



Kyle Holland, **Planner II**  
**Community Development Department**  
316 North Park Avenue, Room 445  
Helena, MT 59623

: Phone: 406-447-8492  
: Fax: 406-447-8460  
: Email: [kholland@helenamt.gov](mailto:kholland@helenamt.gov)

**helenamt.gov**

**Date:** August 24, 2023

**STAFF REPORT**

**To:** Helena Board of Adjustment

**From:** Kyle Holland, City Planner II

**Subject:** Consideration of:

1. A variance from Section 11-4-2 to decrease the minimum setback for a lot line that abuts a dedicated public right of way that provides only a secondary means of access to property and is not intended for general travel from 5' to 0', for a property with the legal description of The north 50 feet of Lots 24,25, and 26: the west 10 feet and the north 50 feet of the east 15 feet of Lot 27; and Lots 29,29,30,31, and 32, all in Block 138 of the Cannon Addition to the City of Helena, Lewis and Clark County, Montana (Ref: 248 Deeds 492)

The reason for this variance is to replace a loading dock. The applicant contends that they have a rebuttable presumption.

This property is located at 1526 Hauser BLVD.

**OVERVIEW**

**GENERAL INFORMATION**

**DATE OF APPLICATION:** Application received August 1, 2023

**PUBLIC HEARING DATE:** Board of Adjustment - 5:30 p.m., Tuesday, September 5, 2023

**PROPERTY OWNER:** Dorrington Properties

**APPLICANT:** American Sheet Metal – Chris Nichols

**MAILING ADDRESS:** 1526 Hauser BLVD, Helena, MT 59601

**CONTACT NUMBER:** (406) 439-4486

**EMAIL ADDRESS:** [Operations@asmhelena.com](mailto:Operations@asmhelena.com)

**PROPERTY ADDRESSES:** 1526 Hauser BLVD, Helena, MT 59601

**LEGAL DESCRIPTION:**

The north 50 feet of Lots 24,25, and 26; the west 10 feet and the north 50 feet of the east 15 feet of Lot 27; and Lots 28, 29, 30, 31, and 32, all in Block 128 of the Cannon Addition to the City of Helena, Lewis and Clark County, Montana. (Ref: 248 Deeds 492)

**PRESENT LAND USE:** Loading dock for HVAC equipment at a HVAC and metal fabrication company.

**ADJACENT LAND USE:**

- North: R-2 – Residential - Single Dwelling Unit
- South: R-2 – Residential - Single Dwelling Unit
- R-2 - Residential – Two Dwelling Units
- East: R-2 – Residential - Single Dwelling Unit
- West: R-2 – Residential - Single Dwelling Unit

**PRESENT ZONING:** R-2

**VARIANCE PROPOSALS:**

1. A variance from Section 11-4-2 to decrease the minimum setback for a lot line that abuts a dedicated public right of way that provides only a secondary means of access to property and is not intended for general travel from 5’ to 0’, for a property with the legal description of The north 50 feet of Lots 24,25, and 26: the west 10 feet and the north 50 feet of the east 15 feet of Lot 27; and Lots 29,29,30,31, and 32, all in Block 138 of the Cannon Addition to the City of Helena, Lewis and Clark County, Montana (Ref: 248 Deeds 492)

**HISTORY OF APPLICABLE PERMITTING ACTION:**

There are no building permits on file for this property.

**ZONING EVALUATION for the properties legally addressed as 1526 Hauser BLVD, Helena, MT, located in a R-2 zoning district.**

<b>ZONING REQUIREMENT</b>	<b>Applicable ZONING REGULATION</b>	<b>PRESENT CONDITION</b>	<b>PROPOSAL</b>	<b>VARIANCE REQUIRED</b>
<b>City Code:</b> §11-4-2 (B) (4) LOT REQUIREMENTS FOR ZONING DISTRICTS	The lot line setback is five feet (5') for any lot line that abuts a dedicated public right of way that provides only a secondary means of access to property and is not intended for general travel.	0'	Remove and replace existing wooden loading dock with a new concrete loading dock in the same footprint	Yes

**BOARD OF ADJUSTMENT VARIANCE CRITERIA**

Section 11-5-5 of the Helena Zoning Ordinance includes certain criteria that must be reviewed as part of the variance procedure.

*To approve a requested variance for a new building or portion thereof, the board of adjustment shall consider the following standards and find as follows:*

1. *The variance will not create a significant risk to the public health, safety, or general welfare;*
2. *The variance will not significantly reduce or impair the peaceful use of existing property or improvements in the vicinity and the zoning district in which the subject property is located; and*
3. *Strict compliance with the provisions of this title would create unnecessary hardship or practical difficulty.*

*In evaluating the standards above, the board of adjustment may consider the following factors:*

1. *Special conditions and circumstances that are unique to the applicant’s site, including the size of the property, unusual or extreme topography, or unusual shape of the property.*

2. *The height, location, or dimensions of existing structures located on the site or in the vicinity of the site.*
3. *Whether there is a prevalence of nonconformities in the vicinity of the site that are similar to the variance requested.*
4. *The subsequent imposition of zoning restrictions creating nonconforming lots or parcels, and governmental actions beyond the applicant's control.*
5. *Whether a literal interpretation of the provisions of this Title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this Title.*
6. *The extent to which the hardship or difficulty results from the actions of the applicant.*
7. *Whether granting the variance requested will confer an unreasonable special privilege to the subject property that is not available to other properties similarly located in the same zoning district.*

**PUBLIC COMMENT:**

As of Thursday, August 24, 2023, no comments have been received.

**City Attorney's Office:**

It is the recommendation of the City Attorney's Office, that staff does not make a recommendation to approve or deny a variance.

**CONCLUSION**

Montana law states the Board of Adjustment has authority to consider "...upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done." (76-2-323 MCA)

**Motion:**

**Move to Approve or Deny**

1. **A variance from Section 11-4-2 to decrease the minimum setback for a lot line that abuts a dedicated public right of way that provides only a secondary means of access to property and is not intended for general travel from 5' to 0', for a property with the legal description of The north 50 feet of Lots 24,25, and 26: the west 10 feet and the north 50 feet of the east 15 feet of Lot 27; and Lots 29,29,30,31, and 32, all in Block 138 of the Cannon Addition to the City of Helena, Lewis and Clark County, Montana (Ref: 248 Deeds 492)**

If the Board of Adjustment approves the requested variance, the following condition is recommended:

Building Permit: A building permit must be obtained within one (1) year.

Regards,



**Kyle Holland, Planner II**  
Community Development Department  
City-County Building  
316 N. Park Ave, Rm 403  
Helena, MT 59623

# 1526 Hauser Boulevard



**Legend**

-  1526 Hauser
-  R-2 Residential District







Kyle Holland, **Planner II**  
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316 North Park Avenue, Room 445  
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**helenamt.gov**

**Date:** August 17, 2023

**TO WHOM IT MAY CONCERN:** Variances from district dimensional standards requirements are being proposed in your area. Please review the enclosed description, and vicinity map. You may respond to the proposal at the public hearing or submit written comments prior to the September 5th, 2023 Board of Adjustments public hearing to the City Planning Division, 316 North Park, Helena MT 59623.

**The Helena Board of Adjustments will hold a public hearing on the variance request on Tuesday, September 05, 2023 at 5:30 p. m. via Zoom at <https://zoom.us/j/95139091644>, Meeting ID: 951 3909 1644. Dial in at (346) 248-7799 or find your local Zoom phone number by going to <https://zoom.us/u/abx78Gko9e>.**

Interested parties are encouraged to attend this meeting. We may not be able to reach all who may be interested in this application, and we encourage you to talk to your neighbors about this proposal.

**PROPOSAL:**

1. A variance from Section 11-4-2 to decrease the minimum setback for a lot line that abuts a dedicated public right of way that provides only a secondary means of access to property and is not intended for general travel from 5' to 0', for a property with the legal description of The north 50 feet of Lots 24,25, and 26: the west 10 feet and the north 50 feet of the east 15 feet of Lot 27; and Lots 29,29,30,31, and 32, all in Block 138 of the Cannon Addition to the City of Helena, Lewis and Clark County, Montana (Ref: 248 Deeds 492)

The Reason for this variance is to replace a loading dock.

**ADDRESS:**

The property is located at 1526 Hauser Blvd.

**GENERALLY LOCATED:**

This property is generally located on the south side of the alley between Hauser Boulevard and Knight Street, midblock between Garrison Street and Mountain View Street.

If you have questions concerning the proposed change, please contact the City Planning Division of the Community Development Department at 447-8459.



Sincerely,

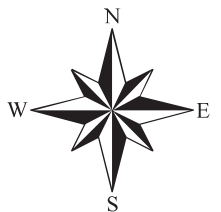
**Kyle Holland, Planner II**  
Community Development Department  
City-County Building  
316 N. Park Ave, Rm 403  
Helena, MT 59601

# 1526 Hauser Boulevard



## Legend

-  1526 Hauser
-  R-2 Residential District





**Section B: INDICATE WHICH VARIANCE(S) IS (ARE) BEING REQUESTED AND THE EXTENT OF THE VARIANCE.**

**EXAMPLE:** [X] Reduce Front Lot Line Setback: *From the required 10 feet to 3 feet.*

**Please provide all the information requested in the Application. An incomplete application may delay the review of your request. Please note: "N/A" is not an acceptable answer alone and requires an explanation if used.**

**Dimensional Criteria:**

- Reduce front lot line setback: \_\_\_\_\_
- Front lot line setback #2 (corner lot): \_\_\_\_\_
- Reduce garage entrance setback: \_\_\_\_\_
- Reduce side lot line setback: From 5 feet to 0
- Reduce rear lot line setback: \_\_\_\_\_
- Exceed building height limitation: \_\_\_\_\_

**Lot Coverage/Area Criteria:**

- Lot coverage percentage: \_\_\_\_\_
- Front porch lot coverage percentage: \_\_\_\_\_
- Lot area per dwelling unit: \_\_\_\_\_

**Landscaping Criteria:**

- Reduce or eliminate landscaping area: \_\_\_\_\_
- Reduce or eliminate screening: \_\_\_\_\_

**Parking Criteria:**

- Exceed the maximum parking spaces allowed: \_\_\_\_\_
- Reduce the amount of required on-site parking spaces: \_\_\_\_\_
- Reduce or eliminate loading berths: \_\_\_\_\_
- Reduce or eliminate required bicycle spaces: \_\_\_\_\_
- Reduce size of parking space: \_\_\_\_\_

**Sign Criteria:**

- Sign area (square footage): \_\_\_\_\_
- Sign height: \_\_\_\_\_
- Sign location: \_\_\_\_\_
- Number of signs: \_\_\_\_\_



**Other:** \_\_\_\_\_  
\_\_\_\_\_

**Section C: BOARD OF ADJUSTMENTS VARIANCE REVIEW CRITERIA.**

**To approve a requested variance for a new building or portion thereof, the Board of Adjustment shall consider the following standards in section 11-5-5 of the Helena City Code and find as follows:**

1. The variance will not create a significant risk to the public health, safety, or general welfare;
2. The variance will not significantly reduce or impair the peaceful use of existing property or improvements in the vicinity and the zoning district in which the subject property is located; and
3. Excluding monetary hardship, strict compliance with the provisions of this title would create unnecessary hardship or practical difficulty.

**These are the standards your application for variance will be judged on. Your answers in section D should speak to the review criteria.**

**It is the applicant's burden of proof to show that a variance should be granted. As part of your application, you are required to provide information for each of the following factors including all alternatives considered. Failure to provide adequate responses or requested documentation may result in a returned application.**

**Section D: EVALUATION FACTORS**

- 1. Special conditions and circumstances that are unique to the applicant's site, including the size of the property, unusual or extreme topography, or unusual shape of the property.**

If the above condition applies, state the specific factors and provide supporting documentation. For example, if the variance request is due to an abnormal lot configuration, provide a survey of the lot that specifically demonstrates the issue.

Warehouse is located along a public alley. Equipment is often delivered via large trucks that cannot pull into our lot safely. The previous wooden dock was located in a way that allowed large trucks to drive past and back up to the dock. Our new concrete dock will replicate this and be more stable and longer lasting.

- 2. The height, location, or dimensions of existing structures located on the site or in the vicinity of the site.**

Ex: How is the proposed variance compatible with the other structures located on the site or in the vicinity of the site? On the site plan you provide, please represent accurately and to scale the height, location, and dimensions of existing structures.

Dock is directly attached to a 60'x35' warehouse. Wooden dock is 48" high and has length of 48'-6" and a width of 9'-3". The proposed concrete dock is 48'-6"x 9'-3".

- 3. Whether there is a prevalence of nonconformities in the vicinity of the site that are similar to the variance requested.**

If so, what are those nonconformities and provide supporting documentation.

Current dock extends from warehouse the same amount as proposed dock.

- 4. The subsequent imposition of zoning restrictions creating nonconforming lots or parcels, and governmental actions beyond the applicant's control.**

Is the need for a variance request a result of government action? For example, the front yard setbacks were increased after construction of the structure, thereby creating the non-conformity. Explain.

Building and dock was erected in 1951. This predates a change the city made in 1968 regarding zoning.

- 5. Whether a literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title.**

For example, would the denial of the variance deny the property owner the right to safe placement of a garage where garages are typical? If so, explain.

In this case, our commercial property lies completely in a residential setting and those residences do not have loading docks.

**6. The extent to which the hardship or difficulty results from the actions of the applicant.**

Explain the extent of the circumstances that are creating hardship or difficulty in compliance with the City Code and list alternatives and options considered by the applicant. Provide supporting documentation.

As showing on the site plan our existing warehouse abuts an alley and the space needed for deliveries is very narrow. The space allocated currently is sufficient for safe delivery.

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**7. Whether granting the variance requested will confer an unreasonable special privilege to the subject property that is not available to other properties similarly located in the same zoning district.**

Many other properties have garages or additions that are located close to the boundary. Presumably, these homes and out buildings were also erected prior to 1968.

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**8. Do you think a rebuttable presumption, as identified in City Code Section 11-5-5(E), should apply to your property, yes or no? For example, do you have an existing non-conforming structure that you wish to rebuild in the same location? If yes, show the original footprint of the building. Provide documentation that proves the existence of the prior nonconformity. Document that the nonconformity can be in compliance with building and fire codes.**

Yes, the old dock existed for some time and the new dock will not exceed the width that was previously on site. The dock dimensions are attached along with the independent survey.

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**9. Provide any additional information you would like the Board to consider.**

The previous wooden dock had become a safety hazard and an eye sore. The proposed concrete dock would be safer, last much longer and would stand up to repeated abuse much better.

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IT IS THE POLICY OF THE CITY OF HELENA'S BOARD OF ADJUSTMENT TO NOT ACT ON A PROPOSAL IF THE APPLICANT/PROPERTY OWNER OR REPRESENTATIVE IS NOT PRESENT AT THE BOARD OF ADJUSTMENTS HEARING. CITY STAFF REPRESENT THE CITY AND CANNOT ANSWER QUESTIONS ON BEHALF OF THE APPLICANT AT THE BOARD OF ADJUSTMENT HEARINGS.

**I HEREBY CERTIFY AND ACKNOWLEDGE THE STATEMENTS IN THIS APPLICATION AND ANY ATTACHED INFORMATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.**

Signed: *Dawn Dorrington* Date: 08/01/2023  
Property Owner

Applicant: *Chris Nichols* Date: 08/01/2023  
(If different from Owner)

(Property owner must sign application)

**It is recommended that the applicant contact neighbors to inform them of proposal and identify any concerns that the applicant may be able to address.**

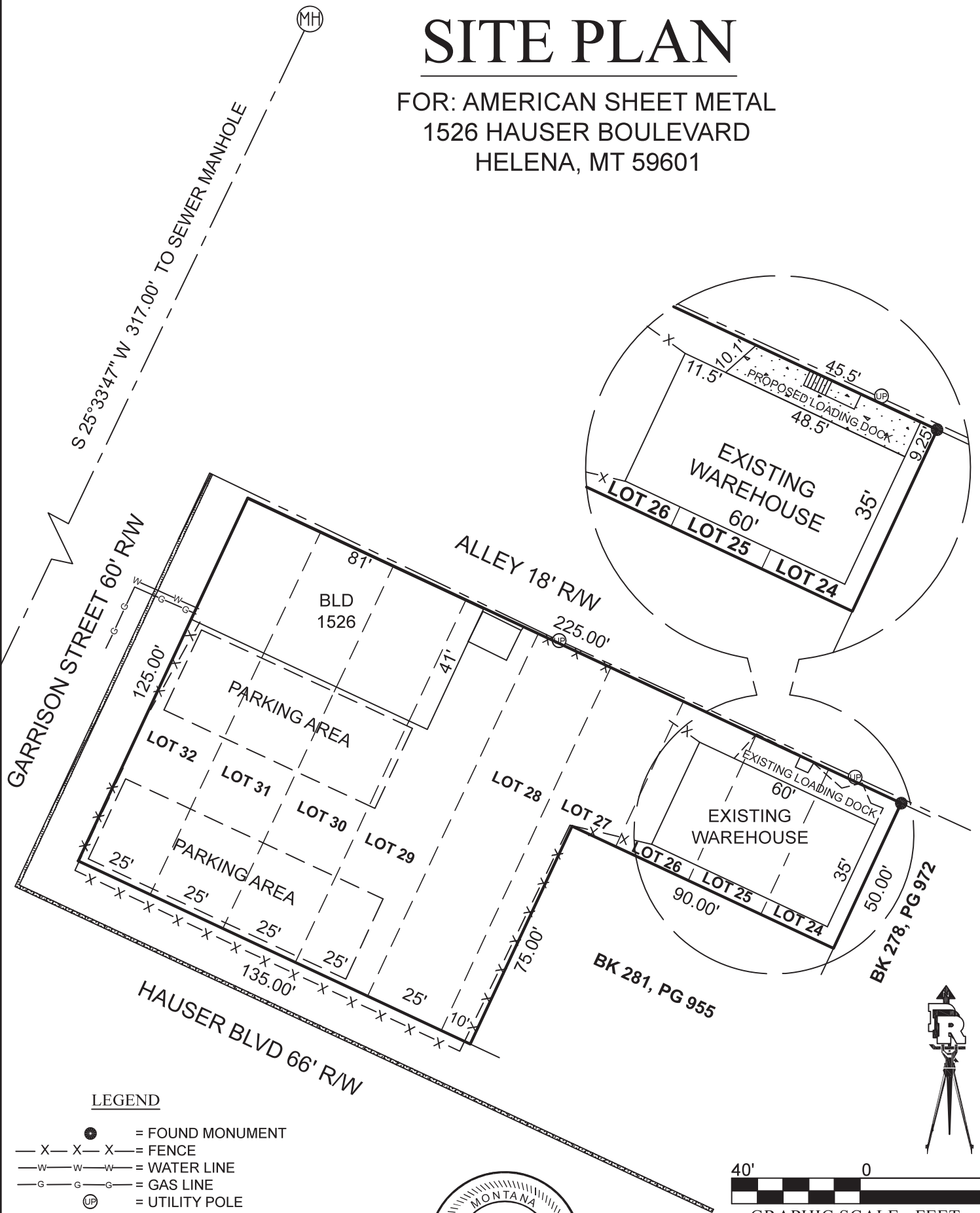
City Planning Staff represents the City; staff cannot answer questions for the applicant.





# SITE PLAN

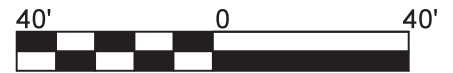
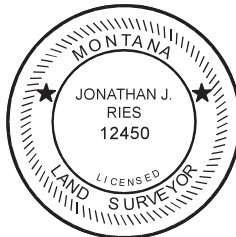
FOR: AMERICAN SHEET METAL  
 1526 HAUSER BOULEVARD  
 HELENA, MT 59601



**LEGEND**

- = FOUND MONUMENT
- X — X — X — = FENCE
- W — W — W — = WATER LINE
- G — G — G — = GAS LINE
- ⊕ = UTILITY POLE
- — — — — = OVERHEAD UTILITY LINE
- — — — — = CURB
- Ⓜ = SEWER MANHOLE
- — — — — = SEWER LINE

FIELD: MM/AD      JOB # 4865  
 DRAFTED BY: MM      DATE: 05/05/2023



GRAPHIC SCALE - FEET  
 TRIPLE R SURVEYING, INC  
 P.O. BOX 2201  
 EAST HELENA, MT. 59635  
 (406) 227-8844

COPY

DEED OF TRUST

(TRUST INDENTURE UNDER THE SMALL TRACT FINANCING ACT)

**THIS DEED OF TRUST** is made effective as of March 31, 2012 by and among **DORRINGTON PROPERTIES, LLC**, a Montana limited liability company, with mailing address at 1526 Hauser Blvd., Helena, Montana 59601 ("Grantor"), and **HELENA ABSTRACT AND TITLE COMPANY**, with principal office at 24 West 6<sup>th</sup> Ave., Helena, Montana 59601 ("Trustee"), and **PMR PROPERTIES LLC**, a Montana limited liability company with mailing address at 746 Corral Road, Helena, Montana 59602 (together with its successors and assigns "Beneficiary"),

**WITNESSETH:** Grantor hereby irrevocably **GRANTS, CONVEYS** and **WARRANTS** to Trustee, its successors and assigns, in trust, with power of sale, the following properties (collectively, the "Premises"):

**A. REAL PROPERTY:** The following described real property in Lewis and Clark County, Montana, which does not exceed forty (40) acres in area:

**The north 50 feet of Lots 24, 25, and 26; the west 10 feet and the north 50 feet of the east 15 feet of Lot 27; and Lots 28, 29, 30, 31, and 32, all in Block 138 of the Cannon Addition to the City of Helena, Lewis and Clark County, Montana. (Ref: 248 Deeds 492)**

together with all rights in and to lands lying in streets, alleys and roads adjoining the real property and all buildings, fixtures, and improvements thereon and all rights of way, tenements, hereditaments, privileges and appurtenances thereto, now owned or hereafter acquired, however evidenced, used or enjoyed with said property; and

**B. PERSONAL PROPERTY:** All equipment, fixtures and personal property now or hereafter attached to, placed in or upon or necessary or convenient to the use of said real property or improvements thereon, or construction thereof, including, but not limited to, all machinery, plumbing, fittings, fixtures, apparatus, equipment or articles used to supply heating, gas, electric, air conditioning, water, light, waste disposal, power, refrigeration, ventilation and fire protection, as well as all elevators, escalators, cranes, hoists, assists and the like, and all furnishings, draperies, floor coverings, screens, storm windows, blinds, awnings, shrubbery and



plants, ranges, ovens, refrigerators, garbage disposals and compactors, supplies and maintenance and repair equipment, as well as renewals, replacements, alterations, accessories, increases, parts, fittings, substitutes, and proceeds thereof, all of which personal property shall be deemed not separable in whole or in part without material injury to the Premises, but excluding therefrom all inventory and all trade fixtures and removable personal property of any tenant or licensee of the Premises; and

**C. RENTS, LEASES AND PROFITS:** All rents, issues, royalties and profits now due or which may hereafter become due under or by virtue of any lease, license, sublease, or agreement, written or verbal, for the use or occupancy of the Premises or any part thereof,

FOR THE PURPOSE OF SECURING: (a) performance of Dorrington Properties under that Real Property Note given by Dorrington Properties to Beneficiary effective March 31, 2012 for the principal sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)(the "Real Property Note"); (b) payment of all other sums, with interest thereon, becoming due or payable under the provisions hereof or under any of the Financing Documents, as defined in that certain Stock Purchase Agreement between Dawn M. Dorrington, Patricia M. Rowsey, Russell E. Rowsey and Adam B. Dorrington effective March 31, 2012 (the "Stock Purchase Agreement") and each agreement and covenant of Grantor contained herein and in all of the obligations described herein; and (c) any and all guaranties, assignments, extensions, renewals, modifications, substitutions, or replacements of any and all of the foregoing. All of the obligations described above shall be included in the term "Real Property Note" whenever and wherever that term is used in this Deed of Trust. Furthermore, any default, or failure of Grantor to perform, under any of the foregoing obligations shall be deemed to be a default under all of the obligations, and under this Deed of Trust.

**WARRANTIES:** Grantor represents and warrants to the Beneficiary, as follows:

(a) The Grantor is the lawful owner of and has good and marketable title to the Premises; Grantor has good right and lawful authority to grant, bargain, sell, convey, warrant, mortgage, assign and pledge the same as provided herein; and the Premises are free and clear of all mortgages, liens, pledges, charges and encumbrances, excepting only real estate taxes not yet due. Grantor warrants and will defend the title to the Premises against all claims and demands whatsoever not specifically excepted herein.

(b) There is no provision in any indenture, contract or agreement to which the Grantor is a party or by which it is bound or in any order of any court or administrative agency to which the Grantor is subject, which prohibits the execution and delivery by the Grantor of this Deed of Trust, or of the Real Property Note, or the performance or observance by the Grantor of any of the terms or conditions of this Deed of Trust or of the Real Property Note.

(c) The Real Property Note, the Real Property Guaranty, and this Deed of Trust have been validly executed and delivered and are valid and enforceable obligations of the Grantor, Dawn M. Dorrington and her spouse Adam B. Dorrington, in accordance with their terms.



(d) There are no actions, suits, or proceedings pending or, to the knowledge of the Grantor, threatened against the Grantor, or the Premises in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to the Grantor would have a materially adverse effect upon the Grantor or upon the Premises, and the Grantor is not in default with respect to any order of any court or governmental agency.

(e) The Grantor is not in default in the payment of the principal of or interest on any indebtedness for borrowed money and is not in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued, and no event has occurred under the provisions of any such instrument or agreement which with or without the lapse of time or the giving of notice, or both, constitutes or would constitute an event of default thereunder.

(f) The proceeds of the loan evidenced by the Real Property Note and Financing Documents (as defined in the Stock Purchase Agreement) are not to be used primarily for personal, household, or family purposes; but are to be used primarily for business purposes. This representation is made fully understanding that no disclosures are required under the Federal Truth in Lending Act for business or commercial purposes nor are the notice or disclosure provisions of the Federal Fair Credit Reporting Act applicable to loans or credit unless obtained for personal, family or household purposes.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, AND FOR OTHER PURPOSES, IT IS AGREED:

1. PAYMENT OF INDEBTEDNESS. Upon the terms provided in the Real Property Note and the Financing Documents (as defined in the Stock Purchase Agreement), Grantor agrees to perform promptly all of its obligations under the Real Property Note secured hereby, including payment of the principal of and interest on the Real Property Note and Financing Documents, including any future advances, and to pay prepayment and late charges as provided in the Real Property Note and Financing Documents, and to perform each and every agreement and covenant contained in the Real Property Note, the Financing Documents, and the Real Property Guaranty and obligations guaranteed thereby.

2. PAYMENT OF IMPOSITIONS. Grantor shall pay when due and before any penalty all taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever assessed or charged against or constituting a lien on the Premises or any interest therein, or the indebtedness secured hereby ("Impositions"); and will upon demand furnish to the Beneficiary proof of the payment of any such Impositions. In the event of a court decree or an enactment after the date hereof by any legislative authority of any law imposing upon a trustee or beneficiary under a trust indenture or a mortgage the payment of the whole or any part of the Impositions herein required to be paid by the Grantor, or changing in any way the laws relating to the taxation of debts secured by trust indentures or mortgages or a trustee's, beneficiary's or mortgagee's interest in premises conveyed as security, so as to impose such Imposition on the Trustee or Beneficiary or on the interest of the Trustee in the Premises, then, in any such event, Grantor shall bear and pay the full amount of such Imposition, provided that if for any reason payment by Grantor of any such Imposition would be unlawful, or if the payment thereof would constitute usury or render the indebtedness



secured hereby wholly or partially usurious, Beneficiary, at its option, may declare the whole sum secured by this Deed of Trust with interest thereon to be immediately due and payable, without prepayment premium, or Beneficiary at its option, may pay that amount or portion of such Imposition as renders the indebtedness secured hereby unlawful or usurious, in which event Grantor shall concurrently pay the remaining lawful and non-usurious portion or balance of said Imposition.

3. **INSURANCE.** Grantor shall obtain and maintain continuously in effect with respect to the Premises policies of insurance against such risks, in such amounts and with such companies satisfactory to Beneficiary, with a mortgagee clause satisfactory to Beneficiary. Policies or certificates evidencing such insurance shall be deposited with Beneficiary. Each policy shall provide that the insurer will not cancel, refuse to renew, or materially modify the policy without giving at least thirty (30) days advance written notice to Beneficiary.

4. **LIENS.** Grantor shall keep the Premises free from statutory liens of every kind and shall pay promptly and discharge all encumbrances, charges and liens on the Premises whether inferior or superior to the lien of this Deed of Trust. Grantor shall keep and maintain the Premises free from the claims of all persons supplying labor or materials which will enter into the construction, repair, alteration or improvement of any and all buildings now on, now being erected, or which hereafter may be erected on the Premises.

5. **CONTEST OF LIENS AND IMPOSITIONS.** Grantor shall not be in default hereunder in respect to the payment of any taxes, payments in lieu of taxes, assessments, levies or other charges which Grantor shall be required by any provision hereof to pay so long as Grantor shall first notify the Beneficiary in writing at least thirty (30) days prior to the due date thereof of their intention to contest such payment and shall thereafter, in good faith and with all possible promptness, contest such payment; provided, however, that Grantor shall furnish to the Beneficiary, prior to commencing any such protest or other contest, cash or other security satisfactory to the Beneficiary to indemnify the Beneficiary against any loss or liability by reason of any such protest or other contest and to pay any such taxes, assessments, levies or other charges, together with interest and penalty thereon, if any, if said contest should fail. Upon a final adjudication of any such protest or other contest, and in any event prior to the date on which the interest of the Beneficiary in the Premises will forfeit by reason of the nonpayment of any such taxes, special assessments, levies or other charges, the Grantor shall pay the amount thereof then due. Beneficiary may, at its option, make such payment from the security deposited by Grantor.

6. **MAINTENANCE.** Grantor agrees to keep and maintain the Premises in good condition, repair and operating condition free from any waste or misuse, and to comply with all requirements of law, municipal ordinances, regulations, restrictions, and covenants affecting the Premises and their use, and will promptly repair or restore any buildings, improvements or structures now or hereafter on the Premises and all fixtures therein which may become damaged or destroyed to their condition prior to any such damage or destruction. Grantor further agrees that without the prior consent of Beneficiary, it will not: (a) remove, alter, or demolish any building thereon, or sever or remove any fixtures or appliances from said buildings; nor (b) make any additions, alterations, or expansions to the Premises which will alter the basic structure, materially affect the market value or change the existing architectural



character of the Premises; (c) acquiesce in any rezoning classification, modification or restrictions affecting the Premises; or (d) abandon or vacate the Premises. Beneficiary may enter upon and inspect the Premises at any reasonable time and effect whatever repairs or replacements the Beneficiary may reasonably require to maintain the Premises in good condition (provided the Beneficiary shall have no duty to make inspections and shall not incur any liability or obligation for making or not making any inspections).

7. ENVIRONMENTAL MATTERS.

(a) As used in this paragraph, the following terms have the following definitions:

(1) "Hazardous Materials" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.) and by the Montana Hazardous Waste and Underground Storage Tank Act (MCA §75-10-401 et. seq.), as either may be amended from time to time, and regulations promulgated thereunder.

(2) "Law" and "Laws" means federal, state and local laws, rules, ordinances and regulations, and orders or decrees of any court or other governmental authority having jurisdiction as may be in effect from time to time.

(b) During the term of this Deed of Trust and any applicable period of redemption, Grantor agrees:

(1) not to manufacture or to permit to be manufactured on the Premises any Hazardous Materials. Other than Hazardous Materials which are placed, stored or handled in the Grantor's ordinary course of business in compliance with all applicable Laws, the Grantor shall not place, store, or handle or permit to be present, placed, stored, or handled on the Premises any Hazardous Materials;

(2) to give notice to the Beneficiary immediately upon the Grantor's acquiring knowledge of: (i) the presence of any Hazardous Materials on the Premises, other than Hazardous Materials which are placed, stored or handled in the Grantor's ordinary course of business in compliance with all applicable Laws, or (ii) of any Hazardous Materials Contamination of the Premises, with a full description thereof in either case;

(3) to deliver to Beneficiary promptly after receipt: (i) copies of any documents received from the United States Environmental Protection Agency and/or any federal, state, county or municipal regulatory, environmental, or health agency concerning Grantor's operations upon the Premises; and (ii) copies of any documents submitted by Grantor to the United States Environmental Protection Agency and/or any federal, state, county or municipal regulatory, environmental, or health agency concerning Grantor's operations on the Premises;

(4) to comply with present and hereafter enacted environmental Laws affecting the Premises and Grantor's operations located on the Premises; and

(5) upon the reasonable request of Beneficiary, at any time and from time to time during the existence of this Deed of Trust, Grantor will provide at Grantor's sole expense an inspection or audit of the Premises from an engineering or consulting firm approved by



Beneficiary, indicating the presence or absence of Hazardous Materials on or in the Premises. If Grantor fails to provide such inspection report or audit after reasonable notice, the Beneficiary may order same, and Grantor grants to Beneficiary and its employees and agents access to the Premises for the purpose of inspecting and testing for the presence of Hazardous Materials and Hazardous Materials Contamination. The cost of such tests shall be a demand obligation owing by Grantor to Beneficiary hereunder, together with interest thereon at the rate applicable under the Real Property Note after maturity of principal.

8. CONDEMNATION AND INSURANCE ACTIONS AND PROCEEDS.

Grantor shall immediately notify Beneficiary of the commencement of any condemnation proceedings, actual or threatened, affecting the Premises or of any loss that may be covered by insurance. Grantor hereby assigns to Beneficiary any insurance proceeds and any award for property taken and for damages to remaining property, in connection with an actual or threatened condemnation proceeding, whether fully adjudicated or settled, and such proceeds and awards (less expenses of collection) shall, at the option of Beneficiary, be applied to the indebtedness secured hereby then most remotely to be paid, whether due or not, without the application of any prepayment premium, or to the restoration or repair of the Premises. Beneficiary shall have full authority, but shall not be obligated, to make proof of loss and adjust and collect insurance and to intervene in any condemnation proceeding in the name of Grantor and settle, collect and receive any award from the condemning authorities. Any insurer or condemning authority is hereby authorized and directed to make payment directly to Beneficiary. Any expenses incurred by Beneficiary in intervening in any action or collecting such proceeds shall be reimbursed to Beneficiary first out of the proceeds. Should proceeds be applied to restoration or repair of the Premises, the restoration or repair shall be pursuant to plans and specifications approved by Beneficiary, and the proceeds shall be disbursed by Beneficiary under such safeguards as Beneficiary may reasonably require to assure completion in accordance with such plans and specifications.

9. INDEMNIFICATION. Grantor agrees to save Beneficiary harmless from all costs and expenses (including reasonable attorney's fees and costs of a title search, continuation of abstract and preparation of survey) incurred by reason of any action or proceeding before any court or administrative body (excepting an action to foreclose or to collect the debt secured hereby) in which the Beneficiary or Trustee may be or become a party by reason hereof, including but not limited to condemnation, bankruptcy, probate and administration proceedings, as well as any other proceeding similar to the foregoing wherein proof of claims is by law required to be filed or in which it becomes necessary to defend or uphold the terms of the lien created by this Deed of Trust, and all money paid or expended by Beneficiary in that regard, together with interest thereon from date of such payment at the rate applicable under the Real Property Note after maturity of principal, shall be so much additional indebtedness secured hereby and shall be immediately and without notice due and payable by Grantor.

10. COSTS AND EXPENSES. Except as otherwise expressly provided herein, Grantor agrees to pay without demand, all costs, fees and expenses of this Deed of Trust, including costs of search and evidence of title, advertising and recording expense, documentary taxes, trustees' and attorneys' fees as allowed by law, and all other sums expended hereunder by Beneficiary or Trustee with interest from the date of expenditure at the rate applicable under the Real Property Note after maturity of principal.



11. BOOKS AND RECORDS. Grantor shall maintain proper books and records and shall account for all transactions relating to the operation of the Premises, and shall permit the Beneficiary to examine such books and records at any time; and shall furnish to Beneficiary an income statement and balance sheet upon request at reasonable intervals, and in any event within sixty (60) days following the expiration of each of Grantor's fiscal years. All books and records shall be kept and maintained in accordance with generally accepted accounting principles, consistently applied. Upon failure of Grantor to furnish any such statements, Beneficiary may cause an audit to be made of the respective books and records at Grantor's sole cost and expense, and Beneficiary may also treat such failure as a default hereunder, entitling it to exercise the remedies hereinafter provided.

12. PROTECTION OF SECURITY. If Grantor defaults hereunder in any respect, or if Beneficiary in its sole judgment and discretion deems it necessary to expend funds, appear in actions or take other action to protect the full security interest intended to be created by this instrument, then Beneficiary or Trustee, without obligation to do so, without notice to or demand upon Grantor, and without releasing Grantor from any obligation hereof, may make such appearances, expend such funds and take such action as either may deem necessary to protect the security hereof, Beneficiary and Trustee being authorized to enter upon the Premises for such purposes. Grantor will on demand reimburse Beneficiary and Trustee for all amounts expended, including reasonable attorneys' fees, pursuant to this paragraph, together with interest thereon at the rate applicable under the Real Property Note after maturity of principal.

13. ASSIGNMENT OF RENTS. Grantor hereby assigns to Beneficiary all rents, issues, royalties and profits of the Premises, provided that Grantor shall have the right to collect all such rents, issues, royalties and profits, but only as they become due and payable and only until Grantor defaults hereunder in any respect, at which time Beneficiary shall have the right, with or without taking possession of the Premises, to collect the same. Upon such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Grantor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Premises or any part thereof, in its own name sue for or otherwise collect said rents, issues, royalties and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any indebtedness secured hereby. Nothing contained herein, nor the exercise of rights hereunder by Beneficiary, shall be construed or considered an affirmation of any tenancy, lease or option, nor an assumption of liability under nor subordination of the lien or charge of this Deed of Trust to, such tenancy, lease or option.

14. NON-WAIVER. The entering upon and the taking possession of the Premises, the collection of rents, issues, royalties, profits, proceeds of insurance or condemnation awards or the application thereof to the indebtedness hereby secured shall not cure or waive any default or notice of default, invalidate any act done pursuant to such notice, nor extend or postpone the due date of any payment secured hereby.

15. APPLICATION OF PAYMENTS. Except as otherwise required by law, all payments made to Beneficiary and any amounts applied to the indebtedness secured hereby shall be applied to the various amounts secured hereby in any order Beneficiary may determine.



In the event any portion of the Real Property Note is not, for any reason whatsoever, secured by this Deed of Trust, the full amount of all payments made on the Real Property Note shall first be applied to such unsecured portion of the Real Property Note until the same has been fully paid.

16. POWERS OF BENEFICIARY AND TRUSTEE. Without affecting the liability of any person, including Grantor, for the payment of any indebtedness secured hereby or the lien of this Deed of Trust on the remainder of the Premises for the full amount of any indebtedness unpaid, Beneficiary and Trustee are respectively empowered as follows: Beneficiary may from time to time, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon: (a) release any person liable for the payment of any of the indebtedness; (b) extend the time or otherwise alter the terms of payment of any of the indebtedness; (c) alter, substitute or release any property securing the indebtedness; or (d) accept any additional security or resort to any security in such order as Beneficiary may determine. Trustee may from time to time, upon the written request of Beneficiary: (a) consent to the making of any map or plat of the Premises; (b) join in granting any easement or creating any restrictions thereon; (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; or (d) reconvey, without warranty, all or any part of the Premises.

Beneficiary shall not be required, prior to exercising its rights against any person or at any other time, by reason of any demand or otherwise, to commence proceedings against any person liable under this Deed of Trust or under any note secured hereby.

17. FIXTURE FINANCING STATEMENT. This Deed of Trust shall be deemed to be a fixture financing statement within the meaning of the Montana Uniform Commercial Code and for such purpose the following information is furnished:

- |     |  |   |
|-----|--|---|
| (a) | Name and Address of Debtor:  | See name and address of Grantor on page 1   |
| (b) | Organizational Identification Number of Debtor (if applicable):                      | 45-4890295  |
| (c) | Type of organization and jurisdiction of organization of Debtor (if applicable):     | Limited Liability Company   |
| (d) | Name and Address of Secured Party:   | See name and address of Beneficiary on page 1   |
| (e) | Description of the types (or items) of property covered by this Financing Statement: | Fixtures and improvements within the Personal Property Description in Granting Clause B above |
| (f) | Description of real estate   | See description of "Real  |



to which collateral is attached or upon which it is located:

Property" in Granting Clause A above.

(g) Record owner of real estate:

Grantor

18. DUE ON SALE OR ENCUMBRANCE. If all or any part of the Premises or any interest therein is sold, conveyed, transferred or further mortgaged or encumbered, or if the rents of the Premises or any part thereof are assigned, or if all or any part of the ownership interest in Grantor is transferred, assigned, or pledged, or if any person other than Grantor, Beneficiary and Trustee obtains any interest in or right to acquire the Premises, without the prior written consent of Beneficiary, Beneficiary may, at Beneficiary's option, declare all indebtedness, or indebtedness underlying the Real Property Note and the Financing Documents secured hereby immediately due and payable, in full together with any applicable prepayment premiums (if no prepayment privilege exists at that time, then with the prepayment premium provided in the Real Property Note at the earliest day on which the indebtedness secured hereby could be prepaid) provided, however, the granting of a leasehold interest of three (3) years or less, not containing an option to purchase, shall not be cause for such acceleration. Beneficiary shall exercise such option to accelerate by mailing notice of acceleration to Grantor within sixty (60) days after Beneficiary has actual knowledge of one of the events mentioned above; such notice shall provide a period of not less than thirty (30) days from the date such notice is mailed within which Grantor may pay the sums declared due. Failure by Grantor to pay such sums within such time shall constitute an Event of Default hereunder. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

19. REPLACEMENT OF PERSONAL PROPERTY. Notwithstanding any other provision hereof and without giving Beneficiary the right to accelerate, Grantor may remove, dispose of, replace or substitute any items included within the terms of subparagraph (B) of the description of property hereby conveyed, but only upon the following terms and conditions: (a) the item or items must be inadequate, obsolete or worn out or unsuitable, undesirable or unnecessary for the operation of the Premises; (b) the removal, disposal, replacement or substitution must not adversely affect the value of the Premises; and (c) all amounts received or allowed upon the sale or other disposition of the item or items must be applied first against the cost of acquisition and installation of any replacement or substituted item. Failure to comply with the terms and conditions of this paragraph shall constitute an Event of Default hereunder.

20. EVENTS OF DEFAULT. If any one or more of the following events (the "Events of Default") shall occur:

(a) Default in the punctual payment of any payment of money required to be made pursuant to the Real Property Note, or in any payment of money to be made pursuant to this Deed of Trust, or any payment due under the Financing Documents (as defined in the Stock Purchase Agreement),



(b) Any Grantor, owner of the Grantor, or any maker, guarantor or surety of the Real Property Note secured hereby, shall file a voluntary petition in bankruptcy proceeding, shall consent to voluntary or involuntary adjudication to bankruptcy or to reorganization, or shall be adjudged bankrupt or insolvent under any applicable law or laws, or admits, in writing to having become insolvent, or becomes unable to pay debts as they mature, or suspends doing business, or makes an assignment for the benefit of creditors, or shall apply for, or consents to, the appointment of a trustee or receiver for a substantial portion of its assets,

(c) A trustee or receiver is appointed for the Grantor or for a substantial portion of its assets and is not discharged within sixty (60) days after such appointment,

(d) Default by Grantor under any terms, covenants and conditions of this Deed of Trust, the Real Property Note, the Real Property Guaranty, or of any of the Financing Documents (as defined in the Stock Purchase Agreement), or

(e) Any representation or warranty made by Grantor to Beneficiary in connection with the loan secured hereby proves to be untrue in any material respect,

then, in any such case, the Beneficiary or its attorney, may, at its option, without further written notice to the Grantor, declare the principal of and the accrued interest on the Real Property Note and all sums advanced hereunder, with interest, and the principal of and the accrued interest on any of the Financing Documents (as defined in the Stock Purchase Agreement) and all sums advanced thereunder, to be immediately due and payable, and thereupon the Real Property Note, including both principal and all interest accrued thereon, and including any prepayment premium then applicable, and all sums advanced hereunder and interest thereon, shall be and become immediately due and payable without presentment, demand or further notice of any kind.

21. **BENEFICIARY'S REMEDIES.** Upon the happening of any Event of Default entitling the holder of the Real Property Note to accelerate the maturity thereof, or in case the principal of the Real Property Note shall have become due and payable, whether by lapse of time or by acceleration, then and in every such case the holder of the Real Property Note and the Financing Documents may:

(a) Proceed to protect and enforce its rights by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein, in the Real Property Note, the Real Property Guaranty, or in the Financing Documents (as defined in the Stock Purchase Agreement), or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Deed of Trust as a mortgage, or for the enforcement of any other appropriate legal or equitable remedies. Beneficiary may be the purchaser at any foreclosure sale, and Beneficiary shall have the right to credit upon the amount of its bid at sale the amount payable to Beneficiary out of the net proceeds of the sale.

(b) Execute or cause Trustee to execute a written notice of default and of election to cause such property to be sold to satisfy the obligations hereof, and Trustee or Beneficiary shall file such notice for record, in each county wherein said property or some part thereof is situated. The holder of the Real Property Note and Real Property Guaranty shall also deposit



with Trustee, the Real Property Note, the Financing Documents, and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of said notice of default and of election to cause said property to be sold, and notice of sale having been given as then required by law, the Trustee or its attorney shall sell the Premises on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels as designated by the Beneficiary, and in such order as the Beneficiary or Trustee may determine (but subject to any statutory right of Grantor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in cash in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale as allowed by law by public proclamation by such person at the time and place fixed in the notice of sale, and no other notice of the postponed sale need be given. Trustee shall execute and deliver to the purchaser its deed conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person including Beneficiary (but excluding Trustee) may bid at the sale. After deducting all costs and expenses of exercising the power of sale and of the sale, including cost of search and evidence of title, advertising and recording expense, documentary taxes and Trustee's and attorney's fees, Trustee shall apply the proceeds of sale to payment of all amounts expended by the Trustee and Beneficiary, or either of them, with accrued interest thereon at the rate applicable in the Real Property Note after maturity of principal, from the date of expenditure thereof, and the surplus, if any, to the person or persons legally entitled thereto; provided that the Trustee, in its discretion, may deposit such surplus with the County Clerk and Recorder of the County in which the sale took place. Trustee is authorized to accept an affidavit signed by the holder of the Real Property Note or Financing Documents, or an authorized representative of the holder, setting forth facts showing a default by Grantor hereunder or a default by maker under the Real Property Note, as true and conclusive and to act thereon as provided in this instrument and as allowed by law.

(c) In any action to foreclose, appoint a receiver of the rents, issues and profits of the Premises as a matter of right and without notice, with power to collect the rents, issues and profits of the Premises due and coming due during the pendency of such sale hereunder or any suit hereunder, without regard to the value of the Premises or the solvency of any person or persons liable for the payment of the Real Property Note or Financing Documents involved in said suit. Grantor, for itself and any subsequent owner or owners, hereby waives any and all defenses to the application for a receiver as above provided, and hereby specifically consents to such appointment without notice; but nothing herein contained is to be construed to deprive Beneficiary of any other right, remedy or privilege it may now have under the law to have a receiver appointed. The provision for the appointment of a receiver of the rents and profits is made an express condition upon which the loan evidenced by the Real Property Note and the Financing Documents is made.

(d) Have, without limitation, all of the rights and remedies provided by the Code, including the right to proceed under the Code provisions governing default as to any personal property which may be included in the Premises separately from the real estate included herein, or to proceed as to all of the property included in the Premises in accordance with its rights and remedies in respect of said real estate. If Beneficiary shall elect to proceed separately as to



such personal property, Grantor agrees to make such personal property available to Beneficiary at a place or places reasonably acceptable to Beneficiary, and if any notification of intended disposition of any of such personal property is required by law, such notification shall be deemed commercially reasonable and reasonably and properly given if given at least ten (10) days prior to such intended disposition and may be given by posting or advertisement in a newspaper accepted for legal publications, either separately or as part of a notice given to sell or foreclose the real property or may be given by private notice if such parties are known to Beneficiary.

22. SURRENDER OF POSSESSION AFTER SALE. Grantor agrees to surrender possession of the Premises to the purchaser at the aforesaid sale on the tenth (10th) day following said sale, in the event such possession has not previously been delivered by Grantor.

23. TITLE EVIDENCE AND INSURANCE POLICIES. Each title insurance policy, all other evidences of title and all insurance policies placed or deposited with Beneficiary (including proceeds from such policies) shall be deemed an incident to the title to the Premises and upon foreclosure by exercise of power of sale, or otherwise, shall pass to the purchaser and the same are hereby pledged as additional security for the payment of the indebtedness secured hereby.

24. EFFECT OF DISCONTINUANCE OF PROCEEDINGS. Beneficiary shall have the unqualified right, after requesting Trustee to invoke any remedy permitted under this Deed of Trust, to discontinue the same, and in such event Grantor, Trustee and Beneficiary shall be restored to their former positions with respect to the indebtedness secured hereby; and this Deed of Trust, the Premises and all rights, remedies and recourse of Beneficiary shall continue as if the same had not been invoked.

25. COSTS OF INVOKING REMEDIES. Except as may be otherwise provided herein, Grantor agrees to pay to Beneficiary or Trustee the costs and expenses, including reasonable attorney and paralegal fees, incurred by either of them, (a) in instituting, prosecuting or defending any court action in which Grantor does not prevail, if such action involves the interpretation hereof or performance hereunder by a party hereto or the breach of any provision hereof, including but not limited to an action to obtain possession of the Premises after exercise of the power of sale granted hereunder; and (b) in attempts, which fall short of instituting an action or commencing foreclosure, to secure performance hereof.

26. WAIVERS AND CUMULATIVE RIGHTS. Waiver by Beneficiary of any default by Grantor, or acceptance of payment in default or partial payment, shall not constitute a waiver by Beneficiary of any continuing or subsequent default. Failure by Beneficiary to exercise any right, power, privilege or remedy which Beneficiary may have by reason of a default by Grantor shall not preclude the exercise of such right, power, privilege or remedy so long as such default remains uncured or if a subsequent default occurs. Each right, power, privilege and remedy herein conferred upon the Beneficiary is cumulative and in addition to every other right, power, privilege and remedy available to Beneficiary at law or in equity, under the Uniform Commercial Code, or under any other agreement, and each and every right, power, privilege and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Beneficiary and such



exercise shall not be a waiver of the right to exercise at any time thereafter any other right, power, privilege or remedy.

27. RECONVEYANCE. Upon written request of Beneficiary stating that all sums secured hereby have been paid, surrender of this Deed of Trust and all notes secured hereby to Trustee for cancellation and retention and upon payment by Beneficiary of its fees, Trustee shall reconvey to Grantor, without warranty, the Premises then held hereunder. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

28. INTEREST LIMITATIONS. Notwithstanding any other provision of this Deed of Trust, the Real Property Note, the Real Property Guaranty, and the Financing Documents (as defined in the Stock Purchase Agreement), the Grantor does not agree, and shall not be charged with, or obligated to pay, any amount which would render the Financing Documents usurious. It is the intention of the Beneficiary to conform strictly to the applicable usury laws presently in force, and any agreement for taking, receiving, reserving or charging interest shall be held to be subject to reduction to the amount allowed under said usury laws, so that if from any circumstance any amount deemed interest under applicable law is in excess of the maximum permitted by law, such excess shall be cancelled automatically, and if theretofore paid, shall be credited on the principal amount of the obligation secured hereby or, at Beneficiary's option, refunded to Grantor. All sums charged, paid or agreed to be paid under any of the Financing Documents for the use, forbearance, or detention of the indebtedness secured hereby which is in excess of the maximum permitted by law shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term of the indebtedness until payment in full so that the rate or amount of interest does not exceed the applicable maximum lawful rate for so long as the indebtedness is outstanding. This provision shall control any provisions of the Financing Documents which are inconsistent with this paragraph.

29. SUBROGATION. If the proceeds of the loan made by the Beneficiary to the Grantor, the repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by Beneficiary, is used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises, or any part thereof, then the Beneficiary shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same.

30. FURTHER ASSURANCES. Grantor agrees upon reasonable request by Beneficiary to execute and deliver such further security agreements, financing statements under the Code and other agreements as may be necessary or proper to carry out more effectively the purposes of this Deed of Trust or any property intended to be subjected hereto by the granting clause hereof.

31. RIGHT TO DEAL WITH SUCCESSORS. If ownership of the Premises becomes vested in a person or persons other than Grantor, Beneficiary may continue to deal with the Grantor without any obligation to deal with such successor until notified of such vesting. Upon such notification, the Beneficiary may thereafter deal with such successor in place of Grantor without any obligation to thereafter deal with Grantor and without waiving any liability of Grantor hereunder or under the Real Property Note or the Financing Documents. Grantor shall give immediate written notice to Beneficiary of any change of



ownership of the Premises but nothing in this paragraph shall constitute consent of the Beneficiary to any such change or negate any provisions elsewhere in this Deed of Trust giving Beneficiary the right to declare the entire unpaid balance of the indebtedness secured hereby due and payable immediately on such vesting.

32. **NO CLAIM AGAINST BENEFICIARY OR TRUSTEE.** Nothing contained in this Deed of Trust shall constitute any consent or request by the Beneficiary or Trustee, express or implied, for the performance of any labor or services or for the furnishing of any materials or other property in respect of the Premises or any part thereof, nor as giving the Grantor or any party in interest with Grantor any right, power or authority to contract for or permit the performance of any labor or services for the furnishing of any materials or other property in such fashion as would create any personal liability against the Beneficiary or Trustee in respect thereof or would permit the making of any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to this Deed of Trust. Grantor will permit Beneficiary's authorized representatives to enter the Premises at all times for the purpose of inspecting the same; provided Beneficiary shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

33. **GOVERNING LAW.** This Deed of Trust is made within the State of Montana pursuant to the Small Tract Financing Act of Montana (the "Act"), and the parties intend that the Act and any other applicable Montana law govern this Deed of Trust, and all rights and indebtedness secured hereby. This Deed of Trust is not taken in substitution for a mortgage in existence on the effective date of the Act.

34. **SEVERABILITY.** The unenforceability or invalidity of any provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

35. **TIME.** Time shall be of the essence of this Deed of Trust.

36. **TRUSTEE.** Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Beneficiary or Trustee shall be a party unless brought by Trustee.

37. **NOTICES.** Any notices which any party hereto may desire or may be required to give to any other party shall be in writing and the mailing thereof by certified mail to the respective addresses as set forth herein, or to such other places any party hereto may hereafter by notice in writing designate, shall constitute service of notice. A copy of any notice sent to Beneficiary must also be sent to: Jason Loble, Crowley Fleck PLLP, 100 North Park Ave., Ste. 300, Helena, MT 59601.

38. **FAIR MARKET VALUE FOR CALCULATING DEFICIENCY.** If a deficiency is sought in connection with Beneficiary's exercise of remedies following a default, and if fair market value or intrinsic fair market value (the "Market Value") of the Premises is a factor in determining the deficiency, the following shall be the basis for the finder of fact's determination of the Market Value of the Premises as of the date of the foreclosure sale:



(a) The Premises shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Premises will be repaired or improved in any manner before a resale of the Premises after foreclosure;

(b) The valuation shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Premises for cash no later than twelve months following the foreclosure sale;

(c) All reasonable closing costs customarily borne by the seller in a commercial real estate transaction shall be deducted from the gross Market Value of the Premises, including, without limitation, brokerage commissions, title insurance, a survey of the Premises, tax prorations, attorney's fees, and marketing costs;

(d) The gross Market Value of the Premises shall be discounted to account for any estimated holding costs associated with maintaining the Premises pending sale, including, without limitation utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in subparagraph (c) above), and other maintenance expenses; and

(e) Any expert opinion testimony given or considered in connection with a determination of the Market Value of the Premises must be given by persons having at least five (5) years experience in appraising property similar to the Premises and who have conducted and prepared a complete written appraisal of the Premises taking into consideration the factors set forth above.

39. **SUBSTITUTE TRUSTEE.** If the Trustee shall die or become disqualified from acting in the execution of this trust, or shall fail or refuse to execute the same when requested by Beneficiary so to do, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee to act instead of the Trustee, Beneficiary shall have full power to appoint, at any time by written instrument, a substitute trustee, and, if necessary, several substitute trustees in succession, who shall succeed to all the estate, rights, powers and duties of Trustee named herein, and no notice of such appointment need be given to Grantor or to any other person. Such appointment may be executed by any authorized agent of Beneficiary, and if Beneficiary is a corporation and such appointment is executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms any and all acts that the Trustee, or his/her successor or successors in this trust, shall lawfully do by virtue hereof.

40. **WAIVER OF MARSHALING AND CERTAIN RIGHTS.** To the extent that Grantor may lawfully do so, Grantor hereby expressly waives any right pertaining to the marshaling of assets, the administration of estates of decedents, or other matters to defeat, reduce or affect (a) the right of Beneficiary to sell all or any part of the Premises for the collection of the Real Property Note or Financing Documents (without any prior or different resort for collection), or (b) the right of Beneficiary to the payment of the Real Property Note or Financing Document obligations out of the proceeds of the sale of all or any part of the Premises in preference to every other person and claimant.









# LEWIS & CLARK COUNTY

Shopping Cart: 0 items [\$0.00]

**New Search**

**Detail**

**Payoff**

**Help**

**Property Tax ID:** 112

**Status:** Current

**Type:** RE

**Owner:** DORRINGTON PROPERTIES LLC

### History:

Tax Year	Statement#	Bill Date	Bill Amount	Date Paid	** Paid Amount	Notes
<u>2022</u>	13053	10/24/2022	\$5,541.64	11/22/2022 11/22/2022	\$2,770.83 \$2,770.81	
<u>2021</u>	13765	10/23/2021	\$5,504.15	11/30/2021 11/30/2021	\$2,752.09 \$2,752.06	
<u>2020</u>	14782	10/21/2020	\$5,330.68	11/25/2020 11/25/2020	\$2,665.36 \$2,665.32	
<u>2019</u>	14712	10/25/2019	\$5,336.36	11/22/2019 11/22/2019	\$2,668.19 \$2,668.17	
<u>2018</u>	10991	10/24/2018	\$4,388.14	11/27/2018 11/27/2018	\$2,194.10 \$2,194.04	
<u>2017</u>	8006	10/30/2017	\$3,965.08	12/5/2017 12/5/2017	\$1,982.55 \$1,982.53	
<u>2016</u>	6815	11/03/2016	\$3,600.68	12/13/2016 12/13/2016	\$1,800.36 \$1,800.32	
<u>2015</u>	5799	10/22/2015	\$3,497.18	12/4/2015 12/4/2015	\$1,748.62 \$1,748.56	
<u>2014</u>	5747	10/22/2014	\$3,570.65	12/3/2014 12/3/2014	\$1,785.35 \$1,785.30	
<u>2013</u>	10303	10/23/2013	\$3,448.21	11/27/2013 11/27/2013	\$1,724.12 \$1,724.09	
<u>2012</u>	12022	10/22/2012	\$3,305.60	11/23/2012 11/23/2012	\$1,652.82 \$1,652.78	
<u>2011</u>	9395	10/20/2011	\$3,208.01	11/25/2011 3/28/2012	\$1,604.02 \$1,603.99	
<u>2010</u>	14057	10/28/2010	\$3,119.15	12/7/2010 5/26/2011	\$1,559.59 \$1,559.56	
<u>2009</u>	9483	11/02/2009	\$3,403.00	12/2/2009 5/27/2010	\$1,701.53 \$1,701.47	
<u>2008</u>	24283	10/24/2008	\$2,724.73	11/21/2008 5/26/2009	\$1,362.38 \$1,362.35	
<u>2007</u>	3005338	10/25/2007	\$3,808.88	11/30/2007 6/4/2008	\$1,904.47 \$1,904.41	

\*\* Paid Amount may include penalty & interest




**Note:** The accuracy of this data is not guaranteed. Property Tax data was last updated 08/01/2023 12:00 PM.

Send Payments to:  
Lewis & Clark County  
316 North Park Ave; Room #113  
Helena, Montana 59623

Phone: (406) 447-8329  
Email: [propertytax@lccountymt.gov](mailto:propertytax@lccountymt.gov)




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# LEWIS & CLARK COUNTY

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**Property Tax ID:** 112

**Status:** Current

**Type:** RE

**Owner:** DORRINGTON PROPERTIES LLC

**Current Tax Year:**

**Total Unpaid:**

Tax Year	Amount	Discount	Total Due

**Total payoff amount as of 8/1/2023:** \$0.00

Tax Year	Due Date	Statement#	Half	Tax Amount	Interest	Penalty	Discount	Total Due	

**Note:** The accuracy of this data is not guaranteed. Property Tax data was last updated 08/01/2023 12:00 PM.

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