

## **TNIBD – TCC Agreement to Purchase and Sell**

THIS PURCHASE AGREEMENT (this “Agreement”) is made the 3<sup>rd</sup> day of May 2019, between Timberlane Country Club (the “Seller”) and Timberlane Neighborhood Improvement and Beautification District (the “Purchaser”).

### **This Agreement is Conditioned and Contingent Upon the following:**

**(1) the approval or ratification of Seller’s shareholders and the approval or ratification of Purchaser’s Board of Commissioners, and**

**(2) the approval/passage of the proposition submitted at a special election to be held on Saturday, May 4, 2019, to all registered voters residing in the Timberlane Neighborhood Improvement and Beautification District (the “District”) and qualified and entitled to vote at the said election that the District, be authorized to levy and collect a special assessment in an amount not to exceed One Thousand Nine Hundred Fifty Dollars (\$1,950) on all property subject to taxation within the District.**

**Upon approval or ratification of (1) and approval/passage of (2), this agreement shall be retroactively effective to the date of execution hereof (“Effective Date”).**

### **ARTICLE 1: AGREEMENT TO SELL AND TO PURCHASE**

Upon the terms and conditions herein provided, Seller agrees to sell and Purchaser agrees to purchase the following generally described property (collectively, the “Total Property”):

The immovable (real) property owned by Seller located in the Parish of Jefferson, State of Louisiana, within that area designated as Timberlane Neighborhood Improvement and Beautification District, together with all servitudes, rights of way, rights, claims and appurtenances thereto, all buildings, other constructions and improvements located thereon, and all component parts thereof, and all of Seller’s rights, title, and interest in all streets, ways, alleys, servitudes and public ways adjoining the same (collectively, the “Real Property”).

All of Seller’s right, title and interest in all leases of the Real Property or any part or portion thereof, including leases which may be made by Seller after the Effective Date and prior to the Closing (as defined in Section 4) as permitted and/or required by this Agreement (the “Leases”).

All of Seller’s right, title and interest in the equipment, machinery, furniture, furnishings, supplies and other tangible movable (personal) property, if any, owned by Seller and now or hereafter located in and used in connection with the operation, ownership or management of the Real Property, but specifically excluding any items of personal property owned by tenants at or on the Real Property (collectively, the “Tangible Property”).

All of Seller’s right, title and interest in all intangible movable (personal) property related to the Real Property and the improvements, including, without limitation: warranties (to the extent assignable); contract rights related to the construction, operation, ownership or management of the Real Property, if any (but only to the extent assignable and Seller’s obligations thereunder are expressly assumed by Purchaser); governmental permits, approvals and licenses, if any (to the extent assignable);

and telephone exchange numbers (to the extent assignable) (collectively, the "Intangible Movable Property").

#### ARTICLE 2: PURCHASE PRICE

The purchase price for the Total Property ("Purchase Price") shall be the assumption of the total of the balances due in payment of Seller's obligation to pay the following indebtedness:

a. Small Business Administration Note made by Seller payable to SBA dated June 16, 2006 in the original principal amount of \$750,000.00 secured by a Mortgage on a portion of the Total Property recorded in MOB 4272 folio 705, Jefferson Parish, Louisiana ("SBA Secured Note 1").

b. Small Business Administration Note made by Seller payable to SBA dated July 9, 2013 in the original principal amount of \$827,800.00 secured by a Mortgage on a portion of the Total Property recorded in MOB 4583 folio 989, Jefferson Parish, Louisiana ("SBA Secured Note 2").

Seller warrants that the combined total balance due on SBA Secured Note 1 and SBA Secured Note 2 at Closing shall not exceed the sum of \$1,300,000.00.

c. Promissory Note(s) made by Seller secured by Mortgage to Secure Future Advances not to exceed \$300,000.00 in favor of Hollis B. Eddins and Sharon Corte Eddins dated December 10, 2018 on a portion of the Total Property recorded in MOB 4808 folio 601, Jefferson Parish, Louisiana

Seller warrants that the balance due on the indebtedness secured by the mortgage described in c directly above shall not exceed the amount of \$300,000.00.

#### ARTICLE 3: TITLE

If Seller fails or is unable to cure Title Objections, Purchaser, at its option, may terminate this Agreement by written notice to Seller given on or before the time fixed for Closing in this Agreement. Purchaser's failure to terminate this Agreement will not be a waiver of Seller's obligation to deliver to Purchaser at Closing good and merchantable title to (full ownership interest in) the Real Property, free and clear of all mortgages, privileges, liens, security interests, encumbrances, and assessments (except those described in Section 2 above), and if Purchaser elects to go forward with the sale, Seller shall be obligated to have all such other mortgages, liens, encumbrances, and assessments satisfied at or before the Closing.

If the Contingencies are not satisfied in Purchaser's sole discretion, then Purchaser may, in its sole discretion, waive any of the Contingencies or Purchaser may terminate this Agreement, by written notice to Seller given before the Closing, after which neither Seller nor Purchaser shall have any further rights, duties or obligations under this Agreement.

#### ARTICLE 4: CLOSING

The closing of the sale and purchase of the Property (the "Closing") shall take place on any date on or before June 1, 2020, at the request of Purchaser.

At Closing, the following shall occur, subject to satisfaction of all of the terms and conditions of this Agreement:

- (a) Seller shall convey to Purchaser good and merchantable title to (full ownership

interest in) the Property free and clear of all mortgages, privileges, security interests, tenancies (except for those listed in Section 2 above) and any other tenancies to which Purchaser consents in writing prior to or on the date of the Closing), encumbrances, and liens whatsoever, and free of all other encumbrances whatsoever other than title exceptions that have been accepted by Purchaser, which title will be conveyed by authentic act of sale, duly executed by Seller, witnessed and notarized and in recordable form;

(b) Seller shall deliver to Purchaser such evidence or documents as may be reasonably required by Purchaser or the Title Company evidencing the status and capacity of Seller and the authority of the person or persons that are executing the various documents on behalf of Seller in connection with the sale of the Property, including, but not limited to, a good standing certificate from the Secretary of State of Louisiana and corporate, limited liability company or partnership resolutions or consents, if applicable;

(c) Seller shall deliver to Purchaser or the Title Company such Owner's Affidavit as may be required by the Title Company, including a "gap" indemnity agreement and, if required by the Title Company, an affidavit to delete all "printed form" or "standard" exceptions to coverage, including rights of parties in possession, unrecorded easements, servitudes, judgments or other claims and mechanic's or materialmen's liens or claims of lien;

(d) Seller shall deliver to Purchaser such other instruments and documents which Purchaser and/or the Title Company may reasonably require, including, without limitation, such other instruments and documents as shall be reasonably necessary to convey title to the Property to Purchaser, to comply with any provisions of the Internal Code of 1986, as amended, related to the sale of the Property, and otherwise to consummate the conveyance of the Property;

(e) Seller shall deliver to Purchaser estoppel letters of certificates from each lessee or tenant at the Property stating: (1) the date of commencement and the scheduled date of termination of the Lease; (2) that the Lease is in full force and effect and that there have been no modifications or amendments thereto; and (3) that there is no default under the terms of the Lease by lessor or lessee.

(f) Each party shall deliver signed copies of a closing statement, and

Closing Costs will be paid as follows:

(a) At Closing, Seller shall pay (1) all costs incurred in the curing of any Title Objections (including the expenses, if any, of any title insurance endorsements or affirmative coverages agreed to by Seller in connection with the satisfaction of any Title Objections); (2) the fees and expenses of Seller's attorneys; (3) the expenses of all certificates; and (4) any other costs and expenses incurred by Seller, or agreed to be paid by Seller herein.

(b) At Closing, Purchaser shall pay (1) the fees and expenses of Purchaser's attorneys; (2) any premiums in connection with the title insurance policy (except for any added expenses incurred in connection with any title insurance endorsements or affirmative coverages in connection with the satisfaction of Title Objections); (3) the costs of recording the act of sale; (4) the costs of the Survey, and (5) any other costs and expenses incurred by Purchaser or agreed to be paid by Purchaser herein

All ad valorem and similar taxes and assessments, all rents from the Leases, all utility charges, and any or all other assessments, charges or receivables due or owing with respect to the Property for the calendar year of the Closing shall be prorated between Purchaser and Seller as of midnight of the day before the Closing Date, based on the most current and accurate information available.

## ARTICLE 5: AGREEMENT CONDITIONAL

There are no claims, causes of action or other litigation or proceedings pending or, to the best of Seller's knowledge, threatened in respect to the ownership, operation or environmental condition of the Property or any part thereof (including threatened or contemplated eminent domain proceedings or disputes with mortgagees, governmental authorities, utility companies, contractors, adjoining land owners or suppliers of goods or services), except for claims which are fully insured and as to which the insurer has accepted defense without reservation.

There are no violations of any health, safety, pollution, zoning or other laws, ordinances, rules or regulations with respect to the Property, which have not been heretofore entirely corrected. In the event Seller has knowledge of any such violations, Seller shall: (i) immediately provide Purchaser with copies of all documents evidencing any such violation and (ii) cure such violations prior to Closing. To the best of Seller's knowledge, no portion of the Property has been determined by any regulatory body to be a "wetland."

Subsequent to the date hereof and until the Closing, Seller shall maintain the Property in its current physical condition and quality, ordinary wear and tear excepted, and shall operate the Property in the same manner in which it is currently operated.

Seller shall use its best good faith efforts to have executed the leases with Café Hope on terms and conditions approved by Purchaser in its discretion.

In order to induce Seller to execute, deliver and perform this Agreement and without regard to any independent investigations made by Purchaser, Purchaser represents and warrants to Seller on and as of the date of execution and delivery of this Agreement and as of the Closing Date, that Purchaser has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by Purchaser pursuant hereto, subject to express conditions on page one. This Agreement and all documents to be executed pursuant hereto by Purchaser are and shall be binding upon and enforceable against Purchaser in accordance with their respective terms.

## ARTICLE 6: DEFAULT

If any of Purchaser's representations or warranties proves false or inaccurate in any respect or if Purchaser violates this Agreement or if Purchaser fails to comply with its obligations hereunder, then Purchaser shall be in default, and Seller shall be entitled to terminate this Agreement by written notice to Purchaser. In no event will Seller be entitled to any other damages or to specific performance hereunder regardless of the reason for Purchaser's refusal to go forward with the purchase of the Property or other defaults.

In the event that any of Seller's representations or warranties proves false or inaccurate in any respect or if Seller violates this Agreement or fails to comply with its obligations hereunder, then Seller shall be in default, and Purchaser may, at its option, either: (i) terminate this Agreement by written notice to Seller or (ii) have the right to specific performance or any other remedies available to it at law or in equity.

If Seller or Purchaser incurs any attorney's fees or other litigation expenses in any action for

enforcement of this Agreement, then the party prevailing in such enforcement action shall be entitled to reimbursement from the other for such fees and expenses.

ARTICLE 7: MISCELLANEOUS

This Agreement shall be governed by and interpreted and construed under the laws of the State of Louisiana.

This Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of each of the parties to this Agreement.

If any provision of this Agreement or the application of any provision to any person or circumstance is or becomes invalid or unenforceable to any extent, then the remainder of this Agreement and the application of such provisions to any other person or circumstances shall not be affected by such invalidity or unenforceability and shall be enforced to the greatest extent permitted by law.

All of the representations, warranties, obligations and indemnities contained herein shall survive the Closing and/or the rescission, cancellation, termination or consummation of this Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the date first above written.

PURCHASER:

Timberlane Neighborhood Improvement and  
Beautification District

By: 

Jon McGill, Chairman

SELLER:

Timberlane Country Club

By: 

Charles "Chip" Rosen, President