

EXECUTION VERSIONSHAREHOLDERS AGREEMENT

THIS SHAREHOLDERS AGREEMENT (“Agreement”) is made as of this 1st day of October, 2014, by and among ROBERT W. BURNS, an individual residing at 8955 Rivershore Drive, Niagara Falls, New York 14304 (“Robert”), JASON R. BURNS, an individual residing at 4641 Creek Road, Lewiston, New York 14092 (“Jason”) (each of Robert and Jason shall hereinafter be referred to individually as a “Shareholder” and collectively as the “Shareholders”), and C.R.B. HOLDINGS INC., a New York corporation with an office for the transaction of business at 2019 River Road, Niagara Falls, New York 14304 (the “Corporation”).

WITNESSETH:

WHEREAS, the Corporation is engaged in the business of owning and operating a number of Tim Hortons franchises in and around Niagara County, New York (the “Business”);

WHEREAS, the issued and outstanding capital stock of the Corporation on the date hereof consists of one hundred (100) shares of common stock, all of which is currently owned of record and beneficially by the Shareholders in the respective amounts set forth below:

<u>Shareholder</u>	<u>Shares</u>
Robert	85.0
Jason	15.0

WHEREAS, the Shareholders and the Corporation are desirous of entering into an agreement (i) creating certain rights and imposing certain restrictions with respect to their ownership of such stock in the Corporation and (ii) providing for the purchase of the capital stock owned by Jason under certain circumstances.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties set forth herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS**

1.1 Definitions. As used in this Agreement, the terms below shall have the following meanings:

(a) “Agreed Price” means Five Thousand Dollars (\$5,000.00) per Share (as hereinafter defined). The Agreed Price may be amended or modified from time to time by the Shareholders using the form attached hereto as Exhibit A.

(b) “Book Value” means book value per Share, as determined in accordance with generally accepted accounting principles consistently applied as of the end of the calendar quarter preceding the date of the closing of any purchase or sale of Shares hereunder, determined by the certified public accountant or certified public accounting firm then servicing the Corporation, which determination shall be final and conclusive and binding on all parties. “Book

Value shall include the cash surrender value, excluding proceeds, of any insurance policy owned by the Corporation on the life of a Shareholder.

(c) **"Purchase Price"** means the greater of: (i) the Agreed Price per Share; or (ii) the Book Value per Share.

(d) **"Share"** or **"Shares"** means any share or shares of capital stock of the Corporation which are now owned or may hereafter be acquired.

(e) **"Transfer"** means to sell, donate, assign, mortgage, pledge, hypothecate, encumber, gift, bequeath or otherwise transfer or dispose of in any manner whatsoever, whether voluntarily or involuntarily, by bankruptcy, insolvency, reorganization, decree, order or operation of law or otherwise, or attempt or agree to do any of the foregoing actions.

ARTICLE II

RESTRICTIONS ON TRANSFER; PERMITTED TRANSFER

2.1 **Restrictions on Transfer by Jason.** Jason hereby expressly covenants and agrees that he will not Transfer any of his Shares except in accordance with the provisions of this Agreement. Any purported Transfer by Jason of his Shares in violation of the terms of this Agreement shall be void and of no force or effect whatsoever. Compliance with the provisions of this Agreement is a condition precedent to the Transfer by Jason of any of his Shares and to the recording of such Transfer upon the books of the Corporation. The restrictions on Transfer herein set forth shall not apply to Robert.

2.2 **Permitted Transfer.** Notwithstanding the foregoing or any other provision of this Agreement to the contrary, Jason may Transfer any or all of his Shares to Robert. Any Transfer of Shares by Jason to Robert pursuant to this Section 2.2 shall not be subject to any of the restrictions set forth in this Agreement.

ARTICLE III

PURCHASE UPON CERTAIN EVENTS

3.1 **Purchase of Shares Upon Death of Jason.** Upon the death of Jason, the Corporation shall purchase from the estate of Jason, and the estate of Jason shall sell to the Corporation, all (but not less than all) of the Shares which Jason owned at the time of his death, for the purchase price and upon the other terms specified in Section 3.5 below. The consummation of any purchase of Jason's Shares by the Corporation shall take place on a date not more than sixty (60) days following the date of the appointment, by a court of competent jurisdiction, of the executor/executrix or other representative for the estate of Jason.

3.2 **Purchase of Shares Upon Disability of Jason.** For purposes of this Agreement, Jason shall be considered **"Disabled"** if, in the written medical opinion of an independent medical physician selected by the Corporation, he has been unable, by reason of physical or mental incapacity, to perform his normal responsibilities as an officer and/or employee of the Corporation for a period of eight (8) consecutive months or ten (10) non-consecutive months out of any consecutive twelve (12) month period. In the event that Jason shall become Disabled, the

Corporation shall purchase from Jason, and Jason shall sell to the Corporation, all (but not less than all) of the Shares which Jason owned at the time of his Disability, for the purchase price and upon the other terms specified in Section 3.5 below. The consummation of any purchase of Jason's Shares by the Corporation shall take place on a date not more than sixty (60) days following the date of Disability.

3.3 Purchase of Shares Upon Retirement of Jason. In the event that Jason shall retire as an employee of the Corporation upon or any time after attaining the age of sixty-five (65), the Corporation shall purchase from Jason, and Jason shall sell to the Corporation, all (but not less than all) of the Shares which Jason owned at the time of his retirement as an employee of the Corporation, for the purchase price and upon the other terms specified in Section 3.5 below. The consummation of any purchase of Jason's Shares by the Corporation shall take place on a date not more than sixty (60) days following the effective date of Jason's retirement from the Corporation.

3.4 Optional Purchase of Shares Upon Termination of Employment of Jason. In the event that Jason shall cease to be an employee of the Corporation for any reason, the Corporation shall have the option to purchase from Jason any or all of the Shares which Jason owned at the time of his termination as an employee of the Corporation, for the purchase price and upon the other terms specified in Section 3.5 below. The right of the Corporation to purchase all or any portion of the Shares then owned by Jason shall be exercisable by giving written notice to Jason within thirty (30) days following the effective date of the termination of his employment. In the event that the Corporation shall exercise such option, the Corporation shall be required to purchase, and Jason shall be required to sell, such Shares owned by Jason. The consummation of any purchase of Jason's Shares by the Corporation shall take place on a date not more than sixty (60) days following the effective date of the termination of the employment of Jason.

3.5 Purchase Price: Closing.

(a) Purchase Price.

(i) The purchase price for any Shares purchased pursuant to Sections 3.1, 3.2, 3.3 and 3.4 above shall be the Purchase Price.

(ii) The Corporation shall pay the Purchase Price in cash or by wire transfer of immediately available funds. Notwithstanding the foregoing, the Corporation shall have the option, in its sole discretion, to pay a maximum of seventy-five percent (75%) of the Purchase Price by promissory note, which promissory note shall be upon the following terms: (A) seven (7) equal annual installments of principal and interest, the first such installment to be paid not more than sixty (60) days from the date of closing; (B) interest to accrue at a per annum rate equal to the Wall Street Journal Prime Rate as reported on the date of the closing or, if not reported on such date, on the prior date nearest thereto; and (C) no prepayment penalty.

(b) Closing. The closing of any sale and purchase of Shares pursuant to Sections 3.1, 3.2, 3.3 and 3.4 above shall take place at the then principal office of the Corporation.

**ARTICLE IV
OTHER ACTIONS**

4.1 **By Jason.** In consideration of Robert permitting the reduction of criminal charges initiated by him, as complaining witness against Jason in the Wheatfield Town Court (P.L. 240.26-1) on October 14, 2009, and other valuable consideration, Jason hereby agrees that if, at any time, he should assault, strike, harass, menace, threaten or otherwise intentionally harm Robert, as evidenced and attested to by an affidavit of Robert of such occurrence setting forth the time, date and place of such occurrence, and after (i) giving Jason notice of same and reasonable time to controvert such charges and (ii) final determination by Robert, in his sole discretion, of the validity of such charges, the following provisions, and the rights and remedies therein, shall become immediately effective and enforceable:

(a) Article III of this Agreement in its entirety, as to the rights of Jason, shall be cancelled and null and void and of no effect whatsoever;

(b) Jason shall forfeit all of his Shares and, in connection therewith, convey any and all such Shares to the Corporation and/or to Robert, in Robert's sole discretion, without payment or other remuneration of any kind whatsoever;

(c) Jason shall resign as an officer, director and employee of the Corporation;

(d) Any and all other rights, remedies and powers of Jason under this Agreement shall be cancelled and null and void and of no effect whatsoever;

(e) Jason shall release, discharge and acquit Robert and the Corporation from and against any and all claims, demands, causes of actions, liabilities or other obligations he may have against Robert and/or the Corporation; and

(f) Jason shall forfeit and turn over or destroy, at the option of the Corporation, any and all documents and other property in his possession related to the Corporation and/or its Business.

4.2 **No Limitation.** Nothing herein shall be deemed to limit or otherwise restrict Robert from bringing any action or claim against Jason in connection with his employment and/or position as an officer, director or shareholder of the Corporation, in law or in equity, as a result of any acts of Jason, including, without limitation, the acts enumerated in Section 4.1 above.

4.3 **Confidentiality.** The parties hereto hereby covenant and agree that any of the acts of Jason enumerated in Section 4.1 above, if they shall be alleged to occur, shall at all times be deemed and kept confidential and shall not be revealed to any third party; provided, however, that any such acts which are criminal in nature may be disclosed to the police or other proper authority.

ARTICLE V
NON-COMPETITION AND NON-SOLICITATION

5.1 **Non-Competition; Non-Solicitation.** Jason hereby covenants with the Corporation and Robert, at any time he is an officer, director, employee or agent (collectively, "**Agent**") of the Corporation and for a period of eighteen (18) months following the date that he is no longer an Agent, Jason will not, directly or indirectly, through an affiliate or otherwise:

(a) In Niagara County, New York and within a radius of fifteen (15) miles of any retail location in which the Business is conducted, engage in, own, operate, manage, join, finance, control or participate in the ownership, management, operation or control of, or be paid or employed by or acquire any securities of, or otherwise become associated with or provide assistance to, any person, entity, activity or enterprise (other than as a five percent (5%) or less shareholder of a publicly held corporation) in any way similar to or competitive with the Business of the Corporation;

(b) Divert or attempt to divert any business from the Corporation or engage in any act which causes or is likely to cause any present or future customer of the Corporation to discontinue or curtail its business with the Corporation or to do business with another person, entity, activity or enterprise; or

(c) Solicit, cause or seek to cause any employee of the Corporation to terminate, curtail or otherwise modify his or her employment relationship with the Corporation for the purpose of entering into an employment or other relationship with Jason or any person, entity, business activity or enterprise with which Jason is affiliated.

5.2 **Injunctive Relief.** The parties hereto hereby stipulate that a breach of the provisions of this Article V will result in irreparable damage and injury to the Corporation for which no money damages could adequately compensate it. If Jason breaches the provisions of this Article V, in addition to all other remedies to which the Corporation may be entitled, the Corporation shall be entitled to an injunction to enforce the provisions of this Agreement, to be issued by any court of competent jurisdiction, to enjoin and restrain Jason and each and every person or entity concerned or acting in concert with Jason from the continuance of such breach. Jason expressly waives any claim or defense that an adequate remedy at law might exist for any such breach.

5.3 **Reformation.** The parties hereto hereby acknowledge and agree that the restrictions set forth in this Article VI are founded on valuable consideration and are reasonable in duration and geographic area in view of the circumstances under which this Agreement is executed and that such restrictions are necessary to protect the legitimate interests of the parties. In the event that any provision contained in this Article V shall be deemed to exceed the time or geographic limits or any other limitation imposed by applicable law in any jurisdiction, then such provision shall be deemed reformed in such jurisdiction to the maximum extent permitted by applicable law.

**ARTICLE VI
MISCELLANEOUS**

6.1 **Subchapter S Election.** Notwithstanding any other provision of this Agreement, a Shareholder may not Transfer any Shares if, in the opinion of counsel for the Corporation, such Transfer would cause the termination of the Corporation's election (if any) as an S corporation under Section 1362 of the Code. Any Transfer in violation of this provision shall be void and of no force or effect whatsoever, and will not be recorded on the books of the Corporation. The Corporation shall not issue any shares of stock of the Corporation to any Person if in the opinion of counsel for the Corporation such issuance would cause the termination of the Corporation's election (if any) as an S corporation under Section 1362 of the Code. The Shareholders shall also vote their Shares, execute such necessary documents, take such other required actions and otherwise use their best efforts to secure and maintain such S Corporation election.

6.2 **Further Action: Resignation.** Jason hereby agrees to take any and all such steps and measures and to do such acts and things as may be reasonably necessary or appropriate to carry out the provisions of this Agreement, subject to applicable law. Upon the closing of any sale of all of the Shares owned by Jason, Jason shall execute and deliver to the Corporation Jason's resignation as an officer, director and employee of the Corporation.

6.3 **Equitable Relief.** It is understood and agreed that in the event the obligations of the parties are not performed in accordance with the provisions hereof, immediate irreparable injury would be caused for which there is no adequate remedy at law. In the event of a breach or threatened breach by any party of any of his or its respective obligations under this Agreement, the non-breaching party shall be entitled to an injunction restraining such breach or threatened breach and to enforce his or its rights hereunder by specific performance or other equitable relief. Nothing contained herein shall be construed to prohibit such non-breaching party from pursuing any other remedy available to him or it under applicable law.

6.4 **Additional Shares Covered by Agreement.** This Agreement shall apply not only to the Shares now owned by Jason as hereinabove provided, but also to all of the shares of the stock of the Corporation which Jason may hereafter acquire while a party to this Agreement.

6.5 **Legend.** The parties agree that each certificate representing any of the Shares shall be endorsed with a legend in substantially the following form:

**"THE SHARES REPRESENTED BY THIS CERTIFICATE
ARE TRANSFERABLE ONLY UPON COMPLIANCE WITH
PROVISIONS OF A CERTAIN SHAREHOLDERS
AGREEMENT, DATED OCTOBER 1, 2014, BY AND
AMONG ROBERT W. BURNS, JASON R. BURNS AND
C.R.B. HOLDINGS INC., A COPY OF WHICH IS ON FILE IN
THE PRINCIPAL OFFICES OF C.R.B. HOLDINGS INC. NO
SHARES REPRESENTED BY THIS CERTIFICATE MAY BE
SOLD, DONATED, ASSIGNED, MORTGAGED, PLEDGED,
HYPOTHECATED, ENCUMBERED, BEQUEATHED,**

**GIFTED, OR OTHERWISE TRANSFERRED OR DISPOSED
OF IN ANY MANNER UNLESS MADE IN ACCORDANCE
WITH THE AFORESAID AGREEMENT.”**

6.6 Termination of Agreement. This Agreement shall remain in full force and effect until the earlier of:

- (a) the liquidation, dissolution, bankruptcy or receivership of the Corporation;**
- (b) the sale or other disposal by the Shareholders of all of their Shares in accordance with the provisions of this Agreement;**
- (c) one (1) Shareholder owning and holding all of the Shares; or**
- (d) the written agreement of the Corporation and both Shareholders.**

6.7 Notices. All notices required to be given to any party hereunder shall be in writing and sent by certified mail to such party at the address hereinabove set forth, or at such other address as such party shall specify to the other parties in writing.

6.8 Governing Law. This Agreement shall be governed by and construed under the laws of the State of New York, without regard to principles of conflicts of law.

6.9 Dispute Resolution. Any dispute arising from, out of, or in connection with this Agreement (except for requests for injunctive or other equitable relief) shall be settled exclusively by arbitration. Such disputes shall be submitted to arbitration in Niagara County, New York, and shall be conducted in accordance with the rules of arbitration of the American Arbitration Association then in force. Each party shall cooperate with the other party in making full disclosure of and providing complete access to all information and documents requested by the other party in connection with such proceedings, subject only to any confidentiality obligations binding on such party. The arbitration award shall be final and binding upon both parties. The costs of the arbitration and the attorneys' fees of the parties shall be as fixed by the arbitration tribunal. The parties shall keep confidential the arbitration proceedings and the terms of any arbitration award, except as may be otherwise required by law. During the period when a dispute is being resolved, the parties shall in all other respects continue their implementation of this Agreement.

6.10 Parties Bound. This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective executors, heirs, administrators, successors and permitted assigns.

6.11 Amendment. This Agreement may not be modified or amended except pursuant to a writing executed by all parties.

6.12 Assignment. No party shall have the right to assign any of its rights, duties or obligations hereunder, without the prior written consent of the other parties. Any proposed assignment in contravention of this Section shall be deemed null and void.

6.13 **Severability.** If any provision hereof shall be determined to be invalid or unenforceable, the remainder hereof shall continue in full force and effect.

6.14 **Further Actions.** The parties acknowledge and agree that they shall each promptly execute and deliver any and all additional instruments and documents necessary or appropriate in order to effectuate the purposes and provisions hereof.

6.15 **Entire Agreement.** This Agreement constitutes the entire agreement by and between the parties regarding the subject matter contained herein and supersedes all prior and contemporaneous undertakings and agreements by and between the parties, whether written or oral, with respect to such subject matter herein, including, without limitation, that certain Buy-Sell Agreement, dated November 14, 2007, by and among the Corporation, Robert and Jason, as amended by that certain Amendment and Modification thereto, dated January 28, 2010.

6.16 **Headings.** The headings used herein are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent, meaning or intent of this Agreement.

6.17 **Recitals.** The defined terms set forth in the recitals to this Agreement and in the introductory paragraph preceding the recitals are hereby incorporated and made a part of this Agreement.

6.18 **Counterparts.** This Agreement may be executed and delivered by electronic or facsimile signature and/or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, notwithstanding that each of the parties are not a signatory to the original or the same counterpart.

6.19 **Waiver.** Any agreement on the part of a party to any extension or waiver of any obligation of any other party hereunder shall be valid only if set forth in an instrument in writing signed on behalf of such party. A waiver by one party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty or as a waiver by any other party. A waiver by any party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time.

6.20 **Interpretation.** The use of the masculine, feminine or neuter gender or the singular or plural form of words herein shall not limit any provision of this Agreement. All pronouns and any variation thereof shall be deemed to refer to the masculine feminine, neuter, singular and/or plural as the identity of the person or the context may require. The use of the terms "including" or "include" shall in all cases herein mean "including, without limitation" or "include, without limitation," respectively. Reference to any individual or entity includes such individual's or entity's successors and assigns to the extent such successors and assigns are permitted by the terms of any applicable agreement, law or statute, and reference to an individual or entity in a particular capacity excludes such individual or entity in any other capacity or individually. Reference to any law means as amended, modified, codified, replaced or re-enacted, in whole or

in part, and in effect on the date hereof, including rules, regulations, enforcement procedures and any interpretations promulgated thereunder. The use of the terms "hereunder," "hereof," "hereto" and words of similar import shall refer to this Agreement as a whole and not to any particular Article, Section or clause of or Exhibit to this Agreement.

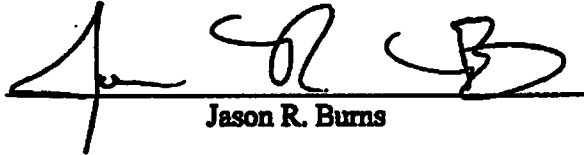
6.21 Separate Counsel. Each party to this Agreement acknowledges and agrees that such party has been provided the opportunity and encouraged to consult with counsel of such party's own choosing with respect to this Agreement and that no party other than the Corporation has engaged Damon Morey LLP to represent his interests. Each party has negotiated, reviewed and entered into this Agreement of their own free will and by the exercise of their own independent judgment after having an opportunity to be represented by legal counsel of their own choice and selection.

6.22 Savings Clause. In the event any state or federal laws or regulations now existing or enacted or hereafter promulgated are interpreted by judicial decision, a regulatory agency or legal counsel of both parties in such manner as to indicate that some or all of the provisions of this Agreement may be in violation of such laws and regulations, the parties shall use their best efforts to amend this Agreement as necessary or appropriate under the circumstances. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between the parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have hereto executed this Agreement as of the day and year first above written.


Robert W. Burns


Jason R. Burns

C.R.B. HOLDINGS INC.


By: 
Authorized Officer

EXHIBIT A

Agreed Price Per Share

Reference is hereby made to that certain Shareholders Agreement, dated October 1, 2014, by and among Robert W. Burns ("Robert"), Jason R. Burns ("Jason"), and C.R.B. Holdings Inc., a New York corporation (the "Agreement"). All capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

Pursuant to Section 1.1(a) of the Agreement, Jason and Robert hereby agree that the Agreed Price per Share shall be \$ _____.

Agreed to this ____ day of _____, 20__.

Robert W. Burns

Jason R. Burns