

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

DRAFT 02/04/2013

LEASE PURCHASE AGREEMENT

between

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

and

**CITY OF BILLINGS, MONTANA
As Lessee**

MARCH 5, 2013

Relating to

REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2013

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND EXHIBITS.....	1
Section 1.1. Definitions.....	1
Section 1.2. Exhibits	3
ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES.....	3
Section 2.1. Representations, Covenants and Warranties of the City.....	3
Section 2.2. Representations, Covenants and Warranties of the Lessor	5
ARTICLE III REFUNDING; LEASE AND SALE OF PREMISES	5
Section 3.1. Refunding.....	5
Section 3.2. Lease of Premises	5
Section 3.3. Possession and Enjoyment.....	5
Section 3.4. Lessor Access to Premises	6
Section 3.5. Compliance with Trust Agreement.....	6
ARTICLE IV TERM OF LEASE; SURRENDER OF PREMISES AND TERMINATION	6
Section 4.1. Lease Term.....	6
Section 4.2. Termination of Lease Term	6
Section 4.3. Surrender of Premises	6
Section 4.4. No Subordination of City’s Title to Land	7
Section 4.5. Termination by the City	7
Section 4.6. Effect of Termination.....	7
Section 4.7. Right of Lessor to Remove Improvements	7
ARTICLE V RENTAL PAYMENTS	8
Section 5.1. Rental Payments.....	8
Section 5.2. Current Expense.....	8
Section 5.3. Interest Component.....	8
Section 5.4. Rental Payments to be Unconditional.....	8
ARTICLE VI DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS	9
Section 6.1. Damage, Destruction and Condemnation	9
Section 6.2. Insufficiency of Net Proceeds.....	9
Section 6.3. Cooperation of Lessor.....	9
Section 6.4. Condemnation of Other Property Owned by the City	9
ARTICLE VII INSURANCE AND INDEMNIFICATION.....	9
Section 7.1. Liability Insurance	9
Section 7.2. Property Insurance	10
Section 7.3. Worker’s Compensation Insurance.....	10
Section 7.4. Requirements For All Insurance	10
Section 7.5. Indemnification	10

ARTICLE VIII GENERAL MATTERS	11
Section 8.1. Use; Permits	11
Section 8.2. Maintenance and Modification of Premises by the City.....	11
Section 8.3. Taxes, Other Governmental Charges and Utility Charges; Compliance with Governmental Requirements.	12
Section 8.4. Easements	12
Section 8.5. Covenants Regarding Hazardous Material	12
ARTICLE IX TITLE	14
Section 9.1. Title.....	14
Section 9.2. Liens.....	14
Section 9.3. Installation of Personal Property.....	14
ARTICLE X WARRANTIES.....	14
Section 10.1. Maintenance of Premises	14
Section 10.2. Contractor’s Warranties	15
Section 10.3. Patent Infringement.....	15
Section 10.4. Disclaimer of Warranties	15
ARTICLE XI OPTION TO PREPAY; DISCHARGE	15
Section 11.1. Option to Prepay in Whole or in Part.....	15
Section 11.2. Exercise of Prepayment Option	15
Section 11.3. Discharge of City’s Obligation	15
ARTICLE XII ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING.....	15
Section 12.1. Assignment by the Lessor	15
Section 12.2. Assignment and Subleasing by the City	16
Section 12.3. Restriction on Mortgage or Sale of Premises by the City.....	16
ARTICLE XIII EVENTS OF DEFAULT AND REMEDIES	16
Section 13.1. Events of Default Defined	16
Section 13.2. Remedies on Default.....	17
Section 13.3. No Remedy Exclusive.....	18
ARTICLE XIV ADMINISTRATIVE PROVISIONS.....	18
Section 14.1. Notices	18
Section 14.2. Recording.....	19
Section 14.3. Financial Information.....	19
Section 14.4. Binding Effect.....	19
Section 14.5. Severability	19
Section 14.6. Amendments, Changes and Modifications	19
Section 14.7. Captions	19
Section 14.8. Further Assurances and Corrective Instruments.....	19
Section 14.9. Execution in Counterparts.....	19
Section 14.10. Applicable Law	19
SIGNATURE PAGES	27

EXHIBIT A	Premises Description	A-1
EXHIBIT B	Rental Payment Schedule.	B-1

LEASE PURCHASE AGREEMENT

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

W I T N E S S E T H:

WHEREAS, the City is authorized by Montana Code Annotated, Sections 7-1-4124 and 7-8-4101, to acquire real and personal property by entering into lease purchase agreements;

WHEREAS, the City previously entered into a Lease Purchase Agreement dated as of March 3, 2003 between Koch Financial Corporation, as lessor, and the City, as lessee (the "*Refunded Lease*"), for the purpose of financing the design, construction and equipping of the City's Operations Center (as hereinafter defined, the "*Improvements*"), located on certain real estate owned by the City (as hereinafter defined, the "*Land*");

WHEREAS, the City has determined that it is necessary to refinance the City's obligations with respect to the Refunded Lease by entering into this Lease and the issuance by the Trustee of the corresponding Certificates; and

WHEREAS, the Lessor is willing to acquire a leasehold interest in the Premises (as hereinafter defined) described in Exhibit A and to lease and/or sell the same to the City, pursuant to this Lease.

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

DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. For the purposes of this Lease and Exhibits attached hereto, capitalized terms used herein but not otherwise defined shall have the respective meanings given such terms in the Trust Agreement. In addition, the terms defined in this Section 1.1 shall, for all purposes of this Lease and Exhibits attached hereto, have the meanings herein specified.

Certificates: The \$4,100,000 Refunding Certificates of Participation, Series 2013.

Closing Date: The date upon which the Certificates are delivered to the Original Purchaser (as defined in the Trust Agreement) against payment therefore.

Fiscal Year: The twelve month fiscal period of the City which commences on July 1 every year and ends on the following June 30.

Ground Lease: The Ground Lease dated as of the date hereof by and between Lessee, as lessor, and Lessor, as lessee, relating to the Land.

Improvements: The improvements described in Exhibit A hereto and all repairs, replacements, substitutions and modifications thereto during the term of this Lease.

Independent Counsel: An attorney duly admitted to the practice of law before the highest court of the State who is not a full-time employee of the Lessor or the City.

Interest: The portion of any Rental Payment designated as and comprising interest as shown in the attached Exhibit B.

Land: The real property described in Exhibit A hereto.

Net Proceeds: Any insurance proceeds or condemnation award paid with respect to the Premises remaining after payment therefrom of all expenses incurred in the collection thereof.

Non-Appropriation: The failure of the City Council of the City to appropriate money for any Fiscal Year of the City sufficient for the continued performance of this Lease by the City, as evidenced by the passage of a resolution specifically prohibiting the City from performing its obligations under this Lease, and from using any moneys to pay the Rental Payments due under this Lease for a designated Fiscal Year and all subsequent Fiscal Years.

Permitted Encumbrances: As of any particular time: (i) liens for taxes, assessments and other governmental surcharges not then delinquent, or which the City may, pursuant to provisions of Section 8.3, permit to remain unpaid; (ii) this Lease, the Ground Lease and amendments hereto and thereto; (iii) the Lessor's interest in the Premises pursuant to the Ground Lease; (iv) any mechanic's, laborer's, materialmen's, supplier's or vendor's lien incurred in the ordinary course of business or which is being contested in good faith; (v) minor defects and irregularities in the title to the Premises which do not in the aggregate materially impair the use of the Premises for the purposes for which they are or may reasonably be expected to be held; (vi) easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not materially impair the use of the Premises for the purposes for which they are or may reasonably be expected to be held; (vii) rights reserved to or vested in any municipality or governmental or other public authority to control or regulate or use in any manner any portion of the Premises which do not materially impair the use of the Premises for the purposes for which they are or may reasonably be expected to be held; (viii) any obligations or duties affecting any portion of the Premises of any municipality or governmental or other public authority with respect to any right, power, franchise, grant, license or permit; and (ix) present and future zoning laws and ordinances.

Premises: The Land and Improvements.

Principal: The portion of any Rental Payment designated as principal in the attached Exhibit B.

Rental Payment: The payment due from the City to the Lessor on each Rental Payment Date during the Term of this Lease, as shown on Exhibit B.

Rental Payment Date: The date upon which any Rental Payment is due and payable, as shown on Exhibit B.

State: The State of Montana.

State and Federal Law or Laws: The Constitution and any law of the State and any rule or regulation of any agency or political subdivision of the State and any law of the United States, and any rule or regulation of any federal agency.

Term of this Lease or Lease Term: The period during which this Lease is in effect as specified in Section 4.1.

Trustee: U.S. Bank National Association, in Seattle, Washington, acting pursuant to the Trust Agreement.

Trust Agreement: The Declaration of Trust dated as of the date hereof by and between the Trustee and the City and any amendment thereof or supplement thereto.

Trust Fund: The Trust Fund so designated which is established by the Trustee under Section 4.1 of the Trust Agreement.

Section 1.2. Exhibits. The following Exhibits are attached to and by reference made a part of this Lease:

Exhibit A: A legal description of the Land and a description of the Improvements being leased by the City pursuant to this Lease.

Exhibit B: A schedule indicating the date and amount of each Rental Payment (including the interest portion of each Rental Payment) coming due during the Lease Term and the provisions for prepayment of the Lease in accordance with Article XI.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants as follows:

(a) The City is a duly formed and validly existing municipal corporation and body corporate and political subdivision of the State.

(b) The City is authorized under the Constitution and laws of the State to enter into this Lease, the Ground Lease and the Trust Agreement and to perform all of its obligations hereunder and thereunder.

(c) The officers of the City executing this Lease, the Ground Lease and the Trust Agreement have been duly authorized to execute and deliver such documents under the terms and provisions of a resolution of the City's governing body or by other appropriate official action.

(d) The City will not pledge, mortgage or assign this Lease, or its duties and obligations hereunder, to any other person, firm or corporation except as provided under the terms of this Lease.

(e) The City will use the Premises during the Lease Term primarily to carry out the governmental or proprietary purposes of the City and its departments, agencies, institutions, instrumentalities and political subdivisions.

(f) Subject to the provisions of Section 4.5, the officers of the City responsible for budget preparation will include in the annual budget request, for each Fiscal Year during the Term of this Lease, commencing with the Fiscal Year ending on June 30, 2014, moneys sufficient to pay and for the purpose of paying all Rental Payments and other obligations of the City under this Lease.

(g) The City presently intends to continue this Lease for its entire stated Lease Term and to pay all Rental Payments specified in Exhibit B hereto. The City reasonably believes that moneys in an amount sufficient to make all such Rental Payments can and will lawfully be appropriated or budgeted and made available for this purpose.

(h) This Lease does not constitute a general obligation of the City, and the full faith and credit and taxing powers of the City are not pledged for the payment of the Rental Payments or other amounts coming due, or other actions required to be performed, hereunder. The governing body of the City is not obligated to appropriate or otherwise provide moneys for the payment of the Rental Payments or any other amounts coming due hereunder; and in the event of Non-Appropriation by the governing body of the City, the City shall not be liable for general, special, incidental, consequential or other damages resulting therefrom, except as provided in Section 4.6.

(i) The City will file with the Internal Revenue Service the information reporting statement required by Section 149(e) of the Internal Revenue Code of 1986, as amended (the "*Code*"), and Treasury Regulations promulgated thereunder (the "*Regulations*").

(j) The City will take no action that would cause the Interest portion of the Rental Payments to become includible in gross income of the recipient for federal income tax purposes under the Code and Regulations, and the City will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest portion of the Rental Payments does not become

includible in gross income of the recipient for federal income tax purposes under the Code and Regulations.

Section 2.2. Representations, Covenants and Warranties of the Lessor. The Lessor represents, covenants and warrants as follows:

(a) The Lessor is a national banking association duly organized, existing and in good standing under and by virtue of the laws of the United States; has power to enter into this Lease, the Ground Lease and the Trust Agreement; is possessed of full power to own and hold real and personal property and to lease the same; and has duly authorized the execution and delivery of this Lease, the Ground Lease and the Trust Agreement.

(b) Neither the execution and delivery of this Lease, the Ground Lease and the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessor is now a party or by which the Lessor is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessor or upon the Premises, except Permitted Encumbrances.

ARTICLE III

REFUNDING; LEASE AND SALE OF PREMISES

Section 3.1. Refunding.

(a) The Trustee shall deposit in the Escrow Account created by the Escrow Agreement proceeds of the issuance and sale of the Certificates in the amount of \$4,203,436.77, together with any amounts remaining in the debt service funds for the Refunded Lease, all in accordance with the provisions of the Trust Agreement.

(b) Upon deposit of the amounts described in clause (a), the Trustee shall cause the lessor for the Refunded Lease to deliver such deeds or termination documents as may be required to convey the interest of such lessor in the Premises subject to the Refunded Lease to the Trustee. Upon such deposit, the Premises shall become subject to the provisions of this Lease.

Section 3.2. Lease of Premises. The Lessor hereby leases and sells the Improvements and subleases the Land to the City, and the City hereby leases and purchases the Improvements and subleases the Land from the Lessor, upon the terms and conditions set forth in this Lease. The Premises are leased or subleased and sold in their present condition without representation or warranty of any kind by the Lessor, and subject to the rights of parties in possession, to the existing state of title, to all applicable legal requirements now or hereafter in effect, and to Permitted Encumbrances.

Section 3.3. Possession and Enjoyment. The Lessor hereby covenants to provide the City during the Term of this Lease with quiet use and enjoyment of the Premises, and the City

shall during the Term of this Lease peaceably and quietly have and hold and enjoy the Premises, without suit, trouble or hindrance from the Lessor, except as expressly set forth in this Lease. The Lessor will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Lessor may lawfully do so.

Section 3.4. Lessor Access to Premises. The Lessor shall have the right at all reasonable times to examine and inspect the Premises, and shall have such rights of access to the Premises as may be reasonably necessary to cause the proper maintenance thereof in the event of failure by the City to perform its obligations hereunder.

Section 3.5. Compliance with Trust Agreement. During the Term of this Lease, the City agrees to perform all obligations imposed upon it by the Trust Agreement.

ARTICLE IV

TERM OF LEASE; SURRENDER OF PREMISES AND TERMINATION

Section 4.1. Lease Term. This Lease shall be in effect commencing upon the execution hereof and ending on the date upon which the City has paid to the Lessor all Rental Payments required to be paid by it hereunder, unless terminated prior to said date as provided in Section 4.2.

Section 4.2. Termination of Lease Term. The Term of this Lease will terminate upon the occurrence of the first of the following events:

- (a) termination of this Lease by the City pursuant to Section 4.5;
- (b) the discharge by the City of its obligation to pay the Rental Payments pursuant to Section 11.3;
- (c) a default by the City and the Lessor's election to terminate this Lease pursuant to Article XIII; or
- (d) the prepayment by the City of all Rental Payments pursuant to Section 11.1.

Section 4.3. Surrender of Premises. Upon termination of the Term of this Lease pursuant to Section 4.2, clauses (a) or (c), or upon exercise by the Lessor of its right to take possession of the Premises under Section 13.2, the City shall surrender the Premises to the Lessor in the condition in which they were originally received from the Lessor, except as repaired, rebuilt, restored, altered or added to as permitted or required hereby, ordinary wear and tear excepted. If the City refuses to surrender the Premises in the manner designated, the Lessor may repossess the Premises and charge to the City the costs of such repossession or pursue any remedy described in Section 13.2.

Section 4.4. No Subordination of City's Title to Land. No provision of this Lease shall be construed as in any way subordinating, conveying or agreeing to convey, or otherwise adversely affecting the City's fee simple interest in, the Land. This Lease covers only the Lessor's leasehold interest in the Land created by the Ground Lease, and all references to the Land herein and in the Trust Agreement shall be construed as applying only to such leasehold interest, unless otherwise specifically stated.

Section 4.5. Termination by the City. Notwithstanding anything in this Lease to the contrary, the City shall have the right to terminate this Lease, in whole but not in part, at the end of any Fiscal Year of the City, in the manner and subject to the terms specified in this Section 4.5 and Section 4.6, if the governing body of the City does not appropriate or budget moneys sufficient to pay the Rental Payments coming due in the next Fiscal Year, as determined by a specific provision in the City's budget for the Fiscal Year in question. The City may effect such termination by giving the Lessor a written notice of termination, as evidenced by a resolution of the governing body of the City specifically determining not to provide moneys to pay Rental Payments for the succeeding Fiscal Year and all future Fiscal Years, and stating the governing body's determination to terminate this Lease, and by paying to the Lessor any remaining Rental Payments for the City's then current Fiscal Year. The City shall give notice not later than June 1 of its intent to terminate this Lease at the end of the City's then current Fiscal Year and shall notify the Lessor of any anticipated termination. If notice of termination is not given to the Lessor by June 1, this Lease shall be deemed to be renewed, and the City shall appropriate money for its payment for the succeeding Fiscal Year. In the event of termination of this Lease as provided in this Section 4.5, the City shall surrender the Premises to the Lessor in accordance with Section 4.3 within thirty (30) days after the end of its then current Fiscal Year.

Section 4.6. Effect of Termination. Upon termination of this Lease as provided in Section 4.5, the City shall not be responsible for the payment of any additional Rental Payments coming due with respect to succeeding Fiscal Years, but if the City has not delivered possession of the Premises to the Lessor in accordance with Section 4.3 within thirty (30) days after the end of its then current Fiscal Year, the termination shall nevertheless be effective, but the City shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments thereafter coming due which are attributable to the number of days during which the City fails to so deliver possession of the Premises to the Lessor and for any other loss suffered by the Lessor as a result of the City's failure to so deliver possession of the Premises to the Lessor. The City shall be required to pay over to the Lessor any moneys which it has appropriated or budgeted for the purpose of paying obligations under this Lease for any Fiscal Years preceding the Fiscal Year for which termination under Section 4.5 is effective.

Section 4.7. Right of Lessor to Remove Improvements. In the event of a termination of this Lease under the circumstances described in either clause (a) or (c) of Section 4.2, the Lessor shall have the right, at its option and upon not less than fifteen (15) days written notice to City, to treat the Improvements as being severable from the Land, and to remove part or all of the Improvements from the Land. If the Lessor exercises its right under this Section 4.7, it shall pay the costs involved in such removal, and the City shall not be obligated to pay any of such costs. The Lessor shall not be liable for any damage to the Land or any remaining Improvements resulting from any such removal. The removal of the Improvements pursuant to this Section 4.7 shall not result in a termination of the Ground Lease.

ARTICLE V

RENTAL PAYMENTS

Section 5.1. Rental Payments. Except as provided in Section 4.5, the City agrees to pay Rental Payments during the Term of this Lease, in the amounts and on the dates specified in Exhibit B. All Rental Payments shall be paid to the Lessor at the address specified in Section 14.1 of this Lease, or to such other person or entity to which the Lessor has assigned such Rental Payments as specified in Article XII, at such place as such assignee may from time to time designate by written notice to the City. The City shall pay the Rental Payments exclusively from moneys legally available therefor, in lawful money of the United States of America, to the Lessor or, in the event of assignment of the right to receive Rental Payments by the Lessor, to its assignee. Interest shall accrue from and after the Closing Date.

Section 5.2. Current Expense. The obligations of the City under this Lease, including its obligation to pay the Rental Payments, in any Fiscal Year for which this Lease is in effect, shall constitute a current expense of the City for such Fiscal Year and shall not constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions whatsoever. Nothing herein shall constitute a pledge by the City of its general credit or taxing powers of the City, other than moneys lawfully appropriated from time to time by the City in the annual budget of the City and the Net Proceeds with respect to the Premises as specified in Article VI, to the payment of any Rental Payment or other amount coming due hereunder.

Section 5.3. Interest Component. A portion of each Rental Payment is paid as and represents the payment of Interest. Exhibit B sets forth the Interest portion of the Rental Payments.

Section 5.4. Rental Payments to be Unconditional. Except as provided in Section 4.5, the obligation of the City to make Rental Payments or any other payments required hereunder shall be absolute and unconditional in all events. Notwithstanding any dispute between the City and the Lessor or any other person, the City shall make all Rental Payments and other payments required hereunder when due and shall not withhold any Rental Payment or other payment required hereunder pending final resolution of such dispute nor shall the City assert any right of set-off or counterclaim against its obligation to make such Rental Payments or other payments required hereunder. The City's obligation to make Rental Payments or other payments required hereunder during the Lease Term shall not be abated through accident or unforeseen circumstances (including, without limitation, the occurrence of any environmental liability). However, nothing herein shall be construed to release the Lessor from the performance of its obligations hereunder; and if the Lessor should fail to perform any such obligation, the City may institute such legal action against the Lessor as the City may deem necessary to compel the performance of such obligation or to recover damages therefor.

ARTICLE VI

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 6.1. Damage, Destruction and Condemnation. If the Premises or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or title to or the temporary use of the Premises or any part thereof, or the interest of the City or the Lessor in the Premises or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the City shall have the rights with respect to the Net Proceeds of any insurance or condemnation award with respect thereto. All Net Proceeds shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Premises by the City and this Lease shall continue in effect, or if the City elects in its sole discretion not to repair or rebuild, all Net Proceeds shall be applied to prepay Rental Payments; in either event all Net Proceeds not needed for such purposes shall belong to the City.

Section 6.2. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification, improvement or replacement of the Premises, the City shall either: (a) complete the work and pay any cost in excess of the amount of the Net Proceeds, and the City agrees that if by reason of any such insufficiency of the Net Proceeds, the City shall make any payments pursuant to the provisions of this Section 6.2, the City shall not be entitled to any reimbursement therefor from the Lessor nor shall the City be entitled to any diminution of the Rental Payments due with respect to the Premises; or (b) prepay the Rental Payments to the full extent of the Net Proceeds. If the City elects not to repair or rebuild, the City shall prepay the Rental Payments to the full extent of the Net Proceeds.

Section 6.3. Cooperation of Lessor. The Lessor shall cooperate fully with the City at the expense of the City in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 6.1 and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Premises or any part thereof and will, to the extent it may lawfully do so, permit the City to litigate in any proceeding resulting therefrom in the name of and on behalf of the Lessor. In no event will the Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Premises or any part thereof without the written consent of the City.

Section 6.4. Condemnation of Other Property Owned by the City. The City shall be entitled to the proceeds of any condemnation award or portion thereof made for destruction of, damage to or taking of its property not included in the Premises.

ARTICLE VII

INSURANCE AND INDEMNIFICATION

Section 7.1. Liability Insurance. Unless self-insurance is provided by the City, as evidenced by a written certificate satisfactory to the Lessor specifying the terms and amounts

thereof and subject further to the annual verification no later than 90 days after the end of each Fiscal Year, the City shall take such measures as may be necessary to insure that any liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition or the operation of the Premises or any part thereof, is covered by liability insurance maintained by the City. The Net Proceeds of such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

Section 7.2. Property Insurance. The City shall have and assume the risk of loss with respect to the Premises. Unless self-insurance is provided by the City, as evidenced by a written certificate satisfactory to the Lessor specifying the terms and amounts thereof and subject further to annual verification no later than 90 days after the end of each Fiscal Year, the City shall procure and maintain continuously in effect during the Term of this Lease, property insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part of the Premises damaged or destroyed or to pay the applicable Purchase Option Price of the Premises. Such insurance may be written with customary deductible amounts and need not cover land and building foundations. As set forth in Article VI, the Net Proceeds of insurance required by this Section 7.2 shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Premises, or shall be applied to prepay Rental Payments. Any Net Proceeds not needed for those purposes shall belong to the City.

Section 7.3. Worker's Compensation Insurance. If required by State law, and unless self-insurance is provided by the City, as evidenced by a written certificate satisfactory to the Lessor specifying the terms and amounts thereof and subject further to annual verification no later than 90 days after the end of each Fiscal Year, the City shall carry worker's compensation insurance covering all employees on, in, near or about the Premises, and upon request, shall furnish to the Lessor certificates evidencing such coverage throughout the Term of this Lease.

Section 7.4. Requirements For All Insurance. Insurance taken out pursuant to this Article VII shall be maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State or through the Montana Municipal Interlocal Authority (MMIA); and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten (10) days before the cancellation or revision becomes effective. All insurance required by Sections 7.1 and 7.2 shall name the City and the Lessor as insured parties, and any insurance required by Section 7.3 shall name the City as insured party. The City shall deposit with the Lessor evidence of such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such insurance, the City shall furnish to the Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article VII, unless such insurance is no longer obtainable in which event the City shall notify the Lessor of this fact.

Section 7.5. Indemnification. As between the Lessor and the City, the City assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Premises and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of the City, the Lessor or of third parties, and whether such

property damage be to the City's or the Lessor's property or the property of others, which is proximately caused by the negligent conduct of the City, its officers, employees, agents and lessees, or arising out of the operation, maintenance or use of the Premises by the City, its officers, employees, agents and lessees. The City hereby assumes responsibility for and agrees to indemnify, defend and hold harmless the Lessor, its directors, officers, employees and agents, and any assignee of the Lessor, without payment being made by the Lessor, from and against all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against the Lessor or its directors, officers, employees, agents or assignees that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part on the foregoing, to the maximum extent permitted by law.

The City further agrees that it will indemnify, defend and hold harmless the Lessor, its directors, officers, employees and agents and any assignee of Lessor, without payment being made by Lessor, 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 law or regulation, including without limitation, any environmental law or regulation, or arising out of the presence on the Land of any hazardous or toxic waste, materials or substances within the meaning of any federal, state or local law or regulation, to the maximum extent permitted by law.

ARTICLE VIII

GENERAL MATTERS

Section 8.1. Use; Permits. The City shall exercise due care in the use, operation and maintenance of the Premises, and shall not use, operate or maintain the Premises improperly, carelessly, in violation of any State and Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. The City shall obtain all permits and licenses necessary for the installation, operation, possession and use of the Premises. The City shall comply with all State and Federal Laws applicable to the installation, use, possession and operation of the Premises, and if compliance with any such State and Federal Law requires changes or additions to be made to the Premises, such changes or additions shall be made by the City at its expense.

Section 8.2. Maintenance and Modification of Premises by the City. During the Term of this Lease, the City shall, at its own expense, maintain, preserve and keep the Premises in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep the Premises in such condition. The Lessor shall have no responsibility for any of these repairs, replacements or improvements. In addition, the City shall, at its own expense, have the right to remodel the Premises or to make additions, modifications and improvements thereto. All such additions, modifications and improvements shall thereafter comprise part of the Premises and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage the Premises; and the Premises, upon completion of any additions, modifications and improvements made pursuant to this Section 8.2, shall be of a value not materially less than the value of the Premises immediately prior to the making of such additions, modifications and improvements. Any

property for which a substitution or replacement is made pursuant to this Section 8.2 may be disposed of by the City in such manner and on such terms as are determined by the City.

Section 8.3. Taxes, Other Governmental Charges and Utility Charges; Compliance with Governmental Requirements. Except as expressly limited by this Section 8.3, the City shall pay all taxes and other charges of any kind which are at any time lawfully assessed or levied against or with respect to the Premises, the Rental Payments or any part thereof, or which become due during the Term of this Lease, whether assessed against the City or the Lessor. The City shall also pay when due all gas, water, steam, electricity, heat, power, telephone and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Premises, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Premises; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. The City shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by the Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of the City under this Section 8.3. The City may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Lessor shall notify the City that, in the opinion of Independent Counsel, by nonpayment of any such items the interest of the Lessor in the Premises will be materially endangered or the Premises or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments, utility or other charges or provide the Lessor with full security against any loss which may result from nonpayment, in form satisfactory to the Lessor.

Section 8.4. Easements. The Lessor will from time to time, at the request of the City and at the City's cost and expense, cooperate and join with the City: (a) in granting easements and other rights in the nature of easements, releasing existing easements or other rights in the nature of easements which are for the benefit of the Premises; and (b) in executing and delivering to any person any instrument appropriate (i) to confirm or to the effect that such grant, release or execution is not detrimental to the proper conduct of the operations of the City on or in the Premises, (ii) to show the consideration, if any, being paid for such grant, release or amendment, (iii) to show that such grant, release, dedication, transfer, petition or amendment does not materially impair the use of the Premises or reduce their value, or (iv) to confirm that the City will remain obligated hereunder to the same extent as if such grant, release, or amendment had not been made, and the City will perform all obligations of the Lessor under such instrument; provided that no such easement will materially adversely affect the operation of the Improvements.

Section 8.5. Covenants Regarding Hazardous Material. The City shall comply with all regulations concerning the environment, health and safety relating to the generation, use, handling, production, disposal, discharge and storage of Hazardous Materials in, on, under or about the Premises. The City shall promptly take any and all necessary action in response to the

presence, storage, use, disposal, transportation or discharge of any Hazardous Materials in, on, under or about the Premises by the City or persons acting on behalf of or at the direction of the City as all applicable laws, rules, regulations or ordinances may require. The City agrees promptly to:

- (a) Transmit to the Lessor copies of any governmental citations, orders or notices received with respect to Hazardous Materials which may result in a penalty, liability or cost greater than \$10,000.
- (b) Observe and comply with any and all laws, ordinances, rules, regulations, licensing requirements or conditions relating to the use, maintenance or disposal of Hazardous Materials and all orders or directives from any official, court or governmental agency of competent jurisdiction relating to the use or maintenance or requiring the removal, treatment, containment or other disposal of such Hazardous Material.
- (c) Pay or otherwise dispose of any lien, charge or imposition relating thereto which, if paid, would constitute a lien upon the Premises.
- (d) Indemnify and hold harmless the Lessor from any and all liabilities and obligations relating to or arising from the presence, at any time, of Hazardous Materials in, on, under or about the Premises, to the maximum extent permitted by law. The Lessor shall not be liable for any payment whatsoever with regards to Section 8.5, clauses (a) through (c).

As used herein, the term Hazardous Material shall mean: (i) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other substances, materials or pollutants which (1) pose a hazard to the Premises, to adjacent premises or to persons on or about the Premises or adjacent premises, (2) substances which cause the Premises to be in violation of any local, state or federal law, rule, regulation or ordinance, or (3) substances which are defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” or words of similar import under any applicable local, state or federal law or under the regulations, policy guidelines or other publications adopted or promulgated pursuant thereto, including, but not limited to: (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; (B) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1601, et seq.; (C) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; (D) the Clean Air Act, 42 U.S.C. § 7412; (E) the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq.; (F) The Clean Water Act, 33 U.S.C. § 1317 and 1321(b)(2)A and (G) rules, regulations, ordinances and other publications adopted or promulgated pursuant to the aforesaid laws; (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, and (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety or property interests of the City or its employees, the occupants of the Premises or the owners and/or occupants of property adjacent to or surrounding the Premises.

ARTICLE IX

TITLE

Section 9.1. Title. During the Term of this Lease, legal title to the Improvements and any and all repairs, replacements, substitutions and modifications thereto shall be in the Lessor, subject to the City's interests under this Lease, and legal fee title to the Land shall remain in the City, subject to Lessor's leasehold interest under the Ground Lease. At any time when (a) the entire principal balance, together with any unpaid interest, has been fully paid, whether by (i) payment of all Rental Payments as provided in Section 5.1, (ii) prepayment of all of the Rental Payments as provided in Section 11.1, or (iii) discharge of all of the Rental Payments as provided in Section 11.3, then the purchase of the Premises by the City shall be deemed to have been completed. The Lessor shall thereupon deliver to the City such instruments of conveyance or release as, in the opinion of counsel, may be necessary to release and terminate any interests of the Lessor in the Premises. Thereafter, full and unencumbered legal title to the Premises shall pass to the City, and the Lessor shall have no further interest therein.

Section 9.2. Liens. During the Term of this Lease, the City shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Premises, other than the respective rights of the Lessor and the City as herein provided and Permitted Encumbrances. The City shall promptly, at its own expense, take such action as may be necessary to discharge or remove any mortgage, pledge, lien, charge, encumbrance or claim with respect to the Premises, other than the respective rights of the Lessor and the City as herein provided and Permitted Encumbrances. The City shall reimburse the Lessor for any expense incurred by the Lessor in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 9.3. Installation of Personal Property. The City may, at any time and from time to time, in its sole discretion and at its own expense, install items of personal property in or upon the Premises. All such items so identified shall remain the sole property of the City, in which the Lessor shall have no interest, and may be modified or removed by the City at any time; provided that the City shall repair and restore any and all damage to the Premises resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent the City from purchasing items to be installed pursuant to this Section 9.3 under a conditional sale or lease with option to purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof; provided that no such lien or security interest shall attach to any part of the Premises.

ARTICLE X

WARRANTIES

Section 10.1. Maintenance of Premises. The Lessor shall have no obligation to test, inspect, service or maintain the Premises under any circumstances, but such actions shall be the obligation of the City.

Section 10.2. Contractor's Warranties. The Lessor hereby assigns to the City for and during the Term of this Lease, all of its interest in all contractor's warranties and guarantees, express or implied, issued on or applicable to the Premises or any portion thereof, and the Lessor hereby authorizes the City to obtain the customary services furnished in connection with such warranties and guarantees at the City's expense.

Section 10.3. Patent Infringement. The Lessor hereby assigns to the City for and during the Term of this Lease all of its interest in patent indemnity protection provided by any Contractor with respect to the Premises. Such assignment of patent indemnity protection by the Lessor to the City shall constitute the entire liability of the Lessor for any patent infringement by the Premises furnished pursuant to this Lease.

Section 10.4. Disclaimer of Warranties. THE PREMISES ARE DELIVERED AS IS, AND LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE PREMISES, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PREMISES.

ARTICLE XI

OPTION TO PREPAY; DISCHARGE

Section 11.1. Option to Prepay in Whole or in Part. The City shall have the option to prepay the unpaid Rental Payments, in whole or in part, but only under the terms and conditions for the redemption of the Certificates set forth in Section 3.6 of the Trust Agreement.

Section 11.2. Exercise of Prepayment Option. The City shall give notice to the Lessor of its intention to exercise its prepayment option not less than forty-five (45) days in advance of the date of exercise, and shall pay to the Lessor on the date of exercise an amount equal to the amount of Principal to be prepaid, plus accrued Interest to the prepayment date.

Section 11.3. Discharge of City's Obligation. The City may at any time discharge its obligation to pay the Rental Payments due under this Lease, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities for the defeasance of the Certificates under Article VII of the Trust Agreement. Defeasance of the Certificates shall constitute defeasance of the Rental Payments hereunder.

ARTICLE XII

ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 12.1. Assignment by the Lessor. All of the Lessor's rights, title and/or interest in and to this Lease, the Ground Lease, the Rental Payments and other amounts due hereunder and the Premises may be assigned and reassigned in whole or in part to one or more assignees or subassignees by the Lessor at any time without the consent of the City. No such assignment shall be effective as against the City unless and until the assignor shall have given written notice

thereof to the City at the address specified in Section 14.1. The City shall pay all Rental Payments due hereunder to or at the direction of the Lessor or the assignee named in the most recent assignment or notice of assignment filed with the City. During the Lease Term the City shall keep a complete and accurate record of all such notices of assignment. In the event the Lessor assigns its right, title and/or interest in and to this Lease, such assignee shall be considered to be the Lessor. The City hereby consents to assignment of the Lease and Ground Lease to the Trustee for the purposes as set forth in the Trust Agreement.

Section 12.2. Assignment and Subleasing by the City. Neither this Lease nor the City's interest in the Premises may be assigned by the City without the written consent of the Lessor. However, the Premises may be subleased by the City, in whole or in part, without the consent of the Lessor, subject, however, to each of the following conditions:

- (i) This Lease and the obligation of the City to make Rental Payments hereunder shall remain obligations of the City.
- (ii) The sublessee shall assume the obligations of the City hereunder to the extent of the interest subleased.
- (iii) The City shall furnish or cause to be furnished to the Lessor a true and complete copy of such sublease within thirty (30) days after the delivery thereof.
- (iv) The City shall furnish to the Lessor an opinion of nationally recognized bond counsel that the proposed sublease shall not cause the Interest component of the Rental Payments due with respect to the Premises to become includible in gross income of the recipient for federal income tax purposes.

Section 12.3. Restriction on Mortgage or Sale of Premises by the City. Except as provided in Section 12.2, the City will not mortgage, sell, assign, transfer or convey the Premises or any portion thereof during the Term of this Lease, or remove the same from its boundaries, without the written consent of the Lessor.

ARTICLE XIII

EVENTS OF DEFAULT AND REMEDIES

Section 13.1. Events of Default Defined. The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

- (i) Failure by the City to pay any Rental Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of ten (10) days after telephonic, telegraphic or other electronic notice given by the Lessor that the payment referred to in such notice has not been received, such telephonic, telegraphic or other electronic notice to be subsequently confirmed in writing, or after written notice.

(ii) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease, the Ground Lease or the Trust Agreement, other than as referred to in clause (i) of this Section 13.1, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Lessor, unless the Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is promptly instituted by the City and diligently pursued until the default is corrected.

(iii) The filing by the City of a voluntary petition in bankruptcy, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the applicable federal or State bankruptcy, insolvency, reorganization or other similar laws.

If by reason of force majeure the City is unable in whole or in part to carry out its obligations under this Lease, other than its obligation to pay Rental Payments, the City shall not be deemed in default during the continuance of such inability. The term “force majeure” as used herein shall mean, without limitation, acts of God; strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of the City. The City agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the City from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of the City and the City shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the City unfavorable to the City.

Section 13.2. Remedies on Default. Whenever any event of default referred to in Section 13.1 shall have happened and be continuing with respect to the Premises, the Lessor shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(i) The Lessor, with or without terminating this Lease, may declare all Rental Payments due or to become due during the Fiscal Year in effect when the default occurs to be immediately due and payable by the City, whereupon such Rental Payments shall be immediately due and payable.

(ii) The Lessor, with or without terminating this Lease, may repossess the Premises by giving the City written notice to surrender the Premises to the

Lessor for the remaining term of the Ground Lease, whereupon the City shall do so in the manner provided in Section 4.7. Notwithstanding the fact that the Lessor has taken possession of the Premises, the City shall continue be responsible for the Rental Payments due during the Fiscal Year in effect when such default occurs. If this Lease has not been terminated, the Lessor shall return the Premises to the City at the City's expense when the event of default is cured.

(iii) The Lessor may terminate this Lease and take possession of the Premises, and shall thereafter use its best efforts to sell or lease its interest in the Premises or any portion thereof in a commercially reasonable manner in accordance with applicable State laws. The Lessor shall apply the proceeds of such sale or lease to pay the following items in the following order: (a) all costs incurred in securing possession of the Premises; (b) all expenses incurred in completing the sale, including attorney's fees; (c) the applicable Purchase Option Price of the Premises; and (d) the balance of any Rental Payments owed by the City during the Fiscal Year in effect when such default occurs. Any sale proceeds remaining after the requirements of clauses (a), (b), (c) and (d) have been met may be retained by Lessor.

(iv) If the proceeds of sale or lease of the Lessor's interest in the Premises are not sufficient to pay the balance of any Rental Payments owed by the City during the Fiscal Year in effect when such default occurs, the Lessor may take any other remedy available at law or in equity to require the City to perform any of its obligations hereunder.

Section 13.3. No Remedy Exclusive. No remedy conferred upon or reserved to the Lessor by this Article XIII is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by the Lessor or its assignee.

ARTICLE XIV

ADMINISTRATIVE PROVISIONS

Section 14.1. Notices. Except as otherwise provided in this Lease, all notices, requests, demands and other communications under this 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 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 14.2. Recording. This Lease shall be recorded by the City at its cost and expense.

Section 14.3. Financial Information. During the Term of this Lease, the City annually within 365 days after the end of its Fiscal Year will provide the Lessor with current financial statements, budgets, proof of appropriation for the ensuing Fiscal Year and such other financial information relating to the ability of the City to continue this Lease as may be requested by the Lessor or its assignee.

Section 14.4. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Lessor and the City and their respective successors and assigns.

Section 14.5. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.6. Amendments, Changes and Modifications. This Lease may be amended or any of its terms modified only by written document duly authorized, executed and delivered by the Lessor and the City.

Section 14.7. Captions. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provision, Article, Section or Clause of this Lease.

Section 14.8. Further Assurances and Corrective Instruments. The Lessor and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Premises hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Lease.

Section 14.9. Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.10. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State.

[Signatures continue on the following page.]

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

U.S. BANK NATIONAL ASSOCIATION

Vice President

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: _____

EXHIBIT A

LAND

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.

IMPROVEMENTS

The Billings Operations Center is located on approximately 21 acres of land on the southwest corner of I-90 and South Billings Blvd. in Billings, MT. The land configuration is an inverted “T-shape” with the 5-acre tail of the “T” bordered by the I-90 off ramp to the north and privately-held, undeveloped land to the east and west. The cross of the “T” consisting of 16 acres is bound by South Billings Blvd. to the east, agricultural land to south, and commercial/industrial development to the west. An extension of Midland Road has been constructed as part of this project, bisecting the north and south parcels and intersecting South Billings Blvd. Midland Road will form an “S-curve” as it traverses the property.

The project houses the operations of four divisions of the City of Billings: Streets/Traffic, Solid Waste, Motor Pool/Purchasing, and Parks, Recreation, and Public Lands.

Four buildings have been constructed on the south parcel:

(1) A 100,000 square foot structure (500' x 200') with 97,000 square foot enclosed, heated space and 3,000 square foot of covered parking, containing open storage for large street and sanitation vehicles and smaller, enclosed workshop areas. This building is occupied by all divisions except Motor Pool.

(2) A 43,000 square foot building consisting of two connected components, an 18,900 square foot (210' x 90') structure containing an 18-stall Motor Pool repair garage and four enclosed large-vehicle wash bays at the west end, and a 24,100 square foot structure containing office/administration/storage functions for the four departments at the east end. The entire building is heated; the administration areas are also cooled.

(3) A 12,000 square foot Police Training facility with 10,000 square foot of office/training/conditioning and 2,000 square foot of heated storage garage for emergency

response vehicles. The entire building is heated; the administration areas are also cooled.

(4) An 11,250 square foot unheated material storage facility for the storage of road materials required by EPA to be stored in the dry.

The entire 16-acre parcel has been developed for parking, storage, circulation, and landscaping. The site houses a fueling facility with 2-10,000 gallon and 2-5,000 gallon buried tanks, above-grade dispensers and islands, a loading facility for calcium chloride consisting of above-grade tanks and dispensers on containment pads, and carports for police vehicles. The entire site, except for private vehicle parking and landscaping is surrounded by a chain link fence accessed through automatic gates.

One building has been constructed on the north parcel:

A 5,000 square foot Police Evidence Storage facility with three vehicle processing bays, an evidence processing area, and an evidence storage area, including a mezzanine storage area.

A single access drive and a small, fenced parking lot will serve the Evidence building. The building will attach directly to a 48,000 square foot vehicle impound yard, with high-security fencing, lighting, and intrusion system. The balance of this north parcel is undeveloped.

All of the buildings are concrete slab-on-grade with pre-engineered steel frames, purlins and girts, with standard steel ribbed roofing and wall panels, insulated with R-30 insulation on the roof and R-19 on the walls.

EXHIBIT B

SCHEDULE OF RENTAL PAYMENTS

<u>Rental Payment</u> <u>Date</u>	<u>Rental Payment</u>	<u>Principal</u>	<u>Interest</u>
August 25, 2013	\$237,444.44	\$180,000.00	\$57,444.44
February 25, 2014	56,950.00		56,950.00
August 25, 2014	426,950.00	370,000.00	56,950.00
February 25, 2015	53,250.00		53,250.00
August 25, 2015	428,250.00	375,000.00	53,250.00
February 25, 2016	47,625.00		47,625.00
August 25, 2016	432,625.00	385,000.00	47,625.00
February 25, 2017	41,850.00		41,850.00
August 25, 2017	441,850.00	400,000.00	41,850.00
February 25, 2018	35,850.00		35,850.00
August 25, 2018	445,850.00	410,000.00	35,850.00
February 25, 2019	29,700.00		29,700.00
August 25, 2019	454,700.00	425,000.00	29,700.00
February 25, 2020	23,325.00		23,325.00
August 25, 2020	458,325.00	435,000.00	23,325.00
February 25, 2021	16,800.00		16,800.00
August 25, 2022	466,800.00	450,000.00	16,800.00
February 25, 2023	10,050.00		10,050.00
August 25, 2024	480,050.00	460,000.00	10,050.00
February 25, 2025	3,150.00		3,150.00
August 25, 2026	213,150.00	210,000.00	3,150.00