



**AGENDA
CITY OF LAUREL
CITY COUNCIL MEETING
TUESDAY, SEPTEMBER 08, 2020
6:30 PM
COUNCIL CHAMBERS**

NEXT RES. NO.
R20-65

NEXT ORD. NO.
O20-03

WELCOME . . . By your presence in the City Council Chambers, you are participating in the process of representative government. To encourage that participation, the City Council has specified times for citizen comments on its agenda -- once following the Consent Agenda, at which time citizens may address the Council concerning any brief community announcement not to exceed one minute in duration for any speaker; and again following Items Removed from the Consent Agenda, at which time citizens may address the Council on any matter of City business that is not on tonight's agenda. Each speaker will be limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council. Citizens may also comment on any item removed from the consent agenda prior to council action, with each speaker limited to three minutes, unless the time limit is extended by the Mayor with the consent of the Council. If a citizen would like to comment on an agenda item, we ask that you wait until the agenda item is presented to the Council by the Mayor and the public is asked to comment by the Mayor. Once again, each speaker is limited to three minutes.

Any person who has any question concerning any agenda item may call the City Clerk-Treasurer's office to make an inquiry concerning the nature of the item described on the agenda. Your City government welcomes your interest and hopes you will attend the Laurel City Council meetings often.

Pledge of Allegiance

Roll Call of the Council

Approval of Minutes

1. Approval of Minutes of August 25, 2020.

Correspondence

Council Disclosure of Ex Parte Communications

Public Hearing

2. Public Hearing - Conditional Use of Property Leased From Montana Rail Link for the Operation of Koo Beans Coffee.

Consent Items

NOTICE TO THE PUBLIC

*The Consent Calendar adopting the printed Recommended Council Action will be enacted with one vote. **The Mayor will first ask the Council members if any Council member wishes to remove any item from the Consent Calendar for discussion and consideration.** The matters removed from the Consent Calendar will be considered individually at the end of this Agenda under "Items Removed from the Consent Calendar." (See Section 12.) The entire Consent Calendar, with the exception of items removed to be discussed under "Items Removed from the Consent Calendar," is then voted upon by roll call under one motion.*

3. Claims entered through 9/4/2020.
4. Approval of Payroll Register for PPE 8/23/2020 totaling \$189,946.31.

Ceremonial Calendar

Reports of Boards and Commissions

Audience Participation (Three-Minute Limit)

Citizens may address the Council regarding any item of City business that is not on tonight's agenda. Comments regarding tonight's agenda items will be accepted under Scheduled Matters. The duration for an individual speaking under Audience Participation is limited to three minutes. While all comments are welcome, the Council will not take action on any item not on the agenda.

Scheduled Matters

5. Appointment of David Brunz to the Laurel Volunteer Fire Department.
6. Resolution No. R20-65: A Resolution To Approve The Conditional Use Of Property Leased From Montana Rail Link For To Operation Of Koo Beans Coffee, A Coffee Kiosk At 102 West Main Street, Within The City Of Laurel.

Items Removed From the Consent Agenda

Community Announcements (One-Minute Limit)

This portion of the meeting is to provide an opportunity for citizens to address the Council regarding community announcements. The duration for an individual speaking under Community Announcements is limited to one minute. While all comments are welcome, the Council will not take action on any item not on the agenda.

Council Discussion

Council members may give the City Council a brief report regarding committees or groups in which they are involved.

Mayor Updates

Unscheduled Matters

Adjournment

The City makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in this meeting. Persons needing accommodation must notify the City Clerk's Office to make needed arrangements. To make your request known, please call 406-628-7431, Ext. 2, or write to City Clerk, PO Box 10, Laurel, MT 59044, or present your request at City Hall, 115 West First Street, Laurel, Montana.

DATES TO REMEMBER

File Attachments for Item:

Approval of Minutes of August 25, 2020.

MINUTES OF THE CITY COUNCIL OF LAUREL

AUGUST 25, 2020

A regular meeting of the City Council of the City of Laurel, Montana, was held in the Council Chambers and called to order by Mayor Tom Nelson at 6:30 p.m. on August 25, 2020.

COUNCIL MEMBERS PRESENT:

Bruce McGee	Heidi Sparks
Scot Stokes	Richard Herr
Richard Klose	Irv Wilke (6:39)
	Don Nelson

COUNCIL MEMBERS ABSENT:

Emelie Eaton

OTHER STAFF PRESENT:

Jean Kerr, Judge
 Stan Langve, Police Chief
 Monica Salo, Court Clerk
 Fran Schweigert, Public Works
 Kurt Markegard, Public Works Director

Mayor Nelson led the Pledge of Allegiance to the American flag.

Mayor Nelson asked the Council to observe a moment of silence.

MINUTES:

Motion by Council Member McGee to approve the minutes of the regular meeting of August 11, 2020, as presented, seconded by Council Member Sparks. There was no public comment or council discussion. A vote was taken on the motion. All six council members present voted aye. Motion carried 6-0.

CORRESPONDENCE: None.

COUNCIL DISCLOSURE OF EX PARTE COMMUNICATIONS: None.

PUBLIC HEARING:

- Public Hearing – Street Maintenance Ordinance

Mayor Nelson stated this is the time and place set for the public hearing on the City of Laurel's Ordinance No. O20-03 an Ordinance amending Title 12 Chapter 12.04 of the Laurel Municipal Code Relating to the City's Street and Sidewalk construction and maintenance.

Mayor Nelson opened the public hearing.

Mayor Nelson opened the floor for public comment and asked that Staff present the item.

Kurt Markegard, Public Works Director, you have before you Ordinance O20-03; this is the ordinance amending the street and sidewalk construction maintenance ordinance. This ordinance is trying to catch up to State law changes. It was brought forward that Laurel's Municipal Code was not current with MCA. He stated he worked with Sam, the City Attorney, to update the ordinance and change some terminology. Took out the City Engineer and put in Public Works Director. The most significant change is allowing the City to create one district Citywide or create multiple districts. The City could create a business maintenance district, and those assessments would be used to fixed streets in just that area. It won't be implemented until next year. It is too late this year; after Council approves this ordinance, it takes 30 days to go into effect. This ordinance allows for the City to make these assessments, allows for protest periods where if 50% of the population could come in and protest the assessment. It also allows financial assistance options. And excludes any water users within the City limits. So, if there is a ditch company that has land, the City cannot assess. Currently, there is no property within the City of Laurel owned by a water user.

Mayor Nelson stated that copies of the rules governing the public hearing were posted in the council chambers.

Mayor Nelson asked three times if there were any proponents. There were none.

Mayor Nelson asked three times if there were any opponents. There were none.

Mayor Nelson asked Staff to respond to any relevant questions. There were none.

Mayor Nelson closed the public hearing.

CONSENT ITEMS:

- **Claims entered through August 21, 2020, totaling \$ 562,892.62.**
A complete listing of the claims and their amounts is on file in the Clerk/Treasurer's Office.
- **Approval of Payroll Register for PPE 8/9/2020, totaling \$199,604.97.**

The Mayor asked if there was any separation of consent items. There was none.

Motion by Council Member McGee to approve the consent items as presented, seconded by Council Member Sparks. There was no public comment or council discussion. A vote was taken on the motion. All seven council members present voted aye. Motion carried 7-0.

CEREMONIAL CALENDAR: None.

REPORTS OF BOARDS AND COMMISSIONS:

- City/County Planning Board Minutes of June 24, 2020.
- Laurel Urban Renewal Agency Minutes of May 11, 2020.
- Laurel Urban Renewal Agency Minutes of June 22, 2020.
- Laurel Urban Renewal Agency Minutes of July 6, 2020.
- Laurel Urban Renewal Agency Minutes of July 20, 2020.
- Public Works Committee Minutes of July 20, 2020.
- Public Works Committee Minutes of August 17, 2020.

AUDIENCE PARTICIPATION (THREE-MINUTE LIMIT): None.

SCHEDULED MATTERS:

- **Resolution No. R20-46: A Resolution Of The City Council Authorizing The Award Of Grants From The Tax Increment Financing District Funds Pursuant To The Lura Large Grant Request Program For Eligible Applicants And Improvements.**

Motion by Council Member Sparks to approve Resolution No. R20-46, seconded by Council Member Klose. There was no public comment or council discussion. A vote was taken on the motion. All seven council members present voted aye. Motion carried 7-0.

- **Resolution No. R20-47: A Resolution Authorizing The Mayor To Execute An Agreement With Dunne Communications Inc. For Police Dispatch Replacement Equipment, To Include Installation And Support.**

Motion by Council Member Wilke to approve Resolution No. R20-47, seconded by Council Member Klose. There was no public comment or council discussion. A vote was taken on the motion. All seven council members present voted aye. Motion carried 7-0.

- **Ordinance No. O20-03: An Ordinance Amending Title 12 Chapter 12.04 Of The Laurel Municipal Code Relating To The City's Street And Sidewalk Construction And Maintenance. (Second Reading)**

Motion by Council Member Nelson to adopt Ordinance No. O20-03, seconded by Council Member Sparks.

The Council Secretary read the following questions from the Editor of the Outlook into the record.

DRAFT

Council Minutes of August 25, 2020

- Is this going to raise our street assessment again this year? It was clarified that this is an ordinance change; this not an assessment resolution. That resolution will be passed with the budget resolutions as in every year.
- Is every street in a maintenance district? It was clarified that every street within City limits is in a maintenance district.
- Will every property owner receive an assessment whether work is being done or not? It was clarified, yes.
- How much can the City levy before incurring a violation to MCA 15-10-420 or 15-10-402? It was clarified that street assessment is subject to title 7, chapter 12.
- How are assessments different from taxes? It was clarified that assessments and taxes are in different titles in MCA. Tax levies are subject to title 15. Assessments can be done for streets, parks, or special assessments. They are primarily for maintenance.

There was no council discussion.

A roll call vote was taken on the motion. Council Members Sparks, Herr, Wilke, Klose, Nelson, Stokes, and McGee voted aye. Motion carried 7-0.

ITEMS REMOVED FROM THE CONSENT AGENDA: None.

COMMUNITY ANNOUNCEMENTS (ONE-MINUTE LIMIT): None.

COUNCIL DISCUSSION:

Council noted that the work at Riverside Park is looking good.

It was noted that on August 11th minutes, it was stated that there would be a discussion about the 1 acre for parking at the Cemetery on the next Workshop. That has been moved to the September 15th meeting.

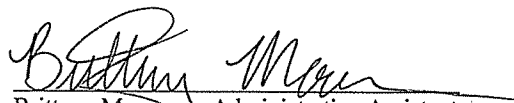
MAYOR UPDATES: None.

UNSCHEDULED MATTERS: None.

ADJOURNMENT:

Motion by Council Member Klose to adjourn the council meeting, seconded by Council Member McGee. There was no public comment or council discussion. A vote was taken on the motion. All seven council members present voted aye. Motion carried 7-0.

There being no further business to come before the Council at this time, the meeting was adjourned at 6:53 p.m.


Brittney Moorman, Administrative Assistant

Approved by the Mayor and passed by the City Council of the City of Laurel, Montana, this 8th day of September 2020.

Thomas C. Nelson, Mayor

Attest:

Bethany Langve, Clerk/Treasurer

File Attachments for Item:

5. Appointment of David Brunz to the Laurel Volunteer Fire Department.



LAUREL FIRE/EMS

215 WEST 1ST STREET • LAUREL, MT • 59044
OFFICE 406.628.4911 • FAX 406.628.2185

City of Laurel
PO Box 10
Laurel, Mt. 59044

August 20, 2020

Mayor and Laurel City Council,

The following have been selected by the members of the Laurel Volunteer Fire Department/ Association to become volunteers.

Firefighter
David Brunz

David has been selected unanimously by the Department and are seeking your appointment.

All personnel have been approved by the Chief of the Department.

A handwritten signature in black ink, appearing to read "B. Peters".

Brent Peters
Fire Chief
Laurel Volunteer Fire Department

File Attachments for Item:

6. Resolution No. R20-65: A Resolution To Approve The Conditional Use Of Property Leased From Montana Rail Link For To Operation Of Koo Beans Coffee, A Coffee Kiosk At 102 West Main Street, Within The City Of Laurel.

RESOLUTION NO. R20-65

A RESOLUTION TO APPROVE THE CONDITIONAL USE OF PROPERTY LEASED FROM MONTANA RAIL LINK FOR TO OPERATION OF KOO BEANS COFFEE, A COFFEE KIOSK AT 102 WEST MAIN STREET, WITHIN THE CITY OF LAUREL.

WHEREAS, the application has been made to the City of Laurel to approve the applicant's request for approval of a conditional use, a coffee kiosk, to be constructed and placed on a parcel of leased property owned by Montana Rail Link; and

WHEREAS, the location for the conditional use is specifically identified on Exhibit A of the attached Lease Agreement between the applicant and Montana Rail Link ("MRL") and such Lease is hereby incorporated as part of this resolution; and

WHEREAS, applicant Alania Eastman filed the application with the City on behalf of her business Koo Beans Coffee, and the application was reviewed by Staff and the City County Planning Board, sitting as the City's Zoning Commission; and

WHEREAS, a public hearing was held by the Zoning Commission and no opposition to the application was received; and

WHEREAS, the Zoning Commission recommends the City Council's approval of the Conditional Use Application subject to the conditions contained in the Staff Report which is attached hereto and incorporated herein;

WHEREAS, the City Council held a public hearing on September 8, 2020 and received public comment and input regarding the application.

NOW THEREFORE the City Council of Laurel hereby adopts the recommendation of the Zoning Commission and hereby approves the conditional use for the parcel of leased property described in the attached Lease Agreement between applicant and MRL for the operation of a coffee kiosk; and

BE IT FURTHER RESOLVED, that such approval is subject City Ordinances, Rules and applicable Regulations and the conditions contained in the Staff Report which is adopted by the City Council and incorporated into the resolution.

Introduced at a regular meeting of the City Council on September 8, 2020, by Council Member _____.

PASSED and APPROVED by the City Council of the City of Laurel this 8th day of September 2020.

APPROVED by the Mayor this 8th day of September 2020.

CITY OF LAUREL

Thomas C. Nelson, Mayor

ATTEST:

Bethany Langve, Clerk-Treasurer, Clerk-Treasurer

Approved as to form:

Sam Painter, Civil City Attorney



**MINUTES
CITY OF LAUREL
CITY/COUNTY PLANNING BOARD
WEDNESDAY, AUGUST 19, 2020
5:35 PM
LAUREL CITY COUNCIL CHAMBERS**

Public Input: *Citizens may address the committee regarding any item of business that is not on the agenda. The duration for an individual speaking under Public Input is limited to three minutes. While all comments are welcome, the committee will not take action on any item not on the agenda.*

1. Roll Call

The chair called the meeting to order at 5:36PM

Ron Benner
Dan Koch
Roger Giese
Evan Bruce
Judy Goldsby
Nick Altonaga (City of Laurel)

General Items

2. Approve Meeting Minutes: July 22, 2020

Ron motioned to approve the meeting minutes from July 22, 2020 as presented.
Dan Seconded.
Motion Carried.

3. Public Hearing: Conditional Use Permit for Koo Beans Coffee

The Chair opened the public hearing. Nick provided a summary of the conditional use permit, presenting the details of the application and the supporting documents.

The applicant, Alania Eastman, 907 Bristol Way, Laurel, MT, was on hand to speak for the conditional use application.

Alania has been a resident of Laurel for the last five years. She has worked hard to bring a business to Laurel. Her and her husband both love the Laurel community.

The coffee kiosk would operate from 3:30AM to 3:30PM. They plan to donate a portion of revenue to the city and the school district to help give back.

Planning Board members asked questions of the Applicant.

Roger: Any plans for future employees?

- Currently just myself and my husband. Trying to keep it within the family.
- Possibly want to give jobs to teenagers/students in the future.

Evan: Will electricity and water services be hooked up to the kiosk?

- Electricity yes. Will use overhead lines going towards the train tracks.
- Water will be dumped off-site. Has had water plant officials allow her to dump at the city facility.

Ron: Bathrooms?

- No bathrooms right now.
- If the conditional use is approved, we will work with MRL to incorporate bathrooms.

Ron: Mountain Mudd had issues 10-12 years ago due to lack of bathrooms. Kiosks did not have any working relationship with nearby businesses to have facilities for kiosk employees. We need to discuss the rules and what was decided previously.

- How much garbage will be generated?
- How do we assess garbage rates on a kiosk?
- Commercial Vs. Residential: We need to ensure that garbage fees are equitable throughout the city.
- Need to see how the city dealt with Heidi's Kiosk.

Alania: For the bathroom, working with MRL for a port-a-potty for now. Garbage service is currently through McKinsey. It would not be hard to change over these services to Laurel Public Works.

Ron: any thoughts on traffic? Will it be a one-way exit?

Alania: There will be two driveways on the site, and it will have a one-way exit. We are aware of the safety issues of the road.

Members discussed the traffic directions on Main St. and 1st Ave and turning across traffic.

Roger: Electricity will be officially installed shortly, but how has it been operating up to now?

Alania: We are not operating until we go through all the required processes and approvals.

Dan: Will it be paved or gravel?

Alania: Gravel, because MRL would like it to remain that way. Have applied to MRL for a paved driveway that we are currently waiting to hear back on. Will be laying down neater gravel for the time being.

Members discussed other kiosk situations including Heidi's and Mo Cones.

Dan motioned to approve the Conditional Use Application with the conditions presented in the Staff Report.

Evan seconded.

Motion Carried.

The Chair closed the public hearing.

Members held brief discussion on investigating what we have on hand for kiosk regulations for Heidi's and Mo Cones prior to sending it to the City Council.

There needs to be code to address kiosks. Also need to know the situation for temporary structures, and other types of small structures.

New Business

4. Conoco Sign Update Review

Nick presented the sign application for the Conoco on S. 1st Ave. Members reviewed the images and discussed the signage situation.

Ron Motioned to approve the Conoco Sign application.

Roger Seconded.

Motion Carried.

5. Growth Management Policy Chapter Review

Nick presented the current chapters of the Growth Policy update. Ron remarked that it would be important to get a full draft prior to the public hearing in September to review and develop comments.

Old Business

Other Items

6. Upcoming Projects Discussion

Discussion of GSE and a summary of that project. Upcoming Variance and Preliminary Plat review.

- Many moving pieces to this process
- Many details to review
- Nick will prepare a detailed staff report for the variances and the plat itself. Will have it far in advance of the planned October Meeting.

Upcoming Public Hearing on Laurel High School Sign

7. Growth Management Policy Schedule

Ron mentioned asking MDT about plans for West Laurel Interchange?

Brief discussion about West Laurel Interchange

- Possibilities for expansion.
- Discussions happened previously about West Railroad connections

Does the state have any plans for the interchange? Originally the plan was that the Interchange created a bypass up to Molt and Broadview.

Nick reported that he had met with MDT in the Spring regarding the growth policy and that they currently have no other plans for the West Laurel Interchange other than what has been prepared. MDT stressed the importance of developing funding sources for transportation projects to better implement them.

Roger Giese - Would like to see something similar what is on Shiloh and Central in Billings at the Interchange. A mix of cafes and residential units.

Nick remarked that a development of that kind could be a very positive development near the interchanges, if a site could be found and utilities provided.

Members discussed Utility lines and extending infrastructure.

- Nick has been looking into funding sources to support the extension of infrastructure.
- The Mayor has been aware of the funding needs and has investigated how to accomplish any expansion of utilities and services.

Announcements

8. Next Meeting: September 16, 2020

Ron motioned to adjourn the meeting.

Roger seconded.

Meeting adjourned at 6:45PM.

The City makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in this meeting. Persons needing accommodation must notify the City Clerk's Office to make needed arrangements. To make your request known, please call 406-628-7431, Ext. 2, or write to City Clerk, PO Box 10, Laurel, MT 59044, or present your request at City Hall, 115 West First Street, Laurel, Montana.

DATES TO REMEMBER

INDEFINITE TERM LEASE LAND NO. 502,130
01LAUREL

THIS INDEFINITE TERM LEASE FOR LAND ("Lease") is dated as of the 1st day of February, 2020 (the "Effective Date") between **MONTANA RAIL LINK, INC.**, a Montana corporation ("Lessor"), whose mailing address is PO Box 16624, Missoula, MT 59808-6624 and physical address is 101 International Way, Missoula, MT 59808 and;

whose address is **ALANIA EASTMAN AND MATHEW PRUETT, ("Lessee")**
 DBA KOO BEANS COFFEE
 1302 NORTH 24TH STREET WEST STE. 101
 BILLINGS, MT 59102-3861

RECITALS

A. Lessor is in the railroad transportation business and leases a system of rail tracks ("**Lessor's Track(s)**") and various real properties associated therewith from BNSF Railway Company, a Delaware corporation ("**BNSF**"), pursuant to that certain Agreement between Lessor and BNSF dated July 21, 1987 ("**Master Lease**"), including the Property described below which Lessee desires to further lease from Lessor.

B. Lessor has agreed to lease to Lessee the Property, subject to the terms, conditions and limitations provided herein.

AGREEMENTS

In consideration of the mutual covenants herein, Lessor and Lessee hereby agree as follows:

Section 1. Property, Term and Master Lease.

A. Lessor leases to Lessee and Lessee rents from Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease, that certain parcel of real property situated in the City of Laurel, County of Yellowstone, State of Montana, Mile Post 15+0898, Survey Station 800+65, as shown on the plat, dated November 21, 2019 a copy of which is attached hereto as **Exhibit "A"** and made a part hereof ("**Property**").

B. Lessee leases the Property from Lessor beginning February 1, 2020 ("**Commencement Date**"), and shall continue until terminated by either party as provided in this **Section 1(B)**. This Lease may be terminated by either party, at any time, without cause, for convenience, by serving upon the other party written notice of termination at least thirty (30) days in advance. Upon termination, this Lease and all rights of Lessee shall absolutely cease.

C. Upon termination, either (i) Lessor may retain from prepaid rent, as an additional charge for use of the Property, a sum equal to three (3) months Rent (as defined below), and any unearned portion of the annual Rent, in excess of such retainage, paid in advance shall be refunded to Lessee or (ii) if Lessor has not been paid sufficient Rent to satisfy the above retainage, then Lessee shall pay Lessor a sufficient sum so that, together with sums already held by Lessor, Lessor shall hold a sum equal to three (3) months Rent which Lessor shall retain as an additional charge for use of the Property, and such additional sum shall be paid by Lessee within thirty (30) days of termination of the Lease.

D. Each consecutive twelve-month period this Lease is in effect, beginning with the Effective Date of this Lease, is herein called a "**Lease Year**."

E. Lessee acknowledges that it is assuming all risks associated with Lessor's right to terminate this Lease at any time as provided above, and (i) Lessor gives no assurance that Lessor will delay termination of this Lease for any length of time whatsoever, (ii) Lessee may expend money and effort during the term of this Lease which may not ultimately be of any benefit to Lessee if Lessor terminates this Lease, but nonetheless, Lessor shall have the right to terminate the Lease if Lessor determines in its sole and absolute discretion that Lessor desires to terminate, and (iii) in no event shall Lessor be deemed to have any legal obligations to continue to lease the Property for any length of time.

F. This Lease is subject and subordinate to the Master Lease. BNSF hereby agrees by its signature below to recognize Lessee's rights under this Lease, if, prior to the termination of this Lease, or to the expiration of the term of this Lease, the term of the Master Lease expires, the Master Lease is terminated or BNSF reenters and repossesses the Property after a default by Lessor under the Master Lease. If BNSF succeeds to the rights of Lessor as the "Lessor" under this Lease, Lessee agrees that (i) BNSF shall not be liable or responsible for any breach of or default under this Lease arising prior to the date that BNSF succeeds to the rights of Tenant as the "Lessor" under this Lease; (ii) BNSF shall not be required to cure or correct any breach or default under this Lease arising prior to the date that BNSF succeeds to the rights of Lessor as the "Lessor" under this Lease; and (iii) no breach of or default under this Lease arising prior to the date that BNSF succeeds to the rights of Lessor as the "Lessor" under this Lease shall excuse, delay, release or relieve Lessee from the payment and performance of all of Lessee's duties and obligations under this Lease. The preceding sentence is not intended and shall not be construed to affect any rights or remedies of Lessee against Lessor arising or resulting from a breach of or default under this Lease by Lessor prior to the date that BNSF succeeds to the rights of Lessor as the "Lessor" under this Lease. If BNSF succeeds to the rights of Lessor as the "Lessor" under this Lease, Lessee agrees to recognize BNSF as the "Lessor" under this Lease and timely tender payment and performance of Lessee's duties and obligations under this Lease to BNSF as if BNSF were named as "Lessor" in this Lease.

Section 2. Use and Compliance.

A. Lessee may use the Property for the sole and exclusive purpose of a portable drive through coffee kiosk and for no other purpose without the prior written consent of Lessor. Lessee shall respond to Lessor's reasonable inquiries regarding the use or condition of the Property.

B. Lessee shall comply with all Laws applicable to Lessee, the Property, this Lease and Lessee's activities and obligations hereunder, and shall have the sole responsibility for costs, fees, or expenses associated with such compliance. As used herein, the term "**Laws**" shall mean any and all statutes, laws, ordinances, codes, rules or regulations or any order, decision, injunction, judgment, award or decree of any public body or authority having jurisdiction over Lessee, the Property, this Lease, and/or Lessee's obligations under this Lease, and shall include all Environmental Laws (as defined in **Section 4(A)**).

C. If any governmental license or permit is required or desirable for the proper and lawful conduct of Lessee's business or other activity in or on the Property, or if the failure to secure such a license or permit might in any way affect Lessor or BNSF, then Lessee, at Lessee's expense, shall procure and thereafter maintain such license or permit and submit the same to inspection by Lessor. Lessee, at Lessee's expense, shall at all times comply with the requirements of each such license or permit.

Section 3. Rent.

A. Lessee shall pay as rental for the Property, in advance, an amount equal to Two Thousand Four Hundred Sixty Four (\$2,464.00) annually ("**Rent**"). Lessor may, in its sole discretion, adjust the Rent annually to reflect a then current fair market rental value. Billing or acceptance by Lessor of any rental shall not imply a definite term or otherwise restrict either party from canceling this Lease as provided herein. Either party hereto may assign any receivables due it under this Lease; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Lease. All Rent and other monetary payments under this Lease from Lessee to Lessor shall be delivered solely to the following address:

Montana Rail Link, Inc.
PO Box 16624
Missoula, MT 59808

Lessor shall have the right to designate at any time and from time to time a different address for delivery of such payments by written notice to Lessee pursuant to the notice provisions of **Section 36** below. No Rent or other payment sent to any other address shall be deemed received by Lessor unless and until Lessor has actually posted such payment as received on the account of Lessee, and Lessee shall be subject to all default provisions hereunder, late fees and other consequences as a result thereof in the same manner as if Lessee had failed or delayed in making any payment.

B. Lessee acknowledges that Lessor utilizes the rental collection system involving direct deposit of monies received through a financial institution selected by Lessor, which precludes Lessor's ability to exercise rejection of a rental payment before Lessee's check is cashed. Lessee agrees that as a condition of Lessor granting this Lease Lessee hereby waives any rights it may have under law to force continuation of this Lease due to Lessor having accepted and

cash Lessee's rental remittance. Lessor shall have the option of rejecting Lessee's payment by refunding to Lessee the rental amount paid by Lessee, adjusted as set forth in this Lease, and enforcing the termination provisions of this Lease.

C. Lessee shall pay the Rent and all additional amounts due pursuant to **Section 9** as and when the same become due and payable, without demand, set-off, or deduction. Lessee's obligation to pay Rent and all amounts due under this Lease is an independent covenant and no act or circumstance, regardless of whether such act or circumstance constitutes a breach under this Lease by Lessor, shall release Lessee of its obligation to pay Rent and all amounts due as required by this Lease.

D. If any Rent or any payment under **Section 9** or any other payment due by Lessee hereunder is not paid within five (5) days after the date the same is due, Lessor may assess Lessee a late fee ("**Late Fee**") in an amount equal to 5% of the amount which was not paid when due to compensate Lessor for Lessor's administrative burden in connection with such late payment. In addition to said Late Fee, Lessee shall pay interest on the unpaid sum from the due date thereof to the date of payment by Lessee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in The Wall Street Journal in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

Section 4. Environmental.

A. Lessee shall strictly comply with all federal, state and local environmental laws and regulations in its occupation and use of the Property, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Clean Air Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Lessee shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Property. Lessee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Property.

B. Lessee shall give Lessor immediate notice to Lessor's Manager of Environmental Projects at 406.523.1415 and to BNSF's Resource Operations Center at 800.832.5452 of any release of hazardous substances on or from the Property and to Lessor's Manager of Environmental Projects at 406.523.1415, Lessor's Real Estate Department promptly in writing, and to BNSF's Manager Environmental Leases at 785.435.2386 for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Property. Lessee shall use its best efforts to promptly respond to any release on or from the Property. Lessee also shall give Lessor's Manager of Environmental Projects, Lessor's Real Estate Department and BNSF's Manager Environmental Leases immediate notice of all measures undertaken on behalf of Lessee to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to Lessor's Manager of Environmental Projects, Lessor's Real Estate Department and BNSF's Manager Environmental Leases copies of all reports and/or data regarding any investigations or remediations of the Property.

C. In the event that Lessor and/or BNSF have notice from Lessee or otherwise of a release or violation of Environmental Laws on the Property which occurred or may occur during the term of this Lease, Lessor and BNSF may require Lessee, at Lessee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Property or Lessor's right-of-way.

D. Lessee shall promptly report to Lessor and BNSF in writing any conditions or activities upon the Property which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Lessee's reporting to Lessor and BNSF shall not relieve Lessee of any obligation whatsoever imposed on it by this Lease. Lessee shall promptly respond to Lessor's and/or BNSF's request for information regarding said conditions or activities.

E. Hazardous Materials are not permitted on the Property except as otherwise described herein. Lessee expects to use on the Property the following Hazardous Materials: none, and to store on the Property the following Hazardous Materials (as defined in **Section 4(F)** below): none; provided, however, that Lessee may only use and store the listed Hazardous Materials in such amounts as are necessary and customary in Lessee's industry for the permitted uses hereunder ("**Permitted Substances**"). All such Permitted Substances shall be placed, used, and stored in strict accordance with all Environmental Laws. Use or storage on the Property of any Hazardous Materials not disclosed in this **Section 4(E)** is a breach of this Lease.

F. For purposes of this **Section 4, "Hazardous Materials"** means all materials, chemicals, compounds, or substances (including without limitation asbestos, petroleum products, and lead-based paint) identified as hazardous or toxic under Environmental Laws.

G. Lessor or BNSF may, at its option prior to termination of this Lease, require Lessee to conduct an environmental audit of the Property through an environmental consulting engineer acceptable to Lessor or BNSF, at Lessee's sole cost and expense, to determine if any noncompliance or environmental damage to the Property has occurred during Lessee's occupancy thereof. The audit shall be conducted to Lessor's and BNSF satisfaction and a copy of the audit report shall promptly be provided to Lessor and BNSF for their review. Lessee shall pay all expenses for any remedial action that may be required as a result of said audit to correct any noncompliance or environmental damage, and all necessary work shall be performed by Lessee prior to termination of this Lease.

Section 5. Access to Adjacent Property by Lessee.

If access to and from the Property can be accomplished only through use of Lessor's property adjacent to the Property, such use is granted for ingress and egress only and on a non-exclusive basis, subject to such restrictions and conditions as Lessor may impose by notice to Lessee. Lessor shall have the right to designate the location or route to be used. Lessee understands and agrees that all of the obligations under this Lease applicable to Lessee shall also be applicable to Lessee with respect to Lessee's use of any property adjacent to the Property, including, without limitation, the indemnity provisions of **Section 13**. Notwithstanding anything to the contrary herein, this **Section 5** shall not grant Lessee any right to cross any of Lessor's Tracks. Any such crossing rights may only be granted by a separate written agreement between Lessor and Lessee.

Section 6. Access to Property by Lessor.

A. Lessor and its contractors, agents and other designated third parties may at all reasonable times and at any time in case of emergency, in such manner as to not unreasonably interfere with Lessee's use of the Property as allowed hereunder, (i) enter the Property for inspection of the Property or to protect the interests of Lessor and BNSF in the Property or to protect from damage any property adjoining the Property, (ii) enter the Property to construct, maintain, and operate trackage, fences, pipelines, communication facilities, fiber optic lines, wireless towers, telephone, power or other transmission lines, or appurtenances or facilities of like character, upon, over, across, or beneath the Property; provided that Lessor and BNSF shall have no obligation to pay any sum for any damage, including damage to growing crops, (iii) take all required materials and equipment onto the Property, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Property as Lessor may elect if Lessee defaults in its obligation to do so, (iv) enter the Property to show the Property to holders of encumbrances on the interest of Lessor in the Property, or to prospective purchasers or mortgagees of the Property, and all such entries and activities shall be without any rebate of Rent to Lessee for any loss of occupancy of the Property, or damage, injury or inconvenience thereby caused.

B. For purposes stated in this **Section 6**, Lessor will at all times have keys with which to unlock all of the doors and gates on the Property, and Lessee will not change or alter any lock thereon without Lessor's permission.

C. In an emergency, Lessor will be entitled to use any and all means that Lessor may deem proper to open doors, gates, and other entrances to obtain entry to the Property. Any entry to the Property by Lessor as described in this **Section 6** shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Property, or any eviction of Lessee from the Property, and any damages caused on account thereof will be paid by Lessee.

Section 7. Warranties.

LESSOR DOES NOT WARRANT ITS LEASEHOLD INTEREST IN OR BNSF'S TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LESSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. This Lease is made subject to all outstanding rights or interests of others. If the Property is subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this Lease subject to that possibility and its effect on Lessee's rights and ownership of the Lessee Improvements. In case of eviction of Lessee by anyone other than Lessor, or anyone owning or claiming title to or any interest in the Property, Lessor and BNSF shall not be liable to Lessee for damage of any kind (including any loss of ownership right to Lessee's Improvements) or to refund any Rent paid hereunder, except to return the unearned portion of any Rent paid in advance.

Section 8. Property Condition; Lessee Improvements.

A. Lessee represents that the Property, the title thereto, any subsurface conditions thereof, and the present uses thereof have been examined by the Lessee. Lessee accepts the same in the condition in which they now are, without representation or warranty, expressed or implied, in fact or by law, by the Lessor, and without recourse to the Lessor and BNSF as to the title thereto, the nature, condition or usability thereof, or the uses to which the Property may be put. By taking possession or commencing use of the Property, Lessee (i) acknowledges that it is relying on its own inspections of the Property and not on any representations from Lessor regarding the Property; (ii) establishes conclusively that the Property is at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects; and (iii) accepts the Property in its condition as of the Commencement Date on an **"AS IS," "WHERE IS,"** and **"WITH ALL FAULTS"** basis, subject to all faults and infirmities, whether now or hereafter existing. Nothing contained in this **Section 8** affects the commencement of the term of the Lease or the obligation of Lessee to pay Rent as provided above. Lessee represents and warrants to Lessor as follows: (i) Lessee does not intend to, and will not, use the Property for any purpose other than as set forth in **Section 2**; (ii) Lessee has previously disclosed in writing to Lessor all special requirements (but Lessor shall have no responsibility relative to any such special requirement), if any, which Lessee may have in connection with this intended use; and (iii) Lessee has undertaken and has reasonably and diligently completed all appropriate investigations regarding the suitability of the Property for Lessee's intended use. Lessee shall comply with any covenants, conditions or restrictions now or hereafter affecting the Property, and acknowledges that Lessor may place any covenants, conditions or restrictions of record affecting the Property prior to or during the term of the Lease. In such event, this Lease will be subject and subordinate to all of the same without further action by either party, including, without limitation, the execution of any further instruments. Lessee acknowledges that Lessor has given material concessions for the acknowledgements and provisions contained in this **Section 8**, and that Lessor is relying on these acknowledgements and agreements and would not have entered into this Lease without such acknowledgements and agreements by Lessee.

B. If initial improvements are necessary for Lessee's use of the Property, Lessee, at Lessee's sole cost and expense, shall, on or after the Commencement Date, construct and install such initial improvements to the Property which are necessary for Lessee's use of the Property and are acceptable to Lessor and BNSF in Lessor's and BNSF's sole discretion ("**Lessee Improvements**"). The construction and installation of any Lessee Improvements shall be subject to Lessor's and BNSF's prior written approval of plans and specifications for such Lessee Improvements to be prepared by Lessee and submitted to Lessor and BNSF for approval as set forth below, such approval to be in Lessor's and BNSF's sole and absolute discretion. Within forty-five (45) days after the Commencement Date, Lessee shall submit detailed plans and specifications, and the identity of Lessee's proposed general contractor for the Lessee Improvements for Lessor's and BNSF's review and approval. Lessor and BNSF shall either approve or disapprove the plans and specifications and general contractor (in their sole and absolute discretion) by written notice delivered to Lessee within sixty (60) days after receipt of the same from Lessee. In the event of any disapproval, Lessor and BNSF shall specify the reasons for such non-approval. If Lessor and BNSF fail to deliver notice to Lessee of Lessor's approval or disapproval of the plans, specifications, and proposed general contractor within the time period discussed above, Lessee's plans, specifications and proposed contractor shall be deemed disapproved. If Lessor or BNSF specifies objections to the plans and specifications or general contractor as herein provided and Lessor and Lessee or BNSF and Lessee are unable to resolve the objections by mutual agreement within a period of thirty (30) days from the date of delivery of written notice thereof, Lessee, as its sole remedy, to be exercised not later than ten (10) days after the expiration of said thirty (30) days period, may terminate this Lease by written notice to Lessor. Upon approval of the plans and specifications by Lessor and BNSF, Lessor, BNSF and Lessee shall sign the same, and they shall be deemed a part hereof. All Lessee Improvements shall be constructed and installed in accordance with the terms and conditions of **Exhibit "B"** attached to the Lease and all applicable terms and conditions of the Lease regarding alterations and improvements. Lessee shall not construct any other alteration or improvement to the Property without Lessor's Real Estate Department's prior written consent and BNSF's prior written consent. The Lessee Improvements constructed pursuant to the above provisions shall be owned by Lessee during the term of the Lease and removed from the Property or surrendered to the Lessor pursuant to **Section 20** below upon termination of this Lease.

Section 9. Taxes and Utilities.

A. In addition to Rent, Lessee shall pay all taxes, utilities, and other charges of every kind and character, whether foreseen or unforeseen, ordinary or extraordinary, which are attributable to the term of this Lease and may become due or levied against the Property, against Lessee, against the business conducted on the Property or against the Lessee Improvements placed thereon during the term hereof, even though such taxes, utilities or other charges may not become due and payable until after termination of this Lease provided; however, that Lessee shall only be responsible for the payment of property taxes levied against the Property to the extent such taxes are separately assessed by the applicable taxing authority as a result of this Lease. Lessee agrees that Lessor shall not be required to furnish to Lessee

any utility or other services. If this Lease is a transfer of an existing lease, Lessee must make arrangements with the present lessee for payment of any delinquent and current taxes, utilities, and other charges prior to taking possession. If such arrangements are not made, Lessee agrees to pay all such taxes, utilities, and other charges. If Lessor should make any such payments, Lessee shall promptly upon demand reimburse Lessor for all such sums.

B. Should the Property be subject to special assessment for public improvements in the amount of Five Hundred Dollars (\$500.00) or less during any Lease Year, Lessee shall promptly reimburse Lessor the amount in full. Should the assessment exceed Five Hundred Dollars (\$500.00) during any Lease Year then such excess shall be paid by Lessor, but the Rent herein shall be increased by an amount equal to twelve percent (12%) of such excess payable for each Lease Year such amounts are payable.

Section 10. Track Clearance.

A. Lessee shall not place, permit to be placed, or allow to remain, any permanent or temporary material, structure, pole, or other obstruction within (i) 8½ feet laterally from the centerline of any of Lessor's Tracks on or about the Property (nine and one-half (9-1/2) feet on either side of the centerline of any of Lessor's Tracks which are curved) or (ii) 24 feet vertically from the top of the rail of any of Lessor's Tracks on or about the Property ("**Minimal Clearances**"); provided that if any law, statute, regulation, ordinance, order, covenant or restriction ("**Legal Requirement**") requires greater clearances than those provided for in this **Section 10**, then Lessee shall strictly comply with such Legal Requirement. However, vertical or lateral clearances which are less than the Minimal Clearances but are in compliance with Legal Requirements will not be a violation of this **Section 10**, so long as Lessee strictly complies with the terms of any such Legal Requirement and posts a sign on the Property clearly noting the existence of such reduced clearance. Any such sign shall be painted with black and white reflective paint.

B. Lessor's or BNSF's operation over any Lessor's Track on or about the Property with knowledge of an unauthorized reduced clearance will not be a waiver of the covenants of Lessee contained in this **Section 10** or of Lessor's or BNSF's rights to recover for and be indemnified and defended against such damages to property, and injury to or death of persons, that may result therefrom. In addition to, and not in exclusion of, other provisions of this Lease, Lessor and Lessee hold BNSF harmless from liability occurring as a result of Lessor's provision of rail freight services over the Property.

C. Lessee shall not place or allow to be placed any freight car within 250 feet of either side of any at-grade crossings on Lessor's Tracks.

Section 11. Repairs; Maintenance.

A. Lessee shall, at its sole expense, take good care of the Property (including all Lessee Improvements) and shall not do or suffer any waste with respect thereto and Lessee shall promptly make all necessary or desirable Repairs to the Property. The term "**Repairs**" means all reasonable repair and maintenance necessary to keep the Property (including all Lessee Improvements) in good condition and includes, without limitation, replacements, restoration and renewals when necessary. Lessee shall keep and maintain any paved areas, sidewalks, curbs, landscaping and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish.

B. Lessor shall not have any liability or obligation to furnish or pay for any services or facilities of whatsoever nature or to make any Repairs or alterations of whatsoever nature in or to the Property, including but not limited to structural repairs, or to maintain the Property in any manner. Lessee acknowledges that Lessor shall have no responsibility for management of the Property.

Section 12. Safety; Dangerous and Hazardous Conditions.

It is understood by Lessee that the Property may be in dangerous proximity to railroad tracks, including Lessor's Tracks, and that persons and property, whether real or personal, on the Property will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Property), and Lessee accepts this Lease subject to such dangers, and acknowledges that its indemnification obligations hereunder extend to and include all such risks.

Section 13. Indemnity.

A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR, BNSF, BURLINGTON NORTHERN SANTA FE LLC AND EACH OF THE AFOREMENTIONED PARTIES' AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (i) THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS;**
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LEASE;**
- (iii) LESSEE'S OCCUPATION AND USE OF THE PROPERTY;**
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PROPERTY CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR**
- (v) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,**

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LESSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES (1) TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE OR (2) WHOLLY CAUSED BY THE SOLE NEGLIGENCE OF AN INDEMNITEE.

B. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 14A, LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT AN INDEMNITEE IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE PROPERTY FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LESSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LESSEE FURTHER AGREES THAT THE USE OF THE PROPERTY AS CONTEMPLATED BY THIS LEASE SHALL NOT IN ANY WAY SUBJECT ANY INDEMNITEE TO CLAIMS THAT ANY INDEMNITEE IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PROPERTY.

C. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE FURTHER AGREES, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LESSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

D. Upon written notice from any Indemnatee, Lessee agrees to assume the defense of any lawsuit or other proceeding brought against such Indemnatee by any entity, relating to any matter covered by this Lease for which Lessee has an obligation to assume liability for and/or save and hold harmless such Indemnatee. Lessee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

Section 14. Equal Protection.

It is agreed that the provisions of **Sections 10, 12, and 13** are for the equal protection of other railroad companies, including, without limitation, the National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property, and such railroad companies shall be deemed to be included as Indemnitees under **Sections 10, 12, and 13**.

Section 15. Assignment and Sublease.

A. Lessee shall not (i) assign or otherwise transfer this Lease or any interest herein, or (ii) sublet the Property or any part thereof, without, in each instance, obtaining the prior written consent of Lessor and BNSF, which consent may be withheld in the sole and absolute discretion of Lessor and BNSF. For purposes of this **Section 15**, in the event that there are aggregate transfers or other changes in the ownership interests of Lessee resulting in a change of more than 20% of the ownership interests as held on the date hereof, a transfer shall be deemed to have occurred hereunder. Any person or legal representative of Lessee, to whom Lessee's interest under this Lease passes by operation of law, or otherwise, will be bound by the provisions of this Lease.

B. Any assignment, lease, sublease or transfer made pursuant to **Section 15(A)** may be made only if, and shall not be effective until, the assignee cures all outstanding defaults of Lessee hereunder and executes, acknowledges and delivers to Lessor an agreement, in form and substance satisfactory to Lessor, whereby the assignee assumes the obligations and performance of this Lease and agrees to be personally bound by and upon all of the covenants, agreements, terms, provisions and conditions hereof on the part of Lessee to be performed or observed. Lessee covenants that, notwithstanding any assignment or transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of Rent by Lessor from an assignee or transferee or any other party, Lessee will remain fully and primarily liable along with the assignee for the payment of the Rent due and to become due under this Lease and for the performance of all of the covenants, agreements, terms, provisions, and conditions of this Lease on the part of Lessee to be performed or observed.

Section 16. Liens.

Lessee shall promptly pay, discharge and release of record any and all liens, charges and orders arising out of any construction, alterations or repairs, suffered or permitted to be done by Lessee on the Property. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the Property that is or may be permitted by law to prevent the attachment of any such liens to the Property; provided, however, that failure of Lessor to take any such action shall not relieve Lessee of any obligation or liability under this **Section 16** or any other Section of this Lease.

Section 17. Insurance.

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease the following insurance coverage:

A. All risks property insurance covering all of Lessee's property including property in the care, custody or control of Lessee. Coverage shall include the following:

- ♦ Issued on a replacement cost basis.
- ♦ Shall provide that in respect of the interests of Lessor and BNSF the insurance shall not be invalidated by any action or inaction of Lessee or any other person and shall insure the respective interests of Lessor and BNSF as they appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Lessee or any other person.
- ♦ Include a standard loss payable endorsement naming Lessor and BNSF as the loss payee as its interests may appear.
- ♦ Include a waiver of subrogation in favor of Lessor and BNSF.

B. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- ♦ Bodily Injury and Property Damage
- ♦ Personal Injury and Advertising Injury
- ♦ Fire legal liability
- ♦ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ♦ The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ♦ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ♦ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy.

C. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ♦ Bodily injury and property damage
- ♦ Any and all vehicles owned, used or hired

D. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ♦ Lessee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ♦ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

Other Requirements:

All policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Lessee agrees to waive its right of recovery against Lessor and BNSF for all claims and suits against Lessor and BNSF. In addition, its insurers, through the terms of the policy or through policy endorsement, waive their right of subrogation against the Lessor and BNSF for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Lessee further waives its right of recovery, and its insurers also waive their right of subrogation against the Lessor and BNSF for loss of its owned or leased property or property under Lessee's care, custody or control.

Lessee's insurance policies through policy endorsement must include wording that states that the policy shall be primary and non-contributing with respect to any insurance carried by any Indemnitee. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name the Lessor and BNSF as additional insureds with respect to work performed under this Lease. Severability of interest and naming the Lessor and BNSF as additional insureds shall be indicated on the certificate of insurance.

Lessee is not allowed to self-insure without the prior written consent of Lessor and BNSF. If granted by Lessor and BNSF, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Lessee in lieu of insurance. Any and all liabilities of the Lessor and BNSF that would otherwise, in accordance with the provisions of this Lease, be covered by Lessee's insurance will be covered as if Lessee elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to accessing the Property, Lessee shall furnish to Lessor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Lessor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Lessor, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Lessor with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Property is located.

Lessee represents that this Lease has been thoroughly reviewed by Lessee's insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Lease. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Lessor and BNSF may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be contracted by Lessee, Lessee shall require that the contractor shall provide and maintain insurance coverages as set forth herein, naming Lessor and BNSF as additional insureds, and shall require that the contractor shall release, defend and indemnify the Lessor and BNSF to the same extent and under the same terms and conditions as Lessee is required to release, defend and indemnify the Lessor and BNSF herein.

Failure to provide evidence as required by this section shall entitle, but not require, Lessor to terminate this Lease immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Lessee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by the Lessor and BNSF shall not be limited by the amount of the required insurance coverage.

For purposes of this section, BNSF shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

Section 18. Water Rights and Use of Wells.

This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the BNSF which may be appurtenant to the Property. All right, title, and interest in and to such water is expressly reserved unto BNSF, and the right to use same or any part thereof may be obtained only by the prior written consent of the BNSF. Lessee shall not use, install or permit to be installed or used any wells on the Property without the prior written consent of BNSF.

Section 19. Default.

A. An "Event of Default" by Lessee shall have occurred hereunder if any of the following shall occur:

- (i) if Lessee violates any safety provision contained in this Lease;
- (ii) if Lessee fails to pay Rent or any other monetary payment hereunder when due or fails to perform any other obligations under this Lease and such failure continues thirty (30) days after written notice from Lessor to Lessee of Lessee's failure to make such payment or perform such obligations;
- (iii) if a decree or order of a court having jurisdiction over the Property for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Lessee or over all or a substantial part of the property of Lessee shall be entered; or if Lessee becomes insolvent or makes a transfer in fraud of creditors; or an interim receiver, trustee or other custodian of Lessee or of all or a substantial part of the property of Lessee shall be appointed or a warrant of attachment, execution, or similar process against any substantial part of the property of Lessee shall be issued and any such event shall not be stayed, dismissed, bonded or discharged within thirty (30) days after entry, appointment or issuance;
- (iv) if the Property is abandoned or vacated by Lessee.

B. If an Event of Default occurs as provided above, Lessor may, at its option, (i) terminate this Lease by serving five (5) days notice in writing upon Lessee, in which event Lessee shall immediately surrender possession of the Property to Lessor, without prejudice to any claim for arrears of Rent or breach of covenant, (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Lessee of the applicable provisions of this Lease or to recover damages for a breach thereof, (iii) cure the default by making any such payment or performing any such obligation, as applicable, at Lessee's sole expense, without waiving or releasing Lessee from any obligation, or (iv) enter into and upon the Property or any part thereof and repossess the same without terminating the Lease and, without obligations to do so relet the Property or any part thereof as

the agent of Lessee and in such event, Lessee shall be immediately liable to Lessor for all costs and expenses of such reletting, the cost of any alterations and repairs deemed necessary by Lessor to effect such reletting and the full amount, if any, by which the rentals reserved in this Lease for the period of such reletting exceeds the amounts agreed to be paid as Rent for the Property for the period of reletting. The foregoing rights and remedies given to Lessor are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise by Lessor at any time of a different or inconsistent remedy. If, on account of breach or default by Lessee of any of Lessee's obligations hereunder, it shall become necessary for the Lessor to employ an attorney to enforce or defend any of Lessor's rights or remedies hereunder, then, in any such event, any reasonable amount incurred by Lessor for attorneys' fees shall be paid by Lessee. Any waiver by Lessor of any default or defaults of this Lease or any delay of Lessor in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date or terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect Lessor's ability to enforce any Section of this Lease. The remedies set forth in this **Section 19** shall be in addition to, and not in limitation of, any other remedies that Lessor may have at law or in equity, and the applicable statutory period for the enforcement of a remedy will not commence until Lessor has actual knowledge of a breach or default.

C. In the event of a default by Lessee, Lessor shall be allowed to recover one hundred percent (100%) of its costs or outstanding amounts owed, including any amount received by a collection agency in connection with pursuing any unpaid portion of rent or other amounts due under this Lease on Lessor's behalf.

Section 20. Termination.

Upon the termination of Lessee's tenancy under this Lease in any manner herein provided, Lessee shall relinquish possession of the Property and shall remove any Lessee Improvements, and restore the Property to substantially the state and environmental condition in which it was prior to Lessee's use ("**Restoration Obligations**"). If Lessee shall fail within thirty (30) days after the date of such termination of its tenancy to complete the Restoration Obligations, then Lessor may, at its election (i) either remove the Lessee Improvements or otherwise restore the Property, and in such event Lessee shall, within thirty (30) days after receipt of bill therefor, reimburse Lessor for cost incurred, (ii) upon written notice to Lessee may take and hold any Lessee Improvements and personal property as its sole property, without payment or obligation to Lessee therefor, or (iii) specifically enforce Lessee's obligation to restore and/or pursue any remedy at law or in equity against Lessee for failure to so restore. Further, in the event Lessor has consented to Lessee Improvements remaining on the Property following termination, Lessee shall, upon request by Lessor, provide a Bill of Sale in a form acceptable to Lessor conveying such Lessee Improvements to Lessor.

Section 21. Survival of Obligations.

Notwithstanding any expiration or other termination of this Lease, all of Lessee's indemnification obligations and any other obligations that have accrued but have not been satisfied under this Lease prior to the termination date shall survive such termination.

Section 22. Holding Over.

If Lessee fails to surrender the Property to Lessor upon any termination of this Lease, and Lessor and BNSF do not consent in writing to Lessee's holding over, then such holding over will be deemed a month-to-month tenancy. Lessee's holdover will be subject to all provisions of this Lease.

Section 23. Multiple Party Lessee.

In the event that Lessee consists of two or more parties, all the covenants and agreements of Lessee herein contained shall be the joint and several covenants and agreements of such parties.

Section 24. Damage or Destruction.

If at any time during the term of this Lease, the Property is damaged or destroyed by fire or other casualty, then Lessor may terminate this Lease or repair and reconstruct the Property to substantially the same condition in which the Property existed immediately prior to the damage or destruction, except that Lessor is not required to repair or reconstruct any Lessee Improvements, personal property, furniture, trade fixtures, or office equipment located on the Property and removable by Lessee under the provisions of this Lease.

Section 25. Eminent Domain.

If any part of the Property is taken by eminent domain, Lessor may either terminate this Lease or continue the Lease in effect. If Lessor elects to continue the Lease, Rent will be reduced in proportion to the area of the Property taken by eminent domain, and Lessor shall repair any damage to the Property resulting from the taking. All sums awarded or agreed upon between Lessor and the condemning authority for the taking of the interest of Lessor or Lessee, whether as damages or as compensation, will be the property of Lessor; without prejudice, however, to claims of Lessee against the condemning authority for moving costs and the unamortized cost of leasehold improvements paid for by Lessee taken by the condemning authority. If this Lease is terminated under this **Section 25**, Rent will be payable up to the date that possession is taken by the condemning authority, and Lessor shall refund to Lessee any prepaid unaccrued Rent less any sum then owing by Lessee to Lessor.

Section 26. Representations.

Neither Lessor nor Lessor's agents have made any representations or promises with respect to the Property except as herein expressly set forth.

Section 27. Signs.

No signs are to be placed on the Property without the prior written approval of Lessor of the size, design, and content thereof.

Section 28. Consents and Approvals.

Whenever in this Lease Lessor's or BNSF's consent or approval is required, such consent or approval shall be in their sole and absolute discretion. If Lessor and BNSF delay or refuse such consent or approval, such consent or approval shall be deemed denied, and Lessee in no event will be entitled to make, nor will Lessee make, any claim, and Lessee hereby waives any claim, for money damages (nor will Lessee claim any money damages by way of set-off counterclaim or defense) based upon any claim or assertion by Lessee that Lessor or BNSF unreasonably withheld or unreasonably delayed its consent or approval.

Section 29. Captions.

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

Section 30. Public Record.

It is understood and agreed that this Lease shall not be placed of public record.

Section 31. Governing Law.

All questions concerning the interpretation or application of provisions of this Lease shall be decided according to the substantive laws of the state in which the Property is located.

Section 32. No Waiver.

One or more waivers of any covenant, term, or condition of this Lease by Lessor or BNSF shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval by Lessor or BNSF to or of any act by Lessee requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 33. Binding Effect.

All provisions contained in this Lease shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Lessor and Lessee to the same extent as if each such successor and assign was named a party to this Lease.

Section 34. Force Majeure.

Except as may be elsewhere specifically provided in this Lease, if either party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or other reason of the like nature not the fault of the party delayed in performance of its obligation, such party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay.

Section 35. Entire Agreement/Modification.

This Lease is the full and complete agreement between Lessor and Lessee with respect to all matters relating to lease of the Property and supersedes any and all other agreements between the parties hereto relating to lease of the Property. If this Lease is a reissue of an existing agreement held by Lessee, it shall supersede and cancel the previous lease or leases, without prejudice to any liability accrued prior to cancellation. This Lease may be modified only by a written agreement signed by Lessor and Lessee.

Section 36. Notices.

Any notice or documents required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given or shall be deemed to have been served and given if (i) delivered in person to the address herein above or hereinafter set forth for the party to whom the notice is given, (ii) placed in the United States mail, certified - return receipt requested, addressed to such party at the address herein above or hereinafter set forth, or (iii) deposited into the custody of any reputable overnight carrier for next day delivery, addressed to such party at the address herein above or hereinafter set forth. Any notice mailed as above shall be effective upon its deposit into the custody of the U. S. Postal Service or such reputable overnight carrier, as applicable; all other notices shall be effective upon receipt. All Rent and other payments due to Lessor hereunder shall also be made as provided in **Section 3(A)** above, and delivery of such rental and other payments shall only be effective upon actual receipt by Lessor. From time to time either party may designate another address or telecopy number within the 48 contiguous states of the United States of America for all purposes of this Lease by giving the other party not less than fifteen (15) days' advance written notice of such change of address in accordance with the provisions hereof.

If to Lessee, at the address shown above.

If to Lessor, at the address shown above.

If to BNSF:

BNSF Railway Company
Jones Lange LaSalle Brokerage, Inc., Its Attorney in Fact
4200 Buckingham Road, Suite 110
Ft. Worth, TX 76155

Section 37. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

Section 38. Relationship.

Notwithstanding anything else herein to the contrary, neither party hereto shall be construed or held, by virtue of this Lease, to be the agent, partner, joint venturer, or associate of the other party hereto, it being expressly understood and agreed that the relationship between the parties hereto is and at all times during the term of this Lease, shall remain that of Lessor and Lessee.

Section 39. Severability.

If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or

provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

Section 40. Transferability; Release of Lessor.

Lessor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this Lease and in the Property, and upon such transfer, Lessor shall be released from any further obligations hereunder, and Lessee agrees to look solely to the successor in interest of Lessor for the performance of such obligations.

Section 41. Tax Waiver.

Lessee waives all rights pursuant to all Laws to protest appraised values or receive notice of reappraisal regarding the Property (including Lessor's personalty), irrespective of whether Lessor contests the same. However, if the Property is separately assessed by the applicable taxing authority as a result of this Lease, the Lessee may, at its own cost and upon written consent of Lessor, contest the assessed value of the Property.

Section 42. Attorneys' Fees.

If any action at law or in equity is necessary to enforce or interpret the terms of this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

Executed by the parties to be effective as of the Effective Date set forth above.

LESSOR

Montana Rail Link, Inc., a Montana corporation

By: _____

Joe Gentri, Manager Real Estate

LESSEE

dba Koo Beans Coffee

By: _____

Alania Eastman

By: _____

Mathew Pruett

BNSF's execution in the space provided below evidences BNSF's consent to this Lease. This Lease is not valid and shall have no force and effect without BNSF's signature.

BNSF

BNSF Railway Company

By: _____

EXHIBIT "B"

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT (the "**Agreement**") supplements that certain Indefinite Term Lease For Land ("**Lease**") dated _____, _____ by and between **MONTANA RAIL LINK, INC.**, a Montana corporation ("**Lessor**"), and _____, a(n) _____ ("**Lessee**"). In the event of any conflict between the provisions of this Agreement and the provisions of the Lease, the provisions of this Agreement shall control. Unless the context otherwise requires, capitalized terms not defined herein shall have the meaning assigned to such terms in the Lease.

In the event Lessee uses one or more general contractors or subcontractors ("**Contractor(s)**") for any improvements, alterations, build out, finish out, or other similar work on the Property ("**Work**"), Lessee agrees to and accepts the following:

1. Prior to performing any Work, Lessee shall obtain Lessor's and BNSF's approval of each Contractor and any Work to be performed by such Contractor shall be performed pursuant to a written contract between Lessee and the Contractor ("**Work Contract**") approved in advance by Lessor and BNSF.
2. Prior to commencing any Work, Lessee shall submit for Lessor's and BNSF's review and approval Lessee's plans, specifications and/or drawings for such Work (collectively, "**Plans**") in accordance with the procedure set forth in the Lease.
3. All Work must be performed at Lessee's sole cost and expense and in accordance with the Plans which have previously been approved by Lessor and BNSF.
4. Lessee shall cause its Contractors to meet all insurance and indemnification requirements required of Lessee under the Lease and shall obtain indemnification and insurance provisions from its Contractors in favor of Lessor and BNSF and in the same form as set forth in the Lease.
5. Prior to the commencement of the Work, all required local building, fire, health and other departments must approve all Plans requiring approval by local building codes. In addition, the Work shall be performed, installed and/or constructed in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations, including without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C.A. 12101 *et seq.*
6. Lessee shall be responsible for obtaining all municipal and other governmental licenses or permits for the Work with copies furnished to Lessor and BNSF prior to commencement of any construction.
7. Lessee shall furnish Lessor and BNSF, for Lessor's and BNSF's approval, a copy of its schedule of the Work. Lessee shall perform the Work in accordance with the schedule approved by Lessor and BNSF, and any changes in such schedule must be approved by Lessor and BNSF in writing in advance.
8. Notwithstanding the status of the completion of the Work, Lessee's obligation for payment of Rent and other amounts due under the Lease shall commence on the Commencement Date provided in the Lease. Notwithstanding anything herein to the contrary, Lessor and BNSF may, in Lessor's and BNSF's sole discretion, permit Lessee and Lessee's Contractors to enter the Property prior to the Commencement Date in order to commence Work; provided, however, that Lessee agrees that such early entry or occupation of the Property shall be governed by all of the terms and conditions of the Lease and this Agreement (including the insurance and indemnity requirements therein), as such terms and conditions are more specifically set forth in the Lease and this Agreement.
9. During construction, Lessor and BNSF reserves the right to inspect the Work at any time upon reasonable notice to Lessee.
10. Lessee's Contractors shall keep the Property reasonably clean at all times during the performance of the Work.
11. All Work must be performed in a good and workmanlike manner, free from defects in materials and workmanship.

12. If any materialman's, mechanic's, laborer's or any other liens for any work claimed to have been undertaken for Lessee or at Lessee's request is filed against the Property, Lessee shall indemnify, defend and hold harmless Lessor and BNSF from any such liens filed during the term of the Lease and shall, at Lessee's own expense, cause all such liens to be removed within ten (10) days after written notice from Lessor or BNSF to Lessee of the filing thereof.

13. Lessee must obtain Lessor's and BNSF's reasonable approval that the Work has been completed in substantial accordance with the approved plans and specifications. Lessor and BNSF shall receive copies of all Certificates of Occupancy and as-built drawings (electrical, mechanical, fire and architectural) prior to approving the Work.

14. All guarantees and warranties provided by Lessee's Contractors shall be issued to Lessee and, for Work which is or will at the termination of this Lease be Lessor's property, also to Lessor and BNSF.

IN WITNESS WHEREOF, the parties hereto have executed this Work Letter Agreement to be effective as of the date first set forth above.

LESSOR:

Montana Rail Link, Inc., a Montana corporation

By: _____
Name: _____
Title: _____

LESSEE:

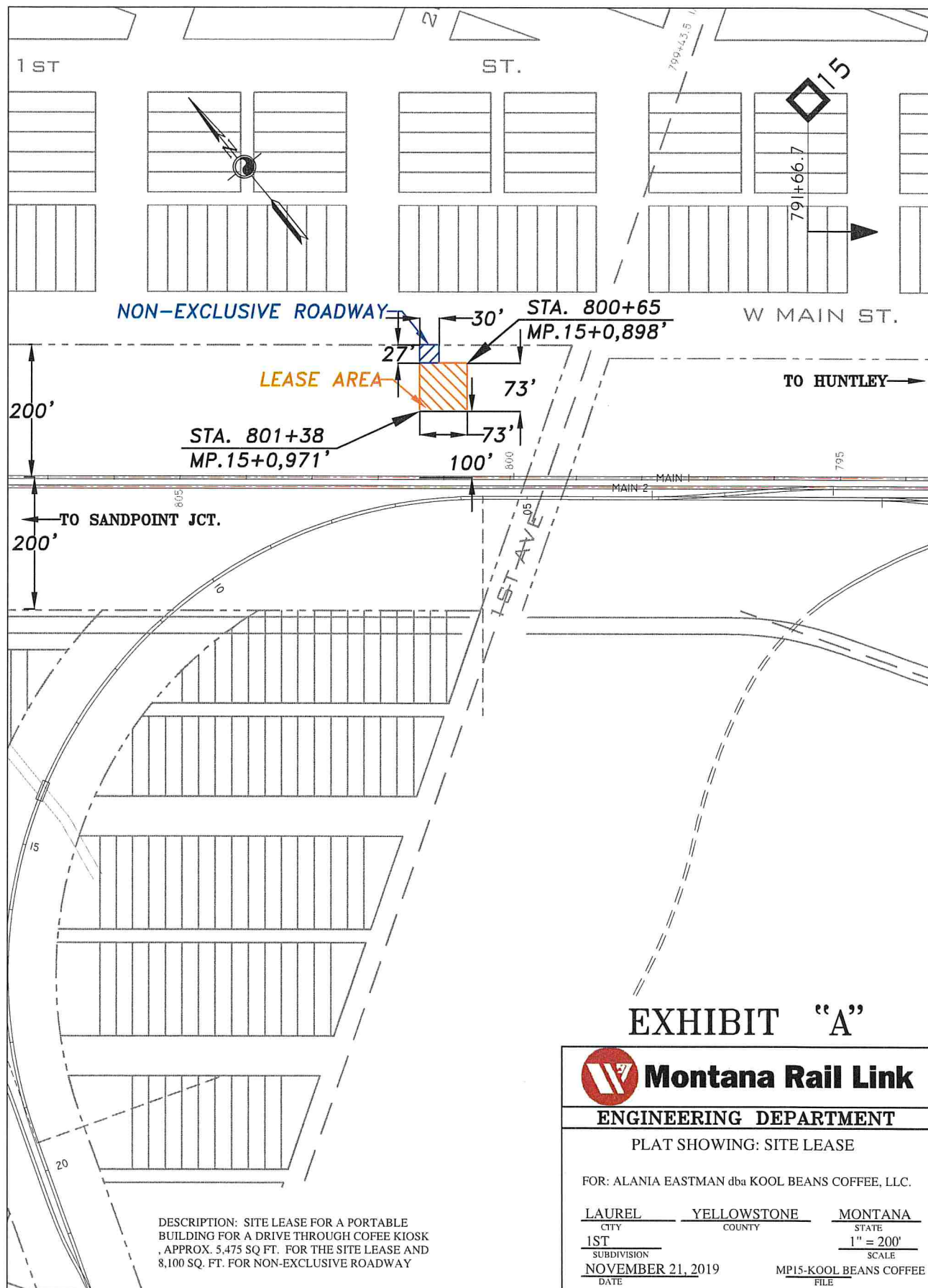
By: _____
Name: _____
Title: _____

BNSF's execution in the space provided below evidences BNSF's consent to this Work Letter Agreement. This Work Letter Agreement is not valid and shall have no force and effect without BNSF's signature.

BNSF

BNSF Railway Company, a Delaware corporation

By: _____
Name: _____
Title: _____





LAUREL CITY-COUNTY PLANNING DEPARTMENT

STAFF REPORT

TO: Laurel City-County Planning Board / Zoning Commission
FROM: Nicholas Altonaga, Planning Director
RE: Conditional Use Permit – Koo Beans Coffee Kiosk
DATE: August 25, 2020

DESCRIPTION/LOCATION:

The applicant Alania Eastman of Koo Beans Coffee submitted an application for a conditional use on July 17th, 2020. The proposed conditional use is located at 102 West Main St. The parcel is zoned as Light Industrial and is located within the Community Entryway Zoning District. The applicant is requesting a conditional use for the operation of a coffee kiosk. The property is owned by Montana Rail Link and is legally described as S09, T02 S, R24 E, ****INFORMATIONAL ONLY**** CENTRALLY ASSESSED PROPERTY IN SEC 9-2S-24E.

Application Data:

Owner: Montana Rail Link
Legal Description: S09, T02 S, R24 E, ****INFORMATIONAL ONLY**** CENTRALLY ASSESSED PROPERTY IN SEC 9-2S-24E
Address: 102 W. Main St.
Parcel Size: 45.386 acres (direct area is Southwest of intersection of N 1st Ave and Main St.)
Existing Land Use: Railroad, Vacant
Proposed Land Use: Coffee Kiosk and parking area
Existing Zoning: Light Industrial
Overlay District: Community Entryway Overlay District

Surrounding Land Use and Zoning (See Exhibits A & B)

North Zoning:	Central Business District (CBD)	Land Use:	Laurel Hearing Aid, King Koin
South Zoning:	Light Industrial/ Heavy Industrial	Land Use:	Railroad
East Zoning:	Light Industrial	Land Use:	Railroad, Chamber of Commerce
West Zoning:	Light Industrial /CBD	Land Use:	Railroad, Commercial

STAFF FINDINGS:

1. The applicant is requesting a conditional use to operate a coffee kiosk on a parcel adjacent to the Central Business District.
2. The application packet is attached and contains:
 - a. Application Form,
 - b. Site map
 - c. Map detail on leased area and adjacent uses
 - d. List of adjacent property owners
 - e. Lease agreement Between Alania Eastman, Mathew Pruett and Montana Rail Link
3. The parcel is zoned Light Industrial.
4. The parcel is within the Community Entryway Zoning District.
5. The parcel is within the Downtown Overlay District.
6. The Downtown Overlay District takes precedence over the Community Entryway Zoning District.
7. The only mention of “kiosks” in the Laurel Municipal Code is in LMC Chapter 17.40.130 – Off-Street Parking Requirements, Landscaping Standards, Part C.
8. LMC 17.25 – Downtown Overlay District is attached to this report in full.
9. LMC 17.62 – Conditional Land Uses is attached to this report in full.
10. The advertising requirements of LMC 17.62.030.A have been met.

ZONING COMMISSION CONSIDERATIONS AND RECOMMENDATION:

The Zoning Commission shall review and make determinations on Chapter 17.62 – Conditional Land Uses, Section 020 – Requirements. This section is provided below.

No structure or land use may be used for any purpose other than those allowed within a zoning district as specified in the zoning ordinance unless either a variance has been granted (under Chapter 17.60 or 17.64 of this code) or a conditional land use permit therefor has been provided. The zoning commission may recommend and the city can require any information that will allow the decision makers to comprehensively evaluate and decide on applications for conditional uses brought before them. The zoning commission may recommend and the city can require, after consideration of the application for conditional use, those conditions under which such land use may be allowed to include but not be necessarily limited to the following:

- A. Adequate ingress and egress with concern for vehicular and pedestrian safety and convenience, traffic flow and control, and emergency access as reviewed and approved by the city public works director;
- B. Adequate off-street parking and loading with attention to vehicular and pedestrian safety and traffic flow;
- C. Conditions that control, specify, or plan for the generation of odors, noise, hours of operation, signage, or impact on the neighborhood of natural systems;
- D. Adequate landscaping, screening, mitigation of impact on adjacent property and buffering; and
- E. Compatibility with adjacent and neighborhood land uses and Laurel's GMP.

STAFF SUGGESTED CONDITIONS:

The Planning Board-Zoning Commission recommends the following conditions for approval if the City Council votes to approve this application for Conditional Use.

1. The conditional use shall comply with the requirements of LMC Chapter 17.25 – Downtown Overlay District
2. The conditional use shall comply with the requirements of LMC Chapter 17.40 – Off-Street Parking Requirements
3. The conditional use shall comply with the requirements of LMC Chapter 17.42 – Sign Code
4. The conditional use shall comply with the requirements of LMC Chapter 17.62 – Conditional Land Uses

PROCEDURAL HISTORY:

- The applicant communicated with the laurel Planning Director in July 2020 regarding the need to apply for a conditional use permit and the procedural requirements.
- The conditional use application and review fee were submitted on July 17, 2020.
- A public hearing on the conditional use application took place at the August 19, 2020 meeting of the Laurel City-County Planning Board.
- Planning Board Members voted at the August 19, 2020 meeting to approve the Conditional Use Application with the conditions presented in the staff report.
- City Staff has forwarded the Conditional Use Application, Staff Report, and August 25, 2020 meeting minutes to the City Council.
- A Public Hearing regarding the conditional use application is scheduled for the September 8, 2020 meeting of the Laurel City Council.

Attachment 1. LMC Chapter 17.25 Downtown Overlay District

17.25.010 - Intent.

The city of Laurel hereinafter ("city"), in collaboration with the Laurel Urban Renewal Agency, prepared the following set of regulations to preserve and protect the unique nature of the Downtown core of the city of Laurel. These regulations are intended to promote, preserve, and enhance the character of the built environment while encouraging a cohesive identity.

In addition to building construction, further elements include, but are not limited to parking and pedestrian connectivity requirements, landscaping, and signage.

This district's requirements are in addition to the existing zoning ordinances found in Title 17 of the Laurel Municipal Code (LMC). Single-family and two-family residential uses in the district are exempt from the provisions herein.

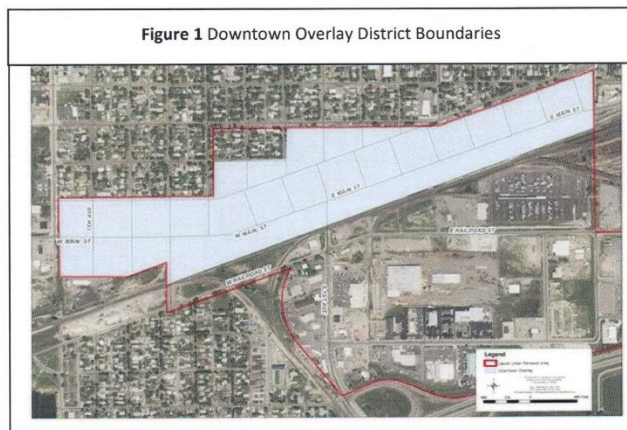
The intent of this section is to:

- A. Promote a physical landscape to make the District an attractive place to live and work;
- B. Encourage creativity in design and quality site planning;
- C. Promote development patterns in coordination with the goals and objectives of the city's growth management plan;
- D. Provide consistency to land uses and design that will protect the investment of property owners in the district.

(Ord. No. O15-01, 3-17-2015)

17.25.020 - District boundaries.

The boundaries of the district are identified in Figure 1.



(Ord. No. O15-01, 3-17-2015)

17.25.030 Application and Approval Process

- A. All building permit applications shall be submitted to the city's building official. All permit applications must be submitted and signed by the property owner or the authorized agent of the property owner. An approved building permit is required prior to any construction activity.
- B. Each building permit application must include, but not be limited to, the following information:
 - 1. The name and address of the property owner;
 - 2. The name and address of the applicant;

3. The legal description of the parcel;
 4. A map drawn to scale showing the dimensions, acreage, location of the parcel, north arrow, streets and adjacent land uses;
 5. A complete site plan drawn to a scale of no less than 1"=40' showing the dimensions and height of the structure;
 6. A complete elevation drawings drawn to the scale 1"=40' including the dimensions and height of the structure;
 7. If applicable, signage plan specifications, location and ground lighting pattern; and
 8. Payment of application review fee.
- C. Within fifteen working days following the submittal of a complete application, the planning director, designee, or the public works department (in the case of signs) shall issue approval for development or a denial of the application, unless the applicant consents in writing to an extension of the review period. Should the application be denied, the applicant shall be notified in writing specifying the reasons for the denial. (Ord. No. 002-31, 2002)

(Ord. No. O15-01, 3-17-2015)

17.25.040 - Nonconformance.

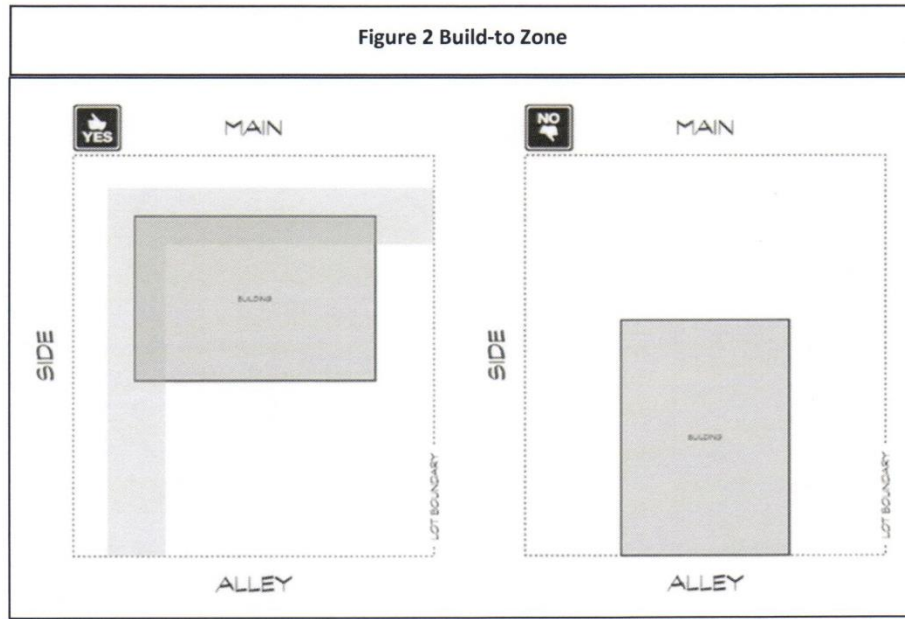
- A. Any lawful characteristic of the properties existing prior to the effective date of the ordinance that would not be a permitted characteristic under these regulations is declared to constitute a nonconforming characteristic.
- B. Nonconforming structures shall not be enlarged, extended, reconstructed, or structurally altered in an amount greater than fifty percent of its assessed valuation, unless the characteristics of the building are changed to comply with the appropriate regulations.
- C. If any nonconforming structure is damaged by an event including, but not limited to, fire, flood, explosion, wind, or war, in an amount equal to or greater than fifty percent of its assessed valuation, reconstruction must comply with the appropriate regulations. In addition, repair and maintenance may be carried out each year in an amount not to exceed twenty-five percent of the assessed valuation of the structure for that year.
- D. A nonconforming structure may continue pursuant to these regulations, but it shall not be changed in any way except to conform to the regulations herein.

(Ord. No. O15-01, 3-17-2015)

17.25.050 - Definitions.

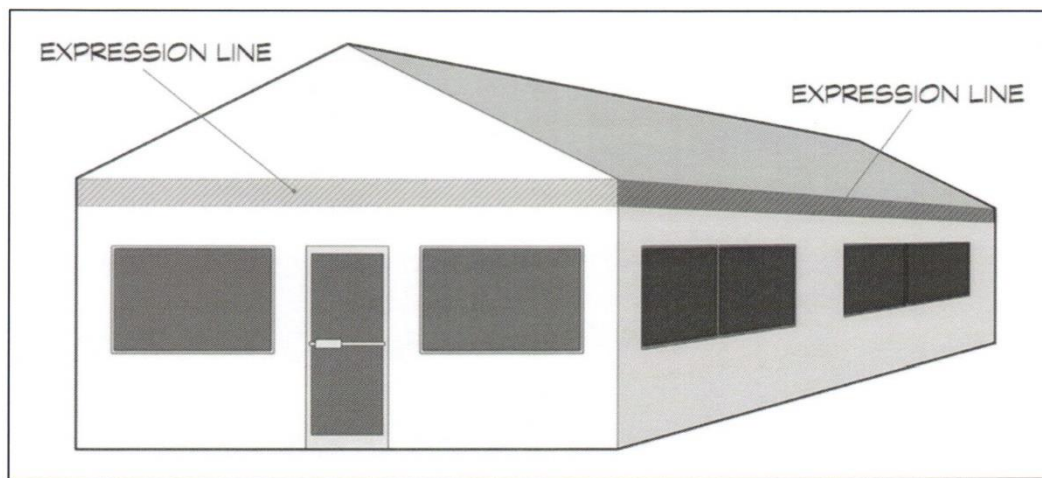
All terms shall have the same meanings as defined elsewhere in the city zoning ordinance or city signage regulations. For purposes of this title, certain words and terms used herein are defined in this chapter.

- A. "Architectural design elements" means an architectural feature consisting of a decorative, three dimensional element, horizontal or vertical, protruding or indented at least two inches from the exterior façade of a building typically utilized to provide additional aesthetic relief to a façade.
-
- B. "Build-to zone means" an area of a lot designated for placement of a building façade along a street, located parallel to a front property line or a front and side property line in the case of a corner lot. The build-to zone defines an area in which the locations of building fronts can vary within a specified range. See Figure 2.



- C. "Expression line" means an architectural feature consisting of a decorative, three dimensional, linear element, horizontal or vertical, protruding or indented at least two inches from the exterior façade of a building typically utilized to delineate the top or bottom of floors or stories of a building or provide additional aesthetic relief to a façade. See Figure 3.

Figure 2 Expression Line



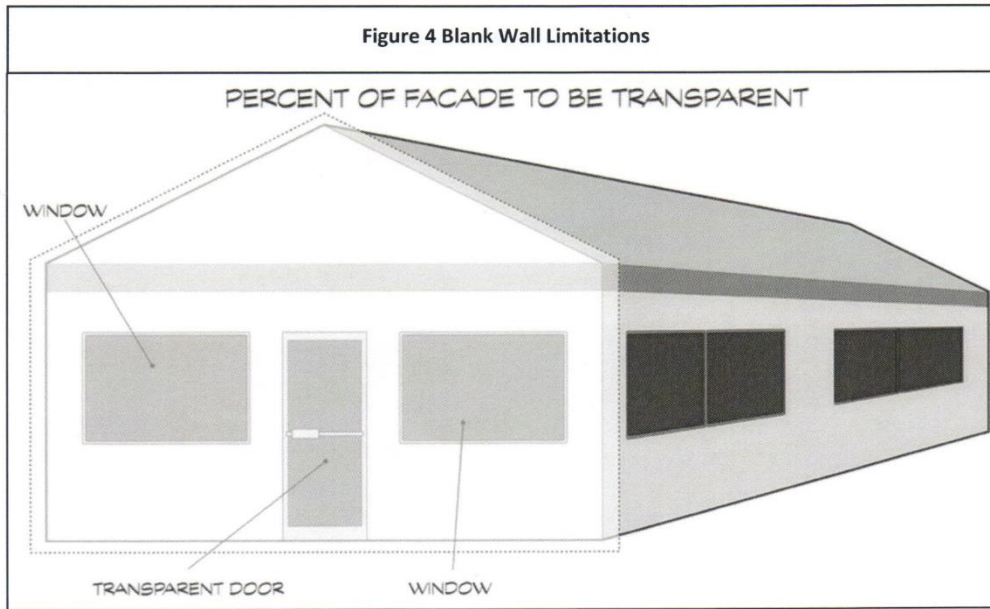


- D. "Façade" means the exterior face of a building, including but not limited to the wall, windows, windowsills, doorways, and design elements such as expression lines.
- E. "Front façade" means any building face adjacent to the street. In the case of a corner lot, the front façade is the face that the building is addressed.
- F. "Lot line, front" means the boundary abutting a right-of-way, other than an alley, from which the required setback or build-to zone is measured. The front lot line shall be to the street to which the building is addressed.
- G. "Lot line, side" means the boundary line adjacent to the front lot line and may or may not abut a right-of-way depending on lot location from which the required setback or build-to zone is measured.

(Ord. No. O15-01, 3-17-2015)

17.25.060 - Building design requirements.

- A. Exterior materials shall be sufficiently durable to ensure stability, maintainability, and long life. The use of natural and natural looking materials indigenous to the area signifying permanence, such as stone, stucco and masonry are encouraged.
 - 1. Buildings shall be finished with one or more of the following materials. Brick, fluted block, colored textured block, glass, stucco, or stone. Exposed seam metal buildings are prohibited unless covered with an acceptable finishing material.
 - 2. All front façades and sides adjacent to streets shall have a minimum of twenty-five percent masonry composed of natural materials such as stone, brick, brick veneer, or cast stone.
 - 3. Exterior cladding materials shall be of colors that compliment neighboring structures.
- B. Roof top mechanical equipment shall be screened from view with parapet walls, articulated roof designs or other architectural components.
- C. Expression lines are required on the front façade of all buildings.
- D. Blank walls on front facades or façades adjacent to street are not permitted. The amount of windowless or non-transparent area allowed on a front façade is measured per façade. No rectangular area greater than fifty percent of a front façade may be windowless. All other façades are encouraged to have transparent elements. See Figure 4.

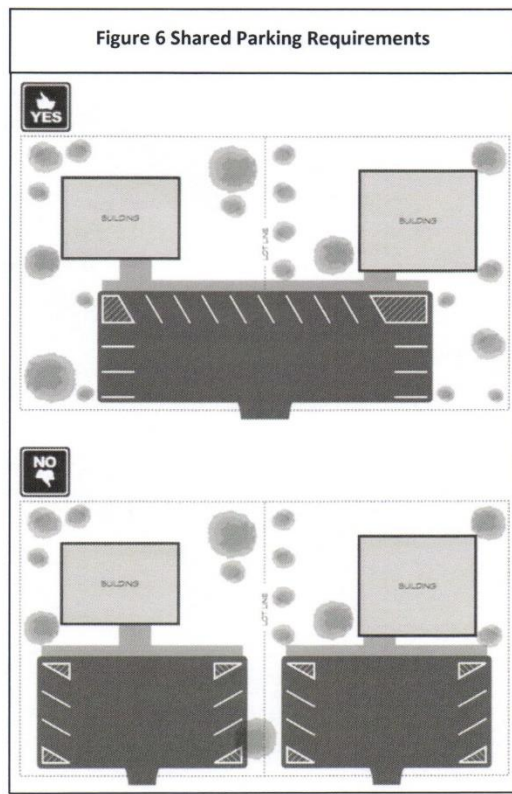
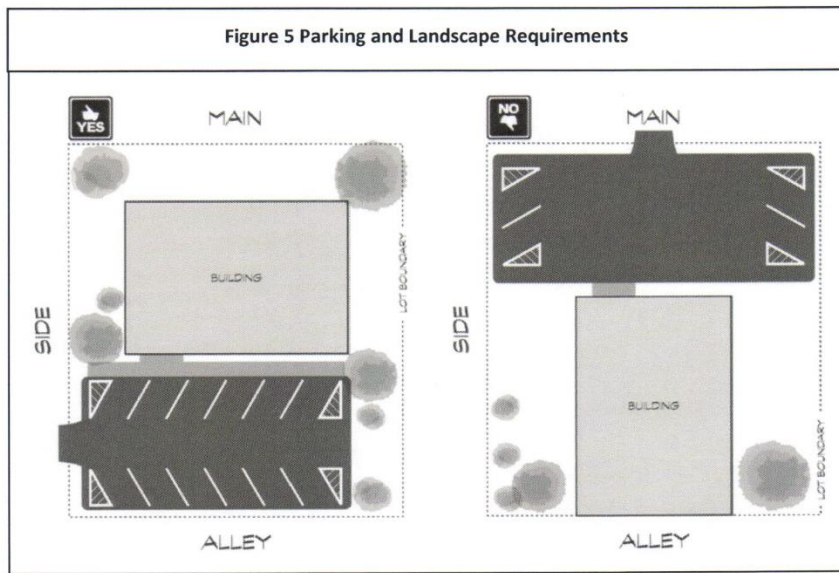


- E. All front facades shall have a minimum of one entry door.

(Ord. No. O15-01, 3-17-2015)

17.25.070 - Site design requirements.

- A. When a building does not have one hundred percent lot coverage a build-to zone of at least five feet is required at the front lot line or a side adjacent to street. Exceptions to this include properties in the district that are zoned light industrial, heavy industrial, and highway commercial.
- B. If off-street parking is proposed it shall be located at the rear of the building. When parking cannot be located in the rear, the planning board shall make a recommendation. See Figure 5. Shared parking is encouraged when property owners have a written agreement. This agreement is not subject to approval by the city but should be presented if it is applicable to meeting off-street parking requirements. See Figure 6.
- C. Landscape islands are required at the terminal ends of all parking rows.
- D. If a property is located in this district and the entry way zoning district, parking and landscape requirements of the downtown overlay district shall apply.



(Ord. No. O15-01, 3-17-2015; Ord. No. O-15-06, 11-3-2015)

17.25.080 - Landscape requirements.

Landscaping in the form of trees, shrubs and groundcover serve several purposes: The softening of harsh building forms and paved areas, the absorption of groundwater, the reflection of seasonal color change, the provision of sound barriers, and urban wildlife habitat. If a property is located in this district and the entryway zoning district, parking and landscape requirements of the downtown overlay district shall apply.

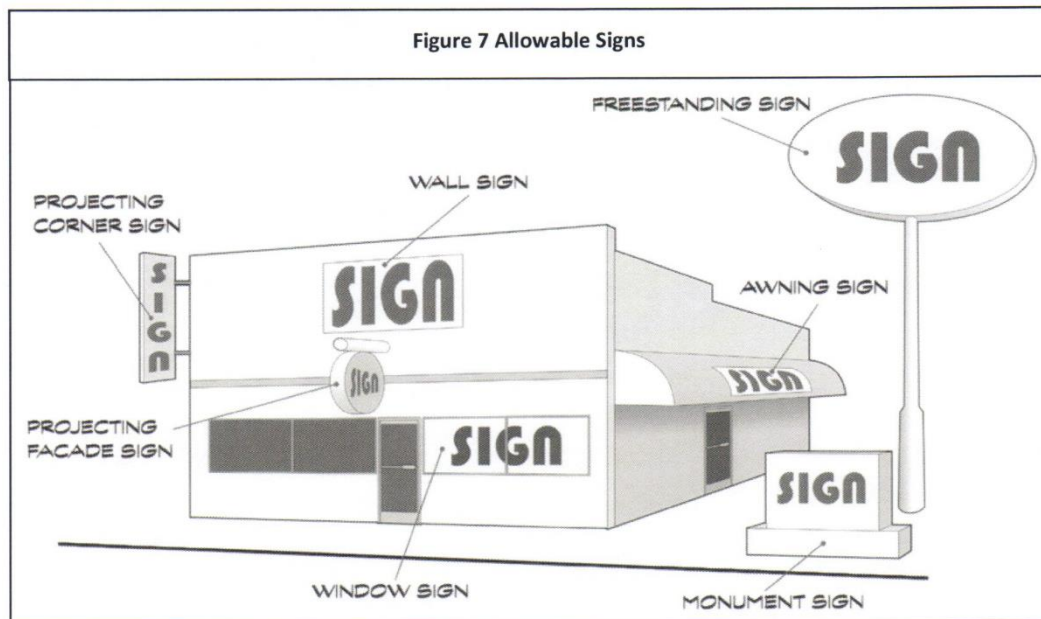
- A. Any site development where the building and parking area does not occupy one hundred percent of the parcel, the remaining property must be landscaped.
- B. Landscaping should be of an indigenous species or species that are acclimated to the city's climate.
- C. Landscaping shall include a mix of plants, shrubs, sod and trees. A minimum of fifty percent of the trees shall be at least 2.5 inch in caliper size.
- D. Landscaping shall not interfere with clear vision requirements.

(Ord. No. O15-01, 3-17-2015)

17.25.090 - Signage requirements.

Laurel Municipal Code Chapter 17.42 governs signage within the city of Laurel. Exceptions to LMC 17.42 occur only when a property is located in a special zoning district. If a property is located in this district and the entryway zoning district, signage requirements of the entryway zoning district shall apply.

- A. Allowable sign types include wall signs, window signs, awning signs, corner projecting signs, and projecting signs. See Figure 7.



- B. Illumination is encouraged to be internal. When external illumination is used, it must be focused only upon the sign face and must have cut off shields to prevent light spillage.
- C. Any projecting or corner projecting sign shall not extend above the roofline of the attached building.
- D. Any wall sign shall not exceed 30 percent of the area of any building façade.
- E. Electronic message boards are not permitted in this district.



Corner Projecting signs are allowable in this district. These two photos show examples of corner projecting signs. Similar signs are also allowable on any portion of the façade.

(Ord. No. O15-01, 3-17-2015)

Attachment 2. LMC Chapter 17.62 – Conditional Land Uses

17.62.010 - Purpose.

The purpose of conditional land uses is to provide for specific uses, other than those already allowed in each zoning district, which may be compatible uses in the district under certain safeguards or conditions. The conditional land use permitting process is intended to provide a detailed and comprehensive review of such proposed, compatible developments and to insure the interest of the public, the community, and the larger neighborhood area are protected. Conditional uses, once granted by the city, are sight specific and run with the land. Land use changes not specifically included in the approval of a conditional use are a violation of the city zoning ordinance.

(Ord. 03-4 (part), 2003)

17.62.020 - Requirements.

No structure or land use may be used for any purpose other than those allowed within a zoning district as specified in the zoning ordinance unless either a variance has been granted (under Chapter 17.60 or 17.64 of this code) or a conditional land use permit therefor has been provided. The zoning commission may recommend and the city can require any information that will allow the decision makers to comprehensively evaluate and decide on applications for conditional uses brought before them. The zoning commission may recommend and the city can require, after consideration of the application for conditional use, those conditions under which such land use may be allowed to include but not be necessarily limited to the following:

- A. Adequate ingress and egress with concern for vehicular and pedestrian safety and convenience, traffic flow and control, and emergency access as reviewed and approved by the city public works director;
- B. Adequate off-street parking and loading with attention to vehicular and pedestrian safety and traffic flow;
- C. Conditions that control, specify, or plan for the generation of odors, noise, hours of operation, signage, or impact on the neighborhood of natural systems;
- D. Adequate landscaping, screening, mitigation of impact on adjacent property and buffering; and
- E. Compatibility with adjacent and neighborhood land uses and Laurel's GMP.

(Ord. 03-4 (part), 2003)

17.62.030 - Application process.

Twelve copies of the conditional use application form and required review fee shall be submitted to the planning board secretary thirty working days prior to the regularly scheduled zoning commission/planning board meeting at which the application will be considered. The planning board secretary shall note the time of receipt, keep one copy, send one copy to the city planner, and forward the remainder to the members of the zoning commission.

- A. The zoning commission shall publish notice of public hearing in the local newspaper at least fifteen days prior to the zoning commission meeting at which the application will be considered; adjacent property owners of record within one hundred fifty feet of the application property shall also be notified by mail by the zoning commission. The applicant or the authorized agent must attend the public hearings before both the zoning commission and the city council.
- B. The conditional use application shall include twelve copies of:
 - 1. Conditional use application form;
 - 2. Legal description of the property;
 - 3. Address or general location of property;
 - 4. Existing zoning;
 - 5. Specific land use being requested;
 - 6. Reason for request;
 - 7. Scaled drawings of the subject property, proposed use, existing buildings and improvements, adjacent land use, fences, etc.;
 - 8. Other information as may be needed by the zoning commission;
 - 9. Name, address and telephone number of owner of record;
 - 10. Name, address and telephone number of agent of owner of record;
 - 11. List of current property owners adjacent to and within one hundred fifty feet of the parcel for which a conditional use permit is sought;
 - 12. Review fee.
- C. After the public hearing for the conditional use, the zoning commission shall delay its recommendation to city council no longer than thirty working days. The city council shall publish notice of and conduct a second public hearing before the council, consider the recommendation of the zoning commission and make its decision.

(Ord. 03-4 (part), 2003)

CITY OF LAUREL, MONTANA
CONDITIONAL USE APPLICATION



Date received: 7-17-20

Twelve copies of this form, along with the appropriate fee, shall be submitted to the Planning Board Secretary on the first day of the month prior to the month in which the application shall be heard by the Zoning Commission. The Planning Board Secretary shall note the time of receipt, keep one copy, send one copy to the Planning Director, and forward the remainder to the members of the Zoning Commission. The Planning Board Secretary shall publish notice of a public hearing in the local newspaper at least 15 days prior to the Zoning Commission meeting at which the application will be considered; adjacent property owners of record within 150 feet of the application property shall also be notified by mail by the Zoning Commission. **The applicant or the authorized agent must attend the public hearing before both the Zoning Commission and the City Council.**

1. Name of Land Owner: Montana Rail Link
2. Address: 101 International Dr PO Box 16624 Missoula MT
3. Phone #: 406 523-1314
4. Legal Description of Property asking for Conditional Use:
Sta. 800+65
MP 15+0, 898'
5. Address of property or general location: 1st and main St
6. Map Showing Property Location with Circle Drawn within 150' thereof: _____
7. List of Property Owners of Record within the 150' Perimeters. (Obtained from the County Clerk and Recorder's Office first (4th floor of County Courthouse) and the Department of Revenue Office second (14th floor of Wells Fargo Bank Building in downtown Billings).
8. Existing Zoning: Rail Road Industrial
9. Specific Land being Requested: 300 Sqft Lot for
coffee kiosk
10. Reason for Request: Opening another small
Business in the heart of Laurel
(Coffee kiosk)
11. Scaled Drawing of the property showing the proposed use and improvements, adjacent land use, fences, driveways, etc.: _____
12. Other Information as may be required by the City. _____
13. Review fee paid and date paid: N/A \$550 residential
7/17/20 \$1,100 commercial

After the public hearing for the conditional use, the Zoning Commission shall delay its recommendation to the City Council no longer than 30 working days. The City Council shall publish notice of and conduct a second public hearing before the Council, consider the recommendation of the Zoning Commission, and make its decision.

Scheduled before Planning Board: 8/19/20 Scheduled before City Council: 9/8/20
Final Approval: _____

Chapter 17.62

CONDITIONAL LAND USES

Sections:

- 17.62.010 Purpose.**
- 17.62.020 Requirements.**
- 17.62.030 Application process.**

17.62.010 Purpose.

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C. Conditions that control, specify, or plan for the generation of odors, noise, hours of operation, signage, or impact on the neighborhood of natural systems;

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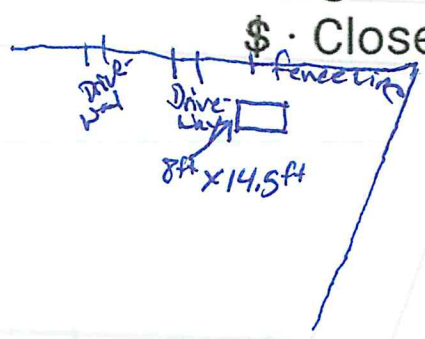
Laurel City
Court Clerk
Open

Harmony, Coffee
Bar & Boutique
Open

K C Interiors
Open

The Yogurt Shop
\$ · Closed

Hair On



W Railroad St

E Railroad St

Rapid
tire

Hardee's



The UPS Store



otive Inn



Reese & Ray's IGA

Ave



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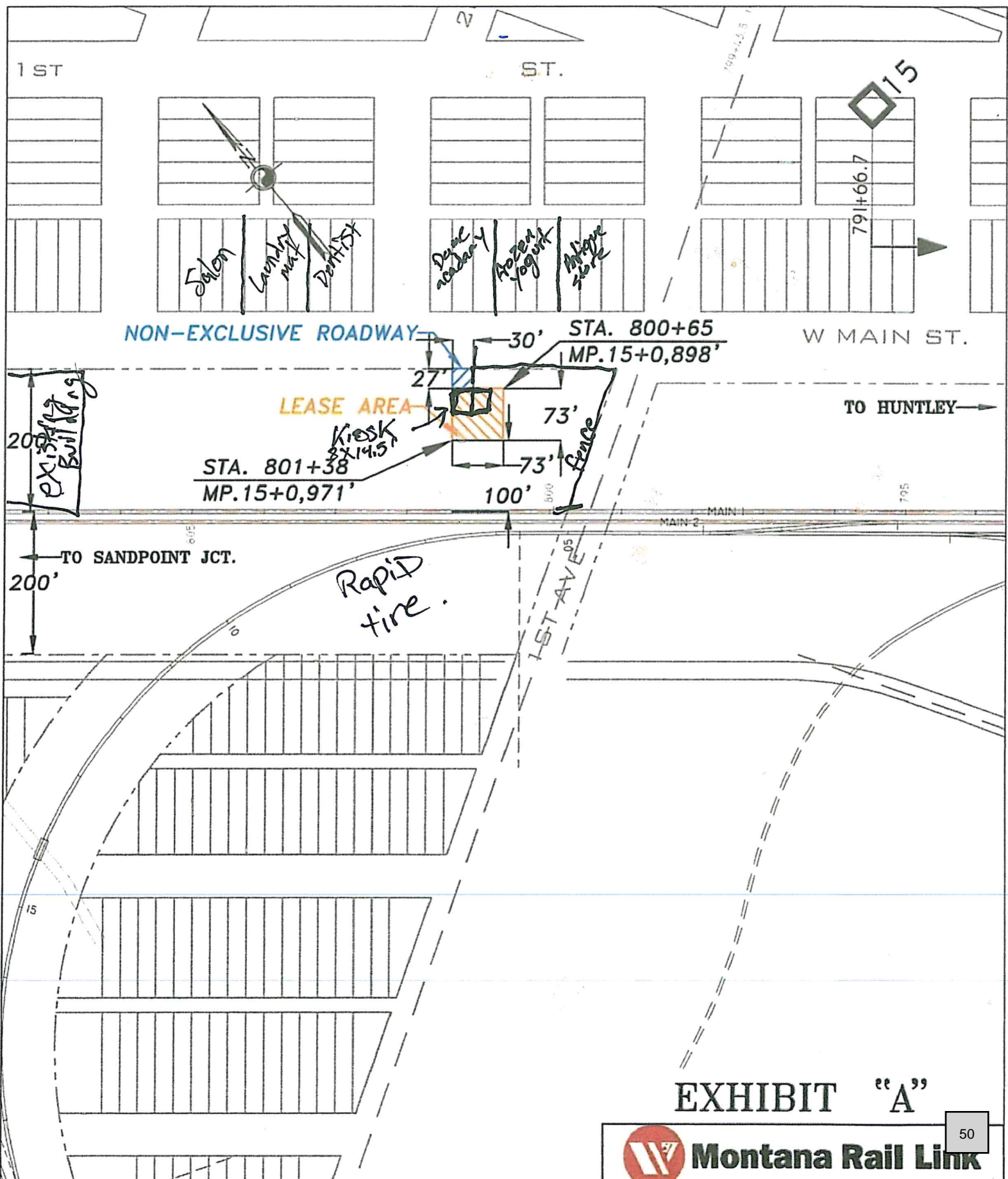


EXHIBIT "A"



Montana Rail Link

ADJACENT PROPERTY OWNERS

Blessed Beginning - 101 W main St Ste 1

406-628-2294

The Yogurt Shop - 105 W main St

406-633-4477

Laurel hearing aid - 109 W main St

406 628-4498

Dame talent - 110 W main St

Salon envy - W main St

406-628-4110