

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 Resolution No. _____, entitled: "RESOLUTION RELATING TO TAX INCREMENT URBAN RENEWAL REVENUE REFUNDING BONDS (SOUTH BILLINGS BOULEVARD URBAN RENEWAL DISTRICT), SERIES 2015; AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED SALE THEREOF" (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 April 13, 2015, 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notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.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 officially this 13th day of April, 2015.

(SEAL)

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO TAX INCREMENT URBAN
RENEWAL REVENUE REFUNDING BONDS (SOUTH BILLINGS
BOULEVARD URBAN RENEWAL DISTRICT), SERIES 2015;
AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED
SALE THEREOF

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

Section 1. Recitals; Prior City Actions.

1.01. On August 11, 2008, the City entered into an Amended and Restated Development Agreement (Miller Crossing Subdivision Off-Site Improvements) (the “Development Agreement”) with South Billings Center, LLC (the “Developer”) and Cabela’s Wholesale, Inc. (“Cabela’s”) pursuant to which the Developer and Cabela’s agreed to undertake the development of the Billings Town Square Shopping Center and the City agreed to construct street improvements on King Avenue East, South Billings Boulevard, Newman Lane, Calhoun Lane and Orchard Lane, as well as water, storm drain and sanitary sewer facilities and drain crossings (the “2008 Public Improvements”).

1.02. In order to finance the cost of the 2008 Public Improvements, the City, upon receipt of a signed petition from the owners of record of the properties in the Billings Town Square Shopping Center, created Special Improvement District No. 1385 (the “District No. 1385”) and, pursuant to Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, issued its Special Improvement District No. 1385 Bonds (the “Series 2008 Bonds”), dated, as originally issued, as of October 1, 2008, in the original aggregate principal amount of \$5,360,000 (the “Series 2008 Bonds”).

1.03. Subsequent to the issuance of the Series 2008 Bonds, the Developer sold additional properties within the Billings Town Square Shopping Center to RW Billings, LLC (“RW Billings”) and Sam’s Real Estate Business Trust (“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. As of the date hereof, the owners of record of the properties within the Billings Town Square Shopping Center are the Developer, Cabela’s, RW Billings and Sam’s Club (collectively, the “Property Owners”).

1.04. In order to achieve debt service savings, the City issued its Special Improvement District No. 1385 Refunding Bonds, Series 2013, dated, as originally issued, as of June 5, 2013, in the original aggregate principal amount of \$5,545,000 (the “Series 2013 Bonds”), the proceeds of which were used to advance refund the Series 2008 Bonds. The Series 2013 Bonds are outstanding in the aggregate principal amount of \$5,520,000.

1.05. Under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”), the City is authorized to create urban renewal areas, prepare and adopt an urban renewal plan therefor and amendments thereto, undertake urban renewal projects therein, provide for the segregation and collection of tax increment with respect to property taxes

collected in such areas, issue its bonds to pay the costs of such projects and to refund bonds previously issued under the Act and pledge to the repayment of the bonds the tax increment and other revenues derived from projects undertaken within the urban renewal area.

1.04. Pursuant to the Act and Ordinance No. 07-5441 adopted on December 10, 2007, the Council created the South Billings Boulevard Urban Renewal District (the “Urban Renewal District”), approved the South Billings Boulevard Urban Renewal Plan (the “Urban Renewal Plan”) containing a tax increment financing provision, approved the 2008 Public Improvements as an urban renewal project and declared its intention to use tax increment revenue to finance the 2008 Public Improvements, all as set forth in the Plan. The Billings Town Square Shopping Center is located in the Urban Renewal District.

1.05. Pursuant to the Development Agreement, the City agreed to use tax increment revenue generated from the Billings Town Square Shopping Center (the “Project Tax Increment”) to reimburse the Property Owners for assessments related to the Series 2008 Bonds and the Series 2013 Bonds and, to the extent that adequate Project Tax Increment is available, to refund the Series 2013 Bonds from the proceeds of tax increment revenue bonds payable from the Project Tax Increment, at which time the assessments related to the Series 2013 Bonds would be permanently and unconditionally removed from the properties. The Project Tax Increment is currently insufficient for purposes of reimbursing the Property Owners for assessments related to the Series 2008 Bonds and the Series 2013 Bonds and/or undertaking the refunding of the Series 2013 Bonds. The Developer has informed that City that it is unable to sell the remaining properties in the Billings Town Square Shopping Center as a result of the assessments related to the Series 2013 Bonds. As the date hereof, approximately 60% of the Billings Town Square Shopping Center has been completed and the Billings Town Square Shopping Center is generating approximately 60% of the projected Project Tax Increment. As a result, the City has reimbursed Property Owners an aggregate of \$1,340,607 out of a total of \$2,673,456 in assessments paid by the Property Owners related to the Series 2008 Bonds and the Series 2013 Bonds.

1.06. The Property Owners have requested that the City refund the Series 2013 Bonds from the proceeds of tax increment revenue bonds payable from the Urban Renewal 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 have agreed to forfeit reimbursements of assessments related to the Series 2008 Bonds and the Series 2013 Bonds, including but not limited to any accumulated aggregate unreimbursed portion of the assessments. The Series 2013 Bonds with stated maturities on or after July 1, 2016 (the “Refunded Bonds”) are subject to redemption on July 1, 2015. The Refunded Bonds are outstanding in the aggregate principal amount of \$4,840,000. The request and agreement of the Property Owners is set forth in the First Amendment to Amended and Restated Development Agreement attached hereto as Exhibit A (the “Amendment to Development Agreement”).

Section 2. Authorizations. Pursuant to the authorizations and findings recited in Section 1 hereof, it is hereby determined that it is in the best interests of the City to offer for sale its Tax Increment Urban Renewal Revenue Refunding Bonds (South Billings Boulevard Urban Renewal District), Series 2015 (the “Series 2015 Bonds”), in the maximum aggregate principal amount of \$6,000,000, for the purpose of refunding the Refunded Bonds, funding a deposit to a debt service

reserve account for the Series 2015 Bonds, and paying costs of issuance and refunding, as determined by the officers of the City identified pursuant to, and subject to the limitations set forth in, Section 4 hereof. The refunding of the Refunded Bonds will not result in debt service savings to the City, however, the refunding will help the City to achieve the purposes of the Urban Renewal District, as set forth in the Urban Renewal Plan, by encouraging further economic development in the Urban Renewal District, including at the Billings Town Square Shopping Center.

Section 3. Adequacy of Tax Increment. The City estimates that tax increment from the Urban Renewal District will be at least \$1,904,826 per year (based on tax increment from the Urban Renewal District of \$1,904,826 received by the City in 2014). The maximum annual payment of principal and interest on the Series 2015 Bonds, assuming an average interest rate of 5.00% per annum and a term of 25 years, is \$426,000. There are no other bonds or other obligations of the City payable from tax increment received in the Urban Renewal District.

Section 4. Negotiated Sale and Terms.

4.01. This Council hereby determines that it would be in the best interests of the City to sell the Series 2015 Bonds through a private negotiated sale to D.A. Davidson & Co., Great Falls, Montana (the “Purchaser”).

4.02. The Series 2015 Bonds shall be sold to the Purchaser on terms and at a purchase price within the following limitations and conditions: (1) the maximum aggregate principal amount of the Series 2015 Bonds, exclusive of original issue discount or premium, shall not exceed \$6,000,000; (2) the maximum true interest cost on the Series 2015 Bonds shall not exceed 5.00%; (3) the purchase price of the Series 2015 Bonds shall not be less than 98.8% of the principal amount thereof, exclusive of original issue premium or discount; (4) the final stated maturity of the Series 2015 Bonds shall not be later than 25 years from their date of issue; and (5) all of the Property Owners shall have executed and delivered to the City the Amendment to Development Agreement substantially in the form attached hereto as Exhibit A. All costs of issuing the Series 2015 Bonds (including, without limitation, the fees and expenses of bond counsel, the fees of the paying agent and registrar, the preliminary and final Official Statement costs, and the costs of printing the Series 2015 Bonds) shall be paid by the City.

4.03. The City Administrator and the City Finance Director, in consultation with Springsted Incorporated, the City’s Municipal Advisor, are hereby authorized and directed to approve the principal amount, maturity dates, interest rates and redemption provisions of the Bonds and compensation to the Purchaser, subject to the limitations contained in this Section 3. Upon approving such terms, the City Administrator and the City Finance Director are hereby authorized and directed to approve, execute and deliver to the Purchaser a bond purchase agreement (the “Bond Purchase Agreement”), containing the agreement of the City to sell, and the agreement of the Purchaser to purchase, the Series 2015 Bonds on the terms so approved, and containing such other provisions as such officers shall deem necessary and appropriate. In the event of the absence or disability of the City Administrator and City Finance Director, the Mayor or Deputy City Administrator shall make such approvals and execute and deliver the Bond Purchase Agreement. The execution and delivery by appropriate officers of the City of the Bond Purchase Agreement shall be conclusive as to the approval of such officers of the terms of the

Series 2015 Bonds and the agreement of the City to sell the Bonds on such terms in accordance with the provisions thereof.

4.04. The City Administrator and the City Finance Director are hereby authorized and directed to approve, execute and deliver the Amendment to Development Agreement substantially in the form attached hereto as Exhibit A. In the event of the absence or disability of the City Administrator and City Finance Director, the Mayor or Deputy City Administrator shall make such approvals and execute and deliver the Amendment to Development Agreement. The execution and delivery by appropriate officers of the City of the Amendment to Development Agreement shall be conclusive as to the approval of such officers of the terms thereof.

Section 5. Official Statement. The City Finance Director, in consultation with Springsted Incorporated, the Purchaser and Dorsey & Whitney LLP, the City's bond counsel, are authorized to prepare on behalf of the City an Official Statement, to be distributed by the Purchaser to prospective purchasers of the Series 2015 Bonds. The Official Statement shall contain such information as shall be advisable and necessary to describe accurately the City and the security for, and the terms and conditions of, the Series 2015 Bonds. The City Administrator and City Finance Director are authorized on behalf of the Council to deem the Preliminary Official Statement near "final" as of its date, in accordance with Rule 15c2-12(b)(1) under the Securities Exchange Act of 1934.

Section 6. Continuing Disclosure. To permit the Purchaser and other participating underwriters in the primary offering of the Series 2015 Bonds to comply with paragraph (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, the City will covenant and agree, for the benefit of the registered holders and beneficial owners from time to time of the outstanding Series 2015 Bonds, to provide annual reports of specified information and notice of the occurrence of certain events.

PASSED AND APPROVED by the City Council of the City of Billings, Montana, this 13th day of April, 2015.

Mayor

Attest: _____
City Clerk

EXHIBIT A

**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.

IN WITNESS WHEREOF, the Parties have set their hands and seals the day and year first above written.

CITY OF BILLINGS, MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the CITY OF BILLINGS, MONTANA, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

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 Montana
Printed name: _____
Residing at: _____
My commission expires: _____

SOUTH BILLINGS CENTER, LLC,
a Delaware limited liability company

By: IWR Protective Corporation,
a Delaware corporation, its sole member

By: _____

Name: _____

Title: _____

STATE OF ILLINOIS)

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 South Billings Center, 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 Illinois
Printed name: _____
Residing at: _____
My commission expires: _____

CABELA'S WHOLESALE, INC.

By: _____

Name: _____

Title: _____

STATE OF NEBRASKA)

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 Cabela's Wholesale, Inc., 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 Nebraska
Printed name: _____
Residing at: _____
My commission expires: _____

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: _____

SAM'S REAL ESTATE BUSINESS TRUST

By: _____

Name: _____

Title: _____

STATE OF ARKANSAS)

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 Sam's Real Estate Business Trust, 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 Arkansas
Printed name: _____
Residing at: _____
My commission expires: _____