

PROPERTY SALE CONTRACT

SELLER: TOWN OF CAROGA, NY
1840 STATE HWY 10
CAROGA LAKE, NY 12032

BUYER: THE CAROGA ARTS COLLECTIVE, INC.
PO Box 1048
CAROGA LAKE, NY 12032

DATE: April ____, 2019

The parties to this Contract agree to a sale of the property on the following terms:

1. **PROPERTY:** Seller agrees to sell and Buyer agrees to purchase the property formerly known as the Sherman's Amusement Park Property, located in the Town of Caroga, Fulton County, and State of New York including the portion of the highway known as Caroga Lake Shore Drive between the intersection with State Route 10 on the north to the intersection with Bath Avenue on the south. The property includes all of Seller's transferable rights, privileges and easements, if any, related to the property. The lot size is approximately 8.56 acres and is described more fully in Seller's deed, annexed or a copy will be provided and incorporated herein. Tax Map #83.6-1-1.2; 68.18-1-22; 68.-1-46.12 and 68.18-1-23.1. The sale includes all buildings on the premises, the groundwater well and piping and the wastewater collection, pumping and treatment system.

2. **PURCHASE PRICE:** The purchase price is \$50,000.00, payable by Buyer as follows:

(a) \$4,000.00 deposit, with this contract; to be held by Dunn & Dunn, PLLC in attorney's escrow account pending the closing

(b) \$46,000.00 to be paid to the Seller at the time of closing.

3. **POSSESSION:** Seller shall deliver possession and occupancy of premises to buyer at time of closing the sale.

4. **FINANCING CONDITION:** Not applicable.

5. **ADJUSTMENTS:** Seller agrees that all taxes, if any, against the property have been or will be paid at date of closing. Such bills shall be apportioned between seller and buyer as of date of closing, unless agreed otherwise. Fuel oil, if any, shall be adjusted based on current market price.

6. **PERSONAL PROPERTY:** All fixtures which are attached to the premises are included in this sale and seller warrants that they have been or will be fully paid for by closing time. All other personal property in the buildings is specifically

included in this sale, as well as the following items: Ferris wheel and seating, Carousel and windows, and all related parts/equipment.

7. **TITLE PROVISIONS:** On closing, the seller agrees to furnish a 5-year tax search, an Abstract and a Bargain and Sale Deed of marketable title, which shall be free of liens or encumbrances, except for utility easements.

8. **EXISTING CONDITIONS:** The seller shall convey the premises subject to all covenants, conditions, restrictions and easements of record; zoning and environmental protection laws; any unpaid installments of street and improvement assessments payable after the date of transfer of title to the premises; if the property is a subdivision lot, restrictions imposed on all lots in the subdivision, provided they are not violated by the buildings or improvements erected on the property; and any state of facts which an inspection and/or accurate survey may show, provided that this does not render the title to the premises unmarketable.

9. **CONDITION OF PREMISES:** The building(s) on the premises herein are hereby sold "as is", without warranty as to condition, express or implied, and a conveyance thereof hereunder shall be made in their condition on the date of transfer of title, except that in the case of any destruction within the meaning of the provisions of Section 5-1311 of the General Obligations Law of the State of New York entitled "Uniform Vendor and Purchaser Act", said section shall apply to this contract. Property Condition Disclosure Statement has been provided Yes No Not Applicable.

10. **TITLE OBJECTIONS:** If Buyer correctly rejects Seller's title to the property as unmarketable, Seller shall have a reasonable length of time to cure the objection. If Seller is unable to cure the objection, Seller's sole responsibility shall be to return all deposits to Buyer without interest, and upon such payment this contract shall be terminated and Seller shall be discharged of all liability to Buyer.

11. **CLOSING:** The closing shall be held at the office of Dunn & Dunn, PLLC, or the Town of Caroga municipal office on or before July 15, 2019.

12. **OTHER TERMS/CONTINGENCIES:**

(a) This contract is contingent upon the consent of Balboaa Land Development, Inc. to the transfer which appears to be required by the Donation Agreement dated December 29, 2014 between Balboaa Land Development and the Town of Caroga and is further contingent on a general release from the said Balboaa Land Development, Inc. to the seller for any violations of the donation agreement dated December 9, 2014.

(b) The parties agree that the Seller shall have a right of first refusal to re-purchase the property as set forth in a Right of First Refusal to Purchase Real Estate agreement in the form attached as Exhibit A that will be signed by the parties hereto at the time of closing

13. **LIQUIDATED DAMAGES:** If Buyer defaults in the performance of any term of this contract, Seller shall have the option to withdraw Buyer's deposit from escrow and retain it as liquidated damages and not by way of penalty. If Seller elects to retain the deposit pursuant to this Paragraph, then this contract shall be terminated and neither party shall have any further claim against the other.

14. **ENTIRE AGREEMENT:** It is understood and agreed that all prior understandings and agreements between Seller and Buyer are merged into this contract. This contract may only be modified by a written instrument signed by both parties.

15. **BINDING CONTRACT:** Buyer and Seller agree that they, their heirs, legal representatives, successors and/or assigns will be bound under this contract. This contract cannot be assigned without the written consent of Seller.

16. **SELLER'S REPRESENTATIONS:**

A. Seller represents and warrants to Buyer that:

i. The premises abut or have a right of access to a public road;

ii. Seller is the sole owner of the premises and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract and the provisions of Town Law of the State of New York.

B. Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at closing.

C. Except as otherwise expressly set forth in this contract, none of seller's covenants, representations, warranties or other obligations contained in this contract shall survive closing.

17. **PERSONS INVOLVED:** If more than one person is a seller or buyer, the relative words shall be read as if written in the plural as the case may be.

THE TOWN OF CAROGA

By: _____

Its Supervisor and Seller

Date: _____

THE CAROGA ARTS COLLECTIVE,
INC.

By: Richard Ruby

Its President

Date: 4/9/19

EXHIBIT A

RIGHT OF FIRST REFUSAL TO PURCHASE REAL ESTATE

THIS RIGHT OF FIRST REFUSAL TO PURCHASE REAL ESTATE is made on this the ____ day of _____, 20____, by and between the **TOWN OF CAROGA**, a New York Municipality, and the **CAROGA ARTS COLLECTIVE, INC.**, a New York _____, its assigns and successors-in-interest, hereinafter referred to as "**CAC**".

WHEREAS, the Town of Caroga desires to obtain a right of first refusal or first option to purchase certain real estate recently sold by the Town of Caroga to CAC; and

WHEREAS, CAC as a condition of the above referenced sale by the Town of Caroga, agrees to grant the Town of Caroga a right of first refusal or first option to purchase said real estate pursuant to the terms of this agreement; and

NOW, FOR AND IN CONSIDERATION of One and 00/100's Dollars (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **GRANT OF FIRST OPTION:** CAC does hereby grant unto the Town of Caroga the exclusive, irrevocable and limited right of first refusal and first option to purchase the above referenced real estate recently sold by the Town of Caroga to CAC as more fully described hereinbelow (hereinafter referred to as the "Premises"):

SEE ATTACHED "SCHEDULE A"

2. **EXERCISE OF FIRST OPTION:** This Right of First Refusal or first option to purchase shall be limited to three (3) years duration and may only be exercised by the Town of Caroga if CAC shall list for sale and/or attempt to sell and receive an acceptable offer to purchase the Premises from a bona fide third-party for value within three (3) years following the date of closing of the sale of the Premises by the Town of Caroga to CAC.

3. **TERMS OF PURCHASE:** If CAC shall receive a bona fide third-party offer to purchase at any time during said three (3) year period, CAC shall provide the Town of Caroga with a written copy of said offer to purchase. The Town of Caroga shall exercise said right of first refusal or first option by providing the CAC with written acceptance of the same or better terms and conditions and a purchase price equal to or greater than that specified in the third party offer within said fifteen (15) business days from the date of receipt of said third-party offer from CAC, along with a deposit of ten percent (10%) of the purchase price to secure its acceptance. If the Town of Caroga shall timely exercise said right of first refusal or first option it shall have ninety (90) days from the date of acceptance to obtain adequate financing for the purchase of the Premises, if needed.

4. **TITLE:** Within fifteen (15) days after the Town of Caroga has exercised its right of first refusal or first option, CAC shall deliver to the Town of Caroga an Abstract of Title or

continuation thereof, at its sole expense. The Town of Caroga shall notify CAC of any defects and/or clouds in and on title, and CAC shall have a reasonable time in which to make the title good and marketable or insurable, and shall use due diligence in an effort to do so. If after using due diligence, and within a reasonable time period, CAC is unable to provide good and marketable title, acceptable to the Town of Caroga, it shall be the option of the Town of Caroga to either accept the title in its existing condition with no further obligation on the part of CAC to correct any defect/remove any cloud or to cancel this Agreement. If this Agreement is thus cancelled, any deposit made by the Town of Caroga upon the exercise of its right of first refusal or first option shall be returned to the Town of Caroga, and this Agreement shall terminate without further obligation of either party to the other. If title is acceptable to the Town of Caroga, the closing shall occur as soon as reasonably possible thereafter. At closing CAC shall convey title to the Town of Caroga by Warranty Deed subject only to exceptions acceptable to the Town of Caroga.

5. DEFAULT: This Right of First Refusal shall be binding upon and inure to the benefit of the assigns and successors-in-interest of the parties hereto and the prevailing party in any lawsuit arising any breach hereunder shall be entitled to recover from the defaulting party(ies), in addition to any other remedy available at law or equity, its reasonable attorney's fees.

6. GOVERNING LAW: This Right of First Refusal shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties have executed this Right of First Refusal on this the ____ day of _____, 2019.

CAROGA ARTS COLLECTIVE, INC.

By Richard Ruby, its PRESIDENT

THE TOWN OF CAROGA,
a New York Municipality

By _____
James Selmsler, Town Supervisor

STATE OF NEW YORK }
COUNTY OF Fulton } ss.:

On this 9th day of April, 2019, before me, personally appeared, Richard Ruby, President of the Caroga Arts Collective, Inc., to me personally known and known to me to be the same person described in and who executed the foregoing Right of First Refusal, and duly acknowledged to me that he executed the same.


Notary Public

April Griesemer
Commissioner of Deeds
City of Gloversville, NY
Commission Expires:
December 31, 2019

STATE OF NEW YORK }
COUNTY OF _____ } ss.:

On this _____ day of _____, 2019, before me, personally appeared JAMES SELMSER, Supervisor of the Town of Caroga, to me personally known and known to me to be the same person described in and who executed the foregoing Right of First Refusal, and duly acknowledged to me that he executed the same.

Notary Public