

P05000028896

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP ☐ WAIT ☐ MAIL

(Business Entity Name)

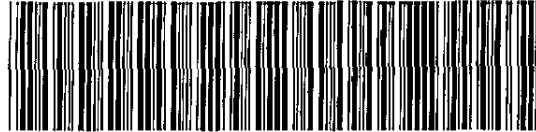
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BK

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07/29/05--01006--026 \*\*68.75

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TALLAHASSEE, FLORIDA

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Suite 1200  
106 East College Avenue  
Tallahassee, FL 32301  
[www.akerman.com](http://www.akerman.com)  
850 224 9634 tel 850 222 0103 fax

July 29, 2005

Buck Kohr  
Limited Liability Company Filings  
Division of Corporations  
Department of State  
409 East Gaines Street  
Tallahassee, FL 32399

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05 JUL 29 AM 10:31  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

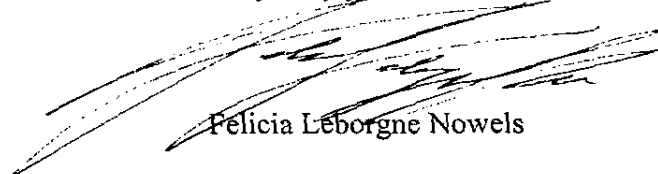
RE: Vanderbilt Real Property, LLC into the Residences at the Mercato, Inc.

Dear Mr. Kohr,

Please find enclosed the original Articles of Merger and Agreement and Plan of Merger for the above referenced company along with one additional copy and a check for the filing fees and certified copy fee in the amount of \$68.75.

We would like to file the Articles of Merger at this time and request one certified copy. Please let me know if you require any additional information. Thank you for your assistance with this matter.

Very truly yours,



Felicia Leborgne Nowels

**ARTICLES OF MERGER**

**OF**

**VANDERBILT REAL PROPERTY, LLC,**  
a Florida limited liability company

**INTO**

**THE RESIDENCES AT THE MERCATO, INC.,**  
a Florida corporation

**FILED**  
05 JUL 29 AM 10:37  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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To the Secretary of State  
State of Florida

Pursuant to the provisions of Sections 607.1109 and 608.4382, Florida Statutes, the domestic corporation and the domestic limited liability company herein named do hereby submit the following Articles of Merger.

1. Annexed hereto and made a part hereof is the Agreement and Plan of Merger for merging Vanderbilt Real Property, LLC, a Florida limited liability company, with and into The Residences at The Mercato, Inc., a Florida corporation.
2. The sole member of Vanderbilt Real Property, LLC approved and adopted the Agreement and Plan of Merger by written consent in accordance with the provisions of Section 608.4381, Florida Statutes.
3. The date of approval and adoption of the Agreement and Plan of Merger by the sole member of Vanderbilt Real Property, LLC was July 29, 2005.
4. All of the shareholders of The Residences at The Mercato, Inc. approved and adopted the Agreement and Plan of Merger by written consent in accordance with the provisions of Section 607.1108 (5), Florida Statutes.
5. The date of approval and adoption of the Agreement and Plan of Merger by all of the shareholders of The Residences at The Mercato, Inc. was July 29, 2005.
6. The effective time and date of the merger herein provided for in the State of Florida shall be the date and time of filing these Articles of Merger with the Florida Secretary of State.

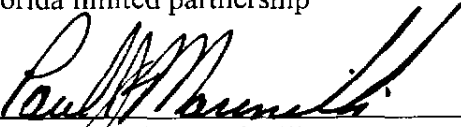
Executed on July 29, 2005.

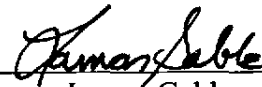
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These Articles of Merger may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

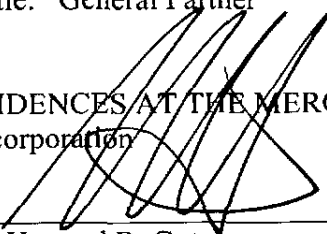
VANDERBILT REAL PROPERTY, LLC, by its  
sole member:

OCEAN BOULEVARD SOUTH, LTD.,  
a Florida limited partnership

By:   
Name: Paul J. Marinelli  
Title: Chief Executive Officer

By:   
Name: Lamar Gable  
Title: General Partner

THE RESIDENCES AT THE MERCATO, INC.  
a Florida corporation

By:   
Name: Howard B. Gutman  
Title: President

## **AGREEMENT AND PLAN OF MERGER**

AGREEMENT AND PLAN OF MERGER, dated as of July 29, 2005 (this "Agreement"), between VANDERBILT REAL PROPERTY, LLC, a Florida limited liability company ("LLC"), and THE RESIDENCES AT THE MERCATO, INC., a Florida corporation ("INC").

### **WITNESSETH:**

WHEREAS, INC desires to acquire the properties and other assets, and to assume all of the liabilities and obligations, of LLC, by means of a merger of LLC with and into INC;

WHEREAS, Sections 607.1108 – 607.11101 and Sections 608.438 - 608.4384, Florida Statutes, authorize the merger of a Florida limited liability company with and into a Florida corporation;

WHEREAS, LLC now desires to merge with and into INC (the "Merger"), following which INC shall be the surviving entity; and

WHEREAS, the sole member of LLC and all of the shareholders of INC have approved this Agreement and the consummation of the Merger;

NOW THEREFORE, the parties hereto hereby agree as follows:

### **ARTICLE I**

#### **THE MERGER**

##### **SECTION 1.1 The Merger.**

(a) On July 29, 2005, after satisfaction or, to the extent permitted hereunder, waiver of all conditions to the Merger, as LLC and INC shall determine, INC, which shall be the surviving entity, shall file Articles of Merger (the "Articles") with the Secretary of State of the State of Florida and make all other filings or recordings required by Florida law in connection with the Merger. The Merger shall become effective upon the filing of the Articles with the Secretary of State of the State of Florida (the "Effective Time").

(b) At the Effective Time, LLC shall be merged with and into INC, whereupon the separate existence of LLC shall cease and INC shall be the surviving entity of the Merger (the "Surviving Entity").

##### **SECTION 1.2 Effect of Merger on Interests. At the Effective Time:**

(a) Each membership interest in 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 canceled and no consideration shall be issued in respect thereof; and

(b) Each share in INC outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, remain unchanged and continue to remain outstanding with each shareholder of INC having the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the Merger, without further action on the part of INC or any holder of its shares.

## **ARTICLE II**

### **TRANSFER AND CONVEYANCE OF ASSETS AND ASSUMPTION OF LIABILITIES**

**SECTION 2.1 Transfer, Conveyance and Assumption.** At the Effective Time, INC shall continue in existence as the Surviving Entity, and without further transfer, succeed to and possess all of the rights, privileges and powers of LLC, and all of the assets and property of whatever kind and character of LLC shall vest in INC without further act or deed; thereafter, INC, as the Surviving Entity, shall be liable for all of the liabilities and obligations of LLC, and any claim or judgment against LLC may be enforced against INC, as the Surviving Entity.

**SECTION 2.2 Further Assurances.** If at any time INC, as the Surviving Entity, shall consider or be advised that any further assignment, conveyance or assurance is necessary or advisable to vest, perfect or confirm of record in the Surviving Entity the title to any property or right of LLC, or otherwise to carry out the provisions hereof, the proper representatives of LLC as of the Effective Time shall execute and deliver any and all proper deeds, assignments, and assurances and do all things necessary or proper to vest, perfect or convey title to such property or right in the Surviving Entity, and otherwise to carry out the provisions hereof.

## **ARTICLE III**

### **TERMINATION**

**SECTION 3.1 Termination.** This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time:

- (i) by mutual written consent of LLC and INC; or
- (ii) by either LLC or INC, if there shall be any law or regulation that makes consummation of the Merger illegal or otherwise prohibited, or if any judgment, injunction, order or decree enjoining LLC or INC from consummating the Merger is entered and such judgment, injunction, order or decree shall become final and nonappealable.

**SECTION 3.2 Effect of Termination.** If this Agreement is terminated pursuant to Section 4.1, this Agreement shall become void and of no effect with no liability on the part of either party hereto.

## ARTICLE IV

### CONDITIONS TO THE MERGER

SECTION 4.1 Conditions to the Obligations of Each Party. The obligations of LLC and INC to consummate the Merger are subject to satisfaction of the following conditions as of the Effective Time:

(i) no provision of any applicable law or regulation and no judgment, injunction, order or decree shall prohibit the consummation of the Merger; and

(ii) all actions by or in respect of or filings with any governmental body, agency, official, or authority required to permit the consummation of the Merger shall have been obtained.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.1 Amendments; No Waivers. (a) Any provision of this Agreement may, subject to applicable law, be amended or waived prior to the Effective Time if, and only if, such amendment or waiver is in writing and signed by LLC and INC.

(b) No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 5.2 Integration. All prior or contemporaneous agreements, contracts, promises, representations, and statements, if any, between LLC and INC, or their respective representatives with respect to the subject matter hereof, are merged into this Agreement, and this Agreement shall constitute the entire understanding between LLC and INC with respect to the subject matter hereof.

SECTION 5.3 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other party hereto.

SECTION 5.4 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida, without giving effect to principles of conflict of laws.

SECTION 5.5 Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become

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effective when each party hereto shall have received the counterpart hereof signed by the other party hereto.

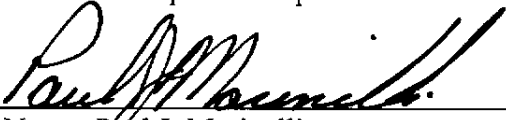
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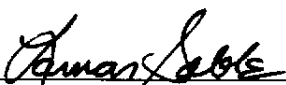


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

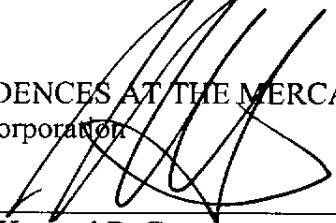
VANDERBILT REAL PROPERTY, LLC,  
a Florida limited liability company'  
by its sole member:

OCEAN BOULEVARD SOUTH, LTD.,  
a Florida limited partnership

By:   
Name: Paul J. Marinelli  
Title: Chief Executive Officer

By:   
Name: Lamar Gable  
Title: General Partner

THE RESIDENCES AT THE MERCATO, INC.,  
A Florida corporation

By:   
Name: Howard B. Gutman  
Title: President

[Signature Page to Agreement and Plan and Merger]