

LETTER OF INTENT

DATE: January 3, 2020

FROM: Kelton Enterprises, LLC
2635 Millersport Highway
Getzville, NY 14068
Attn: David Beaton, Chief Executive Officer
E-Mail: davidbeaton@keltonenterprises.com
Office: (716) 639-3701, Ext. 520
Mobile: (716) 445-0531

TO: C.R.B. Holdings, Inc.
2019 River Road
Niagara Falls, NY 14304
Attn: Robert W. Burns, President
E-Mail: crburnzie@aol.com
Mobile: (716) 283-1232

RE: Proposal to Acquire Seven (7) Tim Hortons Restaurants

Dear Mr. Burns:

We have discussed the prospect of (i) our purchase of the assets (excluding real property) in seven (7) of your Tim Hortons® restaurants (each, a "Restaurant" and collectively, the "Restaurants"), as more specifically described in Exhibit A, attached hereto and incorporated herein, and (ii) the assignment of two (2) of your property leases, as more fully described in Exhibit B, attached hereto and incorporated herein (together, the "Leases"). Although our intention is to complete the acquisition, this proposal does not constitute a binding commitment or agreement by anyone. Any binding legal commitment between you and us, other than the confidentiality and exclusivity undertakings described herein, is subject to a final written and definitive agreement signed by both you and us.

The terms of our proposal are as follows:

- 1) Buyer. We will either be the buyer or we will form and organize a new legal entity or use an existing one (the "Buyer" or "we," "us" or "our") in a method and structure to best accomplish our objectives. The Buyer will be affiliated with us in some way, but will not necessarily be a subsidiary because it may have other ownership ("Buyer Affiliates").
- 2) Seller. The Seller of the Restaurants is CRB Holdings, Inc., a New York corporation ("Seller," "you" or "your"). Buyer and Seller shall be referred to as the "Parties".
- 3) Acquisition. You will sell substantially all of the assets comprising the Restaurants and ensure the proper assignment of the Leases to the Buyer (the "Acquisition") for a purchase price of no more than Five Million USD (\$5,000,000.00) (the "Price"). The final Purchase

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Price will ultimately be determined under the terms of Valuation Practice Handbook. The Parties acknowledge and agree that the office building located at 2019 River Road, Buffalo, NY 14207 and the 2012 Ford food truck, which are both owned by the Seller, shall be excluded from the Acquisition. The Price will be based on our mutual definitive written agreement (the "Purchase Contract") after evaluation of the prospects and resources of the Restaurants, including their legal status, financial condition, lease status and other relevant factors. The Parties acknowledge and agree that the Acquisition is subject to the (i) approval of Franchisor, as defined in Section 7(c) below, (ii) Lessors approval of the assignment of the lease rights described in Exhibit B, and (iii) satisfactory financing from a lender of Buyer's choosing.

- 4) Payment of Price. The Buyer will pay the Price as follows: \$5,000,000.00 at closing, in good and readily available funds by wire transfer ("Closing Day Payment").
- 5) Closing Date. The Parties shall utilize best efforts to close on the Acquisition no later than thirty (30) days following the Due Diligence Period in a mutually agreed upon manner (the "Closing Date").
- 6) Debts and Liabilities. The Buyer will not assume any debts, obligations or liabilities other than those that it specifically agreed upon. All liabilities and obligations not assumed will remain with Seller and Seller shall indemnify the Buyer, Buyer Affiliates, and each of their respective officers, directors, and members (collectively, the "Buyer Parties") from any debts and liabilities that arise from the operation of the Restaurants prior to the Closing Date. Similarly, Buyer shall indemnify the Seller from any responsibility in regard to the debts and liabilities of the Restaurants that arise on or after the Closing Date. In addition, provided that Seller discloses any non-Tim Hortons US approved programs, Buyer will (i) assume all of Seller's gift card liability under the Tim Hortons® gift card program and (ii) honor and assume any liability for any qualified and sanctioned promotional offers, discount coupons, and similar programs. This will be a Bulk Sale for NYS sales tax purposes. Purchaser will be responsible for filing notification prior to closing, filing for certificates of authority to collect sales tax at all locations prior to closing, and for paying sales tax on the value of the tangible property acquired in the transaction.
- 7) Assets to be Acquired. We will review the business operating assets of the Restaurants, including leases, contracts, inventory, furniture, fixtures and equipment, and other tangible personal property. Seller shall provide that the acquired assets are transferred free and clear of all liens, mortgages, security interests, taxes, encumbrances and claims or as a result of any debts or liability that the Buyer expressly assumes. Without limiting the foregoing, the assets we will acquire (the "Included Assets") include the following:
 - a) *Leasehold Rights*: To the extent assignable, the leasehold rights to the premises of the Restaurants under the existing lease agreements (the "Existing Leases") between the Seller and Seller's landlord (each, the "Landlord");
 - b) *Tangible Assets*: All of the tangible assets, including, but not limited to, all rights of any kind under any license of any kind, certificates of occupancy, and permits or

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approvals of any nature; the accounts receivable; maintenance and cleaning supplies; equipment necessary to the operation of the Restaurants including, but not limited to, pots, pans, burners, utensils, ovens, computers and electronic equipment; telephone system and phone numbers; furniture and fixed assets (all tangible assets sold AS IS, WHERE IS and subject only to transferrable original manufacturer warranties);

- c) **Franchise:** Reference is hereby made to that certain franchise agreement entered into by you and Tim Hortons USA, Inc. (the "Franchisor"), which granted you a franchise right to operate the Restaurants (the "Franchise Agreements"). We acknowledge that the Franchisor may have the first right of refusal to purchase the Restaurants. If the Franchisor does not exercise such right of first refusal, we must be approved by it and enter into its then current form of Franchise Agreements ("New Agreement") and comply with all its requirements, including, but not limited to, training and remodeling (if applicable). Seller will be responsible for paying the Franchisor's "Transfer Fee" equal to Five Percent (5%) of the purchase price and ensure that all transfer conditions of the Franchise Agreements are satisfied and providing all requisite information to the Franchisor;
 - d) **Records and Lists:** Copies of the following: customer lists, personnel files (for employees as of the Closing Date), operational procedures and office systems;
 - e) **Contracts:** To the extent assignable, all assumed contracts, vendor contracts (leased equipment, service contracts, etc.) and deposits and all rights to gift card revenue;
 - f) **Inventory:** The inventory of all consumables; and
 - g) **Goodwill:** Any goodwill garnered by the Restaurants during its time of existence that does not belong to the Franchisor due to its ownership of the trademarks utilized to operate the Restaurants.
- 8) **Excluded Assets.** Notwithstanding the foregoing, the Included Assets exclude the following assets of the Seller (collectively, the "Excluded Assets"):
- a) **Other Assets:** All assets of the Seller not used in connection with the Restaurants; and
 - b) **Entity Assets:** Taxpayer and other identification numbers, seals, minute books, membership transfer books, and blank membership certificates and other documents relating to the organization, maintenance, and existence of the Seller.
 - c) **Employees:** Purchaser shall have the exclusive right to determine which of Seller's employees to retain (or not).
- 9) **Right of First Refusal.** For a period beginning on the Closing Date and ending on the first anniversary thereof, Buyer shall be entitled to a right of first refusal to purchase the real

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estate upon which Store #9369 (2720 Military Road, Niagara Falls, NY 14303) is located (the "Real Estate"), in its entirety, which is owned by 2019 RR, LLC, a New York limited liability company. If, during the period set forth in this Section 9, (i) Seller receives an offer from another party to purchase the Real Estate and (ii) the Purchase Contract was fully executed, Seller shall notify Buyer in writing of the third party offer (the "Offer"). Buyer shall then have no less than fifteen (15) business days (the "Consideration Period") from its receipt of the Offer to either accept or reject the Offer. If Buyer does not respond to the Offer in writing within the Consideration Period, then Buyer's silence shall be deemed a rejection of the Offer and Seller shall have no further obligations to the Receiving Party with respect to the Real Estate.

- 10) Licenses and Permits. Seller shall cooperate in good faith with Buyer for Buyer to obtain any license or permit necessary for the operation of the Restaurants, including, without limitation, those issued by federal, state or local governmental agencies. Seller shall cooperate with Buyer in good faith for Buyer to obtain worker's compensation and unemployment coverage by providing Buyer with information about Seller's workers' compensation and unemployment compensation history with respect to the Restaurants.
- 11) Status of Existing Lease. As a condition to closing the Acquisition, you must give us copies of the Existing Leases for the Restaurants and facilitate the assignment thereof. You must also give us a summary of the principal terms, rental payments, and common area maintenance (CAM) charges and other related charges and related information so that we can understand the obligations represented by the Existing Leases. The Existing Leases must be satisfactory to us for us to proceed. Either the Landlord(s) consent must not be required to consummate the transaction, or you must give us the written consent of the Landlords in advance of the Closing Date. Before the closing, you must deliver to us an estoppel letter from the Landlord in form and substance satisfactory to us.
- 12) Assumption of Gift Cards and other Offers and Discounts. We will honor all outstanding gift cards and current or active online offers and discounts, excluding Groupon, Living Social, or any other similar deals.
- 13) No Assumption of Liabilities. Except as specifically described herein, we will not assume any of your liabilities or obligations, whether fixed, contingent, disclosed or undisclosed.
- 14) Reimbursements. Upon notice to Seller, the Buyer may pay certain bills and accounts payable accrued up to and through the Closing Date to the extent it is necessary to keep the Restaurants in operation without significant interruption. Seller shall indemnify the Buyer Parties and reimburse same promptly for any and all payments of such bills by it upon presentation of invoices or other demonstration of payment. Such reimbursement must be made within ten (10) business days of the date of notice to you. The Buyer may set off against any payments it must make to you, the amount of any payments it makes to your creditors or others relating to liabilities or obligations relating to the Restaurants accrued prior to the closing date, against the Closing Day Payment.

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- 15) **Customary Terms.** The Purchase Contract relating to the purchase of the Restaurants will include various collateral agreements and appropriate and customary representations, warranties and covenants concerning their financial condition, title to the assets, satisfactory condition of assets to be functional for the purposes intended, and operations conveyed and other appropriate items.
- 16) **Brokers.** Neither you nor we will be responsible for any broker's commissions and we will both indemnify each other and hold each other harmless from and against any such payment or obligation as a result of claims for brokerage commissions as a result of the consummation of the transactions described herein.
- 17) **Access to Information.** You will provide us with such information as we reasonably request regarding the Restaurants to enable us to fully evaluate the Acquisition.
- 18) **Confidentiality.** Between now and the Closing Date, you and we will keep confidential, and will not disclose, disseminate, leak, divulge or publish any of the trade secrets, business plans, financial information or other information (the "**Confidential Information**") about the Restaurants, except for purposes of furthering the Acquisition through disclosure to attorneys, accountants, representatives or other agents designed to assist in the Acquisition process or as may be required by applicable laws and regulations or to obtain required approvals (for licenses, lease and franchise approval). If the Acquisition is not consummated, you and we will each return to the other all documents and other information supplied to them by the other party, and all copies. Neither you nor we will utilize such information for any other purpose whatsoever.
- 19) **Expenses.** You and we will each pay all of our expenses incident to the Acquisition, including the fees of our respective attorneys, accountants and other representatives.
- 20) **Future Negotiations.** During the Due Diligence Period, you agree not to discuss or negotiate the sale of the Restaurants, in whole or in part, to anyone else while we conduct our investigation of the Acquisition. This restriction shall not apply to Seller's professional advisors (legal, financial, etc.).
- 21) **Due Diligence.** The Parties acknowledge and agree that Buyer will be entitled to a sixty (60) day due diligence period (the "**Due Diligence Period**"). Promptly after your acceptance of this proposal, we will commence our due diligence investigation. We will want to make certain verifying investigations in order to determine the general suitability of this transaction, including inspection of the Restaurants, Existing Leases, Franchise Agreements and related documentation. As a result of these investigations, it may be appropriate to modify the general terms of this proposal or to determine not to proceed any further.
- 22) **Conduct of the Business.** During the period from the date that this proposal is signed until the Closing Date or the termination date of this proposal, Seller shall (i) conduct its business and operations only in the ordinary and normal course, consistent with past practice and in a commercially reasonable manner, and to refrain from any extraordinary transactions and

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(ii) use its best efforts to preserve its business organization intact, retain the services of its present employees and preserve the present business relationships and goodwill of its customers, vendors and others having business relations with Seller.

23) Execution. This proposal be executed in one or more counterparts, and it is not necessary that signatures of all parties appear on the same counterpart, but such counterparts together will constitute a single binding agreement regarding the binding provisions between and among all parties hereto. Counterparts may be executed by hand or by any electronic signature complying with the U.S. Federal E-SIGN Act of 2000. Executed counterparts may be delivered via electronic mail or other similar transmission method, and any executed counterpart so delivered shall be valid and effective for all purposes.

24) Nature of Proposal. As we described, this letter is intended to serve solely as the basis for future negotiations. The final terms and conditions are subject to the mutual review and approval of the Parties, appropriate corporate action and any other approvals or consents that are necessary. If, for any reason, any of such approvals are not forthcoming, or any of the conditions of the transaction are not satisfied, or if this proposal is withdrawn by us for any reason, this proposal will not be of any force or effect, except for the confidentiality obligations and except for the confidentiality obligations, this proposal shall expire automatically if definitive agreements for the Acquisition are not entered into by the Closing Date, unless extended by written agreement of the Parties.

If this proposal meets with your understanding, please indicate by signing the duplicate copy and returning it to us. Please keep in mind that time is of the essence of this proposal and we would appreciate your prompt reply. Accordingly, we must receive from you the signed duplicate of this letter by 5:00 PM EST on January 10, 2020. If we do not receive signed duplicate of this letter, we will not proceed further with the Acquisition.

We look forward to your response.

Sincerely yours,

Kelton Enterprises, LLC

By: David Beaton

Name: David Beaton

Title: Chief Executive Officer

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THE TERMS AND CONDITIONS OF THIS PROPOSAL ARE ACCEPTED AND AGREED:

CRB Holdings, Inc.

By: _____
Name: Robert W. Burns
Title: President
Date: January _____, 2020

ACCEPTED AND AGREED AS TO SECTION 9 OF THIS PROPOSAL:

2019 RR, LLC

By: _____
Name: Robert W. Burns
Title: Sole Member and Manager
Date: January _____, 2020

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EXHIBIT A

RESTAURANTS

- 1. Store #4315
621 10th Street, Niagara Falls, NY 14301**

- 2. Store #5161
2970 Saunders Settlement Road, Sanborn, NY 14132**

- 3. Store #7199
4700 Military Road, Niagara Falls, NY 14305**

- 4. Store #7491
8500 Niagara Falls Boulevard, Niagara Falls, NY 14304**

- 5. Store #9305
3024 Pine Avenue, Niagara Falls, NY 14301**

- 6. Store #9369
2720 Military Road, Niagara Falls, NY 14304**

- 7. Store #11115
2248 Niagara Road, Niagara Falls, NY 14304**

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EXHIBIT B

LEASED PROPERTY

- 1. Lease of Retail Space at 402/430 Buffalo Avenue, Niagara Falls, NY 14303, which is owned and/or managed by Merani Hospitality, Inc.**
- 2. Ellicott Development Company Lease – Center Street & North 8th Street, Lewiston, NY 14092**