

# P18006089758

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**COR AMND/RESTATE/CORRECT OR O/D RESIGN  
THE SALTY DONUT INC.**

AUG 15 2019

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**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
THE SALTY DONUT INC.**

(Pursuant to Section 607.1007 of the Florida Business Corporation Act)

In compliance with the requirements of the Florida Business Corporation Act (the "FBCA"), The Salty Donut Inc., a corporation organized and existing under and by virtue of the provisions of the FBCA and the State of Florida, does hereby certify:

1. That the name of this corporation is The Salty Donut Inc., and that this corporation was originally incorporated pursuant to the FCBA on October 24, 2018, under the name The Salty Donut Inc.
2. That this corporation filed Amended and Restated Articles of Incorporation pursuant to the FBCA on November 27, 2018.
3. That the Board of Directors duly adopted resolutions proposing to amend and restate the Articles of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its shareholders, and authorizing the appropriate officers of this corporation to solicit the consent of the shareholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

**RESOLVED**, that the Articles of Incorporation of this corporation be amended and restated in its entirety to read as follows:

**ARTICLE I: NAME**

The name of the corporation shall be THE SALTY DONUT INC. (the "Corporation").

**ARTICLE II: INITIAL PRINCIPAL OFFICE**

The street and mailing address of the initial principal office of the Corporation is 1504 South Greenway Drive Coral Gables, Florida 33134.

**ARTICLE III: PURPOSE**

The Corporation is organized to transact any or all lawful business for which corporations may be incorporated under the FBCA as it now exists or may hereafter be amended or supplemented.

**ARTICLE IV: SHARES**

The total number of shares that the Corporation is authorized to issue and have outstanding at any time is 20,000,000 shares of common stock, par value \$.0001 per share ("Common Stock"), consisting of (a) 10,000,000 shares designated as Class A Common Stock of the Corporation ("Class A Common Stock"), of which (i) 3,266,606 shares have been designated as Class A-1 Common Stock ("Class A-1 Common Stock"), and (ii) 6,733,394 shares have been designated as Class A-2 Common Stock ("Class A-2 Common Stock"), and (b) 525,000 shares have been designated as Class B Common Stock ("Class B Common Stock").

#### ARTICLE V: COMMON STOCK

1. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of shareholders (and written actions in lieu of meetings). Shares of Common Stock shall not have voting cumulative rights. The number of authorized shares of Common Stock may be increased or decreased by the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of the FBCA. Except as provided by law, holders of Common Stock shall vote together as a single class.

2. Dividends. The holders of Common Stock shall be entitled to receive such dividends, if any, when, as and if declared by the board of directors of the Corporation out of funds legally available therefor; *provided that* any such dividends shall be taken into account for purposes of calculating the Class A Return Amount (as defined below), as contemplated in Section 3(a) below.

3. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

(a) Initial Distribution of Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the holders of shares of Class A-1 Common Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its shareholders before any payment shall be made to the holders of any other shares of Common Stock (including Class A-2 Common Stock) by reason of their ownership thereof, an amount per share equal to 1 times the Class A-1 Common Original Issue Price. If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its shareholders shall be insufficient to pay the holders of shares of Class A-1 Common Stock the full amount to which they shall be entitled under this Section 3(a), the holders of shares of Class A-1 Common Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(b) Secondary Distribution of Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed

Liquidation Event, after the payment of all preferential amounts required to be paid to the holders of shares of Class A-1 Common Stock pursuant to Section 3(a) above, the holders of shares of Common Stock then outstanding, pro rata based on the number of shares held by each such holder, shall be entitled to be paid distributions out of the remaining assets of the Corporation available for distribution to its shareholders until the holders of shares of Class A-1 Common Stock have received an aggregate amount equal to five (5) times the Class A Common Original Issue Price (such amount referred to herein as the "**Class A Return Amount**"). For the avoidance of doubt, the Class A Return Amount shall take into account (x) the amounts paid to the holders of Class A-1 Common Stock pursuant to Section 3(a) above, and (y) any dividends previously declared and paid to the holders of shares of Class A-1 Common Stock. For purposes hereof, the "**Class A-1 Common Original Issue Price**" shall mean \$1.34.

(c) Distribution of Remaining Assets. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, after the Class A Return Amount has been distributed in accordance with Section 3(b) above, the remaining assets of the Corporation available for distribution to its shareholders, if any, shall be distributed among the holders of the shares of Common Stock, pro rata based on the number of shares held by each such holder; *provided, however* that the aggregate amount of remaining assets of the Corporation available for distribution to the holders of Class A Common Stock (the "**Remaining Class A Distributable Assets**") shall be distributed in a manner such that the shares of Class A-1 Common Stock, in the aggregate, receive 25% of such Remaining Class A Distributable Assets, and the shares of Class A-2 Common Stock, in the aggregate, receive 75% of such Remaining Class A Distributable Assets.

(d) Deemed Liquidation Events. Each of the following events shall be considered a "Deemed Liquidation Event":

(i) a merger or consolidation in which

(A) the Corporation is a constituent party, or

(B) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation, or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(ii) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger, consolidation or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

(iii) a Change of Control (as such term is defined in the Shareholders Agreement of the Company, as same may be amended from time to time).

4. Vesting; Repurchase. The Class B Common Stock, if and when issued, shall be subject to certain vesting criteria and repurchase rights as set forth in a Stock Option Plan to be adopted by the board of directors of the Corporation.

#### **ARTICLE VI: INITIAL REGISTERED OFFICE AND AGENT**

The street address of the initial registered office of the Corporation is 515 East Park Avenue, 2<sup>nd</sup> Floor, Tallahassee, Florida 32301. The name of the initial registered agent of the Corporation at that office is Capitol Corporate Services Inc.

#### **ARTICLE VII: INCORPORATOR**

The name and street address of the Corporation's incorporator is:

Olga Pizarro  
1504 South Greenway Drive  
Coral Gables, Florida 33134

#### **ARTICLE VIII: ELECTION OF DIRECTORS**

Election of directors need not be by written ballot unless the bylaws of the corporation shall so provide.

#### **ARTICLE XII: EFFECTIVE DATE AND TIME**

The effective date and time of these Articles of Incorporation shall be the date and time that these Articles of Incorporation are filed with Florida Department of State, Division of Corporations.

\* \* \* \*

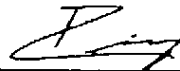
4. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 607.1006 of the FBCA.

5. That these Amended and Restated Articles of Incorporation, which supersede and restate this corporation's original Articles of Incorporation, has been duly adopted in accordance with 607.1006 of the FBCA.

6. The Florida Department of State may certify these Amended and Restated Articles of Incorporation as the Articles of Incorporation currently in effect, without including the certificate of information required by subsection (4) of Section 607.1007 of the FBCA.

*[Signature Page to Follow]*

**IN WITNESS WHEREOF**, these Amended and Restated Articles of Incorporation has been executed by a duly authorized officer of this corporation on this 12<sup>th</sup> day of August, 2019.

By:   
Name: Andres Rodriguez  
Title: President