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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): October 25, 2007**

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**TIM HORTONS INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-32843**  
(Commission File Number)

**51-0370507**  
(IRS Employer  
Identification No.)

**874 Sinclair Road, Oakville, ON, Canada**  
(Address of principal executive offices)

**L6K 2Y1**  
(Zip Code)

**(905) 845-6511**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 2.02 Results of Operations and Financial Condition.**

On October 26, 2007, Tim Hortons Inc. issued a press release containing financial information relating to its third quarter results and certain other information. The press release is attached hereto as Exhibit 99.1.

The Company announced today that it has completed its 2006-2007 share repurchase program with approximately 5.8 million shares purchased at an average price of Cdn.\$34.43 per share. The Company also announced that its Board of Directors approved a new 2007-2008 share repurchase program of up to Cdn.\$200 million, or up to 5% of the shares of the Company currently outstanding; and, in connection therewith, the Company will file a notice of intention to make a normal course issuer bid with the Toronto Stock Exchange (TSX). Implementation of the program is subject to final regulatory approval. The Company expects to implement the repurchase program on or about October 31, 2007, with purchases to be made by the Company and/or one or more of its direct or indirect subsidiaries on the TSX and/or the New York Stock Exchange, subject to compliance with applicable regulatory requirements. The program is set to expire on October 30, 2008.

The Company also announced that, as part of its share repurchase program, it will enter into a Rule 10b5-1 repurchase plan with a broker in order to facilitate its stock repurchase activity. The Rule 10b5-1 repurchase plan will allow the Company, and/or one or more of its direct or indirect subsidiaries, to purchase shares at times when it ordinarily would not be in the market due to regulatory or company restrictions. Purchases under the share repurchase program will be made under the parameters of the Rule 10b5-1 plan. In addition to repurchases made pursuant to the Rule 10b5-1 plan, the Company may also make repurchases under its stock repurchase program at management's discretion, from time to time, subject to market conditions, stock prices, its cash position, and compliance with regulatory requirements. The full text of the Company's press release issued today regarding its share repurchase program is attached hereto as Exhibit 99.2.

The Company also announced today that the Board of Directors has approved a Cdn.\$0.07 quarterly dividend. The dividend is payable on November 20, 2007 to shareholders of record on November 6, 2007. The full text of the Company's press release issued today regarding its quarterly dividend is attached hereto as Exhibit 99.3

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On October 25, 2007, our Board of Directors approved amendments to our amended and restated by-laws to add a requirement that each person nominated for election to the Board of Directors by a stockholder of the Company must agree to meet personally with the Company's Nominating and Corporate Governance Committee (Committee) within a reasonable timeframe established by the Committee; to remove certain provisions that governed the conduct of the business and affairs of the Company prior to its separation from Wendy's International, Inc. on September 29, 2006, which, following such date, are no longer applicable; and, to make certain other administrative adjustments. A copy of the Second Amended and Restated By-laws of Tim Hortons Inc. is attached hereto as Exhibit 3.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

Exhibit 3 The Company's Second Amended and Restated By-laws, as amended October 25, 2007.

Exhibit 99.1 Press release issued by the Company dated October 26, 2007 regarding the release of quarterly financial results and other information.

Exhibit 99.2 Press release issued by the Company dated October 26, 2007 announcing the completion of the 2006-2007 share repurchase program and planned commencement of 2007-2008 share repurchase program.

Exhibit 99.3 Press release issued by the Company dated October 26, 2007 announcing \$0.07 quarterly dividend.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

TIM HORTONS INC.

Date: October 26, 2007

By: /s/ Donald B. Schroeder

Donald B. Schroeder,  
Executive Vice President and  
Secretary

SECOND AMENDED AND RESTATED

BY-LAWS

OF

TIM HORTONS INC.,

a Delaware corporation

(the "*Corporation*")

(Adopted as of February 23, 2006)

(Revised August 31, 2006 and October 25, 2007)

**SECOND AMENDED AND RESTATED  
BY-LAWS  
OF  
TIM HORTONS INC.**

**ARTICLE I  
OFFICES**

**Section 1.1 Registered Office.** The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

**Section 1.2 Additional Offices.** The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "**Board**") may from time to time determine or as the business and affairs of the Corporation may require.

**ARTICLE II  
STOCKHOLDERS MEETINGS**

**Section 2.1 Annual Meetings.** An annual meeting of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5 (a). At each annual meeting, the stockholders shall elect directors of the Corporation and may transact any other business as may properly be brought before the meeting.

**Section 2.2 Special Meetings.** Except as otherwise required by applicable law or provided in the Corporation's Amended and Restated Certificate of Incorporation, as the same may be amended or restated from time to time (the "**Certificate of Incorporation**"), special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board, the Chief Executive Officer, the President or the Board pursuant to a resolution adopted by a majority of the Whole Board (as defined below). Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). "**Whole Board**" shall mean the total number of directors the Corporation would have if there were no vacancies.

**Section 2.3 Notices.** Notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat

by the Corporation not less than 10 nor more than 60 days before the date of the meeting. If said notice is for a stockholders meeting other than an annual meeting, it shall in addition state the purpose or purposes for which the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto). Any meeting of stockholders as to which notice has been given may be postponed, and any special meeting of stockholders as to which notice has been given may be cancelled, by the Board upon public announcement (as defined in Section 2.7(c)) given before the date previously scheduled for such meeting.

**Section 2.4 Quorum.** Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present or represented by proxy at any meeting of the stockholders, the holders of a majority of the voting shares represented at the meeting, whether or not a quorum is present, the Chairman of the Board, the Chief Executive Officer, the President or the officer of the Corporation acting as the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. The stockholders present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; *provided, however*, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

#### **Section 2.5 Voting of Shares.**

(a) Voting Lists. The Secretary shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders of record entitled to vote thereat arranged in alphabetical order and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting

during the whole time thereof, and may be inspected by any stockholder who is present. If a meeting of stockholders is to be held solely by means of remote communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxyholders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxyholder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after 11 months from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary of the Corporation until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority.

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) **Required Vote.** Subject to the rights of the holders of one or more series of preferred stock of the Corporation (“**Preferred Stock**”), voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. All other matters shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation, these By-Laws or applicable stock exchange rules, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) **Inspectors of Election.** The Board may appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at any meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each, determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots, count all votes and ballots and report the results, determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

**Section 2.6 Adjournments.** Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 2.7 Advance Notice for Business.**

(a) **Annual Meetings of Stockholders.** No business may be transacted at an annual meeting of stockholders, other than business that is either (i) specified in the Corporation’s notice of meeting (or any supplement thereto) given by or at the direction of the Board,



(ii) otherwise properly brought before the annual meeting by or at the direction of the Board or (iii) otherwise properly brought before the annual meeting by any stockholder of the Corporation (x) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.7(a) and on the record date for the determination of stockholders entitled to vote at such annual meeting and (y) who complies with the notice procedures set forth in this Section 2.7(a). Notwithstanding anything in this Section 2.7(a) to the contrary, only persons nominated for election as a director at an annual meeting pursuant to Section 3.2 will be considered for election at such meeting.

(i) In addition to any other applicable requirements, for business (other than nominations) to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation and such business must otherwise be a proper matter for stockholder action. Subject to Section 2.7(a)(iii), to be timely, a stockholder's notice to the Secretary with respect to such business must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 120th day nor earlier than the opening of business on the 150th day before the anniversary of the date that the Corporation's proxy statement was released to stockholders in connection with the immediately preceding annual meeting of stockholders; *provided, however*, that for any annual meeting that is called for a date that is not within 45 days before or after such anniversary date, notice by the stockholder to be timely must be so received not earlier than the opening of business on the 150th day before the meeting and not later than the later of (x) the close of business on the 120th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting is first made by the Corporation; *and provided, further*, that for the 2007 annual meeting, notice by the stockholder to be timely must be so received not earlier than the opening of business on October 13, 2006 and not later than the close of business on November 12, 2006. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described in this Section 2.7(a).

(ii) To be in proper written form, a stockholder's notice to the Secretary regarding any business (other than nominations) must set forth as to each such matter such stockholder proposes to bring before the annual meeting (A) a brief description of the business desired to be brought before the annual meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event such business includes a proposal to amend these By-Laws, the language of the proposed amendment) and the reasons for conducting such business at the annual meeting, (B) the name and record address of such stockholder and the name and address of the beneficial owner, if any, on whose behalf the proposal is made, (C) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and by the beneficial owner, if any, on whose behalf the proposal is made, (D) a description of all arrangements or understandings between such stockholder and the beneficial owner, if any, on whose behalf the proposal is made and any other person or persons (including their names) in connection with the proposal of such business by such stockholder, (E) any material interest of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made in such business and (F) a

representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

(iii) The foregoing notice requirements of this Section 2.7(a) shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and such stockholder has complied with the requirements of such Rule for inclusion of such proposal in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.7(a), *provided, however*, that once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 2.7(a) shall be deemed to preclude discussion by any stockholder of any such business. If the Board or the chairman of the annual meeting determines that any stockholder proposal was not made in accordance with the provisions of this Section 2.7(a) or that the information provided in a stockholder's notice does not satisfy the information requirements of this Section 2.7(a), such proposal shall not be presented for action at the annual meeting. Notwithstanding the foregoing provisions of this Section 2.7(a), if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(iv) In addition to the provisions of this Section 2.7(a), a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 2.7(a) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(b) Special Meetings of Stockholders. At a special meeting of stockholders, only such business shall be conducted as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting only pursuant to Section 3.2.

(c) Public Announcement. For purposes of these By-Laws, "**public announcement**" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

**Section 2.8 Conduct of Meetings**. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director)

or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these By-Laws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

**Section 2.9 No Action Without Meeting.** Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to act by written consent, any action required or permitted to be taken by stockholders of the Corporation must be effected at a duly called annual or special meeting of the stockholders and may not be effected by written consent in lieu of a meeting.

### **ARTICLE III DIRECTORS**

**Section 3.1 Powers.** The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

**Section 3.2 Advance Notice for Nomination of Directors.**

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided by the terms of one or more series of Preferred Stock regarding the rights of holders of one or

more series of Preferred Stock to elect directors. Nominations of persons for election to the Board at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors as set forth in the Corporation's notice of such special meeting, may be made (i) by or at the direction of the Board or (ii) by any stockholder of the Corporation (x) who is a stockholder of record on the date of the giving of the notice provided for in this Section 3.2 and on the record date for the determination of stockholders entitled to vote at such meeting and (y) who complies with the notice procedures set forth in this Section 3.2.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation. To be timely, a stockholder's notice to the Secretary must be received by the Secretary at the principal executive offices of the Corporation (i) in the case of an annual meeting, not later than the close of business on the 120th day nor earlier than the opening of business on the 150th day before the anniversary of the date that the Corporation's proxy statement was released to stockholders in connection with the immediately preceding annual meeting of stockholders; *provided, however*, that for any annual meeting that is called for a date that is not within 45 days before or after such anniversary date, notice by the stockholder to be timely must be so received not earlier than the opening of business on the 150th day before the meeting and not later than the later of (x) the close of business on the 120th day before the meeting or (y) the close of business on the 10th day following the day on which public announcement of the date of the annual meeting was first made by the Corporation; *and provided, further*, that for the 2007 annual meeting, notice by the stockholder to be timely must be so received not earlier than the opening of business on October 13, 2006 and not later than the close of business on November 12, 2006; and (ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the 10th day following the day on which public announcement of the date of the special meeting is first made by the Corporation. In no event shall the public announcement of an adjournment of an annual meeting or special meeting commence a new time period for the giving of a stockholder's notice as described in this Section 3.2.

(c) Notwithstanding anything in paragraph (b) above to the contrary, if the number of directors to be elected to the Board at an annual meeting is greater than the number of directors whose terms expire on the date of the annual meeting and there is no public announcement by the Corporation naming all of the nominees for the additional directors to be elected or specifying the size of the increased Board before the close of business on the 90th day prior to the anniversary date of the immediately preceding annual meeting of stockholders, a stockholder's notice required by this Section 3.2 shall also be considered timely, but only regarding nominees for the additional directorships created by such increase that are to be filled by election at such annual meeting, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the date on which such public announcement was first made by the Corporation.

(d) To be in proper written form, a stockholder's notice to the Secretary must set forth: (i) as to each person whom the stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment of the person, (C) the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by the person and (D) any other

information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; and (ii) as to the stockholder giving the notice (A) the name and record address of such stockholder and the name and address of the beneficial owner, if any, on whose behalf the nomination is made, (B) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, (C) a description of all arrangements or understandings relating to the nomination to be made by such stockholder among such stockholder, the beneficial owner, if any, on whose behalf the nomination is made, each proposed nominee and any other person or persons (including their names), (D) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (E) any other information relating to such stockholder and the beneficial owner, if any, on whose behalf the nomination is made that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected, as well as an express agreement by such nominee to meet personally with the Nominating and Corporate Governance Committee of the Board, at the principal office of the Corporation, on or by such date as is reasonably selected by the Nominating and Corporate Governance Committee to allow for consideration of the nominee prior to such Committee's recommendation to the Board of a slate of nominees for election to the Board.

(e) Except as otherwise provided by the terms of one or more series of Preferred Stock regarding the rights of one or more series of Preferred Stock to nominate and elect directors, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 3.2. If the Board or the chairman of the meeting of stockholders determines that any nomination was not made in accordance with the provisions of this Section 3.2, then such nomination shall not be considered at the meeting in question. Notwithstanding the foregoing provisions of this Section 3.2, if (i) the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the Corporation to present the nomination, or (ii) the nominee fails to meet with the Nominating and Corporate Governance Committee, as required by Section 3.2 (d), such nomination shall be disregarded, notwithstanding that proxies in respect of such nomination may have been received by the Corporation.

(f) In addition to the provisions of this Section 3.2, a stockholder shall also comply with all of the applicable requirements of the Exchange Act and the rules and regulations thereunder regarding the matters set forth herein. Nothing in this Section 3.2 shall be deemed to affect any rights of the holders of Preferred Stock to elect directors pursuant to the Certificate of Incorporation.

**Section 3.3 Compensation.** Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, the Board shall have the authority to fix the compensation of directors. The directors may be reimbursed their expenses, if any, of attendance at each meeting of the Board and may be paid either a fixed sum for attendance at each meeting of the Board or

other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for service on the committee.

#### **ARTICLE IV BOARD MEETINGS**

**Section 4.1 Annual Meetings.** The Board shall meet at least annually and may meet more frequently as needed.

**Section 4.2 Regular Meetings.** Regularly scheduled, periodic meetings of the Board may be held without notice at such times, dates and places as shall from time to time be determined by the Board.

**Section 4.3 Special Meetings.** Special meetings of the Board (a) may be called by the Chairman of the Board, the Chief Executive Officer, the President, or any three directors, or the sole director, as the case may be, and shall be held at such time, date and place as may be determined by the person calling the meeting or, if called upon the request of such directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (x) not later than the day before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (y) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (z) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these By-Laws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting. A special meeting may be held at any time without notice if all of the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

**Section 4.4 Quorum; Required Vote.** A majority of the Whole Board shall constitute a quorum for the transaction of business at any meeting of the Board, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by applicable law, the Certificate of Incorporation or these By-Laws. If a quorum shall not be present at any meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

**Section 4.5 Consent In Lieu of Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic

transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 4.6 Organization.** The chairman of each meeting of the board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meeting of the Board. In the absence (or inability or refusal to act) of the Secretary, and Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

## **ARTICLE V COMMITTEES OF DIRECTORS**

**Section 5.1 Establishment.** The Board may designate one or more committees, each committee to consist of one or more of the directors. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. The Board shall have the power at any time to fill vacancies in, change the membership of, or dissolve any such committee.

**Section 5.2 Available Powers.** Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

**Section 5.3 Alternate Members.** The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee.

**Section 5.4 Procedures.** Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. Unless the Board otherwise provides with respect to specific delegations of authority relating to a specific committee (or the Board otherwise directs with respect to a specific committee), at meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable law, the Certificate of Incorporation, these By-Laws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time,

without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these By-Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these By-Laws.

## **ARTICLE VI OFFICERS**

**Section 6.1 Officers.** The officers of the Corporation elected by the Board shall be a Chairman of the Board, a Chief Executive Officer, a President, a Chief Financial Officer, a Treasurer, a Secretary and such other officers (including without limitation Vice Presidents, Assistant Secretaries and Assistant Treasurers) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chairman of the Board or President may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these By-Laws or as may be prescribed by the Board or, if such officer has been appointed by the Chairman of the Board or President, as may be prescribed by the appointing officer.

**Section 6.2 Duties of Officers.** All officers of the Corporation, as between themselves and the Corporation, shall, respectively, have such duties as are determined by the directors.

**Section 6.3 Term of Office.** The officers of the Corporation shall hold office at the pleasure of the directors. Any officer of the Corporation may be removed, either with or without cause, at any time, by the affirmative vote of a majority of all of the directors then in office; such removal, however, shall be without prejudice to any contract rights of the person so removed.

**Section 6.4 Multiple Officeholders; Stockholder and Director Officers.** Any number of offices may be held by the same person, unless the Certificate of Incorporation or these By-Laws otherwise provide. Officers need not be stockholders or residents of the State of Delaware.

## **ARTICLE VII SHARES**

**Section 7.1 Uncertificated Shares.** The shares of the Corporation shall be uncertificated, provided that the Corporation shall be permitted to issue such nominal number of certificates to securities depositories and further provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be represented by certificates. The Corporation shall not have power to issue a certificate representing shares in bearer form.



**Section 7.2 Multiple Classes of Stock.** If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; *provided, however,* that, except as otherwise provided by applicable law, in lieu of the foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

**Section 7.3 Signatures.** Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, the Chief Executive Officer, the President or a Vice President and (b) the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

**Section 7.4 Consideration and Payment for Shares.** (a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities.

(b) Subject to applicable law and the Certificate of Incorporation, shares may not be issued until the full amount of the consideration has been paid, unless upon the face or back of each certificate issued to represent any partly paid shares of capital stock or upon the books and records of the Corporation in the case of partly paid uncertificated shares, there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said certificate representing certificated shares or said uncertificated shares are issued.

**Section 7.5 Lost, Destroyed or Wrongfully Taken Certificates.** (a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond

sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

**Section 7.6 Transfer of Stock.** (a) If a certificate representing shares of the Corporation is presented to the Corporation with an endorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the endorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the endorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such endorsement or instruction or such other reasonable assurance that the endorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

**Section 7.7 Registered Stockholders.** Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other

books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

**Section 7.8 Effect of Corporation's Restriction on Transfer.** (a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the Delaware General Corporation Law (the "*DGCL*") and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares.

**Section 7.9 Regulations.** The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

## **ARTICLE VIII INDEMNIFICATION**

**Section 8.1 Right to Indemnification.** Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "*proceeding*"), by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter a "*Covered Person*"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized or permitted by applicable law, as the same exists

or may hereafter be amended, against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid in settlement) reasonably incurred or suffered by such Covered Person in connection with such proceeding; *provided, however*, that, except as provided in Section 8.3 with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board.

**Section 8.2 Right to Advancement of Expenses.** In addition to the right to indemnification conferred in Section 8.1, a Covered Person also shall have the right to be paid by the Corporation the expenses (including, without limitation, attorneys' fees) incurred in defending, testifying, or otherwise participating in any such proceeding in advance of its final disposition (hereinafter an "*advancement of expenses*"); *provided, however*, that, if the DGCL requires, an advancement of expenses incurred by a Covered Person in his or her capacity as a director or officer of the Corporation (and not in any other capacity in which service was or is rendered by such Covered Person, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "*undertaking*"), by or on behalf of such Covered Person, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "*final adjudication*") that such Covered Person is not entitled to be indemnified for such expenses under this Article VIII or otherwise.

**Section 8.3 Right of Indemnitee to Bring Suit.** If a claim under Section 8.1 or Section 8.2 is not paid in full by the Corporation within 60 days after a written claim therefor has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the Covered Person may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Covered Person shall also be entitled to be paid the expense of prosecuting or defending such suit. (a) In any suit brought by the Covered Person to enforce a right to indemnification hereunder (but not in a suit brought by a Covered Person to enforce a right to an advancement of expenses) it shall be a defense that, and (b) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Covered Person has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Covered Person is proper in the circumstances because the Covered Person has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including a determination by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the Covered Person has not met such applicable standard of conduct, shall create a presumption that the Covered Person has not met the applicable standard of conduct or, in the case of such a suit brought by the Covered Person, shall be a defense to such suit. In any suit brought by the Covered Person to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of

expenses pursuant to the terms of an undertaking, the burden of proving that the Covered Person is not entitled to be indemnified, or to such advancement of expenses, under this Article VIII or otherwise shall be on the Corporation.

**Section 8.4 Non-Exclusivity of Rights.** The rights provided to Covered Persons pursuant to this Article VIII shall not be exclusive of any other right that any Covered Person may have or hereafter acquire under applicable law, the Certificate of Incorporation, these By-Laws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

**Section 8.5 Insurance.** The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

**Section 8.6 Indemnification of Other Persons.** This Article VIII shall not limit the right of the Corporation to the extent and in the manner authorized or permitted by law to indemnify and to advance expenses to persons other than Covered Persons. Without limiting the foregoing, the Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of Covered Persons under this Article VIII.

**Section 8.7 Amendments.** Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these By-Laws inconsistent with this Article VIII, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to Covered Persons on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

**Section 8.8 Certain Definitions.** For purposes of this Article VIII, (a) references to “*other enterprise*” shall include any employee benefit plan; (b) references to “*finer*” shall include any excise taxes assessed on a person with respect to an employee benefit plan; (c) references to “*serving at the request of the Corporation*” shall include any service that imposes duties on, or involves services by, a person with respect to any employee benefit plan, its participants, or beneficiaries; and (d) a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “*not opposed to the best interest of the Corporation*” for purposes of Section 145 of the DGCL.

**Section 8.9 Contract Rights.** The rights provided to Covered Persons pursuant to this Article VIII shall be contract rights and such rights shall continue as to a Covered Person who

has ceased to be a director, officer, agent or employee and shall inure to the benefit of the Covered Person's heirs, executors and administrators.

**Section 8.10 Severability.** If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

## **ARTICLE IX MISCELLANEOUS**

**Section 9.1 Place of Meetings.** If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these By-Laws is not designated in the notice of such meeting, such meeting shall be held at the U.S. principal business office of the Corporation; *provided, however*, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

**Section 9.2 Fixing Record Dates.** (a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

### **Section 9.3 Means of Giving Notice.**

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by hand delivery, through the United States mail, or by a

nationally recognized overnight delivery service for next day delivery, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director; (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation; (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation; (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation; (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation; or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder; (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation; (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation; and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; *provided, however*, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. "***Electronic transmission***" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including but not

limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. If the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. If the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

**Section 9.4 Waiver of Notice.** Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these By-Laws, a written waiver of such notice, signed before or after the date of such meeting by the person or persons entitled to the



notice, or a waiver by electronic transmission by the person entitled to the notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

**Section 9.5 Meeting Attendance via Remote Communication Equipment.**

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation, or these By-Laws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

**Section 9.6 Dividends.** The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

**Section 9.7 Reserves.** The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

**Section 9.8 Fiscal Year.** The fiscal year of the Corporation shall be fixed by the Board. Until changed by the Board, the fiscal year of the Corporation shall end on the Sunday closest to December 31 of each year.

**Section 9.9 Seal.** The seal of the Corporation shall be in such form as shall from time to time be adopted by the Board. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

**Section 9.10 Books and Records.** The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

**Section 9.11 Resignation.** Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. The resignation shall take effect at the time specified therein, or at the time of receipt of such notice if no time is specified or the specified time is earlier than the time of such receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 9.12 Surety Bonds.** Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, the President or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Corporation, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation, in such amounts and by such surety companies as the Chairman of the Board, the Chief Executive Officer, the President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

**Section 9.13 Securities of Other Corporations.** Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, the Chief Executive Officer, President or any Vice President. Any such officer, may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

**Section 9.14 Amendments.** In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power to adopt, amend, alter or repeal the By-Laws. The affirmative vote of a majority of the Whole Board shall be required to adopt, amend, alter or repeal the By-Laws. The By-Laws also may be adopted, amended, altered or repealed by the holders of a majority of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting as a single class; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by law or by the Certificate of Incorporation (including any Preferred Stock Designation), unless two-thirds of the Whole Board shall recommend approval, the affirmative vote of the holders of at least 75% of the voting power of all then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the By-Laws.

**FOR IMMEDIATE RELEASE**  
(All amounts in Canadian dollars)



**Tim Hortons Inc. Announces  
Third Quarter Net Income of \$67.4 Million**

**Revenues up 18.6% with continued sales momentum;  
New 12-month, \$200 million share repurchase program announced**

**Financial & Sales Highlights**

<u>Third Quarter Ended</u>	<u>September 30, 2007</u>	<u>October 1, 2006</u>	<u>% Change</u>
Revenues	\$ 490.5	\$ 413.6	18.6%
Operating Income	\$ 108.3	\$ 91.3	18.7%
Effective Tax Rate	35.2%	41.0%	n/a
Net Income	\$ 67.4	\$ 51.8	30.0%
Earnings Per Share	\$ 0.36	\$ 0.27	33.3%
Fully Diluted Shares	187.9	193.5	(2.9)%

(\$ in millions except EPS. Fully diluted shares in millions)

<u>Same Store Sales</u>	<u>Q3 2007</u>	<u>Q3 2006</u>	<u>2007 YTD</u>	<u>2006 YTD</u>
Canada	7.5%	5.9%	6.8%	6.8%
U.S.	4.5%	9.2%	4.1%	9.1%

As of September 30, 2007, 99% of the Company's stores in Canada and 87% of the stores in the U.S. were franchised.

**Third Quarter Highlights**

- Systemwide sales<sup>(1)</sup> increased 11.7%
- Same-store sales grew 7.5% in Canada and 4.5% in the U.S.
- 40 new restaurants opened
- Revenues rose 18.6%, operating income increased 18.7%
- Sixth consecutive \$0.07 quarterly dividend declared
- New \$200 million share repurchase plan announced

**OAKVILLE, ONTARIO**, (October 26, 2007): Tim Hortons Inc. (NYSE:THI, TSX: THI) today announced its results for the third quarter ended September 30, 2007.

Systemwide sales growth, which includes sales from company-operated and franchise restaurants, rose 11.7% in the quarter. Third quarter same-store sales increased 7.5% in Canada and 4.5% in the U.S. Total revenues were \$490.5 million in the third quarter, an 18.6% increase compared to \$413.6 million in the same period last year. Net income was \$67.4 million in the third quarter, a 30.0% increase compared to \$51.8 million last year.

"Canadian same-store sales growth sustained momentum this past quarter, while U.S. same-store sales growth held nicely in a challenging sales environment. Our U.S. segment sales performance was particularly healthy considering the exceptionally strong comparable period in 2006 due to the previous introduction of the breakfast sandwich in that market," said Paul House, Chairman and Chief Executive Officer. "We continue to execute well against our strategies and our performance this past quarter reflects those efforts," House added.

## **Consolidated Performance**

During the quarter, a total of 40 restaurants were opened compared to 29 in the third quarter last year. The total number of restaurants opened in 2007 is 79, compared to 86 this time last year. Restaurant openings are typically weighted more heavily in the fourth quarter each year.

Sales growth during the quarter was fueled primarily by the Company's promotional program, store level execution and some pricing in Canada. During the quarter, featured promotions in Canada were the breakfast sandwich, a lemon-baked theme including Lemon Crinkle Donuts, 12- Grain Bagel with Omega 3, Fruit Bites and Apple Toffee Danish. In the U.S., featured promotions included the roll-out of ICED Coffee, in addition to the Lemon Crinkle Donut, large gourmet cookies, chocolate baked goods, Apple Toffee Danish and the introduction of a new Bagel B.E.L.T. breakfast sandwich.

Pricing contributed 2.7% to same-store sales growth in Canada during the quarter and 0.3% in the U.S.

Revenues were \$490.5 million in the quarter, up 18.6% compared to \$413.6 million in the same period last year. Sales growth of 20.4%, consisting primarily of distribution sales, grew by a substantially higher percentage than systemwide sales growth due to the completion of the implementation of three-channel delivery of dry, frozen and refrigerated goods from our Guelph, Ontario facility. Rent and royalty revenues increased by 12.1%, consistent with systemwide sales growth. Franchisee fees, which are based primarily on restaurant openings, increased 42.2%, primarily reflecting a higher number of restaurant openings compared to the same period in 2006. Corresponding franchisee fee costs increased more than franchisee fees due to the timing of expenses.

Costs of sales grew 20.0% in the third quarter compared to the third quarter of 2006. The increased costs primarily reflect growth in systemwide sales and higher distribution costs associated with three-channel delivery. Operating expenses increased 13.4% year-over-year, due to a higher number of restaurants in the system with corresponding depreciation and lease costs.

Third quarter operating income was \$108.3 million, an increase of 18.7% compared to \$91.3 million for the same period in 2006. Operating income was consistent with revenue growth during the quarter. Operating income performance this quarter primarily reflects higher systemwide sales, higher sales from distribution and lower general and administrative costs. General and administrative costs declined 2.8% year-over-year, primarily due to the timing of Restricted Share Unit (RSU) grants made in the second quarter this year instead of the third quarter last year and accelerated vesting of RSUs associated with the separation from Wendy's International, Inc. Lower RSU costs were partially offset by higher standalone public company costs and expenses related to the Company's franchisee convention.

Net interest expense in the third quarter of 2007 was \$4.3 million compared to \$3.4 million in the same period last year. This net increase reflects lower interest income from cash on hand due to share repurchase and dividend activities, and higher interest expense compared to the same period in 2006.

Third quarter net income was \$67.4 million, an increase of 30.0% compared to \$51.8 million last year. The effective tax rate for the third quarter of 2007 was 35.2%, higher than targeted for the quarter due to future expected settlement of certain outstanding tax matters with tax authorities. The effective tax rate compares to 41.0% in the comparable period in 2006. The higher rate in 2006 was due primarily to discrete items that did not recur. Reported diluted earnings per share (EPS) were \$0.36 compared to \$0.27 in the third quarter of 2006. Third quarter reported EPS also reflects the diluted weighted average shares outstanding in the third quarter of 187.9 million compared to 193.5 million in the same period last year, a 2.9% decrease due to share repurchases.

### **Segmented Performance Commentary**

The Canadian business continued to outperform our long-term same-store sales aspirations, up 7.5% compared to the same quarter in 2006. Approximately 2.7% of same-store sales growth this quarter was due to pricing. Segment margins were modestly impacted by increased revenues from the distribution business which has lower margins but a positive overall income contribution. The Canadian segment had operating income of \$119.1 million for the quarter. A total of 31 restaurants were opened in Canada during the quarter.

The U.S. segment, which accounts for less than 10% of the Company's revenues, experienced same-store sales growth of 4.5% during the quarter, of which only 0.3% was from pricing. While lower than long-term same-store sales growth aspirations, the Company is pleased with this result given the challenging sales environment in which this performance was delivered. The U.S. segment had a loss of \$0.3 million for the quarter, mainly reflecting continued investment in developing our targeted U.S. markets. A total of 9 restaurants were opened during the quarter.

Total operating income at the end of the third quarter is ahead of the Company's growth target of 10%. If third-quarter year-to-date trends continue for the remainder of the year, the Company expects to exceed its established 2007 target of 10% operating income growth.

### **Corporate Highlights**

The Company substantially completed its rollout of the MasterCard™ payment system in participating restaurants, now in place at approximately 2,100 locations. The Company is pleased with initial customer acceptance and use of the MasterCard payment system in the early stages of the implementation. The reloadable, cashless Tim Card™ was introduced recently in Canada using the same technology platform as MasterCard payment system. Both initiatives are designed to provide customer convenience and increase speed of service.

As previously disclosed, the Company continued its implementation of a general ledger and U.S. fixed asset subledger conversion in the third quarter. Management is satisfied with progress of its implementation and currently plans to rely on its new system for the fourth quarter and year-end. There are certain risks in implementing financial reporting systems in the fourth quarter with respect to Sarbanes-Oxley Section 404. The Company has taken steps it believes appropriate to mitigate these risks but there can be no assurance that these steps will entirely eliminate this risk.

### **\$200 million share repurchase program announced**

The Company's 2006-2007 \$200 million share repurchase program was successfully completed in September, 2007. A total of 5.8 million shares were purchased at an average net cost of \$34.43 per share as part of this program. The Board of Directors has approved a new 12-month, \$200 million share repurchase program as part of the Company's ongoing focus of creating value for shareholders. Implementation of the program is subject to final regulatory approval. For details on the new program, please refer to the news release issued today in conjunction with this earnings release.

### **Board declares sixth consecutive quarterly dividend**

The Board of Directors has approved a \$0.07 quarterly dividend. The dividend is payable on November 20, 2007 to shareholders of record as of November 6, 2007.

Dividends are paid in Canadian dollars to all shareholders with Canadian resident addresses whose shares are registered with Computershare (the Company's transfer agent). For all other shareholders, including all shareholders who hold their shares indirectly (i.e., through their broker) and regardless of country of residence, the dividend will be converted to U.S. dollars on November 13, 2007 at the daily noon rate established by the Bank of Canada and paid in U.S. dollars on November 20, 2007.

### **Board appoints Michael J. Endres as Chair of Audit Committee**

The Board of Directors has appointed Michael J. Endres as Chair of the Audit Committee, replacing David P. Lauer, who has stepped down from the Board as previously announced on September 28, 2007. Mr. Lauer is continuing his service on the Board of Directors of Wendy's International, Inc., and in conjunction therewith, Mr. Lauer resigned from the Company's Board of Directors. Mr. Endres has served as a director at Tim Hortons since 2006. He is Managing Principal of Stonehenge Financial Holdings, Inc., a private equity firm that he co-founded in 1999. Prior to founding Stonehenge, Mr. Endres was Vice-Chairman of Banc One Capital Holdings Corporation and Chairman of Banc One Capital Partners.

### **Tim Hortons to host conference call at 10:30 a.m. today, October 26**

Tim Hortons will host a conference call beginning at 10:30 a.m. (Eastern Standard Time) today. Investors and the public may listen to the conference call in either one of the following ways:

**Phone:** The dial-in number is (416) 641-6712 or 1-800-354.6885. No access code is required. A replay of the call will be available for one year and can be accessed at (416) 626-4100 or 1-800-558- 5253. The reservation number for the replay call is 21351036. A slide presentation will be available to coincide with the conference call, and can be accessed at [www.timhortons.com](http://www.timhortons.com) under the investor information section, by clicking on the "Presentations" tab.

A simultaneous Web Cast of the conference call will be available at [www.timhortons.com](http://www.timhortons.com). The call will also be archived for a period of one-year at the site, which can be found by going to the "Investor Information" section and clicking on the "Audio Archives" tab.

### **(1) Systemwide Sales Growth**

Total systemwide sales growth includes restaurant level sales at both Company and Franchise restaurants. Approximately 98% of our system is franchised as at September 30, 2007. Systemwide sales growth is determined using a constant exchange rate to exclude the effects of foreign currency translation. U.S. dollar sales are converted to Canadian dollar amounts using the average exchange rate of the base year for the period covered. For the third quarter of 2007, system-wide sales growth was 11.7% over the third quarter of 2006. Systemwide sales impact our franchise royalties and rental income, as well as our distribution sales. Changes in systemwide sales are driven by changes in average same store sales and changes in the number of systemwide restaurants.

### **Tim Hortons Inc. Overview**

Tim Hortons is the fourth largest publicly-traded quick service restaurant chain in North America based on market capitalization, and the largest in Canada. Tim Hortons appeals to a broad range of consumer tastes, with a menu that includes coffee and donuts, premium coffees, flavored cappuccinos, specialty teas, home-style soups, fresh sandwiches and fresh baked goods. As of September 30, 2007, Tim Hortons had 3,110 system-wide restaurants, including 2,758 in Canada and 352 in the United States. More information about the Company is available at [www.timhortons.com](http://www.timhortons.com).

### **CONTACTS:**

INVESTORS: Scott Bonikowsky: (905) 339-6186 or [bonikowsky\\_scott@timhortons.com](mailto:bonikowsky_scott@timhortons.com)

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**TIM HORTONS INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands of Canadian dollars, except per share data)

(Unaudited)

	Third Quarter Ended		\$ Change	% Change
	September 30, 2007	October 1, 2006		
<b>REVENUES</b>				
Sales	\$ 327,020	\$ 271,534	\$55,486	20.4%
Franchise revenues				
Rents and royalties	143,449	127,912	15,537	12.1%
Franchise fees	20,072	14,117	5,955	42.2%
	<u>163,521</u>	<u>142,029</u>	<u>21,492</u>	<u>15.1%</u>
<b>TOTAL REVENUES</b>	<u>490,541</u>	<u>413,563</u>	<u>76,978</u>	<u>18.6%</u>
<b>COSTS AND EXPENSES</b>				
Cost of sales	288,168	240,161	48,007	20.0%
Operating expenses	51,617	45,532	6,085	13.4%
Franchise fee costs	20,432	13,579	6,853	50.5%
General & administrative expenses	30,758	31,647	(889)	(2.8)%
Equity (income)	(9,861)	(9,082)	(779)	8.6%
Other expense (income), net	1,090	431	659	N/M
<b>TOTAL COSTS &amp; EXPENSES, NET</b>	<u>382,204</u>	<u>322,268</u>	<u>59,936</u>	<u>18.6%</u>
<b>OPERATING INCOME</b>	108,337	91,295	17,042	18.7%
Interest (expense)	(6,118)	(5,707)	(411)	7.2%
Interest income	1,823	2,333	(510)	(21.9)%
<b>INCOME BEFORE INCOME TAXES</b>	<u>104,042</u>	<u>87,921</u>	<u>16,121</u>	<u>18.3%</u>
<b>INCOME TAXES</b>	<u>36,661</u>	<u>36,080</u>	<u>581</u>	<u>1.6%</u>
<b>NET INCOME</b>	<u>\$ 67,381</u>	<u>\$ 51,841</u>	<u>\$15,540</u>	<u>30.0%</u>
Basic earnings per share of common stock	<u>\$ 0.36</u>	<u>\$ 0.27</u>	<u>\$ 0.09</u>	<u>33.3%</u>
Diluted earnings per share of common stock	<u>\$ 0.36</u>	<u>\$ 0.27</u>	<u>\$ 0.09</u>	<u>33.3%</u>
Basic shares of common stock (in thousands)	<u>187,684</u>	<u>193,303</u>	<u>(5,619)</u>	<u>(2.9)%</u>
Diluted shares of common stock (in thousands)	<u>187,879</u>	<u>193,486</u>	<u>(5,607)</u>	<u>(2.9)%</u>
Dividend per share of common stock (post initial public offering)	<u>\$ 0.07</u>	<u>\$ 0.07</u>	<u>\$ 0.00</u>	

N/M - not meaningful  
(all numbers rounded)

**TIM HORTONS INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands of Canadian dollars, except per share data)

(Unaudited)

	Year-to-Date Ended		<u>\$ Change</u>	<u>% Change</u>
	<u>September 30, 2007</u>	<u>October 1, 2006</u>		
<b>REVENUES</b>				
Sales	\$ 913,364	\$ 777,638	\$ 135,726	17.5%
Franchise revenues				
Rents and royalties	410,803	370,279	40,524	10.9%
Franchise fees	56,239	45,175	11,064	24.5%
	<u>467,042</u>	<u>415,454</u>	<u>51,588</u>	<u>12.4%</u>
<b>TOTAL REVENUES</b>	<u>1,380,406</u>	<u>1,193,092</u>	<u>187,314</u>	<u>15.7%</u>
<b>COSTS AND EXPENSES</b>				
Cost of sales	805,419	683,351	122,068	17.9%
Operating expenses	148,881	132,275	16,606	12.6%
Franchise fee costs	53,909	44,507	9,402	21.1%
General & administrative expenses	90,318	87,426	2,892	3.3%
Equity (income)	(28,873)	(26,679)	(2,194)	8.2%
Other expense (income), net	1,870	(702)	2,572	N/M
<b>TOTAL COSTS &amp; EXPENSES, NET</b>	<u>1,071,524</u>	<u>920,178</u>	<u>151,346</u>	<u>16.4%</u>
<b>OPERATING INCOME</b>	308,882	272,914	35,968	13.2%
Interest (expense)	(17,882)	(16,475)	(1,407)	8.5%
Interest income	5,143	9,195	(4,052)	(44.1)%
Affiliated interest (expense), net	—	(7,876)	7,876	N/M
<b>INCOME BEFORE INCOME TAXES</b>	296,143	257,758	38,385	14.9%
<b>INCOME TAXES</b>	102,262	66,017	36,245	54.9%
<b>NET INCOME</b>	<u>\$ 193,881</u>	<u>\$ 191,741</u>	<u>\$ 2,140</u>	<u>1.1%</u>
Basic earnings per share of common stock	<u>\$ 1.03</u>	<u>\$ 1.05</u>	<u>(\$ 0.02)</u>	<u>(1.9)%</u>
Diluted earnings per share of common stock	<u>\$ 1.02</u>	<u>\$ 1.05</u>	<u>(\$ 0.03)</u>	<u>(2.9)%</u>
Basic shares of common stock (in thousands)	<u>189,049</u>	<u>182,797</u>	<u>6,252</u>	<u>3.4%</u>
Diluted shares of common stock (in thousands)	<u>189,319</u>	<u>183,072</u>	<u>6,247</u>	<u>3.4%</u>
Dividend per share of common stock (post initial public offering)	<u>\$ 0.21</u>	<u>\$ 0.07</u>	<u>\$ 0.14</u>	

N/M - not meaningful  
(all numbers rounded)



**TIM HORTONS INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands of Canadian dollars)

	<u>September 30,</u> <u>2007</u>	<u>December 31,</u> <u>2006</u>
<u>(Unaudited)</u>		
<b>ASSETS</b>		
<b>Current assets</b>		
Cash and cash equivalents	\$ 109,960	\$ 176,083
Accounts receivable, net	108,255	110,403
Notes receivable, net	12,021	14,248
Deferred income taxes	14,001	6,759
Inventories and other, net	58,251	53,888
Advertising fund restricted assets	20,265	25,513
	<u>322,753</u>	<u>386,894</u>
<b>Property and equipment, net</b>	1,155,219	1,164,536
<b>Notes receivable, net</b>	13,450	16,504
<b>Deferred income taxes</b>	20,442	23,579
<b>Intangible assets, net</b>	3,280	3,683
<b>Equity investments</b>	138,076	139,671
<b>Other assets</b>	9,848	10,120
	<u>\$ 1,663,068</u>	<u>\$ 1,744,987</u>

**TIM HORTONS INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands of Canadian dollars)

	<u>September 30,</u> <u>2007</u>	<u>December 31,</u> <u>2006</u>
(Unaudited)		
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>Current liabilities</b>		
Accounts payable	\$ 97,649	\$ 115,570
Accrued expenses:		
Salaries and wages	13,081	18,927
Taxes	26,267	27,103
Other	51,273	66,262
Advertising fund restricted liabilities	38,941	41,809
Current portion of long-term obligations	<u>5,808</u>	<u>5,518</u>
	<u>233,019</u>	<u>275,189</u>
<b>Long-term obligations</b>		
Term debt	327,070	325,590
Advertising fund restricted debt	16,615	23,337
Capital leases	<u>49,296</u>	<u>44,774</u>
	<u>392,981</u>	<u>393,701</u>
<b>Deferred income taxes</b>	17,580	17,879
<b>Other long-term liabilities</b>	52,999	39,814
<b>Stockholders' equity</b>		
Common stock, (US\$0.001 par value per share)		
Authorized: 1,000,000,000 shares		
Issued: 193,302,977 shares	289	289
Capital in excess of par value	920,503	918,043
Treasury stock, at cost: 5,796,352 and 1,930,244 shares, respectively	(199,590)	(64,971)
Common stock held in trust, at cost: 421,344 and 266,295 shares, respectively	(14,628)	(9,171)
Retained earnings	396,409	248,980
Accumulated other comprehensive income (loss):		
Cumulative translation adjustments and other	<u>(136,494)</u>	<u>(74,766)</u>
	<u>966,489</u>	<u>1,018,404</u>
	<u>\$ 1,663,068</u>	<u>\$ 1,744,987</u>

**TIM HORTONS INC. AND SUBSIDIARIES**  
**SEGMENT REPORTING**  
(In thousands of Canadian dollars)

(Unaudited)

	Third Quarter Ended			
	September 30, 2007	% of Total	October 1, 2006	% of Total
<b>REVENUES</b>				
Canada	\$ 453,408	92.4%	\$ 379,892	91.9%
U.S.	37,133	7.6%	33,671	8.1%
Total Revenues	<u>\$ 490,541</u>	<u>100.0%</u>	<u>\$ 413,563</u>	<u>100.0%</u>
<b>SEGMENT OPERATING INCOME (LOSS)</b>				
Canada	\$ 119,066	100.2%	\$ 101,338	99.6%
U.S.	(288)	(0.2)%	357	0.4%
Reportable Segment Operating Income	118,778	<u>100.0%</u>	101,695	<u>100.0%</u>
Corporate Charges	(10,441)		(10,400)	
Consolidated Operating Income	108,337		91,295	
Interest, net	(4,295)		(3,374)	
Income taxes	(36,661)		(36,080)	
Net Income	<u>\$ 67,381</u>		<u>\$ 51,841</u>	

	Year-to-Date Ended			
	September 30, 2007	% of Total	October 1, 2006	% of Total
<b>REVENUES</b>				
Canada	\$ 1,267,151	91.8%	\$ 1,092,822	91.6%
U.S.	113,255	8.2%	100,270	8.4%
Total Revenues	<u>\$ 1,380,406</u>	<u>100.0%</u>	<u>\$ 1,193,092</u>	<u>100.0%</u>
<b>SEGMENT OPERATING INCOME (LOSS)</b>				
Canada	\$ 341,719	101.3%	\$ 297,582	99.6%
U.S.	(4,327)	(1.3)%	1,245	0.4%
Reportable Segment Operating Income	337,392	<u>100.0%</u>	298,827	<u>100.0%</u>
Corporate Charges	(28,510)		(25,913)	
Consolidated Operating Income	308,882		272,914	
Interest, net	(12,739)		(15,156)	
Income taxes	(102,262)		(66,017)	
Net Income	<u>\$ 193,881</u>		<u>\$ 191,741</u>	

**TIM HORTONS INC. AND SUBSIDIARIES**  
**SYSTEMWIDE RESTAURANTS**

	<u>As of</u> <u>September 30, 2007</u>	<u>As of</u> <u>July 1, 2007</u>	<u>Increase/(Decrease)</u> <u>From Prior Quarter</u>	<u>As of</u> <u>October 1, 2006</u>	<u>Increase/(Decrease)</u> <u>From Prior Year</u>
<b>Tim Hortons</b>					
U.S.					
Company	47	50	(3)	61	(14)
Franchise	305	295	10	244	61
	<u>352</u>	<u>345</u>	<u>7</u>	<u>305</u>	<u>47</u>
<i>% Franchised</i>	86.6 %	85.5 %		80.0 %	
Canada					
Company	23	26	(3)	41	(18)
Franchise	2,735	2,707	28	2,596	139
	<u>2,758</u>	<u>2,733</u>	<u>25</u>	<u>2,637</u>	<u>121</u>
<i>% Franchised</i>	99.2 %	99.0 %		98.4 %	
<b>Total Tim Hortons</b>					
Company	70	76	(6)	102	(32)
Franchise	3,040	3,002	38	2,840	200
	<u>3,110</u>	<u>3,078</u>	<u>32</u>	<u>2,942</u>	<u>168</u>
<i>% Franchised</i>	97.7 %	97.5 %		96.5 %	

## TIM HORTONS INC. AND SUBSIDIARIES

### Income Statement Definitions

<b>Sales</b>	Primarily includes sales of products, supplies and restaurant equipment (except for initial equipment packages sold to franchisees as part of the establishment of their restaurant's business—see "Franchise Fees") that are shipped directly from our warehouses or by third party distributors to the restaurants, which we refer to as warehouse or distribution sales. Sales include canned coffee sales through the grocery channel. Sales also include sales from Company-operated restaurants and sales from franchise restaurants that are consolidated in accordance with FIN 46R.
<b>Rents and Royalties</b>	Includes franchisee royalties and rental revenues.
<b>Franchise Fees</b>	Includes the sales revenue from initial equipment packages, less fees for various costs and expenses related to establishing a franchisee's business.
<b>Cost of Sales</b>	Includes costs associated with our distribution warehouses, including cost of goods, direct labour and depreciation as well as the cost of goods delivered by third party distributors to the restaurants and for canned coffee sold through grocery stores. Cost of sales also includes food, paper and labour costs for Company-operated restaurants and franchise restaurants that are consolidated in accordance with FIN 46R.
<b>Operating Expenses</b>	Includes rent expense related to properties leased to franchisees and other property-related costs (including depreciation).
<b>Franchise fee costs</b>	Includes costs of equipment sold to franchisees as part of the initiation of their restaurant business, as well as training and other costs necessary to ensure a successful restaurant opening.
<b>General and Administrative</b>	Includes costs that cannot be directly related to generating revenue, including expenses associated with our corporate and administrative functions, allocation of expenses related to corporate functions and services historically provided to us by Wendy's and depreciation of office equipment, the majority of our information technology systems, and head office real estate.
<b>Equity Income</b>	Includes income from equity investments in joint ventures and other minority investments over which we exercise significant influence. Equity income from these investments is considered to be an integrated part of our business operations and is, therefore, included in operating income. Income amounts are shown as reductions to total costs and expenses.
<b>Other Income and Expense</b>	Includes expenses (income) that are not directly derived from the Company's primary businesses. Items include restaurant closure costs, currency adjustments, real estate sales, minority interest related to the consolidation of franchised restaurants pursuant to FIN 46R, and other asset write-offs.
<b>Comprehensive Income</b>	Represents the change in our net assets during the reporting period from transactions and other events and circumstances from non-owner sources. It includes net income and other comprehensive income such as foreign currency translation adjustments and the impact of cash flow hedges.

**FOR IMMEDIATE RELEASE**

(All amounts in Canadian dollars)



**Tim Hortons Inc. Announces  
New 12-Month, \$200 Million Share Repurchase Program**

**OAKVILLE, ONTARIO**, (October 26, 2007): Tim Hortons Inc. (NYSE:THI, TSX: THI) today announced the Board of Directors has approved a new 12-month, \$200 million share repurchase program as part of the Company's focus on creating value for shareholders.

A notice of intention to make a normal course issuer bid will be filed with the Toronto Stock Exchange for a stock repurchase program authorizing the repurchase of up to \$200 million in shares, not to exceed the regulatory maximum of 9,354,264 or 5%, of the outstanding common shares. As of October 25, 2007, there were 187,085,281 shares outstanding. Implementation of the program is subject to final approval of the TSX.

The Company's strong balance sheet, cash flow and focus on creating shareholder value were key factors in the decision to implement the share repurchase program.

The repurchases will be made by Tim Hortons directly, or through one or more of its direct or indirect subsidiaries, on the Toronto Stock Exchange and/or the New York Stock Exchange, subject to compliance with applicable regulatory requirements. As part of the stock purchase program, Tim Hortons will also enter into a Rule 10b5-1 repurchase plan with a broker in order to facilitate its stock repurchase activity.

A Rule 10b5-1 repurchase plan allows the Company to purchase its shares at times when it ordinarily would not be in the market due to regulatory or internal restrictions. Purchases will be based upon the parameters of the Rule 10b5-1 plan. In addition to the repurchases made pursuant to the Rule 10b5-1 plan, Tim Hortons may also make repurchases at the Company's discretion from time-to-time, subject to market conditions, share price, cash position and compliance with regulatory requirements.

The Company will begin implementation of the program on or about October 31, 2007, and it is expected to be in place until October 30, 2008. There can be no assurance as to the precise number of shares that will be repurchased under the stock repurchase program, or the aggregate dollar amount of the shares purchased. Tim Hortons may discontinue purchases at any time, subject to compliance with applicable regulatory requirements. Shares purchased pursuant to the stock repurchase program will be cancelled, held in the Company's treasury, and/or held by one of the Company's subsidiaries.

The maximum number of shares that may be purchased during any trading day may not exceed 118,988 shares, representing 25% of the average daily trading volume for the shares purchased during the previous six months. This limit, for which there are permitted exceptions, is determined in accordance with regulatory requirements.

In September 2007 the Company successfully completed its 2006-2007 share purchase program. A total of 5.8 million shares were purchased at an average net cost of \$34.43 per share as part of this previous share repurchase program.

### **Tim Hortons Inc. Overview**

Tim Hortons is the fourth largest publicly-traded quick service restaurant chain in North America based on market capitalization, and the largest in Canada. Tim Hortons appeals to a broad range of consumer tastes, with a menu that includes coffee and donuts, premium coffees, flavored cappuccinos, specialty teas, home-style soups, fresh sandwiches and fresh baked goods. As of September 30, 2007, Tim Hortons had 3,110 system-wide restaurants, including 2,758 in Canada and 352 in the United States. More information about the Company is available at [www.timhortons.com](http://www.timhortons.com).

### **CONTACTS:**

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**FOR IMMEDIATE RELEASE**  
(All amounts in Canadian dollars)



**Tim Hortons Inc.**  
**Declares Sixth Consecutive \$0.07 Quarterly Dividend**

**OAKVILLE, ONTARIO**, (October 26, 2007): Tim Hortons Inc. (NYSE:THI, TSX: THI) today announced the Board of Directors has approved the sixth consecutive \$0.07 quarterly dividend. The dividend is payable on November 20, 2007 to shareholders of record as of November 6, 2007.

Dividends are paid in Canadian dollars to all shareholders with Canadian resident addresses whose shares are registered with Computershare (the Company's transfer agent). For all other shareholders, including all shareholders who hold their shares indirectly (i.e., through their broker) and regardless of country of residence, the dividend will be converted to U.S. dollars on November 13, 2007 at the daily noon rate established by the Bank of Canada and paid in U.S. dollars on November 20, 2007.

**Tim Hortons Inc. Overview**

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**TIM HORTONS INC.**  
**Safe Harbor Under the Private Securities Litigation Reform Act of 1995**

The Private Securities Litigation Reform Act of 1995 (the “Act”) provides a “safe harbor” for forward-looking statements to encourage companies to provide prospective information, so long as those statements are identified as forward-looking and are accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those discussed in the statement. Tim Hortons Inc. (the “Company”) desires to take advantage of the “safe harbor” provisions of the Act.

Certain information in this news release, particularly information regarding future economic performance and finances, and plans, expectations, and objectives of management, is forward-looking. The following factors, in addition to other factors set forth in the Company’s Annual Report on Form 10-K, filed with the Securities and Exchange Commission (“SEC”) on March 9, 2007 and in other press releases, communications, or filings made with the SEC or the Ontario Securities Commission, and other possible factors not previously identified, could affect the Company’s actual results and cause such results to differ materially from those expressed in forward-looking statements:

Competition. The quick-service restaurant industry is intensely competitive with respect to price, service, location, personnel, qualified franchisees, and type and quality of food. The Company and its franchisees compete with international, regional and local organizations, primarily through the quality, variety, and value perception of food products offered. The number and location of units, quality and speed of service, attractiveness of facilities, effectiveness of advertising/marketing and operational programs, and new product development by the Company and its competitors are also important factors. Certain of the Company’s competitors have substantially larger marketing budgets.

Economic, Market and Other Conditions. The quick-service restaurant industry is affected by changes in international, national, regional, and local economic and political conditions, consumer preferences and perceptions (including food safety, health, or dietary preferences and perceptions), spending patterns, consumer confidence, demographic trends, seasonality, weather events and other calamities, traffic patterns, the type, number and location of competing restaurants, enhanced governmental regulation (including nutritional and franchise regulations), changes in capital market conditions that affect valuations of restaurant companies in general or the Company’s goodwill in particular, litigation relating to food quality, handling, or nutritional content, and the effects of war or terrorist activities and any governmental responses thereto. Factors such as inflation, food costs, the cost and/or availability of a qualified workforce and other labor issues, benefit costs, legal claims, disruptions to supply chain or changes in the price, availability and shipping costs of supplies, and utility and other operating costs, also affect restaurant operations and expenses and impact same-store sales and growth opportunities. The ability of the Company and its franchisees to finance new restaurant development, improvements and additions to existing restaurants, acquire restaurants from, and sell restaurants to franchisees, and pursue other strategic initiatives (such as acquisitions and joint ventures), are affected by economic conditions, including interest rates and other government policies impacting land and construction costs and the cost and availability of borrowed funds.

Factors Affecting Growth. There can be no assurance that the Company or its franchisees will be able to achieve new restaurant growth objectives or same-store sales growth in Canada or the U.S. The opening and ongoing success of the Company’s and its franchisees’ restaurants depends on various factors, including many of the factors set forth in this cautionary statement, as well as sales levels at existing restaurants, factors affecting construction costs generally, and the generation of sufficient cash flow by the Company to pay ongoing construction costs. In addition, the U.S. markets in which the Company seeks to expand may have competitive conditions (including higher construction, occupancy, or operating costs), consumer tastes, or discretionary spending patterns that differ from the Company’s existing markets, and there may be a lack of brand awareness in such markets. There can be no assurance that the Company will be able to successfully adapt its brand, development efforts, and restaurants to these differing market conditions.

Manufacturing and Distribution Operations. The occurrence of any of the following factors is likely to result in increased operating costs and depressed profitability of the Company’s distribution operations and may also damage the Company’s relationship with franchisees: higher transportation costs, shortages or changes in the cost or availability of qualified workforce and other labour issues, equipment failures, disruptions in supply chain, price fluctuations, climate conditions, industry demand, changes in international commodity markets (especially for coffee, which is highly volatile in terms of price and supply), and the adoption of additional environmental or health and safety laws and regulations. The Company’s manufacturing and distribution operations in the U.S. are also subject to competition from other qualified distributors, which could reduce the price the Company receives for supplies sold to U.S. franchisees.

Joint Venture to Manufacture and Distribute Par-Baked Products for Tim Hortons Restaurants. The profitability of the Maidstone Bakeries joint venture, which manufactures and distributes par-baked products for the Company’s and its

franchisees' restaurants, could be affected by a number of factors, including many of the factors set forth in this cautionary statement. Additionally, there can be no assurance that both the Company and its joint venture partner will continue with the joint venture. If the joint venture terminates, it may be necessary, under certain circumstances, for the Company to build its own par-baking facility or find alternate products or production methods.

Importance of Locations. The success of Company and franchised restaurants is dependent in substantial part on location. There can be no assurance that current locations will continue to be attractive, as demographic patterns change. It is possible the neighborhood or economic conditions where restaurants are located could decline in the future, thus resulting in potentially reduced sales in those locations.

Government Regulation. The Company and its franchisees are subject to various federal, state, provincial, and local ("governmental") laws affecting its and its franchisees' businesses. The development and operation of restaurants depend to a significant extent on the selection, acquisition, and development of suitable sites, which are subject to zoning, land use (including drive thrus), environmental, traffic, franchise, design and operational requirements, and other regulations. Additional governmental laws and regulation affecting the Company and its franchisees include: licensing; health, food preparation, sanitation and safety; labour (including applicable minimum wage requirements, overtime, working and safety conditions, and citizenship requirements); tax; employee benefits; accounting; and anti-discrimination. Changes in these laws and regulations, or the implementation of additional regulatory requirements, particularly increases in applicable minimum wages, taxes, or franchise requirements, may adversely affect financial results.

Foreign Exchange Fluctuations. The majority of the Company's business is conducted in Canada. If the U.S. dollar falls in value relative to the Canadian dollar, then U.S. operations would be less profitable because of the increase in U.S. operating costs resulting from the purchase of supplies from Canadian sources, and U.S. operations will contribute less to the Company's consolidated results. Exchange rate fluctuations may also cause the price of goods to increase or decrease for the Company and its franchisees. In addition, fluctuations in the values of Canadian and U.S. dollars can affect the value of our Company's common stock and any dividends the Company pays.

The Company's Relationship with Wendy's. The separation agreements with Wendy's may limit the Company's ability to affect future financings, acquisitions, dispositions, the issuance of additional securities and certain debt instruments, and to take certain other actions.

Mergers, Acquisitions and Other Strategic Transactions. The Company intends to evaluate potential mergers, acquisitions, joint venture investments, alliances, vertical integration opportunities and divestitures which are subject to many of the same risks affecting new store development. In addition, these transactions involve various other risks, including accurately assessing the value, future growth potential, strengths, weaknesses, contingent and other liabilities and potential profitability of acquisition candidates; the potential loss of key personnel of an acquired business; the Company's ability to achieve projected economic and operating synergies; difficulties successfully integrating, operating, maintaining and managing newly-acquired operations or employees; difficulties maintaining uniform standards, controls, procedures and policies; the possibility the Company could incur impairment charges if an acquired business performs below expectations; unanticipated changes in business and economic conditions affecting an acquired business; and diversion of management's attention from the demands of the existing business. In addition, there can be no assurance that the Company will be able to complete desirable transactions, for reasons including a failure to secure financing, as a result of the Company's arrangements with Wendy's, or restrictive covenants in debt instruments or other agreements with third parties, including the Maidstone Bakeries joint venture arrangements.

Debt Obligations. The Company's significant debt obligations could have adverse consequences, including increasing the Company's vulnerability to adverse economic, regulatory, and industry conditions, limiting the Company's ability to compete and its flexibility in planning for, or reacting to, changes in its business and the industry; limiting the Company's ability to borrow additional funds, and requiring the Company to dedicate significant cash flow from operations to payments on debt (and there can be no assurance that the Company's cash flow will be sufficient to service its debt), thereby reducing funds available for working capital, capital expenditures, acquisitions, and other purposes. In addition, the Company's credit facilities include restrictive covenants that limit its flexibility to respond to future events and take advantage of contemplated strategic initiatives.

Other Factors Affecting the Company. The following factors could also cause actual results to differ from expectations: an inability to retain executive officers and other key personnel or attract additional qualified management personnel to meet business needs; and inability to adequately protect the Company's intellectual property and trade secrets from infringement actions or unauthorized use by others; operational or financial shortcomings of franchised restaurants and franchisees; liabilities and losses associated with owning and leasing significant amounts of real estate; new and significant legal, accounting, and other expenses to comply with public-company corporate governance and financial reporting requirements; failure to implement or ineffective maintenance of securities

compliance, internal control processes, or corporate governance; implementation of new or changes in interpretation of U.S. GAAP policies or practices; and, potential unfavorable variance between estimated and actual liabilities and volatility of actuarially-determined losses and loss estimates.

Readers are cautioned not to place undue reliance on forward-looking statements contained in this news release, which speak only as of the date thereof. Except as required by federal or provincial securities laws, the Company undertakes no obligation to publicly release any revisions to the forward-looking statements contained in this release, or to update them to reflect events or circumstances occurring after the date of this release, or to reflect the occurrence of unanticipated events, even if new information, future events, or other circumstances have made them incorrect or misleading.