

COMMITTEE OF THE WHOLE

JULY 20, 2026

6:00 PM

1. Annual update on Fergus County Council on Aging
2. Annual update on Lewistown Airport

NOTICE FOR, AND AGENDA FOR, A REGULAR MEETING OF THE CITY COMMISSION, CITY OF LEWISTOWN, JULY 20, 2026 AT 7:00 P.M. AT THE CENTRAL MONTANA COMMUNITY CENTER LOCATED AT 307 W WATSON

To participate virtually the options are as follows:

To join by zoom:

<https://zoom.us/j/8486275925?pwd=dTVGbndDK253ZUJLMjRuZXU5QVpMdz09>

Meeting ID: 848 627 5925 Passcode: 59457

To participate by phone: dial (253) 215-8782 Meeting ID: 848 627 5925 Passcode: 59457

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES – July 6, 2026 & June 29, 2026

COURTESIES

PROCLAMATIONS

BOARD AND COMMISSION REPORTS

CITY MANAGER REPORT

PUBLIC COMMENT – non-agenda items

CONSENT AGENDA

Acknowledgment of the claims that have been paid for June 30, 2026, in the amount of \$69,925.63 and \$209,745.91. Claims that have been paid from July 1, 2026 to July 17, 2026 in the amount of \$85,705.99

***REGULAR AGENDA – Resolutions, Ordinances & Other Action Items:**

1. Discussion and action on approving an amendment to the Honda Shop Railroad lease (**Action: approve, disapprove or amend the amendment to the Honda Shop Railroad lease**) City Manager Holly Phelps
2. Discussion and action on approving Variance V-26-01, a request by Mike Overland for a variance to build a 30 foot by 36 foot garage at their property located at 711 7th Ave N; the variance request is to allow the construction of the garage to be within 10 inches of the northeast property line (**Action: approve, disapprove or amend Variance V-26-01**) City Manager Holly Phelps
3. Discussion and action on approving Resolution No 4227, a resolution approving an application request from Breaks Medical for TEDD funds made to the Lewistown Tax Increment Advisory Committee (**Action: approve, disapprove or amend Resolution No. 4227**) City Manager Holly Phelps

4. Discussion and action on approving Resolution No. 4228, a resolution an application request from United Methodist Church for TIF funds made to the Lewistown Tax Increment Advisory Committee (**Action: approve, disapprove or amend Resolution No. 4228**) City Manager Holly Phelps

5. Discussion and action on approving the 2026-2027 annual plan for the Tax Increment Finance District (**Action: approve, disapprove or amend the 2026-2027 annual plan for the TIF District**) City Manager Holly Phelps

6. Discussion and action on approving the 2026-2027 annual plan for the Targeted Economic Development District (**Action: approve, disapprove or amend 2026-2027 annual plan for the TEDD**) City Manager Holly Phelps

CITIZENS' REQUESTS

COMMISSIONER'S MINUTE

ADJOURNMENT

* All citizens are invited to make comments on any agenda item prior to action being taken by the Commission

BIRDWELL & AAMOLD, P.C.

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SARAH M. AAMOLD
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July 7, 2026

Holly Phelps
Via email @ hphelps@ci.lewistown.mt.us

Subject: Lewistown Honda – Amendment to Lease Agreement

Dear Holly:

I am following up on our discussion last week. I have enclosed a proposed Amendment to the Lewistown Honda Lease Agreement on the Rails-to-Trails property.

The purpose of the Amendment is two-fold. First, the Amendment sets a 15-year term. Second, the Amendment clarifies that the Lease may be terminated for cause.

Please note that I included reference to City Resolution No. 3820, Section 8(d) of the National Trail Systems Act, and the City of Lewistown's Railbanking and Bargain Sale Contract, dated December 11, 2006. My point in referencing these three items was to clarify that the City reserves its right to amend the Lease as necessary to comply with Rails-to-Trails restrictions.

I respectfully request that you submit this Amendment to the council for approval at the next council meeting. Please contact me if you have questions or concerns.

Sincerely,

BIRDWELL & AAMOLD, P.C.



Kris A. Birdwell

KAB/tgp
encl.

**INDEFINITE TERM LEASE
FOR CITY RAILROAD CORRIDOR (TRAILS) PROPERTY**

Section 1. Premises and Term
Section 2. Use and Compliance
Section 3. Rent
Section 4. Environmental
Section 5. Access to Adjacent Property by Lessee
Section 6. Access to Premises by Lessor
Section 7. Warranties
Section 8. Premises Condition; Lessee Improvements
Section 9. Taxes and Utilities
Section 10. Corridor Clearance
Section 11. Repairs, Maintenance, Weed Control
Section 12. Safety; Dangerous and Hazardous Conditions
Section 13. Indemnity
Section 14. Equal Protection
Section 15. Assignment and Sublease
Section 16. Liens
Section 17. Insurance
Section 18. Water Rights and Use of Wells
Section 19. Default
Section 20. Termination
Section 21. Survival of Obligations
Section 22. Holding Over
Section 23. Multiple Party Lessees
Section 24. Damage or Destruction
Section 25. Representations
Section 26. Signs
Section 27. Consents and Approvals
Section 28. Captions.
Section 29. Public Record
Section 30. Governing Law
Section 31. No Waiver
Section 32. Binding Effect
Section 33. Force Majeure
Section 34. Entire Agreement/Modification
Section 36. Notices
Section 37. Counterparts
Section 38. Relationship
Section 39. Severability
Section 40. Transferability; Release of Lessor
Section 41. Tax Waiver
Section 42. Attorney's Fees

THIS INDEFINITE TERM LEASE FOR LAND ("Lease") is made and entered into to be effective as of the 1st day of May, 2011 ("Effective Date"), by and between the **City of Lewistown, a municipal corporation** ("Lessor" or "City") and **Edwin L. Evans and Phyllis L. Evans, DBA Lewistown Honda** ("Lessee").

RECITALS

A. Lessor is a municipal corporation and owns or controls a transportation corridor ("Lessor's corridor") and various real properties associated therewith, including certain premises as described below which Lessee desires to lease from Lessor.

B. Lessor has agreed to lease to Lessee the Premises, 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. Premises and Term.

A. Lessor leases to Lessee and Lessee leases from Lessor, subject to the covenants, agreements, terms, provisions and conditions of this Lease, that certain parcel of real property, situated in or near the City of Lewistown, County of Fergus, State of Montana, described as follows:

A parcel located in the SE 1/4, SW 1/4, Sec. 10, T.15N, R.18E, and more specifically depicted in Exhibit A

B. Lessee leases the premises from Lessor beginning **May 1, 2011** ("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 the expiration of the time specified in such notice, 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 Premises, a sum equal to three (3) months Base rent (as defined below), and any unearned portion of the annual Base rent, in excess of such retainage, paid in advance shall be refunded to Lessee or (ii) if Lessor has not been paid sufficient base 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 Base rent which Lessor shall retain as an additional charge for use of the premises, 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 Premises for any length of time.

Section 2. Use and Compliance.

A. Lessee may use the Premises for the sole and exclusive purpose of operating an **ATV sales and service business** 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 Premises.

B. Lessee shall comply with all Laws applicable to Lessee, the Premises, this Lease and Lessee's activities and obligation 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 Premises, 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 premises, or if the failure to secure such a license or permit might in any way affect Lessor, 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 premises, in advance, an amount equal to **ONE THOUSAND FIVE HUNDRED TWENTY SIX DOLLARS (\$1,526.00)** annually during the term of the lease, ("Base Rent"). Base rent shall increase 3% annually during the term of the lease. Lessor reserves the right to change rental rates as conditions warrant. 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 that 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:

Lewistown City Clerk
305 West Watson
Lewistown, MT 59457

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 has 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 cashed 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 base 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 Base 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 Base Rent and all amounts due as required by this Lease.

D. If any Base 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 the 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 ½%), 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 ½%), 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 Premises, 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 Premises. Lessee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental laws, on or about the Premises.

B. Lessee shall give Lessor immediate notice of any release of hazardous substances on or from the premises 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 Premises. Lessee shall use its best efforts to promptly respond to any release on or from the Premises. Lessee also shall give Lessor 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 copies of all reports and/or data regarding any investigations or remediations of the Premises.

C. In the event the Lessor has notice from Lessee or otherwise of a release or violation of Environmental Laws on the Premises which occurred or may occur during the term of this Lease, Lessor 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 Premises or Lessor's right-of-way.

D. Lessee shall promptly report to Lessor in writing any conditions or activities upon the premises 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 shall not relieve lessee of any obligation whatsoever imposed on it by this Lease. Lessee shall promptly respond to Lessor's request for information regarding said conditions or activities.

E. Hazardous Materials are not permitted on the Premises except as otherwise described herein. Lessee expects to use on the premises the following Hazardous Materials: NONE, and to store on the Premises 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 Premises of any Hazardous materials not disclosed in this Section 4(E) is 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 may, at its option prior to termination of this Lease, require Lessee to conduct an environmental audit of the premises through an environmental consulting engineer acceptable to Lessor, at Lessee's sole cost and expense, to determine if any noncompliance damage to the Premises has occurred during the Lessee's occupancy thereof. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its 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 Premises can be accomplished only through use of the Lessor's property adjacent to the Premises, 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 terms and 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 Premises which lessee may use just as though the property has been specifically described as part of the Premises, 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 corridor. Any such crossing rights may only be granted by a separate written agreement between Lessor and Lessee.

Section 6. Access to Premises 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 Premises as allowed hereunder, (i) enter the Premises for inspection of the Premises or to protect the Lessor's interest in the Premises or to protect from damage any property adjoining the Premises, (ii) enter the Premises to construct, maintain, and operate city facilities, 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 Premises, without payment of any sum for any damage, including damage to growing crops, (iii) take all required materials and equipment onto the premises, and perform all required work therein, for the purpose of making alterations, repairs, or additions to the Premises as Lessor may elect if Lessee defaults in its obligation to do so, (iv) enter the Premises to show the Premises to holders of encumbrances on the interest of Lessor in the premises, or to prospective purchasers or mortgagees of the premises, and all such entries and activities shall be without any rebate of rent to Lessee for any loss of occupancy of the Premises, 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 Premises, 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 Premises. Any entry to the premises 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 Premises, or any eviction of Lessee from the Premises, and any damages caused on account thereof will be paid by Lessee.

Section 7. Warranties.

LESSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES 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 interest of others. If the premises are 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 Lease Improvements. In case of eviction of

Lessee by anyone other than Lessor, or anyone owning or claiming the title to or any interest in the premises, Lessor 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. Premises Condition; Lessee Improvements.

A. Lessee represents that the Premises, 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 as to the title thereto, the nature, condition or usability thereof, or the uses to which the Premises may be put. By taking possession or commencing use of the Premises, Lessee (i) acknowledges that it is relying on its own inspections of the Premises and not on any representations from Lessor regarding the Premises; (ii) establishes conclusively that the Premises are 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 Premises 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 Premises 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 Premises for Lessee's intended use. Lessee shall comply with any covenants, conditions or restrictions now or hereafter affecting the Premises, and acknowledges that Lessor may place any covenants, conditions or restrictions of record affecting the Premises 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 improvements are necessary for Lessee's use of the Premises, Lessee, at Lessee's sole cost and expense, shall, on or after the Commencement Date, construct and install such improvements to the Premises which are necessary for lessee's use of the premises and are acceptable to Lessor in Lessor's sole discretion ("Lessee Improvements"). The construction and installation of any Lessee Improvements shall be subject to Lessor's prior written approval of plans and specifications for such Lessee Improvements to be prepared by Lessee and submitted to Lessor for approval as set forth below, such approval to be in Lessor'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 review and approval. Lessor shall either approve or disapprove the plans and specifications and general contractor (in its 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 shall specify the reasons for such

non-approval. If Lessor fails 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 specifies objections to the plans and specifications or general contractor as herein provided and Lessor 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, Lessor and Lessee shall sign the same, and they shall be deemed a part thereof. 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 Premises without Lessor'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 Premises or surrendered to the Lessor pursuant to Section 20 below upon termination of this Lease.

Section 9. Taxes and Utilities.

A. In addition to Base 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 Premises, against Lessee, against the business conducted on the Premises 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 Premises 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 payments, Lessee shall promptly upon demand reimburse Lessor for all such sums.

B. Should the Premises 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 Base 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. Corridor Clearance. [For purpose of this lease, no part of the premises leased herein is considered "corridor"]

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 Corridor on or about the Premises (nine and one half (9½) feet on either side of the centerline of any of Lessor's Corridor which are curved) or (ii) 24 feet vertically from the top of the~~

~~rail of any of Lessor's Corridor on or about the premises ("Minimal Clearances"), or on or over any established trail; 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, the 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 Premises clearly noting the existence of such clearance. Any such sign shall be painted with black and white reflective paint.~~

~~B. — Lessor's operation over any Lessor's Corridor on or about the premises 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 right to recover for and be indemnified and defended against such damages to property, and injury to death of persons, that may result therefrom.~~

~~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 Corridor.~~

Section 11. Repairs; Maintenance, Weed control.

A. Lessee shall, at its sole expense, take good care of the Premises (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 Premises. The term "Repairs" means all reasonable repair and maintenance necessary to keep the Premises (including all Lessee Improvements) in good condition and includes, without limitation, replacements, restoration and renewal when necessary. Lessee shall keep and maintain any paved area, sidewalks, curbs, landscaping, and lawn areas in a clean and orderly condition, and free of accumulation of dirt and rubbish. Lessee shall be responsible, at his sole expense, for control of all noxious and nuisance weeds on the Premises. If Lessee fails to control such weeds Lessor, in addition to any other remedies provided for in this agreement, including termination, may hire a certified contractor to control the same after ten days written notice provided by Lessor to Lessee. All costs thereof incurred by Lessor shall be billed to Lessee and Lessee agrees to pay the same, along with an administrative fee of \$100.00 within 30 days. Failure to make such payment shall be grounds for immediate termination of this Lease.

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 Premises, including but not limited to structural repairs, or to maintain the Premises in any manner. Lessee acknowledges that Lessor shall have no responsibility for management of the Premises.

C. Lessee shall not use the Premises for open storage of cars, vehicles, or machinery whether operational or not, building materials, rubbish, trash, or personal property. Excess grass and vegetation shall be controlled so as to minimize any fire hazard.

D. If Lessee's approved purpose, as set forth in Section 2, is for the grazing of livestock, Lessee will not suffer or permit any waste, damage or unlawful acts to be committed upon the Premises during the existence of this agreement Lessee shall observe good husband like grazing practices and shall not allow the land to be over-grazed. Lessor and its agents shall have the right to

enter upon the premises for the purpose of inspecting the same. Lessee shall provide a grazing use plan, approved by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) commensurate with the number of aums available on this property. The Lessor, in its sole discretion may approve or disapprove this plan. Therefore, no grazing practice used shall exceed that plan. Lessee shall provide Lessor a use plan for the premises at the time of execution of this agreement and by April 1 of each year thereafter.

Section 12. Safety; Dangerous and Hazardous Conditions.

A. It is understood by Lessee that the Premises may be in dangerous proximity to Lessor's Corridor, and that persons and property, whether real or personal, on the Premises may be in danger of injury, death or destruction incident to Lessor's activities in the Lessor's Corridor, and Lessee accepts this Lease subject to such dangers, and acknowledges that its indemnification obligation hereunder extends to and include all such risks.

B. It is further understood by Lessee that the Premises may be in proximity to City trails or other public roadways and corridors (the "Public Ways"), including Lessor's Corridor, and that persons using those trails, roadways and corridors may be in danger of injury or death due to operations on the Premises. Lessee shall take all necessary precautions including but not limited to barricading, fencing or otherwise erecting such structures or facilities as may be necessary to adequately protect those using these Public Ways. All such structures shall be approved by Lessor in writing in advance of construction. Lessee agrees to indemnify Lessor in accordance with this Lease for any injuries by Lessee, his agents, contractors, invitees or others on the Premises, to persons or property on the adjacent Public Ways.

Section 13. Indemnity.

A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICER, 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, ATTORNEY'S 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 PREMISES;

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED IN WHOLE OR IN PART, BY LESSEE; OR

(v) ANY ACT OR OMISSION OF LESSEE OR LESSEE'S OFFICER, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LESSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITIES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

B. FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 13(A), LESSEE SHALL NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT THE CITY IS AN "OWNER", "OPERATOR" OR "ARRANGER", WITH RESPECT TO THE PREMISES 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 PREMISES AS CONTEMPLATED BY THE LEASE SHALL NOT IN ANY WAY SUBJECT LESSOR TO CLAIMS THAT LESSOR IS OTHER THAN A MUNICIPAL CORPORATION 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 PREMISES.

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 EMPLOYER'S 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 lessor, lessee agrees to assume the defense of any lawsuit or other proceeding brought against any indemnitee 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 any indemnitee. Lessee shall pay all costs incident to such defense, including, but not limited to, attorney's fees, investigator's 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 public entities permitted to use the Lessor's property, and such entities 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 premises or any part thereof, without, in each instance, obtaining the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion. 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 thereof, 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 Premises. Lessor is hereby authorized to post any notices or take any other action upon or with respect to the premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; 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. Special Form property insurance covering all of Lessee's property including property in the care, custody or control of Lessee.

i. Coverage shall be issued on a replacement cost basis.

ii. The policy shall include a standard loss payable endorsement naming Lessor as the loss payee as its interests may appear.

iii. The policy shall include a waiver of subrogation in favor of Lessor **[may omit if lessee is assuming all maintenance and upkeep of property]**

B. Commercial General Liability Insurance. This insurance shall provide a combined single limit of a minimum of \$750,000.00 each occurrence and an aggregate limit of at least \$1,500,000.00. Coverage must include Bodily Injury, Property Damage and Fire Legal Liability. 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 \$750,000.00 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 coverage shall be provided for all of Lessee's employees.

E. If construction is to be performed on the Premises by Lessee, Lessee or lessee's contractor shall procure Liability insurance naming only the Lessor as the insured with coverage of at least \$750,000.00 for each claim and \$1,500,000.00 for each occurrence. The policy shall include endorsements to provide adequate pollution coverage.

Other Requirements:

A. Lessee agrees to waive its right of recovery against City for all claims and suits against City. In addition, its insurers, through the terms of the policy or through policy endorsement, waive their right of subrogation against City 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 City for loss of its owned or leased property or property under lessee's care, custody, or control.

B. All policy(ies) required above shall name City as an additional insured with respect to the premises under this Lease.

C. Prior to accessing the premises, Lessee shall furnish to City an acceptable, certificate(s) of insurance naming the authorized representative and evidencing the required coverage, endorsements, and amendments and referencing policy number. Prior to expiration of any certificate of insurance, Lessee shall provide a new, current certificate(s) of insurance. Upon request from City, a certified duplicate original of any required policy shall be furnished.

D. Any insurance policy shall be written by a reputable insurance company acceptable to City or with a current Best's Guide Rating of A- and Class VII or better or if self insured, an adequate evidence of reinsurance. The company must be authorized to do business in the state of Montana.

F. 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.

G. The City may reasonably modify the required insurance coverage to reflect then-current risk management practices by cities and towns and underwriting practices in the insurance industry.

H. 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 City as an additional insured, and shall require that the contractor shall release, defend and indemnify the City to the same extent and under the same terms and conditions as lessee is requires to release, defend and indemnify City herein.

I. Failure to provide evidence as required by this Section 17 shall entitle, but not require, City 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.

J. 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 City shall not be limited by the amount of the required insurance coverage.

K. For purposes of this section 17, City shall mean "the City of Lewistown, a municipal corporation" and its, successors, assigns, employees and agents.

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 Lessor which may be appurtenant to the Premises. All right, title, and interest in and to such water is expressly reserved unto Lessor, and the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor. Lessee shall not use, install or permit to be installed or used any wells on the Premises without prior written consent of Lessor.

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 Premises 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 Premises 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 Premises to Lessor, without prejudice to any claim for arrears of rent or breach of covenant, (ii) proceed by appropriate judicial proceedings, wither 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 premises or any part thereof and repossess the same without terminating the Lease and, without obligations to do so relet the Premises or any part thereof as the agent of Lessee and in such event, lessee shall 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 premises 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 to 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 the 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 to terminate this Lease for any subsequent default or defaults, nor shall any such waiver in any way affect the 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.

Section 20. Termination.

Upon the termination of Lessee's tenancy under this Lease in any manner herein provided, Lessee shall relinquish possession of the premises and shall remove any lessee Improvements, and restore the Premises 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, the Lessor may, at its election (i) either remove the Lessee Improvements or otherwise restore the Premises, and in such event Lessee shall, within (30) days after receipt of bill therefore, 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 therefore, 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 Premises 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 obligation 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 Premises to Lessor upon the termination of this Lease, and Lessor does not consent in writing to Lessee's holding over, then such holding over will be deemed a month-to-month tenancy. Lessee 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 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 Premises are damaged or destroyed by fire or other casualty, the Lessor may terminate this Lease or repair and reconstruct the Premises to substantially the same condition in which the premises existed 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 premises and removable by Lessee under the provisions of this Lease.

Section 25. Representations.

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

Section 26. Signs.

No signs are to be placed on the premises without the prior written approval of Lessor of the size, design, and content thereof. All signage shall comply with applicable city, state and federal laws and regulations.

Section 27. Consents and Approvals.

Whenever in the Lease Lessor's consent or approval is required such consent or approval shall be in Lessor's sole and absolute discretion. If Lessor delays or refuses 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 unreasonably withheld or unreasonably delayed its consent or approval.

Section 28. 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 29. Public Record.

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

Section 30. Governing Law.

All questions concerning the interpretation or application of provisions of this lease shall be decided according to the laws of the state of Montana.

Section 31. No Waiver.

One or more waivers of any covenant, term, or condition of this Lease by Lessor shall not be construed as a waiver of subsequent breach of the same covenant, term, or condition. The consent or approval by Lessor 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 32. Binding Effect.

All provisions contained in the 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 33. 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 34. 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 Premises and supersedes any and all other agreements between the parties hereto relating to lease of the Premises. If this Lease is a reissue of an existing agreements 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 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 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 hereinafter set forth. Any notice 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:

Lewistown Honda
Edwin and Phyllis Evans
302 Truck Bypass
Lewistown, MT 59457

If to Lessor:

City of Lewistown
305 West Watson
Lewistown, MT 59457

Section 37. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed and original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counter part 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 time 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 Premises, 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 premises (including Lessor's personalty), irrespective of whether Lessor contests the same.

Section 42. Attorney's 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 attorney's 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 above.

LESSOR

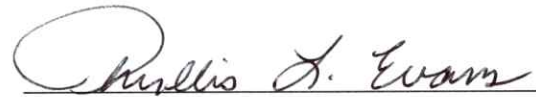
City of Lewistown

By: 
Name: Kevin L. Myhre
Title: Lewistown City Manager

LESSEE

Lewistown Honda

By: 
Name: Edwin L. Evans
Title: Owner

By: 
Name: Phyllis L. Evans
Title: Owner

The map illustrates a residential development layout with the following features:

- Tracts:** Labeled as TRACT 2, TRACT 3, TRACT 4, TRACT 5, TRACT 6, and TRACT 7.
- Highlighted Area:** A yellow-shaded region within Tract 3, labeled "Area 21,800 sq ft".
- Truck By-Pass:** A road labeled "TRUCK BY-PASS" running diagonally across the upper portion of the map.
- Lot Numbers:** Individual lots are numbered within the tracts. For example, Tract 2 contains lots 1-11, Tract 3 contains lots 1-12, Tract 4 contains lots 1-12, Tract 5 contains lots 1-12, Tract 6 contains lots 1-12, and Tract 7 contains lots 1-12.
- Scale:** A scale bar at the bottom indicates distances in feet, ranging from 0 to 100.



Planning Department
305 West Watson Street, Lewistown, MT 59457
(406) 535-1775

Staff Report Variance 26-01

GENERAL INFORMATION

APPLICANT:

Mike Overland

PUBLIC NOTICE:

Notice of the public hearing was published in accordance with the requirements of the Lewistown Zoning Code and Montana law. Notices were mailed to surrounding property owners within the required notification radius, and the notice was posted at the City's official posting location. The public hearing is scheduled for Thursday, July 16, 2026, at 5:30 p.m. before the City-County Planning Commission at the Council on Aging/Lewistown Community Center, 307 West Watson Street, Lewistown, Montana.

PROPERTY DESCRIPTION

The subject property is located at 711 7th Avenue North, Lewistown, Montana, and is legally described as:

Lots 5 and 6 and one-half ($\frac{1}{2}$) of the adjacent alley, Block 9, Stafford Addition No. 4, City of Lewistown, Fergus County, Montana.

Current Zoning: R-2 Residential

PROPERTY LOCATION



Figure 1. Aerial view of Subject Property – 711 7th Avenue North



Figure 2. Existing Residence and Proposed Garage Location, Virginia St



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REQUEST

The applicant requests a variance from the minimum side-yard setback requirements of the Lewistown Zoning Code to allow construction of a 30-foot by 36-foot detached garage.

The proposed garage would be located approximately 10 inches from the northeast property line, rather than meeting the required 3-foot side-yard setback for accessory structures.

Approval of the variance would only allow a variance from the side yard setback requirement. All required building permits, inspections, and applicable building code requirements must still be satisfied prior to construction.

Current R-2 zoning requirements include;

SURROUNDING LAND USES

The surrounding neighborhood is fully developed with single-family residences and customary residential accessory buildings.

APPLICABLE ZONING REQUIREMENTS

The property is located within the R-2 Residential District.

The Lewistown Zoning Code 11-4-1 requires accessory structures to maintain a minimum three-foot (3') side-yard setback from the property line unless a variance is granted. (see attached)

The applicant proposes a setback of approximately 10 inches, requiring a variance from the setback standard.

FINDINGS OF FACT

The Planning Commission should consider the variance criteria established by the Lewistown Zoning Code.

1. Special Conditions



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The property contains existing improvements and limited building area that restrict placement of a detached garage while maintaining practical access and use of the property.

The requested variance would permit construction of a detached garage in a location that best accommodates the existing residence, access, and site layout.

2. Deprivation of Property Rights

Without the requested variance, construction of the garage in the proposed location would not comply with the required setback standards.

The applicant may still have the ability to construct a garage elsewhere on the property; however, doing so may significantly reduce functionality and decrease the setback between the garage and the house.

3. Not Self-Created

The request is based upon the existing configuration of the property and proposed improvements rather than an attempt to create additional development density.

4. Neighborhood Character

The proposed detached garage is consistent with the residential character of the surrounding neighborhood.

Granting the variance is not anticipated to substantially alter the appearance of the neighborhood or adversely affect adjacent properties.

5. Public Welfare

Approval of the variance is not anticipated to adversely affect public health, safety, or welfare, provided the structure complies with all applicable building, fire, and utility requirements. The existing garage was built in this location, with the same side-yard setback of 10 inches.



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STAFF ANALYSIS

The requested variance represents a reduction in the required side-yard setback from three feet (3') to approximately ten inches (10").

The purpose of setback regulations is to provide separation between structures, maintain access for maintenance, reduce fire hazards, and preserve neighborhood character.

In evaluating this request, staff considered:

- Existing development on the lot;
- Relationship of the proposed garage to adjacent properties;
- Potential impacts to neighboring property owners;
- Compatibility with surrounding residential development; and
- Whether granting the variance would establish an undesirable precedent.

Because the request affects only one side-yard setback and involves an accessory residential structure, staff believes any impacts can be minimized through compliance with all applicable building and fire code requirements.

The variance does not authorize construction. Separate building permits and inspections remain required.

PUBLIC COMMENT

Notices were mailed to 38 properties. At the time this staff report was prepared, No comments had been received.

STAFF RECOMMENDATION

Based upon the information submitted by the applicant and the findings contained in this report, **staff recommends approval** of Variance Application V26-01, subject to the following conditions:

1. All required building permits shall be obtained prior to construction.
2. Construction shall comply with all applicable Building Code, Fire Code, and other City regulations.



Planning Department
305 West Watson Street, Lewistown, MT 59457
(406) 535-1775

Prepared by:

Holly Phelps

City Manager / Planning Department

City of Lewistown

PLANNING COMMISSION RECOMMENDATION

Prior to the Planning Commission meeting one written comment was made. This comment was provided to the board and read that the Public Hearing. The neighbor that owns the property at 605 W. Virginia Street, had questions regarding the snow and ice that may come off the garage roof. He did state that he did not have any objections to the project. The owners were in the audience and provided information on the existing structure and stated that they are requesting the variance to construct the garage at this location, so that they keep the appropriate distance between the house and the garage and preserve an existing tree.

Based on this information the Planning Commission made the following decision unanimously, to recommendation to the City Commission to approve Variance 26-01 with the following conditions;

1. All required building permits shall be obtained prior to construction.
2. Construction shall comply with all applicable Building Code, Fire Code, and other City regulations.

RESOLUTION NO. 4227

A RESOLUTION APPROVING AN APPLICATION FROM BREAKS MEDICAL CENTER FOR TEDD FUNDS MADE TO THE LEWISTOWN TAS INCREMENT ADVISORY COMMITTEE

WHEREAS, following the finding of necessity in Resolution No. 3950 on November 6, 2017, the Lewistown City Commission adopted Ordinance 17-57 creating the Lewistown Targeted Economic Development District (TEDD) 2017 (hereafter TEDD 2017) on December 4, 2017.

WHEREAS, since the creation of the Lewistown TEDD 2017, and in 2019 because of additional annexations continuous with the TEDD boundary, the Lewistown City Commission passed Resolution No. 4015 (Resolution of Necessity), declaring the proposed Amended District as "infrastructure deficient" as described in MCA § 7-15-4279.

WHEREAS, the area within the proposed Amended TEDD 2017 is zoned Airport, Residential (R-1, R-1B) or Commercial (C-3).

WHEREAS, Resolution 4015 generally established boundaries of the Lewistown Amended TEDD 2017 and determined the existence of infrastructure deficiencies in the area.

WHEREAS, the City of Lewistown is interested in fostering redevelopment, growth and retention of secondary, value adding industries as part of the City's overall goal to promote, stimulate, develop, and advance the general welfare, commerce, economic development, and prosperity of the citizens of Lewistown and the State of Montana. Therefore, pursuant to MCA § 7-15-4212, the City of Lewistown caused an Amended Comprehensive Development Plan to be prepared.

WHEREAS, the City of Lewistown is currently using Tax Increment Financing as authorized in MCA §§ 7-15-4282 through 7-15-4294, to help fund the supportive public infrastructure needed for the development of secondary, value-adding industries in the Lewistown TEDD 2017 area, and proposes to continue the use of such financing in the Lewistown Amended TEDD.

WHEREAS, the Board has developed the Lewistown TEDD District Program whereby qualified applicants may apply for TEDD District Program Funds for assistance for infrastructure improvements necessary for value adding economic development within the District; and,

WHEREAS, Resolution 4213 amended the advisory board created by Resolution Nos. 3903 and 3923 in accordance with the requirements set forth in SB3, and to redesignate the Lewistown Tax Increment Financing Board as the "Lewistown Tax Increment Finance Advisory Committee."; and,

WHEREAS, the City Commission has retained final budgetary authority for TEDD program activities.

NOW, THEREFORE, BE IT RESOLVED, that the Lewistown City Commission hereby approves the following applications for TEDD District Program Funds as recommended by the TEDD Tax Increment Finance Advisory Committee:

1. Breaks Medical Center, for site improvements, and utilities that improve access to this expanding business, 103 Market Drive, \$250,000 grant.

BE IT FURTHER RESOLVED, that prior to disbursement of any TEDD funds, all applicants shall enter into such Development Agreements as requested and approved by the Tax Increment Finance Advisory Committee.

PASSED AND APPROVED this 20th day of July, 2026.

Loraine Day, Chairperson
Lewistown City Commission

Attest:

Nikki Brummond
City Financial Officer/Clerk

RESOLUTION NO. 4228

**A RESOLUTION APPROVING AN APPLICATION FROM
UNITED METHODIST CHURCH, FOR TIF FUNDS MADE
TO THE LEWISTOWN TAX INCREMENT ADVISORY
COMMITTEE**

WHEREAS, the Lewistown City Commission has adopted Ordinance No. 1748 – An Ordinance establishing the Lewistown Urban Renewal Area, creating the Lewistown Urban Renewal District and adopting the Lewistown Urban Renewal District Plan; and

WHEREAS, by Resolution number 4213 the City amend the current advisory board created by Resolution Nos. 3903 and 3923 in accordance with the requirements set forth in SB3, and to redesignate the Lewistown Tax Increment Financing Board as the “Lewistown Tax Increment Advisory Committee”; and

WHEREAS, the Commission appointed a Lewistown Tax Increment Advisory Committee (hereafter, the “TIF Committee”) to manage the Lewistown Urban Renewal District created by Ordinance 1748; and,

WHEREAS, the TIF Committee oversees the operation of the Lewistown Urban Renewal District, including public purpose activities; promotional activities; façade building conservation and loan programs; and administrative functions; and,

WHEREAS, the TIF Committee exercises those powers authorized by law as specified in Resolution 3923 and Resolution 4213; and,

WHEREAS, the TIF Committee has developed the Lewistown TIF District (LTD) Program whereby qualified applicants may apply for TIF District Program Funds for assistance in redevelopment or rehabilitation of properties within the Urban Renewal District; and,

WHEREAS, through its LTD Program the TIF Committee has receives applications for TIF District Program Funds, has reviews the same and, recommends approval of applicants for those funds; and,

WHEREAS, the City Commission has retained final budgetary authority for TIF program activities.

NOW, THEREFORE, BE IT RESOLVED, that the Lewistown City Commission hereby approves the following applications for TIF District Program Funds as recommended by the TIF Committee:

1. United Methodist Church, for installation of solar panels, grinding of tree stumps and purchase of a handicap ramp for property located at 512 W. Broadway, a grant of up to \$17,288.99.

BE IT FURTHER RESOLVED, that prior to disbursement of any TIF funds, all applicants shall enter into such Development Agreements as established and approved by the TIF Committee. All documentation must be provided prior to reimbursement of funds for the project

PASSED AND APPROVED this 20th day of July, 2026.

Loraine Day, Chairperson
Lewistown City Commission

Attest:

Nikki Brummond
City Financial Officer/Clerk

Lewistown TIF FY 2027

Annual Workplan

The TIF board's budget continues to prioritize private and public investment to generate taxable value.

These projects include but are not limited to improving building façades, infrastructure and other public benefits. (*parking, upper story housing*)

The board will work to expand their knowledge of revolving loan funds and bonding options to be more prepared to take on larger projects moving forward.

The advisory board has opted not to allocate any funds to the RLF currently.

The investment plan and application are used to determine eligible applicants and projects.

Snowy Mountain Development staff continues to act as administrators for the board.

The FY 2027 TIF Budget will be based on the following percentages;

TIF Management SMDC and other Operating Expenses	1%
Private Property Investment	25%
Infrastructure Investment	45%
Discretionary Investment Opportunities	19%
Funds Allocated to Reserve/future funding opportunities	10%
Total Budget	100%

Lewistown TEDD FY 2027

Annual Workplan

The TED board's budget continues to prioritize private and public investment to generate taxable value.

These projects include but are not limited to improving infrastructure.

The investment plan and application are used to determine eligible applicants and projects. Snowy Mountain Development staff acts as administrator for the board.

The FY 2027 TEDD Budget will be based on the following percentages;

TED Management/SMDC and other Operating Expenses	1%
Infrastructure & Private Property Investment	75%
Discretionary Investment Opportunities	14%
Funds Allocated to Reserve/future funding opportunities	10%
Total Budget	100%