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City of Billings, Montana
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201 North 27th Street
Billings, Montana 59101

FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this “First Amendment”) shall be dated as of _____, 2015, and is made by and among **SOUTH BILLINGS CENTER, LLC**, a Delaware limited liability company whose address is c/o Retail Properties of America Inc., 2021 Spring Road Suite 200, Oak Brook, Illinois 60523 (the “Developer”), **CABELA’S WHOLESALE, INC.**, a Nebraska corporation whose address is One Cabela Drive, Sidney, Nebraska 69160, as successor by merger to Cabela’s Retail, Inc., a Nebraska corporation (“Cabela’s”), **RW BILLINGS, LLC**, a South Dakota limited liability partnership whose address is 1910 8th Avenue NE, Aberdeen, South Dakota 57401 (“RW Billings”), **SAM’S REAL ESTATE BUSINESS TRUST**, a Delaware trust company whose address is 702 SW 8th Street, Bentonville, Arkansas 72716 (“Sam’s Club” and, together with the Developer, Cabela’s and RW Billings, the “**Property Owners**”) and the **CITY OF BILLINGS, MONTANA**, a municipal corporation whose address is 210 North 27th Street Billings, Montana 59101 (the “City” and, together with the Property Owners, the “Parties”).

WITNESSETH:

WHEREAS, pursuant to that certain Amended and Restated Development Agreement dated as of August 11, 2008 originally by and among the Developer, Cabela’s and the City (the “Development Agreement”), the Developer and Cabela’s agreed to undertake the development of the Billings Town Square Shopping Center (the “Project”) and the City agreed to construct certain public improvements described in the Development Agreement (the “Public Improvements”); and

WHEREAS, the City created Special Improvement District No. 1385 (the “District”) and issued special improvement district bonds (the “Special Improvement District Bonds”) to finance the costs of the Public Improvements which are currently outstanding in the aggregate principal amount of \$5,520,000; and

WHEREAS, the City has pursuant to Ordinance No. 08-5462 (the “Ordinance”) created the South Billings Boulevard Urban Renewal District which contains a tax increment provision (the “Urban Renewal District”) and determined that the Project and the Public Improvements are urban renewal projects eligible for tax increment financing; and

WHEREAS, the Special Improvement District Bonds are payable from special assessments levied against the Property in the District (the “Assessments”) and pursuant to the Development Agreement the City agreed to use the tax increment revenue generated from the Project (the “Project Tax Increment”) to reimburse the Property Owners for the payment of the Assessments; and

WHEREAS, subsequent to the issuance of the Special Improvement District Bonds, the Developer sold lots within the Project area to RW Billings and Sam’s Club, whereupon RW Billings and Sam’s Club became assignees of certain of the Developer’s rights and obligations under the Development Agreement and became parties thereto; and

WHEREAS, pursuant to the Development Agreement, the Developer agreed to complete the Project substantially in accordance with the five year schedule of development provided by the Developer and set forth in the report of King and Associates dated as of July 11, 2008 (the “King Report”); and

WHEREAS, as of the date hereof, approximately 60% of the Project has been completed and the Project Tax Increment is approximately 60% of the amount projected to be generated by the King Report; and

WHEREAS, pursuant to the Development Agreement, the City stated its intention to refund the Special Improvement District Bonds from the proceeds of tax increment revenue bonds payable from the Project Tax Increment when and to the extent that the Project Tax Increment is adequate to successfully market a principal amount of bonds sufficient to redeem the Special Improvement District Bonds, fund a debt service reserve, to pay costs associated with the sale and issuance of the Bonds, without any additional credit support of the Developer, at which time the Assessments would be permanently and unconditionally removed from the Property in the District; and

WHEREAS, the Project Tax Increment is insufficient for purposes of reimbursing the Property Owners for the payment of all Assessments and/or undertaking the refunding of the Special Improvement District Bonds; and

WHEREAS, the Property Owners request that the City refund the Special Improvement District Bonds from the proceeds of tax increment revenue bonds payable from the District as a whole (and not just from the Project Tax Increment as set forth in the Development Agreement) in consideration for which the Property Owners shall forfeit reimbursement of the Assessments, including but not limited to any accumulated aggregate unreimbursed portion of the Assessments.

NOW THEREFORE, for good and valuable consideration the sufficiency and receipt of which is hereby acknowledged, the Parties hereto hereby agree, covenant and represent as follows:

Section 1. Refunding of the Special Improvement District Bonds. The City agrees to undertake the refunding of the Special Improvement District Bonds from the proceeds of tax increment revenue bonds payable from the District as a whole (and not just from the Project Tax Increment as set forth in the Development Agreement) as soon as practicable and in accordance with the terms and conditions set forth in Section 6 of the Development Agreement. Upon the refunding of the Special Improvement District Bonds, the Assessments shall be permanently and unconditionally removed from the Property in the District.

Section 2. Reimbursements. Notwithstanding anything in the Development Agreement to the contrary, on and after the refunding of the Special Improvement District Bonds as described in Section 1 hereof, the City shall no longer be required to reimburse the Property Owners for the payment of the Assessments, including but not limited to any accumulated aggregate unreimbursed portion of the Assessments.

Section 3. Governing Law. This First Amendment shall be governed by and construed in accordance with the applicable laws of the State of Montana.

Section 4. Construction. If any provision of this First Amendment is found invalid to any extent, the remainder of this First Amendment shall not be affected thereby, and any provision of this First Amendment shall be valid and enforceable to the fullest extent permitted by law.

Section 5. Successors and Assigns. The stipulations and agreements of this First Amendment shall be binding on the successors and assigns of the Parties.

Section 6. Defined Terms. Capitalized terms used herein but not otherwise defined shall have the respective meanings given such terms in the Development Agreement.

RW BILLINGS LLC

By: _____

Name: _____

Title: _____

STATE OF SOUTH DAKOTA)

County of _____ : ss
(_____)

On this _____ day of _____, 20__, before me, a Notary Public for the State of _____, personally appeared _____, known to me to be the _____ of RW Billings LLC, the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

Notary Public for the State of South Dakota
Printed name: _____
Residing at: _____
My commission expires: _____

