

FIRST AMENDMENT TO SUBLEASE AGREEMENT

THIS FIRST AMENDED SUBLEASE AGREEMENT (the "Sublease") is entered into and made as of November 16, 2018, by and between the **City of Billings**, a municipal corporation with a mailing address of 210 N. 27th St., Billings, MT 59101 (the "City") and **Billings Depot, Inc.**, a Montana nonprofit corporation with a mailing address of 2310 Montana Avenue, Billings, MT 59101 ("BDI").

RECITALS

A. Montana Rail Link, Inc. ("MRL") leases a system of rail tracks and various real properties from BNSF Railway Company ("BNSF"), pursuant to that certain agreement between MRL and BNSF dated July 21, 1987 (the "Master Lease"), including certain real property located in the City of Billings, Yellowstone County, Montana, which is more particularly described in **Exhibit "A"** attached to this Sublease (the "Premises").

B. Pursuant to the terms of that certain Sublease dated July 10, 1995 (the "Sublease I"), the City of Billings ("City") sublet from BNSF, MRL, and Inland Properties, Inc. ("Inland"), the Premises, which included the "BN Building" (which has also been described in various other documents as the BN Office Building, the Depot Services Building, and the multi-story office building which is the most easterly of the existing structures on the premises); and

C. At some point in the past, Inland acquired from BNSF all right, title, and interest to the following buildings which are located upon but legally severed from the Premises: (i) the Passenger Station; (ii) the Lunch Room; and (iii) the Railway Post Office Building (the "Other Buildings"). Inland did not acquire any interest in the BN Building; and

D. Pursuant to the terms of that certain Bill of Sale dated July 10, 1995, the City acquired from Inland all of Inland's right, title, and interest to the Other Buildings. The Bill of Sale did not include the BN Building; and

E. Pursuant to that certain Maintenance Agreement, dated July 10, 1995, BDI acquired from the City a leasehold interest in the Premises, the BN Building, and the Other Buildings. Under the Maintenance Agreement BDI agreed (i) to perform and discharge all of the City's covenants, duties, and obligations that the City has as lessee under the Sublease I; and (ii) to preserve and maintain the Premises, the BN Building, and the Other Buildings as an historic facility; and

F. The rights and interests of MRL, the City, and BDI in and to the Premises, the BN Building, and the Other Buildings are set forth and clarified in that certain Clarification Agreement dated August 15, 2008; and

G. The City desires to sublease to BDI whatever interest, if any, the City has in the Premises and the Other Buildings, all subject to the terms and conditions of this Sublease and, where applicable, the Sublease I. The City also desires to forfeit and assign to BDI any interest it may have in and to the BN Building; and

H. BDI wishes to sublease from the City whatever interest, if any, the City has in the Premises and the Other Buildings, all subject to the terms and conditions of this Sublease and, where applicable, the Sublease I.

I. The City and BDI desire to amend this Sublease Agreement by extending the current term in Section Three to December 31, 2034. No other amendments are made to this Agreement and all provisions herein remain in full effect.

FIRST AMENDED AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements contained in this Sublease and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Sublease of Premises and the Other Buildings. The City subleases to BDI and BDI subleases from the City whatever interest the City has, if any, in the Premises and the Other Buildings. BDI agrees to comply with all of the terms and conditions of the Sublease I and to discharge all of the City's obligations under the Sublease I as the lessee therein.

2. Forfeiture and Assignment of Interest. The City irrevocably and forever forfeits and assigns to BDI any interest in and to the BN Building that the City may have or may claim to have had under the Sublease I or any other document. The City acknowledges that BNSF has transferred its ownership of the BN Building to BDI under the terms of a Real Estate Donation Contract.

3. Term. This Sublease shall commence on the date first written above and shall end on the earlier of either December 31, 2034, or the date on which this Agreement is otherwise terminated pursuant to **Paragraph 21** herein.

4. Rent. The annual rent payment shall be One and No/100 Dollars (\$1.00), which shall be payable directly to MRL under the terms of the Sublease I.

5. Use.

(a) Historic Facility. During the term of this Sublease, BDI shall preserve, manage, and operate the Premises and the Other Buildings as an historic facility, as that term is defined in 23 USC § 101(a), as it may be amended from time to time, for the benefit of the public.

(b) Activities. BDI may rent or lease the Premises or the Other Buildings, or any portion of the Premises or the Other Buildings, to commercial tenants for amounts that it determines to be reasonable. BDI shall have sole authority to determine the kind, duration, and number of revenue-generating activities at the Premises or the Other Buildings.

(c) Limitations. Notwithstanding any provision of this Sublease to the contrary, all activities at the Premises or the Other Buildings must be (i) compatible

with preserving the Premises and the Other Buildings as an historic facility for the benefit of the public and (ii) in compliance with all applicable federal, state, and local statutes, regulations, laws, ordinances, and laws.

6. Sublease I Terms and Conditions. Except as otherwise provided in this Sublease, the terms, covenants, and conditions of the Sublease I are incorporated herein by reference and BDI agrees to perform and discharge all of the terms, covenants, and conditions of the Sublease I on the part of the lessee therein, commencing on the date of this Sublease.

7. Maintenance Agreement. Both parties acknowledge and agree that this Sublease terminates and renders null and void the Maintenance Agreement.

8. Waste and Nuisance. BDI shall comply with all applicable laws affecting the Premises, the breach of which might result in any penalty to the City or forfeiture of any right that the City may have to the Premises or the Other Buildings. BDI shall not commit, nor suffer to be committed, any waste or nuisance on the Premises.

9. Security. BDI shall provide and maintain fire and intrusion detection alarm systems on the Other Buildings.

10. Utilities, Maintenance, and Repair.

(a) BDI shall be responsible for all water, gas, heat, light, power, telephone services, and other public utilities of every kind furnished to the Premises and the Other Buildings, and all other costs and expenses of every kind in connection with the use, operation, preservation, maintenance, and restoration of the Premises and the Other Buildings and all activities conducted therein. BDI shall maintain the Premises and the Other Buildings, along with any improvements thereon, including sidewalks and parking lots, in good, neat, and sanitary repair and condition. All repairs and improvements made by BDI shall conform to the applicable codes, ordinances, laws, and regulations. of the City of Billings and any other governmental authority or agency.

(b) The City shall have no responsibility of any kind for any of the expenses described in **Paragraph 10(a)** above or to make any repairs or improvements of any kind or description to the Premises or the Other Buildings or the improvements thereon. The City reserves the right to enter the Premises to make repairs necessary for the preservation of the Other Buildings. The cost of such repairs made by the City shall be the obligation of BDI provided that the City has first given notice to BDI of the conditions needing repair and BDI has not acted to make the necessary repairs within fifteen (15) days after receipt of such notice.

11. Approval Requirement and Expectations.

(a) The City requires that BDI undertake all use, operation, preservation, and restoration affecting the Premises and the Other Buildings in conformance with the

Secretary of the Interior's "Standards for Historic Preservation Projects with Guidelines for Applying the Standards." BDI shall undertake no work of any kind whatsoever that affects the fabric of the Other Buildings and the Premises without the written concurrence of the Montana Historical Society and the City.

(b) The parties agree that a designee from the City will be named to act as a liaison between the City and BDI. The designee shall serve as an ex-officio member of the Board of Directors of BDI.

(c) To the extent such has not been done, the City and BDI shall develop written procedures, time tables, and processes for the reviews and approvals previously required by the Maintenance Agreement. The parties shall request regularly scheduled visits by the Montana Historical Society to the Premises for on-site review of use, operation, preservation, and restoration of the Premises and the Other Buildings.

12. Taxes and Assessments. BDI shall pay and discharge all taxes, assessments, rates, charges, license fees, levies, excises, and imposts, whether general or special, ordinary or extraordinary, of every nature as they become due.

13. Property Insurance. BDI shall at all times and at its sole expense insure the Premises and the Other Buildings and any other improvements thereon and contents thereof with fire and extended coverage insurance in the amount of 100% of the full insurable value of the Other Buildings. Except as otherwise provided for in this Sublease, any property insurance proceeds shall, so long as this Sublease is in effect, be used for the repair or replacement of the Other Buildings and any improvements thereon. Except as provided for in **Paragraph 14** herein, it is agreed and acknowledged that the City shall have no interest in the insurance upon the Other Buildings and any improvement thereon, and shall sign all documents necessary or proper in connection with the settlement of any claim or loss by BDI. The City agrees the Premises may be insured under any insurance policy maintained by the City, but the applicable portion of any premium due from the City that relates to the Other Buildings shall be paid by BDI within thirty (30) days after notice to BDI that the premium is due.

14. Damage to Premises or the Other Buildings. Because of the uniqueness of the historic and architectural value of the Premises and the Other Buildings, if there is significant damage, destruction, or partial destruction of the Premises or the Other Buildings, it is agreed that it may not be feasible to repair or restore the Premises or the Other Buildings to their authentic condition as good or better than existed prior to the damage or destruction. In case of such damage or destruction, if BDI in consultation with the City should determine that it wishes to repair, restore, or replace the Premises or the Other Buildings, then the proceeds of any insurance coverage shall be made available to BDI for such repair, restoration, or replacement of the Premises or the Other Buildings. Should BDI in consultation with the City decide not to repair, restore, or replace the Premises or the Other Buildings, then the insurance proceeds shall: first, be applied to pay any debts, loans, or obligations BDI has secured or may secure for preservation, maintenance, and restoration under this Sublease and the Sublease I and, second, surplus proceeds, if any, shall be applied to similar projects determined jointly by the City and BDI.

15. Liability Insurance.

(a) BDI shall maintain liability insurance covering the Premises and the Other Buildings and any appurtenances, sidewalks, and parking lots of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) combined single limits of liability for each occurrence for bodily injury or property damage regardless of the number of persons or organizations who sustain bodily injury or property damage or the number of claims made, or suits brought, on account of bodily injury or property damage. Such insurance shall specifically insure BDI against all liability assumed by it under this Sublease, and shall insure both the City and BDI against all liability imposed by law against them. In addition, the policy or policies shall contain a provision that no cancellation thereof shall be effective by the insurer without thirty (30) days written notice to the City.

(b) Unless the above insurance coverage is provided under policies maintained by or in the name of the City, at least twenty (20) days prior to the date of expiration of any insurance policy, BDI shall deliver to the City the certificate of renewal of such policy, which certificate indicates the payment of the premiums. All insurance policies carried by any party covering the Premises or the Other Buildings shall expressly waive any right, including subrogation, on the part of any party against the others. All policies shall require the insurance companies to notify the City in writing prior to any cancellation of the insurance policy.

16. Hold Harmless/Indemnification. The City, its administrators, council members, officers, agents, and employees shall not be liable for any liabilities, claims for damages, or suits for or by any reason of any death or injury to any person or damage to property of any kind, whether to the person or property of BDI, its agents, or employees or to the person or property of any third person, from any cause whatsoever while on the Premises or in the Other Buildings during the term of this Sublease. BDI covenants and agrees to indemnify and to save harmless the City, its administrators, council members, officers, agents, and employees from all liabilities, charges, expenses (including attorney fees), and costs on account of such death, injury, damage, liability, claim, suit, or loss, however occurring. However, this hold harmless covenant shall not apply to any loss, injury, death, or damage arising by reason of the negligence or misconduct of the City, its administrators, council members, officers, agents, and employees.

17. Effect of Eminent Domain. In the event that the Premises or any part thereof, shall be appropriated or taken under the power of eminent domain or conveyed under the threat of eminent domain by any public or quasi-public authority so that the Premises or any of the Other Buildings can no longer be operated as an historic facility in the manner operated at the time of such appropriation or taking, this Sublease shall terminate and BDI shall have the following rights:

(a) To consult with the City to have the condemnation award applied under **Paragraph 14** above; and

(b) To recover such compensation from the condemning authority for any loss or damage caused by such condemnation.

18. Non-Assignment. BDI shall not have the right to assign or transfer this Sublease to any third party without the prior written consent of the City.

19. Mortgages. The City shall have no right to place mortgages or have liens placed on the Premises or the Other Buildings without the prior written consent of BDI. BDI shall have no right to place mortgages or have liens placed on the Premises or on the Other Buildings without the prior written consent of the City, which consent shall not be unreasonably withheld, except for the US Bank National Association Leasehold Mortgage made contemporaneously with this Sublease. BDI shall have the right, subject to the terms of the Sublease I, to place mortgages or other liens on the Premises without the consent of the City.

20. Indemnification. BDI agrees to indemnify and hold the City harmless from any further obligation or liability under the Sublease I incurred after the date of this Sublease.

21. Default/Termination. If BDI shall default in any covenant or agreement set forth herein or in any covenant or agreement set forth in the Sublease I, and should such default not be remedied or corrected within thirty (30) days after written notice of such default from the City to BDI, the City may at its option:

(a) Terminate this Sublease and declare this Sublease null and void, in which event all of BDI's rights hereunder shall be terminated and all monies theretofore paid by BDI shall be retained by the City as stipulated rent for the Premises and the Other Buildings as liquidated damages, and the City shall have its right to immediately re-enter the Premises and Other Buildings and recover full and exclusive possession thereof. In the event of such default and failure to remedy default, BDI and its assigns agree to yield possession of the Premises and the Other Buildings, any improvements thereto (whether now existing or hereafter erected) to the City upon demand, at no cost or expense to the City.

(b) Declare the entire balance of principal and any accrued interest immediately due and payable and the City shall have the right and privilege to take legal action against BDI for the collection of such sum, including the entry of any judgment.

(c) Elect any other remedy available to the City under the laws of the State of Montana.

(d) Any waiver by the City of any default shall not be construed as a waiver of any subsequent default. While such default continues, BDI shall not remove from the Premises any building or other property owned by BDI unless directed to do so by the City.

22. Notices. Any notice required under this Sublease shall be sent by certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

The City: City of Billings
City Hall
Billings, MT 59101

BDI: President
Billings Depot, Inc.
2310 Montana Avenue
Billings, MT 59101

The address of any party may be changed by written notice given by such party as above provided.

23. Third Party Beneficiaries. Except as otherwise expressly provided herein, (a) nothing in this Sublease is intended to confer on and shall not be construed as creating in any person or party, other than the parties hereto or their respective successors or assigns, any rights or obligations under or by reason of this Sublease and (b) there are no third party beneficiaries to this Sublease.

24. Severability. The invalidity, illegality, or unenforceability of any one or more of the provisions of this Sublease shall not affect or impair the validity, legality or enforceability of the remaining provisions. To the extent permitted by applicable law, each party waives any provision of law that renders any provision of this Sublease invalid, illegal or unenforceable in any respect. In the event any provision of this Sublease shall be held to be invalid, illegal or unenforceable the parties hereto shall use reasonable efforts to substitute a valid, legal and enforceable provision that, insofar as is practical, implements the purposes hereof.

25. Attorneys' Fees and Costs. The successful party in any litigation arising out of a dispute between the parties with regard to this Sublease shall be entitled to recover reasonable attorneys' fees and costs of litigation.

26. Binding Effect. This Sublease shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors and assigns.

27. Governing Law. The parties agree that this Agreement is governed in all respects by the laws of the State of Montana and the parties expressly agree that venue will be in the Thirteenth Judicial District Court, Yellowstone County, Montana, and no other venue.

28. Laws and Regulations. BDI shall comply fully with all applicable state and federal laws, regulations, and municipal ordinances including, but not limited to, all workers' compensation laws, all environmental laws including, but not limited to, the generation and disposal of hazardous waste, the Occupational Safety and Health Act (OSHA), all applicable City, County, and State building and electrical codes, the Americans with Disabilities Act and all non-discrimination, affirmative action, and utilization of minority and small business statutes and regulations.

29. Non-discrimination in Hiring. All hiring by BDI and contractors performing work for BDI will be on the basis of merit and qualification and will not discriminate on the basis of

race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.


30. Headings. The descriptive headings of the several sections and paragraphs of this Sublease are inserted for convenience only and do not constitute a part of this Sublease.

31. Counterparts. This Sublease may be executed in counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument. Counterparts of this Sublease may be exchanged electronically and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

IN WITNESS WHEREOF, each of the parties hereto has executed this Sublease as of the date set forth in the first Paragraph.

"THE CITY"

City of Billings, a Montana municipal corporation


By: Bruce McCandless
Its: City of Billings

"BDI"

Billings Depot, Inc. a Montana nonprofit corporation

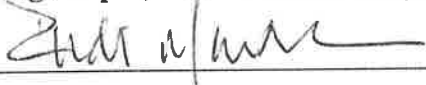

By:
Its: President

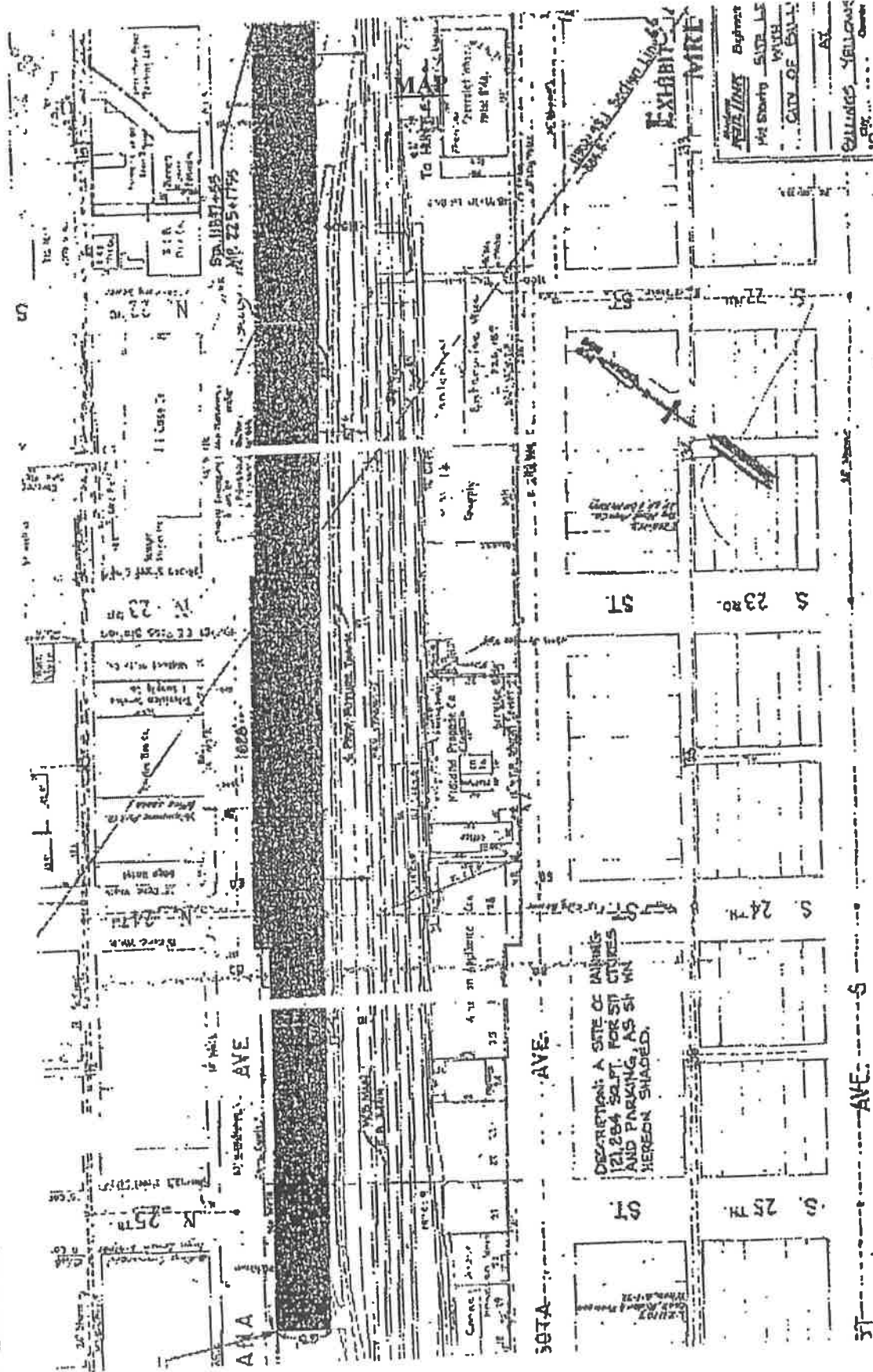
EXHIBIT A

The Premises, located in Yellowstone County, Montana, is described as follows:

The leasehold estate created by the Lease executed by Burlington Northern Railroad Company, as lessor, to Montana Rail Link, Inc., as lessee, recorded November 2, 1987 in Book 1314, page 1121, under Document No. 1462028, described subject property, to-wit:

Commencing at the northeast corner of said Section 3; thence west along the north line of said Section 3 a distance of 884.5 feet to a point of intersection with the centerline of Lessor's main track or its Yellowstone 2nd Subdivision at Engineers Station 11902+95.1; thence southwesterly along said centerline a distance of 196.9 feet to Engineers Station 11904+92; thence northwesterly at right angles to said centerline to a point 100 feet southeasterly from the southeasterly boundary of Montana Avenue and the Point of Beginning; thence continuing northwesterly at right angles to said centerline to the southeasterly boundary of Montana Avenue; thence southwesterly along said boundary to its intersection with a southeasterly extension of the southwesterly boundary of North 24th Street; thence southeasterly along said extension a distance of 20 feet; thence continuing southwesterly along the southeasterly boundary of Montana a distance of 480 feet; thence southeasterly at right angles to the southeasterly boundary of Montana Avenue a distance of 80 feet; thence northeasterly parallel with the southeasterly boundary of Montana Avenue to the Point of Beginning.

A map of the Premises is attached hereto.



ENGINEER
 W. J. ...
 111 ...
 CITY OF ...
 ...
 ...

30th AVE

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the "Sublease") is entered into and made as of August 15, 2008, by and between the **City of Billings**, a municipal corporation with a mailing address of 210 N. 27th St., Billings, MT 59101 (the "City") and **Billings Depot, Inc.**, a Montana nonprofit corporation with a mailing address of 2310 Montana Avenue, Billings, MT 59101 ("BDI").

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B. Pursuant to the terms of that certain Sublease dated July 10, 1995 (the "Sublease I"), the City of Billings ("City") sublet from BNSF, MRL, and Inland Properties, Inc. ("Inland"), the Premises, which included the "BN Building" (which has also been described in various other documents as the BN Office Building, the Depot Services Building, and the multi-story office building which is the most easterly of the existing structures on the premises); and

C. At some point in the past, Inland acquired from BNSF all right, title, and interest to the following buildings which are located upon but legally severed from the Premises: (i) the Passenger Station; (ii) the Lunch Room; and (iii) the Railway Post Office Building (the "Other Buildings"). Inland did not acquire any interest in the BN Building; and

D. Pursuant to the terms of that certain Bill of Sale dated July 10, 1995, the City acquired from Inland all of Inland's right, title, and interest to the Other Buildings. The Bill of Sale did not include the BN Building; and

E. Pursuant to that certain Maintenance Agreement, dated July 10, 1995, BDI acquired from the City a leasehold interest in the Premises, the BN Building, and the Other Buildings. Under the Maintenance Agreement BDI agreed (i) to perform and discharge all of the City's covenants, duties, and obligations that the City has as lessee under the Sublease I; and (ii) to preserve and maintain the Premises, the BN Building, and the Other Buildings as an historic facility; and

F. The rights and interests of MRL, the City, and BDI in and to the Premises, the BN Building, and the Other Buildings are set forth and clarified in that certain Clarification Agreement dated August 15, 2008; and

G. The City desires to sublease to BDI whatever interest, if any, the City has in the Premises and the Other Buildings, all subject to the terms and conditions of this Sublease and, where applicable, the Sublease I. The City also desires to forfeit and assign to BDI any interest it may have in and to the BN Building; and

H. BDI wishes to sublease from the City whatever interest, if any, the City has in the Premises and the Other Buildings, all subject to the terms and conditions of this Sublease and, where applicable, the Sublease I.

AGREEMENT

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(a) BDI shall maintain liability insurance covering the Premises and the Other Buildings and any appurtenances, sidewalks, and parking lots of ONE MILLION

FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) combined single limits of liability for each occurrence for bodily injury or property damage regardless of the number of persons or organizations who sustain bodily injury or property damage or the number of claims made, or suits brought, on account of bodily injury or property damage. Such insurance shall specifically insure BDI against all liability assumed by it under this Sublease, and shall insure both the City and BDI against all liability imposed by law against them. In addition, the policy or policies shall contain a provision that no cancellation thereof shall be effective by the insurer without thirty (30) days written notice to the City.

(b) Unless the above insurance coverage is provided under policies maintained by or in the name of the City, at least twenty (20) days prior to the date of expiration of any insurance policy, BDI shall deliver to the City the certificate of renewal of such policy, which certificate indicates the payment of the premiums. All insurance policies carried by any party covering the Premises or the Other Buildings shall expressly waive any right, including subrogation, on the part of any party against the others. All policies shall require the insurance companies to notify the City in writing prior to any cancellation of the insurance policy.

16. Hold Harmless/Indemnification. The City, its administrators, council members, officers, agents, and employees shall not be liable for any liabilities, claims for damages, or suits for or by any reason of any death or injury to any person or damage to property of any kind, whether to the person or property of BDI, its agents, or employees or to the person or property of any third person, from any cause whatsoever while on the Premises or in the Other Buildings during the term of this Sublease. BDI covenants and agrees to indemnify and to save harmless the City, its administrators, council members, officers, agents, and employees from all liabilities, charges, expenses (including attorney fees), and costs on account of such death, injury, damage, liability, claim, suit, or loss, however occurring. However, this hold harmless covenant shall not apply to any loss, injury, death, or damage arising by reason of the negligence or misconduct of the City, its administrators, council members, officers, agents, and employees.

17. Effect of Eminent Domain. In the event that the Premises or any part thereof, shall be appropriated or taken under the power of eminent domain or conveyed under the threat of eminent domain by any public or quasi-public authority so that the Premises or any of the Other Buildings can no longer be operated as an historic facility in the manner operated at the time of such appropriation or taking, this Sublease shall terminate and BDI shall have the following rights:

(a) To consult with the City to have the condemnation award applied under **Paragraph 14** above; and

(b) To recover such compensation from the condemning authority for any loss or damage caused by such condemnation.

18. Non-Assignment. BDI shall not have the right to assign or transfer this Sublease to any third party without the prior written consent of the City.

19. Mortgages. The City shall have no right to place mortgages or have liens placed on the Premises or the Other Buildings without the prior written consent of BDI. BDI shall have no right to place mortgages or have liens placed on the Premises or on the Other Buildings without the prior written consent of the City, which consent shall not be unreasonably withheld, except for the US Bank National Association Leasehold Mortgage made contemporaneously with this Sublease. BDI shall have the right, subject to the terms of the Sublease I, to place mortgages or other liens on the Premises without the consent of the City.

20. Indemnification. BDI agrees to indemnify and hold the City harmless from any further obligation or liability under the Sublease I incurred after the date of this Sublease.

21. Default/Termination. If BDI shall default in any covenant or agreement set forth herein or in any covenant or agreement set forth in the Sublease I, and should such default not be remedied or corrected within thirty (30) days after written notice of such default from the City to BDI, the City may at its option:

(a) Terminate this Sublease and declare this Sublease null and void, in which event all of BDI's rights hereunder shall be terminated and all monies theretofore paid by BDI shall be retained by the City as stipulated rent for the Premises and the Other Buildings as liquidated damages, and the City shall have its right to immediately re-enter the Premises and Other Buildings and recover full and exclusive possession thereof. In the event of such default and failure to remedy default, BDI and its assigns agree to yield possession of the Premises and the Other Buildings, any improvements thereto (whether now existing or hereafter erected) to the City upon demand, at no cost or expense to the City.

(b) Declare the entire balance of principal and any accrued interest immediately due and payable and the City shall have the right and privilege to take legal action against BDI for the collection of such sum, including the entry of any judgment.

(c) Elect any other remedy available to the City under the laws of the State of Montana.

(d) Any waiver by the City of any default shall not be construed as a waiver of any subsequent default. While such default continues, BDI shall not remove from the Premises any building or other property owned by BDI unless directed to do so by the City.

22. Notices. Any notice required under this Sublease shall be sent by certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

The City: City of Billings
City Hall
Billings, MT 59101

BDI: President
Billings Depot, Inc.

2310 Montana Avenue
Billings, MT 59101

The address of any party may be changed by written notice given by such party as above provided.

23. Third Party Beneficiaries. Except as otherwise expressly provided herein, (a) nothing in this Sublease is intended to confer on and shall not be construed as creating in any person or party, other than the parties hereto or their respective successors or assigns, any rights or obligations under or by reason of this Sublease and (b) there are no third party beneficiaries to this Sublease.

24. Severability. The invalidity, illegality, or unenforceability of any one or more of the provisions of this Sublease shall not affect or impair the validity, legality or enforceability of the remaining provisions. To the extent permitted by applicable law, each party waives any provision of law that renders any provision of this Sublease invalid, illegal or unenforceable in any respect. In the event any provision of this Sublease shall be held to be invalid, illegal or unenforceable the parties hereto shall use reasonable efforts to substitute a valid, legal and enforceable provision that, insofar as is practical, implements the purposes hereof.

25. Attorneys' Fees and Costs. The successful party in any litigation arising out of a dispute between the parties with regard to this Sublease shall be entitled to recover reasonable attorneys' fees and costs of litigation.

26. Binding Effect. This Sublease shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors and assigns.

27. Governing Law. The parties agree that this Agreement is governed in all respects by the laws of the State of Montana and the parties expressly agree that venue will be in the Thirteenth Judicial District Court, Yellowstone County, Montana, and no other venue.

28. Laws and Regulations. BDI shall comply fully with all applicable state and federal laws, regulations, and municipal ordinances including, but not limited to, all workers' compensation laws, all environmental laws including, but not limited to, the generation and disposal of hazardous waste, the Occupational Safety and Health Act (OSHA), all applicable City, County, and State building and electrical codes, the Americans with Disabilities Act, and all non-discrimination, affirmative action, and utilization of minority and small business statutes and regulations.

29. Non-discrimination in Hiring. All hiring by BDI and contractors performing work for BDI will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

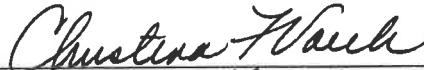
30. Headings. The descriptive headings of the several sections and paragraphs of this Sublease are inserted for convenience only and do not constitute a part of this Sublease.

31. Counterparts. This Sublease may be executed in counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument. Counterparts of this Sublease may be exchanged electronically and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

IN WITNESS WHEREOF, each of the parties hereto has executed this Sublease as of the date set forth in the first Paragraph.

"THE CITY"

City of Billings, a Montana municipal corporation



By: CHRISTINA F. VOLEK

Its: CITY ADMINISTRATOR

"BDI"

Billings Depot, Inc., a Montana nonprofit corporation

By:

Its:



President

EXHIBIT A

The Premises, located in Yellowstone County, Montana, is described as follows:

The leasehold estate created by the Lease executed by Burlington Northern Railroad Company, as lessor, to Montana Rail Link, Inc., as lessee, recorded November 2, 1987 in Book 1314, page 1121, under Document No. 1462028, described subject property, to-wit:

Commencing at the northeast corner of said Section 3; thence west along the north line of said Section 3 a distance of 884.5 feet to a point of intersection with the centerline of Lessor's main track or its Yellowstone 2nd Subdivision at Engineers Station 11902+95.1; thence southwesterly along said centerline a distance of 196.9 feet to Engineers Station 11904+92; thence northwesterly at right angles to said centerline to a point 100 feet southeasterly from the southeasterly boundary of Montana Avenue and the Point of Beginning; thence continuing northwesterly at right angles to said centerline to the southeasterly boundary of Montana Avenue; thence southwesterly along said boundary to its intersection with a southeasterly extension of the southwesterly boundary of North 24th Street; thence southeasterly along said extension a distance of 20 feet; thence continuing southwesterly along the southeasterly boundary of Montana a distance of 480 feet; thence southeasterly at right angles to the southeasterly boundary of Montana Avenue a distance of 80 feet; thence northeasterly parallel with the southeasterly boundary of Montana Avenue to the Point of Beginning.

A map of the Premises is attached hereto.

CONSENT TO SUBLEASE AGREEMENT FOR LEASE NO. 500,500
01BILLINGS

THIS CONSENT TO SUBLEASE AGREEMENT ("**Agreement**") is dated as of the 21st day of August, 2008 (the "**Effective Date**") between **MONTANA RAIL LINK, INC.**, a Montana corporation ("**Lessor**"), whose mailing address is Property Management Division, PO Box 16630, Missoula, MT 59808-6630 and physical address is 101 International Way, Missoula, MT 59808 and

whose address is CITY OF BILLINGS, ("**Lessee**")
 OFFICE OF CITY ADMINISTRATOR
 PO BOX 1178
 59103

whose address is BILLINGS DEPOT, INC., ("**Sublessee**")
 2310 MONTANA AVE.
 BILLINGS, MT 59101

RECITALS

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

B. Lessor and Lessee entered into a Indefinite Term Lease Agreement for Land ("**Lease**") on July 10, 1995.

C. By the terms and provisions of the Lease, Lessor leases to Lessee and Lessee leases from Lessor that certain Premises situated in the City of Billings, County of Yellowstone, State of Montana, Mile Post 225+1755, Survey Station 11897+55 as more particularly described in the Lease ("**Premises**").

D. Sublessee desires to sublease the Premises and therefore, Lessee and Sublessee desire Lessor's and BNSF's consent for Lessee to sublease the Premises to Sublessee.

NOW, THEREFORE, in consideration of the mutual covenants, premises, and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENTS

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

1. Sublessee assumes and agrees to perform all of the covenants, duties, and obligations of Lessee under the Lease.

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

arising or resulting from a breach of or default under the Lease by Lessor prior to the date that BNSF succeeds to the rights of Lessor as the "Lessor" under this Lease. If BNSF succeeds to the rights of Lessor as the "Lessor" under this Lease, Lessee agrees to recognize BNSF as the "Lessor" under the Lease and timely tender payment and performance of Lessee's duties and obligations under the Lease to BNSF as if BNSF were named as "Lessor" in the Lease.

3. Lessee and Sublessee shall jointly and severally perform and be bound by all of the terms, conditions, and provisions of the Lease during the term of the sublease from Lessee to Sublessee. Lessee and Sublessee shall be jointly and severally liable for all obligations of Lessee under the Lease.

4. Lessee shall cause the Sublessee to grant Lessor an express first and prior contract lien and security interest in Sublessee's personal Premises.

5. Sublessee shall use and occupy the Premises for the exclusive purpose of:

i. Historic Facility. Sublessee shall preserve, manage, and operate the Premises as an historic facility, as that term is defined in 23 USC § 101(a), as it may be amended from time to time, for the benefit of the public.

ii. Activities. Sublessee may rent or lease the Premises or the buildings thereon or any portion of the Premises or buildings thereon to commercial tenants for amounts that it determines to be reasonable. Sublessee shall have sole authority to determine the kind, duration, and number of revenue generating activities at the Premises.

iii. Limitations. All activities at the Premises must be (a) compatible with preserving the Premises as an historic facility for the benefit of the public and (b) in compliance with all applicable federal, state, and local statutes, regulations, laws, ordinances, and laws.

6. Lessee will remain directly and primarily liable for the performance of all of the covenants, duties, and obligations of Lessee under the Lease (including, without limitation, the obligations to pay all rent and other amounts due), and Lessor may enforce the Lease against the Lessee without prior demand upon Sublessee.

7. Subject to and in consideration of the terms and conditions hereof and of the Master Lease, Lessor and BNSF agree that the sublease of the Premises is not a default under the Lease and consents to the execution of the sublease; provided, however, that this consent shall not be construed as consent to any further or different sublease of the Premises.

8. Lessor may, in Lessor's sole and absolute discretion, terminate the sublease by delivering written notice to Lessee of Lessor's desire for the sublease to be terminated. Upon receipt of such notice, Lessee shall have ten (10) days to deliver written notice of termination to Sublessee. The sublease shall terminate, and Sublessee shall peaceably and quietly surrender the Premises, thirty (30) days after Sublessee's receipt of a notice of termination from Lessee pursuant to this paragraph. Lessor shall have no liability to Lessee or Sublessee as a result of exercising its rights under this paragraph.

9. Lessee agrees that Lessor is not currently in default under the Lease, nor does any condition exist which, with the passage of time alone, could constitute a default under the Lease. **Lessee and Sublessee agree to fully and forever release and discharge Lessor and BNSF from any claim whatsoever relating to any period covered by the Lease prior to the date hereof.**

10. Lessee shall pay to Lessor, upon Lessee's execution of this Agreement, One Hundred Fifty Dollars (\$150.00) as a processing fee for this Agreement. Any consent to sublease shall be conditioned on Lessor's receipt of such processing fee.

11. Unless otherwise provided herein, all capitalized and/or defined terms herein shall have the same meaning given to such capitalized and/or defined terms in the Lease.

12. Except as or may be amended hereby, all of the terms and provisions of the Lease are hereby reaffirmed and remain in full force and effect. In the event there is a conflict between the terms and provisions of the Lease and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control.

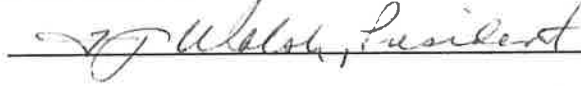
13. This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents,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

Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

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

LESSOR

Montana Rail Link, Inc., a Montana corporation

By: 

Tom Walsh, President Montana Rail Link, Inc

LESSEE

City of Billings

By: 

Printed Name: CHRISTINA F. VOLEK

Title: CITY ADMINISTRATOR

SUBLESSEE

Billings Depot, Inc.

By: 

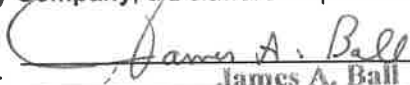
Printed Name: Jim Goodridge

Title: President

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

BNSF

BNSF Railway Company, a Delaware corporation

By: 
Name: James A. Ball
Title: Senior Manager - Land Revenue Management

BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131-2828
Attn: Real Estate

SCANNED



CONTRACT ROUTING FORM

(please attach three originals of agreement, signed by contractor, and any supporting documents)

PARTIES TO THE CONTRACT: City of Billings & Billings Depot Inc.

PURPOSE OF CONTRACT: Amended Sublease Agreement

1) Signature of person requesting contract signatures:
Comments:

Name: Brent Brooks

Dept: Legal

Phone #: 657-8202

Signature: [Handwritten Signature]

Date: 11.16.2018

2) Signature of Purchasing Agent:
Comments:

Name: Liz Kampa-Weatherwax

Signature: [Handwritten Signature]

Date: [Handwritten Date]

3) Signature of Legal Department:
Comments:

OK

Name: BRENT BROOKS

Signature: [Handwritten Signature]

Date: 11-19-18

4) Signature of City Administrator (\$50,000 or less) or Mayor (\$50,000+ or if approved by Council):
Comments:

Name: Bruce McCandless

Signature: [Handwritten Signature]

Date: 11.16.2018

4) Signature of City Clerk:
(that they received one Original final copy of contract)
(2nd original returned to requestor)

Name: Denise R. Bohman

Signature: [Handwritten Signature]

Date: 11-23-2018