

**CITY OF SHELBY
INVESTMENT REPORT
Jan-17**

PURCHASE		MATURITY				
BANK	DATE	INVESTMENT	PRINCIPAL	PAR VALUE	TIME	DATE
Montana Board of Investments FSB	varies	Short Term Investment Pool	\$ 667,312.43		NA	NA
Montana Board of Investments WF	varies	Short Term Investment Pool	\$ 7.11			
Security State Bank & Trust, Polson*	varies	CD's & MM savings	\$ 370,702.73		various	various
BPCU - CD		CD	\$ 400,000.00			
BPCU		Savings	\$ 4,849.57			
First State Bank		CD Shelby Energy Share	\$ 93,364.06			
First State Bank		CD Shelby Disaster Relief	\$ 93,364.06			
Subtotal			\$ 1,629,599.96			
					next business day	
TOTAL			\$ 1,629,599.96			
* Landfill Trust. Investment Report submitted by trustee quarterly.						

CITY OF SHELBY, FY 2016-17
PROJECT BUDGETS
JANUARY 2017

2/15/2017

PROJECT NUMBER	NAME & ACCOUNTING	Committed Current Month	Committed YTD	ORIGINAL BUDGET	CURRENT BUDGET	AVAILABLE BUDGET	% Committed
<u>2209</u>	<u>Walking Trail</u> 2920-460443-950-2209	\$ -	\$ -	\$ -	\$ 90,000.00	\$ 90,000.00	0%
<u>2242</u>	<u>Champions Park</u> 1000-460441-950-2242	\$ -	\$ 3,651.55	\$ -	\$ 18,000.00	\$ 14,348.45	20%
<u>2279</u>	<u>Splash Park (Grant app)</u> 2600-460400-950-2279	\$ -	\$ -	\$ -	\$ 75,000.00	\$ 75,000.00	0%
<u>2281</u>	<u>Multi-Modal Rail Infrastructure Project</u> 5210-430550-950-2281	\$ -	\$ 37,285.76	\$ -	\$ 38,000.00	\$ 714.24	98%
	5310-430650-950-2281	\$ -	\$ 20,973.24	\$ -	\$ 21,000.00	\$ 26.76	100%
<u>2282</u>	<u>4th Cell Sewer Lagoon Project 2014</u> 5310-430601-950-2282	\$ -	\$ -	\$ -	\$ 4,200,000.00	\$ 4,200,000.00	0%
<u>2283</u>	<u>Storm Drainage Project</u> 5720-430246-950-2283	\$ -	\$ 57,971.65	\$ -	\$ 7,700,000.00	\$ 7,642,028.35	1%
<u>2284</u>	<u>Water Booster Station (Devon/Humic)</u> 5210-430501-950-2284 (previously 5210-430500-950-2284)	\$ 1,987.13	\$ 3,137.13	\$ -	\$ 1,100,000.00	\$ 1,096,862.87	0%
		\$ 1,987.13	\$ 123,019.33	\$ -	\$ 13,242,000.00	\$ 13,118,980.67	2%

**CITY OF SHELBY
DELINQUENT TAXES
As of 1/31/2017**

2/7/2017

City Fund	TC District	TC Fund	FUND NAME	# of Taxpayers	UNCOLLECTED AMOUNT
CITY	0910	7850	City of Shelby	184	189,624.98
1000	9981	7854	Junk Vehicle	7	51,684.02
1000	9970	7852	Noxious Weeds	21	18,850.63
1000	9971	7883	Noxious Weeds	4	803.00
2400	9840	7851	Lighting District	147	27,671.20
2500	9983	7855	Street Maintenance	143	76,118.16
2550	9986	7856	Curb, Gutter & Sidewalk-2012	5	5,493.31
2600	9860	7881	Park Maintenance	158	3,589.16
3410	9980	7853	Curb, Gutter & Sidewalk-1992	16	84,481.25
5210	9984	7857	Curb Stop	1	656.15
					\$ 458,971.86

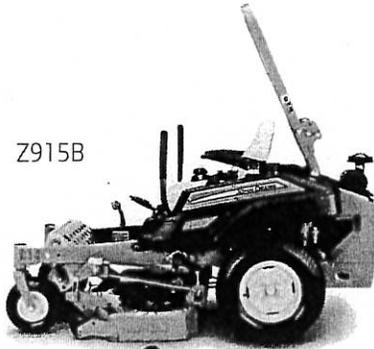
CITY OF SHELBY
112 1ST ST SO
SHELBY MT 59474
Phone (406) 434-5222
Fax (406) 434-2039

Memo

DATE: 2/15/17
TO: Mayor and City Council
FROM: Jade Goroski, City Finance Officer
RE: April 1, 2017 Landfill Trust Deposit

Attached is the landfill closure and post-closure cost estimates from Damschen and Associates, Inc. The total estimated cost is \$915,122. As of December 31, 2015, there was \$368,725.96 on deposit with the trustee leaving a balance of \$546,396.04 unfunded estimated costs for the remaining life of the landfill, 35years. On April 1, I will deposit \$15,612 to the landfill trust ($\$915,122 - \$368,726 = \$546,396 \div 35 \text{ years} = \$15,612$).

We're in the business of supporting your business.



Z915B



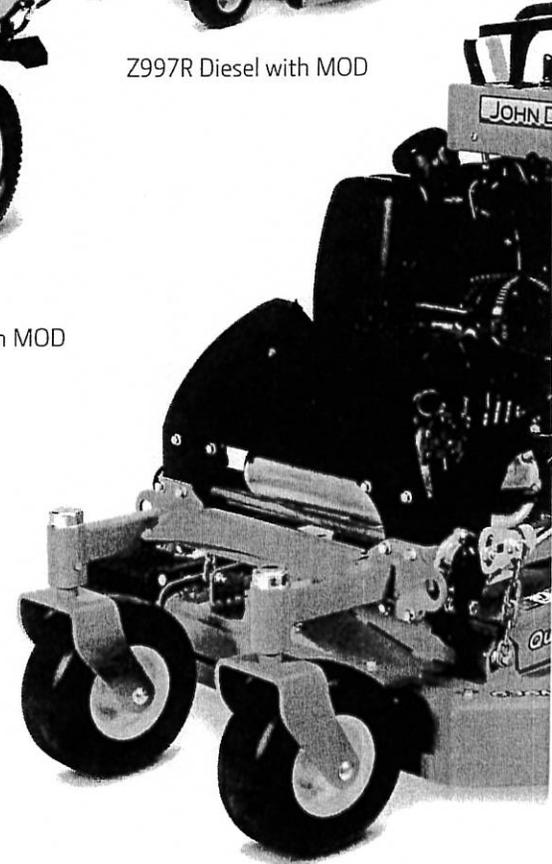
Z930M Propane with MOD
(US only)



Z997R Diesel with MOD



Z950M with MOD and
MICHELIN® X® TWEEL® TURF™





Quote Summary

Prepared For:
City Of Shelby
112 1st St S
Shelby, MT 59474
Business: 406-434-5222

Prepared By:
Joe Flesch
Frontline Ag Solutions, Llc
127 South Main Street
Conrad, MT 59425
Phone: 406-278-5531
nwfarmflesch@hotmail.com

Quote Id: 11536955
Created On: 28 May 2015
Last Modified On: 28 January 2016
Expiration Date: 28 May 2015

Equipment Summary	Suggested List	Selling Price	Qty	Extended
JOHN DEERE 950M GAS MIDZ MOWER	\$ 12,829.81	\$ 9,984.31 X	1 =	\$ 9,984.31
JOHN DEERE HOPPER 3 BAG	\$ 3,734.25	\$ 3,734.25 X	1 =	\$ 3,734.25
Equipment Total				\$ 13,718.56

Quote Summary

Equipment Total	\$ 13,718.56
SubTotal	\$ 13,718.56
Total	\$ 13,718.56
Down Payment	(0.00)
Rental Applied	(0.00)
Balance Due	\$ 13,718.56



JOHN DEERE

Selling Equipment



Quote Id: 11536955

Customer: CITY OF SHELBY

JOHN DEERE 950M GAS MIDZ MOWER

Hours:

Suggested List

Stock Number:

\$ 12,829.81

Code	Description	Qty
0691TC	Z950M Commercial ZTrak	1
Standard Options - Per Unit		
001A	United States and Canada	1
1038	24x12N12 Michelin X Tweel Turf for 54 In. and 60 In. Decks	1
1504	60 In. 7-Iron PRO Side Discharge Mower Deck	1
2001	Deluxe Comfort Seat with Armrests and Isolation	1
Other Charges		
	Freight	1
	EnviroCrate	1
	Setup	1

JOHN DEERE HOPPER 3 BAG

Hours:

Suggested List

Stock Number:

\$ 3,734.25

Code	Description	Qty
0788TC	14 Bushel 3-Bag Material Collection System (For 48 In./54 In./60 In. Z900 B/M/R Series and 72 In. Z900 M/R Series Mowers including Mulch-On-Demand Decks)	1
Standard Options - Per Unit		
001A	United States and Canada	1
1006	Attaching Parts for 60 In. 7-Iron PRO Decks	1
2000	7-Iron Blower for 7-Iron, 7-Iron PRO and 7-Iron PRO Mulch-On-Demand Decks	1



JOHN DEERE

Selling Equipment



Quote Id: 11536955

Customer: CITY OF SHELBY

Dealer Attachments		
BTC10591	Rear Anti-Scalp Wheel Kit (60" Deck)	1
R66949	Quik-Tatch Weight, 42 Lb.	1
Other Charges		
	Freight	1
	Setup	1

Lori Stratton

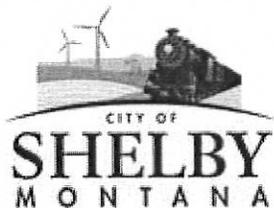
From: Larry Bonderud
Sent: Wednesday, February 15, 2017 8:37 AM
To: Bil Moritz; brian.leelaw@gmail.com; Chip Miller; Clark, Deb; Gary McDermott; Hunt Law; Jade Goroski; Loren and Randi; Lorette Carter; Lyle Kimmet; Sarah Clary; Tammy Pederson
Cc: Lori Stratton
Subject: Public Hearing

Council:

Bond council and the City Attorney have informed us that we need to have only one public hearing. We will schedule that for the 6th of March. We must do a mailing to all Shelby Property owners giving notice of the hearing and we are all working on that. It will include the official notice and also contain the issues that the council requested be included. As soon as we get a draft done of all, I will get it to you.

Mayor Lar

Larry J. Bonderud, Mayor
City of Shelby
larry@shelbymt.com
phone 406-434-5222
cell 406-450-5196



Lori Stratton

From: Larry Bonderud
Sent: Wednesday, February 15, 2017 11:06 AM
To: William E. Hunt, Jr.
Cc: Jade Goroski; Semmens.Dan@dorsey.com; Deb Clark; Lyle Kimmet; Gary McDermott; Brian Lee; Bill Moritz; pega@3rivers.net; Lori Stratton; Tammy Pederson
Subject: Re: Hearing publication

Sounds good. 13th it is.

Sent from my iPhone

Mayor Lar

On Feb 15, 2017, at 11:03 AM, William E. Hunt, Jr. <huntlaw@3rivers.net> wrote:

Damn- I was just looking at 69-7-111, the requirements of publication of notice of a rate hearing. It requires 3 published notices in the Promoter. Not 2. 69-7-111(3). 6 days apart with the last notice published no less than 3 days prior to the hearing.

The soonest we can do a rate hearing is March 13 (which will require a special meeting).

I thought in the past we only published 2x. But I see drafts of notices for prior hearings being published 3x.

Please advise- draft as special meeting for 3/13 or regular meeting for 3/20 or am I reading the statute incorrectly?

William E. Hunt, Jr.
Attorney at Law
PO Box 569
201 Main Street
Shelby MT 59474
(406) 434-3900
Fax (866) 868-8943
huntlaw@3rivers.net

Proposal for Smokefree Parks

Americans for Nonsmokers' Rights states "We know there is no safe level of exposure to secondhand smoke and even short term exposure can be deadly." So why are our residents and especially young children exposed to smoke in our public parks. Everyone has the right to breathe chemical free air.

Under federal and state laws nonsmokers are protected from harmful chemicals being put into the air. From research, we know that secondhand smoke is dangerous. "Increased risk of developing asthma, reduced lung functions, lung cancer, coronary heart disease and respiratory disorders." (2016 American Nonsmokers' Rights Foundation) Secondhand smoke exposure is now known to cause strokes in nonsmokers, increasing ear infections, also impairing immune functions and reducing quality life.(surgeon general.gov/library/reports)

In Shelby, it is currently legal for adults to use tobacco products in all public parks. This is potentially harmful to the wellbeing of the children who spend time at our city parks and adults that enjoy using our parks for picnics and get-togethers. The solution to this problem is to ban smoking in all parks. As a first step towards this positive lifestyle goal we are suggesting that all parks, including the baseball complex, be declared Tobacco Free. The benefit of this proposal is the parents of the children in the park will no longer have to worry about their children being exposed to the chemicals in secondhand smoke. This ban will help the children of Shelby to live longer, healthier lives since they will no longer be exposed to the harmful toxins in the air.

The cost of this solution is minimal to none. The radio station and newspaper would report this new law on their own so that the public would be notified. There would be minimal

cost that the City of Shelby as the reACT student group and the Toole County Health Department would provide the signage and the city would just be asked to install the signs at the various parks around the town.

Having cigarette butts lying around these areas is potentially dangerous to small children and toddlers. These children do not yet know that they should not eat objects found on the ground, if they see a cigarette butt laying in the park they may think it is candy and eat it, sending them to the hospital for nicotine poisoning. Cigarette filters are made from cellulose acetate and will never biodegrade or disappear.(2016 American Nonsmokers' Rights Foundation) By having this ban, the park will be a much cleaner place for children to play around, since there will be no cigarette butts laying in the area that take many years to chemically break down.

The ban on tobacco products in City Park will apply to all sidewalks on the perimeter of the park as well. This ban will be enforced mostly by the people of Shelby. We expect that the people will ask smokers in the park to stop smoking and follow the law. If the smoker refuses to stop law enforcement can be contacted. The law enforcement may write tickets to those who refuse to stop. This policy is used by cities in Montana such as Helena and Lewistown.

Banning tobacco products in City Parks will be beneficial to any resident or nonresident of Shelby who is using the park. If tobacco free, we may see an increase in the amount of people using the park. This is because many parents do not want their children to be exposed to secondhand smoke. By having this ban, the park will be a much cleaner place for children to play around, since there will be no cigarette butts laying in the area. ReACT encourages a healthy, non tobacco area for children and adults to use for various activities.

Proposed Resolution for City of Shelby

A resolution for the City of Shelby, Montana City Council, Directing that "No Tobacco Use" signs be placed in the City of Shelby Parks and Baseball Complex due to the amount of children in the area.

Whereas, tobacco products whether smoked or smokeless or vapor, and second hand smoke, have been determined to cause a wide range of serious health problems by the American Cancer Society, the American Heart Association, and the Surgeon General of the United States of America; and

Whereas, children look to adults as role models; and

Whereas, the City of Shelby has set aside public parks for the enjoyment of the public, including play areas and baseball fields for children including City Park, Aronow Park, Baseball Complex, Swimming Pool Park, the old Bitterroot School, and _____; and

Whereas, the City Council feels that it is in the best interest of children and adult's health to restrict tobacco use in Public Parks/Recreation Areas that are set aside for children and families.

Montana Tobacco Use Prevention Program
Chronic Disease Prevention & Health Promotion Bureau

Montana Arthritis Program
Chronic Disease Prevention & Health Promotion Bureau

Welcome Guest Log In Help View Order

Shopping Cart

Previous CONTINUE

Product Information



Product Name 12"x18" SmokeFree Metal Park Sign
Description 12"x18" SmokeFree Metal Park Sign
Product Code

Close

CITY OF SHELBY

112 First Street South
Shelby, MT 59474
Telephone: (406) 434-5222
FAX: (406) 434-2039
www.shelbymt.com



February 7, 2017

Northern Transit Interlocal
David R. Irvin
112, 1st Street South
Shelby, MT 59474

Dear David:

The city of Shelby agrees to support Northern Transit Interlocal's Coordination Plan for FY 2017-2018 with a \$5,000.00 commitment. Funds will be used to help support a regional transportation system.

The City of Shelby designates Lorette Carter as our voting member for the Northern Transit Interlocal Advisory Committee. If unable to attend a meeting, then Mayor Larry Bonderud will be our voting delegate.

Date: _____

Signature: _____

Title: _____

OTHER MATTERS

1. **Office Closure for Holidays** - This would allow all city offices to close on the following holidays and give employees the option to take vacation days or work if they wish:

- 7/03/2017 - Monday before 4th of July
- 11/24/2017 - Friday after Thanksgiving Day

Good afternoon Jade

In response to the City's inquiry regarding the carousel and public restrooms I can only respond based on the limited information provided to me.

It is my understanding that a company wishes to build a carousel and public restrooms in one of the City's parks. I am not certain whether or not the restrooms are inside the carousel building or outside as a separate structure.

The City of Missoula also has a carousel in a public park and so I was able to reach out to them to see how they are handling this. They have entered into a contract with the organization that operates the carousel. The City is the owner of the building itself, however, it is not the owner of the furnishings or contents inside the building. They only took ownership of the building. If the organization that operates the carousel should ever wish to discontinue the operation, they take the carousel horses and equipment with them. They are not owned by the City. The organization and the City's contract stipulates that maintenance of the carousel is the responsibility of the organization that operates it. The liability for the carousel rests with the organization and the City is to be listed as an additional insured on that policy. The insurance coverage for the carousel, not the building itself, rests with the organization. The operation of the carousel rests with the organization. The employees are not employees of the City, are not paid by the City nor under the direction of the City. The building itself, less the carousel, are insured by the City.

If the restrooms are inside the building they would be considered part of the building itself. The organization, however, is responsibility for upkeep and maintenance of them.

If the restrooms are outside the building and a separate structure then they would be owned by the City but you could make a decision on upkeep.

The City of Missoula felt that if the buildings were on City owned land then they should own them but not the contents and furnishings.

I have also attached a section in our Memorandum of Liability addressing claims arising out of special activities:

10.2. General Liability Coverage EXCLUSIONS

In addition to the EXCLUSIONS stated in Section 9 of this Memorandum, the following are excluded from coverage under Coverage A, General Liability Coverage, provided by this Memorandum:

10.2.9. Any liability arising out of the following special activities:

- (1) Air shows involving the aerial display of Aircraft;

- (2) Circuses;
- (3) Rodeos;
- (4) Fireworks involving the ignition of a commercial or COVERED PARTY's sponsored display;
- (5) Animal racing;
- (6) Carnival or amusement rides;**
- (7) Motorized vehicle racing;
- (8) Water sports other than those associated with municipal swimming pools, or bodies of water, owned, or controlled by the Member. For purposes of this exclusion, **“Controlled” means having in place an inspection and maintenance program, and the placement of signage to include but not be limited to the following: use of safety equipment, recommended times when feature should not be used, and to use at own risk.**
- (9) The rental of any motorized vehicle or apparatus used for individual conveyance or entertainment;
- (10) Boxing or other martial arts competition.

During our call last week you indicated the Town of Shelby does not want to own the building either. In this case, you will want to enter into an agreement that clearly outlines who is responsible for what if the organization goes defunct---what happens to the building etc. MMIA also recommends the Town is listed as an additional insured on the organization's liability policy.

Please contact me with any additional questions you may have.

Ann Komac
Claims Manager

Approved by City Council on October 24, 2005

Amendment to the Amendment to the Carousel Operations Agreement

This Amendment to the Carousel Operations Agreement between the City of Missoula and A Carousel for Missoula Foundation, Inc., first entered into on November 10, 1994, is mutually agreed upon by the parties hereto.

Whereas, the Missoula Carousel is an integral part of the community's identity and has provided several years of enjoyment to citizens and visitors alike; and,

Whereas, the City of Missoula and A Carousel for Missoula Foundation, Inc. have maintained a productive and mutually beneficial relationship during the period of the Carousel Operations Agreement; and

Whereas, A Carousel for Missoula Foundation, Inc. proposed to build a children's play area, named "Dragon Hollow," adjacent to the Carousel in Caras Park, and the City of Missoula Parks Board approved said proposal; and,

Whereas, Dragon Hollow was financed and constructed by the people of Missoula in the tradition of the Missoula Carousel, and has become a valued new public place of recreation; Now, Therefore, the parties agree as follows:

A Carousel for Missoula Foundation, Inc. does hereby transfer and convey to the City of Missoula the play structure, furnishings and equipment in Dragon Hollow. Responsibility for maintenance of the play structure, furnishings, equipment and immediate grounds, however, shall remain with and be the obligation of A Carousel for Missoula Foundation, Inc. Dragon Hollow play area, including the immediate grounds it occupies, as well as the play structure, furnishings and equipment, will be maintained in a good, safe condition at the sole expense of A Carousel for Missoula Foundation, Inc.

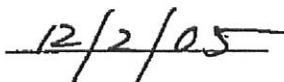
The Missoula Parks and Recreation Department will conduct inspections of the Dragon Hollow play area on a monthly basis and report any conditions of disrepair, damage or any other unsafe condition to the Executive Director of the Missoula Carousel.

Upon receiving report of any condition identified as being unsafe for the public, A Carousel for Missoula Foundation, Inc. through its Executive Director, shall close the play area and/or restrict public access to unsafe portions of the play area until such time as the condition shall have been remedied by A Carousel for Missoula Foundation, Inc. at its sole expense.

Signed:


Wendy Carpenter

President of A Carousel for Missoula Foundation, Inc,



Date

Jim Nugent
Jim Nugent, City Attorney

12/5/05
Date

Mike Kadas
City of Missoula, Mayor Kadas

12.6.05
Date

Janet Keller Holler
Marty Rehbein, City Clerk of Missoula
Deputy

12/13/05
Date



Agreement to Extend Lease Option for A Carousel for Missoula

3. Option to Renew and Amendment.

Lessee may at its option renew this lease under the terms stated herein for five additional periods of five (5) years each provided the following conditions are satisfied:

(a) At the time of the exercise of this option Lessee is not then in default under this Lease.

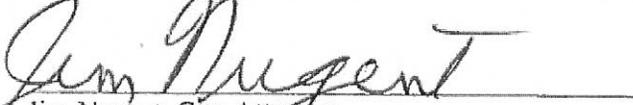
(b) Lessee gives written notice to Lessor of its exercise of the option not less than sixty (60) days prior to the expiration of the initial term of this Lease. If the option is not so exercised, any holdover by Lessee and any acceptance of rent by Lessor shall be deemed to be pursuant to a month-to-month tenancy and shall not extend Lessee's right to renew hereunder.

Per Section Three above of the Carousel Lease, A Carousel for Missoula Foundation is excising their right to extend the lease of the land in Caras Park upon which the Carousel sits until November 2009.

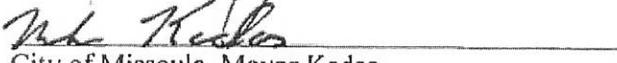
Signed:


Wendy Carpenter
President of A Carousel for Missoula Foundation, Inc,

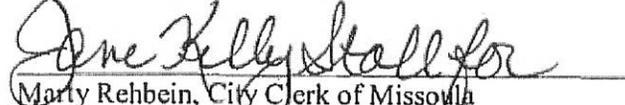
12/2/05
Date


Jim Nugent, City Attorney

12/5/05
Date


City of Missoula, Mayor Kadas

12.6.05
Date


Marty Rehbein, City Clerk of Missoula
deputy

12/12/05
Date



Part 1 Rec

CAROUSEL LEASE

Carousel

THIS LEASE AGREEMENT, made and entered into this 10th day of November, 1994, by and between the City of Missoula, hereinafter referred to as "Lessor", and Carousel for Missoula Foundation, Inc., hereinafter referred to as "Lessee".

WITNESSETH:

Lessor, for and in consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the Lessee, demises and leases to Lessee, and Lessee does hereby take, accept and rent from Lessor the premises hereinafter described for the period, at the rental and upon the terms and conditions hereinafter set forth:

1. *Demised Premises.* The premises demised and leased hereunder shall be known as the Missoula Carousel Building located in Caras Park in the City of Missoula, Missoula County, Montana, for use and operation of Missoula's Carousel, the location of which is more particularly described as:

A portion of Caras Park, a tract of land located in the E $\frac{1}{2}$, Section 21 and in the W $\frac{1}{2}$, Section 22, Township 13 North, Range 19 West, P.M.M., Missoula County Montana; more particularly described as follows:

Commencing at the southeast corner of lot 1, Corrected Plat CP Higgins-McCormick Addition to Missoula, Montana; thence S 48°34'5" W, 139 feet to the point of beginning; thence N 47°0'0" W, 150 feet; thence S 81°28'35" W, 104 feet; thence S 32°20'27" E, 150 feet; thence S 89°22'56" E, 12.5 feet; thence N 71°32'45" E, 126.3 feet to the point of beginning; containing 0.38 acres, more or less.

2. *Term of Lease.* ~~The term of this Lease shall commence on November 1, 1994, and expire November 1, 1999, unless terminated or renewed in accordance with the provisions of this Lease.~~

3. *Option to Renew and Amendment.* Lessee may, at its option, renew this Lease under the terms stated herein for five (5) additional periods of five (5) years each provided the following conditions are satisfied:

- (a) At the time of the exercise of this option Lessee is not then in default under this Lease.
- (b) Lessee gives written notice to Lessor of its exercise of the option not less than sixty (60) days prior to the expiration of the initial term of this Lease. If the option is not so exercised, any holdover by Lessee and any acceptance of rent by Lessor shall be deemed to be pursuant to a month-to-month tenancy and shall not extend Lessee's right to renew hereunder.

In the event Lessee exercises this option, the parties may agree to renegotiate certain terms of this Lease. In that event, an addendum reflecting any renegotiated terms shall be executed and appended to this Lease and incorporated herein by reference. Any termination of this Lease during the initial term shall extinguish all rights of extension or renewal granted hereunder. If Lessee exercises its option to renew hereunder, all terms and conditions of this Lease shall remain in full force and effect.

4. *Payment of Rent.* Lessee shall pay rental only as provided herein and only after payment of operating expenses and other expenses as set forth herein. Lessee shall be entitled to set prices for and charge the public for use of Missoula's Carousel. The Foundation shall use all Carousel income, including net income from operation of the Carousel gift shop, to pay expenses of operation. Thereafter, and until such time as Lessee has amassed a contingency fund of Seventy-Five Thousand Dollars (\$75,000.00) to cover unexpected costs of repair or operation, Lessee shall pay twenty-five percent (25%) of income after payment of expenses to Lessor. Once Lessee has accumulated Seventy-Five Thousand Dollars (\$75,000.00) in its contingency fund, it shall pay to

Lessor, on an annual basis and with an accounting of funds, seventy-five percent (75%) of all income after payment of operating expenses and shall make such payment on or before December 1 of each year.

As used herein, the term "expenses" shall include all costs of operating Missoula's Carousel, including personnel salary and costs, utilities, maintenance, insurance, professional fees and costs, advertising, garbage fees, all normal, routine and necessary costs of operation, and any applicable taxes and assessments. The term "expenses" shall also include repairs to the Missoula Carousel Building and miscellaneous routine repairs, including repairs required as a result of vandalism, to the extent such repair or replacement costs are not covered by insurance on either the building or its contents. As used herein, the term "income" shall not include gifts, charitable bequests, grants or other donations made to or for the benefit of Missoula's Carousel.

If the Foundation pays expenses for repairs from its contingency fund, it shall be entitled to directly pay those expenses from income and treat such repayment as an expense of operation.

Lessee shall provide, by March 1st of each year of the term of the Lease, an accountant-prepared financial statement and a tax return as filed for operation of Missoula's Carousel for the prior calendar year to be delivered to Lessor for audit.

5. *Use of Premises.* Lessee shall occupy and use the demised premises for operation of Missoula's Carousel and all other uses necessarily incident thereto. Lessee will, in its use and occupancy of the leased premises, comply with all applicable laws, rules, regulations and ordinances of every governmental body or agency whose authority

extends to the leased premises or to any business conducted thereon. Lessee covenants that no liens will attach to the real property as a result of Lessee's operation. The parties hereto acknowledge, however, the existence of liens upon the Carousel horses, mechanical works and band organ in favor of First Bank Montana National Association securing a loan in an amount not to exceed the principal sum of One Hundred Thousand Dollars (\$100,000.00).

6. *Restriction on Use.* Lessee shall not use nor permit the demised premises to be used for any purpose other than that set forth in Paragraph 5 above. In addition, Lessee agrees that use of alcohol in Missoula's Carousel shall be prohibited during hours of general operation. Any use of alcohol during private events shall only be permitted if supplied by a licensed caterer with the proper endorsement for the event on his/her/its all-beverage license. The Foundation agrees to indemnify and hold harmless the Lessor from any and all claims and related fees, costs and expenses arising out of serving of alcohol at the Carousel and Carousel-related events.

7. *Maintenance and Repairs.* Lessor shall maintain in accordance with community standards and keep in good repair the structural portions of the demised premises including the roof, gutters and downspouts. ~~Lessee shall be responsible for all maintenance and any other charges or expenses incurred in the use or occupancy of the demised property.~~ Lessee warrants that during the term of this Lease it shall maintain the property and improvements thereon in as good a state and condition as they were at the time this Lease was entered into. Lessee further warrants that upon termination of this Lease whether by default, expiration or otherwise, it shall vacate and surrender the

premises in as good a state and condition as they were at the time this Lease was entered into.

Lessor agrees that its Parks Department shall maintain and shall be responsible for maintenance of all grounds in and near the Missoula Carousel Building. The grounds surrounding the Missoula Carousel Building shall be regarded as part of the Parks Department of the City of Missoula.

8. *Assignment.* Lessee shall not assign or transfer this Lease or any part thereof without the prior written consent of Lessor. Lessee likewise may not sublet or transfer a part or a portion of the demised premises without the express written consent of Lessor.

9. *Lessor's Right to Inspect.* Lessor and its agents shall have free access to the premises during all reasonable hours for the purpose of examining the same to ascertain if they are in good repair.

10. *Utilities and Liens.* Lessee shall pay promptly all charges for heat, light, gas, water, and power used in or upon the demised premises. Lessee shall also promptly pay for sewage, if any, as well as all bills for materials furnished or labor performed for Lessee. Lessee shall keep the demised premises free from all claims for liens for work, labor or materials. Lessor shall, in accordance with its work regarding its city parks, be responsible for removal of garbage accumulated in any garbage bins maintained on the premises in the same fashion as it removes or is responsible for removal of garbage in any of its public parks.

11. *Taxes and Assessments.* Lessee shall pay all taxes and assessments levied upon Lessee or upon Lessee's personal property located on the premises or used in Lessee's business as the same become due and payable during the term of this Lease.

12. *Liability and Insurance.* Lessor shall acquire and maintain property and casualty insurance on the building (i.e.; the premises covered by this Lease) in which it shall name Lessee as an additional insured. Lessee shall acquire and maintain property and casualty insurance on all contents of the building, including the Carousel itself, including all horses, mechanical works, band organ, lights, mirrors and all related accoutrements. Lessee shall hold Lessor free and harmless from all claims, damage, suits, or causes of action resulting from injuries to person or property arising thereon or out of the use, occupancy or condition of the demised premises and shall carry and maintain public liability insurance in such form and with such companies as will be satisfactory to Lessor. Lessee's insurance shall include Lessor as a named insured, as its interest may appear from time to time, and shall insure against liability in the minimum amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) for each claim and One Million Five Hundred Thousand Dollars (\$1,500,000.00) for each occurrence, and not less than Fifty Thousand Dollars (\$50,000.00) property damage arising in or about the demised premises.

During the term of this Lease, Lessor shall procure and maintain fire, windstorm, and extended coverage insurance on the demised premises, and shall list Lessee as an additional named insured as its interests may appear.

All insurance policies written on behalf of the Lessee shall contain a waiver of subrogation rights which Lessee's insurers may have against Lessor and those for whom the Lessor may be responsible. All insurance policies written on behalf of the Lessor shall contain a waiver of subrogation rights which Lessor's insurers may have against Lessee and those for whom the Lessee may be responsible.

13. *Entry.* Lessor shall, after reasonable notice, have the right to enter the premises for the purpose of inspecting and making repairs and improvements to the premises and in the case of an emergency, provided that Lessor shall use all reasonable efforts to avoid interference with the conduct of Lessee's business on the premises.

14. *Default and Reentry.* Should Lessee fail to pay the rent due hereunder, or should Lessee fail to perform any other covenant, agreement, condition or undertaking required to be performed by Lessee or its assigns, and should such default continue for a period of thirty (30) days after written notice thereof is given by Lessor to Lessee, it shall and may be lawful for Lessor, at its election, to do either of the following:

- (a) Terminate this Lease, without the necessity of reentry, by giving written notice to Lessee.
- (b) Reenter the premises and remove the Lessee and every other person occupying the premises and repossess the premises, without such re-entry and repossession working as a forfeiture of the rent to be paid and the covenants to be performed by Lessee during full term.

If Lessee remedies any default within the said period of thirty (30) days, this Lease shall be deemed reinstated as of that date.

15. *Surrender Upon Termination.* Lessee covenants and agrees that, upon the termination of this Lease by expiration of the initial term or any renewal term or

otherwise, Lessee will at once surrender and deliver up to the Lessor the premises in as good condition as when the Lessee took possession, ordinary wear and tear and damage by the elements alone excepted.

16. *Hold Over.* If Lessee shall with the consent of Lessor, hold over after the expiration of the term of this Lease, such tenancy shall be for an indefinite period of time on a month-to-month basis pursuant to Montana law. During such tenancy, the applicable rent due hereunder shall be the same as set forth herein unless a different rate is agreed upon in writing.

17. *Removal of Lessee's Property.* At the end of the Lease term or any renewals thereof, Lessee shall be entitled to remove its signs, furniture, business fixtures, equipment, inventory, special lighting fixtures, or other items installed by it, including the Carousel horses, mechanical works, band organ, lights, mirrors, gargoyles and any and all other Carousel accoutrements. Under no circumstances shall Lessor be entitled to ownership or possession of any of the personal property of Lessee maintained in or upon the premises.

18. *Miscellaneous Provisions.*

(a) *Attorney's Fees.* In the event suit is brought to enforce any of the provisions of this Lease, the prevailing party shall be entitled to costs of suit, including reasonable attorney's fees.

(b) *Parties.* The terms and conditions of this Lease are to apply to and bind the respective parties hereto, their heirs, representatives, successors, and assigns.

(c) *Notice.* Whenever in this Lease notice is called for or required, such notice shall be deemed to have been given when served or sent by registered or certified mail to the parties at the addresses listed below or when served upon one of the parties utilizing procedures specified for service of process under the laws of the State of Montana:

Lessor: City of Missoula
435 Ryman
Missoula, MT 59802

Lessee: A Carousel for Missoula Foundation, Inc.
P. O. Box 3345
Missoula, MT 59806

Should Lessee change its address, it shall be its responsibility to give notice to Lessor of such change. Absent such notice, Lessor shall be free to rely upon the addresses set forth above.

(d) *Complete Agreement.* This Lease contains the entire understanding of the parties, and such understanding may not be modified except in writing signed by the parties.

(e) *Governing Law.* The laws of the State of Montana shall govern the interpretation and enforcement of this Lease.

(f) *No Relationship.* Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or a partnership, joint venture or of any other association whatsoever between Lessor and Lessee, it being expressly understood and agreed that no provision contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any

relationship between the Lessor and Lessee other than the relationship of landlord and tenant.

(g) *Partial Severability.* The invalidity or unenforceability of any provision of this Lease shall not affect or impair the validity of any other provision contained herein.

(h) *Non-Waiver of Breach.* The failure of either party hereto to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of such, or any such other covenants or agreements but the same shall be and remain in full force and effect.

(i) *Paragraph Headings.* The paragraph headings herein are for convenience only, and do not define, limit or construe the contents of such paragraphs.

(j) *Parties.* This Lease is binding upon the parties hereto, their heirs, representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto executed this Lease the day and year first above written.

LESSOR:

ATTEST:

By Charles C. Stearns
Charles C. Stearns
Finance Officer/City Clerk

CITY OF MISSOULA
By Daniel Kemmis
Mayor Daniel Kemmis

LESSEE:

A CAROUSEL FOR MISSOULA
FOUNDATION, INC.

By Robert D. [Signature]
Its President

CAROUSEL OPERATIONS AGREEMENT

This Agreement is entered into by and between the City of Missoula (City) and A Carousel for Missoula Foundation, Inc., (Foundation), a duly constituted and authorized Montana not-for-profit corporation for the ownership and operation of the Carousel being built and completed by the Foundation (referred to herein as "Missoula's Carousel").

WHEREAS, the Foundation has assisted in the efforts of hundreds of Missoula and Western Montana citizens in the building of the first fully hand-carved wooden Carousel to be built in the United States since the Depression; and,

WHEREAS, the Foundation has raised public and private funds sufficient to build a building for Missoula's Carousel; and

WHEREAS, hundreds of volunteers have donated tens of thousands of hours of their time to carve, sand and paint horses, mirror frames, gargoyles, band organ facade, chariots and other parts of Missoula's Carousel and to refurbish and build the mechanical works for Missoula's Carousel; and

WHEREAS, the Foundation, with the assistance of dedicated band organ enthusiasts, has raised funds to have built and delivered to Missoula's Carousel one of the largest band organs in use in the United States; and

WHEREAS, the City of Missoula, through its City Council, Mayor and Redevelopment Agency have supported and encouraged this unique project; and

WHEREAS, the City of Missoula has provided ground for the building site of Missoula's Carousel in Missoula's Caras Park; and

WHEREAS, the City of Missoula and the Foundation wish to enter into a long-term agreement for the operation of Missoula's Carousel;

NOW, THEREFORE, the parties hereby enter into this Agreement which shall be regarded as the principal agreement governing the relationship of the parties as it relates to the operation of Missoula's Carousel.

1. *Location of Carousel.* Missoula's Carousel shall be located in the Missoula Carousel Building at Caras Park. The legal description of the site of Missoula's Carousel is as follows:

A portion of Caras Park, a tract of land located in the E½, Section 21 and in the W½, Section 22, Township 13 North, Range 19 West, P.M.M., Missoula County Montana; more particularly described as follows:

Commencing at the southeast corner of lot 1, Corrected Plat CP Higgins-McCormick Addition to Missoula, Montana; thence S 48°34'5" W, 139 feet to the point of beginning; thence N 47°0'0" W, 150 feet; thence S 81°28'35" W, 104 feet; thence S 32°20'27" E, 150 feet; thence S 89°22'56" E, 12.5 feet; thence N 71°32'45" E, 126.3 feet to the point of beginning; containing 0.38 acres, more or less.

2. *Ownership of Building.* Concurrent with execution of this Agreement, the Foundation shall convey to the City and the City shall accept all right, title and interest in and to that structure known as the Missoula Carousel Building located in Caras Park and at the place above-described.

3. *Ownership of Carousel, Mechanical Works, Gift Shop and Band Organ.* The Foundation owns and shall retain ownership of and right, title and interest to any and all property located in Missoula's Carousel Building including, but not limited to, all of Missoula's Carousel including any and all carousel horses, mirror frames, gargoyles, chariots, lights, decorations of all kinds, band organ including the facade, as well as all

inventory, furniture, equipment and fixtures related to the operation of the Carousel and gift shop. The Foundation does not presently own the first five carved Carousel horses or the original Carousel frame but expects to acquire those items pursuant to separate agreement with Chuck Kaparich.

4. *Lease of Missoula's Carousel Building.* Upon execution of this Agreement, the City and the Foundation shall enter into a lease agreement for a term of five (5) years which shall be renewable for successive five (5) year terms upon the giving of sixty (60) days' notice by the Foundation of intention to renew. The option to renew may not be abridged so long as the Foundation is complying with the terms and conditions of its lease. Further terms and conditions relating to the lease and renewal or termination of the lease shall be contained in the Carousel Lease agreement, a copy of which is attached hereto as Exhibit "A" and which is incorporated herein by this reference. Any modifications of or amendments to this Agreement may be considered by the parties at any time, but any such modification or amendment may only be in writing signed by the parties.

5. *Control Over Operations of Missoula's Carousel.* The Foundation shall have control over operation of Missoula's Carousel at all times including, but not limited to, decisions regarding hours of operation, policies regarding use and operation, advertising and promotion and receipt of and accounting for funds received from Missoula's Carousel operations. The Foundation shall comply with all applicable laws, rules, regulations and ordinances of every governmental body or agency whose authority extends to the property or to any business conducted upon the property, including, but not

limited to, rules, regulations and policies relating to use by the public and the Foundation shall not discriminate in any way and shall comply with all laws relating to equal opportunity and non-discrimination. The Foundation hereby adopts the statement of non-discrimination used by the City attached hereto as Exhibit "B".

The Foundation agrees that use of alcohol shall be prohibited during hours of general operation of Missoula's Carousel. Any use of alcohol during private events shall only be permitted if supplied by a licensed caterer with the proper endorsement for the event on his/her/its all beverage license.

6. *Assignment of Rights.* The Foundation shall not assign or encumber its interest in the lease or in the premises, or sublease all or any part of the premises, or allow any other person or entity other than Missoula's Carousel to occupy or use all or any part of the premises without first obtaining the City's written consent. The parties acknowledge, however, that from time to time it may be necessary for the Foundation to encumber certain of its property, including horses, the carousel works or the band organ, and to grant a security interest in such property to a lending institution or institutions to secure all or a portion of a loan to the Foundation. The parties acknowledge that there is presently existing and perfected a security interest in and to all Carousel horses, mechanical works, band organ, attachments and related equipment in favor of First Bank Montana National Association securing a loan in an amount not to exceed the principal sum of One Hundred Thousand Dollars (\$100,000.00).

7. *Cessation of Operations.* In the event the Foundation ceases operations of the Carousel, the City shall have the right of first refusal or first option to purchase or acquire the right to operate the Carousel.

8. *Income From Operations.* The Foundation shall set prices for and charge the public for use of Missoula's Carousel, including rides and rental of the Missoula Carousel Building for parties and special events. The Foundation shall use Missoula Carousel income, including net income from operation of the Carousel gift shop, to pay all expenses of operation, including such things as costs of building repair and maintenance to the extent not covered by insurance. Thereafter, and until such time as the Foundation has amassed a contingency fund of Seventy-Five Thousand Dollars (\$75,000) to cover costs of repair or operation, the Foundation shall provide twenty-five percent (25%) of income after payment of expenses to the City of Missoula. Once the Foundation has accumulated Seventy-Five Thousand Dollars (\$75,000) in its contingency fund, it shall pay to the City of Missoula, on an annual basis and with an accounting of the funds, seventy-five percent (75%) of all income after payment of expenses. Such payment shall be made on or before December 1 of each year. As used in this Agreement, the term "expenses" shall include all costs of operating Missoula's Carousel, including personnel salary and costs, utilities, maintenance, insurance, professional fees and costs, advertising, garbage service, all normal, routine and necessary costs of operation, and any applicable taxes and assessments. The term shall also include repairs to the roof and structure of the Carousel Building and miscellaneous routine repairs to the extent such repairs are not covered by insurance on either the building or its contents.

If the Foundation pays expenses for repairs from its contingency fund, it shall be entitled to directly repay those expenses from income and treat such repayment as an expense of operation.

The parties agree that the term "income," as used in this Agreement, shall not include gifts, charitable bequests, grants or other donations made to or for the benefit of Missoula's Carousel.

9. ***Business Records.*** The Foundation agrees that it shall keep and provide to the City a full and complete accounting of all income and expenses of the business and that its accounting records shall be open to the City upon request.

10. ***Maintenance of Grounds.*** The City agrees that its Parks Department shall maintain and shall be responsible for maintenance of all grounds in and near the Missoula Carousel Building. The grounds shall be regarded as part of the Parks Department of the City.

11. ***Building Maintenance.*** The Foundation shall be responsible for all maintenance of the Missoula Carousel Building at its own expense, except to the extent that repair costs may be paid or properly covered by insurance on either the building or its contents.

12. ***Property and Casualty Insurance.*** The City shall acquire and maintain property and casualty insurance on the building, and the Foundation shall acquire and maintain property and casualty insurance on all contents of the building, including the Carousel itself, including all horses and accoutrements, all such insurance to cover the cost of replacement of the building and its contents.

13. *Liability Insurance.* The Foundation shall acquire and maintain a comprehensive general liability insurance policy, and a policy endorsement naming the City of Missoula as an additional insured, in the amount of commercial and general liability insurance in the minimum amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) for each claim and One Million Five Hundred Thousand Dollars (\$1,500,000.00) for each occurrence, and not less than Fifty Thousand Dollars (\$50,000.00) property damage arising in or about the demised premises, such insurance to cover bodily injury, death, property damage and products liability for food and merchandise. The City shall be given no less than twenty (20) days written notice of any cancellation, termination or reduction in coverage.

14. *Notice.* Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be served by prepaid, first class mail, and sent to the other party at the addresses set forth below:

City of Missoula
435 Ryman
Missoula, MT 59802

A Carousel for Missoula Foundation, Inc.
P. O. Box 3345
Missoula, MT 59806

15. *Default and Termination.* In the event of breach of a material term of this Agreement by the Foundation, the City shall serve written notice specifying the breach or default to the Foundation. Failure to cure the specified default within thirty (30) days after notice has been given shall constitute a default which shall be grounds for termination of this Agreement.

16. **Complete Agreement.** This Agreement contains the entire agreement and understanding of the parties and may not be modified except in writing signed by the parties.

17. **Severability.** If any part of this Agreement shall be held by the courts to be illegal or in conflict with the laws of the State of Montana, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

18. **Binding Effect.** The terms and conditions of this Agreement shall apply to and bind the parties, their heirs, successors, representatives and assigns.

19. **Relationship of Parties.** The parties hereto are not and shall not be regarded as partners or joint venturers and neither party shall, as a result of this Agreement, be held to answer for any loss, charge or expense in connection with or arising from operation of Missoula's Carousel except as specifically provided in this Agreement or any other agreement entered into by the parties hereto.

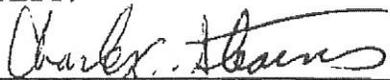
EXECUTED this 10th day of November, 1994.

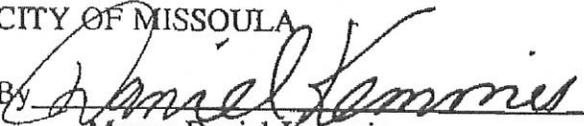
A CAROUSEL FOR MISSOULA
FOUNDATION, INC.

By 

Its President

ATTEST:

By 
Charles C. Stearns
Finance Officer/City Clerk

CITY OF MISSOULA
By 
Mayor Daniel Kemmis

CAROUSEL LEASE

THIS LEASE AGREEMENT, made and entered into this ____ day of _____, 1994, by and between the City of Missoula, hereinafter referred to as "Lessor", and A Carousel for Missoula Foundation, Inc., hereinafter referred to as "Lessee".

WITNESSETH:

Lessor, for and in consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the Lessee, demises and leases to Lessee, and Lessee does hereby take, accept and rent from Lessor the premises hereinafter described for the period, at the rental and upon the terms and conditions hereinafter set forth:

1. *Demised Premises.* The premises demised and leased hereunder shall be known as the Missoula Carousel Building located in Caras Park in the City of Missoula, Missoula County, Montana, for use and operation of Missoula's Carousel, the location of which is more particularly described as:

A portion of Caras Park, a tract of land located in the E½, Section 21 and in the W½, Section 22, Township 13 North, Range 19 West, P.M.M., Missoula County Montana; more particularly described as follows:

Commencing at the southeast corner of lot 1, Corrected Plat CP Higgins-McCormick Addition to Missoula, Montana; thence S 48°34'5" W, 139 feet to the point of beginning; thence N 47°0'0" W, 150 feet; thence S 81°28'35" W, 104 feet; thence S 32°20'27" E, 150 feet; thence S 89°22'56" E, 12.5 feet; thence N 71°32'45" E, 126.3 feet to the point of beginning; containing 0.38 acres, more or less.

2. *Term of Lease.* The term of this Lease shall commence on November 1, 1994, and expire November 1, 1999, unless terminated or renewed in accordance with the provisions of this Lease.

3. *Option to Renew and Amendment.* Lessee may, at its option, renew this Lease under the terms stated herein for five (5) additional periods of five (5) years each provided the following conditions are satisfied:

- (a) At the time of the exercise of this option Lessee is not then in default under this Lease.
- (b) Lessee gives written notice to Lessor of its exercise of the option not less than sixty (60) days prior to the expiration of the initial term of this Lease. If the option is not so exercised, any holdover by Lessee and any acceptance of rent by Lessor shall be deemed to be pursuant to a month-to-month tenancy and shall not extend Lessee's right to renew hereunder.

In the event Lessee exercises this option, the parties may agree to renegotiate certain terms of this Lease. In that event, an addendum reflecting any renegotiated terms shall be executed and appended to this Lease and incorporated herein by reference. Any termination of this Lease during the initial term shall extinguish all rights of extension or renewal granted hereunder. If Lessee exercises its option to renew hereunder, all terms and conditions of this Lease shall remain in full force and effect.

4. *Payment of Rent.* Lessee shall pay rental only as provided herein and only after payment of operating expenses and other expenses as set forth herein. Lessee shall be entitled to set prices for and charge the public for use of Missoula's Carousel. The Foundation shall use all Carousel income, including net income from operation of the Carousel gift shop, to pay expenses of operation. Thereafter, and until such time as Lessee has amassed a contingency fund of Seventy-Five Thousand Dollars (\$75,000.00) to cover unexpected costs of repair or operation, Lessee shall pay twenty-five percent (25%) of income after payment of expenses to Lessor. Once Lessee has accumulated Seventy-Five Thousand Dollars (\$75,000.00) in its contingency fund, it shall pay to

Lessor, on an annual basis and with an accounting of funds, seventy-five percent (75%) of all income after payment of operating expenses and shall make such payment on or before December 1 of each year.

As used herein, the term "expenses" shall include all costs of operating Missoula's Carousel, including personnel salary and costs, utilities, maintenance, insurance, professional fees and costs, advertising, garbage fees, all normal, routine and necessary costs of operation, and any applicable taxes and assessments. The term "expenses" shall also include repairs to the Missoula Carousel Building and miscellaneous routine repairs, including repairs required as a result of vandalism, to the extent such repair or replacement costs are not covered by insurance on either the building or its contents. As used herein, the term "income" shall not include gifts, charitable bequests, grants or other donations made to or for the benefit of Missoula's Carousel.

If the Foundation pays expenses for repairs from its contingency fund, it shall be entitled to directly pay those expenses from income and treat such repayment as an expense of operation.

Lessee shall provide, by March 1st of each year of the term of the Lease, an accountant-prepared financial statement and a tax return as filed for operation of Missoula's Carousel for the prior calendar year to be delivered to Lessor for audit.

5. *Use of Premises.* Lessee shall occupy and use the demised premises for operation of Missoula's Carousel and all other uses necessarily incident thereto. Lessee will, in its use and occupancy of the leased premises, comply with all applicable laws, rules, regulations and ordinances of every governmental body or agency whose authority

extends to the leased premises or to any business conducted thereon. Lessee covenants that no liens will attach to the real property as a result of Lessee's operation. The parties hereto acknowledge, however, the existence of liens upon the Carousel horses, mechanical works and band organ in favor of First Bank Montana National Association securing a loan in an amount not to exceed the principal sum of One Hundred Thousand Dollars (\$100,000.00).

6. *Restriction on Use.* Lessee shall not use nor permit the demised premises to be used for any purpose other than that set forth in Paragraph 5 above. In addition, Lessee agrees that use of alcohol in Missoula's Carousel shall be prohibited during hours of general operation. Any use of alcohol during private events shall only be permitted if supplied by a licensed caterer with the proper endorsement for the event on his/her/its all-beverage license. The Foundation agrees to indemnify and hold harmless the Lessor from any and all claims and related fees, costs and expenses arising out of serving of alcohol at the Carousel and Carousel-related events.

7. *Maintenance and Repairs.* Lessor shall maintain in accordance with community standards and keep in good repair the structural portions of the demised premises including the roof, gutters and downspouts. Lessee shall be responsible for all maintenance and any other charges or expenses incurred in the use or occupancy of the demised property. Lessee warrants that during the term of this Lease it shall maintain the property and improvements thereon in as good a state and condition as they were at the time this Lease was entered into. Lessee further warrants that upon termination of this Lease whether by default, expiration or otherwise, it shall vacate and surrender the

premises in as good a state and condition as they were at the time this Lease was entered into.

Lessor agrees that its Parks Department shall maintain and shall be responsible for maintenance of all grounds in and near the Missoula Carousel Building. The grounds surrounding the Missoula Carousel Building shall be regarded as part of the Parks Department of the City of Missoula.

8. *Assignment.* Lessee shall not assign or transfer this Lease or any part thereof without the prior written consent of Lessor. Lessee likewise may not sublet or transfer a part or a portion of the demised premises without the express written consent of Lessor.

9. *Lessor's Right to Inspect.* Lessor and its agents shall have free access to the premises during all reasonable hours for the purpose of examining the same to ascertain if they are in good repair.

10. *Utilities and Liens.* Lessee shall pay promptly all charges for heat, light, gas, water, and power used in or upon the demised premises. Lessee shall also promptly pay for sewage, if any, as well as all bills for materials furnished or labor performed for Lessee. Lessee shall keep the demised premises free from all claims for liens for work, labor or materials. Lessor shall, in accordance with its work regarding its city parks, be responsible for removal of garbage accumulated in any garbage bins maintained on the premises in the same fashion as it removes or is responsible for removal of garbage in any of its public parks.

11. *Taxes and Assessments.* Lessee shall pay all taxes and assessments levied upon Lessee or upon Lessee's personal property located on the premises or used in Lessee's business as the same become due and payable during the term of this Lease.

12. *Liability and Insurance.* Lessor shall acquire and maintain property and casualty insurance on the building (i.e., the premises covered by this Lease) in which it shall name Lessee as an additional insured. Lessee shall acquire and maintain property and casualty insurance on all contents of the building, including the Carousel itself, including all horses, mechanical works, band organ, lights, mirrors and all related accoutrements. Lessee shall hold Lessor free and harmless from all claims, damage, suits, or causes of action resulting from injuries to person or property arising thereon or out of the use, occupancy or condition of the demised premises and shall carry and maintain public liability insurance in such form and with such companies as will be satisfactory to Lessor. Lessee's insurance shall include Lessor as a named insured, as its interest may appear from time to time, and shall insure against liability in the minimum amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) for each claim and One Million Five Hundred Thousand Dollars (\$1,500,000.00) for each occurrence, and not less than Fifty Thousand Dollars (\$50,000.00) property damage arising in or about the demised premises.

During the term of this Lease, Lessor shall procure and maintain fire, windstorm, and extended coverage insurance on the demised premises, and shall list Lessee as an additional named insured as its interests may appear.

All insurance policies written on behalf of the Lessee shall contain a waiver of subrogation rights which Lessee's insurers may have against Lessor and those for whom the Lessor may be responsible. All insurance policies written on behalf of the Lessor shall contain a waiver of subrogation rights which Lessor's insurers may have against Lessee and those for whom the Lessee may be responsible.

13. *Entry.* Lessor shall, after reasonable notice, have the right to enter the premises for the purpose of inspecting and making repairs and improvements to the premises and in the case of an emergency, provided that Lessor shall use all reasonable efforts to avoid interference with the conduct of Lessee's business on the premises.

14. *Default and Reentry.* Should Lessee fail to pay the rent due hereunder, or should Lessee fail to perform any other covenant, agreement, condition or undertaking required to be performed by Lessee or its assigns, and should such default continue for a period of thirty (30) days after written notice thereof is given by Lessor to Lessee, it shall and may be lawful for Lessor, at its election, to do either of the following:

- (a) Terminate this Lease, without the necessity of reentry, by giving written notice to Lessee.
- (b) Reenter the premises and remove the Lessee and every other person occupying the premises and repossess the premises, without such re-entry and repossession working as a forfeiture of the rent to be paid and the covenants to be performed by Lessee during full term.

If Lessee remedies any default within the said period of thirty (30) days, this Lease shall be deemed reinstated as of that date.

15. *Surrender Upon Termination.* Lessee covenants and agrees that, upon the termination of this Lease by expiration of the initial term or any renewal term or

otherwise, Lessee will at once surrender and deliver up to the Lessor the premises in as good condition as when the Lessee took possession, ordinary wear and tear and damage by the elements alone excepted.

16. *Hold Over.* If Lessee shall with the consent of Lessor, hold over after the expiration of the term of this Lease, such tenancy shall be for an indefinite period of time on a month-to-month basis pursuant to Montana law. During such tenancy, the applicable rent due hereunder shall be the same as set forth herein unless a different rate is agreed upon in writing.

17. *Removal of Lessee's Property.* At the end of the Lease term or any renewals thereof, Lessee shall be entitled to remove its signs, furniture, business fixtures, equipment, inventory, special lighting fixtures, or other items installed by it, including the Carousel horses, mechanical works, band organ, lights, mirrors, gargoyles and any and all other Carousel accoutrements. Under no circumstances shall Lessor be entitled to ownership or possession of any of the personal property of Lessee maintained in or upon the premises.

18. *Miscellaneous Provisions.*

(a) *Attorney's Fees.* In the event suit is brought to enforce any of the provisions of this Lease, the prevailing party shall be entitled to costs of suit, including reasonable attorney's fees.

(b) *Parties.* The terms and conditions of this Lease are to apply to and bind the respective parties hereto, their heirs, representatives, successors, and assigns.

(c) *Notice.* Whenever in this Lease notice is called for or required, such notice shall be deemed to have been given when served or sent by registered or certified mail to the parties at the addresses listed below or when served upon one of the parties utilizing procedures specified for service of process under the laws of the State of Montana:

Lessor: City of Missoula
435 Ryman
Missoula, MT 59802

Lessee: A Carousel for Missoula Foundation, Inc.
P. O. Box 3345
Missoula, MT 59806

Should Lessee change its address, it shall be its responsibility to give notice to Lessor of such change. Absent such notice, Lessor shall be free to rely upon the addresses set forth above.

(d) *Complete Agreement.* This Lease contains the entire understanding of the parties, and such understanding may not be modified except in writing signed by the parties.

(e) *Governing Law.* The laws of the State of Montana shall govern the interpretation and enforcement of this Lease.

(f) *No Relationship.* Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or a partnership, joint venture or of any other association whatsoever between Lessor and Lessee, it being expressly understood and agreed that no provision contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any

relationship between the Lessor and Lessee other than the relationship of landlord and tenant.

(g) *Partial Severability.* The invalidity or unenforceability of any provision of this Lease shall not affect or impair the validity of any other provision contained herein.

(h) *Non-Waiver of Breach.* The failure of either party hereto to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of such, or any such other covenants or agreements but the same shall be and remain in full force and effect.

(i) *Paragraph Headings.* The paragraph headings herein are for convenience only, and do not define, limit or construe the contents of such paragraphs.

(j) *Parties.* This Lease is binding upon the parties hereto, their heirs, representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto executed this Lease the day and year first above written.

LESSOR:

CITY OF MISSOULA

ATTEST:

By _____
Charles C. Stearns
Finance Officer/City Clerk

By _____
Mayor Daniel Kemmis

LESSEE:

A CAROUSEL FOR MISSOULA
FOUNDATION, INC.

By _____

Its _____

POLICY OF NON-DISCRIMINATION

NON-DISCRIMINATION. All hiring shall be on the basis of merit and qualifications and there shall be no discrimination on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry, by persons performing this Agreement. Qualifications mean such abilities as are genuinely related to competent performance of the particular occupational task.

Lease

THIS INDENTURE, made and entered into this 6th of July, 1998, by and between CITY OF SHELBY, a municipal corporation of the State of Montana, Shelby, Montana, hereinafter referred to as "LESSOR", and MARIAS VALLEY GOLF AND COUNTRY CLUB, Box 784, Shelby, Montana, hereinafter referred to as "LESSEE";

WITNESSETH:

That for and in consideration of the payments herein agreed to be made, and the covenants and conditions on its part agreed to be kept by the Lessee, the Lessor has leased and let and by these presents does hereby lease and let unto the Lessee, and the Lessee hereby agrees to lease from the Lessor, the following described real property located in the County of Toole, State of Montana, to-wit:

Township 31 North, Range 2 West, MPM
Section 19: Lots 7, 8, 10, 11, 22, 23
Section 20: Lots 3 and 4
West ½ NE ¼, NE ¼ NE ¼
A parcel of land containing approximately 264 acres

TO HAVE AND TO HOLD unto the said Lessee for and during the full term of twenty five years commencing on the 1st day January, 1998, and ending on the 31st day of December, 2023, at the total annual rent of One Thousand Two Hundred and no/100ths Dollars, (\$1,200.00) payable on or before the 9th day of January each and every year.

IT IS FURTHER AGREED between Lessor and Lessee that this Lease will be automatically renewed at the conclusion of the initial term, for two successive ten (10) year periods, the terms and conditions of said Agreement to be re-negotiated at that time.

FURTHER, it is hereby agreed that the yearly lease payment derived by Lessor from the leasing of said property to Lessee shall be dedicated solely to the continued development and improvement of said property as a recreational facility.

IT IS FURTHER AGREED that any funds derived from said property by Lessor in any other manner or that may be contributed to Lessor for and on behalf of said property, shall also be dedicated solely to the continued development and improvement of said property as a recreational facility.

In consideration hereof, the Lessee agrees as follows:

To pay the lease payments provided herein at the times and in the amounts herein provided.

To keep and maintain the above described premises in as good a condition as the same are in at this time or as they may be put during the term hereof, and at the expiration of said term to deliver up and surrender said premises to Lessor in good condition, reasonable wear, tear and damage by the elements excepted. Lessee agrees that it will use its best efforts to expand and improve the facilities hereby leased and to operate the same in a good and businesslike manner.

To operate and maintain said premises as a municipal golf course and to permit and encourage members of the general public to utilize said premises for such purposes at any and all times, subject however, to reasonable golfing rules and regulations promulgated by the Lessee including scheduling of league and tournament play, and further subject to the payment of reasonable green fees charged by the Lessee for such use.

It is understood and agreed that the Lessee may charge a reasonable daily green fee to those persons of the general public desiring to use said golfing facility. In addition, it is understood and agreed that the Lessee may allow its members usage of said golfing facility upon compliance with the terms of Lessee's membership requirements. However, Lessee agrees that its membership requirements shall contain no provisions discriminating against any person by reason of age, race, sex, or religion.

It is further understood and agreed that the Lessee shall have the exclusive use and supervision of all the buildings on said premises. It is further understood and agreed that Lessee shall promptly notify the Lessor of any material structural improvements made to any buildings on the premises. This provision in no way requires Lessee obtain the prior approval of the Lessor for such improvements.

The Lessee promises and agrees to pay all charges for electricity, fuel and other utilities used upon said premises. Lessee further agrees to maintain fire and extended coverage insurance covering the Club House, the north cart barn, the south cart barn, the shop the restroom adjacent to hole #5, and the restroom adjacent to hole #11, in an amount that represents at least ninety percent (90%) of the replacement value of each respective building. Lessee further promises to carry liability insurance naming both Lessor and Lessee as insured in the amount of \$1,000,000.00 for any one occurrence for commercial general liability coverage, said insurance to include coverage for bodily injury and property damage, products and completed operations, and personal injury and advertising injury and liquor liability arising from usage of the leased facilities by persons of the general public or Lessee's members. Lessee shall furnish Lessor in February of each year proof that said fire, extended coverage, and liability insurance is in fact in place.

In the event that Lessee shall default on any of its obligations required to be performed under this Lease Agreement, then Lessor shall give Lessee thirty (30) days notice in writing stating what provision is in default and demanding that said default is timely cured, then this Lease shall continue in effect as if no default had taken place. If said default is not timely cured, then Lessor shall take whatever appropriate measures it feels fit, including, but not limited to, taking possession of said leased property. Lessor is entitled to take all measures available to it under the laws of the State of Montana.

It is understood and agreed that Lessee will not assign this Lease or any part hereof not let or sublet the said premises nor any part thereof without first obtaining written consent from the Lessor therefor.

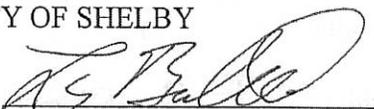
All of the aforesaid agreements, covenants, and conditions shall apply to and be binding upon the parties thereto, and their successors and assigns.

IN WITNESS THEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

ATTEST:

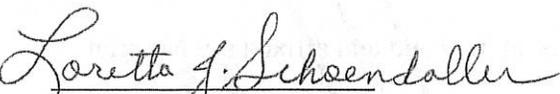

Joanne Wright, City Clerk

CITY OF SHELBY

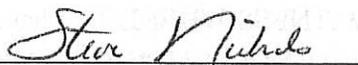
By 
Larry Bonderud, Mayor

LESSOR

ATTEST:


Loretta J. Schoendaller, Secretary

MARIAS VALLEY GOLF AND
COUNTRY CLUB

By 
Steve Nichols - President

LESSEE

State of Montana)

:ss

County of Toole)

On this July 6, 1998, before me, the undersigned, a Notary Public, in and for the State of Montana, personally appeared LARRY BONDERUD, Mayor of the City of Shelby, known to me to be the person whose name is subscribed to the foregoing document, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal that day and year first hereinabove written.

(Notary Seal)

Sammy Pederson
Notary Public for the State of Montana
Residing at Shelby, Montana
My Commission expires 3-10-00

State of Montana)

:ss

County of Toole)

On this 30th of July, before me, the undersigned, a Notary Public, in and for the State of Montana, personally appeared STEVE NICHOLS and LORETTA J. SCHOENDALLER, known to me to be the President and Secretary respectively, of MARIAS VALLEY GOLF AND COUNTRY CLUB, a Montana corporation, and acknowledged to me that executed the foregoing document for and on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first hereinabove written.

(Notary Seal)

John L. Barty
Notary Public for the State of Montana
Residing at Shelby, Montana
My Commission expires 11/15/98

LEASE

This lease is made and executed on _____, 2011, by and between **SHELBY INNS HOLDINGS. LLC**, of 600 South Main Street, Butte, Montana 59701, herein referred to as "OWNER", and the **CITY OF SHELBY**, a municipal corporation, of 112 1st St S, Shelby, Montana, herein referred to as "TENANT".

The Owner and Tenant, for and in consideration of the mutual covenants contained herein, agree as follows:

ARTICLE I

LEASE OF PREMISES

1.01 Demise. Owner hereby leases to Tenant and Tenant hereby rents from Owner an area of ground, described as the Flag Grounds, Roadway and Parking Area as identified on the attached Exhibit A (the "Premises"), which ground is a portion of the real property situated at the intersection of U.S. Highway 2 and Interstate 15, Shelby, Toole County, Montana (the "Property"); together with a right of ingress and egress as set forth in Paragraph 4.04 below.

1.02 Relocation. Owner shall have the right, upon thirty (30) days written notice to Tenant, to select another suitable area on the Property for placement of Tenant's improvements; provided that Owner shall pay all expenses incurred in relocating Tenant's improvements.

1.03 Term. The primary term of this Lease shall be for fifteen (15) years and shall commence on _____, 2011, and end on _____, 2026, unless sooner terminated pursuant to this Lease. Thereafter, unless and until terminated, the term of this Lease shall continue on a year to year basis.

1.04 Rent. Tenant is leasing the Premises for charitable purposes, and for so long as Tenant complies with the provisions of Article IV below, no rent will be due Owner under this Lease.

ARTICLE II

TAXES

Owner shall pay all real property taxes and assessments on the Premises; provided, however, that Tenant shall pay all taxes levied or assessed upon Tenant's improvements and personal property located on the Premises. Tenant shall furnish to the Owner official receipts or other satisfactory proof of payment of any taxes required by this Article to be paid by Tenant, within a reasonable time after demand by Owner.

ARTICLE III

UTILITIES

Owner shall not be required to furnish utility services to the Premises, and any utility services desired by Tenant shall be installed at Tenant's sole cost and expense, provided that Owner shall cooperate with Tenant in making electric service available from Owner's existing service. Any utility lines installed by Tenant shall be installed underground and shall be located in the access road provided for in Paragraph 4.04 or at a location agreed to by parties. Tenant shall obtain Owner's prior written approval of any utility installation. Damage to any portion of the Property caused by Tenant's installation or use of a utility service shall be repaired by Tenant. Except when due to the negligence of the Owner, Owner shall not be liable for any failure of service by any utility. Tenant shall pay when due all charges for utility services supplied to the Premises and shall indemnify Owner against any liability on such account.

ARTICLE IV
CONSTRUCTION, MAINTENANCE AND REPAIR

4.01 Improvements. Subject to Owner's prior written approval of all plans and specifications, Tenant may construct a concrete pad, erect one or more flagpoles on the Premises, and construct such other improvements as are necessary to Tenant's use of the Premises. Improvements shall be constructed in accordance with industry standards and all applicable laws and regulations shall be professionally designed and engineered. All improvements located upon the Premises shall be at the sole cost and expense of Tenant.

4.02 Fence. Tenant shall enclose the Premises with a fence satisfactory to Owner.

4.03 Maintenance. Tenant, at Tenant's sole cost and expense, shall make all repairs and replacements necessary to maintain the Premises and Tenant's improvements, including the roadway to be constructed by Tenant, in good order, condition, and repair. Flags shall be repaired or replaced as needed for appearance. Tenant shall keep the Premises and roadway free of weeds and rubbish.

4.04 Access and Parking Area. Tenant shall be entitled to reasonable access to the Premises, with the initial access being in the location shown on attached Exhibit A. Tenant may also make such improvements to the roadway as reasonably necessary to allow vehicular access. Tenant may install gates and erect fences to control access, subject to the prior approval of Owner. In the event, that the roadway should interfere with any future use of the property by Owner, Tenant shall relocate the roadway at its expense to an alternate location agreed to by the parties.

Tenant may use the Parking Area shown on the attached Exhibit A for public parking for purposes of accessing the Flag Grounds. Tenant may make reasonable improvements to the Parking Area to permit it to be utilized. In the event that the Parking Area should interfere with any future use of the property by Owner, Tenant shall relocate the Parking Area at its expense to an alternate location agreed to by the parties.

4.05 Return of Premises. Upon expiration or earlier termination of this Lease, Tenant shall remove all improvements installed on the Premises and shall surrender the Premises in the same or better condition as received.

4.06 Acceptance of Premises by Tenant. Taking possession of the Premises by Tenant shall be conclusive evidence as against Tenant that the Premises were in good and satisfactory condition when possession was taken.

ARTICLE V
ENTRY BY OWNER

Owner shall be provided with keys to all gates installed by Tenant, and Owner and its agents shall have the right to enter the Premises at all reasonable times for the purpose of examining and inspecting the same.

ARTICLE VI
LIENS

Tenant shall keep the Premises free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant and does hereby agree to indemnify, hold harmless, and defend Owner from any liens, costs, attorneys' fees and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant.

ARTICLE VII

USE

7.01 Permitted Uses. The Premises are to be used for display of the United States flag and other appropriate flags and for other Veterans Ceremonial and Memorial purposes and for no other purpose without the prior written consent of Owner.

7.02 Compliance with Law. Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.

ARTICLE VIII

HAZARDOUS WASTE

Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Tenant, its agents, contractors, or invitees without prior written consent of Owner. Owner shall not unreasonably withhold its consent as long as Tenant demonstrates to Owner's reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept or about the Premises.

ARTICLE IX

INSURANCE AND INDEMNIFICATION

9.01 Insurance. The Tenant shall procure and maintain in force with companies acceptable to Owner, insurance with limits of liability of not less than the following:

Commercial General Liability including Completed Operations, Contractual and Aggregate Limit:

Bodily Injury and Property Damage:	\$1,000,000 per occurrence
Personal Injury:	\$1,000,000 per occurrence
General Aggregate:	\$2,000,000

Owner shall be named as an additional insured on each of these policies, and shall be primary to any and all other insurance of Owner with respect to any and all claims and demands made against Owner. All insurance policies shall contain a provision that coverage afforded under the policies will not be canceled, not renewed, or materially altered until at least thirty (30) days prior written notice has been given to Owner. Certificates of Insurance showing coverage to be in force shall be filed with Owner. Tenant shall procure and maintain at its cost all Workers' Compensation insurance required by law to protect Tenant's employees.

9.02 Indemnification. To the fullest extent permitted by law, it is expressly agreed and understood that the Tenant shall indemnify, defend, and hold harmless Owner, its officers, directors and employees from and against any and all claims and demands whatsoever, including bodily injury, personal injury, or property damage, arising out of the Tenant's occupation and use of the Premises and access roadways. Tenant, at Tenant's sole expense, shall promptly dispose of all such claims, defend all lawsuits against Owner, pay all judgments and settlements, and reimburse Owner upon demand for all reasonable expenses incurred by Owner as a result of any such claims or demands.

ARTICLE X

DAMAGE OR DESTRUCTION TO PREMISES

Tenant understands that Owner will not carry insurance of any kind on Tenant's improvements or on Tenant's personal property under the provisions of this Lease, and that Owner shall not be obligated to repair any damage thereto or replace the same.

ARTICLE XI
ASSIGNMENT

Tenant shall not assign any or all of its rights under this Lease to any other person without the prior written consent of Owner, which consent shall not be unreasonably withheld.

ARTICLE XI
DEFAULT AND REMEDIES

12.01 Default. The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant:

- (a) the abandonment of the Premises by Tenant, which shall be presumed if the Premises are not used for their intended purpose for a period of thirty (30) consecutive days;
- (b) a failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Owner to Tenant; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

12.02 Re-Entry. In the event of a material default and breach of this Lease and failure by Tenant to cure such default within thirty (30) days after the giving of written notice of default by Tenant, then Owner shall have the immediate right of re-entry without notice and may remove all property from the Premises; such property may be removed and stored in any other place, for the account of and at the expense and at the risk of Tenant. Tenant hereby waives all claims for damages which may be caused by the re-entry of Owner and taking possession of the Premises or removing or storing the property as herein provided, and will save Owner harmless from any loss, costs or damages occasioned Owner thereby, and no such re-entry shall be considered or construed to be a forcible entry.

ARTICLE XIII
EMINENT DOMAIN

In the event the Premises or access roadways are taken by any exercise of the right of eminent domain or by action of any public or other authority during this Lease, then this Lease shall terminate at the election of the Owner. The Owner reserves all rights to damages to the Premises and the leasehold hereby created, hereinafter accruing by reason of any exercise of the right of eminent domain, or by reason of anything lawfully done and in pursuance of any public or other authority; and by way of confirmation, Tenant grants to Owner all of Tenant's rights to such damages and covenants to execute and deliver such further instruments of assignment thereof as Owner may from time to time request. Nothing in this section shall give Owner any interest in, or preclude Tenant from seeking, on its own account, any award attributable to the taking of Tenant's property.

ARTICLE XIV
FAILURE TO VACATE

If Tenant without Owner's consent fails to vacate the Premises on or before the expiration or sooner termination of this Lease, such holding over shall be construed to be a tenancy from month-to-month, and shall be on the terms and provisions of this lease, except that Tenant shall be liable to Owner for rent in the amount of One Hundred Dollars per month and for any costs or damages Owner may suffer, including attorney's fees, for recovery of possession of the Premises. The provisions of this Article shall survive the expiration or other termination of this Lease.

ARTICLE XV
QUIET ENJOYMENT

Owner covenants and agrees with Tenant that Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the term.

ARTICLE XVI
SALE BY OWNER

In the event of a sale or conveyance by Owner of the Premises, the same shall operate to release Owner from any future liability upon any of the covenants or conditions, expressed or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to the responsibility of the successor in interest of Owner in and to this Lease. This Lease shall not be affected by any such sale, and the Tenant agrees to attorn to the purchaser or assignee.

ARTICLE XVII
MISCELLANEOUS PROVISIONS

17.01 Attorney's Fees. In the event of any litigation between the parties hereto arising out of this Lease, the prevailing party therein shall be allowed all reasonably attorneys' fees expended or incurred in such litigation to be recovered as a part of the costs therein.

17.02 Owner's Performance of Tenant's Obligations. If Tenant shall be in default of any provision of Article IV of this Lease, Owner may cure such default on behalf of Tenant, in which event Tenant shall reimburse Owner for all sums paid to affect such cure together with interest at the legal rate, such reimbursement due and payable upon demand of Owner. Any amounts which may become due hereunder shall be deemed to be rent due Owner under this Lease, and the failure of Tenant to pay the same when due shall be a material default of this Lease.

17.03 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Lease must be in writing, and shall be deemed to have been properly given if served by personal delivery or by depositing the same in the United States Mail, addressed to the party to whom notice is to be given, postage prepaid, registered or certified mail with return receipt requested, to the last known address furnished by that party to the other party. Until further notice, all notices to the parties shall be sent to the addresses set forth on page 1 of this Lease. All notices, demands and requests shall be effective upon being deposited in the United States Mail, but the time period in which a response to any such notice, demand or request must be given shall commence to run from the date of receipt of the return receipt of the notice, demand or request by the addressee thereof.

17.04 No Waiver. No waiver of a breach of any of the covenants contained in this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

17.05 Entire Agreement. This agreement contains the entire agreement between the parties as of this date, and the execution of this agreement has not been induced by either party by representations, promises, or understandings not expressed therein, and there are no collateral agreements, stipulations, promises, or undertakings whatsoever upon the respective parties in any way touching the subject matter of this instrument which are not expressly contained in this instrument.

17.06 Written Modifications. No modification, release, discharge, or waiver of any provisions of this Lease shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

17.07 Inapplicability of Certain Terms. If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of said provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

17.08 Applicable Law. This Lease shall be construed and enforced in accordance with the laws of the State of Montana.

17.09 Captions. The article and section captions in this Lease are for convenience only and shall not in any way limit or be deemed to construe or interpret the terms and provisions hereof.

17.10 Signature of Owner. This Lease Agreement is not valid until signed by either the Operations Manager, an Officer or General Manager of Owner.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals of the day and the year first above written.

"OWNER"
Shelby Inns Holdings, LLC

By _____
Title _____

"TENANT"
City of Shelby

By _____
Title _____

EXHIBIT A

PARKING AREA:

BEGINNING at a point on the Marias Valley Frontage Road, from which the most southerly corner of Tract B, COS 360621 bears N67°22'20"W, 229.05 feet; Thence N45°09'15"W, 97.85 feet; Thence N49°00'E, 137.55 feet; Thence S28°57'25"E, 108.4 feet to a point on the northerly right-of-way of Marias Valley Frontage Road; Thence along said r/w on a curve left, radius of 2576.7 feet, the chord being S53°27'25"W, 108.2 feet to the Point of Beginning, containing an area of 0.288 acres.

ROADWAY:

BEGINNING at a point on the north boundary of above described parking area, 15.0 feet N49°E of the northwest corner thereof; Thence along the centerline the following courses:

- (1) N74°32'45"W, 132.15 feet;
- (2) N35°50'W, 65.25 feet;
- (3) N06°06'40"W, 144.45 feet;
- (4) N36°20'40"E, 328.2 feet
- (5) N56°48'E, 134.2 feet
- (6) N27°38'E, 109.8 feet to the beginning of a 75 foot radius circle, and the end of said 25 foot access easement; Thence continuing N27°38'E, 75.0 feet to the center of said circular easement area. Containing 0.93 acres.

