

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 OF INTENTION TO ADOPT AN ORDINANCE APPROVING THE EMPIRE PARKING GARAGE AND NORTHERN HOTEL AS URBAN RENEWAL PROJECTS IN THE EXPANDED NORTH 27TH STREET URBAN RENEWAL AREA - 2008 (THE "DISTRICT"); APPROVING THE SALE OF PARKING SPACES AND RETAIL SPACE AS SET FORTH IN AGREEMENTS WITH ALLEY CAT INVESTMENTS, LLC AND WITH ZOOTIST GARAGE, LLC AND ZOOTIST HOSPITALITY, LLC; THE FINANCING OF THE PROJECTS USING TAX INCREMENT REVENUES OF THE DISTRICT; AND CALLING A PUBLIC HEARING THEREON" (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 June 13, 2011, 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notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.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: Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Astle and Clark; voted against the same: none; abstained from voting thereon: none; or were absent: Ulledalen.

WITNESS my hand and seal officially this 13th day of June, 2011

(SEAL)



Cari Martin
City Clerk

RESOLUTION NO. 11-19060

RESOLUTION OF INTENTION TO ADOPT AN ORDINANCE APPROVING THE EMPIRE PARKING GARAGE AND NORTHERN HOTEL AS URBAN RENEWAL PROJECTS IN THE EXPANDED NORTH 27TH STREET URBAN RENEWAL AREA - 2008 (THE "DISTRICT"); APPROVING THE SALE OF PARKING SPACES AND RETAIL SPACE AS SET FORTH IN AGREEMENTS WITH ALLEY CAT INVESTMENTS, LLC AND WITH ZOOTIST GARAGE, LLC AND ZOOTIST HOSPITALITY, LLC; THE FINANCING OF THE PROJECTS USING TAX INCREMENT REVENUES OF THE DISTRICT; AND CALLING A PUBLIC HEARING THEREON

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 Pursuant to the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43 (the "Act") and Ordinance No. 05-5333 adopted on July 11, 2005, the Council created the North 27th Street District Urban Renewal Area as an urban renewal district, and approved the North 27th Street Urban Renewal Plan (the "North 27th Street Plan") for the District (as hereinafter defined) containing a tax increment financing provision all as set forth in Ordinance No. 05-5333. The Council adopted Ordinance Nos. 06-5394 and 08-5483 on November 13, 2006 and December 8, 2008, respectively, which expanded the boundaries of the District and amended the North 27th Street Plan to create the Expanded North 27th Street Urban Renewal Area – 2008 (the "District").

1.02. In adopting the North 27th Street Plan, the City noted the need for additional public parking in the District, and the North 27th Street Plan contemplates the development of additional parking in the District. In addition, the North 27th Street Plan determined it necessary to use tax increment financing to encourage private reinvestment within the District, and provided for the segregation of the tax increment. The North 27th Street Plan further contemplates the use of tax increment received in the District to finance the costs of development projects approved by the Council, including issuing bonds secured by the tax increment, as a way of encouraging private investment, and development and redevelopment in the District.

1.03. The Downtown Billings Partnership has proposed that the City build a 505-car parking garage and 18,000-square-foot retail space on the corner of North 27th Street and Montana Avenue (the "Empire Parking Garage").

1.04. Zootist Hospitality, LLC, a Montana limited liability company, owns and plans to rehabilitate and redevelop the Northern Hotel in the District and has requested that the City reimburse it for the costs of certain qualified improvements from tax increment of the District (the "Northern Hotel Project").

1.05. Pursuant to Montana Code Annotated, Section 7-15-4258, the City is authorized to acquire by purchase any real and personal property necessary for an urban renewal project.

1.06. Montana Code Annotated, Section 7-15-4263, provides that a municipality may dispose of real property in an urban renewal area to private persons only under reasonable procedures as it shall proscribe or as provided by statute.

1.07. Montana Code Annotated, Section 7-15-4258, provides that a municipality may acquire real property and enter into a development agreement in connection with the approval by the municipality of a project as an urban renewal project.

1.08. It is necessary and desirable that the Council conduct a public hearing on the Empire Parking Garage and the Northern Hotel as urban renewal projects (together, the "Projects") and take certain other actions with respect to the Projects.

Section 2. Proposed Urban Renewal Projects.

2.01. Empire Parking Garage. The Empire Parking Garage is proposed to be built on the site of the Northern Hotel's current parking structure, the Windsor Court office building, and the parking lot that was once the site of the Empire Bar. It is necessary for the City to acquire such property from the respective owners. The total estimated costs of designing, acquiring land for, and the construction of the Empire Parking Garage is \$21,000,000. To pay a portion of the costs of Empire Parking Garage, the City proposes to issue tax increment revenue bonds in the estimated amount of \$15,000,000 (the "Bonds"). Costs of the Empire Parking Garage in excess of the proceeds of the Bonds will be paid from tax increment funds on hand, City parking funds, proceeds from the sale of the Park IV Parking Garage, if any, and proceeds from the sale of parking spaces and the retail space in the Empire Parking Garage to private persons. The Bonds proposed to be issued would be payable from the tax increment revenue generated in the District.

2.02. Northern Hotel Project. It is proposed that the City will reimburse Zootist Hospitality, LLC from tax increment revenues in the District, on a subordinate lien basis and on other terms and conditions set forth in the Development Agreement (as hereinafter defined), the costs of the following improvements to the Northern Hotel Project (collectively, the "Qualified Improvements").

- (a) new sewer and storm sewer connections,
- (b) new water service;
- (c) irrigation improvements on streetscape;
- (d) sidewalk demolition;
- (e) asbestos demolition and abatement;
- (f) general demolition of dilapidated/outdated structures;
- (g) new energy efficient windows;
- (h) repair of exterior masonry;

- (i) landscaping and site work;
- (j) upgrade and replace exterior doors;
- (k) hoisting services – equipment rental; and
- (l) concrete work and rebar - exterior.

The estimated cost of the Qualified Improvements is \$2,180,827. The City's obligation to reimburse Zootist Hospitality, LLC shall be dependent upon completion of the Northern Hotel Project and completion of the Qualified Improvements and is limited to the actual costs of the Qualified Improvements, not to exceed \$2,180,827 or the Maximum Reimbursement Amount (as hereinafter defined).

Section 3. Prior Action of Council.

3.01. Acquisition of Land for Empire Parking Garage. The Council approved and the City has entered into a Real Estate Purchase Agreement dated as of May 4, 2011 with Alley Cat Investments, LLC ("Alley Cat") pursuant to which the City agreed to purchase seven of the lots necessary for the construction of the Empire Parking Garage at a purchase price of \$1,635,000 (the "Alley Cat Purchase Agreement").

The Council likewise approved and the City has entered into a Sale and Purchase Agreement dated as of May 31, 2011 with Zootist Garage, LLC pursuant to which the City agreed to purchase the five other lots necessary for the construction of the Empire Parking Garage at a purchase price of \$810,000 (the "Zootist Purchase Agreement"). The current Northern Hotel parking garage is located on such property.

3.02. Development Agreement. The Council approved and the City has entered into a Development Agreement dated as of May 31, 2011 with Zootist Hotel, LLC (the "Development Agreement") pursuant to which the City agreed to reimburse Zootist Hotel, LLC from tax increment revenues of the District for the costs of the Qualified Improvements listed above in the maximum amount of \$2,180,827 or the Maximum Reimbursement Amount. The Maximum Reimbursement Amount is calculated based on 33% of the difference between \$2,110,130 (the 2010 assessed value of the Northern Hotel located in Billings Original Townsite 613, Block 109, Lots 8-12) and the assessed value of the same property including improvements thereon in the first full tax year following completion of the Northern Hotel Project.

3.03. Lease Agreements. The Council approved and the City has entered into a Lease Agreement dated as of May 4, 2011 with Alley Cat (the "Alley Cat Lease") to lease back to Alley Cat for \$1.00 a portion of the property acquired from it for continued use as a parking lot until the City is ready to commence construction of the Empire Parking Garage. The Council likewise approved and the City has entered into a Lease Agreement dated as of May 31, 2011 with Zootist Hospitality, LLC (the "Zootist Lease"), pursuant to which the City leases back to Zootist Hospitality, LLC for \$1.00 the current Northern Hotel parking garage until the City is ready to commence construction of the Empire Parking Garage.

3.04. Option Agreements. The Council approved and the City has entered into an Empire Garage Option Agreement, dated May 4, 2011 (the “Alley Cat Option Agreement”) pursuant to which the City has granted Alley Cat an irrevocable option and right of first refusal to purchase first floor retail space in the Empire Parking Garage for fair market value and a right to purchase a minimum of 25 first floor ground level parking spaces in the Empire Parking Garage as replacement parking for a purchase price of \$4,331.55 per space. Pursuant to the Alley Cat Option Agreement, the City also granted Alley Cat a right to repurchase the property sold to the City pursuant to Alley Cat Purchase Agreement if the City terminates its plan to build the Empire Parking Garage.

The Council likewise approved and the City has entered into an Empire Garage Option Agreement, dated May 31, 2011 (the “Zootist Option Agreement”), with Zootist Garage, LLC and Zootist Hospitality, LLC (collectively, “Zootist”) pursuant to which the City granted Zootist an irrevocable option and right of first refusal to purchase first floor retail space in the Empire Parking Garage for fair market value and the right to purchase 187 contiguous parking spaces in the Empire Parking Garage chosen by Zootist as replacement parking for a purchase price of \$4,331.55 per space, which equals the purchase price for the property sold to the City pursuant to the Zootist Purchase Agreement. Pursuant to the Zootist Option Agreement, the City also agreed to provide Zootist with alternative parking for up to 100 construction workers renovating and rehabilitating the Northern Hotel, granted Zootist a right to approve the design plans for the Empire Parking Garage and granted Zootist a right to repurchase the property sold to the City pursuant to the Zootist Purchase Agreement if the City terminates its plan to build the Empire Parking Garage. If at the time of terminating its plan to build the Empire Parking Garage the City has demolished any part of the current Northern Hotel parking garage, the City will be obligated to compensate Zootist for any amounts necessary to complete the demolition and rebuild 187 parking spaces.

Section 4. Findings.

4.01 Findings with Respect to Projects. Based on the forgoing representations and subject to the public hearing called for herein, the Council hereby finds, with respect to the Projects described in Section 2 hereof, as follows:

- (a) the North 27th Street Plan and the Projects conform to the comprehensive plan and growth policy of the City;
- (b) the North 27th Street Plan and the Projects will afford maximum opportunity consistent with the needs of the City as a whole for the rehabilitation or redevelopment of the District by private enterprise;
- (c) based on the findings and recommendations of Springsted, Inc., the City’s financial advisor, using estimated annual tax increment receipts of \$1,900,000 per year, the City can issue and pay annual debt service on approximately \$15,000,000 of Bonds. The proceeds of the Bonds and the other funds identified in Section 1.04 (a) hereof will be adequate to cover the costs of the Empire Parking Garage. Thus there is a workable plan of financing for the Empire Parking Garage based on construction estimates as of the date of this Resolution;

(d) based on tax increment receipts of \$1,900,000 a year, the City estimates there will be adequate tax increment revenue remaining each year after the payment of the estimated annual debt service on the Bonds to reimburse Zootist Hotel, LLC for the Qualified Improvements in accordance with the provisions of the Development Agreement; and

(e) the Projects constitute urban renewal projects within the meaning of the Act and the North 27th Street Plan and are eligible for financing from the tax increment of the District.

4.02 Findings with Respect to Disposition of the Property in the District. Pursuant to the Alley Cat Purchase Agreement, the Zootist Purchase Agreement, the Alley Cat Option Agreement and the Zootist Option Agreement (collectively, with the Lease and the Development Agreement, the "Real Estate Documents"), the City has granted irrevocable options and rights of first refusal to purchase first floor retail space in the Empire Parking Garage for fair market value and rights to purchase a minimum of 25 parking spaces and a total of 187 parking spaces in the Empire Parking Garage to Alley Cat and Zootist, respectively (together, the "Sellers"), for a purchase price of \$4,331.55 per parking space. The City's agreement to sell the parking spaces at the stated price and grant the options and rights to the retail space were required by the Sellers in order to sell the City the land necessary for the construction of the Empire Parking Garage. Based on the foregoing and subject to a public hearing thereon, the City Council hereby finds that \$4,331.55 per parking space constitutes fair value for the parking spaces and the disposition of the parking spaces and the retail space in the Empire Parking Garage all as set forth in the Real Estate Documents is a reasonable, proper and fair procedure for the disposition of tax increment financed property in the District.

Section 5. Reimbursement Expenditures.

5.01. Recitals. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that bonds be issued and the reimbursement allocation be made from the proceeds of such bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

5.02. Official Intent Declaration. The City reasonably expects to reimburse the expenditures made for costs of the Empire Parking Garage out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$15,000,000 after the date of payment of all or a portion of the costs of the Empire Parking Garage. All reimbursed expenditures shall be

capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Empire Parking Garage have heretofore been paid by the City and no expenditures will be paid by the City until after the date of this Resolution.

The City reasonably expects to reimburse some or all of the expenditures made for costs of the Empire Parking Garage out of proceeds of the Bonds after the date of payment of all or a portion of the costs of the Empire Parking Garage. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

5.03. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Empire Parking Garage, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

5.04. Reimbursement Allocations. The Financial Services Manager shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Empire Parking Garage. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Empire Parking Garage and shall specifically identify the actual original expenditure being reimbursed.

Section 6. Public Hearing. A public hearing is hereby called and shall be held on Monday, June 27, 2011 at 6:30 p.m. in the Council chambers on the Projects and the disposition of the parking spaces and retail space in the Empire Parking Garage to the Sellers all as set forth in the Real Estate Documents.

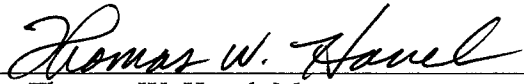
Section 7. Notice. Notice of the public hearing shall be published in the *Billings Times* on June 16 and June 23, 2011, in substantially the form attached as Exhibit A hereto (which is incorporated by reference and made a part hereof).

Section 8. Reading of Ordinance. The first reading of the Ordinance substantially in the form attached as Exhibit B hereto (the “Ordinance”) shall occur at the public hearing called for herein. The second reading of the Ordinance shall occur at the Council’s regular meeting on July 11, 2011, and it is the Council’s intention that the Ordinance will be voted upon conclusion of such meeting.

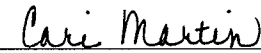
Section 9. Confirmation of Real Estate Documents. Subsequent to the public hearing and a confirmation of the disposition of the parking spaces and the retail space as set forth in the Real Estate Documents as reasonable and at fair value, the Council will confirm and reaffirm the Real Estate Documents.

PASSED AND APPROVED by the City Council of the City of Billings, Montana, this 13th day of June, 2011.

CITY OF BILLINGS



Thomas W. Hanel, Mayor

Attest: 

Cari Martin, City Clerk

(SEAL)



EXHIBIT A

NOTICE OF PUBLIC HEARING ON NORTH 27TH STREET URBAN RENEWAL PLAN TO APPROVE THE EMPIRE PARKING GARAGE AND NORTHERN HOTEL AS URBAN RENEWAL PROJECTS, TO APPROVE THE FINANCING OF THE PROJECTS USING TAX INCREMENT REVENUES OF THE DISTRICT, AND TO APPROVE THE DISPOSITION OF PARKING SPACES AND RETAIL SPACE IN THE EMPIRE PARKING GARAGE TO PRIVATE PERSONS

NOTICE IS HEREBY GIVEN that the City Council (the "Council") of the City of Billings, Montana (the "City"), will hold a public hearing regarding approval of development projects (the Empire Parking Garage and Northern Hotel) as urban renewal projects in the Expanded North 27th Street Urban Renewal Area – 2008 (the "District"), the financing of certain public projects with tax increment revenues and the disposition of parking spaces and retail spaces in the Empire Parking Garage to certain private persons on Monday, June 27, 2011 at 6:30 p.m. in the City Council Chambers in Billings, Montana.

In adopting the North 27th Street Urban Renewal Plan (the "North 27th Street Plan"), the City noted the need for additional public parking in the District, and the North 27th Street Plan contemplates the development of additional parking in the District. In addition, the North 27th Street Plan determined it necessary to use tax increment financing to encourage private reinvestment within the District, and provided for the segregation of the tax increment. The North 27th Street Plan further contemplates the use of tax increment received in the District to finance the costs of development projects approved by the Council, including issuing bonds secured by the tax increment, as a way of encouraging private investment, and development and redevelopment in the District.

The Downtown Billings Partnership has proposed that the City build a 505-car parking garage and 18,000-square-foot retail space on the corner of North 27th Street and Montana Avenue (the "Empire Parking Garage"). The Empire Parking Garage is proposed to be built on the site of the Northern Hotel's current parking structure, the Windsor Court office building, and the parking lot that was once the site of the Empire Bar. It is necessary for the City to acquire such property from the respective owners (the "Owners"). The total estimated costs of designing, acquiring land for, and the construction of the Empire Parking Garage is \$21,000,000. To pay a portion of the costs of Empire Parking Garage, the City proposes to issue tax increment revenue bonds in the estimated amount of \$15,000,000 (the "Bonds"). Costs of the Empire Parking Garage in excess of the proceeds of the Bonds will be paid from tax increment funds on hand, City parking funds, proceeds from the sale of the Park IV Parking Garage, if any, and proceeds from the sale of parking spaces and the retail space in the Empire Parking Garage to private persons.

Zootist Hospitality, LLC, a Montana limited liability company, owns and plans to rehabilitate and redevelop the Northern Hotel in the District and has requested that the City reimburse it for the costs of certain qualified improvements from tax increment of the District (the "Northern Hotel Project"). The City has agreed to reimburse Zootist Hospitality, LLC from tax increment revenues in the District for the costs of the certain qualified improvements to the Northern Hotel. The estimated costs of the Qualified Improvements is \$2,180,827.

The City granted an irrevocable option to sell a minimum of 25 and a total of 187 parking spaces in the Empire Parking Garage, respectively, to the Owners for \$4,331.55 per parking space and has granted the Owners irrevocable options and rights of first refusal to purchase first floor retail space in the Empire Parking Garage. The City has granted will sell a minimum of 25 and a total of 187 parking spaces in the Empire Parking Garage, respectively, to Alley Cat and to Zootist (collectively, the "Sellers") for \$4,331.55 per parking space and will grant to the Sellers irrevocable options and rights of first refusal to purchase first floor retail space in the Empire Parking Garage.

Any interested persons may appear and will be heard or may file written comments with the City Clerk prior to such hearing.

Dated: June 13, 2011.

Done By Order Of The City Council of the
City of Billings, Montana

Publish: June 16 and June 23, 2011

EXHIBIT B

ORDINANCE NO. _____

ORDINANCE APPROVING THE EMPIRE PARKING GARAGE AND NORTHERN HOTEL PROJECT AS URBAN RENEWAL PROJECTS IN THE EXPANDED NORTH 27TH STREET URBAN RENEWAL AREA - 2008; AUTHORIZING THE FINANCING THEREOF WITH TAX INCREMENT REVENUES; AND DETERMINING THAT THE DISPOSITION OF PARKING SPACES AND RETAIL SPACES AS SET FORTH IN CERTAIN REAL ESTATE DOCUMENTS IS REASONABLE AND FAIR WITHIN THE MEANING OF MONTANA CODE ANNOTATED, SECTION 7-15-4263

BE IT ORDAINED by the City Council (the "Council") of the City of Billings, Montana (the "City"), as follows:

Section 1. Recitals.

1.01. On July 11, 2005, the City Council adopted Ordinance No. 05-5333, which created the North 27th Street District Urban Renewal Area as an urban renewal district and approved the North 27 Street Urban Renewal Plan (the "North 27th Street Plan") containing a tax increment financing provision. On November 13, 2006 and December 8, 2008, the City Council adopted Ordinance Nos. 06-5394 and 08-5483, respectively, which expanded the boundaries of the North 27th Street Urban Renewal Area and amended the North 27th Street Plan to create the Expanded North 27th Street Urban Renewal Area – 2008 (the "District").

1.02. In adopting the North 27th Street Plan, the City noted the need for additional public parking in the District, and the North 27th Street Plan contemplates the development of additional parking in the District. The North 27th Street Plan determined it necessary to use tax increment financing to encourage private reinvestment within the District, and provided for the segregation of the tax increment; and the North 27th Street Plan further contemplates the use of tax increment received in the District to finance the costs of development projects approved by the Council, including issuing bonds secured by the tax increment, as a way of encouraging private investment, and development and redevelopment in the District.

1.03. The Council on June 27, 2011, conducted a public hearing on a proposal to undertake urban renewal projects in the District, to finance the costs thereof with tax increment revenues and to provide for the sale of parking spaces and retail space to certain private persons, all as authorized by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act").

1.04. Pursuant to the Act and the procedures contained in the North 27th Street Plan, and Resolution No. 11-19060 adopted June 13, 2011, the City has set forth its intention to use tax increment in an amount sufficient to finance all or a portion of certain urban renewal projects and has undertaken to designate and approve the following urban renewal projects (the "Projects"):

(a) Empire Parking Garage. The Downtown Billings Partnership has proposed that the City build a 505-car parking garage and 18,000-square-foot retail space on the corner of North 27th Street and Montana Avenue (the “Empire Parking Garage”). The Empire Parking Garage is proposed to be built on the site of the Northern Hotel’s current parking structure, the Windsor Court office building, and the parking lot that was once the site of the Empire Bar. It is necessary for the City to acquire such property from the respective owners. The total estimated costs of designing, acquiring land for, and the construction of the Empire Parking Garage is \$21,000,000. To pay a portion of the costs of Empire Parking Garage, the City proposes to issue tax increment revenue bonds in the estimated amount of \$15,000,000 (the “Bonds”). Costs of the Empire Parking Garage in excess of the proceeds of the Bonds will be paid from tax increment funds on hand, City parking funds, proceeds from the sale of the Park IV Parking Garage, if any, and proceeds from the sale of parking spaces and the retail space in the Empire Parking Garage to the Sellers (as hereinafter defined). The Bonds proposed to be issued would be payable from the tax increment revenue generated in the District.

(b) Northern Hotel Project. Zootist Hospitality, LLC, a Montana limited liability company, owns and plans to rehabilitate and redevelop the Northern Hotel in the District and has requested that the City reimburse it for the costs of certain qualified improvements from tax increment of the District (the “Northern Hotel Project”). It is proposed that the City will reimburse Zootist Hospitality, LLC from tax increment revenues in the District, on a subordinate lien basis and on other terms and conditions set forth in the Development Agreement (as hereinafter defined), the costs of the following improvements to the Northern Hotel Project (collectively, the “Qualified Improvements”).

- (a) new sewer and storm sewer connections,
- (b) new water service;
- (c) irrigation improvements on streetscape;
- (d) sidewalk demolition;
- (e) asbestos demolition and abatement;
- (f) general demolition of dilapidated/outdated structures;
- (g) new energy efficient windows;
- (h) repair of exterior masonry;
- (i) landscaping and site work;
- (j) upgrade and replace exterior doors;
- (k) hoisting services – equipment rental; and

- (l) concrete work and rebar - exterior.

The estimated cost of the Qualified Improvements is \$2,180,827. The City's obligation to reimburse Zootist Hospitality, LLC shall be dependent upon completion of the Northern Hotel Project and completion of the Qualified Improvements and is limited to the actual costs of the Qualified Improvements, not to exceed \$2,180,827 or the Maximum Reimbursement Amount. The Maximum Reimbursement Amount is calculated based on 33% of the difference between \$2,110,130 (the 2010 assessed value of the Northern Hotel located in Billings Original Townsite 613, Block 109, Lots 8-12) and the assessed value of the same property including improvements thereon in the first full tax year following completion of the Northern Hotel Project.

1.05. The Council approved and the City has entered the following agreements (collectively, the "Real Estate Documents") with respect to the Projects:

- (a) Real Estate Purchase Agreement dated as of May 4, 2011 with Alley Cat Investments, LLC ("Alley Cat") pursuant to which the City agreed to purchase seven of the lots necessary for the construction of the Empire Parking Garage at a purchase price of \$1,635,000 (the "Alley Cat Purchase Agreement").

- (b) Sale and Purchase Agreement dated as of May 31, 2011 with Zootist Garage, LLC pursuant to which the City agreed to purchase the five other lots necessary for the construction of the Empire Parking Garage at a purchase price of \$810,000 (the "Zootist Purchase Agreement"). The current Northern Hotel parking garage is located on such property.

- (c) Development Agreement dated as of May 31, 2011 with Zootist Hotel, LLC (the "Development Agreement") pursuant to which the City agreed to reimburse Zootist Hotel, LLC from tax increment revenues of the District for the costs of the Qualified Improvements.

- (d) Lease Agreement dated as of May 4, 2011 with Alley Cat (the "Alley Cat Lease") to lease back to Alley Cat for \$1.00 a portion of the property acquired from it for continued use as a parking lot until the City is ready to commence construction of the Empire Parking Garage.

- (e) Lease Agreement dated as of May 31, 2011 with Zootist Hospitality, LLC (the "Zootist Lease"), pursuant to which the City leases back to Zootist Hospitality, LLC for \$1.00 the current Northern Hotel parking garage until the City is ready to commence construction of the Empire Parking Garage.

- (f) Empire Garage Option Agreement, dated May 4, 2011 (the "Alley Cat Option Agreement") pursuant to which the City has granted Alley Cat an irrevocable option and right of first refusal to purchase first floor retail space in the Empire Parking Garage for fair market value and a right to purchase a minimum of 25 first floor ground level parking spaces in the Empire Parking Garage as replacement parking for a purchase price of \$4,331.55 per space. Pursuant to the Alley Cat Option Agreement, the City also

granted Alley Cat a right to repurchase the property sold to the City pursuant to Alley Cat Purchase Agreement if the City terminates its plan to build the Empire Parking Garage.

(g) Empire Garage Option Agreement, dated May 31, 2011 (the "Zootist Option Agreement"), with Zootist Garage, LLC and Zootist Hospitality, LLC (collectively, "Zootist") pursuant to which the City granted Zootist an irrevocable option and right of first refusal to purchase first floor retail space in the Empire Parking Garage for fair market value and the right to purchase 187 contiguous parking spaces in the Empire Parking Garage chosen by Zootist as replacement parking for a purchase price of \$4,331.55 per space, which equals the purchase price for the property sold to the City pursuant to the Zootist Purchase Agreement. Pursuant to the Zootist Option Agreement, the City also agreed to provide Zootist with alternative parking for up to 100 construction workers renovating and rehabilitating the Northern Hotel, granted Zootist a right to approve the design plans for the Empire Parking Garage and granted Zootist a right to repurchase the property sold to the City pursuant to the Zootist Purchase Agreement if the City terminates its plan to build the Empire Parking Garage. If at the time of terminating its plan to build the Empire Parking Garage the City has demolished any part of the current Northern Hotel parking garage, the City will be obligated to compensate Zootist for any amounts necessary to complete the demolition and rebuild 187 parking spaces.

1.06. Pursuant to Resolution No.11-19060, a public hearing was duly noticed and held on June 27, 2011, at which all persons wishing to speak were given the opportunity to address the Council with respect to approval of the Projects as urban renewal projects, to finance the costs thereof with tax increment revenues and to provide for the sale of parking spaces and retail space in the Empire Parking Garage to the Sellers.

Section 2. Findings. The Council hereby finds, with respect to each of the Projects described in Section 1.04, as follows:

(a) a workable and feasible plan exists for making available adequate housing for any persons who may be displaced by the Projects;

(b) the Plan and the Projects conform to the comprehensive plan or parts thereof for the City as a whole;

(c) the Plan and the Projects will afford maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the District by private enterprise;

(d) based on the findings and recommendations of Springsted, Inc., the City's financial advisor, using estimated annual tax increment receipts of \$1,900,000 per year from the District, the City can issue and pay annual debt service on approximately \$15,000,000 of Bonds. The proceeds of the Bonds and the other funds identified in Section 1.04 hereof will be adequate to cover the costs of the Empire Parking Garage. Thus, there is a workable plan of financing for the Empire Parking Garage based on construction estimates as of the date of this Ordinance;

(e) based on tax increment receipts of \$1,900,000 a year, the City estimates there will be adequate tax increment revenue remaining each year after the payment of the estimated annual debt service on the Bonds to reimburse Zootist Hospitality, LLC for the Qualified Improvements in accordance with the provisions of the Development Agreement. Thus there is a workable plan of financing for the Northern Hotel Project, based on construction estimates as of the date of this Ordinance; and

(f) each of the Projects constitutes an urban renewal project within the meaning of the Act and the Plan.

Section 3. Approval of Projects and Financing.

3.01. The Projects are hereby approved as urban renewal projects.

3.02. The Council approves the use of tax increment revenues to finance a portion of the Empire Parking Garage and sets forth its intention to issue Bonds in the estimated principal amount of \$15,000,000.

3.03. The Council approves the use of tax increment revenues to reimburse the costs of the Qualified Improvements in connection with the Northern Hotel pursuant to the Development Agreement.

Section 4. Procedure for Disposition of Tax Increment Financed Property. The disposition of parking spaces and retail spaces as set forth in the certain real estate documents as set forth in Section 1.05 hereof is reasonable and fair within the meaning of Montana Code Annotated, Section 7-15-4263.

Section 5. Effective Date. This Ordinance shall take effect from and after 30 days of its passage by the City Council and approval by the Mayor.

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PASSED AND APPROVED by the City Council of the City of Billings, Montana, on the second reading this 11th day of July, 2011.

Mayor

Attest: _____
City Clerk

[Signature page to Ordinance Approving
the Empire Parking Garage and Northern Hotel Project as Urban Renewal Projects]