

J89475



THE UNITED STATES
CORPORATION
COMPANY

ACCOUNT NO. : 072100000032

REFERENCE : 495591 84041A

AUTHORIZATION : *Patricia Pigute*

COST LIMIT : \$ ~~148.75~~ 113.75

ORDER DATE : November 29, 1999

ORDER TIME : 1:17 PM

ORDER NO. : 495591-005

CUSTOMER NO: 84041A

CUSTOMER: Ms. Kelly Braun
Outback Steakhouse Of Florida,
5th Floor
2202 North Westshore Blvd.
Tampa, FL 33607

Mersen

3000003056853--6

ARTICLES OF MERGER

TEDESCO STEAKHOUSE, INC. ET AL

INTO

OUTBACK STEAKHOUSE OF FLORIDA,
INC.

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY
PLAIN STAMPED COPY

CONTACT PERSON: Janine Lazzarini

EXAMINER'S INITIALS:

DDR

12/1/99

FILED
99 NOV 30 PM 2:25
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

RECEIVED
99 NOV 30 PM 2:25
DEPT. OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER
Merger Sheet

MERGING:

TEDESCO STEAKHOUSE, INC., a Massachusetts corporation not authorized to
in Florida

KPH, INC., a Massachusetts corporation not authorized to transact business in
Florida

,

INTO

OUTBACK STEAKHOUSE OF FLORIDA, INC., a Florida entity, J89475

File date: November 30, 1999

Corporate Specialist: Annette Ramsey

Account number: 072100000032 Account charged: 113.75

99 NOV 30 PM 2:50
FILED
TALLAHASSEE, FLA

AGREEMENT, PLAN AND ARTICLES OF MERGER

THIS AGREEMENT, PLAN AND ARTICLES OF MERGER ("Agreement"), dated as of November 30, 1999, is entered into by and among TEDESCO STEAKHOUSE, INC., a Massachusetts corporation ("Tedesco"), KPH, INC., a Massachusetts corporation ("KPH"), OUTBACK STEAKHOUSE, INC., a Delaware corporation ("OSI") and OUTBACK STEAKHOUSE OF FLORIDA, INC., a Florida corporation ("Outback").

WITNESSETH:

WHEREAS, each of Tedesco and KPH is a corporation duly organized and validly existing under the laws of the State of Massachusetts, and the authorized and outstanding capital stock of each consists solely of common stock, no par value, and is as follows:

<u>Corporation</u>	<u>Authorized Capital Stock</u>	<u>Shares Issued and Outstanding</u>
Tedesco	200,000	1,017
KPH	200,000	100

WHEREAS, OSI is a corporation duly organized and validly existing under the laws of the State of Delaware; and

WHEREAS, OSI is authorized to issue Two Million (2,000,000) shares of Preferred Stock, par value \$.01, none of which are outstanding and Two Hundred Million (200,000,000) shares of Common Stock, \$.01 par value (the "OSI Common Stock"), of which approximately Seventy-Four Million Two Hundred Fifty-Five Thousand (74,255,000) shares of OSI Common Stock are issued and outstanding as of August 31, 1999.

WHEREAS, Outback is a wholly owned subsidiary of OSI, is organized and validly existing under the laws of the State of Florida, and is duly qualified as a foreign corporation in the State of Massachusetts among others; and

WHEREAS, the respective Boards of Directors of each of Tedesco, KPH, Outback and OSI deem it advisable, for the benefit of their respective corporations and shareholders, that Tedesco and KPH be merged into Outback, with Outback as the surviving corporation (in its capacity as surviving corporation, Outback is hereinafter sometimes referred to as the "Surviving Corporation"), pursuant to the provisions of Sections 607.1101-607.1107 of the Florida Business Corporation Act (the "Florida Act") and the laws of the State of Massachusetts ("Applicable State Law"), and have approved this Agreement; and

WHEREAS, OSI as the sole shareholder of Outback has approved and adopted this Agreement by written consent on October 27, 1999; and

WHEREAS, this Agreement has been duly adopted in the manner required by the laws of the State of Florida and in compliance with the requirements of Massachusetts General Laws, Chapter 156B, Section 79, and will be kept as provided to Subsection (c) thereof; and

WHEREAS, the Agreement and Plan of Reorganization (the "Reorganization Agreement"), which Outback, OSI, Tedesco and KPH have entered, contemplates the execution and delivery of this Agreement,

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein and for the purpose of prescribing the terms and conditions of the merger and such other details and provisions as are deemed necessary or desirable, the parties hereto agree as follows:

1. **Merger.** The names of the corporations that propose to merge are TEDESCO STEAKHOUSE, INC., a Massachusetts corporation; KPH, INC., a Massachusetts corporation; and OUTBACK STEAKHOUSE OF FLORIDA, INC., a Florida corporation.

In accordance with the provisions of the Florida Act and Applicable State Law at the Effective Date (as hereinafter defined), each of Tedesco and KPH shall be merged into Outback, and Outback shall be the Surviving Corporation and as such shall continue to be governed by the laws of the State of Florida. The plan of merger set forth in this Agreement was duly authorized by each of Outback, Tedesco and KPH, respectively, by all action required by the laws under which it was incorporated or organized and by its constituent documents.

The Surviving Corporation will provide a copy of the plan of merger to any of its stockholders, or to any person who was a stockholder of and constituent corporation, upon written request.

2. **Continuation of Corporate Existence.** The corporate existence and identity of Outback, with all its purposes, powers, franchises, privileges, rights and immunities, shall continue unaffected and unimpaired by the merger and the corporate existence and identity of each of Tedesco and KPH with all their purposes, powers, franchises, privileges, rights and immunities at the Effective Date shall be merged with and into that of Outback, and Outback as the Surviving Corporation shall be vested fully therewith, and the separate corporate existence and identity of each of Tedesco and KPH shall thereafter cease except to the extent continued by statute.

3. **Effective Date.** The merger shall become effective (hereinbefore and hereinafter called the "Effective Date") upon the later of (i) filing of these Articles of Merger with or declaration of effectiveness by the Secretary of State of the States of Florida and Massachusetts; or (ii) 11:59 p.m. on November 30, 1999. Such Effective Date shall be indicated on Certificates of Merger issued by the Secretary of State of the State of Florida and the State of Massachusetts pursuant to the Florida Act and Applicable State Law.

4. **Corporate Governance.**

(a) The Certificate of Incorporation of Outback, as in effect on the Effective Date, shall continue in full force and effect and shall be the Certificate of Incorporation of the Surviving Corporation.

(b) The Bylaws of Outback, as in effect as of the Effective Date, shall continue in full force and effect and shall be the Bylaws of the Surviving Corporation.

(c) The members of the Board of Directors and the officers of the Surviving Corporation shall be the persons holding such positions for Outback as of the Effective Date.

5. **Conversion of Shares.** The manner and basis of converting the capital stock of each of Tedesco and KPH into OSI Common Stock, subject to Section 5(c) below with respect to fractional shares, shall be as follows:

(a) Each share of Tedesco common stock which shall be outstanding immediately prior to the Effective Date shall at the Effective Date, by virtue of the merger and without any

action on the part of the holder thereof, be converted into and exchanged for 1,996.46 shares of OSI Common Stock.

(b) Each share of KPH common stock which shall be outstanding immediately prior to the Effective Date shall at the Effective Date, by virtue of the merger and without any action on the part of the holder thereof, be converted into and exchanged for 2,256 shares of OSI Common Stock.

(c) The Outback capital stock outstanding immediately prior to the Effective Date shall be unaffected by the merger.

(d) The stock transfer books of each of the Tedesco and KPH shall be closed as of the close of business on the Effective Date and no transfer of record of any of their capital stock shall take place thereafter.

(e) No fractional shares of OSI Common Stock and no certificates or scrip therefor shall be issued. Instead one whole share of OSI Common Stock shall be issued to each holder of shares of common stock of the merging corporations whose fractional share interest is .5 or more of one whole share; each fraction of less than .5 of one whole share shall be disregarded.

(f) Notwithstanding the foregoing, the OSI shall not be required to issue or distribute more than Two Million Two Hundred Fifty Six Thousand (2,256,000) shares of OSI Common Stock pursuant to the mergers, with Two Million Thirty Thousand Four Hundred (2,030,400) shares of OSI Common Stock to be issued to the holders of Tedesco common stock and Two Hundred Twenty-Five Thousand Six Hundred (225,600) shares of OSI Common Stock to be issued to the holders of KPH common stock, less any shares reserved for dissenters' rights, as described in **Article I** of the Reorganization Agreement.

(g) All of the shares of OSI Common Stock, when delivered pursuant to the provisions of this Agreement, shall be validly issued, fully paid and nonassessable.

(h) At the Effective Date, each holder of certificates representing shares of the common stock of each of Tedesco and KPH shall thereupon cease to have any rights with respect to such shares and shall be deemed to be a shareholder of OSI to the extent of the number of shares of OSI Common Stock to which such shareholder shall be entitled in accordance with this Agreement; and shall surrender certificates representing shares of the common stock of each of Tedesco and KPH to OSI, whereupon such holder shall receive a certificate or certificates for the number of shares of OSI Common Stock to which such holder is entitled hereunder.

6. **Rights and Liabilities of the Surviving Corporation.** The Surviving Corporation shall have the following rights and obligations:

(a) The Surviving Corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under the laws of the State of Florida.

(b) The Surviving Corporation shall possess all of the rights, privileges, immunities and franchises, of either a public or private nature, of Outback, Tedesco and KPH and all property, real, personal and mixed and all debts due on whatever account, including subscription to shares and all other choses in action and every other interest of or belonging or due to each of Tedesco and KPH shall be taken and deemed to be transferred or invested in the Surviving Corporation without further act or deed.

(c) At the Effective Date, the Surviving Corporation shall thenceforth be responsible and liable for all liabilities and obligations of each of Tedesco and KPH and any claim existing or action or proceeding pending by or against each of Tedesco, KPH or Outback may be prosecuted as if the merger had not occurred or the Surviving Corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of each of Tedesco, KPH, or Outback shall be impaired by the merger.

7. **Consent of Shareholders.** This Agreement has been adopted by the shareholders of each of Tedesco and KPH in accordance with Applicable State Law and their respective corporate governance documents by unanimous written consents effective as of November 30, 1999. This Agreement has been adopted by the written consent of the sole shareholder of Outback dated October 27, 1999, pursuant to the Florida Act.

8. **Dissenting Shareholders.** If any shareholder of Tedesco or KPH files a written objection to this Agreement before a vote of the shareholders is taken hereon and complies with the further provisions of the Florida Act or Applicable State Law, as applicable, he may be paid the fair value of his shares. If any shareholder of Tedesco or KPH lawfully elects, pursuant to the Florida Act or Applicable State Law, as applicable, to exercise or pursue his right to dissent from any of the corporate actions referred to in this Agreement with respect to the shares of common stock of Tedesco or KPH owned by such shareholder (the "Dissenting Shares"), such shareholder shall be entitled to exercise only those rights available to him as set forth in the Florida Act or applicable State Law, as applicable, and, in that event, only in the manner set forth therein. During the period in which any such shareholder shall be exercising or pursuing any of such shareholder's rights of dissent as specified in the Florida Act or Applicable State Law, as applicable, such shareholder shall have no other rights pursuant to or arising from this Agreement.

9. **Special Provisions Relating to Applicable State Law.** Outback, as the surviving corporation, agrees that it may be served with process under Applicable State Law in such state in any proceeding for enforcement of any obligation of any constituent corporation of such state, as well as for enforcement of any obligation of Outback, the surviving corporation, arising from the merger, including any suit or other proceeding to enforce the right of any shareholders as determined in appraisal proceedings pursuant to the provisions of Applicable State Law. Outback, as surviving corporation, to the extent required under any Applicable State Law, irrevocably appoints the Secretary of State of such state as its agent to accept service of process in any such suit or other proceedings and a copy of such process shall be mailed by the Secretary of State to 2202 N. Westshore Boulevard, 5th Floor, Tampa, Florida 33607.

10. **Reorganization Agreement.** This Agreement is intended to supplement the Reorganization Agreement and is not intended to conflict with or supersede that agreement and, in the event of any conflict, the provisions of the Reorganization Agreement shall control.

11. **Copies.** A copy of this Agreement shall be on file at the Shareholder place of business of the Surviving Corporation located at 2202 N. Westshore Boulevard, 5th Floor Tampa, Florida 33607. A copy of this Agreement will be furnished by the Surviving Corporation, on request and without cost, to any shareholder of any corporation that is a party hereto.

IN WITNESS WHEREOF, the undersigned states under the penalties of perjury, that this Agreement has been duly executed and duly approved in the manner required by the law of the State of Florida and the Massachusetts General Laws, Chapter 156B, Section 78.

Attest:

By:

JOSEPH J. KADOW
Title: Secretary

"OSI"

OUTBACK STEAKHOUSE, INC.
a Delaware corporation

By:

ROBERT S. MERRITT
Title: Senior Vice President

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

)
) ss
)

On this 24 day of November, 1999, before me, personally came ROBERT S. MERRITT and JOSEPH J. KADOW, Senior Vice President and Secretary, respectively, of OUTBACK STEAKHOUSE, INC., a Delaware corporation, who are personally known to me, and each being first duly sworn, did depose and say that they executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

(NOTARY SEAL)



Constance J. Troy
My Commission CC863332
Expires August 16, 2003

Constance J. Troy
(Notary Signature)
NOTARY PUBLIC
Commission No. _____

Attest:

By:

JOSEPH J. KADOW
Title: Secretary

"Outback"

OUTBACK STEAKHOUSE OF FLORIDA,
INC., a Florida corporation

By:

ROBERT S. MERRITT
Title: Senior Vice President

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

)
) ss
)

On this 24 day of November, 1999, before me, personally came ROBERT S. MERRITT and JOSEPH J. KADOW, Senior Vice President and Secretary, respectively, of OUTBACK STEAKHOUSE OF FLORIDA, INC., a Florida corporation, who are personally known to me, and each being first duly sworn, did depose and say that they executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

(NOTARY SEAL)



Constance J. Troy
My Commission CC863332
Expires August 16, 2003

Constance J. Troy
(Notary Signature)
NOTARY PUBLIC
Commission No. _____

Attest:

TEDESCO STEAKHOUSE, INC., a Massachusetts corporation

BRIAN MCCARTHY
Title: Clerk

By: 
CHARLES ANGELOPULOS
Title: President

By: _____
ARTHUR COLLIAS
Title: Treasurer

STATE OF _____)

COUNTY OF _____) ss

On this _____ day of November, 1999, before me, personally came CHARLES ANGELOPULOS and ARTHUR COLLIAS and BRIAN MCCARTHY President, Treasurer and Clerk, respectively, of TEDESCO STEAKHOUSE, INC., a Massachusetts corporation, who are personally known to me, and each being first duly sworn, did depose and say that they executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

(NOTARY SEAL)

(Notary Signature)
NOTARY PUBLIC

Commission No. _____

Attest :

KPH, INC., a Massachusetts corporation

KEVIN P. HARRON
Title: Clerk

By: _____
KEVIN P. HARRON
Title: President and Treasurer

STATE OF _____)

COUNTY OF _____) ss

On this _____ day of November, 1999, before me, personally came KEVIN P. HARRON, is President, Treasurer and Clerk of KPH, INC., a Massachusetts corporation, who is personally known to me, and being first duly sworn, did depose and say that he executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

(NOTARY SEAL)

(Notary Signature)
NOTARY PUBLIC
Commission No. _____

Attest:

TEDESCO STEAKHOUSE, INC., a Massachusetts corporation


BRIAN MCCARTHY
Title: Clerk

By: _____
CHARLES ANGELOPULOS
Title: President

By: _____
ARTHUR COLLIAS
Title: Treasurer

STATE OF _____)
COUNTY OF _____) ss

On this _____ day of November, 1999, before me, personally came CHARLES ANGELOPULOS and ARTHUR COLLIAS and BRIAN MCCARTHY President, Treasurer and Clerk, respectively, of TEDESCO STEAKHOUSE, INC., a Massachusetts corporation, who are personally known to me, and each being first duly sworn, did depose and say that they executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

(NOTARY SEAL)

(Notary Signature)
NOTARY PUBLIC

Commission No. _____

Attest :

KPH, INC., a Massachusetts corporation

KEVIN P. HARRON
Title: Clerk

By: _____
KEVIN P. HARRON
Title: President and Treasurer

STATE OF _____)
COUNTY OF _____) ss

On this _____ day of November, 1999, before me, personally came KEVIN P. HARRON, is President, Treasurer and Clerk of KPH, INC., a Massachusetts corporation, who is personally known to me, and being first duly sworn, did depose and say that he executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

(NOTARY SEAL)

(Notary Signature)
NOTARY PUBLIC
Commission No. _____

Attest:

TEDESCO STEAKHOUSE, INC., a Massachusetts corporation

BRIAN MCCARTHY
Title: Clerk

By: _____
CHARLES ANGELOPULOS
Title: President

By: Arthur Collias
ARTHUR COLLIAS
Title: Treasurer

STATE OF _____)
COUNTY OF _____) ss

On this _____ day of November, 1999, before me, personally came CHARLES ANGELOPULOS and ARTHUR COLLIAS and BRIAN MCCARTHY President, Treasurer and Clerk, respectively, of TEDESCO STEAKHOUSE, INC., a Massachusetts corporation, who are personally known to me, and each being first duly sworn, did depose and say that they executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

(NOTARY SEAL)

(Notary Signature)
NOTARY PUBLIC

Commission No. _____

Attest :

KPH, INC., a Massachusetts corporation

KEVIN P. HARRON
Title: Clerk

By: _____
KEVIN P. HARRON
Title: President and Treasurer

STATE OF _____)
COUNTY OF _____) ss

On this _____ day of November, 1999, before me, personally came KEVIN P. HARRON, is President, Treasurer and Clerk of KPH, INC., a Massachusetts corporation, who is personally known to me, and being first duly sworn, did depose and say that he executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

(NOTARY SEAL)

(Notary Signature)
NOTARY PUBLIC
Commission No. _____

Attest:

TEDESCO STEAKHOUSE, INC., a Massachusetts corporation

BRIAN MCCARTHY
Title: Clerk

By: CHARLES ANGELOPULOS
Title: President

By: ARTHUR COLLIAS
Title: Treasurer

STATE OF _____)

COUNTY OF _____) ss

On this _____ day of November, 1999, before me, personally came CHARLES ANGELOPULOS and ARTHUR COLLIAS and BRIAN MCCARTHY President, Treasurer and Clerk, respectively, of TEDESCO STEAKHOUSE, INC., a Massachusetts corporation, who are personally known to me, and each being first duly sworn, did depose and say that they executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

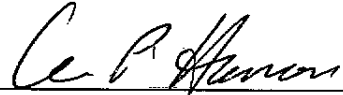
(NOTARY SEAL)

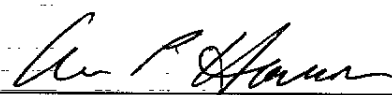
(Notary Signature)
NOTARY PUBLIC

Commission No. _____

Attest :

KPH, INC., a Massachusetts corporation


KEVIN P. HARRON
Title: Clerk

By: 
KEVIN P. HARRON
Title: President and Treasurer

STATE OF _____)

COUNTY OF _____) ss

On this _____ day of November, 1999, before me, personally came KEVIN P. HARRON, is President, Treasurer and Clerk of KPH, INC., a Massachusetts corporation, who is personally known to me, and being first duly sworn, did depose and say that he executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

(NOTARY SEAL)

(Notary Signature)
NOTARY PUBLIC
Commission No. _____

Attest:

B. McCarthy
BRIAN MCCARTHY
Title: Clerk

TEDESCO STEAKHOUSE, INC., a Massachusetts corporation

By: Charles Angelopoulos
CHARLES ANGELOPULOS
Title: President

By: Arthur Collias
ARTHUR COLLIAS
Title: Treasurer

Commonwealth of
STATE OF Massachusetts)
COUNTY OF Middlesex) ss

On this 24th day of November, 1999, before me, personally came CHARLES ANGELOPULOS and ARTHUR COLLIAS and BRIAN MCCARTHY President, Treasurer and Clerk, respectively, of TEDESCO STEAKHOUSE, INC., a Massachusetts corporation, who are personally known to me, and each being first duly sworn, did depose and say that they executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

(NOTARY SEAL)

Mary C. Dixon
(Notary Signature)
NOTARY PUBLIC
Commission No. My commission expires May 8, 2003

Attest :

KPH, INC., a Massachusetts corporation

Kevin P. Harron
KEVIN P. HARRON
Title: Clerk

By: Kevin P. Harron
KEVIN P. HARRON
Title: President and Treasurer

Commonwealth of
STATE OF Massachusetts)
COUNTY OF Middlesex) ss

On this 24th day of November, 1999, before me, personally came KEVIN P. HARRON, is President, Treasurer and Clerk of KPH, INC., a Massachusetts corporation, who is personally known to me, and being first duly sworn, did depose and say that he executed the foregoing on behalf of said corporation by order of the Board of Directors of said corporation.

(NOTARY SEAL)

Mary C. Dixon
(Notary Signature)
NOTARY PUBLIC
Commission No. My commission expires May 8, 2003