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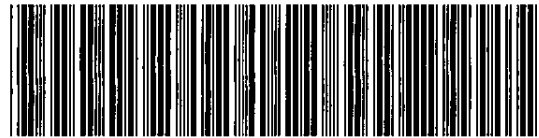
(Business Entity Name)

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TALLAHASSEE, FLORIDA

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M. THOMAS

JAN 7 2009

EXAMINER

Law Offices

**MAGIDS COTTAM PLC**

1661 INTERNATIONAL PLACE DRIVE  
SUITE 320  
MEMPHIS, TENNESSEE 38120  
TELEPHONE (901) 682-6431  
FACSIMILE (901) 682-6453  
www.magidscottam.com

JACK MAGIDS \*  
CHARLES C. COTTAM

\* Also licensed in New York

ANN MARIE CHARNES  
Certified Paralegal

CHARLES C. COTTAM  
ccottam@magidscottam.com

December 30, 2008

**VIA FEDERAL EXPRESS**

Registration Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

Re: Certificate of Merger Fogelman Realty Group, LLC

Ladies and Gentlemen:

Enclosed is a Certificate of Merger for filing with the Florida Secretary of State.

Please return all correspondence concerning this matter to:

Charles C. Cottam, Esq.  
Magids Cottam PLC  
1661 International Place Drive, Suite 320  
Memphis, TN 38120

Also enclosed is our firm's check in the amount of \$80.00 for the filing fee (which includes the certified copy fee of \$30.00). If you have any questions, please give me a call at 901-682-6431.

Very truly yours,

MAGIDS COTTAM PLC



Charles C. Cottam

CCC:psw  
Enclosures

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**CERTIFICATE OF MERGER  
FOR  
FLORIDA LIMITED LIABILITY COMPANY**

Pursuant to the provisions of Section 608.4382 of the Florida Limited Liability Company Act, FOGELMAN REALTY GROUP, LLC, a Tennessee limited liability company ("FRGTN"), and FOGELMAN REALTY GROUP, LLC, a Florida limited liability company ("FRGFL") hereby file the following Certificate of Merger and state as follows:

1. 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>
Fogelman Realty Group, LLC	Tennessee	limited liability company
Fogelman Realty Group, LLC	Florida <b>108-116407</b>	limited liability company

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

<u>Name</u>	<u>Jurisdiction</u>	<u>Entity Type</u>
Fogelman Realty Group, LLC	Florida	limited liability company

3. The Agreement and Plan of Merger (the "Merger Plan"), a copy of which is attached hereto as Exhibit "A", was approved:

- (a) 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; and
- (b) 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.

4. The effective date of a merger shall be at 10:59 p.m. Eastern Standard Time on December 31, 2008.

[SIGNATURE PAGE FOLLOWS]

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Dated: December 24, 2008.

FOGELMAN REALTY GROUP, LLC, a  
Tennessee limited liability company

By: Richard L. Fogelman  
Richard L. Fogelman  
Chief Manager

FOGELMAN REALTY GROUP, LLC, a  
Florida limited liability company

By: Richard L. Fogelman  
Richard L. Fogelman  
President

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TALLAHASSEE, FLORIDA

Exhibit A

**AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER ("Agreement") is made and entered into as of the 24<sup>th</sup> day of December, 2008, by and among FOGELMAN REALTY GROUP, LLC, a Tennessee limited liability company ("FRGTN") and FOGELMAN REALTY GROUP, LLC, a Florida limited liability company ("FRGFL").

**RECITALS:**

WHEREAS, the Board of Governors of FRGTN and the Manager of FRGFL have each determined that the merger of the FRGTN with and into FRGFL (the "Merger") upon the terms and subject to the conditions set forth in this Agreement is in the best interest of the members of FRGTN and FRGFL;

WHEREAS, the Merger has been approved by the unanimous written consent of the Board of Governors and Members of FRGTN and the Manager and Members of FRGFL; and

WHEREAS, the parties desire to execute this Agreement to evidence the terms and conditions upon which the Merger will be consummated.

NOW, THEREFORE, in consideration of the premises, promises and 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:

**ARTICLE 1  
THE MERGER**

1.1 **The Merger.** Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the provisions of the Tennessee Limited Liability Company Act (the "TLLCA") and the Florida Limited Liability Act (the "FLLCA") FRGTN shall be merged with and into FRGFL on the Effective Date (hereinafter defined). Following the Merger, the separate existence of FRGTN shall cease and FRGFL shall continue as the surviving entity.

1.2 **Closing.** The Merger shall be consummated (the "Closing") on a date (the "Closing Date") and at a time mutually agreeable to the parties; provided, however, in no event shall the Closing Date occur later than two (2) Business Days prior to the Effective Date.

1.3 **Effective Date.** The Merger shall be effective at 11:59 p.m. Eastern Time on December 31, 2008 (the "Effective Date").

1.4 **Certificate of Merger.** As soon as practicable following the Closing, the parties shall (a) file a Certificate of Merger (the "Tennessee Certificate of Merger") in such form as is required by and executed in accordance with the applicable provisions of the TLLCA; (b) file Certificate of Merger (the "Florida Certificate of Merger") in such form as is required by and executed in accordance with the applicable provisions of the FLLCA; and (c) make all other filings or recordings required by applicable law.

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**1.5 Effects of the Merger.** On and after the Effective Date, the Merger will have the effects set forth in the TLLCA and FLLCA. Without limiting the generality of the foregoing and subject thereto, on the Effective Date:

(a) FRGTN shall be merged with and into FRGFL, and FRGFL shall be the surviving entity.

(b) The separate existence of FRGTN shall cease.

(c) The ownership of all the rights, assets and properties of every type, nature and description, whether real, personal, tangible, intangible or mixed, owned by FRGTN shall vest in FRGFL.

(d) All obligations, duties, debts and liabilities of every kind or origin, whether absolute or contingent, known or unknown, of FRGTN shall become the obligations, duties, debts and liabilities of FRGFL and may be enforced against FRGFL to the same extent as if the obligations, duties, debts and liabilities had been incurred or contracted by FRGFL.

(e) All liens, encumbrances and security interests upon any of the property of FRGTN shall be preserved and unimpaired and may be enforced against FRGFL to the same extent as if such lien, encumbrance or security interests had been incurred or created by FRGFL.

**1.6 Effect on FRGTN.**

(a) On the Effective Date, by virtue of the Merger and without any further action by FRGTN, the operating agreement of FRGTN (the "FRGTN Operating Agreement") shall be canceled and terminated.

(b) On the Effective Date, by virtue of the Merger and without any action on the part of the holders thereof, the membership interest of each member of FRGTN (individually, a "FRGTN Interest" and, collectively, the "FRGTN Interests") issued and outstanding immediately prior to the Effective Date shall be treated as follows: (A) the FRGTN Interest held by each Class A Member shall be converted into the same percentage Class A Membership Interest and Class A Membership Units in FRGFL; and (B) the FRGTN Interest held by each Class B Member shall be converted into the same percentage Class B Membership Interest and Class B Membership Units in FRGFL.

(c) There shall be no cash or other distribution of property to the holders of the FRGTN Interests as a result of the Merger.

**1.7 Managers and Governors.** The managers of FRGTN as of the Effective Date shall remain and shall serve as the officers of FRGFL to hold office until such time as their successors are elected and have qualified or until their earlier death, resignation, removal or disqualification. The governor of FRGTN as of the Effective Date shall remain and shall serve as the manager of FRGFL to hold office until such time as his successor or successors are elected and have qualified or until his earlier death, resignation, removal or disqualification.

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**1.8 Articles of Organization.** The Articles of Organization of FRGFL in effect on the Effective Date shall be the Articles of Organization of FRGFL until thereafter changed or amended as provided therein or by the FLLCA.

**1.9 Operating Agreement.** The Operating Agreement of FRGFL (the "FRGFL Operating Agreement") shall be the Operating Agreement of FRGFL until thereafter modified or amended as provided therein or pursuant to the provisions of FLLCA.

**1.10 Appraisal Rights.** The FRGFL Operating Agreement eliminates the appraisal rights provided under Section 608.4352 of the FLLCA.

**1.11 Further Assurances.** On and after the Effective Date, the managers and governors of FRGFL are authorized to make, execute and deliver in the name of and on behalf of FRGFL any deeds, bills of sale, assignments or assurances and to take and do in the name of and on behalf of FRGFL any other actions to vest, perfect or confirm of record or otherwise in FRGFL any and all right, title and interest into and under any of the rights, properties or assets acquired or to be acquired by FRGFL as a result of or in connection with the Merger.

## **ARTICLE 2 TERMINATION**

**2.1 Termination.** This Agreement may be terminated and the merger abandoned at any time prior to the Effective Date:

(a) By the mutual consent of FRGFL and FRGFL by action of their respective Board of Governors or managers;

(b) By either of FRGFL or FRGFL if the Merger has not been consummated on or before January 1, 2009; or

(c) By either FRGFL or FRGFL if any governmental entity shall have issued an order or decree ruling, or taking any action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and non-appealable.

Notwithstanding any other provision contained in this Agreement, the right to terminate this Agreement under this Section 2.1 shall not be available to any party (i) that is in material breach of its obligations hereunder; or (ii) whose failure to fulfill its obligations or comply with its covenants under this Agreement has been the cause of or result in the failure to satisfy any conditions to the obligations of either party hereunder.

**2.2 Effect of Termination.** In the event this Agreement is terminated as provided in Section 2.1, this Agreement shall forthwith become null and void and there shall be no liability or obligation on the part of either party to the other.

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### ARTICLE 3 GENERAL PROVISIONS

**3.1 Benefits of Agreement.** Except as otherwise expressly provided herein, the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and assigns; and nothing contained in this Agreement, expressed or implied, shall be construed to confer upon, or give to, any other person any right, remedy or claim under or by reason of this Agreement.

**3.2 Notice.** Any notice, demand, or other communication required or permitted under the terms of this Agreement shall be in writing and shall be deemed to have been given or delivered (i) three (3) Business Days after being sent by United States certified or registered mail, return receipt requested, addressed to the party to be notified at its address set forth on the signature page of this Agreement, or at such other address as such party designates for itself by like notice, or (ii) on the date of actual delivery to such party at said address by hand delivery, overnight courier, telegraph, telex or facsimile transmitter.

**3.3 Incorporation.** All exhibits and schedules attached hereto, or to be attached hereto, and all other agreements and instruments referred to herein are hereby incorporated by reference into this Agreement as fully as if copied herein verbatim.

**3.4 Further Assurances.** The parties further agree that, upon request, they shall do such further acts and deeds and shall execute, acknowledge, deliver and record such other documents and instruments as may be reasonably necessary from time to time to evidence, confirm or carry out the intent and purpose of this Agreement.

**3.5 No Waiver.** No consent or waiver expressed or implied by any party to this Agreement to or of any breach or default by any other party to this Agreement or the performance by such other party of its obligations hereunder, shall be deemed or construed to be a consent or waiver to, or of, any breach or default of any other party of the same or any subsequent obligations hereunder. Failure on the part of any party to this Agreement to complain of any act or failure to act of any party to this Agreement or to declare such party in default, irrespective of how long such failure continues, shall not constitute a waiver by the non-defaulting parties of their rights hereunder.

**3.6 Section Headings.** The Section headings contained in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement.

**3.7 Governing Law.** This Agreement shall be governed in all respects, including validity, interpretation and effect by, and shall be enforceable in accordance with the internal laws of the State of Florida without regard to conflicts of laws principles.

**3.8 Counterpart Execution.** This Agreement may be executed in multiple counterparts, each one of which shall be deemed an original, but all of which shall be considered together as one and the same instrument. Further, in making proof of this Agreement, it shall not be necessary to produce or account for more than one (1) such counterpart. Execution by a party of a signature page hereto shall constitute due execution and shall create a valid, binding

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obligation of the party so signing, and it shall not be necessary or required that the signatures of all parties appear on a single signature page hereto.

**3.9 Successors and Assigns.** This Agreement is binding on the successors and assigns of all parties hereto.

**3.10 Amendments.** This Agreement may be modified or amended as herein provided; however, each and every modification and amendment of this Agreement must be in writing and except as otherwise provided herein, signed by all the parties hereto. Each and every waiver of any covenant, representation, warranty or other provision of this Agreement must be in writing and signed by each party whose interests are adversely affected by such waiver. No waiver granted in any one instance shall be construed as a continuing waiver applicable in any other instance.

**3.11 Entire Agreement.** This Agreement contains the entire agreement between the parties regarding the subject matter hereof. Any prior agreements, discussions or representations not expressly contained herein shall be deemed to be replaced by the provisions hereof, and no party has relied on any such prior

[SIGNATURES ON ATTACHED COUNTERPART SIGNATURE PAGE(S)]

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**COUNTERPART SIGNATURE PAGE TO  
AGREEMENT AND PLAN OF MERGER**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed  
by their duly authorized representatives as of the date first above written.

**FRGTN:**

FOGELMAN REALTY GROUP, LLC, a  
Tennessee limited liability company

By: Richard L. Fogelman  
Richard L. Fogelman  
Chief Manager

**FRGFL:**

FOGELMAN REALTY GROUP, LLC, a  
Florida limited liability company

By: Richard L. Fogelman  
Richard L. Fogelman  
Chief Manager

Notice Address for All Parties:  
2436 North Federal Highway  
Lighthouse Pointe, FL 33064

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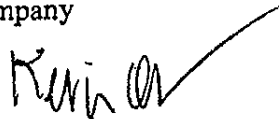
### CERTIFICATE

The undersigned secretary of Fogelman Realty Group, LLC, a Tennessee limited liability company hereby certifies that the foregoing Agreement and Plan of Merger was unanimously adopted and approved by the Board of Governors and the Members of Fogelman Realty Group, LLC, pursuant to a Joint Action by Written Consent of the Governor and Members of Fogelman Realty Group, LLC dated December 24, 2008.

The undersigned secretary of Fogelman Realty Group, LLC, a Florida limited liability company hereby certifies that the foregoing Agreement and Plan of Merger was unanimously adopted and approved by the Manager of Fogelman Realty Group and by the Members of Fogelman Realty Group, LLC pursuant to a Actions by Written Consent dated December 24, 2008.



Kevin Q. Jackson, Secretary of Fogelman Realty Group, LLC, a Tennessee limited liability company



Kevin Q. Jackson, Secretary of Fogelman Realty Group, LLC, a Florida limited liability company

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