

**THE VILLAGE AT NEDERLAND SHOPPING CENTER**  
**RETAIL LEASE AGREEMENT**

THIS LEASE AGREEMENT (hereinafter the "Lease") is dated as of this 22 day of May 2008 and is by and between CARIBOU MERCANTILE COMPANY, INC., a Colorado corporation (hereinafter the "Landlord") and CAROUSEL OF HAPPINESS, INC., a Colorado not for profit corporation (hereinafter the "Tenant.")

**RECITALS**

A. Landlord is the owner of certain real estate legally described as follows:

Lot 1, Big Springs Park Meadows Subdivision No. 2, Town of Nederland, County of Boulder, State of Colorado

and commonly known as 20 Lakeview Drive, Nederland, Colorado 80466 (hereinafter the "Real Estate.") The Real Estate is improved with a shopping center complex, ancillary parking and pedestrian improvements (hereinafter the "Improvements") (the Real Estate and improvements are collectively referred to as the "Property.")

B. Tenant is desirous of leasing a certain portion of the Property from Landlord pursuant to the terms and conditions contained herein. More specifically, the Tenant intends to construct and operate a carousel facility, consisting of a steel structure, purpose-built for housing an antique carousel amusement ride (the "Carousel Structure," which will contain within it the actual antique carousel with newly created carousel animals (the "Carousel Apparatus") together with chattel and improvements reasonably associated with operating such carousels.

C. Landlord is desirous of leasing a certain portion of the Property to Tenant pursuant to the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable consideration recited herein, including payment of rent and the other covenants, conditions and agreements, Landlord and Tenant agree as follows:

1. Premises. A certain portion of the Property, which is located between the Laundromat and the train cars, and consisting of approximately 5,000 square feet, more or less, the legal description of which is attached hereto and incorporated herein as Exhibit A (the "Premises") and a diagram of the Premises detailing the specific location of the Carousel Structure is attached hereto as Exhibit B.

2. Demise. Landlord hereby leases and demises to Tenant the above-described Premises under the terms and conditions contained herein:

a. Licenses. Additionally, for the Term (as hereinafter defined), Landlord grants to Tenant a Parking License and Common Area License, both of which are hereafter defined.

i. Parking. Landlord further grants to Tenant, its employees, contractors, licensees and invitees a non-exclusive license for the use of Sixteen (16) parking spaces upon the Property, which will be adequate to accommodate Tenant's employees, contractors, licensees and invitees (hereinafter the "Parking License.") The Parking License

shall be effective for the term of this Lease as defined below. Landlord reserves the right to designate specific parking spaces as reserved for the Parking License. Tenant shall not use the parking areas for any type of storage of trucks, trailers or other vehicles owned or under the control of Tenant without the advance written consent of Landlord.

b. **Common Area License.** The "Common Areas" are all areas outside of the Premises upon the Property designated by Landlord for common use of Tenant, its employees, licensees, invitees, contractors and Landlord. The Common Areas shall include, but shall not be limited to, parking areas, sidewalks or other pedestrian walkways, landscaped areas, pickup and delivery areas, streets and other public areas designated for the common use and benefit of all tenants of the Property, exclusive of space in any Improvements designated for rental to specific tenants as the same may exist from time to time. Landlord grants to Tenant, its employees, licensees, invitees and contractors a non-exclusive license over the term of this lease over such Common Areas of Property which are necessary to the use and occupancy of the Premises to use in the ordinary course of Tenant's operations, including any construction, maintenance and repair of the Carousel Structure and Carousel Apparatus (hereinafter the "Common Area License.") Tenant shall not use the Common Areas for any type of storage or parking of trucks, trailers or other vehicles owned by Tenant or under Tenant's control without the advance written consent of Landlord.

c. **Control of Common Areas.** All parking and Common Areas of Property shall at all times be subject to the management of Landlord and shall not be deemed part of the Premises. Landlord shall have the right, power and authority to compile, promulgate, change and modify all rules and regulations that it may, in its sole discretion, deem necessary for use of the Common Areas. Tenant agrees to abide by and conform with all rules and regulations pertaining to such Common Areas. Landlord shall have the right to construct, maintain and operate lighting facilities, to police and from time to time change the area, location and arrangement of the Common Areas and facilities, to restrict employee parking to certain areas, to temporarily close all or any portion of the Common Areas, to discourage non-customer parking and to do and perform any and all such other acts in and to said Common Areas and facilities as the Landlord shall determine in its sole and absolute discretion. With respect to use of Common Areas in connection with construction, Landlord shall designate the areas within the Common Areas which shall be used and occupied for storage, staging and parking of construction materials and vehicles so as to minimize disruption or disturbance of adjacent tenants and the shopping center as a whole.

i. Tenant shall have no obligation to repair or maintain the Common Areas and parking spaces except in the event of damage or destruction by Tenant or its invitees.

d. **Limited Use of Premises.** The Premises shall be used for the initial construction, operation and maintenance of a carousel and infrastructure improvements attendant to a carousel for public display and use, together with the sale of gift items available for purchase by consumers, a local information center, hosting of events and other attendant uses associated with or related to the carousel facility and Carousel of Happiness, Inc. (collectively, the "Permitted Uses"). Tenant shall not, without the prior written consent of Landlord, use or permit the Premises to be used for any other purpose. No food or drink items shall be sold on the Premises. Notwithstanding the foregoing, Tenant shall be permitted to serve food and/or beverages upon the Premises in conjunction with special events, parties and functions.

e. **Phasing of Construction.** The Carousel Structure shall be constructed in phases in accordance with the following schedule:

i. **Phase I.** Tenant shall construct the steel infrastructure of the Carousel Structure consisting of the Polygon 12-sided pavilion which is approximately 3397 square feet as per the plans, drawings and fact sheet attached hereto as Exhibit C (hereinafter "Phase I").

ii. **Phase II.** After completion of Phase I Tenant shall construct the remaining improvements to the Premises, including, without limitation, the remaining portions to complete the Carousel Structure and installation of the Carousel Apparatus (hereinafter "Phase II.")

iii. **Adequate Capital to Complete Intended Phase.** Prior to commencement of any phase of construction work upon the Premises, Tenant shall provide to the Landlord proof, in the form and specificity as may be reasonably required by the Landlord, that the Tenant has One Hundred Percent (100%) of the capital resources required to fully pay for and complete such phase of the improvements.

iv. **Timing of Construction.**

(1) Phase I shall be complete within one (1) year of commencement date as defined herein (the "Commencement Date"). The Commencement Date shall be deemed the commencement of actual construction or July 1, 2008, whichever shall occur first..

(2) Upon the completion of Phase I, as determined by receipt of final inspection and approval from the relevant governmental authority, (the "Phase I Completion Date") Phase II shall be commenced and completed no later than two (2) years after such Phase I Completion Date (the "Phase II Commencement Date"). In any event, Phase II shall be completed within three (3) years from the Commencement Date.

(3) There shall be no extensions of the time for completion of any phase except upon written consent of Landlord. Any delay in the completion or commencement of a phase in excess of sixty (60) days shall be a default under this Lease Agreement unless waived in writing by Landlord. Notwithstanding the foregoing, in the event commencement or completion of any phase is delayed by reason of Force Majeure (as hereinafter defined), Tenant's delay in commencing or completing such phase is excused for the longer of the period of the delay or the period of delay caused by such Force Majeure and the period of time for completion of any phase will be extended for a period equivalent to such longer period. For the purposes of this Agreement, "Force Majeure" shall mean acts of God; strikes; lockouts; labor troubles; inability to procure materials; governmental laws or regulations; orders or directives of any legislative, administrative, or judicial body or any governmental department; inability to obtain any governmental licenses, permissions or authorities (despite commercially reasonable pursuit of such licenses, permissions or authorities); and other similar or dissimilar causes beyond Tenant's reasonable control. In the event that any of the above periods of time are exceeded, such event shall be deemed a default under this Lease Agreement, unless a written mutual agreement is reached between the parties extending such respective time periods.

v. **Proof of Insurance.** Prior to the commencement of any work upon the Premises, Tenant shall provide Landlord proof of adequate insurance as further detailed in this Lease in such form and detail as may be reasonably required by Landlord.

vi. **Advance Approval of Design and Siting Details.** Prior to the commencement of any phase, Tenant shall provide Landlord finalized plans subject to Landlord approval as more fully set forth in Section 10(c) below.

3. **Term.** This Lease shall commence on April 1, 2008 at 12:01 a.m. and terminate on January 31, 2028 at 11:59 p.m. (hereinafter the "Term") unless sooner terminated by reason of default or otherwise, as provided herein. This Lease may contain express provisions for extension of the Term through exercise of the Tenant extension/renewal options.

4. **Option.** Tenant shall have the option to extend the Term, pursuant to the terms and conditions contained herein, for an additional ten year period (hereinafter the "Option.") In the event Tenant desires to exercise said option, Tenant shall, at least ninety (90) days before expiration of the Term, provide Landlord with written notice of its intent to exercise the Option. The option shall only be exercisable provided that no Event of Default (hereinafter defined) currently exists. Unless otherwise provided above, this shall be a single "one time" option and may not be repeatedly exercised unless otherwise agreed to in writing by the parties.

5. **Security Deposit.** The "Security Deposit" shall be in the sum of zero and no/100 Dollars (\$ 0.00 ..

6. **Base Rent.** Tenant shall pay as Base Rent for the Premises the amount of One and no/100 Dollars (\$1.00) per month, 12.00 annually (hereinafter the "Base Rent"). Base Rent shall be due annually in advance; rent for the first calendar year of the Term shall be equal to nine dollars (\$9.00) and shall be due and payable upon execution of this Lease; thereafter annual rent for the coming year shall be due on January 1 of each year.

7. **Escalation Provision.** N/A

8. **Additional Rent.** As additional rent (hereinafter the "Additional Rent,") the Tenant shall pay Landlord the following:

a. **CAM Costs.** N/A

b. **Tax Costs.** N/A

c. **Payment of Additional Rent.** Tenant shall be responsible for payment of all utilities associated with the Carousel Structure and Carousel Apparatus as Additional Rent.

d. **Utilities/Services/Additional Taxes.** Except as otherwise provided herein, Tenant shall be responsible for the payment of all utility charges upon the Premises and used in conjunction with the Tenant's business, use and occupancy of the Premises including, but not limited to, electric, natural gas, water, sewer, trash collection and disposal services, cable television services, telephone and telecommunication

services, all payments for personal property taxes and/or assessments levied and/or assessed against any furniture, fixtures, equipment, inventory and items of a similar nature installed and/or located in or about the Premises, all sales tax and other taxes levied by local or state authorities relative to Tenant's business, and any and all costs or expenses which are specified in any other term or provision of this Lease which are designated as the responsibility of Tenant. Tenant shall contract directly with all utility providers. All utility payments shall be directed to the respective utility providers when possible. Payments shall be made in a timely manner. Landlord shall not be liable in any manner for Tenant's non-payment or late payment of Tenant's utilities and Tenant shall indemnify and hold Landlord harmless for any claims related to such non-payment or late payment on the part of Tenant. The non-payment or late payment of the aforementioned charges shall be deemed identical to the non-payment or late payment of Base and Additional Rent. Tenant agrees that Landlord shall not be liable by abatement of Base and Additional Rent or otherwise, for failure to furnish or delay in furnishing any utility service, or for any diminution or surge thereof. Such failures, delays, diminutions or power surges shall never be deemed to constitute an eviction or disturbance of the Tenant's use and possession of the Premises or relieve Tenant from performing any of Tenant's obligations hereunder, including the payment of Base and Additional Rent.

e. **Utility Connections.** Tenant understands and agrees that as the Premises occupy an unimproved portion of the Shopping Center and do not enjoy the use of any current utility connections (including water, sewer, electricity, and natural gas) and that it shall be Tenant's sole and complete responsibility and expense to obtain all necessary approvals, connections and related infrastructure to connect the Premises to available public and private utilities, this specifically includes tap fees, and under grounding utilities as may be applicable. More specifically, the Landlord shall have absolutely no responsibility or obligation to extend or pay for the cost of extension of any utilities from their existing locations to the Premises and Tenant shall be wholly responsible for all such expenses and operations. All utilities servicing the Premises shall be underground if required by the permitting authorities and the entire cost and expense of same shall be borne by Tenant. Further, should any existing above ground utilities need to be relocated or moved as a requirement of erecting the Carousel Structure or which are located upon the Premises, same shall be the responsibility and expense of the Tenant. In the event any existing utilities servicing the shopping center are underground and must be relocated to permit the erection of the Carousel Structure, the Landlord shall be responsible for such costs. In the event there are utilities adjacent to the Premises and same are not required to be undergrounded by the permitting authorities as a condition for the erection of the Carousel Structure the parties may, by written agreement agree to share in the costs of such undergrounding, absent such agreement neither party shall be obliged to effect such work.

i. Landlord hereby grants Tenant an easement for utility connections, infrastructure, service, maintenance and repair (the "Utility Easement") across such portions of Landlord's Property as mutually determined by the parties in writing to provide utilities to the Premises. Tenant shall have the sole responsibility of remedying any damage or disturbance to the Property resulting from construction, installation of infrastructure and/or use of the Utility Easement.

ii. Landlord hereby agrees to provide Tenant with notice and opportunity to utilize any utility trenches or similar infrastructure that Landlord may

construct in the course of renovating the Property for the limited purpose of establishing utility connections to the Premises.

f. No Setoff. Payments of Base and Additional Rent shall not be subject to set-off or withholding for any reason.

9. Tenant Covenants Relative to Use. Tenant, in consideration of the leasing of the Premises, agrees as follows:

a. Prompt Payments. To base all the Base and Additional Rent due for the Premises in a timely manner.

b. Use of Premises. To use and occupy the Premises solely as and for the business operated by Tenant and specified in Paragraph 2(e) of this Lease. Landlord's consent of the aforementioned uses shall not be deemed an assurance or warranty that the Premises' attributes are sufficient for the intended use of the Tenant. Tenant represents and warrants that it has conducted sufficient due diligence to assure itself that the Premises are so suitable, and that such uses and purposes are permitted by applicable law and that the Premises are suitable for such business. Additionally, Landlord's demise of said Premises to Tenant for said use shall not preclude Landlord from leasing other parts of the Property to other tenants who may be viewed objectively or subjectively as competing with the business of Tenant and Landlord expressly reserves its right to lease space within the Property unrestricted, unless explicitly prohibited by other provisions in this Lease. Notwithstanding the foregoing, Landlord agrees that during the Term of the Lease and any applicable option periods exercised by Tenant, Landlord shall not lease any other portion of the Property to a tenant for operation of a carousel.

c. Signage. Tenant shall be permitted to erect a sign or signs upon the Premises, provided all signage is consented to in writing by Landlord in advance of erection, is in compliance with size and other requirements of Landlord and as may be set forth by the Town of Nederland ordinances and regulations including, but not limited to, the Town of Nederland Sign and Design Ordinances, as amended. All signage shall conform to aesthetic and design criteria, themes and standards of the Property and the Improvements. Additionally, Landlord may provide signage space on a common or community sign located on the Property.

d. Hours of Operation/ Vacancy. Tenant shall provide a written schedule of Tenant's hours of operation for Landlord's approval. The aforementioned hours of operation shall be adhered to by Tenant. Landlord shall provide notice of Tenant's material failure to comply with the hours of operation and upon receipt of such notice Tenant shall have three (3) days to come into compliance with the hours of operation. Delivery of four (4) such notices in any calendar year or two (2) such notices within any calendar month shall be deemed a default under the terms of this Lease. Tenant may provide separate seasonal schedules (e.g., hours of operation for the summer, hours of operation for the remainder of the year), which hours shall be subject to modification upon written consent of both parties.



e. **Legal Compliance.** Tenant, its licensees and invitees, shall comply with and abide by all federal, state, county and municipal laws and ordinances in connection with the occupancy and use of the Premises. No alcoholic beverages shall be possessed nor consumed by Tenant, its licensees and invitees, unless such person is of legal age. No alcoholic beverages shall be sold upon the Premises. No illegal drugs, nor controlled substances (unless specifically prescribed by a physician for a specific person occupying or present upon the Premises) shall be permitted upon the Premises. While it is acknowledged that Tenant does not have absolute control over third parties, Tenant hereby covenants and agrees to use its commercially reasonable efforts to prevent and preclude its employees, guests, invitees, and licensees from the aforementioned illegal conduct. No use which shall increase the rate or cost of insurance upon the Property shall be permitted. No hazardous or dangerous activities shall be permitted upon the Premises.

f. **Additional Prohibitions.** Neither Tenant nor its subtenants, nor its licensees, volunteers, employees, guests or invitees shall act in any manner, or be a nuisance to other subtenants, occupants or invitees of the Premises or adjacent property owners or adjacent tenants or which would interfere with the other parties' quiet enjoyment of their premises. Said prohibition includes, but is not limited to, loud noises, loud music, noxious or unpleasant odors, and disruptive behavior or actions.

g. **Pets and Animals.** Absolutely no pets or animals are permitted upon the Premises with the exception of service animals which are clearly identified as such.

10. **Condition, Maintenance and Improvement of Premises and Property.**

a. **Condition of Premises.** Tenant is familiar with the physical condition of the Premises and the Property. Except as may otherwise be provided for herein, Landlord makes no representations or warranties as to the physical condition thereof or its suitability for Tenant's intended purpose. Other than the work, if any, to be performed pursuant to this Lease, as explicitly stated herein, the Premises are rented AS-IS, in current condition, and all warranties are hereby expressly disclaimed.

b. **Tenant Improvements.** Unless otherwise explicitly provided herein, Tenant shall be responsible for any and all improvements and alterations within the Premises, including, *inter alia*, the Phase I and Phase II construction, the entire Carousel Structure and the entire Carousel Apparatus and all ancillary paving, sidewalks and additional landscaping upon the Premises and including, but not limited to, foundation, flatwork, structural, roof construction, finish construction, electrical wiring, HVAC, plumbing, framing, drywall, flooring, telephone and other communication systems (inclusive of wiring and fixtures,) (hereinafter the "Tenant Work.") Initial Tenant Work consists of the Phase I construction of the Carousel Structure as set forth in Section 2(f)(i) above. , Subsequent Tenant Work consists of the Phase II construction and installation of the Carousel Apparatus as set forth in Section 2(f)(ii) above. Tenant shall be solely responsible for procuring any and all the municipal and county approvals for the construction and use of the Carousel Structure and Carousel Apparatus, including, *inter alia* compliance with all parking requirements imposed by the municipality as a condition precedent to Tenant's intended use. Except as to the expenses explicitly agreed to by Landlord in paragraph 25 (t) of this Lease, Tenant shall be solely responsible for all costs and expenses for the construction of the Carousel Structure and Carousel Apparatus,

including, inter alia, the foundation, the utility connections and other infrastructure, and all other building components.

c. **Improvements/Prior Landlord Consent.** Tenant agrees to submit to Landlord complete plans and specifications including engineering, mechanical and electrical work covering any and all contemplated Tenant Work for each phase of construction, and any subsequent improvements or alterations of the Premises, if applicable. The plans and specifications shall be in such detail as Landlord may require, and in compliance with all applicable statutes, ordinances, regulations and codes, and shall be certified by a licensed architect. As soon as reasonably feasible thereafter, but in any event no later than thirty (30) days after submission of the plans, Landlord shall notify Tenant of any failures of Tenant's plans to meet with Landlord's approval, which approval shall not be unreasonably conditioned, withheld or delayed. Tenant shall cause Tenant's plans to be revised to a commercially reasonable extent as necessary to obtain Landlord's approval. In the event Landlord does not act upon any such plans within thirty (30) days from submission, Landlord shall be deemed to have approved such plans. Tenant shall not commence Phase I or any other Tenant Work or any other improvements or alterations of Premises until Landlord has approved its plans. Any and all work or repairs for which plans are not necessary and which (1) are visible from the exterior of the Carousel Structure or (2) cost in excess of \$5,000, shall also be approved in advance by Landlord prior to work being performed, which approval shall not be unreasonably conditioned, withheld or delayed. Minor non-structural repairs and repairs to the interior of the Carousel Structure or Carousel Apparatus shall not require such pre-approval. In the event the parties cannot agree to Tenant's plans within six (6) months from the first submission of such plans, this Lease shall terminate and neither party shall have any further obligations hereunder.

d. **Tenant's Duty to Repair.** Tenant shall, at Tenant's sole cost and expense, take good care of, and maintain the entire Premises, inside and out. Landlord shall have absolutely no duty to repair or maintain the Premises.

e. **Landlord's Duty to Repair.** Landlord shall have absolutely no duty or obligation to repair or maintain the Premises.

f. **Tenant Work/Compliance with Codes.** Tenant shall promptly pay when due the entire cost of any Tenant Work and repairs in the Premises undertaken by Tenant, so that the Premises shall at all times be free of liens for labor and materials. Tenant shall procure all necessary permits before undertaking such work. Tenant shall perform all of such work in a good and workmanlike manner. Tenant shall employ materials of good quality and perform such work only with contractors previously approved of in writing by Landlord. Tenant shall comply with all governmental laws, ordinances and regulations including, but not limited to, building, health, fire and safety codes. Tenant hereby agrees to hold Landlord and Landlord's agents harmless and indemnified from all injury, loss, claims, or damage to any person or property (including the cost for defending against the foregoing) (collectively, "Claims") occasioned by or growing out of such work, except to the extent such Claims arose from the negligence or willful misconduct of Landlord or its agents. If Landlord permits persons requested by Tenant to perform any alterations, repairs, modifications or additions to the Premises, then prior to the commencement of any such work Tenant shall deliver to Landlord certificates issued by insurance companies qualified to do business in the State of



Colorado evidencing that workmen's compensation, public liability insurance and property damage insurance, all in amounts, with companies and on forms satisfactory to Landlord, are in force and maintained by all such contractors and subcontractors engaged by Tenant to perform such work. All such policies shall name Landlord as an additional insured and shall provide that the same may not be canceled or modified without thirty (30) days prior written notice to Landlord.

g. **Mechanic's Liens.** Tenant shall pay or cause to be paid all costs for work done by or on behalf of Tenant or caused to be done by or on behalf of Tenant on the Premises of a character which will or may result in liens against Landlord's interest in the Premises or the Improvements and Tenant will keep the Premises and Improvements free and clear of all mechanic's liens and other liens on account of work done for or on behalf of Tenant or persons claiming under Tenant. Tenant hereby agrees to indemnify, defend and save Landlord harmless of and from all liability, loss, damages, costs or expenses, including reasonable attorneys' fees, incurred in connection with any claims of any nature whatsoever for work performed for, or materials or supplies furnished to Tenant, including lien claims of laborers, materialmen or others. Should any such liens be filed or recorded against the Premises or the Improvements with respect to work done for or materials supplied to or on behalf of Tenant or should any action affecting the title thereto be commenced, Tenant shall cause such liens to be released of record within five (5) days after notice thereof. If Tenant desires to contest any such claim of lien, Tenant shall nonetheless cause such lien to be released of record by the posting of adequate security with a court of competent jurisdiction as may be provided by Colorado's mechanics lien statutes. If Tenant shall be in default in paying any charge for which such a mechanics lien or suit to foreclose such a lien has been recorded or filed and shall not have caused the lien to be released as aforesaid, Landlord may (but without being required to do so) pay such lien or claim and any costs associated therewith, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Tenant to Landlord as Additional Rent. Immediately after completing the Phase I and Phase II construction, as well as upon each progress payment made to third parties for labor and/or materials, Tenant will furnish Landlord with contractor affidavits, partial, full and final lien waivers (as the case may be), including from volunteers to the extent they provided labor and/or material, and receipted bills covering all labor and materials expended and used in connection with such construction.

h. **Waste Prohibited.** Tenant shall not lay waste to the Premises. Tenant shall not perform any action or practice which may injure the Premises or Property.

i. **Rubbish Removal.** Tenant shall keep the Premises and the Property surrounding the Premises free and clear of all debris, garbage and rubbish. Tenant shall be responsible for contracting for and paying for trash and debris removal required. All rubbish containers (during the construction, as well as during business operation) shall be located at a location and manner approved by the Landlord.

j. **Violations of Codes Prohibited.** In the event a governmental entity notifies Landlord or Tenant as to any violation or alleged violation of law, ordinance or regulation of any portion of the Premises other than foundation, roof or exterior walls, it shall be Tenant's sole obligation to cause same to be remedied, corrected or dismissed.

Tenant shall hold Landlord harmless from costs or damages arising from any failure on Tenant's part to correct or remedy same in a timely manner. In the event same relates to the foundation, roof or exterior walls Landlord shall have a reasonable period of time to remedy, correct or dismiss said violation. Under no circumstances shall the existence of same be deemed to constitute an eviction or disturbance of Tenant's use and possession of Premises or relieve Tenant from performing any obligations hereunder including the obligation to pay Base and Additional Rent.

k. **Snow/Ice Removal.** Landlord shall be solely responsible for removing snow from the parking and common areas subject to the Parking License and Common Area License and shall use reasonable efforts to effect such snow removal. Landlord shall have no liability whatsoever for any failure to do so unless such failure is due to Landlord's gross negligence or willful misconduct. Tenant shall cause snow to be removed from the sidewalks upon, adjacent to or ancillary to the use of the Premises as may be reasonably required for the safety of persons using such sidewalks.

l. **Common Area Maintenance.** Landlord shall be solely responsible for maintenance and repair of the common areas subject to the Common Area License (except in the event of damage or destruction by Tenant or its invitees) and shall use reasonable efforts to maintain and repair such Common Areas of Property including walks and parking lots. The cost of any maintenance, repairs, or replacements necessitated by the negligence, recklessness or willful act of misconduct by Tenant, its employees, licensees, invitees, or contractors shall be paid by Tenant to Landlord. Landlord shall use reasonable efforts to cause any necessary repairs to be made promptly; provided, however, that Landlord shall have no liability whatsoever for any delays in causing such repairs to be made, including, without limitation, any liability for injury to or loss of Tenant's business, nor shall any delays entitle Tenant to any abatement of Base and Additional Rent or damages or be deemed an eviction of Tenant in whole or in part.

11. **Compliance.** Landlord makes no representations or warranties as to the suitability or useability of the Premises for Tenant's intended use. Landlord further makes no representations or warranties as to whether Tenant's intended use will necessitate changes or alterations to the Premises in order to comport with local, state or federal laws and regulations. Such laws and regulations include, but are not limited to: health code regulations, access regulations (including, but not limited to, the Americans with Disabilities Act) and zoning regulations. Tenant understands and agrees that in the event actions, alterations or improvements are required in order to bring the Premises into compliance with any local, state or federal laws and regulations because of Tenant's intended use, Tenant shall be solely responsible for any and all associated costs and expenses relative thereto and Tenant further indemnifies and agrees to hold Landlord harmless from any and all claims and liabilities which may arise by virtue of Tenant's use of the Premises in violation of any local, state or federal laws and regulations. Notwithstanding the foregoing, Landlord does represent and warrant that Landlord has not received any notices from any local, state or federal agencies regarding noncompliance with any of the above matters.

12. **Damage to Premises and Property/Indemnification.**

a. **Damage to Property, Injury to Persons.** Tenant, as a material part of the consideration to be rendered to Landlord under this Lease, hereby waives all claims of liability that Tenant or Tenant's legal representatives, successors or assigns

may have against Landlord, and Tenant hereby indemnifies and agrees to hold Landlord harmless from any and all claims of liability for any injury or damage to any person or property whatsoever: (1) occurring in, on or about the Premises or any part thereof not arising from Landlord's willful misconduct or gross negligence; and (2) occurring in, on or about the Improvements, when such injury or damage is caused in part or in whole by the grossly negligent act or omission of Tenant, its agents, contractors, employees, licensees or invitees. Tenant further agrees to indemnify and to hold Landlord harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease. Such indemnities shall include by way of example, but not limitation, all costs, reasonable attorneys' fees, expenses and liabilities incurred in or about any such claim, action or proceeding.

b. **Third Party Liability.** Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any co-tenant or other occupant of the Improvements, or by any owner or occupant of adjoining or contiguous property. Landlord shall not be liable for any injury or damage to persons or property resulting in whole or in part from the criminal activities of others. To the extent not covered by normal fire and extended coverage insurance, Tenant agrees to pay for all damage to the Improvements, as well as all damage to persons or property of other tenants or occupants thereof, caused by the misuse, neglect, negligent act or omission of Tenant or any of its agents, contractors, employees, licensees or invitees.

c. **Hold Harmless.** Neither Landlord nor its agents or employees shall be liable for any damage to personal property of the Tenant within the Premises, nor for any injury or damage to persons or property resulting from: 1) any equipment or appurtenances becoming out of repair; 2) Landlord's failure to keep the Property or the Premises in repair; 3) injury done or occasioned by wind, water, or other natural element; 4) any defect in or failure of plumbing, heating, or air-conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings or walks (including wood stoves); 5) broken glass; 6) the backing-up of any sewer pipe or downspout; 7) the bursting, leaking or running of any tank, tub, sink, sprinkler system, water closet, waste pipe, drain or any other pipe or tank in, upon or about the Property or Premises; 8) the escape of steam or hot water; 9) water, snow, or ice being upon or coming through the roof, skylight, doors, stairs, walks, or any other place upon or near such Property or the Premises or otherwise; 10) the falling of any fixtures, plaster or stucco; 11) fire or other casualty; 12) any act, omission or negligence of co-tenants or of other persons or occupants of said Property or of adjoining or contiguous buildings or of adjacent or contiguous property and 13) any Hazardous Materials or conditions on the Premises, Property or adjacent property, nor for the loss or damage to any such property occurring by theft or any other cause whatsoever; provided, however, nothing contained herein shall be construed to relieve Landlord from liability for any personal injury resulting from its gross negligence or willful misconduct. Neither Landlord nor its agents or employees shall be liable for interference with the lights, view or other incorporeal hereditaments, nor shall Landlord be liable for any latent defect in the Premises or in the Improvements. Tenant shall give prompt notice to Landlord in case of fire or accidents in or about the Premises or the Improvements or of defects therein or in the fixtures or equipment located therein.

13. **Indemnification Fees and Costs.** In case any claim, demand, action or proceeding is made or brought against Landlord, its agents or employees, by reason of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act of negligence of Tenant, its agents or employees, or which gives rise to Tenant's obligation to indemnify Landlord, Tenant shall be responsible for all costs and expenses, including but not limited to reasonable attorneys' fees, incurred in defending or prosecution of the same, as applicable.

14. **Tenant Insurance.** Tenant shall procure and maintain at its own cost at all times during the term of this Lease and any extensions hereof, hazard, fire and extended coverage on Tenant's property and the Premises, plate glass insurance, comprehensive general liability insurance, including coverage for bodily injury, property damage, personal injury (employee and contractual liability exclusions deleted), products and completed operations, contractual liability, owner's protective liability, host liquor legal liability and broad form property damage with the following limits of liability: One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury, property damage and personal injury; One Million Dollars (\$1,000,000.00) aggregate for bodily injury and property damage for products and completed operations. All such insurance shall be procured from a responsible insurance company or companies authorized to do business in Colorado, and shall be otherwise satisfactory to Landlord. All such policies shall name Landlord as an additional insured, and shall provide that the same may not be canceled or altered except upon thirty (30) days prior written notice to Landlord. All insurance maintained by Tenant shall be primary to any insurance provided by Landlord. If Tenant obtains any general liability insurance policy on a claims-made basis, Tenant shall provide continuous liability coverage for claims arising during the entire term of this Lease, regardless of when such claims are made, either by obtaining an endorsement providing for an unlimited extended reporting period in the event such policy is canceled or not renewed for any reason whatsoever or by obtaining new coverage with a retroactive date the same as or earlier than the expiration date of the canceled or expired policy. Tenant shall provide certificate(s) of such insurance to Landlord upon commencement of the Lease term and at least thirty (30) days prior to any annual renewal date thereof and upon request from time to time and such certificate(s) shall disclose that such insurance names Landlord as an additional insured, in addition to the other requirements set forth herein. The limits of such insurance shall not, under any circumstances, limit the liability of Tenant hereunder. Tenant shall obtain and keep in effect appropriate liability insurance and builder's risk insurance during the entire construction process. Tenant shall assure that such policies cover all liabilities with respect to both paid contractors as well as volunteers.

15. **Landlord Insurance.** Insurance shall be procured by Landlord in accordance with its sole discretion. All awards and payments thereunder shall be the property of the Landlord and Tenant shall have no interest in same.

16. **Condemnation.**

a. **Taking of Whole.** In the event that the entire Premises shall be condemned or taken by the exercise of eminent domain, this Lease shall terminate on the date of the taking of possession by the condemning authority. All Base and Additional Rents shall be prorated accordingly.

b. **Partial Taking.** In the event that less than the entire Premises shall be condemned or taken by the exercise of eminent domain, this Lease shall, at the option of the Landlord, either: 1) terminate on the date of the taking of possession by the condemning authority; all Base and Additional Rent being pro-rated accordingly, or 2) remain in full force and effect provided that the Base and Additional Rent shall be reduced in proportion to the square footage lost by virtue of said condemnation. In the event of the exercise of option (2), if necessary, Landlord at its cost shall make such repairs and restorations so as to constitute the remaining Premises a complete architectural unit.

c. **Condemnation Awards.** All condemnation awards shall be pro-rated between the Landlord and Tenant based upon the respective values of the land (going to the Landlord) and the tenant improvements and lease value (going to the Tenant), whether the awards arise from actual taking, damage from the threat of taking, diminution in the value of the Premises, or other reasons.

17. **Damage/Restoration of Premises.** If the Property or the Premises shall be destroyed in whole or in part by fire, the elements or other casualty so as to render the Premises wholly unfit for occupancy then this lease shall terminate. Except that if the Premises can be restored within 180 days of such event and Tenant commences such restoration within 45 days from the event and completes restoration within 180 days then this Lease shall continue. In the event that the Premises are damaged to a lesser extent then the lease shall continue provided further that Tenant shall effect a restoration of the Premises within 180 days, otherwise the Lease shall terminate. All repairs and restoration shall be at the sole cost and expense of Tenant.

i. **Removal of Fixtures/Redelivery.** Tenant shall remove, at the termination of this Lease, all personal property that Tenant has moved onto or constructed or installed upon the Premises including, *inter alia*, the Carousel Apparatus. Additionally Tenant shall remove the Carousel Structure and restore the premises to the condition that the Premises enjoyed immediately prior to the erection of the Carousel Structure except that if the parties mutually agree in writing to other condition for redelivery then such agreement shall control. Tenant shall remove such of the alterations and additions made by Tenant (Carousel Structure and Carousel Apparatus inclusive) no later than Eight (8) months after the termination of the tenancy and repair any damage caused by such removal. Tenant shall peaceably yield up the Premises. In the event the Carousel Structure and/or Carousel Apparatus, or any portion thereof is not removed by tenant within such period such property and improvements shall be deemed to become the property of the Landlord and all interest in such items shall pass to the Landlord upon eight months and one day after such termination. The Premises shall be returned in clean and good order, repair and condition, normal wear and tear excepted. Any personal property of Tenant not removed within eight months and one day following such termination shall, at Landlord's option, become the property of Landlord. Notwithstanding the forgoing, in the event the parties reach a written agreement concerning alternative disposition of the property then such agreement shall control.

18. **Subordination/Estoppel Letters.** The rights and interest of Tenant under this Lease shall be subject and subordinate to any mortgages or trust deeds now existing or hereafter placed upon the Property and the Premises, and to any and all extensions,



renewals, refinancing and modifications thereof. Tenant shall execute and deliver whatever instruments may be required for such purposes or for the purpose of informing potential or existing lender(s), or purchaser, of Property as to status of its tenancy. Any such instruments or estoppel letters shall contain all information reasonably required by Landlord or other entity in conjunction with such transaction. In the event Tenant fails to do so within ten (10) days after demand in writing, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney-in-fact and in its name, place and stead to execute same. Tenant agrees to attorn to a lender(s) or other party coming into title to the Property upon written request of Landlord. The attornment letter shall provide that: 1) the Lease is in full force and effect, that there exists no default (or if same exist, shall detail same); 2) that Tenant shall look to lender(s) or other new party as Landlord under this Lease effective as of the date of attornment; and 3) the new Landlord shall not be liable for any prior claims, offsets or defenses available against old Landlord.

19. **Guaranty.** In the event that this Lease is benefited by a guaranty, the guarantor shall have the same obligations to provide the same documents as Tenant, including estoppel and attornment letters.

20. **Assignment Prohibited.** Tenant shall not sublet the Premises or any part thereof, nor assign this Lease or any interest therein, without the prior written consent of Landlord. Such consent shall be at the sole discretion of Landlord. As a condition of assignment or sublease, the assignee must also be a 501c3 not-for-profit corporation.

21. **Storage.** Tenant shall store all personal property entirely within the Premises. Tenant shall store all trash and refuse in adequate containers within the Premises or within designated Common Areas (which Landlord shall designate) and which Tenant shall maintain in a neat and clean condition so as not to be visible to members of the public in or about the Property, and so as not to create any health or fire hazard, and to attend to the daily disposal thereof in the manner designated by Landlord.

22. **Hazardous Material Prohibited.** Tenant shall not cause or permit any Hazardous Material (hereinafter defined) to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees in a manner or for a purpose prohibited by or that could result in liability under any Hazardous Materials Law (as hereinafter defined); and excepting customary cleaning products and supplies used by Tenant, its agents, employees, contractors or invitees in the ordinary course of business conducted upon the Premises. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises caused or permitted by Tenant results in contamination of the Premises, or if contamination of the Premises by Hazardous Material otherwise occurs for which Tenant is responsible to Landlord for damage resulting therefrom, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses. Hazardous Materials Laws means any federal, state or local statutes, laws, ordinances or regulations now existing or existing after the Effective Date that control, classify, regulate, list or define Hazardous Materials.

a. **Hazardous Material; Definition.** As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is 1) defined as a "hazardous substance" under appropriate

state law provisions; 2) petroleum; 3) asbestos; 4) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. ' 1321); 5) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. ' 6903); 6) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. ' 9601); or 7) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. ' 6991).

b. **Hazardous Conditions.** If Landlord shall become aware of any hazardous condition or the presence of any Hazardous Materials upon the Premises in violation of the Hazardous Materials Laws, Landlord may immediately terminate this Lease, and shall return any portion of unused Base and Additional Rent to Tenant on or before thirty (30) days thereafter. Landlord shall not be responsible for any claims, damages or costs of Tenant incurred by such circumstance.

c. **Use of Hazardous Materials.** If Tenant desires to use Hazardous Materials upon Premises in connection with its business, it may request permission to use same from Landlord in writing. Landlord, at its sole discretion, may approve or disapprove said request. In the event Landlord approves the request, Landlord may impose any conditions upon Tenant's use of such Hazardous Materials and at all times Tenant shall comply with all federal, state and local laws, statutes, ordinances and regulations regarding the use, safety, storage and disposal of Hazardous Materials. In the event Landlord denies Tenant's request, this Lease shall remain in full force and effect and such denial shall not give rise to any right of set-off, reduction or relieve Tenant from performing any obligation under this Lease.

23. **Quiet Enjoyment.** Landlord agrees that upon Tenant paying the Base and Additional Rent and performing Tenant's obligations under the Lease, Tenant shall peacefully and quietly have, hold and enjoy the Premises throughout the Term or until it is terminated pursuant to the terms contained herein. Landlord shall not be responsible for the acts or omissions of any other tenant or third party which may interfere with Tenant's use and enjoyment of the Premises. In the event of any transfer or transfers of Landlord's interest in the Premises or in the Property, other than a transfer for security purposes only, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer.

24. **Default.**

a. **Event of Default.** Any of the following occurrences or acts shall constitute an "Event of Default" under this Lease:

If Tenant shall:

i. Default in making payment when due of any Base Rent, CAM Costs, Additional Rent, utility payment or any other amount payable by Tenant hereunder; or

ii. Default in the observance or performance of any other covenant, condition, rules, regulations or provision of this Lease to be observed or performed by Tenant hereunder; or

iii. If the Premises are left vacant and unused in violation of paragraph 9(d) ; or

iv. If an unconsented-to assignment or sublease occurs or is attempted; or

v. If Tenant shall institute bankruptcy proceedings or be declared bankrupt or insolvent pursuant to federal or state law or if any receiver be appointed for Tenant, Tenant's business or property, or if any assignment shall be made of the Tenant's property for the benefit of creditors; or

vi. Any other default specified herein.

b. Notice. Upon an Event of Default, Landlord shall provide Tenant, either by posting or personal service, a Demand for Compliance or Possession (the "Demand") setting forth the default(s). Said Demand shall provide Tenant three (3) days from delivery of the Demand in which to cure the default(s) if said default(s) are of a monetary nature (e.g., rent, etc.) and ten (10) days from the date of delivery of the Demand in which to cure the default(s) if said default(s) are of a non-monetary nature (e.g., noncompliance with non-payment related covenants of this Lease). Said Demand shall be deemed to incorporate the statutorily-required Demand for Compliance or Possession (i.e., an additional three-day notice shall not be required after the time period articulated above has expired.) Additionally, as provided by applicable law (C.R.S. § 13-40-104(e.5) and C.R.S. § 13-40-107.5), in the event Tenant's default constitutes a repeat violation of a covenant of this Lease or a substantial violation, Landlord may provide Tenant a Notice to Quit, requiring that Tenant vacate the Premises within three (3) days of the violation.

c. Remedies. Whenever an Event of Default has occurred, Landlord may, at its election, undertake one or any combination of the following remedies:

i. Proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease or to recover damages for the breach thereof; or

ii. Provide notice as required for herein to either terminate Tenant's right to possession of the Premises, or terminate this Lease whereupon Tenant's estate and all rights of Tenant to the use of the Premises shall forthwith terminate as though this Lease had never been made, but Tenant shall remain liable as hereinafter provided for all Base and Additional Rent and damages; and thereupon Landlord (with the assistance of legal process, if necessary) shall have the immediate right of re-entry and possession of the Premises and the right to remove all persons and property therefrom, and Landlord may thenceforth hold, possess and enjoy the Premises (including the right to lease or sell the Premises or any portion thereof upon any terms deemed satisfactory to Landlord) free from any rights of Tenant and any person claiming through Tenant and in addition shall have the right to recover forthwith from Tenant:

(1) Any and all unpaid Base and Additional Rent for the Term and all other amounts payable by Tenant hereunder, which may then be due and unpaid, and any other payments due and payable for the remainder of the Term; and

(2) Any and all other costs, fees and expenses incurred or due under the provisions of this Lease (including, without limitation, attorneys' fees and expenses);

(3) Notwithstanding the foregoing, Tenant's right to remove the Carousel Apparatus and Carousel Structure as set forth in Section 17 above shall remain in full force and effect.

iii. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy specified herein or provided under applicable law. In the event that any remedy exercised herein terminates Tenant's right to possession of Premises, Tenant's Common Area License shall also be terminated.

d. Re-Entry. In the event of re-entry by Landlord:

i. Tenant shall be liable in damages to Landlord for all loss sustained; including, without limitation, court costs and reasonable attorneys' fees.

ii. Tenant's personal property and the personal property of any guest, invitee, licensee or occupant may be removed from the Premises and left on the street or the alley or, at Landlord's option; it may be removed and stored or disposed of at Landlord's sole discretion. Landlord shall not be deemed a bailee of the property removed and Landlord shall not be held liable to either civil or criminal action. Tenant shall indemnify Landlord for any expense in defending against any claim by Tenant or third-party and for any legal expense, cost, fine or judgment awarded to third-party as a result of Landlord's action under the term of this Lease.

iii. Landlord may attempt to re-let the Premises for such rent and under such terms as Landlord believes appropriate.

iv. Landlord may enter the Premises, clean and make repairs and charge Tenant accordingly.

v. Any money received by Landlord from Tenant shall be applied first to outstanding, fees and other expenses incurred by Landlord. The remaining balance will be applied to the Base and Additional Rent and other payments due.

vi. Tenant shall surrender all keys and peacefully surrender and deliver up possession of the Premises; provided that Tenant's rights to remove the Carousel Apparatus and Carousel Structure as set forth above shall remain in effect.

e. Cumulative Remedies. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder.

f. **Inducement Recapture.** Any agreement by Landlord for free or abated rent, Tenant improvements or other charges applicable to the Premises, or for the giving or paying by Landlord to Tenant of any cash or other bonus, inducement or consideration for Tenant's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions" shall be deemed conditioned upon Tenant's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon the occurrence of a Default of this Lease by Tenant, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Landlord under an Inducement Provision shall be immediately due and payable by Tenant to Landlord, and recoverable by Landlord as Additional Rent due under this Lease.

25. **Additional Provisions.**

a. **Costs of Negotiation.** Except as otherwise expressly provided herein, each party will pay all of its expenses, including attorneys' and accountants' fees, in connection with the negotiation of this Lease, the performance of its obligations hereunder, and the consummation of the transactions contemplated by this Lease.

b. **Confidentiality.** The parties agree that they each shall keep confidential any and all information furnished by the other party in connection with the transactions contemplated hereby, except to the extent any such information may be generally available to the public, obtained from independent sources or as required by law or judicial order or decree or by any governmental agency or authority.

c. **Continuing Assistance.** Subsequent to the execution of this Lease, Tenant will provide to Landlord whatever assistance the Landlord reasonably requests including execution of additional documents contemplated by this Lease. Landlord will pay Tenant the reasonable out-of-pocket expenses incurred in providing such assistance.

d. **Notices.** Any notice required or permitted to be given under this Lease shall be in writing and shall be deemed to have been given or delivered when delivered by hand, posted pursuant to applicable law or 3 days after being deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt required, and addressed: i) to Tenant at Premises or Postal Address commonly used by Tenant; ii) to Landlord at Caribou Mercantile Company, Inc., 1300 Walnut Street, Boulder, Colorado 80302 or to such other address as either party may from time to time specify in writing to the other.

e. **Holdover.** In the event Tenant remains in possession of the Premises after the expiration of the tenancy created hereunder, and without the execution of a new lease, Tenant, at the option of Landlord, shall be deemed to be occupying the Premises as a tenant from month-to-month, at one and one-half (1 1/2) times the Base Rent, subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

f. **Cure by Landlord.** Landlord may, but shall not be obligated to, cure, at any time, without notice, any default by Tenant under this Lease; and whenever Landlord so elects, all costs and expenses incurred by Landlord including, without limitation, reasonable attorneys' fees together with interest on the amount of costs and



expenses so incurred at the maximum legal rate then in effect in the State shall be paid by Tenant to Landlord on demand.

g. **Heirs and Assigns.** This Lease shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. However, notwithstanding the foregoing, Tenant may not assign this Lease except as specifically provided herein.

h. **Amendment.** Unless otherwise provided in this Lease, this Lease may be amended, modified or terminated only by a written instrument executed by Landlord and Tenant.

i. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Colorado. The parties stipulate that proper forum and venue for the adjudication of any issues relative to this Lease is Boulder County, Colorado.

j. **Sole Agreement.** This Lease supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof. The parties do not intend to confer any benefit on any person, firm, or corporation other than the parties to this Lease, except as and to the extent otherwise expressly provided herein.

k. **Attorneys' Fees.** In the event either party hereto fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees.

l. **Captions.** The section titles or captions in this Lease are for convenience only and shall not be deemed to be part of this Lease.

m. **Interpretation.** All pronouns and any variations of pronouns shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the identity of the parties may require. Whenever the terms referred to herein are singular, the same shall be deemed to mean the plural, as the context indicates, and vice versa.

n. **No Waiver.** No right under this Lease may be waived except by written instrument executed by the party who is waiving such right. No waiver of any breach of any provision contained in this Lease shall be deemed a waiver of any preceding or succeeding breach of that provision or of any other provision contained in this Lease. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts. No failure by Landlord to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof

shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

o. **Severability.** If any term, covenant, condition, or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and shall be enforced to the fullest extent permitted by law.

p. **No Recordation.** Neither this Lease nor a memorandum thereof shall be recorded with the Clerk and Recorder of the County in which the Property is situated. However, notwithstanding the foregoing, nothing contained herein shall prohibit Landlord from recording a Memorandum of Lease with the State Department of Revenue or UCC-1 Financing Statement with the Secretary of State of the State of Colorado.

q. **Authority.** In the event the Tenant is not a natural person, Tenant and part(y) (ies) executing this Lease on behalf of Tenant shall represent and warrant that: (i) Tenant is an entity in good standing or licensed to do business in the State which the Property is located, (ii) parties executing this Lease on behalf of Tenant are duly authorized to execute same. In the event said representations and warranties are not made, Landlord shall have all available remedies against parties and Tenant including, but not limited to, holding the existing parties personally responsible for all debts and obligations arising under this Lease.

r. **Counterparts.** This Lease may be executed in counterparts.

s. **Completion of Carousel Structure/Operation of Business/Abandonment.** The parties understand and agree that time is of the essence of this project and as such, it is in all the parties' best interests to assure completion of construction of Tenant Work and commencement of Tenant's business within a prompt and reasonable time. Therefore, the parties explicitly understand and agree that the following provisions of this Lease are material and that a breach of same shall entitle Landlord to terminate this Lease as follows:

i. Except as otherwise set forth in Section 2(f) above, in the event the construction of the Carousel Structure and installation of the Carousel Apparatus is not complete within Three (3) years from the Commencement Date, this Lease shall terminate;

ii. Except as otherwise set forth in Section 2(f) above, in the event that Tenant's business is not fully operational within Three (3) years from the Commencement Date, this Lease shall terminate; and/or

iii. In the event Tenant ceases operation of its business after commencement for a period exceeding Ninety-five (95) consecutive days (exclusive of damage, destruction or other casualty to Premises outside the control of Tenant), this Lease shall terminate.

t. **Landlord Obligations with respect to Tenant Work.** The following details the sole and exclusive obligations of the Landlord with respect to the Tenant Work. Any items not explicitly detailed herein are understood and agreed to be the sole and complete responsibility of the Tenant:

i. Landlord's obligations as detailed below shall be limited to a total capital expenditure of no more than Twenty-Five Thousand and no/100 Dollars (\$25,000.00) (the "Landlord Contribution.") Any expense in excess of the Landlord Contribution shall be the sole responsibility of the Tenant; provided that in the event the Landlord Contribution maximum has been reached, Landlord shall not incur any additional expenses on behalf of Tenant or the Premises without prior review and approval by Tenant, which approval shall not be unreasonably withheld or delayed; and provided further that the parties upon mutual agreement shall have the right to substitute other contractors to perform work related to the Premises, including, but not limited to, architects, engineers, grant writers and landscaping companies with respect to the portion of work covered by the Landlord Contribution. The Landlord shall provide periodic accountings to Tenant to apprise Tenant of the amount remaining in Landlord Contribution.

(1) Subject to the limitation set forth above, Landlord will pay for architectural services related to the building design, landscaping and construction thereof, but not the actual costs of construction. Landlord will pay for costs related to working with the town for presentation of the combined project - Carousel Structure and redesign of the parking lot to the Nederland Planning Commission and later the Town Council.

(2) Subject to the limitation set forth above, Landlord will pay for a grant writer for fundraising for the Carousel Structure.

(3) Subject to the limitation set forth above, Landlord will pay for the services of civil, soils and structural engineers regarding site preparation for the Carousel Structure.

(4) Subject to the limitation set forth above, upon completion of the Carousel Structure, Landlord shall pay for landscaping consistent with that of the shopping center.

ii. Landlord shall be responsible for providing work and materials for the basic grade for the commencement of construction of the Carousel Structure at its sole expense, completed to the elevation set forth in the Site Plan such amount shall not be included in the Landlord Contribution ceiling as detailed above. Such responsibility does not include any excavation or other work or materials for the foundation or footers or other work or materials not related to providing a "pad" surface as per the elevation set forth in the Site Plan.

iii. Landlord has paid for design services of Paul Turnburke in amount of approximately Four Thousand and no/100 Dollars (\$4,000.00), a portion of which was directed towards design of the Carousel Structure. The aforementioned amount shall not be included against the Landlord Contributions.

u. In the event that this Lease is terminated, prior to completion of the construction of the Carousel Structure and/or the Lease is terminated prior to the commencement of the operation of the Carousel business, by reason of Tenant default or at the option of Tenant, Tenant will repay the Landlord for all costs expended by Landlord as detailed above, up to the Landlord Contribution.

v. Tenant will appropriately recognize the Guercio family for its generous donation to the carousel project with a prominently placed plaque on or in the building housing the carousel.

Landlord shall provide a schedule to Tenant, updated regularly, indicating the amounts Landlord has expended in conjunction with the Landlord Contribution.

AGREED TO BY AND BETWEEN THE PARTIES as of the day and date first written above.

LANDLORD:

CARIBOU MERCANTILE COMPANY,  
INC., a Colorado corporation

By: [Signature]  
Its: Pres.

TENANT:

CAROUSEL OF HAPPINESS, INC., a  
Colorado not for profit corporation

By: [Signature]  
Its: President

**EXHIBIT A**

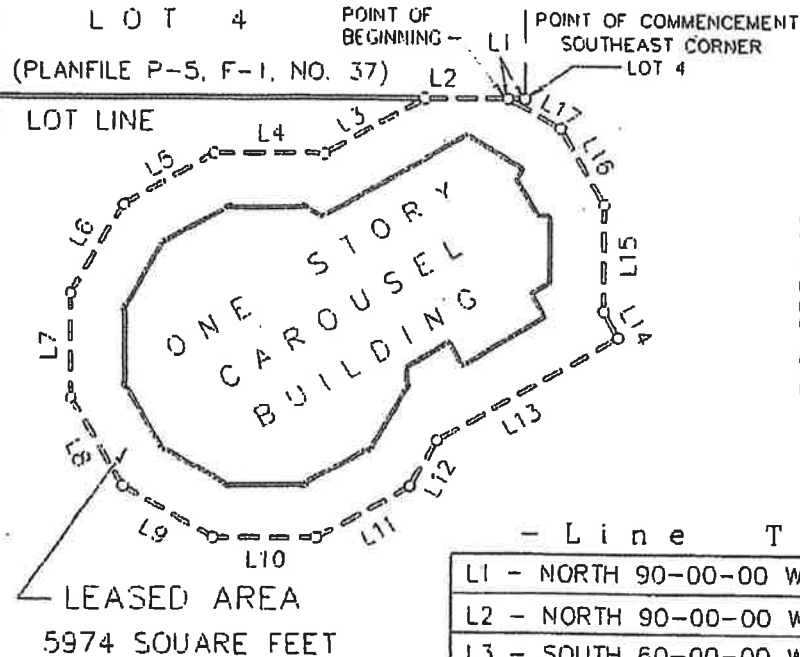




- Easement Exhibit -

BIG SPRINGS PARK MEADOWS SUBDIVISION 2  
 LOCATED IN THE SOUTHWEST 1/4 OF SECTION 13  
 TOWNSHIP 1 SOUTH RANGE 73 WEST OF THE 6TH P.M.  
 IN NEDERLAND BOULDER COUNTY, COLORADO

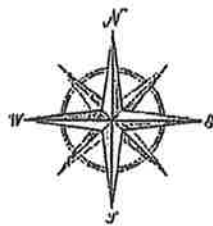
STATE HIGHWAY 119



BIG SPRINGS PARK  
 3.94 ACRE PARCEL  
 VILLAGE SHOPPING CENTER  
 TOWN OF NEDERLAND  
 (PLANFILE P-17, F-1, #30)

- Line Table -

L1 - NORTH 90-00-00 WEST / 3.14 FEET
L2 - NORTH 90-00-00 WEST / 15.95 FEET
L3 - SOUTH 60-00-00 WEST / 21.37 FEET
L4 - NORTH 90-00-00 WEST / 20.33 FEET
L5 - SOUTH 60-00-00 WEST / 19.38 FEET
L6 - SOUTH 30-00-00 WEST / 19.38 FEET
L7 - SOUTH 00-00-00 WEST / 19.32 FEET
L8 - SOUTH 30-00-00 EAST / 19.48 FEET
L9 - SOUTH 60-00-00 EAST / 19.32 FEET
L10 - NORTH 90-00-00 EAST / 19.10 FEET
L11 - NORTH 60-00-00 EAST / 19.87 FEET
L12 - NORTH 30-00-00 EAST / 10.07 FEET
L13 - NORTH 60-00-00 EAST / 39.46 FEET
L14 - NORTH 30-00-00 WEST / 5.40 FEET
L15 - NORTH 00-00-00 EAST / 19.97 FEET
L16 - NORTH 30-00-00 WEST / 16.57 FEET
L17 - NORTH 60-00-00 WEST / 11.25 FEET
DEGREES - MINUTES - SECONDS



SCALE : 1" = 30'

- Flagstaff Surveying Inc. -

Table Mesa Shopping Center  
 637 South Broadway, Suite C  
 Boulder, Colorado, 80305  
 303.499.9737  
 16094A-1.dwg, 28 April 2008

- Easement Exhibit -

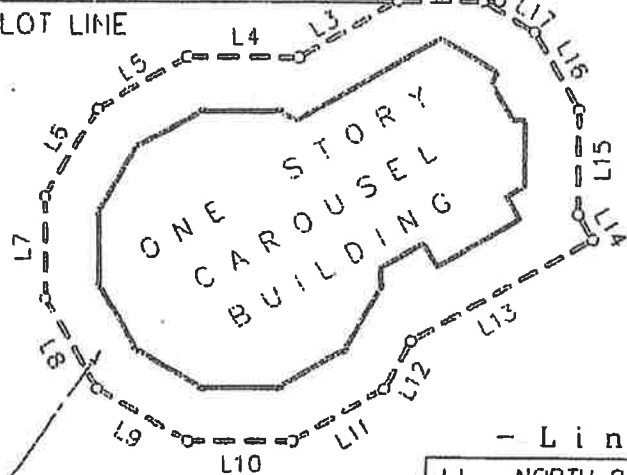
BIG SPRINGS PARK MEADOWS SUBDIVISION 2  
 LOCATED IN THE SOUTHWEST 1/4 OF SECTION 13  
 TOWNSHIP 1 SOUTH . RANGE 73 WEST OF THE 6TH P.M.  
 IN NEDERLAND . BOULDER COUNTY . COLORADO

STATE HIGHWAY 119

LOT 4  
 (PLANFILE P-5, F-1, NO. 37)

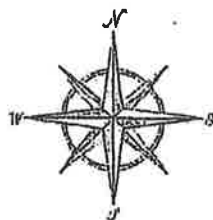
POINT OF BEGINNING L1 L2  
 POINT OF COMMENCEMENT  
 SOUTHEAST CORNER  
 LOT 4

LOT LINE



LEASED AREA

5974 SQUARE FEET



SCALE : 1" = 30'

- Flagstaff Surveying Inc. -

Table Mesa Shopping Center  
 637 South Broadway . Suite C  
 Boulder . Colorado . 80305  
 303.499.9737  
 16094A-1.dwg . 28 April 2008

BIG SPRINGS PARK  
 3.94 ACRE PARCEL  
 VILLAGE SHOPPING CENTER  
 TOWN OF NEDERLAND  
 (PLANFILE P-17, F-1, #30)

- Line Table -

L1 - NORTH 90-00-00 WEST / 3.14 FEET
L2 - NORTH 90-00-00 WEST / 15.95 FEET
L3 - SOUTH 60-00-00 WEST / 21.37 FEET
L4 - NORTH 90-00-00 WEST / 20.33 FEET
L5 - SOUTH 60-00-00 WEST / 19.38 FEET
L6 - SOUTH 30-00-00 WEST / 19.38 FEET
L7 - SOUTH 00-00-00 WEST / 19.32 FEET
L8 - SOUTH 30-00-00 EAST / 19.48 FEET
L9 - SOUTH 60-00-00 EAST / 19.32 FEET
L10 - NORTH 90-00-00 EAST / 19.10 FEET
L11 - NORTH 60-00-00 EAST / 19.87 FEET
L12 - NORTH 30-00-00 EAST / 10.07 FEET
L13 - NORTH 60-00-00 EAST / 39.46 FEET
L14 - NORTH 30-00-00 WEST / 5.40 FEET
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L16 - NORTH 30-00-00 WEST / 16.57 FEET
L17 - NORTH 60-00-00 WEST / 11.25 FEET
DEGREES - MINUTES - SECONDS