

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO THE REFINANCING OF A LEASE-PURCHASE OBLIGATION; APPROVING THE TERMS AND CONDITIONS OF THE REFINANCING AND AUTHORIZING THE EXECUTION OF DOCUMENTATION RELATING THERETO" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on September 10, 2012, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council members voted in favor thereof: \_\_\_\_\_  
\_\_\_\_\_; voted against the same: \_\_\_\_\_  
\_\_\_\_\_; abstained from voting  
thereon: \_\_\_\_\_; or were absent: \_\_\_\_\_.

WITNESS my hand and seal officially this 10th day of September, 2012.

(SEAL)

\_\_\_\_\_  
City Clerk

RESOLUTION NO. \_\_\_\_\_

RESOLUTION RELATING TO THE REFINANCING OF A  
LEASE-PURCHASE OBLIGATION; APPROVING THE TERMS  
AND CONDITIONS OF THE REFINANCING AND  
AUTHORIZING THE EXECUTION OF DOCUMENTATION  
RELATING THERETO

BE IT RESOLVED by the City Council (the “Council”) of the City of Billings, Montana (the “City”), as follows:

Section 1. Recitals and Authorization.

1.01 The City is authorized by Montana Code Annotated, Title 7, Chapter 14, Part 45 (the “Municipal Parking Act”) to acquire by lease, gift, purchase, or condemnation, lots or lands for use as parking areas for motor vehicles and to construct and maintain thereon suitable parking facilities for the use of the public.

1.02 The City is further authorized under the Municipal Parking Act to pledge the revenues derived from the parking facilities to the repayment of obligations issued to finance the parking facilities.

1.03 The City is a party to that certain Lease Purchase Agreement (the “Park 2 Lease Purchase Agreement”), dated August 31, 2006, between the City and Capital One, N.A., as successor to Koch Financial Corporation (the “Lesser”). The Park 2 Lease Purchase Agreement was entered into in order to finance the expansion of the City’s Park 2 parking garage (the “Project”), located in the District at the intersection of 2nd Avenue North and North 26th Street (“Park 2”). Amounts due under the Park 2 Lease Purchase Agreement are secured by and payable solely from parking revenues of the City. The original aggregate principal amount payable under the Park 2 Lease Purchase Agreement was \$5,930,000, of which \$4,979,186 remains outstanding. The Park 2 Lease Purchase Agreement provides for an annual rate of interest of 5.48%. Terms used herein but not otherwise defined shall have the meanings given such terms in the Park 2 Lease Purchase Agreement.

1.04 The City received \$2.62 million from the sale of Park 4, which will be applied to the repayment of the Park 2 Lease Purchase Agreement. The Lessor has proposed that the City refinance the remaining balance due under the Park 2 Lease Purchase Agreement over a term of twenty (20) years at an annual rate of interest of 4.45%. Upon such refinancing, the annual amount payable under the Park 2 Lease Purchase Agreement will be \$201,960.53, as set forth in the amortization schedule attached hereto as Exhibit A. Amounts due under the Park 2 Lease Purchase Agreement, as amended, shall continue to be secured by and payable solely from parking revenues of the City.

1.05 There are no bonds or other obligations outstanding that are payable in whole or in part from or secured by parking revenues, other than Property Schedule No. 2 to the Master Tax-Exempt Installment Purchase Agreement between the City and U.S. Bank National Association, dated as of October 28, 2011 (the “Installment Purchase Agreement”), entered into in order to finance the cost of construction and installation of certain energy improvement in the

City's parking garages. Such Installment Purchase Agreement is a non-appropriation lease. The City has determined that there will be adequate parking revenues generated by the City's Parking Operations to provide parking revenues in an amount sufficient to make the new annual lease payments under the Park 2 Lease Purchase Agreement, as amended, and thereafter make annual installment payments under the Installment Purchase Agreement.

1.06 All acts, conditions and things required by the Constitution and laws of the State of Montana, including the Act, and the home rule charter of the City, in order to make the Park 2 Lease Purchase Agreement, as amended, a valid and binding special obligation in accordance with its terms and in accordance with the terms of this Resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

Section 2. Findings and Approval of Documentation.

2.01 This Council has determined that it is necessary and desirable and in the best interests of the City to refinance \$2,640,383.72 outstanding under the Park 2 Lease Purchase Agreement over a term of twenty (20) years at an annual rate of interest of 4.45% as set forth in the Amortization Schedule. The City's payment obligations under the Park 2 Lease Purchase Agreement shall be payable in equal annual installments, due each September 1, commencing September 1, 2013 and ending on September 1, 2032.

2.02. There has been prepared and presented to this Council a copy of Amendment No. 1 to Lease Purchase Agreement ("Amendment No. 1 to Lease Purchase Agreement"), by and between the City and the Lessor, a copy of which upon execution thereof shall be placed on file in the office of the City Clerk. Amendment No. 1 to Lease Purchase Agreement sets forth the terms of the refinancing of the remaining amounts due under the Park 2 Lease Purchase Agreement. Amendment No. 1 to Lease Purchase Agreement is approved, with such variations, insertions and additions as are deemed appropriate by the parties and approved by the City Attorney. Each of the Mayor, the City Administrator and the City Finance Director is hereby authorized and directed to approve, execute and deliver to the Lessor Amendment No. 1 to Lease Purchase Agreement. Each of the Mayor, the City Administrator and the City Finance Director is also authorized to enter into and deliver such other documents and certificates as may be necessary or desirable in connection therewith, in the opinion of Dorsey & Whitney LLP, as special counsel to the City, or as may be reasonably required by the Lessor.

Section 3. LIMITED OBLIGATIONS. THE RENTAL PAYMENTS UNDER THE PARK 2 LEASE PURCHASE AGREEMENT, AS AMENDED, SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE CITY, THE STATE OF MONTANA OR ANY AGENCY, DEPARTMENT OR POLITICAL SUBDIVISION THEREOF AS CONTEMPLATED WITHIN ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION PROVISION; THE LESSEE'S OBLIGATION TO MAKE RENT PAYMENTS IS A SPECIAL OBLIGATION OF THE LESSEE, PAYABLE SOLELY FROM THE NET PARKING REVENUES OF THE CITY'S PARKING OPERATIONS.

Section 4. Tax Matters.

4.01. General Covenant. The City covenants and agrees that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the portion of the Rental Payments designated as interest to become includable in gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the “Code”), and applicable Treasury Regulations (the “Regulations”), and covenants to take any and all actions within its powers to ensure that the portion of the Rental Payments designated as interest will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

4.02. The Project. The Project is and will be owned and operated by the City for the benefit of the general public. No user of the Project is granted any concession, license or special arrangement with respect thereto. Except for the Park 2 Lease Purchase Agreement, as amended, the City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Project or security for the payment of amounts due thereunder that might cause the Park 2 Lease Purchase Agreement, as amended, or any payments to be made in connection therewith to be considered an “arbitrage bond” or “private loan bond” within the meaning of Sections 148 and 141 of the Code.

4.03. Arbitrage Certification. The Mayor, the City Finance Director and the City Clerk, being the officers of the City charged with the responsibility for executing Amendment No. 1 to Lease Purchase Agreement, are authorized and directed to execute and deliver to the Lessor a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of execution and delivery of Amendment No. 1 to Lease Purchase Agreement, it is reasonably expected that the proceeds of the Park 2 Lease Purchase Agreement, as amended, will be used in a manner that would not cause the Park 2 Lease Purchase Agreement, as amended, to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations.

4.05. Arbitrage Rebate. The City acknowledges that the Park 2 Lease Purchase Agreement, as amended, is subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Regulations to preserve the exclusion of interest on the Park 2 Lease Purchase Agreement, as amended, from gross income for federal income tax purposes, unless the Park 2 Lease Purchase Agreement, as amended, qualifies for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Park 2 Lease Purchase Agreement, as amended, arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Mayor, the City Finance Director and the City Clerk are hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be prepared by bond counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

4.06. Information Reporting. The City shall file with the Secretary of the Treasury, not later than November 15, 2012, a statement concerning the Park 2 Lease Purchase Agreement, as amended, containing the information required by Section 149(e) of the Code.

Section 5. Effective Date. This Resolution shall become effective upon passage and all provisions of ordinances, resolutions and other actions and proceedings of the City which are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

PASSED AND APPROVED by the City Council of the City of Billings, Montana, this  
10th day of September, 2012.

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Mayor

Attest: \_\_\_\_\_  
City Clerk

(SEAL)

**EXHIBIT A**

**AMORTIZATION SCHEDULE**

Pmt #	Payment Date	Payment Amount	Interest	Principal	Purchase Option Price	Outstanding Balance
Closing	9/12/2012					\$2,640,383.72
1	9/1/2013	\$201,960.53	\$115,538.79	\$86,421.74	N/A	\$2,553,961.98
2	9/1/2014	201,960.53	113,651.31	88,309.22	N/A	2,465,652.76
3	9/1/2015	201,960.53	109,721.55	92,238.98	N/A	2,373,413.78
4	9/1/2016	201,960.53	105,616.91	96,343.62	N/A	2,277,070.16
5	9/1/2017	201,960.53	101,329.62	100,630.91	N/A	2,176,439.25
6	9/1/2018	201,960.53	96,851.55	105,108.98	N/A	2,071,330.27
7	9/1/2019	201,960.53	92,174.20	109,786.33	N/A	1,961,543.94
8	9/1/2020	201,960.53	87,288.71	114,671.82	N/A	1,846,872.12
9	9/1/2021	201,960.53	82,185.81	119,774.72	N/A	1,727,097.40
10	9/1/2022	201,960.53	76,855.83	125,104.70	N/A	1,601,992.70
11	9/1/2023	201,960.53	71,288.68	130,671.85	\$1,500,747.27	1,471,320.85
12	9/1/2024	201,960.53	65,473.78	136,486.75	1,361,530.78	1,334,834.10
13	9/1/2025	201,960.53	59,400.12	142,560.41	1,204,196.43	1,192,273.69
14	9/1/2026	201,960.53	53,056.18	148,904.35	1,053,803.03	1,043,369.34
15	9/1/2027	201,960.53	46,429.94	155,530.59	896,717.14	887,838.75
16	9/1/2028	201,960.53	39,508.82	162,451.71	732,640.91	725,387.04
17	9/1/2029	201,960.53	32,279.72	169,680.81	561,263.29	555,706.23
18	9/1/2030	201,960.53	24,728.93	177,231.60	382,259.38	378,474.63
19	9/1/2031	201,960.53	16,842.12	185,118.41	195,289.78	193,356.22
20	9/1/2032	<u>201,960.53</u>	<u>8,604.31</u>	<u>193,356.22</u>	0.00	0.00
	Totals	<u>\$4,039,210.60</u>	<u>\$1,398,826.88</u>	<u>\$2,640,383.72</u>	<b>Rate 4.45%</b>	