

L03000011424

Division of Corporations

Florida Department of State  
Division of Corporations  
Public Access System

Electronic Filing Cover Sheet

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
DEC 30 11:00 AM '04

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.

(((H04000255974 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 : PCA000000023  
Phone : (850) 222-1092  
Fax Number : (850) 222-9428

please  
refile  
+ back date  
to  
12/30/04!

Tim  
Ashley M

RECEIVED

05 JAN -5 AM 7:26

DIVISION OF CORPORATIONS

MERGER OR SHARE EXCHANGE

CFD HOLDINGS II, LLC

Certificate of Status	0
Certified Copy	0
Page Count	04 12
Estimated Charge	\$140.00

F02-4761 B94-334

Electronic Filing Menu

Corporate Filing

Public Access Help



## FLORIDA DEPARTMENT OF STATE

Glenda E. Hood  
Secretary of State

January 3, 2005

CFD HOLDINGS II, LLC  
PO BOX 4920  
ORLANDO, FL 32802SUBJECT: CFD HOLDINGS II, LLC  
REF: L8300001142404 DEC 30 AM 11:00  
FLORIDA DEPT OF STATE  
DIVISION OF CORPORATIONS

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refile the complete document, including the electronic filing cover sheet.

The document is illegible and not acceptable for imaging.

If you have any questions concerning the filing of your document, please call (850) 245-6094.

Agnes Lunt  
Document SpecialistFAX Aud. #: R04000255974  
Letter Number: 003A00000065

Division of Corporations - P.O. BOX 6327 - Tallahassee, Florida 32314

**ARTICLES OF MERGER**

**OF**

**CNL NET LEASE INVESTORS, L.P.,**  
a California limited partnership,  
and  
**CNL NET LEASE INVESTORS GP CORP.,**  
a Delaware corporation,  
**FO2-4761**  
**WITH AND INTO**

**CFD HOLDINGS II, LLC,**  
a Florida limited liability company

04 DEC 30 AM 11:00  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS

CFD HOLDINGS II, LLC, a Florida limited liability company ("Surviving Entity") and CNL NET LEASE INVESTORS, L.P., a California limited partnership ("Investors LP"), and CNL NET LEASE INVESTORS GP CORP., a Delaware corporation ("GP Corp." and together with "Investors LP", the "Merging Entities"), hereby adopt the following Articles of Merger for the purpose of effecting the merger of the Merging Entities with and into the Surviving Entity:

**FIRST:** The plan of merger is as follows:

1. On the Effective Date (as hereinafter defined), the Merging Entities will be merged with and into the Surviving Entity, and the Surviving Entity shall be the surviving limited liability company of such merger (the "Merger").

2. The terms and conditions of the Merger are as follows:

(a) The manner and basis of converting the limited partner partnership interests and the general partner partnership interest in Investors LP and the shares of capital stock in GP Corp. into membership interests in the Surviving Entity, cash, or other consideration, or a combination thereof, is as follows:

(i) CNL Financial LP Holding, LP, a Delaware limited partnership ("Holding LP"), which owns all of the limited partner partnership interests in Investors LP, owns, indirectly through Restaurant Assets, LLC (which is owned 100% by Holding LP), all of the membership interests in the Surviving Entity. As a result, the limited partner partnership interests in Investors LP will not be converted into additional membership interests in the Surviving Entity, cash or other consideration, but rather will cease to exist at and as of the Effective Date.

(ii) GP Corp., which is a wholly-owned subsidiary of CNL Financial GP Holding Corp. ("Holding GP"), owns all of the general partner partnership interest in Investors LP. Accordingly, the general partner partnership interest in Investors LP and all of the shares of capital stock of GP Corp. shall automatically

0914332\105220\00215814

be converted into the right to receive an amount of cash equal to the amount determined by the parties to the Merger and set forth in the Agreement and Plan of Merger. In connection with the payment of the cash consideration to Holding GP, the general partner partnership interest in Investors LP and all of the shares of capital stock of GP Corp. shall cease to exist at and as of the Effective Date.

(b) The Surviving Entity will continue in existence under the laws of the State of Florida, and shall possess all the rights, privileges, licenses, immunities and franchises of a public as well as a private nature, of each of the parties to the Merger, and all property, real, personal or mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest of or belonging to or due to each of the parties to the Merger shall be taken and deemed to be transferred to and vested in the Surviving Entity without further act or deed; and the title to any real estate, or any interest therein, vested in any party to the Merger shall not revert or be in any way impaired by reason of such Merger; and the Surviving Entity shall thenceforth be responsible and liable for all of the liabilities and obligations of each party to the Merger, and any claim existing or action or proceeding by or against any party to the Merger may be continued as if such Merger had not occurred, or the Surviving Entity may be substituted in its place, and neither the rights of creditors nor any liens upon the property of any party shall be impaired by the Merger.

(c) The Articles of Organization of the Surviving Entity, as in effect immediately prior to the filing of the Articles of Merger, shall be the Articles of Organization of the Surviving Entity until thereafter amended as provided by law.

(d) The Operating Agreement of the Surviving Entity, as in effect immediately prior to the filing of the Articles of Merger, shall be the Operating Agreement of the Surviving Entity until thereafter amended as provided in the Operating Agreement and by applicable law.

3. The Merger shall become effective on December 31, 2004 (the "Effective Date").

4. The principal business address of the Surviving Entity is 450 South Orange Avenue, Orlando, Florida 32801.

**SECOND:** The Merger was approved, adopted, certified, executed and acknowledged as follows:

1. The Merger was approved, adopted, certified, executed and acknowledged by the Surviving Entity by its sole member, in accordance with the applicable provisions of Chapter 608, Florida Statutes.

2. The Merger was approved, adopted, certified, executed and acknowledged by Investors LP by its general partner and its limited partner in accordance with the applicable provisions of California law.

0914332105220902215914

3. The Merger was approved, adopted, certified, executed and acknowledged by GP Corp. in accordance with the applicable provisions of the Delaware General Corporation Law and any other applicable provisions of Delaware law.

[remainder of page intentionally left blank;  
signatures appear on next page]

SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
04 DEC 30 AM 11:00

091433210522018021594

- 3 -

IN WITNESS WHEREOF, the undersigned have caused these Articles of Merger to be signed by their duly authorized representatives as of the 30<sup>th</sup> day of December, 2004.

**CFD HOLDINGS II, LLC,**  
a Florida limited liability company

By: **RESTAURANT ASSETS, LLC,**  
a Florida limited liability company, as sole member

By: **CNL FINANCIAL LP HOLDING, LP,**  
a Delaware limited partnership, as sole member

By: **CNL FINANCIAL GP HOLDING CORP.,**  
a Delaware corporation, as general partner

By: \_\_\_\_\_  
Name: **Robert E. Lawless**  
Title: **Senior Vice President  
& Treasurer**

**CNL NET LEASE INVESTORS, L.P.,**  
a California limited partnership

By: **CNL NET LEASE INVESTORS GP CORP.,**  
a Delaware corporation, as general partner

By: \_\_\_\_\_  
Name: **LINDA A. SCARCELLI**  
Title: **Asst. Secretary**

**CNL NET LEASE INVESTORS GP CORP.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: **LINDA A. SCARCELLI**  
Title: **Asst. Secretary**

04 DEC 30 AM 11:00  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS

091433210522018021994

- 4 -

SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
04 DEC 30 AM 11:00

## AGREEMENT AND PLAN OF MERGER

**THIS AGREEMENT AND PLAN OF MERGER** (this "Plan of Merger") is made as of the 30<sup>th</sup> day of December, 2004 by and among **CFD HOLDINGS II, LLC**, a Florida limited liability company ("Surviving Entity") and **CNL NET LEASE INVESTORS, L.P.**, a California limited partnership ("Investors LP"), and **CNL NET LEASE INVESTORS GP CORP.**, a Delaware corporation ("GP Corp." and together with "Investors LP", the "Merging Entities") (the Merging Entities and the Surviving Entity are collectively referred to herein as the "Constituent Entities").

### WITNESSETH:

**WHEREAS**, the Surviving Entity is a wholly-owned subsidiary of Restaurant Assets, LLC, which is in turn a wholly-owned subsidiary of CNL Financial LP Holding, LP ("Holding LP"); and

**WHEREAS**, Holding LP is the sole limited partner of Investors LP, holding a 99.9% limited partner partnership interest in Investors LP (the "Limited Partner Partnership Interests"); and

**WHEREAS**, GP Corp. is the sole general partner of Investors LP, holding a 0.1% general partner partnership interest in Investors LP (the "General Partner Partnership Interest"); and

**WHEREAS**, GP Corp. is a wholly-owned subsidiary of CNL Financial GP Holding Corp. ("Holding GP"), and Holding GP is the general partner of Holding LP; and

**WHEREAS**, the Constituent Entities desire to effect a merger (the "Merger"), whereby the Merging Entities be merged with and into the Surviving Entity in accordance with the terms set forth herein; and

**WHEREAS**, the general partner and limited partner of Investors LP have approved this Plan of Merger; and

**WHEREAS**, the sole shareholder of GP Corp. has approved this Plan of Merger; and

**WHEREAS**, the addresses of each of the Merging Entities are attached hereto as Exhibit "A";

**WHEREAS**, the sole member of the Surviving Entity has approved this Plan of Merger, as required by applicable law;

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual agreements, covenants, and provisions contained herein, and for the purpose of prescribing the terms and conditions of the Merger, and such other details and provisions as the parties hereto deem necessary or desirable, the parties agree as follows:

0914332\105220\8021594

1. On December 31, 2004 (the "Effective Date"), each of the Merging Entities shall be merged with and into the Surviving Entity pursuant to this Plan of Merger, and the Surviving Entity shall continue to exist and be governed under the laws of the State of Florida. The Merger shall become effective as of the Effective Date.

2. The terms and conditions of the Merger shall be as follows:

(a) The manner and basis of converting the partnership interests in Investors LP and the shares of capital stock of GP Corp. into membership interests in the Surviving Entity, cash or other consideration, or a combination thereof, is as follows:

(i) Holding LP, which owns all of the Limited Partner Partnership Interests in Investors LP, owns, indirectly through Restaurant Assets, LLC (which is owned 100% by Holding LP), all of the membership interests in the Surviving Entity. As a result, the Limited Partner Partnership Interests in Investors LP will not be converted into additional membership interests in the Surviving Entity, cash or other consideration, but rather will cease to exist at and as of the Effective Date.

(ii) GP Corp., which is a wholly-owned subsidiary of Holding GP, owns all of the General Partner Partnership Interest in Investors LP. Accordingly, the General Partner Partnership Interest in Investors LP and all of the shares of capital stock of GP Corp. shall automatically be converted into the right to receive One Hundred and 00/100 Dollars cash (the "Cash Consideration"). In connection with the payment of the Cash Consideration to Holding GP, the General Partner Partnership Interest in Investors LP and all of the shares of capital stock of GP Corp. shall cease to exist at and as of the Effective Date.

(b) Except as may otherwise be set forth in this Plan of Merger, the Surviving Entity will continue in existence and shall possess all the rights, privileges, licenses, immunities and franchises, of a public as well as a private nature, of each of the parties to the Merger, and all property, real, personal or mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest of or belonging to or due to each of the parties to the Merger shall be taken and deemed to be transferred to and vested in the Surviving Entity without further act or deed; and the title to any real estate, or any interest therein, vested in any party to the Merger shall not revert or be in any way impaired by reason of such Merger; and the Surviving Entity shall thenceforth be responsible and liable for all of the liabilities and obligations of each party to the Merger, and any claims existing or action or proceeding by or against any party to the Merger may be continued as if such Merger had not occurred, or the Surviving Entity may be substituted in its place, and neither the rights of creditors nor any liens upon the property of any party to the Merger shall be impaired by the Merger.

3. The Surviving Entity is a limited liability company formed under the laws of the State of Florida. The sole member of the Surviving Entity is Restaurant Assets, LLC, a Florida limited liability company, and the Surviving Entity is not managed by a manager and is

091433710522080316994

STATE DEPT OF STATE  
DIVISION OF CORPORATIONS  
DEC 30 AM 11:00



accordingly member-managed. The principal business address of the Surviving Entity is 450 South Orange Avenue, Orlando, Florida 32801.

4. If at any time the Surviving Entity shall consider or be advised that any further assignment or assurances in law are necessary or desirable to vest, perfect, confirm or record in the Surviving Entity the title to any property or rights of either of the Merging Entities or to otherwise carry out the provisions hereof, the parties hereto, as of the Effective Date, shall execute and deliver any and all proper deeds, assignments and assurances in law, and do all things necessary or proper to vest, perfect, or confirm title to such property or rights in the Surviving Entity.

5. Subject to applicable law, this Plan of Merger may be amended, modified or supplemented only by written agreement of the parties hereto at any time before the Effective Date. This Plan of Merger may be terminated at any time prior to the Effective Date by mutual agreement of the parties hereto, and upon any such termination this Plan of Merger shall be void and of no further effect.

6. The sole member of the Surviving Entity hereby expressly waives notice of any action to approve this Plan of Merger (including but not limited to any notice required under Section 608.4381(3), Florida Statutes).

7. The sole stockholder of GP Corp. hereby expressly waives notice of any action to approve this Plan of Merger (including but not limited to any notice required under Section 251(c) of the Delaware General Corporation Law).

[remainder of page intentionally left blank;  
signatures appear on next pages]

IN WITNESS WHEREOF, the undersigned have executed this Plan of Merger as of the date first written above.

04 DEC 30 AM 11:00  
DIVISION OF CORPORATIONS  
TREASURY OF STATE

**CED HOLDINGS II, LLC,**  
a Florida limited liability company

By: **RESTAURANT ASSETS, LLC,**  
a Florida limited liability company, as sole member

By: **CNL FINANCIAL LP HOLDING, LP,**  
a Delaware limited partnership, as sole member

By: **CNL FINANCIAL GP HOLDING CORP.,**  
a Delaware corporation, as general partner

By: \_\_\_\_\_  
Name: **Robert E. Lawton**  
Title: **Senior Vice President  
& Treasurer**

**CNL NET LEASE INVESTORS, L.P.,**  
a California limited partnership

By: **CNL NET LEASE INVESTORS GP CORP.,**  
a Delaware corporation, as general partner

By: \_\_\_\_\_  
Name: **LINDA A. SCARCELLI**  
Title: **Asst. Secretary**

**CNL NET LEASE INVESTORS GP CORP.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: **LINDA A. SCARCELLI**  
Title: **Asst. Secretary**

09143221 052204021594

- 4 -

SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
04 DEC 30 AM 11:00

Restaurant Assets, LLC hereby joins in the execution of this Plan of Merger solely to acknowledge its waiver of notice described in Section 6 hereof.

**RESTAURANT ASSETS, LLC,**  
a Florida limited liability company

By: **CNL FINANCIAL LP HOLDING, LP,**  
a Delaware limited partnership, as sole member

By: **CNL FINANCIAL GP HOLDING CORP.,**  
a Delaware corporation, as general partner

By: \_\_\_\_\_  
Name: **Robert E. Lawless**  
Title: **Senior Vice President  
& Treasurer**

CNL Financial GP Holding Corp. hereby joins in the execution of this Plan of Merger solely to acknowledge its waiver of notice described in Section 7 hereof.

**CNL FINANCIAL GP HOLDING CORP.,**  
a Delaware corporation, as general partner

By: \_\_\_\_\_  
Name: **Robert E. Lawless**  
Title: **Senior Vice President  
& Treasurer**

0914332\105220\802139\4

- 5 -