

***DRAFT 02/04/2013***

Return To:  
City of Billings, Montana  
Office of City Clerk  
201 North 27th Street  
Billings, Montana 59101

**GROUND LEASE**

**between**

**CITY OF BILLINGS, MONTANA  
As Lessor**

**and**

**U.S. BANK NATIONAL ASSOCIATION  
As Lessee**

**MARCH 5, 2013**

**Relating to**

**REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2013**

## GROUND LEASE

THIS GROUND LEASE is dated as of March 5, 2013 (the "*Ground Lease*"), between the City of Billings, Montana, a political subdivision of the State of Montana (the "*Lessor*"), and U.S. Bank National Association, Seattle, Washington, a national banking association duly organized and existing under the laws of the United States (the "*Lessee*").

### W I T N E S S E T H:

WHEREAS, the Lessor owns the land which is described in Exhibit A hereto (the "*Land*"); and

WHEREAS, Lessor and Lessee will enter into a Lease Purchase Agreement dated as of the date hereof (the "*Lease*"), whereby Lessee will refinance the design, construction and equipping by or on behalf of Lessor of certain improvements (the "*Improvements*") upon the Land and Lessee will lease and sell the Improvements to Lessor upon the terms contained therein.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### LEASE OF LAND AND WARRANTIES

Section 1.1. Lease of Land. Subject to and upon the terms, conditions, covenants and undertakings hereinafter set forth, the Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, the Land, together with all buildings and improvements thereon, whether now existing or hereafter constructed, for the sum of one dollar (\$1.00) and other good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged.

Section 1.2. Warranties. The Lessor covenants and warrants to Lessee:

(a) The Lessor has good and merchantable title to the Land, has authority to enter into, execute and deliver this Ground Lease, and has duly authorized the execution and delivery of this Ground Lease.

(b) The Land is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the Improvements upon the Land, as contemplated by the Lease.

(c) All taxes, assessments or impositions of any kind with respect to the Land, except current taxes, have been paid in full.

(d) The Land is properly zoned for the purpose of the Improvements.

(e) The Lessor has authority to enter into, execute and deliver the Lease, and has duly authorized its execution and delivery.

## ARTICLE II

### TERM OF GROUND LEASE

Section 2.1. Term. The term of this Ground Lease shall commence as of the date first written above and shall terminate when the term of the Lease expires as provided in Section 4.1, 4.2(b) or 4.2(d) of the Lease. In the event of a termination of the Lease as provided in Section 4.2(a) or (c) therein, this Ground Lease shall terminate on March 1, 2033.

## ARTICLE III

### USE OF LAND

Section 3.1. Use. Lessee shall not use or permit the use of the Land for an unlawful purpose.

Section 3.2. Assignment and Subletting. Lessee shall have the right to assign its interests in this Ground Lease, and to sublet the Land in accordance with the Lease.

Section 3.3. Quiet Enjoyment. The Lessor covenants that upon Lessee's performing all conditions and covenants set forth in this Ground Lease and the Lease, Lessee shall and may peaceably have, hold and enjoy the Land for the term of this Ground Lease. Lessee covenants that upon expiration of this Ground Lease, either on the date specified in Section 2.1 hereof or earlier pursuant to the terms of the Lease, it shall give the Lessor peaceable possession of the Land, together with the Improvements and any other improvements constructed thereon pursuant to the Lease.

Section 3.4. Environmental Matters. The Lessor represents and warrants that it has no knowledge of the presence of hazardous or toxic waste, materials or substances ("*Hazardous Materials*") within the meaning of any federal, state or local law or regulation relating to environmental matters, on or about the Land. To the extent permitted by law, the Lessor further agrees that it will indemnify, defend and hold harmless the Lessee, its directors, officers, employees and agents, and any assignee of the Lessee, without payment being made by the Lessee, from and against any and all claims, demands, suits, liabilities and costs (including without limitation, attorneys' fees, and costs and expenses of investigation and proof) arising out of any violation or asserted violation of any environmental law or regulation or out of the presence on the Land of any Hazardous Materials.

## ARTICLE IV

### DEFAULT AND REMEDIES

Section 4.1. Performance of Obligation. If any party (the "*Defaulting Party*") fails to perform any obligation hereunder, the other party (the "*Non-Defaulting Party*") may give written notice to the Defaulting Party specifying the nature of the failure to perform, and, if such failure

is not cured within ninety (90) days after the giving of such notice, the Non-Defaulting Party may perform the obligation. The Defaulting Party agrees to reimburse the Non-Defaulting Party for all reasonable costs and expenses incurred in performing such obligation.

## ARTICLE VI

### MISCELLANEOUS

Section 5.1 Conflicts with Lease. In the event of any conflict between the provisions of this Ground Lease and the Lease, the Lease will govern.

Section 5.2. No Merger of Title. There shall be no merger of this Ground Lease with any other estate in the Land or any part thereof by reason of the fact that the same entity may acquire or own or hold, directly or indirectly, (a) the Land or any part thereof or any interest therein and (b) the Improvements or any part thereof or any interest therein, and no such merger shall occur unless and until all persons having any interest in the Improvements or any part thereof shall join in a written instrument effecting such merger and shall duly record the same.

Section 5.3. Notices. Except as otherwise provided in this Ground Lease, all notices, requests, demands and other communications under this Ground Lease shall be in writing, shall be effective upon receipt thereof and shall be delivered by hand, or mailed by first class mail, postage prepaid to the addresses specified below; provided that the Lessor and the Lessee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates, legal opinions or other communications will be sent.

If to the Lessor:	City of Billings, Montana 201 North 27th Street Billings, Montana 59101 Attention: City Clerk
If to the Lessee:	U.S. Bank National Association 1420 Fifth Avenue, 7th Floor Seattle, Washington 98101 Attention: Corporate Trust Services

Section 5.4. Recording. This Ground Lease may be recorded by either party.

Section 5.5. Governing Law. This Ground Lease shall be construed and applied in accordance with the laws of the State of Montana.

Section 5.6. Severability. If any provision of this Ground Lease shall for any reason be determined to be invalid, illegal or unenforceable in any respect, the remainder of this Ground Lease and any other application of such term shall not be affected thereby, and the parties hereto shall negotiate in good faith and agree as to such replacement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein.

Section 5.7. Amendments. No amendment, modification, termination or surrender of this Ground Lease shall be valid or effective unless it is in writing and signed by both parties hereto.

Section 5.8. Successors. This Ground Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and, to the extent provided herein, assigns, and the right, title and interests granted and conveyed hereby shall run with the Land described and are intended and shall be for the use, benefit and enjoyment of the owner of the Improvements and its successor and assigns for the purposes and uses set forth herein.

Section 5.9. Further Assurances. Each party shall execute, acknowledge and deliver such documents and other instruments and perform such acts as may be reasonably required by the other party in order to give full effect to this Ground Lease or to facilitate the recording of this Ground Lease.

Section 5.10. Entire and Complete Agreement. This Ground Lease constitutes the entire and complete agreement of the parties with respect to the interests conveyed and granted hereby and supersedes all prior or contemporaneous undertakings, arrangements, commitments and representations with respect to such interests, all of which, whether oral or written, are merged herein.

Section 5.11. Counterparts. This Ground Lease may, be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

CITY OF BILLINGS, MONTANA,  
as Lessor

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Finance Director

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

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2013.

(Notarial Seal)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My Commission Expires: \_\_\_\_\_

U.S. BANK NATIONAL ASSOCIATION

---

Vice President

## EXHIBIT A

1. Lot 4, Block 1, of Billings Operations Center Subdivision, in Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3217110.
2. Lot 1, Block 2, of Billings Operations Center Subdivision, in Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3217110.
3. Lot 4, Block 1, of Cereus Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #1784237.