



**FLORIDA FILING & SEARCH SERVICES, INC.**

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**DATE:** 5/11/18

**NAME:** TIM HORTON'S USA INC.

**TYPE OF FILING:** AMENDMENT

**COST:** ~~30.00~~ 43.75

**RETURN:** <sup>Certified</sup> ~~FILED~~ COPY PLEASE

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**ACCOUNT:** FCA000000015

**AUTHORIZATION:** ABBIE/PAUL HODGE

*Abbie Hodge*

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*\* File 2<sup>nd</sup> \**

FILED

18 MAY 11 AM 11:20

ARTICLES OF AMENDMENT TO  
AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
TIM HORTONS USA INC.

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

CERTIFICATE OF DESIGNATION ESTABLISHING THE  
SERIES B PREFERRED STOCK

Pursuant to the provisions of Section 607.0602 of the Florida Business Corporation Act, the undersigned corporation hereby certifies that the following designation of a series within the class of its preferred stock, without par value (the "Preferred Stock"), and fixing and determining the relative rights and preferences thereof:

1. The name of the corporation is Tim Hortons USA Inc. (the "Corporation").
2. The following resolutions, establishing and designating a series of Preferred Stock, and fixing and determining the relative rights and preferences thereof, were duly adopted by the Board of Directors of the Corporation on May 11, 2018, and shareholder action was not required:

RESOLVED, that pursuant to the authority expressly granted to and vested in the Board of Directors of the Corporation (the "Board of Directors") by the provisions of the Amended and Restated Articles of Incorporation of the Corporation (the "Amended and Restated Articles of Incorporation"), and the Florida Business Corporation Act, there is hereby created, out of the 1,000,000,000 authorized shares of preferred stock, without par value, of the Corporation authorized in Article V of the Amended and Restated Articles of Incorporation (the "Preferred Stock"), a series of Preferred Stock designated as Series B Preferred Stock ("Series B Preferred Stock"), consisting of 1,000 shares of Series B Preferred Stock, which the Corporation has the authority to issue; and

FURTHER RESOLVED, that the designation, preferences and relative, optional or other rights of the Series B Preferred Stock and the qualifications, limitations and restrictions thereof are as follows:

1. Designation and Amount. The series of Preferred Stock created hereby shall be designated the "Series B Preferred Stock" and the authorized number of shares constituting such series shall be one thousand (1,000).
2. Dividends. The holders of the then outstanding shares of Series B Preferred Stock will not be entitled to receive any dividends that may be granted by the Corporation.
3. Redemption.
  - (a) The shares of Series B Preferred Stock are not redeemable, except as set forth in this Section 3.

- (b) The Corporation may, at any time, redeem each share of Series B Preferred Stock at a price equal to \$1,000,000.00 per share (the "Series B Redemption Price"). The Corporation confirms that the Series B Redemption Price is intended to be equal to the fair market value of the consideration for which the shares of Series B Preferred Stock were reserved in the first issuance of Series B Preferred Stock.
- (c) The provisions in respect of the Series B Redemption Price set forth in Section 3(b) shall be subject to the provisions of this Section 3(c). In the event that the U.S. Internal Revenue Service, Canada Revenue Agency or any other taxing authority having jurisdiction makes or proposes to make an assessment or reassessment of tax on the basis that any property or an aliquot portion thereof for which any such share of Series B Preferred Stock was issued or any share of the Corporation or aliquot portion thereof which was changed into any such share of Series B Preferred Stock, had a fair market value at the time of such issuance or change of other than the Series B Redemption Price, then the Board of Directors shall confer and may by resolution determine an adjusted redemption price for the shares of Series B Preferred Stock so that the fair market value of a share of Series B Preferred Stock equals the fair market value of the property for which such share was issued. Upon such determination being confirmed by resolution of a majority of the holders of shares of Series B Preferred Stock, the Series B Redemption Price shall automatically be adjusted *nunc pro tunc* to be such adjusted redemption price (the "Adjusted Redemption Price") so determined and confirmed. If any share of Series B Preferred Stock is redeemed under this Section 3 prior to any such adjustment as described above resulting in the Adjusted Redemption Price of such share of Series B Preferred Stock being in excess of the Series B Redemption Price, the amount of such excess, together with interest thereon calculated from the date of redemption of such shares of Series B Preferred Stock, at a rate per annum which is equal to the prime rate from time to time charged by the Corporation's bank, in respect of each share of Series B Preferred Stock so redeemed shall be a debt of the Corporation payable on demand to the former holder of each such share of Series B Preferred Stock so redeemed. If any share of Series B Preferred Stock is redeemed under this Section 3 prior to any such adjustment as described above resulting in the Adjusted Redemption Price of such share of Series B Preferred Stock being less than the Series B Redemption Price, the amount of such difference together with interest thereon calculated from the date of redemption at a rate per annum which is equal to the prime rate from time to time charged by the Corporation's bank, in respect of each share of Series B Preferred Stock so redeemed shall be a debt of the former holder of each such share of Series B Preferred Stock so redeemed payable on demand to the Corporation.
- (d) In the event the Corporation shall redeem shares of Series B Preferred Stock, notice of such redemption shall be given by first class mail, postage prepaid, and mailed not less than 15 or more than 60 days prior to the date set for redemption, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (i) the redemption date; (ii) the number of shares of Series B Preferred Stock that are

being redeemed; (iii) the Series B Redemption Price or Adjusted Redemption Price, if applicable; (iv) the place or places where certificates for such shares are to be surrendered for payment of the Series B Redemption Price; and (v) that dividends on the shares to be redeemed will cease to accrue on the redemption date.

(e) Notice having been mailed as provided in Section 3(d), from and after the redemption date (unless the Corporation shall default in providing money for the payment of the Series B Redemption Price), the shares of Series B Preferred Stock so called for redemption shall no longer be deemed to be outstanding, and all rights of the holders thereof as shareholders of the Corporation (except the right to receive from the Corporation the redemption price) shall cease. Upon surrender in accordance with said notice of the certificate for any shares to be redeemed (properly endorsed or assigned for transfer, if the Board of Directors or a duly authorized committee thereof shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the Series B Redemption Price or Adjusted Redemption Price, if applicable.

(f) Any shares of Series B Preferred Stock which shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued shares of Preferred Stock until such shares are once more issued by the Board of Directors or a duly authorized committee thereof.

4. Conversion. The holders of shares of Series B Preferred Stock shall not have any rights to convert or exchange such shares into shares of any other class or series of capital stock of the Corporation or any affiliated corporation.

5. Liquidation Rights.

(a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the holders of the shares of Series B Preferred Stock shall be entitled to receive and to be paid out of the assets of the Corporation available for distribution to its shareholders, before any payment or distribution shall be made on the Common Stock or on any other class of stock of the Corporation ranking junior to Series B Preferred Stock as to receipts of amounts distributable upon liquidation, an amount equal to the Series B Redemption Price or Adjusted Redemption Price, if applicable, per share plus accrued and unpaid dividends thereon.

(b) After the payment to the holders of the shares of Series B Preferred Stock of the full preferential amounts provided for this Section 5, the holders of Series B Preferred Stock as such shall have no right or claim to any of the remaining assets of the Corporation.

(c) If, upon any voluntary or involuntary dissolution, liquidation, or winding up of the Corporation, the amounts payable pursuant to Section 5(a) with respect to the shares of Series B Preferred Stock are not paid in full, the holders of the shares of Series

B Preferred Stock will share ratably in any such distribution of assets of the Corporation in proportion to the full respective liquidating distributions to which they are entitled.

- (d) For purposes of this Section 5, neither the sale of all or substantially all the property or business of the Corporation nor the merger or consolidation of the Corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the Corporation shall be deemed to be a voluntary dissolution, liquidation or winding up of the Corporation.

6. Ranking. Any capital stock of any class or classes of the Corporation shall be deemed to rank:

- (a) prior to the shares of Series B Preferred Stock, either as to dividends or upon liquidation, if the holders of such class or classes shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Corporation, as the case may be, in preference or priority to the holders of shares of Series B Preferred Stock;
- (b) on a parity with shares of Series B Preferred Stock, either as to dividends or upon liquidation, whether or not the dividend rates or amounts, dividend payment dates or redemption or liquidation prices per share or sinking fund provisions, if any, are different from those of Series B Preferred Stock, if the holders of such stock shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Corporation, as the case may be, without preference or priority, one over the other, as between the holders of such stock and the holders of shares of Series B Preferred Stock; and
- (c) junior to shares of Series B Preferred Stock, either as to dividends or upon liquidation, if such class shall be Common Stock or if the holders of shares of Series B Preferred Stock shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Corporation, as the case may be, in preference or priority to the holders of shares of such class or classes.

7. Voting Rights. Except as prohibited by applicable law, the holders of Series B Preferred Stock shall have the same voting rights and powers as the holders of Common Stock and shall be entitled to notice of any shareholders' meeting in accordance with the by-laws of the Corporation, and the holders of Common Stock and the Series B Preferred Stock shall vote together as a single class on all matters. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held, and each holder of Series B Preferred Stock shall be entitled to one vote for each share of Series B Preferred Stock held. Fractional votes shall not, however, be permitted and any fractional voting rights available shall be rounded to the nearest whole number (with one-half being rounded upward).

8. Amendments. The affirmative vote or consent of the holders of more than 50% of the outstanding shares of Series B Preferred Stock, voting as a separate class, shall be necessary to alter or amend the provisions of the Amended and Restated Articles of Incorporation of the Corporation in any manner which would materially alter or change the powers, preferences or rights of the holders of the shares of Series B Preferred Stock so as to affect them adversely.

This Certificate of Designation shall become effective at 5:30 p.m. Eastern Time on May 11, 2018.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Corporation has caused this Certificate of Designation to be executed in its name by the undersigned duly authorized officer on May 11, 2018.

TIM HORTONS USA INC.

By: *Lisa Giles-Klein*  
Name: Lisa Giles-Klein  
Title: Assistant Secretary