

04-22-1999

SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark OfficeFORM PTO-1594
Rev. 6-83)

REC

OMB No. 0651-0011 (exp. 4/94)



Tab settings 000 ▼

To the Honorable Commissioner of Patents

101017706

Attached original documents or copy thereof.

1. Name of conveying party(ies):

McAlister's Management Corporation

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State MS
☐ Other

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☒ Merger
☐ Security Agreement ☐ Change of Name
☐ Other

Execution Date: April 2, 1999

2. Name and address of receiving party(ies)

Name: McAlister's Corporation

Internal Address:

Street Address: 400 Legacy Park Drive, Ste 100

City: Ridgeland State: MS ZIP: 39157

- ☐ Individual(s) citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☒ Corporation-State Mississippi
☐ Other

If assignee is not domiciled in the United States, a domestic representative design is attached: ☐ Yes ☒ No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

NONE

B. Trademark Registration No.(s)

1,942,574	2,207,158	2,217,403
1,943,439	2,217,201	

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Patrick K. Walls

Internal Address: McAlister's Corporation

Street Address: 400 Legacy Park Drive

Suite B

City: Ridgeland State: MS ZIP: 39157

6. Total number of applications and registrations involved: 5

7. Total fee (37 CFR 3.41).....\$ 140 00

☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Patrick K. Walls

Name of Person Signing

Signature

April 12, 1999

Date

Total number of pages including cover sheet, attachments, and document: 15

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

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01 FC:481
02 FC:48240.00 DP
100.00 DP

04/08/99 09:01

TX/RX NO. 4110 P.002

TRADEMARK
REEL: 1886 FRAME: 0408

Articles of Merger or Share Exchange
Profit Corporation

The undersigned corporation pursuant to Section 79-4-11.05, as amended, hereby executes the following document and sets forth:

1. Name of Corporation 1

McALISTER'S MANAGEMENT CORPORATION (Merging out of existence)

2. Name of Corporation 2

RESTAURANT ACQUISITION COMPANY (Survivor)

3. Name of Corporation 3

4. The future effective date is
(Complete if applicable)

5. The plan of merger or share exchange. (Attach page)

6. Mark appropriate box.

☐

(a) Shareholder approval of the plan of merger or share exchange was not required.

OR

☒

(b) If approval of the shareholders of one or more corporations party to the merger or share exchange was required

(i) the designation, number of outstanding shares, and number of votes entitled to be cast by each class entitled to vote separately on the plan as to each corporation were

Name of Corporation	Designation	No. of outstanding shares	No. of votes entitled to be cast
McAlister's Management Corporation	Common	10,000	10,000
Restaurant Acquisition Company	Common	10,000	10,000



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Eric Clark
Secretary of State

F0013 - Page 2 of 3

OFFICE OF THE MISSISSIPPI SECRETARY OF STATE

P.O. BOX 136, JACKSON, MS 39205-0136 (601) 359-1333

Articles of Merger or Share Exchange
Profit Corporation

AND EITHER

a. the total number of votes cast for and against the plan by each class entitled to vote separately on the plan was

Name of Corporation	Class	Total no. of votes cast FOR the Plan	Total no. of votes cast AGAINST the Plan

OR

b. the total number of undisputed votes cast for the plan separately by each class was

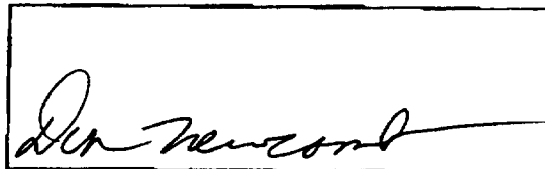
Name of Corporation	Class	Total no. of undisputed votes cast FOR the Plan
McAlister's Management Corporation	Common	10,000
Restaurant Acquisition Company	Common	10,000

and the number of votes cast for the plan by each class was sufficient for approval by that class.

Name of Corporation 1

McAlister's Management Corporation

By: Signature



(Please keep writing within blocks)

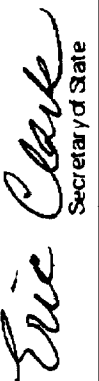
Printed Name

Don Newcomb

Title

President

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 Eric Clark
 Secretary of State

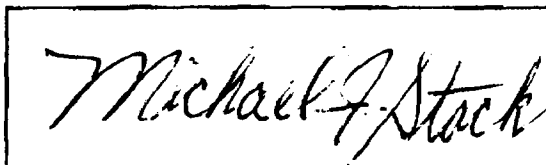
Rev. 01/96

Articles of Merger or Share Exchange
Profit Corporation

Name of Corporation 2

Restaurant Acquisition Company

By: Signature



(Please keep writing within blocks)

Printed Name

Michael J. Stack

Title

CEO

Name of Corporation 3

By: Signature



(Please keep writing within blocks)

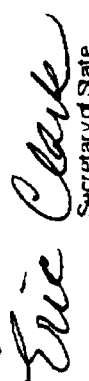
Printed Name



Title

**NOTE**

1. If shareholder approval is required, the plan must be approved by each voting group entitled to vote on the plan by a majority of all votes entitled to be cast by that voting group unless the Act or the articles of incorporation provide for a greater or lessor vote, but not less than a majority of all votes cast at a meeting.
2. The articles cannot be filed unless the corporation(s) has (have) paid all fees and taxes (and delinquencies) imposed by law.
3. The articles must be similarly executed by each corporation that is a party to the merger.

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original filed with the Secretary of State.
Eric Clark
Secretary of State

AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

This Agreement and Plan of Merger and Reorganization (the "Agreement") is dated April 2, 1999, by and among McAlister's Management Corporation, a Mississippi corporation ("McAlister's"), and Don Newcomb, Debra Tubbs Bryson, Don Christopher Newcomb and Neil McAlister Newcomb, who are all the existing shareholders of McAlister's (the "Shareholders"), on the one hand, and Mississippi Restaurant Holdings, Inc., a Mississippi corporation ("Holdings") and Restaurant Acquisition Company, a Mississippi corporation and wholly-owned subsidiary of Holdings (the "Company"), on the other hand.

WHEREAS, pursuant to the terms of an Option Agreement, dated as of December 2, 1998, by and among Holdings and Michael J. Stack, its Chief Executive Officer, on the one hand, and the Shareholders and McAlister's, on the other hand (the "Option Agreement"), the Shareholders and McAlister's have granted Holdings an option to acquire all of the shares of common stock of McAlister's pursuant to a merger transaction, wherein McAlister's shall be merged with and into the Company (the "Merger");

WHEREAS, Holdings caused the formation of the Company to effectuate the transactions contemplated herein and in the Option Agreement;

WHEREAS, the Shareholders, the respective Boards of Directors of McAlister's and the Company and Holdings, have approved the Merger pursuant to the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each signatory hereto, it is agreed as follows:

1. Merger. Subject to the terms and conditions hereof, the Merger shall be consummated in accordance with the Mississippi Business Corporation Act (the "Act"). At the effective date of the Merger (the "Effective Date"), McAlister's shall be merged with and into the Company, which shall be the surviving corporation.

2. McAlister's Common Stock. Each share of McAlister's common stock issued and outstanding immediately prior to the Effective Date (the "Common Stock") shall, by virtue of the Merger, be canceled and converted into the right to receive cash and or a note. The Shareholders shall receive an aggregate of \$6,000,000 in cash as the Merger consideration which shall be apportioned as follows: Don Newcomb shall receive \$4,000,000, Debra Bryson shall receive \$1,000,000, Don Christopher Newcomb shall receive \$500,000 and Neil McAlister Newcomb shall receive \$500,000. In addition, Don Newcomb shall receive a promissory note, a copy of which is attached hereto as Exhibit A, for the payment of One Million Dollars (\$1,000,000). The payment of the cash shall be made and the promissory note delivered to the Shareholders in the amounts described herein not later than 2:00 p.m. Central Standard Time, Friday, April 2, 1999. Failure to so deliver said cash and note by said time without the express written consent of the Shareholders shall render this agreement null and void.

Witness my hand and the seal of the Secretary of State this 2nd day of April 1999.

Michael J. Stack
Secretary of State

3. Distribution for Taxes. McAlister's is a corporation taxed under Subchapter S of the Internal Revenue Code. Not later than April 15, 1999, McAlister's shall distribute to each Shareholder an amount computed from January 1, 1999, through the Effective Date, to be equal to his or her federal and state income tax liability resulting from the flow-through of Subchapter S income and loss from McAlister's operations (the "Company Income") as agreed upon by McAlister's accountants and the Company's accountants less the amount, if any, by which previous distributions of cash to the Founding Shareholders from January 1, 1998, exceeded the 1998 Company Income. The Company shall make all elections necessary, if any, to ensure that the Shareholders are taxed only on the income of McAlister's or the Company prior to the Merger.

4. Execution of Agreement and Articles of Merger. The parties hereto shall complete and execute this Agreement and the Company, Holdings and McAlister's shall complete and execute Articles of Merger or Share Exchange (the "Articles of Merger") in accordance with the Act, and the parties hereto shall cause this Agreement and the Articles of Merger to be delivered to the Mississippi Secretary of State for filing as provided in Section 79-4-11.05 of the Act. The parties hereto will also execute and deliver such other documents or articles as may be required to effect the Merger.

5. Effect of the Merger. The Merger shall have the effects set forth in Section 79-4-11.06 of the Act.

6. Tax Indemnity. It is the expectation of the parties that the federal and state income tax liability to the Shareholders as a result of the Merger (or as a result of the Merger and any transaction deemed by any taxing authority to be a part of the Merger) be no higher for each Shareholder than if the Shareholder had sold the Common Stock to the Company for the amount described in paragraph 2 above in a transaction that qualified for long term capital gain treatment. If any Shareholder is required to pay more in federal or state income tax, or if any Shareholder is subsequently audited and is required to pay more in federal or state income tax (including interest and penalties, if any), as a result of the Merger (or as a result of the Merger and any transaction deemed by any taxing authority to be a part of the Merger) than he or she would have been required to pay had the Company purchased the Common Stock from the Shareholder for the amount described in paragraph 2 above in a transaction that qualified for long term capital gain treatment, then the Company will indemnify the Shareholder and pay directly to the taxing authority, or to the Shareholder prior to the time the tax is collected by the taxing authority, the difference between the federal and/or state income tax that the Shareholder was ultimately required to pay (including interest and penalties, if any) as a result of the Merger (or as a result of the Merger and any transaction deemed by any taxing authority to be a part of the Merger) and the amount that the Shareholder would have been required to pay had the Company purchased the Common Stock from the Shareholder for the amount described in paragraph 2 above in a transaction that qualified for long term capital gain treatment, plus any income tax costs to a Shareholder for said payment. The Company's agreement regarding taxes under this paragraph shall survive the Merger and any transactions related thereto.

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7. Franchise Rights. The Company agrees that Don Newcomb shall have the exclusive franchise rights in the State of Kentucky for the development and operation of McAlister's restaurants subject only to Don Newcomb's agreement to develop a minimum of eight (8) restaurants in the state within four (4) years of the Effective Date and his agreement to pay a three percent (3%) royalty and the Company's then-current marketing fee.

8. Articles of Incorporation. As of the Effective Date, the Articles of Incorporation of the Company shall be the Articles of Incorporation of the surviving corporation, except that Part 2 of the Articles of Incorporation is hereby amended in its entirety to read as follows:

"Name of the Corporation: McAlister's Corporation."

9. Bylaws. As of the Effective Date, the Bylaws of the Company shall be the Bylaws of the surviving corporation.

10. Directors. As of the Effective Date, the Directors of the Company shall be the Directors of the surviving corporation and the McAlister's Directors, other than Don Newcomb, shall resign.

11. Officers. As of the Effective Date, the Officers of the Company shall be the Officers of the surviving corporation and the McAlister's Officers shall resign.

12. Representations and Warranties of McAlister's and the Shareholders.

McAlister's and the Shareholders jointly and severally represent and warrant and hereby covenant as follows:

a. Existence and Good Standing: Authorization. McAlister's is a corporation duly organized, validly existing and in good standing under the laws of the State of Mississippi. McAlister's was formed in 1989. McAlister's has full corporate power and authority to enter into and to perform this Agreement and carry out the terms hereof. The execution, delivery and performance by McAlister's of this Agreement has been duly authorized by all necessary corporate action of McAlister's and no further corporate action on the part of McAlister's is necessary to fully authorize such execution, delivery and performance. This Agreement, when executed, will be fully executed and delivered by McAlister's and the Shareholders and is or will be the legal, valid and binding obligations of McAlister's and the Shareholders and is or will be enforceable against it or them, as the case may be, in accordance with its terms.

b. Capitalization. There are currently 10,000 shares of Common Stock of McAlister's. Except for the Common Stock, there are no other authorized classes or series of capital stock of McAlister's. All outstanding shares of Common Stock are duly authorized, validly issued, fully paid, and nonassessable and have been offered, issued, sold, and delivered by McAlister's in compliance with applicable securities laws. Except for the Option Agreement and the Articles of Incorporation and Bylaws of McAlister's, there are no outstanding agreements or documents binding on McAlister's regarding the transfer, voting, pledge, optioning or gifting of any capital stock of McAlister's.

SECRETARY OF STATE
MICHAEL J. CLARK
This document is a true and correct copy of the original as filed with the Secretary of State.

c. Subsidiaries. McAlister's does not own, directly or indirectly, any of the capital stock of any company or any equity, profit sharing, participation or other interest in any entity.

d. Financial Statements. McAlister's has delivered to the Company copies of the balance sheets of McAlister's as of December 31, 1998, together with the related statements of operations and retained earnings and cash flows for the years then ended (the "Financial Statements"). The Financial Statements (i) were prepared in accordance with generally accepted accounting principles applied on a consistent basis ("GAAP") throughout the periods covered thereby, and (ii) present fairly in all material respects the financial position and results of operations of McAlister's as of such dates and for the periods then ended.

e. **Absence of Undisclosed Liabilities.** Except for matters relating to the transactions contemplated by this Agreement and the Option Agreement, there are no liabilities or financial obligations of McAlister's that are required to be reflected on a balance sheet prepared in accordance with GAAP, other than liabilities and obligations (a) provided for or reserved against in the Financial Statements, (b) arising after December 31, 1998 in the ordinary course of business, or (c) which are not material to the financial position of McAlister's.

f. No Material Adverse Changes or Events. Except for matters relating to the transactions contemplated by the Option Agreement or this Agreement, since the date of the Financial Statements, McAlister's has not suffered any change in its business, operations or financial position, except such changes as, in the aggregate, are not reasonably likely to have a material adverse effect.

g. Legal Compliance. McAlister's has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings and charges thereunder) of federal, state, local and foreign governments, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand or notice has been filed or commenced against McAlister's alleging any failure to so comply, except for where such failure to comply would not have a material adverse effect.

h. Real Property. McAlister's owns no real property. McAlister's has previously delivered a complete and accurate list of all real property leases (the "Real Property Leases"). Each of the Real Property Leases is valid and enforceable in accordance with its terms. To the knowledge of McAlister's and the Shareholders, McAlister's has not received any notice of any, and there exists no event of default or event which constitutes or would constitute (with notice or lapse of time or both) a default in any material respect under any Real Property Lease. To the knowledge of McAlister's and the Shareholders, none of the property subject to any Real Property Lease is subject to any encumbrance, easement, right-of-way, building or use restriction, exception, variance, reservation or limitation as might in any material respect interfere with or impair the present and continued use thereof in the usual and normal conduct of the business and operations of McAlister's.

i. **Employees.** To the knowledge of McAlister's and the Shareholders, no executive, key employee or significant group of employees, other than Don Newcomb and Debra Tubbs

MERGED BY 2

Bryson, plans to terminate employment with McAlister's during the next twelve (12) months. McAlister's is not a party to or bound by any collective bargaining agreement, nor has McAlister's experienced any strike or material grievance, claim of unfair labor practices or other collective bargaining dispute within the past three (3) years. McAlister's is not aware of any organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of McAlister's.

j. Employee Benefits. McAlister's has delivered to the Company true, correct and complete copies of all of its employee benefit plans. No liability has been or is expected to be incurred by McAlister's under or pursuant to Title I or IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or the penalty, excise tax or joint and several liability provisions of the Code or ERISA relating to employee benefit plans and, to the knowledge of McAlister's, no event, transaction or condition has occurred or exists that could result in any such liability to McAlister's or, following the Effective Date, the Company, or any such employee benefit plan.

k. Taxes. McAlister's has duly filed with the appropriate government agencies all of the income, sales, use, employment, excise and other tax returns and reports required to be filed by it as of the date hereof and paid all applicable taxes. In all material respects, all such returns and reports are and will be accurate, true, correct and complete. No waiver of any statute of limitations relating to taxes has been executed or given by McAlister's. No federal tax return of McAlister's is currently under audit by the Internal Revenue Service, no other tax return of McAlister's is currently under audit by any other taxing authority and no elections, consents, waivers, conventions or agreements have been filed or entered into in respect of any tax or taxing authority. Neither the Internal Revenue Service nor any other taxing authority is now asserting or, to McAlister's knowledge, threatening to assert against McAlister's any deficiency or claim for additional taxes or interest thereon or penalties in connection therewith.

l. Litigation. There are no lawsuits, claims, proceedings or investigations pending or, to the best knowledge of McAlister's, threatened by or against McAlister's or administrative proceedings to which McAlister's is a party, which would prevent the consummation of the transactions contemplated by this Agreement or have a material adverse effect on McAlister's business or operations.

m. Environmental Matters. There have been no private or governmental claims, citations, complaints, notices of violation or letters made, issued to or, to the knowledge of McAlister's or the Shareholders, threatened, against McAlister's by any governmental entity or private or other party for the impairment or diminution of, or damage, injury or other adverse effects to, the environment or public health resulting from McAlister's ownership, use or operation of its facilities. McAlister's has not used any of its properties for the disposal of "hazardous waste" or "hazardous materials" as those terms are defined below. As used in this Agreement, the term "hazardous materials" or "hazardous waste" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as a hazardous substance (40 CFR Part 302)

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Eric Clark
Secretary of State

and amendments thereto, or such substances, materials and wastes which are or may become regulated under any applicable local, state or federal law.

n. Indemnity. The Shareholders hereby agree to indemnify, hold harmless and defend the Company and its successors, agents, assigns, members, and affiliates (collectively, the "Indemnified Parties") for, and will pay to the Indemnified Parties the amount of, any loss, liability, claim, damage (including incidental and consequential damages), expense (including costs of investigation and defense and reasonable attorney's fees) or diminution of value, whether or not involving a third-party claim, arising, directly or indirectly, from any material breach of any representation, warranty, covenant or agreement made by such party in this Agreement and any other certificate or document delivered by such party pursuant to this Agreement.

13. Representations and Warranties of Company.

The Company represents and warrants and hereby covenants as follows:

a. Organization. The Company is (i) a corporation duly organized, validly existing and in good standing under the laws of the State of Mississippi; (ii) duly qualified to do business and in good standing in each jurisdiction where such qualification is required, except those jurisdictions where the failure to so qualify will not have a material adverse effect on its business, prospects or financial condition; (iii) has all requisite corporate power and authority to conduct its business as presently being conducted and as proposed to be conducted after the Merger and to own its properties now and after the Merger and (iv) has all requisite corporate power and authority to execute, deliver and to perform all of the obligations under any of the documents related to the Merger to which it is a party.

b. Authority. The Company's execution, delivery and performance of the documents related to the Merger to which it is a party: (i) have been duly authorized by all necessary corporate action and do not contravene any provision of its articles or Bylaws; (ii) do not violate any provision of any law, rule or regulation or any determination or award; (iii) do not and will not result in a breach or constitute a default under any agreement to which it is a party or by which any of its properties are bound, including, without limitation, any indenture, loan or credit agreement, lease, debt instrument or mortgage; and (iv) the Company is not in material default under any law, rule or regulation, order, writ, judgment, injunction, decree, determination, award, indenture, loan or credit agreement, lease, debt instrument or mortgage referred to above or will not be in any such material default by virtue of the Merger or the transactions associated therewith.

c. Valid Obligations. The documents related to the Merger to which the Company is a party have been duly executed and delivered by the Company and constitute legal, valid and binding obligations of the Company, enforceable in accordance with their respective terms, and no further corporate action on the part of the Company is necessary to fully authorize such execution, delivery and performance.

This page contains information which is confidential and may be subject to the provisions of the Securities Exchange Act of 1934.
Eve Clark
Secretary of State

d. **Indemnity.** The Company hereby agrees to indemnify, hold harmless and defend the Shareholders and their successors, agents and assigns (collectively, the "Indemnified Parties") for, and will pay to the Indemnified Parties the amount of, any loss, liability, claim, damage (including incidental and consequential damages), expense (including costs of investigation and defense and reasonable attorney's fees) or diminution of value, whether or not involving a third-party claim, arising, directly or indirectly, from any material breach of any representation, warranty, covenant or agreement made by such party in this Agreement and any other certificate or document delivered by such party pursuant to this Agreement.

14. **Control of Defense of Third Party Claims.** If there is a third party claim or demand that would result in a breach of any representation, warranty, covenant or agreement made by either party (including an audit that could lead to a claim under Section 6), then such party shall have the right to control the defense of such claim or demand and any settlement at their cost and expense. Said right shall be exercised by giving written notice of its exercise to the other party. If either party should elect to exercise such right to control the defense of such claim or demand, then the indemnified parties shall have the right to participate in, but not control, the defense or settlement of such claim or demand at its sole cost and expense.

15. **Reliance on Representations and Warranties.** The undersigned Shareholders hereby acknowledge and agree, that the representations, warranties and other statements being made by McAlister's herein do not contain any material misstatement of fact or omit any material fact necessary to make the statements contained therein not misleading; provided further, that the Shareholders understand that Holdings, the Company and certain lenders are relying on such representations, warranties and other statements in entering into that certain Investment Agreement, by and among Holdings, the Company and such lenders (including all ancillary documents created in connection therewith), and such lenders shall be deemed third party beneficiaries of this Agreement and shall be entitled to all of the rights and remedies of a party hereto.

16. **Further Assurances.** The Company and the Shareholders agree that from time to time after the Effective Date, at the request of any other party and without further consideration or consent, they will execute and deliver such additional instruments as any other party may reasonably request to confirm more effectively the status of the Merger, including but not limited to the assignment of contracts, transfer of bank accounts and licenses, and, from and after the date hereof if there are any rights of the Company with respect to third-parties that would not continue beyond the time of the Merger without the consent of any such third-party, to attempt with the cooperation and assistance of each other to obtain such consent promptly.

17. **Fees.** The Company agrees that it shall pay the costs and expenses incurred by the Shareholders in connection with the Merger, including but not limited to, legal and accounting fees, up to a maximum of \$50,000.00.

Page confirmed with the Secretary of State
Official filed with the Secretary of State
Eric Clark
Secretary of State

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

McAlister's

McALISTER'S MANAGEMENT CORPORATION
a Mississippi corporation

By: Don Newcomb
Name: Don Newcomb
Title: President

Shareholders

Don Newcomb
Don Newcomb

Debra Tubbs Bryson
Debra Tubbs Bryson

Don Christopher Newcomb
Don Christopher Newcomb

Neil McAlister Newcomb
Neil McAlister Newcomb

Holdings

MISSISSIPPI RESTAURANT HOLDINGS, INC.
a Mississippi corporation

By: Michael J. Stack
Name: Michael J. Stack
Title: Chief Executive Officer

The Company

RESTAURANT ACQUISITION COMPANY
a Mississippi corporation

By: Michael J. Stack
Name: Michael J. Stack
Title: Chief Executive Officer

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original filed with the Secretary of State.
Eric Clark
Secretary of State

[Signature Page to Agreement and Plan of Merger and Reorganization]

PROMISSORY NOTE

\$ 1,000,000

April 2, 1999

FOR VALUE RECEIVED, Mississippi Restaurant Holdings, Inc., a corporation ("Maker"), promises to pay to Don Newcomb, an individual resident in Oxford, Mississippi One Million Dollars (\$1,000,000), together with interest in arrears on the unpaid principal balance at an annual rate equal to the prime rate of interest as announced on the date hereof by Trustmark Bank, N. A. plus 1%, in the manner provided below. Interest shall be calculated on the basis of a year of 365 or 366 days, as applicable, and charged for the actual number of days elapsed.

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of the Agreement and Plan of Merger and Reorganization, dated April 2, 1999, by and between Maker, Payee and McAlister's Management Corporation, (the "Agreement"), and is subject to the terms and conditions of the Agreement, which are, by this reference, incorporated herein and made a part hereof. Capitalized terms used in this Note without definition shall have the respective meanings set forth in the Agreement.

1. Payment.

1.1 Principal and Interest.

(a) The principal amount of this Note shall be due and payable in one installment on April 2, 2000. Interest on the unpaid principal balance of this Note shall be due and payable quarterly.

(b) All principal and interest accrued hereunder shall be payable in advance of the due date to the extent Maker closes one or more equity or subordinated debt financing after the date hereof with aggregate proceeds in excess of \$700,000, within three business days following closing. In addition, principal and accrued interest shall be payable in advance of the due date if Maker has cash or liquid assets, to the extent the said amounts exceed Maker's operating needs and reasonable cash reserves.

(c) All payments shall be applied first to accrued interest and then to principal.

1.2 Manner of Payment. All payments of principal and interest on this Note shall be made by certified or bank cashier's check in Oxford, Mississippi, or at such other place in the United States of America as Payee shall designate to Maker in writing or by wire transfer of immediately available funds to an account designated by Payee in writing. If any payment of principal or interest on this Note is due on a day which is not a Business Day, such payment shall be due on the next succeeding Business

EXHIBIT A

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Day, such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Note. "Business Day" means any day other than a Saturday, Sunday or legal holiday in the State of Mississippi.

1.3 Prepayment. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the total amount of unpaid principal, calculated to the date of such prepayment.

2. Defaults.

2.1 Events of Default. The occurrence of any one or more of the following events with respect to the Maker shall constitute an event of default hereunder ("Event of Default"):

- (a) If maker shall fail to pay when due any payment of the principal or interest on this Note and such failure continues for fifteen (15) days.
- (b) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) make an assignment for the benefit of its creditors; or (v) admit in writing its inability to pay its debts as they become due.
- (c) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Maker or substantially all of Maker's properties, or (iii) orders the liquidation of Maker, and in each case the order or decree is not dismissed within 90 days.

2.2 Notice By Maker. Maker shall notify Payee in writing within five days after the occurrence of any Event of Default of which Maker acquires knowledge.

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2.3 Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured or waived by Payee), Payee may, at its option, (i) without notice, demand or presentment, protest, notice of protest, notice of dishonor, bringing of suit and diligence in taking any action to collect amounts called for hereunder, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from Maker all sums due under this Note. Maker shall pay all reasonable costs and expenses incurred by or on behalf of Payee in connection with Payee's exercise of any or all of its rights and remedies under this Note, including, without limitation reasonable attorney's fees.

3. Miscellaneous.

3.1 Waiver. The rights and remedies of Payee under this Note shall be cumulative and not alternative. No waiver by Payee of any right or remedy under this Note shall be effective unless in a writing signed by Payee. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right of Payee arising out of this Note can be discharged by Payee, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing, signed by Payee; (b) no waiver that may be given by Payee will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on Maker will be deemed to be a waiver of any obligation of Maker or of the right of Payee to take further action without notice or demand as provided in this Note. Maker hereby waives presentment, demand, protest, and notice of dishonor and protest.

3.2 Severability. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or in degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.3 Governing Law. This Note will be governed by the laws of the State of Mississippi without regard to conflicts of laws principles.

3.4 Parties In Interest. This Note shall bind Maker and its successors and assigns.

3.5 Section Headings Construction. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this

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Note unless otherwise specified.

3.6 **Gender/Number.** All words used in this Note will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "hereof" and "hereunder" and similar references refer to this Note in its entirety and not to any specific section or subsection hereof.

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IN WITNESS WHEREOF, Maker has executed and delivered this Note as of the date first stated above.

Maker

By: _____
Name: _____
Title: _____

(Signature Page to Non-Negotiable Promissory Note)

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Secretary of State