

02/24/2005 12:20 15822947

CT CORPORATION SYSTEM

PAGE 000

Division of Corporations

Page 1 of 1

P9400003280

Florida Department of State  
Division of Corporations  
Public Access System

Electronic Filing Cover Sheet

**Note:** Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H05000046649 3)))

**Note:** DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:

Division of Corporations  
Fax Number : (850) 205-0380

From:

Account Name : C T CORPORATION SYSTEM  
Account Number : FCA000000023  
Phone : (850) 222-1092  
Fax Number : (850) 222-9428

RECEIVED

05 FEB 24 PM 12:25

DIVISION OF CORPORATIONS

**MERGER OR SHARE EXCHANGE**

Earthsoft Acquisition Corp.

Certificate of Status	0
Certified Copy	0
Page Count	08
Estimated Charge	\$70.00

FILED  
05 FEB 24 PM 4:55  
CLERK OF STATE  
TALLAHASSEE, FLORIDA

Electronic Filing Menu

Corporate Filing

Public Access Help

Merge  
@ 2/24/05

FILED  
05 FEB 24 PM 4:55  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER  
OF  
EARTHSOFT, INC.  
a Florida Corporation  
INTO  
EARTHSOFT ACQUISITION CORP.  
a Delaware Corporation

These Articles of Merger are executed for the purpose of merging EarthSoft, Inc., a Florida corporation (the "Merging Corporation"), with and into EarthSoft Acquisition Corp., a Delaware corporation ("Surviving Corporation"). The name of the surviving corporation into which the merging corporation plans to merge is EarthSoft Acquisition Corp., a Delaware corporation, which shall upon consummation of this merger be renamed EarthSoft, Inc.

1. The Agreement and Plan of Merger (the "Plan of Merger") is attached hereto as Exhibit A and made a part hereof as though fully set forth herein.

2. The Plan of Merger shall become effective at 11:59 p.m. EST on the later of (a) the day on which an executed counterpart of the Certificate of Merger is filed with the Secretary of State of the State of Delaware in the manner required by the Delaware General Corporation Law and (b) the day on which an executed counterpart of the Articles of Merger is filed with the Secretary of State of the State of Florida in the manner required by the Florida Business Corporation Act (the "Effective Date").

3. The Plan of Merger was duly adopted and approved by the stockholders of the Surviving Corporation pursuant to the Delaware General Corporation Law by a unanimous written consent of the stockholders, dated 2/18, 2005. The Plan of Merger was duly adopted and approved by the shareholders of the Merging Corporation pursuant to the Florida Business Corporation Act by a unanimous written consent of the shareholders, dated 2/18, 2005.

Dated: 2/23, 2005

EARTHSOFT ACQUISITION  
CORP.,  
a Delaware corporation

By: [Signature]  
Janet C. Magum, Vice President

EARTHSOFT, INC.,  
a Florida corporation

By: [Signature]  
Mitchell K. Beard, President

**EXHIBIT A**  
**AGREEMENT AND PLAN OF MERGER**

## AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Merger Agreement") is entered into as of the 22nd day of February, 2005, in accordance with Section 252 of the Delaware General Corporation Law, as amended, and Section 607.1101 of the Florida Business Corporation Act, as amended, by and between EarthSoft Acquisition Corp., a Delaware corporation ("Surviving Corporation"), and EarthSoft Inc., a Florida corporation ("Merging Corporation"). Surviving Corporation and Merging Corporation are sometimes collectively referred to hereinafter as the "Constituent Corporations."

### RECITALS

A. The respective boards of directors of Merging Corporation and Surviving Corporation have determined it in the best interest of each respective Constituent Corporation to merge (the "Merger") Merging Corporation with and into Surviving Corporation, primarily for the purpose of reincorporating the Merging Corporation into the State of Delaware.

B. The Merger Agreement was duly adopted and approved by the stockholders of the Surviving Corporation pursuant to Sections 251 and 252 of the Delaware General Corporation Law by unanimous written consent of the stockholders dated February 18, 2005.

C. The Merger Agreement was duly adopted and approved by the shareholders of the Merging Corporation pursuant to 607.1103 of the Florida Business Corporation Act by unanimous written consent of the shareholders dated February 18, 2005.

D. The Constituent Corporations desire the Merger to be effected pursuant to the terms and conditions of this Merger Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

#### 1. General.

1.1 The Merger. On the Effective Date (as herein defined) of the Merger, Merging Corporation shall be merged with and into Surviving Corporation and the separate existence of Merging Corporation shall cease and Surviving Corporation shall survive such Merger. The name of the Surviving Corporation shall be EarthSoft, Inc.

1.2 Certificate of Incorporation and Bylaws. The Certificate of Incorporation of Surviving Corporation as in effect immediately prior to the Effective Date shall be the

Certificate of Incorporation of the Surviving Corporation after consummation of the merger; *provided, however*, that as of the Effective Date the name of the Surviving Corporation shall be EarthSoft, Inc. and Article 1 of the Surviving Corporation's Certificate of Incorporation shall be amended to read as follows:

**The name of this corporation is EarthSoft, Inc.**

The Bylaws of Surviving Corporation as in effect immediately prior to the Effective Date shall be the Bylaws of the Surviving Corporation; *provided, however*, that as of the Effective Date the name of the Surviving Corporation shall be EarthSoft, Inc. and the Bylaws of the Surviving Corporation shall be so amended effective as of the Effective Date.

**1.3 Directors and Officers.** The directors and officers of the Surviving Corporation in office on the Effective Date shall remain in office after consummation of the merger, subject to applicable provisions of the Surviving Corporation's Certificate of Incorporation and Bylaws, until their successors shall have been elected and qualified.

**1.4 Property and Liabilities of Constituent Corporations.** On the Effective Date, the separate existence of Merging Corporation shall cease and Merging Corporation shall be merged into the Surviving Corporation. The Surviving Corporation, from and after the Effective Date, shall possess all the rights, privileges, powers and franchises of whatsoever nature and description, of a public as well as of a private nature, and be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations; all rights, privileges, powers and franchises of each of the Constituent Corporations, and all property, real, personal and mixed, of and debts due to either of the Constituent Corporations on whatever account as well for stock subscriptions as all other things in action or belonging to each of the Constituent Corporations shall be vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all other interests shall be thereafter as effectually the property of the Surviving Corporation as they were of the several and respective Constituent Corporations and the title to any real estate vested by deed or otherwise in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the Merger. All rights of creditors and all liens upon the property of the Constituent Corporations shall be preserved unimpaired, and all debts, liabilities and duties of the Constituent Corporations thenceforth shall attach to the Surviving Corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Any claim existing or action or proceeding, whether civil, criminal or administrative, pending by or against either Constituent Corporation may be prosecuted to judgment or decree as if the Merger had not taken place, or the Surviving Corporation may be substituted in such action or proceeding.

**1.5 Further Assurances.** Merging Corporation agrees that, at any time, or from time to time, as and when requested by the Surviving Corporation, or by its successors and assigns, it will execute and deliver, or cause to be executed and delivered in its name by its last acting officers, or by the corresponding officers of the Surviving Corporation, all such conveyances, assignments, transfers, deeds or other instruments, and will take or cause to be

taken such further or other action as the Surviving Corporation, its successors or assigns may deem necessary or desirable in order to evidence the transfer, vesting or devolution of any property, right, privilege or franchise or to vest or perfect in or confirm to the Surviving Corporation, its successors and assigns, title to and possession of all the property, rights, privileges, powers, franchises and interests referred to in this Section 1 herein and otherwise to carry out the intent and purposes hereof.

1.6 Effective Date. This Merger Agreement shall become effective at 11:59 p.m. EST on the later of (a) the day on which an executed counterpart of the Certificate of Merger is filed with the Secretary of State of the State of Delaware in the manner required by the Delaware General Corporation Law and (b) the day on which an executed counterpart of the Articles of Merger is filed with the Secretary of State of the State of Florida in the manner required by the Florida Business Corporation Act (the "Effective Date").

2. Conversion of Securities on Merger. Each of the issued and outstanding shares of the Merging Corporation and the Surviving Corporation shall, as of the Effective Date by virtue of the Merger, be cancelled, without any action on the part of the holders thereof, and the Surviving Corporation shall immediately issue new shares of the Surviving Corporation's capital stock in such amounts to such individuals as are set forth below:

Joyce Beard	-	10,010,000 shares of common stock
Mitch Beard	-	1,000,000 shares of common stock
Janet Magura	-	9,000,000 shares of common stock

3. Service of Process.

3.1 Florida Service of Process. The Surviving Corporation may be served with process in the State of Florida in any proceeding for enforcement of any obligation of Merging Corporation as well as for enforcement of any obligations of the Surviving Corporation arising from the merger, including any suit or other proceedings to enforce the right of any shareholder as determined in appraisal proceedings pursuant to the provisions of Section 607.1302 of the Florida Business Corporation Act and it hereby irrevocably appoints the State of Florida as its agent to accept service of process in any such suit or other proceedings. The address to which a copy of such process shall be mailed by the Secretary of State of Florida is 78 Harvard Rd., Littleton, MA 01460, until the Surviving Corporation shall have hereafter designated in writing to the said Secretary of State a different address for such purpose. Service of such process may be made by personally delivering to and leaving with the Secretary of State of Florida duplicate copies of such process, one of which copies the Secretary of State of Florida shall forthwith send by registered mail to said Surviving Corporation at the above address.

4. Miscellaneous.

4.1 Counterparts. This Merger Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one Merger Agreement.

*(remainder of page intentionally left blank)*

02/24/2005 12:20 18502229428

CTCORPORATIONSYSTEM

PAGE 08/08

TOTAL P.09

IN WITNESS WHEREOF, the Constituent Corporations have executed this Merger Agreement as of the date and year first above written.


**MERGING CORPORATION:**

EARTHSOFT, INC.,  
a Florida corporation

  
\_\_\_\_\_  
Mitchell K. Beard, President

**SURVIVING CORPORATION:**

EARTHSOFT ACQUISITION CORP.,  
a Delaware corporation

  
\_\_\_\_\_  
Janet C. Magurn, Vice President