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**MERGER OR SHARE EXCHANGE**

**BAYSHORE CULTURAL AND PERFORMING ARTS CENTER, INC**

Certificate of Status	0
Certified Copy	1
Page Count	01/10
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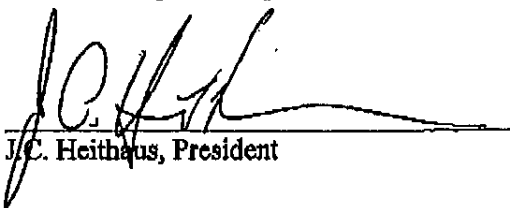
No. 6205 P. 3

**EIGHTH:** The Articles of Incorporation of BCAPAC, the surviving corporation, shall be the Articles of Incorporation presently on file with the State of Florida.

**IN WITNESS WHEREOF**, these Articles of Merger have been executed on behalf of the parties hereto as of the 3<sup>rd</sup> day of July, 2011.

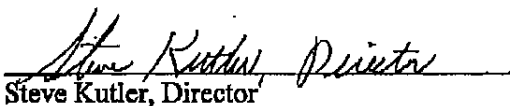
**BAYSHORE CULTURAL AND  
PERFORMING ARTS CENTER, INC.,**  
a Florida nonprofit corporation

By:

  
J.C. Heithaus, President

**BAYSHORE CAPA CENTER, INC.,**  
a Florida nonprofit corporation

By:

  
Steve Kutler, Director

**Agreement and Plan of Merger  
of  
Bayshore Cultural and Performing Arts Center, Inc.  
and  
Bayshore CAPA Center, Inc.**

This Agreement and Plan of Merger ("Agreement") is entered into by and among BAYSHORE CULTURAL AND PERFORMING ARTS CENTER, INC., a Florida nonprofit corporation whose business address is 4069 Bayshore Drive, Naples, Florida 34112 ("BCAPAC"), the Directors of BCAPAC, to wit, J.C. Heithaus, Rochelle Doepke, Dwight Richardson, Jennifer L. Stampfli and Steve Kutler ("BCAPAC Directors"), BAYSHORE CAPA CENTER, INC., a Florida nonprofit corporation whose business address is 4069 Bayshore Drive, Naples, Florida 34112 ("CAPA") and the Directors of CAPA, to wit: Steve Kutler, Noll William, Ronald Bowman, Jennifer L. Stampfli and Rochelle Doepke ("CAPA Directors") all on this 31<sup>st</sup> of July, 2011.

**RECITALS**

Whereas, the parties to this Agreement desire that BCAPAC acquire CAPA through a transfer of the assets from CAPA to BCAPAC on the Effective Date as described below; and

Whereas, the parties hereto desire to set forth certain representations, warranties and covenants made by each to the other as an inducement to the exchange;

Now, Therefore, in consideration of the premises and of the mutual representations, warranties and covenants and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereby agree as follows:

**ARTICLE 1  
COMBINATION AND ASSET TRANSFER**

Subject to the terms and conditions contained herein, the CAPA Directors shall cause the transfer of the assets of CAPA to BCAPAC by such instruments and documentation as shall be necessary to accomplish that task on the effective date of the merger. Following the transfer of assets CAPA will cease its corporate existence in accordance with the Articles of Merger

**ARTICLE 2  
REPRESENTATIONS AND WARRANTIES OF BCAPAC**

2.1 BCAPAC is a corporation validly existing and in active status under the Laws of the State of Florida. BCAPAC is duly qualified to conduct business as a corporation not for profit, and is in good standing. BCAPAC has all requisite corporate power and authority to own its properties and to carry on its business purposes.

2.2 BCAPAC has no Members. No person or entity is entitled to the residual assets of the BCAPAC.

2.3 True and complete copies of the Articles of Incorporation and Bylaws of BCAPAC have been made available to the Board of Directors of CAPA. The minute books of BCAPAC have been made available to Board of Directors of CAPA for examination and contain complete and accurate records of all material corporate action taken by the Board of Directors of BCAPAC.

2.4 The execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by BCAPAC pursuant hereto and the consummation by the BCAPAC of the transactions contemplated hereby and thereby have been duly authorized by the Board of Directors of BCAPAC.

2.5 The BCAPAC has filed all Tax Returns required to be filed by it and all such returns are complete and accurate in all respects. BCAPAC has paid or made adequate provision for the payment of all taxes owed, whether or not shown as due on such tax returns.

2.6 Title to Assets.

2.6.1 BCAPAC has good and marketable title to all of its assets and properties free and clear of all liens, except those disclosed to CAPA Board of Directors.

2.6.2 All of BCAPAC's tangible property, taken as a whole, is in good operating condition and repair, subject to normal wear and tear, and is usable in the ordinary course of business consistent with BCAPAC's past practices.

ARTICLE 3

**REPRESENTATIONS AND WARRANTIES OF CAPA**

3.1 CAPA is a not for profit corporation validly existing and in active status under the Laws of the State of Florida. CAPA is duly qualified to conduct business as a corporation and has all requisite corporate power and authority to own and operate its properties and to carry on its business as and where such is now being conducted.

3.2 CAPA has no Members. No person or entity is entitled to the residual assets of the CAPA.

3.3 CAPA does not own, directly or indirectly, any capital stock or other equity securities of any other corporation or have any direct or indirect equity or other ownership interest in any entity or business.

3.4 True and complete copies of the Articles of Incorporation and Bylaws of CAPA have been made available to the Board of Directors of BCAPAC. The minute books of CAPA have been made available to the Board of Directors of BCAPAC for examination and contain complete and accurate records of all material corporate action taken by the Board of Directors of CAPA.

3.5 The execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by CAPA pursuant hereto and the consummation by the CAPA of the transactions contemplated hereby and thereby have been duly authorized by the Board of Directors of CAPA.

3.6 CAPA has filed all tax returns required to be filed by it and all such returns are complete and accurate in all respects. CAPA has paid or made adequate provision for the payment of all taxes owed, whether or not shown as due on such tax returns.

3.7 Title to Assets.

3.7.1 CAPA has good and marketable title to all of its assets and properties free and clear of all liens, except those disclosed to BCAPAC's Board of Directors.

3.7.2 All of CAPA tangible property, taken as a whole, is in good operating condition and repair, subject to normal wear and tear, and is usable in the ordinary course of business consistent with CAPA past practices.

**ARTICLE 4**  
**COVENANTS**

From and after the date of this Agreement, the parties shall comply with the following covenants:

4.1 Reasonable access during normal business hours to all of the properties, books, records, contracts and documents of BCAPAC and CAPA for the purpose of such inspection, investigation and testing as CAPA deems appropriate.

4.2 BCAPAC and CAPA will carry on their continuing business activities in the ordinary course and in substantially the same manner as heretofore conducted and will not make or institute any material changes in its methods of purchase, sale, management, accounting or operation.

4.3 BCAPAC and CAPA shall not enter into any material contract outside of the ordinary course of business.

**ARTICLE 5**  
**CONDITIONS PRECEDENT TO BCAPAC'S OBLIGATIONS**

Each and every obligation of BCAPAC to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of each of the following conditions:

5.1 Each of the representations and warranties made by CAPA in this Agreement shall be true and correct in all material respects when made and shall be true and correct in all material respects at and as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date, except for any changes permitted by the terms of this Agreement or consented to by BCAPAC; provided that for purposes of this Section 5.1, if

any representation or warranty made by CAPA includes a materiality qualifier, such qualifier shall be disregarded solely for purposes of determining compliance with this Section 5.1.

5.2 CAPA shall have performed and complied with all of its agreements and obligations under this Agreement that are to be performed or complied with by it prior to or on the Closing Date.

5.3 All approvals, consents and waivers shall have been received, and executed counterparts thereof shall have been delivered to BCAPAC prior to the Closing.

5.4 The Articles of Merger shall be filed with the Florida Department of State.

5.5 Certified copies of the resolutions of the CAPA Directors, authorizing and approving this Agreement and the consummation of the transactions contemplated by this Agreement.

5.6 Incumbency certificates relating to each person executing any document executed and delivered to BCAPAC by CAPA pursuant to the terms hereof.

#### **ARTICLE 6**

#### **CONDITIONS PRECEDENT TO CAPA OBLIGATIONS**

Each and every obligation of CAPA to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of each of the following conditions:

6.1 Each of the representations and warranties made by BCAPAC in this Agreement shall be true and correct in all material respects when made and shall be true and correct in all material respects at and as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date, except for any changes permitted by the terms of this Agreement or consented to by CAPA; provided that for purposes of this Section 6.1, if any representation or warranty made by BCAPAC includes a materiality qualifier, such qualifier shall be disregarded solely for purposes of determining compliance with this Section 6.1.

6.2 BCAPAC shall have performed and complied with all of its agreements and obligations under this Agreement that are to be performed or complied with by it prior to or on the Closing Date.

6.3 All approvals, consents and waivers shall have been received, and executed counterparts thereof shall have been delivered to CAPA prior to the Closing.

6.4 The Articles of Merger shall have been filed with the Florida Department of State.

6.5 Certified copies of the resolutions of the BCAPAC Directors, authorizing and approving this Agreement and the consummation of the transactions contemplated by this Agreement.

6.6 Incumbency certificates relating to each person executing any document executed and delivered to CAPA by BCAPAC pursuant to the terms hereof.

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**ARTICLE 7**  
**MISCELLANEOUS**

7.1 Further Assurance. From time to time, at a Party's request and without further consideration, the other Parties will execute and deliver to the requesting Party such documents and take such other action as the requesting Party may reasonably request in order to consummate more effectively the transactions contemplated hereby.

7.2 Assignment. The rights and obligations of a Party hereunder may not be assigned, transferred or encumbered, in whole or in part, without the prior written consent of the other parties; provided, however, Parent may assign its rights hereunder, in whole or in part, for the benefit of its lenders.

7.3 Law Governing Agreement. This Agreement shall be construed and interpreted according to the internal Laws of the State of Florida, excluding any choice of law rules that may direct the application of the Laws of another jurisdiction.

7.4 Amendment and Modification. CAPA and BCAPAC may amend, modify and supplement this Agreement, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed on behalf of all of the parties hereto or, in the case of a waiver, by the party waiving compliance.

7.5 Notice. All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission or other electronic means of transmitting written documents; or (c) sent to the parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

If to BCAPAC:

Bayshore Cultural and Performing Arts  
Center, Inc.  
Attn: J.C. Heithaus  
4069 Bayshore Drive  
Naples, Florida 34112

If to CAPA:

Bayshore CAPA Center, Inc.  
Attn: Steve Kutler  
4900 Bayshore Drive  
Naples, Florida 34112

with a copy to:

Salvatori, Wood & Buckel, P.L.  
Attn: Kevin Carmichael, Esq.  
9132 Strada Place, Fourth Floor  
Naples, Florida 34108

If personally delivered, such communication shall be deemed delivered upon actual receipt; if electronically transmitted pursuant to this paragraph, such communication shall be

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deemed delivered the next Business Day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this paragraph, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this paragraph, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service, or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Delivery to the Company Representative shall constitute delivery to all Company Directors. Any Person may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

7.6 Expenses. Regardless of whether or not the transactions contemplated hereby are consummated:

7.6.1 Brokerage. There is no broker involved or in any way connected with the transfer provided for herein on their behalf respectively and each agrees to hold the other harmless from and against all other claims for brokerage commissions or finder's fees in connection with the execution of this Agreement or the transactions provided for herein.

7.6.2 Other. Except as otherwise provided herein, each of the Parties shall bear its own expenses and the expenses of its counsel and other agents in connection with the transactions contemplated hereby.

7.6.3 Entire Agreement; Binding Effect. This Agreement embodies the entire agreement between the Parties hereto with respect to the transactions contemplated herein, and there have been and are no agreements, representations or warranties between the parties other than those set forth or provided for herein or executed contemporaneously or in connection herewith. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, successors and permitted assigns.

7.6.4 Headings. The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

7.6.5 Construction. Where any group or category of items or matters is defined collectively in the plural number, any item or matter within such definition may be referred to using such defined term in the singular number.

7.6.6 Interpretations. Neither this Agreement nor any uncertainty herein shall be construed or resolved against any Party, whether under rule of construction or otherwise. No Party to this Agreement shall be considered the draftsman. The Parties acknowledge and agree that this Agreement has been reviewed, negotiated, and accepted by all parties, and their attorneys and shall be construed and interpreted according to the ordinary meaning of the words used so as fairly to accomplish the purposes and intentions of all parties hereto.

7.6.7 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms

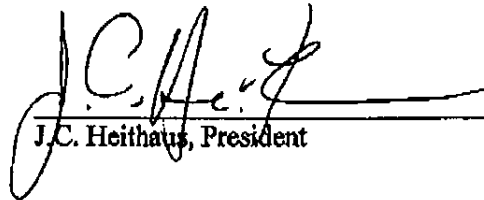


and provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted only so broad as enforceable.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year first above written.

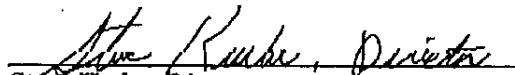
**BAYSHORE CULTURAL AND  
PERFORMING ARTS CENTER, INC.,**  
a Florida nonprofit corporation

By:

  
J.C. Heithaus, President

**BAYSHORE CAPA CENTER, INC.,**  
a Florida nonprofit corporation

By:

  
Steve Kutler, Director

## Bayshore CAPA Center, Inc.

### Unanimous Written Consent Adopting the Plan of Merger And Articles of Merger

by and between

Bayshore CAPA Center, Inc.

and

Bayshore Cultural and Performing Arts Center, Inc.

*This unanimous written consent of the Directors of Bayshore CAPA Center, Inc. is adopted in accordance with Chapter 617 of the Florida Statutes on July 31, 2011*

The Agreement and Plan of Merger Plan of Merger ("Plan") and Articles of Merger ("Articles") is adopted as of the 31<sup>st</sup> day of July, 2011 by the Directors of BAYSHORE CAPA CENTER, INC., a Florida nonprofit corporation ("Corporation").

### RECITALS

WHEREAS, Director, Steve Kutler, has advised the Board of Directors of the Corporation that the original business purposes of the Corporation have been accomplished and that it is in the interests of the Corporation to merge into BAYSHORE CULTURAL AND PERFORMING ARTS CENTER, INC., ("BCAPAC") in accordance with the attached Plan and Articles.

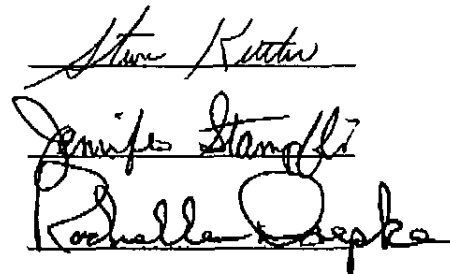
Now, Therefore, the Directors of the Corporation adopt the following resolutions:

1. Resignations were accepted by the Board of Directors on behalf of Noll William and Ronald Bowman. The remaining three Directors have approved and appointed J.C. Helthaus and Dwight Richardson, as additional Directors, the election is memorialized by the signatures of the directors prior to the election below:

Steve Kutler Director

Jennifer L. Stampfli Director

Rochelle Doepke Director



2. Merger of the Corporation. RESOLVED, the Corporation shall wind up its affairs with the last day of business for accounting purposes to be July 31, 2011.

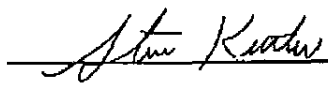
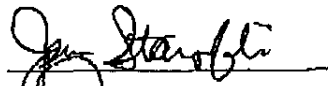
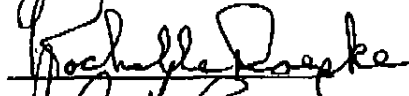

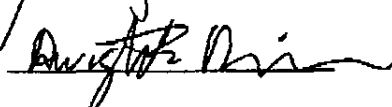
3. Asset Transfer. RESOLVED, the Directors shall cause the transfer of the Corporation's Assets to BCAPAC as provided in the Plan on July 31, 2011.

4. **Resignation of Officers and Directors.** **RESOLVED**, the officers and directors of the Corporation shall tender their resignations effective July 31, 2011.

5. **Expenses of Merger.** **RESOLVED**, all expenses associated with the merger of the Corporation, shall be charged against the income and assets of the Corporation prior to the Merger.

**RECORD OF VOTE BY SIGNATURE OF DIRECTORS**

*The undersigned, representing all of the Directors of the Corporation unanimously give their written consent to the Plan and Articles this 31<sup>st</sup> day of July, 2011.*

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Steve Kutler	Director	
Jennifer L. Stampfli	Director	
Rochelle Doepke	Director	
J.C. Helthaus	Director	
Dwight Richardson	Director	

## **Bayshore Cultural and Performing Arts Center, Inc.**

**Unanimous Written Consent  
Adopting the Plan of Merger  
And Articles of Merger  
by and between  
Bayshore CAPA Center, Inc.  
and  
Bayshore Cultural and Performing Arts Center, Inc.**

*This unanimous written consent of the Directors of Bayshore Cultural and Performing Arts Center, Inc. is adopted in accordance with Chapter 617 of the Florida Statutes on July 31, 2011*

The Agreement and Plan of Merger Plan of Merger ("Plan") and Articles of Merger ("Articles") is adopted as of the 31<sup>st</sup> day of July, 2011 by the Directors of BAYSHORE CULTURAL AND PERFORMING ARTS CENTER, INC., a Florida nonprofit corporation ("Corporation").

### **RECITALS**

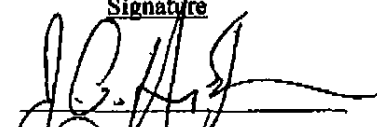
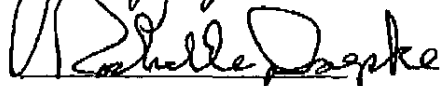
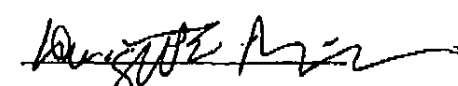
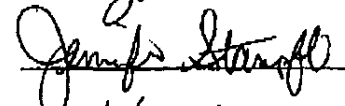
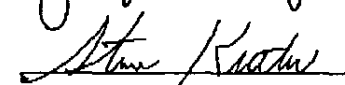
WHEREAS, President, J.C. Heithaus, has advised the Board of Directors of the Corporation that it is in the interests of the Corporation to merge with BAYSHORE CAPA CENTER, INC. ("CAPA") in accordance with the attached Plan and Articles to acquire the contiguous parcels of land owned by CAPA.

*Now, Therefore,* the Directors of the Corporation adopt the following resolutions:

1. **Merger of the Corporation. RESOLVED**, the Corporation shall merge with CAPA on July 31, 2011. The Corporation shall survive the merger.
2. **Receipt of Assets. RESOLVED**, the Corporation shall succeed to the assets of raised as provided in the Plan.
3. **Expenses of Merger. RESOLVED**, all expenses associated with the merger of the Corporation, shall be charged against the income and assets of the Corporation prior to the Merger.

**RECORD OF VOTE BY SIGNATURE OF DIRECTORS**

*The undersigned, representing all of the Directors of the Corporation unanimously give their written consent to the Plan and Articles this 31<sup>st</sup> day of July, 2011.*

<u>Name</u>	<u>Title</u>	<u>Signature</u>
J.C. Heithaus	President	
Rochelle Doepke	Vice President	
Dwight Richardson	Secretary	
Jennifer L. Stampfli	Treasurer	
Steve Kutler	Director	

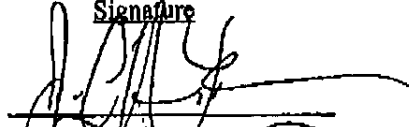
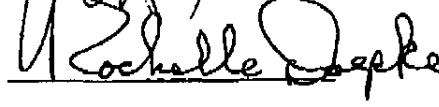
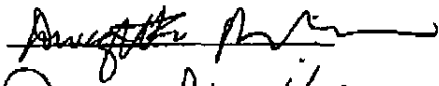
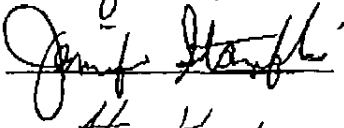
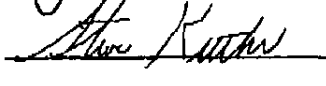
# **Bayshore Cultural and Performing Arts Center, Inc.**

## **Incumbency Certificate**

I, J.C. Heithaus, the undersigned, hereby certify that I am the President of BAYSHORE CULTURAL AND PERFORMING ARTS CENTER, INC., (the "Company"), a Florida nonprofit corporation, and as such I am authorized to execute this certificate. I hereby further certify that:

1. Attached hereto as Exhibit A is a true and correct copy of a certain Unanimous Written Consent containing resolutions adopted by the Board of Directors of the Company in accordance with Florida law and with the Articles of Incorporation and Bylaws of the Company, which resolutions have not been amended, rescinded or otherwise modified, and are in full force and effect and have been filed with the Secretary of the Company.

2. Each of the following persons are, on and as of the date of this certificate, duly elected, qualified and acting directors of the Company holding the office set forth beside his or her respective name, and is authorized to execute and deliver documents and to effect other transactions pursuant to or contemplated by the resolutions and the signature appearing opposite his or her name is the true and genuine signature of such officer.

<u>Name</u>	<u>Title</u>	<u>Signature</u>
J.C. Hoithaus	President	
Rochelle Doepke	Vice President	
Dwight Richardson	Secretary	
Jennifer L. Stampfli	Treasurer	
Steve Kutler	Director	

3. Attached hereto as Exhibits B is a true and correct copy of the Articles of Incorporation of the Company filed with the State of Florida, which the Articles of Incorporation has not been amended, rescinded or otherwise modified, and are in full force and effect.

4. Attached hereto as Exhibit C is a true and correct copy of the Bylaws of the Company, which the Bylaws has not been amended, rescinded or otherwise modified, and are in full force and effect.

IN WITNESS WHEREOF, I have duly executed this Certificate as a Director of the Company as of this 31<sup>st</sup> day of July, 2011.

  
J.C. Heithaus, President

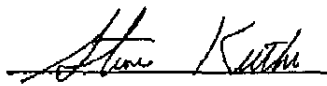
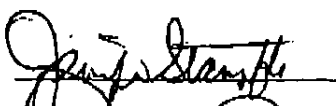
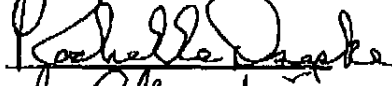
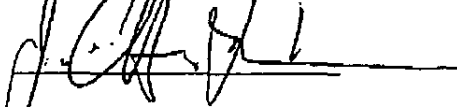
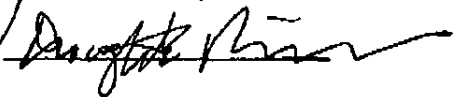
## Bayshore CAPA Center, Inc.

### Incumbency Certificate

I, Steve Kutler, the undersigned, hereby certify that I am the Director of Bayshore CAPA Center, Inc., (the "Company"), a Florida nonprofit corporation, and as such I am authorized to execute this certificate. I hereby further certify that:

5. Attached hereto as Exhibit A is a true and correct copy of a certain Unanimous Written Consent containing resolutions adopted by the Board of Directors of the Company in accordance with Florida law and with the Articles of Incorporation and Bylaws of the Company, which resolutions have not been amended, rescinded or otherwise modified, and are in full force and effect and have been filed with the Secretary of the Company.

6. Each of the following persons are, on and as of the date of this certificate, duly elected, qualified and acting directors of the Company holding the office set forth beside his or her respective name, and is authorized to execute and deliver documents and to effect other transactions pursuant to or contemplated by the resolutions and the signature appearing opposite his or her name is the true and genuine signature of such officer.

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Steve Kutler	Director	
Jennifer L. Stampfli	Director	
Rochelle Doepke	Director	
J.C. Heithaus	Director	
Dwight Richardson	Director	

7. Attached hereto as Exhibits B is a true and correct copy of the Articles of Incorporation of the Company filed with the State of Florida, which the Articles of Incorporation has not been amended, rescinded or otherwise modified, and are in full force and effect.

8. Attached hereto as Exhibit C is a true and correct copy of the Bylaws of the Company, which the Bylaws has not been amended, rescinded or otherwise modified, and are in full force and effect.

IN WITNESS WHEREOF, I have duly executed this Certificate as a Director of the Company as of this 31<sup>st</sup> day of July, 2011.

  
Steve Kutler, Director