B96000000435



# Florida Department of State
## Division of Corporations
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# MERGER OR SHARE EXCHANGE

## WEEKLEY HOMES, L.P.

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**Certificate of Merger
For
Florida Limited Liability Company**

The following Certificate of Merger is submitted to merge the following Florida Limited Liability Company(ies) in accordance with s. 608.4382, Florida Statutes.

FIRST: The exact name, form/entity type, and jurisdiction for each merging party are as follows:

| Name #L02000007698 | Jurisdiction | Form/Entity Type |
|---|---|---|
| David Weekley Homes, L.L.C. | Florida | Limited Liability Company |
| Weekley Homes, L.P. | Delaware | Limited Partnership |
| #B96000000435 | | |
| | | |

SECOND: The exact name, form/entity type, and jurisdiction of the surviving party are as follows:

| Name | Jurisdiction | Form/Entity Type |
|---|---|---|
| Weekley Homes, L.P. | Delaware | Limited Partnership |

THIRD: The attached plan of merger was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with the applicable provisions of Chapters 607, 608, 617, and/or 620, Florida Statutes.

**FOURTH:** The attached plan of merger was approved by each other business entity that is a party to the merger in accordance with the applicable laws of the state, country or jurisdiction under which such other business entity is formed, organized or incorporated.

**FIFTH:** If other than the date of filing, the effective date of the merger, which cannot be prior to nor more than 90 days after the date this document is filed by the Florida *Department of State:*

December 31, 2006 at 11:59 p.m. (EST)

**SIXTH:** If the surviving party is not formed, organized or incorporated under the laws of Florida, the survivor's principal office address in its home state, country or jurisdiction is as follows:

c/o Corporation Services Company 2711 Centerville Road, Suite 400

Wilmington, Delaware 19808

**SEVENTH:** If the survivor is not formed, organized or incorporated under the laws of Florida, the survivor agrees to pay to any members with appraisal rights the amount, to which such members are entitled under ss.608.4351-608.43595, F.S.

**EIGHTH:** If the surviving party is an out-of-state entity not qualified to transact business in this state, the surviving entity:

a.) Lists the following street and mailing address of an office, which the Florida Department of State may use for the purposes of s. 48.181, F.S., are as follows:

Street address: 1111 N. Post Oak Road, Houston, Texas 77055

Mailing address: 1111 N. Post Oak Road, Houston, Texas 77055

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b.) Appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce obligations of each limited liability company that merged into such entity, including any appraisal rights of its members under ss.608.4351-608.43595, Florida Statutes.

NINTH: Signature(s) for Each Party:

| Name of Entity/Organization: | Signature(s): | Typed or Printed Name of Individual: |
|---|---|---|
| David Weekley Homes, L.L.C. | John Burchfield | John Burchfield |
| Weekley Homes, L.P. | John Burchfield | John Burchfield |
| | | |
| | | |

| | |
|---|---|
| Corporations: | Chairman, Vice Chairman, President or Officer *(If no directors selected, signature of incorporator.)* |
| General partnerships: | Signature of a general partner or authorized person |
| Florida Limited Partnerships: | Signatures of all general partners |
| Non-Florida Limited Partnerships: | Signature of a general partner |
| Limited Liability Companies: | Signature of a member or authorized representative |

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| | | |
|---|---|---|
| Fees: | For each Limited Liability Company: | $25.00 |
| | For each Corporation: | $35.00 |
| | For each Limited Partnership: | $52.50 |
| | For each General Partnership: | $25.00 |
| | For each Other Business Entity: | $25.00 |

Certified Copy (optional): $30.00

**PLAN OF MERGER**

**FIRST:** The exact name, form/entity type, and jurisdiction for each merging party are as follows:

| Name | Jurisdiction | Form/Entity Type |
|---|---|---|
| David Weekley Homes, L.L.C. | Florida | Limited Liability Company |
| Weekley Homes, L.P. | Delaware | Limited Partnership |

**SECOND:** The exact name, form/entity type, and jurisdiction of the surviving party are as follows:

| Name | Jurisdiction | Form/Entity Type |
|---|---|---|
| Weekley Homes, L.P. | Delaware | Limited Partnership |

**THIRD:** The terms and conditions of the merger are as follows:

See attached.

*(Attach additional sheet if necessary)*

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**FOURTH:**

A. The manner and basis of converting the interests, shares, obligations or other securities of each merged party into the interests, shares, obligations or others securities of the survivor, in whole or in part, into cash or other property is as follows:

See attached.

*(Attach additional sheet if necessary)*

B. The manner and basis of converting <u>rights to acquire</u> the interests, shares, obligations or other securities of each merged party into <u>rights to acquire</u> the interests, shares, obligations or others securities of the survivor, in whole or in part, into cash or other property is as follows:

See attached.

*(Attach additional sheet if necessary)*

**FIFTH:** Any statements that are required by the laws under which each other business entity is formed, organized, or incorporated are as follows:

See attached.

*(Attach additional sheet if necessary)*

**SIXTH:** Other provisions, if any, relating to the merger are as follows:

See attached.

*(Attach additional sheet if necessary)*

**AGREEMENT AND PLAN OF MERGER**

**merging**

**DAVID WEEKLEY HOMES, L.L.C.**

**(a Florida limited liability company)**

**WITH AND INTO**

**WEEKLEY HOMES, L.P.**

**(a Delaware limited partnership)**

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This Agreement and Plan of Merger (this "Plan") is made and entered into effective as of December 31, 2006, pursuant to Section 608.438 of the Florida Limited Liability Company Act (the "FLLCA"), and Section 17-211 of the Delaware Revised Uniform Limited Partnership Act (the "DRULPA"), by and between David Weekley Homes, L.L.C., a Florida limited liability company ("Weekley Homes LLC") and Weekley Homes, L.P., a Delaware limited partnership ("Weekley Homes LP"), said entities being hereinafter collectively referred to as the "Constituent Entities."

## RECITALS

WHEREAS, Weekley Homes LLC is a limited liability company duly organized and existing under the laws of the State of Florida;

WHEREAS, Weekley Homes LP is the sole member of Weekley Homes LLC;

WHEREAS, Weekley Homes LP is a limited partnership duly organized and existing under the laws of the State of Delaware;

WHEREAS, DM Weekley, Inc., a Delaware corporation, and RW Weekley, Inc., a Delaware corporation, are the general partners of Weekley Homes LP; and

WHEREAS, DM Weekley, Inc. and RW Weekley, Inc., in their capacity as general partners of Weekley Homes LP, and Weekley Homes LLC have each adopted resolutions approving the merger of Weekley Homes LLC with and into Weekley Homes LP, with Weekley Homes LP being the surviving entity (collectively referred herein to as the "Merger"), upon the terms and conditions hereinafter set forth, approving this Plan;

NOW, THEREFORE, in consideration of the premises and the mutual covenants, agreements, representations and warranties herein contained and of the benefits to accrue to the parties hereto, it is agreed that, in accordance with the DRULPA and FLLCA, Weekley Homes LLC shall be merged with and into Weekley Homes LP, and Weekley Homes LP shall be the entity surviving the Merger (as such, the "Surviving Entity"), and that the terms and conditions of the Merger and the mode of carrying the same into effect are and shall be as hereinafter set forth:

## ARTICLE I

## MERGER AND NAME OF SURVIVING ENTITY

The names and states of organization of the entities that are parties to the Merger are:

| Name | State of Organization |
|---|---|
| David Weekley Homes, L.L.C. | Florida |
| Weekley Homes, L.P. | Delaware |

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At the Effective Time, as hereinafter defined, Weekley Homes LLC shall be merged with and into Weekley Homes LP, and Weekley Homes LP shall be the Surviving Entity and shall not be a new limited partnership and shall continue its existence as a Delaware limited partnership governed by the laws of the State of Delaware.

The business addresses of the general partners of the Surviving Entity are:

RW Weekley, Inc.
1111 North Post Oak Road
Houston, TX 77055

DM Weekly, Inc.
1111 North Post Oak Road
Houston, TX 77055

## ARTICLE II

## EFFECT OF MERGER

At the Effective Time:

(a) The Constituent Entities shall become a single entity, which shall be Weekley Homes LP, the limited partnership designated as the Surviving Entity. For purposes of the DRULPA and the FLLCA, the Surviving Entity shall be allocated and vested in all rights, title and interest in all real estate and other property as well as all liabilities of Weekley Homes LLC.

(b) The separate existence of Weekley Homes LLC shall cease, with the effect as provided in the FLLCA.

(c) The Surviving Entity shall have all of the rights, privileges, immunities and powers and shall be subject to the duties and liabilities of a limited partnership organized under the DRULPA.

(d) The Merger shall have the effects set forth in Section 608.438 of the FLLCA and Section 17-211 of the DRULPA.

(e) The Certificate of Limited Partnership of Weekley Homes LP in effect immediately prior to the Effective Time shall be and constitute the Certificate of Limited Partnership of the Surviving Entity.

(f) The Agreement of Limited Partnership of Weekley Homes LP in effect immediately prior to the Effective Time shall be and constitute the Agreement of Limited Partnership of the Surviving Entity until amended in the manner provided by law.

(g) The partners of Weekley Homes LP immediately prior to the Effective Time shall continue to be the partners of the Surviving Entity.

(i) The assets, liabilities, reserves and accounts of Weekley Homes LLC at the Effective Time shall be taken up on the books of the Surviving Entity at the amounts at which they are then carried on the books of Weekley Homes LLC, subject to such adjustments or eliminations of intercompany items as may be appropriate in giving effect to the Merger.



## ARTICLE III

## MANNER AND BASIS OF CONVERTING MEMBER INTERESTS

(a) At the Effective Time, by virtue of the Merger and without any action on the part of the Constituents or their members or partners, the interest of the member of Weekley Homes LLC outstanding prior to the Effective Time shall automatically be cancelled, and no payment shall be made to the holder of such interest with respect thereto.

(b) At the Effective Time, each partnership interest of Weekley Homes LP immediately prior to the Effective Time shall continue unchanged and shall remain following the Merger as a valid partnership interest.

## ARTICLE IV

## FURTHER ACTION

Each of the Constituent Entities, through their respective officers and directors or partners, as applicable, shall execute and file with the appropriate officials of any state or jurisdiction all documents and papers necessary and required by any such state or jurisdiction, and each of the Constituent Entities shall take every reasonable and necessary step and action to comply with and to secure any approvals, as may be required by the statutes, rules and regulations of any such state or jurisdiction applicable to this Plan and the transactions contemplated herein.

## ARTICLE IV

## APPROVAL AND EFFECTIVE TIME OF THE MERGER

The Merger shall become effective on December 31, 2006 at 11:59 p.m., Eastern Standard Time, herein referred to as the "Effective Time."



## ARTICLE V

## GENERAL PROVISIONS

(a) Further Action. If at any time the Surviving Entity shall consider or be advised that any further action is necessary or desirable to carry out the provisions hereof and to vest the Surviving Entity with full right, title and interest to all assets, property, rights, privileges, powers and franchises of either of the Constituent Entities, the officers, directors and partners of the Constituent Entities, as the case may be, are fully authorized in the name of their entity or otherwise to take, and shall take, all such lawful and necessary action.

(b) Modification and Waiver. The Constituents, by mutual consent, may terminate and abandon or amend, modify or supplement this Plan in such manner as may be agreed upon by them in writing at any time before the Effective Time; provided, however, that no amendment, modification, or supplement to this Plan shall be made which by law requires approval by the partners of Weekley Homes LP or the member of Weekley Homes LLC without such approval. At any time prior to the Effective Time, the Constituent Parties may, to the extent legally allowed, extend the time for or waive the performance of any of the obligations of the other parties hereto or waive compliance by the other parties hereto with any of the covenants or conditions contained in this Plan. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party.

(c) Counterparts. This Plan may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall be deemed one and the same agreement, and shall become binding on the parties hereto when one or more counterparts have been signed by each of the parties and delivered to the other party.

(d) Liability. No member of Weekley Homes LLC or limited partner of Weekley Homes LP, as the case may be, will, as a result of the Merger, become personally liable, without its consent, for the liabilities or obligations of any other person or entity.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement and Plan of Merger to be executed on its behalf, all as of the day and year first above written.

DAVID WEEKLEY HOMES, L.L.C.

By: ______________________
Name: John Burchfield
Title: General Counsel for Weekley Homes, LP Managing Member

WEEKLEY HOMES, L.P.

By: ______________________
Name: John Burchfield
Title: General Counsel

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DM WEEKLEY, INC.,
General Partner of Weekley Homes, L.P.

By: ______________________
Name: John Burchfield
Title: Corporate Secretary

RW WEEKLEY, INC.,
General Partner of Weekley Homes, L.P.

By: ______________________
Name: John Burchfield
Title: Corporate Secretary