

770332

McCarthy, Summers, Bobko, Wood, Sawyer & Perry, P.A.
Attorneys at Law

Kathryn C. Bass
Noel A. Bobko
Nicola Jaye Boone*
Terence P. McCarthy**
Kenneth A. Norman
Steven L. Perry
James M. Powers
Thomas R. Sawyer**
Robert P. Summers**
Patricia I. Taylor
Steven J. Wood***

Monterey Triangle
2400 S.E. Federal Highway • Fourth Floor
Stuart, FL 34994

Tel 772-286-1700
Fax 772-283-1803

John D. McKey, Jr.
Of Counsel

E-Mail: info@mcsumm.com
www.McCarthySummers.com

*Board Certified Elder Law Lawyer
** Board Certified Real Estate Lawyer
*** Board Certified Wills, Trusts &
Estates Lawyer

August 29, 2002

Secretary of State
Division of Corporations
The Capitol
P.O. Box 6327
Tallahassee, Florida 32399-0250

200007470872--6
-09/03/02--01040--006
*****78.75 *****78.75

Re: **Bay Pointe Estates Property Owners Association of Palm City, Inc., a Florida
not-for-profit corporation**

Ladies and Gentlemen:

Enclosed please find Articles of Merger with respect to the above-referenced corporation along with our check number 19037 in the amount of \$78.75, representing the filing fee of \$70.00 plus \$8.75 for a certified copy of same. Thank you.

Very truly yours,

Donna Dempsey

Donna Dempsey, Legal Assistant to:
Terence P. McCarthy
Enclosures

F:\users\TPM\SOS\soslet.gen.wpd

V SHEPARD SEP 12 2002

Mengen

FILED
DIVISION OF CORPORATIONS
02 SEP 11 PM 3:26

McCarthy, Summers, Bobko, Wood, Sawyer & Perry, P.A.

Attorneys at Law

Kathryn C. Bass
Noel A. Bobko
Nicola Jaye Boone*
Terence P. McCarthy**
Kenneth A. Norman
Steven L. Perry
James M. Powers
Thomas R. Sawyer**
Robert P. Summers**
Patricia I. Taylor
Steven J. Wood***

Monterey Triangle
2400 S.E. Federal Highway • Fourth Floor
Stuart, FL 34994

Tel 772-286-1700
Fax 772-283-1803

John D. McKey, Jr.
Of Counsel

E-Mail: info@mcsomm.com
www.McCarthySummers.com

*Board Certified Elder Law Lawyer
** Board Certified Real Estate Lawyer
*** Board Certified Wills, Trusts &
Estates Lawyer

September 9, 2002

Florida Department of State
Division of Corporations
Corporate Filings
P.O. Box 6327
Tallahassee, Florida 32314

Attention: Velma Shepard

Re: **Bay Pointe Estates Property Owners Association of Palm City, Inc., a Florida not-for-profit corporation**

Dear Velma:

Enclosed please find executed *Acceptance and Signature of Registered Agent* pursuant to our telephone conversation today. Please attach same to the Articles of Merger previously sent to you and file same. Thank you for your help on this.

Very truly yours,



Donna Dempsey, Legal Assistant to:
Terence P. McCarthy
Enclosures

F:\users\TPM\SOS\soslet.gen.wpd

Rec'd 9/11

ARTICLES OF MERGER
Merger Sheet

MERGING:

BAY POINTE ESTATES PROPERTY OWNER'S ASSOCIATION OF PALM
CITY, INC., a Florida corporation, N50816

INTO

BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., a
Florida entity, 770332

File date: September 11, 2002

Corporate Specialist: Velma Shepard

ARTICLES OF MERGER

To: DEPARTMENT OF STATE
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
02 SEP 11 PM 3:26

1. The undersigned corporations have adopted an Agreement and Plan of Merger, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.
2. The name of the surviving corporation is BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., a Florida non-profit corporation.
3. The name of the disappearing corporation is BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., a Florida non-profit corporation.
4. No changes in the Articles of Incorporation of the surviving corporation have been made.
5. The Agreement and Plan of Merger of the undersigned corporations was adopted pursuant to Sections 617.1101 and 617.1103 of the Florida Not-for-Profit Corporation Act.
6. The merger of the undersigned corporations will become effective on the last of the following to occur: the date the Certificate of Merger is issued by the Division of Corporations; the date the Boards of Directors of the Associations have voted and resolved to adopt this Agreement and Plan of Merger; and the date on which the members of BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC. have voted and resolved to adopt the proposed Second Amendment to Declaration of Covenants and Restrictions in the form attached as Exhibit "C" to the Agreement and Plan of Merger.
7. The Board of Directors of each of the undersigned corporations have adopted the Agreement and Plan of Merger. BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC.'s Board of Directors approved the Agreement and Plan of Merger on July 11, 2002, during a duly noticed regular meeting of the Board of Directors, which was attended by Charles Dussey, William Buster (by telephone) and John P. Pereira. During such meeting, all of the above directors voted in favor of the Agreement and Plan of Merger. A copy of the subject Minutes of Meeting of Directors of Bay Pointe Property Owners Association of Palm City, Inc. is attached as "Exhibit "B" and is incorporated herein by reference.
8. Pursuant to an April 8, 1994 Stipulation and Agreed Final Judgment, in the case styled *Walter L. Harber, Trustee v. Bay Pointe Property Owners Association of Palm City, Inc.*, Case No. 92-1044 CA, in the Circuit Court of the Nineteenth Judicial Circuit In and For Martin County, Florida, BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., Walter Harber as Trustee and BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC. are required to comply with a January

WA
②

11, 1994 Agreement, which was unanimously approved by the then-record owners of BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., HARBER and BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC. and recorded and which binds all current owners;

9. The Directors and Members of BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC. adopted the Agreement and Plan of Merger at a special meeting held for that purpose on the 12th day of AUGUST, 2002, at which meeting a quorum was present and voting and such Agreement and Plan of Merger was ratified and approved by at least a majority of the members present and entitled to vote, as reflected by the Minutes of Special Meeting of Members and Directors of Bay Pointe Estates Property Owners Association of Palm City, Inc., a copy of which is attached as "Exhibit "C" and incorporated herein by reference.

DATED: AUGUST 12, 2002

BAY POINTE PROPERTY
OWNERS ASSOCIATION OF
PALM CITY, INC.

BAY POINTE ESTATES PROPERTY
OWNERS ASSOCIATION OF
PALM CITY, INC.

BY: [Signature]
President

BY: Walter L. Harb
President

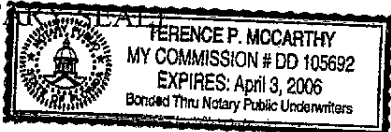
Attest: [Signature]
Secretary

Attest: Walter L. Harb
Secretary

STATE OF
COUNTY OF

The foregoing instrument was acknowledged before me this 12th day of AUGUST, 2002 by CHARLES J. SUSSEY, as Pres. of BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., a Florida non-profit corporation, on behalf of the corporation. He ☐ is personally known to me ☒ has produced DRIVERS LICENSE as identification.

(NOTARY SEAL)



[Signature]
Notary Public

My commission expires:

My commission number:

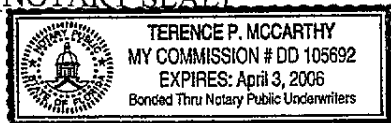
TERENCE P. MCCARTHY
Printed Name

[Signature]
[Signature]

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 18th day of AUGUST, 2002 by WALTER HANSEN, as PRESIDENT of BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., a Florida non-profit corporation, on behalf of the corporation. He ☒ is personally known to me ☐ has produced _____ as identification.

(NOTARY SEAL)



Terence P. McCarthy
Notary Public

My commission expires:

My commission number:

TERENCE P. MCCARTHY

Printed Name

nm
90

EXHIBIT "B" TO ARTICLES OF MERGER

**MINUTES OF MEETING OF DIRECTORS OF BAY POINTE PROPERTY OWNERS
ASSOCIATION OF PALM CITY, INC.**

nm


EXHIBIT "C" TO ARTICLES OF MERGER
MINUTES OF SPECIAL MEETING OF MEMBERS AND DIRECTORS OF BAY
POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC.

The special meeting of the Members and Directors of Bay Pointe Estates Property Owners Association of Palm City, Inc. was held at the offices of the corporation on the 15 day of AUGUST, 2002.

Present were: HARBER (PRESENT), KANWAL (PROXY), HICKEY (PROXY),
LINSEY (PROXY), COERBIAW HOSPITAL CLINIC (PROXY) (8 LOTS)

constituting ~~all~~ of the Members and Directors of said corporation.
AT MATJORITY

WALTER HARBER James Lindsey, the President, presided as Chair of the meeting, and the Secretary, Walter Harber acted as such for the meeting. The Chair called the meeting to order and stated that a quorum of Members and Directors was present for the conduct of the business before the meeting. The Secretary thereupon presented and read the Waiver of Notice to the Meeting duly signed by all of the Members and Directors, which was ordered to be made a part of the minutes of this meeting.

The Chair then said that the Board of Directors had adopted an Agreement and Plan of Merger and was submitting same to the Members for their approval. The Board of Directors recommends the adoption of the Agreement and Plan of Merger. A copy of the Agreement and Plan of Merger was submitted to the Members and ordered to be made a part of the minutes. Upon motion duly made, seconded and carried by the required majority, it was

RESOLVED, as follows:

1. That the corporation adopt the Agreement and Plan of Merger presented to this meeting.
2. That the President and Secretary be and they hereby are authorized and directed to execute the Articles of Merger and the Agreement and Plan of Merger, a copy of which document is attached to and made part of these minutes, jointly, with Bay Pointe Property Owners Association of Palm City, Inc., a Florida non-profit corporation, and to have said document filed in the offices of the Secretary of State in Tallahassee, Florida.
3. That the President and Secretary be and they hereby are authorized and directed to pay any and all legal and other fees and costs and to take all action and execute any further documents that may be necessary to effectuate and implement the proposed merger.

There being no further business, it was on motion duly made, seconded and carried, adjourned.

Walter Harber
Chairman

[Signature]
Secretary

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is made this 12th day of ~~April~~ ^{AUGUST}, 2002, by and between **BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC.**, a Florida Non-Profit Corporation, hereinafter referred to as "Surviving Corporation" or "Bay Pointe," **BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC.**, a Florida Non-Profit Corporation, hereinafter referred to as "Disappearing Corporation" or "Bay Pointe Estates," said corporations being sometimes hereinafter collectively referred to as "Constituent Corporations," and **WALTER HARBER**, individually and as Developer and Trustee of the Trust holding ownership of certain Lots in Bay Pointe Estates.

RECITALS :

WHEREAS, Bay Pointe is a Florida not-for-profit corporation created to maintain and administer the common properties located in Bay Pointe, a subdivision in Martin County, Florida, according to the Plat thereof recorded in Plat Book 9, page 50, and the Plat of Bay Pointe Entrance, replatted in Plat Book 9, page 78, pursuant to that certain Declaration of Covenants and Restrictions and Designation of Property Owners Association As Agent for Administration and Enforcement Thereof, as recorded in Official Records Book 585, page 929, and re-recorded in Official Records Book 615, page 1998 (the "Bay Pointe Declaration") all as recorded in the Public Records of Martin County, Florida; and

WHEREAS, Bay Pointe Estates is a Florida not-for-profit corporation organized to maintain and administer the common properties located in Bay Pointe Estates according to the Plat thereof, recorded in Plat Book 13, page 50, pursuant to the Declaration of Covenants and Restrictions and Designation of Property Owners Association As Agent for Administration and Enforcement Thereof, as recorded in Official Records Book 1057, page 796 (the "Bay Pointe Estates Declaration"); and

WHEREAS, Walter Harber is the developer of Phase VI of the Harbour Pointe P.U.D., otherwise known as Bay Pointe Estates Property Owners Association of Palm City, Inc. and as the developer and sole officer and director, Harber controls the Bay Pointe Estates Property Owners Association of Palm City, Inc.; and

WHEREAS, Bay Pointe and Bay Pointe Estates entered into that certain Agreement dated January 11, 1994, as recorded in Official Records Book 1064, page 2582 and re-recorded in Official Records Book 1116, page 1504, all in the Public Records of Martin County, Florida (the "January 11, 1994 Agreement"), pursuant to which, *inter alia*, Bay Pointe Estates received the right to use the roads and common property of Bay Pointe for the purpose of ingress and egress and construction and maintenance of utilities, and Bay Pointe received the rights to, *inter alia*, indemnification, use of roads and common property in Bay Pointe Estates, to collect assessments from Bay Pointe Estates, control the architecture of future homes in Bay Pointe Estates, and certain docks and other rights of use and access; and

WHEREAS, pursuant to paragraph 13 of the January 11, 1994 Agreement, the parties expressed their intent to merge Bay Pointe Estates into Bay Pointe; and

WHEREAS, the parties have entered this Agreement and Plan of Merger in furtherance of their obligations under the January 11, 1994 Agreement and to administer both subdivisions and to manage the dock and boat slips, if any, to be located upon Tract CA-2 in Bay Pointe Estates; and

WHEREAS, the parties are entering this Agreement and Plan of Merger in furtherance of their obligations under, and under the authority of, an April 8, 1994 Stipulation and Agreed Final Judgment, in the case styled *Walter L. Harber, Trustee v. Bay Pointe Property Owners Association of Palm City, Inc.*, Case No. 92-1044 CA, in the Circuit Court of the Nineteenth Judicial Circuit In and For Martin County, Florida, pursuant to which the parties are required to comply with a January 11, 1994 Agreement, which was approved by the then-record owners of the parties and recorded;

WHEREAS, the respective Boards of Directors and members of the Constituent Corporations deem it advisable that the Disappearing Corporation be merged into the Surviving Corporation, under the laws of the State of Florida, in the manner provided therefor pursuant to Sections 617.1101 and 617.1103 of the Florida Not-for-Profit Corporation Act, and that certain changes be made to the governing documents to effectuate this change and thereby to create the required amended Declaration of Bay Pointe Estates; and

WHEREAS, the respective Boards of Directors of the Constituent corporations have agreed that no changes or amendments in the Articles of Incorporation of the Surviving Corporation will be made; and

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the parties do hereby agree to the following terms and conditions.

1. Recitals. The above recitals are true and correct and are incorporated herein by reference. All recitals, terms, representations, covenants and warranties set forth in this Agreement and Plan of Merger shall survive the closing.

2. Agreement to Merge.

The Constituent Corporations hereby agree that the Disappearing Corporation shall be merged into the Surviving Corporation.

3. Name of Merged Corporation.

The name of the surviving Corporation shall be **Bay Pointe Property Owners Association of Palm City, Inc.**

4. Principal Office of Surviving Corporation.

The principal office of the Surviving Corporation shall be located at the following address:

Bristol Management Services, Inc.
1930 Commerce Lane, Suite 1
Jupiter FL 33458

5. Purposes of Surviving Corporation.

The purposes of the Surviving Corporation are to engage in any lawful acts or activities for which such corporations may be formed under Chapter 617 of the Florida Statutes.

6. All Directors shall be elected in the manner set forth in the Bylaws of the Surviving Corporation.

7. Registered Agent of Surviving Corporation.

The entity hereinafter named shall be the registered agent for the Surviving Corporation at the address hereinbelow set forth, upon whom processes, notices and demands against Bay Pointe Property Owners Association of Palm City, Inc. or Bay Pointe Estates Property Owners Association of Palm City, Inc. may be served:

Bristol Management Services, Inc.
1930 Commerce Lane, Suite 1
Jupiter FL 33458

8. Assets of Disappearing Corporation.

All property, real, personal and mixed and all debts due on whatever account, and all other choses in action and all and every other interest of or belonging to or due to Disappearing Corporation shall be deemed to be transferred, conveyed to and vested in the Surviving Corporation without further act or deed and the title to or any interest in any real estate vested in such corporations shall not revert or be in any way impaired by reason of such merger. Such assets are described on Exhibit "A" attached hereto and incorporated herein by reference.

9. Liabilities of Disappearing Corporation.

The Surviving Corporation shall assume, and henceforth be responsible and liable for, all the liabilities and obligations of the Disappearing Corporation and any claim existing, or action or proceeding pending by or against the Disappearing Corporation may be prosecuted as if such merger had not taken place or the Surviving Corporation may be substituted in its place. All liabilities and obligations of Disappearing Corporation are described on Exhibit "B" attached hereto and

incorporated herein by reference.

10. Articles of Incorporation of Surviving Corporation.

The Articles or Certificate of Incorporation of the Surviving Corporation shall not be amended and shall continue to be the Articles or Certificate of Incorporation of the Surviving Corporation in its present form and content.

11. Bylaws of Surviving Corporation.

The Bylaws of the Surviving Corporation shall continue in its present form and content, to be the Bylaws of the Surviving Corporation.

12. Effective Date of Agreement.

This Agreement and Plan of Merger shall become effective upon the last of the following to occur (the "Effective Date"):

- (a) the date the Certificate of Merger is issued by the Division of Corporations;
- (b) the date the Boards of Directors of the Associations have voted and resolved to adopt this Agreement and Plan of Merger; and
- (c) the date on which the members of BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC. have voted and resolved to adopt the proposed Second Amendment to Declaration of Covenants and Restrictions in the form attached as Exhibit "C."

13. Officers of Surviving Corporation.

On the effective date of the merger, the following persons shall be elected to the offices hereinbelow described, to serve in such capacities until the next annual meeting of the Board of Directors, or until their successors shall be elected and shall qualify:

President:	Charles Dussey
Vice President:	Timothy E. Bryan,
Secretary:	William Buster
Treasurer:	Timothy E. Bryan

14. Books and Records of Disappearing Corporation.

It is agreed that the books and records of the Disappearing Corporation shall be audited for the period from the end of the last fiscal year of said corporation to the effective date of the merger. Such audit shall be conducted by an accountant or CPA to be selected by the Surviving Corporation, and shall be completed prior to the date of merger.

15. Management and Decisions by Board of Directors of Surviving Corporation.

Following the effective date of the merger, all decisions shall be made by the Board of Directors of the Surviving Corporation.

16. Governing documents for Surviving Corporation.

Upon the effective date of the merger, Bay Pointe, as the Surviving Corporation, shall hold all powers, rights, obligations, assets, and liabilities of both Bay Pointe and Bay Pointe Estates. All of the rights, powers, duties, obligations of Bay Pointe Estates and the owners thereof, as set forth in the Declaration of Covenants and Restrictions for Bay Pointe Estates, as amended (the "Declaration"), and any other governing documents, are hereby assigned in total to Bay Pointe Property Owners Association of Palm City, Inc. All references in the Declaration to the Association shall henceforth mean Bay Pointe Property Owners Association of Palm City, Inc. All owners in Bay Pointe Estates agree to be governed by Bay Pointe, and agree to the assignment herein. Bay Pointe Estates shall amend its Declaration of Covenants and Restrictions to specifically reflect this assignment and the transfer, pursuant to the Second Amendment to Declaration of Covenants and Restrictions in the form attached to the Agreement and Plan of Merger as Exhibit "C."

As referred to throughout this Agreement, Bay Pointe Estates' "members" or "owners" shall refer to every entity or person who is a record owner of a fee or undivided fee interest in any Lot situated in the Bay Pointe Estates Subdivision in Martin County according to the plat thereof recorded in Book 13, page 50.

17. Indemnification.

(a) Bay Pointe Estates, and its owners, hereby agree to jointly and severally irrevocably indemnify and hold harmless Bay Pointe and its owners, officers and directors, from and against any loss, cost, damage, liability, judgment, claims, fines, penalties, causes of action, and fees, including attorneys' fees through appeal, arising directly or indirectly out of or related to the development, excavation, restoration, encroachment into, clearing, maintenance, upkeep, use, destruction, alteration, or ownership of wetlands or preserve area or upland transition zones or shoreline protection buffer areas adjacent to, bordering on or included in Bay Pointe Estates, including those in the Phase 4 preservation area in the Harbour Pointe P.U.D., or arising from that certain Consent Decree between the South Florida Water Management District and Adam Brown, as Trustee of Otter's Run and Walter Harber, as Trustee of Bay Pointe Estates, Order No. SFWMD 96-44CO-

SWM; any development of Bay Pointe Estates; any violations of law, permitting requirement, consent decree, planned unit development agreement, the Harbour Pointe PAMP or agency inspection requirements; and any violation of this Agreement and Plan of Merger or the January 11, 1994 Agreement or documents executed in connection therewith. Bay Pointe Estates, and its owners, will jointly and severally resist and defend any action, suit or proceeding, through appeal, brought against Bay Pointe or any of its owners, officers or directors by reason of any such occurrence. Bay Pointe shall have the right to engage counsel of its choice to defend any claim or action, or threatened claim or action, covered by this indemnification, save harmless and obligation to pay. This indemnification shall not be deemed exclusive of any other rights or relief to which Bay Pointe may be entitled to under any statute, authority, law or rule. Harber and Bay Pointe Estates will amend the governing documents for Bay Pointe Estates so that all owners in Bay Pointe Estates are specifically bound by this indemnification provision.

(b) Harber hereby ratifies and affirms his obligations to indemnify Bay Pointe under the January 11, 1994 Agreement, and his obligation to "indemnify and hold harmless Bay Pointe for any and all loss or damage, including attorney fees, resulting from the development of Bay Pointe Estates, including, but not limited to, any violation of code, permitting requirements or agency and inspection requirements" under Paragraph 3 of the January 11, 1994 Agreement. Bay Pointe shall have the right to engage counsel of its choice to defend any claim or action, or threatened claim or action, covered by this indemnification, save harmless and obligation to pay. This indemnification shall not be deemed exclusive of any other rights or relief to which Bay Pointe may be entitled to under any statute, authority, law or rule.

18. Dock and Boat slips.

(a) Construction of Boat Slips to be controlled by Bay Pointe. The parties acknowledge and agree that it is their intent to obtain from all appropriate governmental regulatory authorities all permits and approvals necessary to construct boat slips on the existing fishing pier or upon a newly constructed dock, on Tract CA-2 in Bay Pointe Estates, which boat slips shall be controlled and operated by the Surviving Corporation until such time as a Dock Owners Association is created. The parties agree to cooperate in the effort to construct and obtain approvals for the boat slips. Bay Pointe Estates shall rescind and revoke that certain First Amendment to Declaration of Covenants and Restrictions for Bay Pointe Estates, as recorded in Official Records Book 1284, page 937, of the Public Records of Martin County, Florida, which created Article XIII, Assignment and Use of Boat Slips and Dock.

(b) Allocation and Use of Boat Slips and Dock. Once final approval has been obtained from all appropriate governmental regulatory authorities to construct the boat slips adjacent to the Fishing Pier, the boat slips shall be allocated by Bay Pointe as follows.

(i) If five or less boat slips are permitted, Bay Pointe's Board of Directors shall have the right to allocate all slips to members of Bay Pointe. In the event less than five upland owners desire a slip, the excess slips shall be allocated to Harber.

(ii) If six or more boat slips are permitted, five shall be allocated to Bay Pointe and the remainder to Harber.

(iii) No later than 90 days after the boat slips have been allocated, Harber shall reallocate his boat slips to owners in Bay Pointe Estates.

19. Lot 1 Bay Pointe.

Bay Pointe and Bay Pointe Estates acknowledge that it is the intent of Harber to divide Lot 1, Bay Pointe, into three (3) portions each to be conveyed and made a part of Lots 35, 36 and 37, respectively, in Bay Pointe Estates by execution of unity of title agreement(s). None of such divided portion shall, by itself, be a "buildable site." Bay Pointe will reasonably cooperate with Bay Pointe Estates' efforts to obtain PUD Amendments and needed permit modifications that are required to divide Lot 1 as set forth herein, provided Harber pays all fees and expenses for same. If Harber is unable to divide Lot 1 as contemplated herein, Harber may, at his own cost, attempt to grant easements for ingress and egress over Lot 1, Bay Pointe, to and for the benefit of Lots 35, 36 and 37, respectively, in Bay Pointe Estates, and Bay Pointe will reasonably cooperate with Harber in this regard.

(a) At such time as Harber sells and closes on the sale of Lots 35, 36 or 37, including the appropriate portion of Lot 1 thereof, upon the first such closing, Harber shall pay to Bay Pointe the sum of \$25,000 and upon the second closing of such lots Harber shall pay to Bay Pointe the sum of \$25,000, which sums may be used for any purpose by Bay Pointe. These sums shall be due regardless of whether Harber is successful in dividing Lot 1.

(b) Prior to Harber selling either Lots 35, 36 or 37, and the portion of Lot 1 thereunto appertaining, Lot 1 shall continue to be assessed pursuant to the Bay Pointe Declaration. After the first sale of either Lot 35, 36 or 37, the assessments by Bay Pointe for the divided portions shall be reallocated as set forth in paragraph 20, below. These sums shall be due regardless of whether Harber is successful in dividing Lot 1.

20. Assessments.

All assessments for the common property maintenance of the Surviving Corporation and the Disappearing Corporation will be paid equally by each owner (as set forth in the governing documents) with the exception of the noncommercial community dock, which will be paid for by the owners who have a boat slip. The assessments for maintenance for all individual lots in Bay Pointe Estates will be equitably determined by the Board of Directors of the Surviving Corporation, as required by the January 11, 1994 Agreement. Such assessments may be based upon square footage of the lots.

With regard to assessments for landscaping, each lot owner in Bay Pointe and Bay Pointe Estates shall be responsible for the cost of the initial installation of landscaping on the owner's lot; each lot

owner shall be responsible for the replacement of any dead landscaping or any new additional landscaping on the owner's lot. For security, safety, access and efficiency reasons, the maintenance of all Estates lots, including grass cutting, trimming, fertilization and irrigation, shall be performed by one contractor to be selected by Bay Pointe, unless otherwise determined by Bay Pointe. It is the intention of the parties that the maintenance of all landscaping, including fertilization and irrigation maintenance on all properties in Bay Pointe and Bay Pointe Estates, shall be submitted to a competitive bid process approximately every three years following the termination of the current contract, whereby Bay Pointe may solicit bids from three qualified landscaping contractors and select the most appropriate (not necessarily the lowest) bid submitted as a part of such bidding process. The costs of such individual lot maintenance shall be allocated among all lots in Bay Pointe and Bay Pointe Estates as follows:

(a) Individual lot maintenance assessments for all of the lots in Bay Pointe Estates may be calculated by lot size, as determined by the Board of Directors of the Surviving Corporation. The governing documents for Bay Pointe Estates shall be amended to permit Bay Pointe to assess such lots in unequal amounts for annual or special assessments. In addition, Lots 35, 36 and 37 of Bay Pointe Estates shall be assessed an additional amount totaling the equivalent of the common area maintenance and the individual lot maintenance for Bay Pointe Lot 1. Specifically, Lot 35 (including the portion of Lot 1, Bay Pointe, attached thereto) shall pay 20% of the additional assessment; and Lot 36 (including the portion of Lot 1, Bay Pointe, attached thereto) and Lot 37 (including the portion of Lot 1, Bay Pointe, attached thereto) shall each pay 40% of the additional assessment.

(b) All lots in Bay Pointe shall continue to be assessed according to the Bay Pointe Declaration, which currently provides that such lots are assessed equal amounts for annual and special assessments.

21. Water Management Tract. No later than 90 days after this Agreement and Plan of Merger becomes effective, Harbor shall pay for and have installed an aerator in the water management tract in Bay Pointe Estates, of sufficient power (at least 2 HP) to aerate the water management tract, and in no event shall the installed aerator and accessories be inferior to such items listed in the quote provided under Lindsey Management Company's letter to John Pereira dated April 7, 1998 (discussing a \$3,753.46 bid for installing an aerator Model #5422SC and accessories).

22. Miscellaneous.

Gender. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Successors and Assigns. The terms, provisions, covenants and conditions contained in this Agreement and Plan of Merger shall apply to, inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, except as otherwise expressly provided in this Agreement and Plan of Merger.

Captions. The captions inserted in this Agreement and Plan of Merger are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement and Plan of Merger, or any provision hereof, or in any way affect the interpretation of this Agreement and Plan of Merger.

Amendment. This Agreement and Plan of Merger may not be altered, changed or amended except by an instrument in writing signed by all parties hereto provided, however, after Harber no longer owns any property in Bay Pointe Estates any amendment shall not require the consent or signature of Harber.

Invalidity. If any clause, provision or portion of this Agreement and Plan of Merger or the application thereof to any person or circumstances shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement and Plan of Merger nor any other clause, phrase, provision or portion hereof to other persons or circumstances, and it is also the intention of the parties to this Agreement and Plan of Merger that in lieu of each such clause, phrase, provision or portion of this Agreement and Plan of Merger that is invalid or unenforceable, there be added as a part of this Agreement and Plan of Merger a clause, phrase, provision or portion as similar in terms as such invalid or unenforceable clause, phrase, provision or portion as may be possible and be valid and enforceable.

Waiver of Trial by Jury. It is mutually agreed that the respective parties hereto do waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matter arising out of or in any way connected with this Agreement and Plan of Merger.

Attorneys' Fees and Venue. In connection with any litigation arising out of this Agreement and Plan of Merger, the prevailing party shall be entitled to recover reasonable attorney's fees and costs, including paralegal charges, through appeal. Any litigation related to or arising out of this Agreement and Plan of Merger or related transactions shall be brought solely in the Nineteenth Judicial Circuit in and for Martin County, Florida.

Authority. Each party represents and warrants that it has the right, title and capacity to enter into this Agreement and Plan of Merger, that each is authorized to enter into this Agreement and Plan of Merger and the transactions contemplated hereby, and each has satisfied all conditions precedent to the execution of this Agreement and Plan of Merger. Bay Pointe covenants that it is the owner of the Bay Pointe Common Property, free and clear of all mortgages and liens. Bay Pointe Estates covenants that it is the owner of the Bay Pointe Estates Common Property, free and clear of all mortgages and liens. Each party represents and warrants that this Agreement and Plan of Merger shall not cause it to violate any agreement, instrument or corporate or governing documents to which it is a party or to which it is subject.

No violations. Each party represents and warrants that it is in compliance with all permits, licenses, consent decrees, ordinances, regulations, laws, ordinances, zoning codes, building codes and orders. Each party represents and warrants that it has no notice of any outstanding notices or

orders from any governmental authority, or with respect to any claim of a violation of any permits, licenses, consent decrees, ordinances, regulations, ordinances, zoning codes, building codes or orders and that no actions, suits or proceedings are pending or threatened against any party.

Severability. If any part, term or provision of this Agreement shall be deemed illegal or unenforceable or in conflict with any law, the validity of the remainder of this Agreement shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.

IN WITNESS WHEREOF, the Constituent Corporations and Harber have caused their respective names to be signed hereto by themselves or their authorized representatives, thereunto duly authorized by the respective Board of Directors and Owners thereof, the day and year first above written.

Signed in Presence of:

**BAY POINTE PROPERTY OWNERS
ASSOCIATION OF PALM CITY, INC.**

Scott Kraus
Walt Harber
As to Surviving Corporation

BY: [Signature]
ATTEST: [Signature]

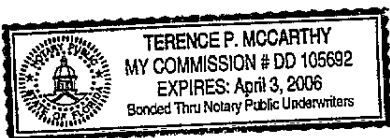
**BAY POINTE ESTATES PROPERTY OWNERS
ASSOCIATION OF PALM CITY, INC.**

Scott Kraus
[Signature]
As to Disappearing Corporation

BY: Walt Harber
ATTEST: Walt Harber
President
Secretary

STATE OF
COUNTY OF

The foregoing instrument was acknowledged before me this 12th day of AUGUST, 2002 by CHARLES J. DISNEY, as PRESIDENT of **BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC.**, a Florida not-for-profit corporation, on behalf of the corporation. He ☐ is personally known to me ☒ has produced DRIVERS LICENSE as identification.



Terence P. McCarthy
Notary Public

W
[Signature]

(NOTARY SEAL)

My commission expires:

My commission number:

TERENCE P. MCCARTHY

Printed Name

STATE OF FLORIDA
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 10th day of AUGUST, 2002 by WALTER MARIN, as PRESIDENT of BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, on behalf of the corporation. He [X] is personally known to me [] has produced _____ as identification.



Terence P. McCarthy

Notary Public

My commission expires:

My commission number:

TERENCE P. MCCARTHY

Printed Name

Signed in Presence of:

Terence P. McCarthy
Scott Kraus

WALTER HARBER, Individually and as
Trustee

Walter Harber

STATE OF FLORIDA
COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this 18th day of
AUGUST, 2002 by _____, Walter Harber. He ☒ is
personally known to me ☐ has produced _____ as identification.

(NOTARY SEAL)



Terence P. McCarthy
Notary Public

My commission expires:

My commission number:

TERENCE P. MCCARTHY
Printed Name

W
Q

EXHIBIT "A"

Assets of Bay Pointe Estates Property Owners Association of Palm City, Inc.

All common areas, water management tracts, utility easements, drainage easements, maintenance easements, access easements, and any combination thereof and all roads and rights-of-way, as more particularly set forth and dedicated on the Plat of Bay Pointe Estates as recorded in Plat Book 13, page 50, Martin County, Florida, Public Records.

Handwritten signature and initials in the bottom right corner of the page.

EXHIBIT "B"

Liabilities of Bay Pointe Estates Property Owners Association of Palm City, Inc.

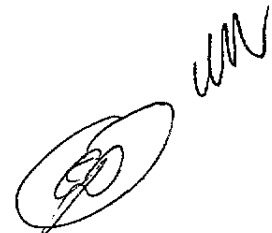
None.

Handwritten signature and initials in the bottom right corner. The initials appear to be "PO" inside a circle, with a stylized signature above it.

EXHIBIT "C"

Second Amendment to Declaration of Covenants and Restrictions for Bay Pointe Estates Property Owners Association of Palm City, Inc.

W:\CASES\BAY POINTE\DOCUMENTS\1-29-02 Final Articles of Merger.wpd(June 14, 2001 (3:53PM))

Handwritten signature and initials in the bottom right corner of the page.

**SECOND AMENDMENT
TO DECLARATION OF COVENANTS, AND RESTRICTIONS FOR
BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC.**

This **Second Amendment to Declaration of Covenants and Restrictions** is made and executed on the 12th day of AUGUST, 2002 by WALTER HARBER as Trustee, hereinafter referred to as "Developer", joined by BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., a Florida not for profit organization hereinafter referred to as the "Association."

WITNESSETH:

WHEREAS, the Developer and the Association created that certain Declaration of Covenants, Conditions, and Restrictions for Bay Pointe Estates as recorded in Official Records Book 1057, Pages 796, Martin County Florida Public Records, as amended by that certain First Amendment to Declaration of Covenants and Restrictions for Bay Pointe Estates, as recorded in Official Records Book 1284, page 937, of the Public Records of Martin County, Florida, which created Article XIII, Assignment and Use of Boat Slips and Dock (collectively, the Declaration and First Amendment will be referred to as the "Declaration"); and

WHEREAS, the Association has entered into a Plan of Merger with Bay Pointe Property Owners Association of Palm City, Inc.; and

WHEREAS, the Developer and the Association have determined that it is necessary and proper to amend the Declaration, as amended.

NOW, THEREFORE, the Developer and the Association hereby declare that the Declaration is amended in the following respects:

1. The First Amendment to Declaration of Covenants and Restrictions for Bay Pointe Estates, as recorded in Official Records Book 1284, page 937, of the Public Records of Martin County, Florida, which created Article XIII, Assignment and Use of Boat Slips and Dock, is hereby revoked and of no further force and effect.

2. All references in the Declaration to the "Association" and BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC. shall hereinafter mean the merged not for profit corporation known as BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., which shall have all of the rights, powers, duties and obligations conferred upon BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC. by virtue of the Declaration. The Owners of Lots in BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC. hereby assign such rights in total to the merged not for profit corporation known as BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC.

3. Section 4, Special Assessments For Capital Improvements, of Article V, Covenant For Maintenance Assessments, is hereby amended to read as follows:

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the combined votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting. All owners may be specially or annually assessed in unequal amounts based upon the discretion of the Board of Directors of the Association.

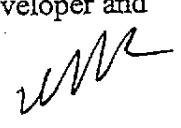
4. Article 5, Section 5, Annual Assessment for a Residence Constructed on Two or More Lots, is hereby amended to read as follows:

Section 5. Annual Assessment for a Residence Constructed on Two or More Lots. If a residence is built upon two or more lots, the Owner of such lots shall be obligated to pay the full amount of the assessment for each such lot.

5. Bay Pointe Estates, and its owners, hereby agree to jointly and severally irrevocably indemnify and hold harmless Bay Pointe and its owners, officers and directors, from and against any loss, cost, damage, liability, judgment, claims, fines, penalties, causes of action, and fees, including attorneys' fees through appeal, arising directly or indirectly out of or related to the development, excavation, restoration, encroachment into, clearing, maintenance, upkeep, use, destruction, alteration, or ownership of wetlands or preserve area or upland transition zones or shoreline protection buffer areas adjacent to, bordering on or included in Bay Pointe Estates, including those in the Phase 4 preservation area in the Harbour Pointe P.U.D., or arising from that certain Consent Decree between the South Florida Water Management District and Adam Brown, as Trustee of Otter's Run and Walter Harbor, as Trustee of Bay Pointe Estates, Order No. SFWMD 96-44CO-SWM; any development of Bay Pointe Estates; any violations of law, permitting requirement, consent decree, planned unit development agreement, the Harbour Pointe PAMP or agency inspection requirements; and any violation of this Agreement and Plan of Merger or the January 11, 1994 Agreement or documents executed in connection therewith. Bay Pointe Estates, and its owners, will jointly and severally resist and defend any action, suit or proceeding, through appeal, brought against Bay Pointe or any of its owners, officers or directors by reason of any such occurrence. Bay Pointe shall have the right to engage counsel of its choice to defend any claim or action, or threatened claim or action, covered by this indemnification, save harmless and obligation to pay. This indemnification shall not be deemed exclusive of any other rights or relief to which Bay Pointe may be entitled to under any statute, authority, law or rule.

6. All of the terms and conditions of the Declaration not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, this Second Amendment has been signed by Developer and the Association as of the date first set forth above.



Witness:

Terence P. McCarthy
TERENCE P. MCCARTHY

Printed name

Scott Konopka
SCOTT KONOPKA
Printed name

BAY POINTE ESTATES PROPERTY
OWNERS ASSOCIATION OF PALM CITY,
INC.

By:

Title:

Address:

Walter Harber
Pres
2400 S.E. FEDERAL HWY
STUART FL 34994

Terence P. McCarthy
TERENCE P. MCCARTHY

Printed name

Scott Konopka
SCOTT KONOPKA
Printed name

Walter Harber
WALTER HARBER, AS TRUSTEE
Address: 2400 S.E. FEDERAL HWY
STUART FL 34994

STATE OF FLORIDA)
) SS:
COUNTY OF MATIN)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Walter Harber, the PRESIDENT of BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., a Florida not for profit corporation, freely and voluntarily under authority duly vested in him by said corporation. He is personally known to me X or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 10 day of AUGUST, 2002.

(NOTARY SEAL)



Terence P. McCarthy
Notary Public

Printed Name: TERENCE P. MCCARTHY

My commission expires: _____

My commission number: _____

STATE OF FLORIDA)
) SS.
COUNTY OF MARTIN)

The foregoing instrument was acknowledged before me this 2nd day of August, 2002, by **WALTER HARBER**, as Trustee. He is personally known to me X or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 2nd day of August, 2002.

(NOTARY SEAL)



Terence P. McCarthy

Notary Public

Printed Name: Terence P. McCarthy

My commission expires: _____

My commission number: _____

Second Amendment to Estates Declaration.wpd(January 22, 2002 (2:54PM))

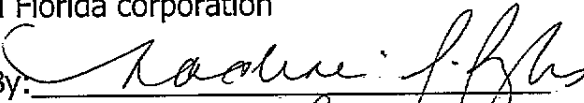
unc

**ACCEPTANCE
AND
SIGNATURE
OF
REGISTERED AGENT**

I hereby am familiar with and accept the duties and responsibilities as Registered Agent for said corporation.

BRISTOL MANAGEMENT SERVICES, INC.

a Florida corporation

By: 

Its: Vice President