


Form PTO-1594 (Rev. 6-93) RECORDATION FORM COVER SHEET U.S. DEPARTMENT OF COMMERCE OMB No. 0651-0011 (exp. 4/94) TRADEMARKS ONLY Patent and Trademark Office	
To the Honorable Commissioner of Patents and Trademarks: Please record the attached original document or copy thereof	
<p>1. Name of conveying party(ies):</p> <p>McDermott Restaurants, Inc.</p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation: State of Arizona <input type="checkbox"/> Other _____</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies):</p> <p>Kona Grill Arizona, Inc. 7373 Doubletree Ranch Road Suite 210 Scottsdale, AZ 85258</p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation: State of Arizona <input type="checkbox"/> Other _____</p>
<p>3. Nature of conveyance:</p> <p><input type="checkbox"/> Assignment <input checked="" type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input checked="" type="checkbox"/> Change of Name <input type="checkbox"/> Other _____</p> <p>Execution Date: <u>December 9, 2002</u></p>	<p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Designations must be a separate document from assignment)</p>
<p>4. Application number(s) or trademark number(s), and identification or description of the mark(s):</p> <p>A. Trademark Application No(s). and description B. Trademark Registration No(s). and description</p> <p style="text-align: right;">2,414,461 (KONA GRILL)</p>	
<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Kerry R. Thompson FAEGRE & BENSON LLP 2200 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402-3901 612/766-7226</p>	<p>6. Total number of applications and registrations involved: <u>01</u></p> <hr/> <p>7. Total fee (37 CFR 3.41) \$40.00</p> <p><input checked="" type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account for underpayment</p>
<p>8. Deposit Account number: 06-0029</p>	
<p>DO NOT USE THIS SPACE</p>	
<p>9. Statement and signature. <i>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.</i></p> <p><u>Kerry R. Thompson</u> Paralegal Name of person signing</p> <p style="text-align: center;"> Signature</p> <p style="text-align: right;"><u>January 17, 2003</u> Date</p>	
<p>Total number of pages including cover sheet, attachments, and document: <u>9</u></p>	

**Mail documents to be recorded with required cover sheet information to:
Director – U.S. Patent and Trademark Office, Box Assignments
Washington, D.C. 20231**

**AZ. CORP. COMMISSION
DELIVERED**

DEC 11 2002

FILED BY *Supra Chiles*
TERM _____
DATE 12/11/02

ARTICLES OF AMENDMENT AND MERGER

OF

ABC MERGER SUB, INC.[1051878-5]

INTO

**MCDERMOTT RESTAURANTS, INC.[0792149-5] SURVIVOR
changed name to: KONA GRILL ARIZONA, INC.**

ARTICLES OF MERGER
ARTICLES OF AMENDMENT AND MERGER

OF

ABC MERGER SUB, INC.
(AN ARIZONA CORPORATION)

INTO

MCDERMOTT RESTAURANTS, INC.
(AN ARIZONA CORPORATION)

1. These Articles of Amendment and Merger relate to the merger (the "Merger") of ABC Merger Sub, Inc., an Arizona corporation ("Merger Sub"), with and into McDermott Restaurants, Inc., an Arizona corporation, which is the surviving corporation (the "Company").
2. The Plan of Merger is attached hereto as Exhibit A and has been approved by the Merger Sub and the Company.
3. The amendment to the Articles of Incorporation of the surviving corporation which has been adopted as a result of the adoption of the Plan of Merger is as follows:

Article I of the surviving corporation's Articles of Incorporation shall be amended in its entirety to read as follows: "The name of this Corporation is Kona Grill Arizona, Inc."
4. The name of the surviving corporation is Kona Grill Arizona, Inc., and its known place of business is 7373 Doubletree Ranch Road, Suite 210, Scottsdale, Arizona 85258.
5. The name and address of the statutory agent of the surviving corporation is: Micheal McDermott, 7373 Doubletree Ranch Road, Suite 210, Scottsdale, Arizona 85258.
6. Approval of the shareholders of one or more of the corporations which are parties to the Merger was required. The designation of voting groups in each corporation which is a party to the Merger entitled to vote separately on the Merger, the number of votes in each, the number of votes represented at the meeting at which the Merger was adopted and the votes cast for and against the Merger were as follows:

Regarding the Company: There is only one voting group eligible to vote on approval of the Merger.

The voting group consisting of 6,911,000 outstanding shares of common stock is entitled to 6,911,000 votes. There were 4,829,000 votes present at the meeting of shareholders. The voting group cast 4,829,000 votes for and -- 0 -- votes against the Merger.

Regarding Merger Sub: There is only one voting group eligible to vote on approval of the Merger.

The voting group consisting of 100 outstanding shares of common stock is entitled to 100 votes. The voting group cast 100 votes for and no votes against the Merger by written consent pursuant to Section 10-704 of the Arizona Business Corporation Act.

DATED as of this 9 day of December, 2002.

McDermott Restaurants, Inc.

By: 

Michael J. McDermott

Its: Chief Executive Officer

EXHIBIT A

AGREEMENT AND PLAN OF MERGER
among
McDermott Restaurants, Inc., an Arizona corporation,
Kona Grill, Inc., a Delaware corporation,
and
ABC Merger Sub, Inc., an Arizona corporation

This Agreement and Plan of Merger (this "Agreement"), dated as of the 19th day of November, 2002, is among McDermott Restaurants, Inc., an Arizona corporation ("McDermott Restaurants"), Kona Grill, Inc., a Delaware corporation ("Kona Grill"), and ABC Merger Sub, Inc., an Arizona corporation ("Merger Sub" and, together with McDermott Restaurants and Kona Grill, sometimes referred to as the "Constituent Corporations").

WHEREAS, McDermott Restaurants has issued and outstanding 6,911,000 shares of common stock, no par value, on the date hereof;

WHEREAS, Merger Sub, a corporation newly formed for purposes of this transaction, has issued and outstanding 100 shares of common stock, \$0.01 par value, on the date hereof, all of which are owned by Kona Grill;

WHEREAS, Kona Grill has issued and outstanding 100 shares of common stock, \$0.01 par value, on the date hereof, all of which are owned by McDermott Restaurants; and

WHEREAS, the directors and shareholders of each of the Constituent Corporations believe that it is in the best interests of the Constituent Corporations that Merger Sub be merged with and into McDermott Restaurants, with McDermott Restaurants continuing as the surviving corporation (the "Merger") and becoming a wholly owned subsidiary of Kona Grill, in accordance with the Arizona Revised Statutes and on the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. **Merger.** Pursuant to the applicable provisions of the Arizona Revised Statutes, Merger Sub shall be merged with and into McDermott Restaurants, with McDermott Restaurants being the surviving corporation. The name of the surviving corporation shall be Kona Grill Arizona, Inc.

2. **Effective Time.** The Merger shall be effective at the effective time and date of filing of the articles of merger as provided in Section 10-123 of the Arizona Revised Statutes (the "Effective Time").

3. **Corporate Charters and Bylaws.** The articles of incorporation and bylaws of McDermott Restaurants immediately before the Effective Time shall be the articles of incorporation and bylaws of the surviving corporation immediately after the Effective Time.

4. Amendment to the Articles of Incorporation. Upon the Effective Time Article I of the surviving corporation's articles of incorporation, shall be amended in its entirety to read as follows:

"The name of this Corporation is Kona Grill Arizona, Inc."

5. Board of Directors and Officers. The directors and officers of Merger Sub immediately before the Effective Time shall be the directors and officers of the surviving corporation immediately after the Effective Time until their successors have been duly elected and have qualified or until their earlier death, resignation or removal in accordance with the surviving corporation's articles of incorporation and bylaws.

6. Capital Stock and Other Interests. At the Effective Time, the capital stock of the Constituent Corporations shall be treated as follows:

(a) Each share of common stock, no par value, of McDermott Restaurants, other than Dissenting Shares, issued and 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 converted into one share of Common Stock of Kona Grill, par value \$0.01 per share (the "Merger Consideration"). No fractional shares of Kona Grill shall be issued in the Merger.

(b) Each option, warrant, security or other right to purchase shares of McDermott Restaurants common stock issued and outstanding immediately prior to the Effective Time, other than options granted under McDermott Restaurants' 1999 Stock Option Plan (each, a "McDermott Purchase Security"), shall, by virtue of the Merger and without any action on the part of the holder thereof, be automatically amended to constitute an option, warrant, security or other right, as the case may be, to one purchase Common Stock of Kona Grill, par value \$0.01 per share, for each share of McDermott Restaurants common stock in which the McDermott Purchase Security was originally issued on the same terms and conditions as the McDermott Purchase Security.

(c) Each option, warrant, security or other right convertible into shares of McDermott Restaurants common stock issued and outstanding immediately prior to the Effective Time, other than options granted under McDermott Restaurants' 1999 Stock Option Plan (each, a "McDermott Convertible Security"), shall, by virtue of the Merger and without any action on the part of the holder thereof, be automatically amended to constitute an option, warrant, security or other right, as the case may be, to convert into one share of Common Stock of Kona Grill, par value \$0.01 per share, for each share of McDermott Restaurants common stock in which the McDermott Convertible Security was originally issued on the same terms and conditions as the McDermott Convertible Security.

(d) Each option to purchase shares of McDermott Restaurants common stock granted pursuant to McDermott Restaurants' 1999 Stock Option Plan that is issued and outstanding immediately prior to the Effective Time (each a "McDermott Option"), whether vested or unvested, shall, by virtue of the Merger, be exchanged for an option

(an "Exchange Option") to acquire one share of common stock of Kona Grill, par value \$0.01 per share, for each share of McDermott Restaurants common stock in which the option was originally issued, on substantially the same terms and conditions as under the McDermott Option. Each Exchange Option shall be granted pursuant to the Kona Grill, Inc. 2002 Stock Plan.

(e) Each share of common stock of Kona Grill issued and 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 cancelled and shall cease to be outstanding without payment of any consideration therefor to the holder.

(f) Each share of common stock, par value \$0.01 per share, of Merger Sub issued and 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 converted into the same number of issued and outstanding shares of common stock of the surviving corporation.

(g) Each outstanding share of McDermott Restaurants common stock the holder or beneficial owner of which has perfected such holder or beneficial owner's right to demand payment under Section 10-1302 of the Arizona Revised Statutes, and has not effectively withdrawn or lost that right as of the Effective Time (the "Dissenting Shares"), shall not be converted into or represent a right to receive the Merger Consideration, and the holder thereof shall be entitled only to those rights as are granted by the Arizona Revised Statutes. If, after the Effective Time, a holder or beneficial owner of Dissenting Shares fails to perfect, withdraws or loses its right to demand payment, such Dissenting Shares shall be deemed to be converted into, as of the Effective Time, the right to receive the Merger Consideration, without interest thereon, upon surrender of the McDermott Restaurants certificates previously constituting Dissenting Shares. Any payments made in respect of Dissenting Shares shall be made by the surviving corporation.

7. Articles of Merger. In accordance with this Agreement and for the purpose of carrying out the Merger, the surviving corporation shall cause its officers to prepare and file Articles of Merger with the Secretary of State of the State of Arizona.

8. Termination or Abandonment. This Agreement may be terminated and the Merger may be abandoned at any time before the Effective Time by mutual written consent of the Board of Directors of each of the Constituent Corporations, notwithstanding the prior approval of this Agreement by the shareholders of each of the Constituent Corporations. If this Agreement is terminated pursuant to this Section 8, this Agreement shall become void.

9. Reorganization. The parties intend that the Merger qualify as a reorganization under Section 368 of the Internal Revenue Code of 1986, as amended.

IN WITNESS WHEREOF, each Constituent Corporation has caused this Agreement to be signed by its duly authorized officer, as of the date first written above.

MCDERMOTT RESTAURANTS, INC.

By: *Michael J. McDermott*
Michael J. McDermott
Its: Chief Executive Officer

KONA GRILL, INC.

By: *Michael J. McDermott*
Michael J. McDermott
Its: Chief Executive Officer

ABC MERGER SUB, INC.

By: *Michael J. McDermott*
Michael J. McDermott
Its: President

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WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER

ARIZONA CORPORATION COMMISSION

BRIAN C. MCNEIL
EXECUTIVE SECRETARY

JOANNE C. MACDONNELL
DIRECTOR, CORPORATIONS DIVISION

December 13, 2002

Corporation Service Company

Re: ABC Merger Sub, Inc. into McDermott Restaurants, Inc.
name change to: Kona Grill Arizona, Inc.

This letter concerns the document checked below which was filed on December 11, 2002.

- Articles of Amendment
- Articles of Restatement
- Articles of Merger
- Application for New Authority
- Articles of Domestication

This document must be published within sixty (60) days after the above-referenced filing date in a newspaper of general circulation in the county of the known place of business in Arizona, as filed with the Commission for three (3) consecutive publications. An affidavit evidencing the publication must be filed with the Commission within ninety (90) days of the date of filing. For your convenience we have attached a list of known qualified newspapers for publishing.

The Commission strongly recommends that you periodically check Commission records regarding the corporation. The Commission web site www.cc.state.az.us/corp contains information specific to each corporation of record and is a good general source of information.

Guadalupe Ortiz 602 542-9790
Customer Service Representative II
Corporations Division

If you have any questions, please call the Corporations Division Phoenix (602) 542-3135,
Tucson 520-628-6560 or toll free (Arizona residents only) at 1-800-345-5819
For more information contact our web site, at the address indicated below.

Approther.wpd