

# F 97000000128

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**MERGER OR SHARE EXCHANGE**

**FBA II, Inc.**

Certificate of Status	0
Certified Copy	1
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*Merger*  
*12/30*  
*9*

ARTICLES OF MERGER  
Merger Sheet

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MERGING:

CALOR DEVELOPMENT, INC., a Florida corporation, document number  
P98000098257

INTO

**FBA II, INC.**, a Delaware entity, F97000000128

File date: December 27, 2002, effective December 31, 2002

Corporate Specialist: Karen Gibson

**ARTICLES OF MERGER**  
**OF**  
**CALOR DEVELOPMENT, INC.**  
(a Florida corporation)  
**and**  
**FBA II, INC.**  
(a Delaware corporation)

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**EFFECTIVE DATE**

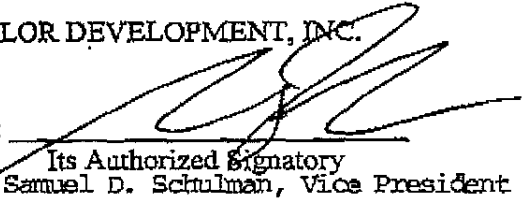
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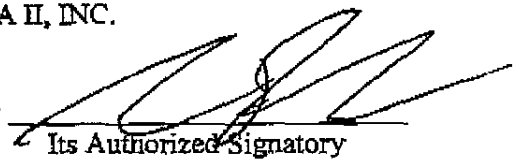
The undersigned corporations hereby submit these Articles of Merger pursuant to Section 607.1105 of the Florida Business Corporation Act ("FBCA"), and certify that:

- I. Calor Development, Inc., a Florida corporation ("Calor"), shall be merged with and into FBA II, Inc., a Delaware corporation, ("FBA II"), which shall be the surviving corporation (the "Merger").
- II. The Merger shall be carried out in accordance with the Agreement and Plan of Merger, dated as of December 26, 2002 (the "Plan of Merger"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference.
- III. The Plan of Merger pursuant to which Calor shall be merged with and into FBA II (the "Merger") was adopted pursuant to Section 252 of the Delaware General Corporation Law by the Board of Directors and shareholders of FBA II by joint written consent on December 26, 2002.
- IV. The Plan of Merger, pursuant to which Calor shall be merged with and into FBA II, was adopted pursuant to Section 607.0821 of the FBCA, by the Board of Directors and shareholders of Calor by written consent dated December 26, 2002.
- V. The Merger shall become effective as of December 31, 2002 (the "Effective Date").
- VI. The address of the principal place of business of FBA II, the surviving corporation is: 601 Biscayne Boulevard, Miami, FL 33132, c/o Raquel Libman.
- VII. FBA II has agreed to appoint the Secretary of State of the State of Florida as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of FBA II.
- VIII. The surviving corporation has agreed to pay to any dissenting shareholder of Calor, the amount, if any, which they are entitled to as dissenting shareholders under the FBCA.

**IN WITNESS WHEREOF**, these Articles of Merger have been executed on behalf of the constituent corporations by their authorized officers as of December 26, 2002.

CALOR DEVELOPMENT, INC.

By:   
Its Authorized Signatory  
Samuel D. Schulman, Vice President  
FBA II, INC.

By:   
Its Authorized Signatory  
Samuel D. Schulman, Vice President

**EXHIBIT A**

**AGREEMENT AND PLAN OF MERGER**

**OF**

**CALOR DEVELOPMENT, INC.**

**(a Florida corporation)**

**and**

**FBA II, INC.**

**(a Delaware corporation)**

## AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (the "Agreement") is entered into by and between Calor Development, Inc., a Florida corporation ("Calor") and FBA II, Inc., a Delaware corporation ("FBA II"), this 26 day of December, 2002. (Calor and FBA II may be collectively referred to as the "Constituent Corporations").

### RECITALS

**WHEREAS**, the Board of Directors of Calor (the "Calor Board") and the Board of Directors of FBA II (the "FBA II Board") deem it advisable and in the best interests of their respective companies that, subject to the conditions and other provisions contained herein, Calor merge with and into FBA II (the "Merger"), with FBA II as the surviving corporation in the Merger (as such, the "Surviving Corporation");

**WHEREAS**, For federal income tax purposes, it is intended that the Merger qualify as a reorganization within the meaning of section 368(a)(1)(A) of the Internal Revenue Code of 1986, as amended (the "Code");

**NOW, THEREFORE**, in consideration of the foregoing and the representations, warranties and covenants contained herein, the parties hereto hereby agree as follows:

1. **The Merger.** On the terms and subject to the conditions of this Agreement, and in accordance with the Florida Business Corporation Act (the "FBCA"), and Section 252 of the Delaware General Corporation Law ("DGCL"), at the Effective Date (as hereinafter defined), Calor will be merged with and into FBA II, whereupon the separate corporate existence of Calor will cease and FBA II will be the Surviving Corporation. From and after the Effective Date, the Surviving Corporation will possess all the rights, privileges and powers and will assume all of the liabilities, obligations and duties of Calor. Without limiting the generality of the foregoing, and subject thereto, at the Effective Date (i) all the rights, privileges, powers and franchises, of a public as well as of a private nature, and all property, real, personal and mixed, and all and every other interest belonging to or due to Calor, shall continue to be held by or shall be taken and deemed to be transferred to, and vested in Surviving Corporation, without further act or deed, and (ii) all debts, liabilities, duties and obligations of Calor shall continue to be or shall become the debts, liabilities duties and obligations of the Surviving Corporation without further act or deed, and neither the rights of creditors nor any liens upon the property of Calor shall be impaired by the Merger.

2. **Effective Date.** As soon as practicable the Surviving Corporation shall file the Certificate of Merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware in accordance with the DGCL, and file the Articles of Merger (the "Articles of Merger") with the Florida Department of State in accordance with the FBCA. Furthermore, the parties will make any other filings and recordings required under the FBCA and the DGCL. The Merger shall become effective as of December 31, 2002 (the "Effective Date").

3. Articles of Incorporation of Surviving Corporation. From and after the Effective Date, the Articles of Incorporation of the Surviving Corporation will be the Certificate of Incorporation of FBA II as in effect immediately prior to the Effective Date, until further amended or restated in accordance therewith and the DGCL.
4. Bylaws of Surviving Corporation. From and after the Effective Date, the Bylaws of the Surviving Corporation will be the Bylaws of FBA II as in effect immediately prior to the Effective Date, until further amended or restated in accordance therewith and the DGCL.
5. Directors and Officers of Surviving Corporation. From and after the Effective Date, the directors and officers of the Surviving Corporation will be the directors and officers of FBA II immediately prior to the Effective Date, until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.
6. Effect of Merger on the Capital Stock of Calor. At the Effective Date, by virtue of the Merger and without any action from any holder of Calor common stock, or FBA II common stock, each share of Calor common stock issued and held in Calor's treasury at the Effective Date, if any, will cease to be outstanding and will be canceled and retired and will cease to exist without payment of any consideration therefor.
7. Tax Treatment. Each of Calor and FBA II will use its reasonable best efforts to cause the Merger to qualify as a reorganization under the provisions of section 368(a)(1)(A) of the Code. As such, each agrees that they will file all applicable tax returns, notifications and any other document required under the Code.
8. Transfer and Gains Taxes. Calor and FBA II will cooperate in the preparation, execution and filing of all returns, questionnaires, applications or other documents regarding any real property transfer or gains, sales, use, transfer, value added, stock transfer and stamp taxes, any transfer, recording registration and other fees and any similar taxes which become payable in connection with the transactions contemplated by this Agreement, or other agreements contemplated herein.
9. Authority of the Board of Directors of the Constituent Corporations. Each of the Boards of Directors and the proper officers of Calor and of the Surviving Corporation are hereby authorized, empowered and directed to do any and all acts and things, and to make, execute, deliver, file, and record any and all instruments, papers and documents which shall be or become necessary, proper or convenient to carry out or to put into effect any of the provisions of this Agreement or of the Merger herein provided for.
10. Amendments to the Agreement. This Agreement may be amended by the Boards of Directors of the Constituent Corporations any time prior to the filing of the Certificate of Merger with the State of Delaware and of the filing of the Articles of Merger with the State of Florida.
11. Authority of Signatory. Each signatory to this Agreement represents and warrants that he or she possesses all necessary capacity and authority to act for, sign, and bind the respective entity on whose behalf he or she is signing.

12. Counterparts. This Agreement may be executed in original or facsimile in multiple or faxed counterparts by Calor and FBA II, each of which counterparts shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

13. Termination of Agreement. At any time prior to the filing of the Certificate of Merger with the State of Delaware and the filing of the Articles of Merger with the State of Florida, the Agreement may be terminated by mutual consent of the Boards of Directors of the Constituent Corporations.

14. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida without regard to conflicts of laws principles thereunder.

15. Assignment. Neither this Agreement, nor any of the rights, interests or obligations under this Agreement, may be assigned or delegated, in whole or in part, by operation of law or otherwise by any of the parties without the prior written consent of the other party. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

16. Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction will, 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 or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision will be interpreted to be only so broad as is enforceable.

17. Closing. The closing of the Merger will take effect upon the filing of the Articles of Merger.

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IN WITNESS WHEREOF, this Plan of Merger has been executed on behalf of the undersigned corporations by their authorized officers on the day and year first above written.

CALOR DEVELOPMENT, INC

By: 

Its Authorized Signatory

Samuel D. Schulman, Vice President  
FBA II, Inc.

By: 

Its Authorized Signatory

Samuel D. Schulman, Vice President

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