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LOWNDES DROSDICK

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12/31/97

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FROM: LOWNDES, DROSDICK, DOSTER, KANTOR & REED, P. ACCT#: 072720000036

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NAME: NET LEASE REALTY II, INC.

AUDIT NUMBER.....H97000021410

DOC TYPE.....MERGER OR SHARE EXCHANGE

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OF JANUARY 1, 1998. PLEASE CALL ME IMMEDIATELY IF YOU HAVE ANY QUESTIONS. THANK
YOU VERY MUCH FOR YOUR ASSISTANCE IN THIS MATTER.

KYLE L. WHITE

DIRECT DIAL: 407/418-6203

DIRECT FAX: 407/843-4444

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merger
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ARTICLES OF MERGER

CNL REALTY ADVISORS, INC., #V00797, a FL corp.

-merging into -

NET LEASE REALTY II, INC., the surviving Maryland corporation, #F95000005661

FILED 12/31/97, EFFECTIVE 1/1/98

Susan Payne
Examiner

H97000021410

ARTICLES OF MERGER

merging

CNL REALTY ADVISORS, INC.
(a Florida corporation)

into

NET LEASE REALTY II, INC.
(a Maryland corporation)

EFFECTIVE DATE

1/1/98

FILED
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THIS IS TO CERTIFY THAT:

FIRST: The name and state of incorporation of each of the constituent corporations of the merger are as follows:

| <u>Name</u> | <u>State of Incorporation</u> |
|---------------------------|-------------------------------|
| CNL Realty Advisors, Inc. | Florida |
| Net Lease Realty II, Inc. | Maryland |

SECOND: The name of the surviving corporation of the merger is Net Lease Realty II, Inc.

THIRD: Pursuant to the applicable provisions of the Maryland General Corporation Law and the Bylaws of Net Lease Realty II, Inc., an Agreement and Plan of Merger (the "Plan of Merger") between the parties was approved without a meeting by a Unanimous Written Consent of the Board of Directors of Net Lease Realty II, Inc. dated May 15, 1997. Pursuant to the applicable provisions of the Maryland General Corporation Law and the Bylaws of Net Lease Realty II, Inc., the Plan of Merger was approved without a meeting by Commercial Net Lease Realty, Inc., the sole stockholder of Net Lease Realty II, Inc., by a Unanimous Written Consent dated May 15, 1997.

FOURTH: Pursuant to the applicable provisions of the Florida Business Corporation Act and the Bylaws of CNL Realty Advisors, Inc., the Plan of Merger was approved without a meeting by a Unanimous Written Consent of the Board of Directors of CNL Realty Advisors, Inc. dated May 15, 1997. Pursuant to the applicable provisions of the Florida Business Corporation Act and the Bylaws of CNL Realty Advisors, Inc., the Plan of Merger was approved without a meeting by the stockholders of CNL Realty Advisors, Inc. by a Unanimous Written Consent dated May 15, 1997.

This document was prepared by:

James J. Hoctor, Esquire

Florida Bar Number: 865494

Lowndes, Drosdick, Doster, Kantor & Reed, P.A.

P. O. Box 2809

Orlando, Florida 32802-2809

(407) 843-4600

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FIFTH: The Plan of Merger is as set out in the Agreement and Plan of Merger (the "Agreement") entered into as of the 15th day of May 1997, by and among Commercial Net Lease Realty, Inc., a Maryland corporation ("NNN"), and Net Lease Realty II, Inc., a Maryland corporation and wholly-owned subsidiary of NNN ("NLR II"), and CNL Realty Advisors, Inc., a Florida corporation (the "Advisor"), and Robert A. Bourne, CNL Group, Inc., a Florida corporation, Kevin B. Habicht and Gary M. Ralston, the principal stockholders of the Advisor (collectively, the "Stockholders"). CNL, NLR II, the Advisor and the Stockholders are referred to collectively herein as the "Parties" and individually as a "Party".

Under the Plan, Advisor will be merged with and into NLR II (the "Merger") and NLR II will be the surviving corporation in the Merger, upon the terms and subject to the conditions of the Agreement and in accordance with the Maryland General Corporation Law (the "Maryland GCL") and the Florida Business Corporation Act (the "Florida BCA");

More specifically, the Plan of Merger is as follows:

1. Subject to the terms and conditions of the Agreement, the Maryland GCL and the Florida BCA, at the Effective Time, NLR II and the Advisor shall consummate the Merger in which (i) the Advisor shall be merged with and into NLR II and the separate corporate existence of the Advisor shall thereupon cease, (ii) NLR II shall be the successor or surviving corporation in the Merger and shall continue to be governed by the laws of the State of Maryland and (iii) the separate corporate existence of NLR II with all its rights, privileges, immunities, powers and franchises shall continue unaffected by the Merger. The corporation surviving the Merger is sometimes hereinafter referred to as the "Surviving Corporation". The Merger shall have the effects set forth in the Maryland GCL and the Florida BCA.

2. The Effective Time of the Merger shall be January 1, 1998.

3. The Articles of Incorporation of Net Lease Realty II, Inc., a Maryland corporation, shall be the Articles of Incorporation of the surviving corporation of the Merger and shall remain unaffected as a result of the Merger.

4. (a) At the Effective Time, by virtue of the Merger and without any action by the Parties, all of the outstanding Advisor Common Shares (i) shall be converted into the right to receive up to 2,200,000 NNN Common Shares (the "Share Consideration") pursuant to the terms of Paragraph 5 below, (ii) shall cease to be outstanding, and (iii) shall be canceled and retired and shall cease to exist, and each Stockholder, as the holder of certificates representing such Advisor Common Shares (the "Advisor Common Share Certificates"), shall cease to have any rights with respect thereto, except the right to receive NNN Common Shares therefor upon the surrender of such certificates in accordance with this Paragraph 4 and cash in lieu of fractional NNN Common Shares as set forth in Paragraph 6.

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(b) Prior to the Effective Time, NNN shall not split or combine the NNN Common Shares, or pay a stock dividend or other stock distribution in NNN Common Shares, or in rights or securities exchangeable or convertible into or exercisable for NNN Common Shares, or otherwise change NNN Common Shares into, or exchange NNN Common Shares for, any other securities (whether pursuant to or as part of a merger, consolidation, acquisition of property or stock, separation, reorganization or liquidation of NNN as a result of which NNN stockholders receive cash, stock or other property in exchange for, or in connection with, their NNN Common Shares (a "Business Combination") or otherwise), or make any other dividend or distribution on or of NNN Common Shares (other than regular quarterly cash dividends paid on NNN Common Shares or any distribution pursuant to NNN's dividend reinvestment plan), without the parties hereto having first entered into an amendment to this Agreement pursuant to which the Share Consideration will be adjusted to reflect such split, combination, dividend, distribution, Business Combination or change.

(c) At the Effective Time, by virtue of the Merger and without any action by holders thereof, all of the NNN Common Shares issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding.

5. At the closing of the transaction contemplated in the Agreement (the "Closing"), upon surrender to NNN of the Advisor Common Share Certificates by the Stockholders and the minority stockholders of the Advisor (the "Minority Stockholders") for cancellation, together with any other required documents, the Stockholders and the Minority Stockholders shall receive NNN Common Shares, pro rata based on their relative equity interests in the Advisor as of the date on which the closing occurs (the "Closing Date"), representing 10% of the Share Consideration to be issued in the Merger and the Advisor Common Share Certificates so surrendered shall forthwith be canceled. The balance of the Share Consideration (the "Share Balance") will, subject to this Paragraph 5, be issued within 90 days after the end of each Payment Period (up to a maximum of 20 Payment Periods) beginning the first full Payment Period following the Closing Date. For the purposes of this Paragraph 5, a "Payment Period" shall mean any of the following three month periods: (i) the period beginning on January 2 and ending on April 1; (ii) the period beginning on April 2 and ending on July 1; (iii) the period beginning on July 2 and ending on October 1; and (iv) the period beginning on October 2 and ending on January 1. Within 90 days after the end of a Payment Period, the number of NNN Common Shares to be issued by NNN to the Stockholders and the Minority Stockholders out of the Share Balance will equal the product obtained by multiplying (i) the Share Balance by (ii) a fraction, the numerator of which is the total cost (in accordance with United States generally accepted accounting principles as in effect from time to time) of Completed New Acquisitions (as defined below) and Completed Development Projects (as defined below) occurring during the Payment Period (with the aggregate amounts less \$45,000,000 over all Payment Periods for such purposes not to exceed \$405,000,000) and the denominator of which is \$405,000,000; provided, however, that for the purposes of this calculation, the first \$45,000,000 of Completed New Acquisitions and Completed Development Projects shall not be included in the determination of the numerator. For example, if during the first Payment Period, the dollar amount of Completed New Acquisitions and Completed Development Projects equals \$35,000,000, the

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Stockholders would not be issued any NNN Common Shares out of the Share Balance. If during the second Payment Period, the dollar amount of Completed New Acquisitions and Completed Development Projects equals \$40,000,000, the Stockholders would be entitled to receive 7.4% of the Share Balance (\$30,000,000 [\$75,000,000 minus \$45,000,000] divided by \$405,000,000). The Issuance of NNN Common Shares from the Share Balance for future Payment Periods would be based solely on the percentage determined by dividing (x) the dollar amount of Completed New Acquisitions and Completed Development Projects that occurred during such Payment Period by (y) \$405,000,000. To the extent any NNN Common Shares are to be issued at the end of such Payment Period, such shares will be issued within 90 days of such Payment Period. In the event of a Change in Control of NNN, the remaining Share Balance shall be immediately issued and paid to the Stockholders and Minority Stockholders. The Stockholders and the Minority Stockholders shall also receive cash in lieu of fractional NNN Common Shares as contemplated by Paragraph 6. For the purposes of this Paragraph 5, the term "Completed New Acquisitions" means property acquisitions closed by NNN (including its Subsidiaries and Affiliates) after the Closing Date and the term "Completed Development Projects" means development projects completed by NNN after the Closing Date (notwithstanding the date upon which development commenced). A development project shall be deemed to be completed when a certificate of occupancy has been issued and the tenant under the project has commenced paying periodic rent under the lease. In the event that the Share Balance has not been reduced to zero following the twentieth Payment Period, any rights of the Stockholders and the Minority Stockholders to the remainder of the Share balance shall expire and become null and void and the Share Balance shall be reduced to zero.

6. No certificates representing fractional NNN Common Shares shall be issued upon surrender of any Advisor Common Share Certificates. In lieu of any fractional NNN Common Shares, there shall be paid to each holder of Advisor Common Shares who otherwise would be entitled to receive a fractional NNN Common Share an amount of cash (without interest) determined by multiplying such fraction by the \$15.50.

7. (a) No transfers of Advisor Common Shares shall be made on the stock transfer books of the Advisor after the date of this Agreement, and

(b) each Stockholder agrees not to transfer any Advisor Common Shares after the date of the Agreement and before the Closing Date; provided, however, the restrictions on transfer of the Advisor Common Shares contained in this Paragraph 7 shall not apply to transfers by CNL Group, Inc. to certain officers and employees of the Advisor and its Affiliates so long as the total number of Advisor Common Shares transferred does not exceed 750.

SIXTH: The effective date of the Merger shall be January 1, 1998.

SEVENTH: The Articles of Incorporation of Net Lease Realty II, Inc., a Maryland corporation, shall be the Articles of Incorporation of the surviving corporation of the merger and shall remain unaffected as a result of the merger.

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IN WITNESS WHEREOF, these Articles of Merger are hereby signed for and on behalf of CNL Realty Advisors, Inc. by its Chief Executive Officer, who does hereby acknowledge that said Articles of Merger are the act of said corporation, and who does hereby state under penalties for perjury that the matters and facts set forth therein with respect to authorization and approval of said merger are true in all material respects to the best of his knowledge, information, and belief; and these Articles of Merger are hereby signed for and on behalf of Net Lease Realty II, Inc. by its President, who does hereby acknowledge that said Articles of Merger are the act of said corporation, and who does hereby state under the penalties for perjury that the matters and facts stated therein with respect to authorization and approval of said merger are true in all material respects to the best of his knowledge, information, and belief.

CNL Realty Advisors, Inc.

By: 

James M. Seneff, Jr.,
Chief Executive Officer

Attest:


LYNDA E. ROSE, Secretary

Dated: December 31, 1997

Net Lease Realty II, Inc.

By: 

Gary M. Ralston,
President

Attest:


Kevin B. Habicht, Assistant Secretary

Dated: December 31, 1997

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