

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. 10-18909 entitled: "RESOLUTION RELATING TO A PROJECT ON BEHALF OF ZOOTIST HOSPITALITY, LLC AND THE ISSUANCE OF A REVENUE BOND TO FINANCE THE COSTS THEREOF UNDER MONTANA CODE ANNOTATED, TITLE 90, CHAPTER 5, PART 1, AS AMENDED; APPROVING THE PROJECT; AUTHORIZING THE ISSUANCE OF A BOND THEREFOR; AND ALLOCATING A PORTION OF THE CITY'S AUTHORITY TO ISSUE RECOVERY ZONE FACILITY BONDS" (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 meeting on January 11, 2010, 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notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.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, Ulledalen, Astle, Clark; voted against the same: none; abstained from voting thereon: none; or were absent: none.

WITNESS my hand officially this 11th day of January, 2010.

Cari Martin
City Clerk

RESOLUTION NO. 10-18909

RESOLUTION RELATING TO A PROJECT ON BEHALF OF ZOOTIST HOSPITALITY, LLC AND THE ISSUANCE OF A REVENUE BOND TO FINANCE THE COSTS THEREOF UNDER MONTANA CODE ANNOTATED, TITLE 90, CHAPTER 5, PART 1, AS AMENDED; APPROVING THE PROJECT; AUTHORIZING THE ISSUANCE OF A BOND THEREFOR; AND ALLOCATING A PORTION OF THE CITY'S AUTHORITY TO ISSUE RECOVERY ZONE FACILITY BONDS

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

1. Recitals:

(a) Pursuant to Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended (the "Act"), the City is authorized to enter into agreements upon terms the governing body considers advantageous and not in conflict with the provisions of the Act to issue its revenue bonds and sell such bonds at public or private sale in such manner and at such times as may be determined by this body to be most advantageous; and to loan the proceeds of its revenue bonds to others for the purpose of defraying the cost of acquiring or improving any land, any building or other improvement, and any other real or personal property considered necessary in connection with the improvement, whether or not now in existence, that is suitable for use for commercial enterprises. Such revenue bonds may be secured by a pledge of the revenues to be derived by the City from a loan agreement with the borrower, by a mortgage on the project and by such other security devices as may be deemed advantageous. Under the provisions of the Act, any bonds so issued by the City shall be special, limited obligations of the City and shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers

(b) Under Section 1401 of the American Recovery and Reinvestment Act of 2009 (the "ARRA"), as codified at Sections 1400U-1 through 1400U-3 of the Internal Revenue Code of 1986, as amended (the "Code"), gross income does not include interest on any bond lawfully designated by an eligible issuer thereof as a "recovery zone facility bond."

(c) Under Internal Revenue Service Notice 2009-50, the City has been allocated authority to issue \$26,831,000 of bonds designated as recovery zone facility bonds, and pursuant to Section 1400U-1(a)(3) of the Code, Montana Code Annotated Section 17-5-116 and the Montana Department of Administration's Recovery Zone Bond Allocation Policy, the City has been reallocated authority from Yellowstone County to issue an additional \$9,973,000 of bonds designated as recovery zone facility bonds, such that the City has \$36,804,000 total authority to issue recovery zone facility bonds.

(d) The City is authorized under the Act to issue economic development revenue bonds and to designate them as recovery zone facility bonds within the meaning of the Code under M.C.A. 7-7-140.

(e) The City, pursuant to Resolution 09-18866, has designated the area within the City as a recovery zone suffering from significant poverty, unemployment, rate of home foreclosures, or general distress

(f) The City, pursuant to Resolution 09-18890, has established criteria for approval of projects for financing with its recovery zone facility bonds.

(g) This Council by Resolution No. 09-18905 duly adopted on December 21, 2009, called a public hearing on a proposed project and the issuance of a revenue bond therefor under Title 90, Chapter 5, Part 1, Montana Code Annotated (the "Act"), to finance a portion of the costs of renovating, restoring and furnishing the Northern Hotel located at 19 North 28th Street in the City (the "Project"). The Project is expected to cost approximately \$21,000,000. When finished, it is anticipated that the Northern Hotel will have 160 hotel rooms, approximately 10,000 square feet of meeting space, a full-service restaurant, lounge, casual diner and parking. The Project will be owned by Zootist Hospitality, LLC, a Montana limited liability company (the "Borrower"). Limited obligation bonds shall be issued by the City in the maximum aggregate face amount of \$20,000,000 (the "Bonds") as authorized by the Act to defray or reimburse the costs of the Project and to pay for the costs and expenses incident to the issuance, sale, and security of the Bonds.

2. At the public hearing duly called, noticed and held as required by the Act all persons who appeared were afforded an opportunity to express their views with respect to the proposal to undertake and

finance the Project. Based on the public hearing, any written comments filed with the City Clerk and such other facts and circumstances as this Council deems relevant, this Council hereby finds, determines and declares, as follows:

(a) The Project, as proposed, will be suitable for use as a commercial enterprise eligible for financing under the Act and in accordance with Sections 1400U-1 and 1400U-3 of the Code, and the City is authorized to issue the Bonds to defray the costs of making a loan to the Borrower, the proceeds of which will be used to finance a portion or all of the costs of constructing, equipping and improving the Project and expenses incident to the issuance of the Bonds, including any security for the Bonds, and to enter into a Loan Agreement with the Borrower requiring loan repayments from the Borrower in amounts sufficient to repay the loan when due and requiring the Borrower to pay all costs of maintaining and insuring the Project.

(b) The Project is located in one of the City's downtown Urban Renewal Districts (the "District") and will further the goals and objectives of the District.

(c) The loan repayments to be made by the Borrower under the Loan Agreement, shall be established at a level and payable in installments at times sufficient to pay all principal of, premium, if any, and interest on the Bonds when due.

(d) In authorizing the Project and the issuance of the Bonds, the City's purpose is and the effect thereof is to promote the public welfare of the City and its residents by preserving and creating jobs and promoting economic recovery and assisting those most impacted by the recession in a recovery zone.

(e) The undertaking of the Project and the issuance of the Bonds to finance all or a portion of the costs thereof will be in the public interest and in the best interests of the City.

(f) The City is authorized to designate the Bonds as recovery zone facility bonds under the Act and Section 1400U-3 of the Code and Section 90-5-103(6) of the Act.

(g) The Project complies with the requirements of and meets the criteria set forth in Resolution No. 09-18890.

3. Subject to Section 7 below, the Council hereby approves the Project and the issuance of the Bonds in the approximate aggregate principal amount of \$20,000,000 to finance a portion of the costs thereof. The Bonds shall mature over a term not to exceed 40 years and shall bear interest at a rate or rates allowable by law and contain such other terms and provisions as shall be agreed upon by the Council, the Borrower and the purchaser of the Bonds. The Bonds shall be designated "recovery zone facility bonds" under Section 1400U-3 of the Code. The Borrower shall, pursuant to the Loan Agreement, agree to renovate, construct, furnish and equip the Project; to operate and maintain the Project and keep it properly insured; to pay all assessments, if any, on or against the Project; and to make loan payments sufficient to pay the principal of, premium, if any, and interest on the Bonds, all costs and expenses of the City and any trustee in connection with the Project. There shall be a pledge and assignment of certain of the City's interests in the Loan Agreement under an Assignment.

4. The Council hereby allocates \$20,000,000 of the City's authority to issue recovery zone facility bonds to the Project.

5. Dorsey & Whitney LLP, as bond counsel, is authorized in cooperation with the City Attorney, the Borrower and the underwriter of the Bonds to prepare forms of the Loan Agreement, a Disbursing Agreement, an Employment Preference and Prevailing Wage Agreement, a Trust Indenture, the Bonds and any other documents necessary to provide for financing of the Project for review and approval of the final terms and conditions thereof by this Council.

6. The Borrower will pay, or upon demand reimburse the City for payment of, any and all costs incurred by the City in connection with the Project and the issuance of the Bonds, whether or not the Project is carried to completion and whether or not the Bonds are issued.

7. The adoption of this Resolution does not constitute a guarantee or a firm commitment that the City will issue the Bonds as requested by the Borrower. The City retains the right, in its sole discretion, to withdraw from participation and accordingly not issue the Bonds if the Council, at any time prior to the issuance thereof, determines that it is in the best interests of the City not to issue the Bonds or if the City and other parties to the transaction are unable to reach agreement as to the terms and conditions of any of the documents for the transaction. Financing the Project with proceeds of the Bonds will be contingent upon the City and other parties

to the transaction, including the purchaser of the Bonds, the Borrower, and federal agencies, coming to agreement on the terms and conditions of the transaction.

PASSED AND ADOPTED by the Billings City Council on January 11, 2010.

THE CITY OF BILLINGS

(SEAL)



ATTEST:

BY: Thomas W. Hanel
Thomas W. Hanel, Mayor

BY: Cari Martin
Cari Martin, City Clerk