

Mar. 13. 2009 2:07PM

No. 003 Page 1 of 1

# LO7000117288

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## MERGER OR SHARE EXCHANGE

NFI Sarasota Two, LLC

Certificate of Status	0
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Page Count	06
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Mar. 13. 2009 2:07PM

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SECRETARY OF STATE  
TALLAHASSEE FLORIDA

**CERTIFICATE OF MERGER**  
of  
**NFI SARASOTA, LLC**  
(A Florida Limited Liability Company)  
with and into  
**NFI SARASOTA TWO, LLC**  
(A Florida Limited Liability Company)

The following Certificate of Merger is being submitted by the parties in accordance with Section 608.4382 of the Florida Statutes:

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

<u>Name</u>	<u>Jurisdiction</u>	<u>Entity Type</u>	<u>Document No.</u>
NFI SARASOTA, LLC	Florida	Limited Liability Company	#L04000020580
NFI SARASOTA TWO, LLC	Florida	Limited Liability Company	#L07000117288

**SECOND:** The exact name, street address of its principal office, jurisdiction and entity type of the Surviving Company are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Entity Type</u>	<u>Document No.</u>
NFI SARASOTA TWO, LLC 11780 US Highway One Suite 500 North Palm Beach, FL 33408	Florida	Limited Liability Company	#L07000117288

**THIRD:** The attached Agreement and Plan of Merger was approved by each domestic limited liability company that is a party to the merger in accordance with the requirements of Section 608.438 of the Florida Statutes.

**FOURTH:** The members of each of the limited liability company unanimously approved the Agreement and Plan of Merger by written consent and waived any and rights to notice and appraisal rights, as provided in Sections 608.438; 608.4351 and 608.4381, Florida Statutes.

**FIFTH:** The merger shall become effective upon filing of this Certificate of Merger with the Secretary of State of the State of Florida.

Witness the following signatures and seals, as of this 29<sup>th</sup> of January 2009.

NFI SARASOTA, LLC, a Florida  
limited liability company

NFI SARASOTA TWO, LLC,  
a Florida limited liability company

By:   
Gary T. Nicklaus, Manager

By: Nicklaus Investments (Sarasota)  
Ltd., a Florida limited partnership  
as sole Member

By: NI Sarasota, LLC, a Florida  
limited liability company, as  
sole General Partner

By:   
Gary T. Nicklaus, Manager

AGREEMENT AND PLAN OF MERGER  
OF

NFI SARASOTA, LLC  
(a Florida limited liability company)

WITH AND INTO

NFI SARASOTA TWO, LLC  
(a Florida limited liability company)

AGREEMENT AND PLAN OF MERGER ("Agreement"), dated as of January 21<sup>st</sup> 2009, between NFI SARASOTA, LLC, a Florida limited liability company ("Merger LLC"), and NFI SARASOTA TWO, LLC, a Florida limited liability company ("Surviving LLC") (Merger LLC and Surviving LLC, collectively the "Companies").

WHEREAS, Surviving LLC is a limited liability company organized under the laws of the State of Florida with its principal place of business located at 11780 U.S. Highway One, Suite 500, North Palm Beach, FL 33408; and

WHEREAS, Merger LLC is a limited liability company organized under the laws of the State of Florida with its principal place of business located at 11780 U.S. Highway One, Suite 500, North Palm Beach, FL 33408; and

WHEREAS, the Companies desire to merge under and pursuant to the applicable provisions of the laws of the State of Florida which laws permit such a merger; and

WHEREAS, the members of Merger LLC and the sole Member of Surviving LLC have determined that it is in the best interest of each of the Companies to merge and such members have duly approved and authorized the execution and delivery of this Agreement and the merger described herein.

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

I. THE MERGER: EFFECTIVE TIME

Section 1.1 The Merger. Subject to the terms and conditions contained in this Agreement, at the Effective Time (as defined in Section 1.2) Merger LLC shall be merged with and into Surviving LLC and the separate existence of Merger LLC shall thereupon cease (the "Merger"). Surviving LLC shall be the surviving entity in the Merger and shall continue to be governed by the laws of the State of Florida, shall succeed to all rights, assets, liabilities and

obligations of Merger LLC, and the separate existence of Surviving LLC with all its rights, privileges, powers, immunities, purposes and franchises shall continue unaffected by the Merger.

Section 1.2 Effective Time. The Merger shall become effective upon filing of the Certificate of Merger with the Florida Department of State (the "Effective Time") in accordance with the Florida Limited Liability Company Act (the "Act").

## **II CONVERSION OF MEMBER INTERESTS IN THE MERGER; APPRAISAL RIGHTS**

Section 3.1 Conversion of Member Interests of Merger LLC. At the Effective Time, each member of Merger LLC shall be entitled to receive a cash payment for such membership interest equal to the amount of their capital contributions to the Merger LLC as reflected on Merger LLC's books and records and upon receipt of the return of said capital contributions the membership interests of Merger LLC outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be automatically canceled and retired and cease to exist.

Section 3.2 Appraisal Rights. Holders of the membership interests acknowledge that they may have certain rights pursuant to Sections 608.438, 608.4351 and 608.4381 Florida Statutes in connection with the Merger and by virtue of their execution hereof hereby waive any and all rights to notice and appraisal that they may have pursuant to the Act.

## **III. TERMINATION AND AMENDMENT**

Section 3.1 Termination by Mutual Consent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, before or after the approval of this Agreement by the mutual consent of the Companies by action of their respective Members.

Section 3.2 Effect of Termination and Abandonment. In the event of termination of this Agreement and abandonment of the Merger pursuant to this Article III, no party hereto (or any of its members) shall have any liability or further obligation to any other party to this Agreement, except that nothing herein will relieve any party from liability for any breach of this Agreement.

Section 3.3 Amendment. The Members of each Company may amend this Agreement at any time prior to the filing of Certificate of Merger with the Secretary of State of the State of Florida, provided that an amendment made subsequent to the adoption of this Agreement by the Members of either of the Companies shall not, without further approval by the Members, (i) alter or change the amount or kind of shares, securities, property and/or rights to be received by Merger LLC members in exchange for or on conversion of all or any of their member interests of Merger LLC; (ii) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the members of Surviving LLC. This Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto.

#### IV. MISCELLANEOUS AND GENERAL

Section 4.1 Counterparts. For the convenience of the parties hereto, this Agreement may be executed in counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

Section 4.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Section 4.3 Entire Agreement etc. This Agreement (a) constitutes the entire agreement, and supersedes all other prior agreements and understanding, both written and oral, among the parties, with respect to the subject matter hereof, (b) is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder, and (c) shall not be assignable by operation of law or otherwise.

Section 4.4 Captions. The captions and headings used herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

*[This space intentionally left blank.]*

IN WITNESS WHEREOF, this Agreement has been duly executed, sealed and delivered by the duly authorized officers of the parties hereto on the date first hereinabove written.

**SURVIVING LLC**

NFI SARASOTA TWO, LLC,  
a Florida limited liability company

By: Nicklaus Investments (Sarasota),  
Ltd., a Florida limited partnership, as  
Sole Member

By: NI Sarasota, LLC, a Florida  
limited liability company, as  
sole general partner

By:   
Gary T. Nicklaus, Manager

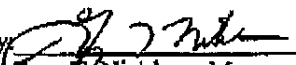
Nicklas Investments (Sarasota), Ltd.  
a Florida limited partnership, Member

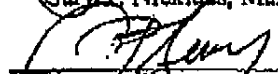
By: NI Sarasota, LLC, a Florida  
limited liability company, sole  
general partner

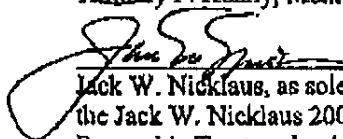
By:   
Gary T. Nicklaus, Manager

**MERGER LLC**

NFI SARASOTA, LLC,  
a Florida limited liability company


By:   
Gary T. Nicklaus, Manager

  
Timothy P. Kearny, Member

  
Jack W. Nicklaus, as sole Trustee of  
the Jack W. Nicklaus 2002  
Revocable Trust under Agreement  
dated February 25, 2002

Nicklaus REI Holdings, Ltd., a  
Florida limited partnership, Member

By: NREI, LLC, a Florida limited  
liability company, sole  
general partner

By:   
Gary T. Nicklaus,  
Manager

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