

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

DRAFT 02/04/2013

DECLARATION OF TRUST

by

U.S. BANK NATIONAL ASSOCIATION

and

CITY OF BILLINGS, MONTANA

MARCH 5, 2013

Relating to

REFUNDING CERTIFICATES OF PARTICIPATION, SERIES 2013

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION	2
Section 1.1. Definitions.....	2
Section 1.2. Rules of Construction	4
ARTICLE II RECITALS AND REPRESENTATIONS	5
Section 2.1. Lease of the Premises.....	5
Section 2.2. Creation of Trust	5
Section 2.3. Conditions Precedent Satisfied	5
ARTICLE III CERTIFICATES; TERMS AND PROVISIONS	5
Section 3.1. Preparation of Certificates	5
Section 3.2. Form; Denominations; Medium of Payment	5
Section 3.3. Date of Certificates	6
Section 3.4. Payment of Principal and Interest with Respect to Certificates.....	6
Section 3.5. Optional Redemption	6
Section 3.6. Extraordinary Redemption of Certificates	6
Section 3.7. Legends	7
Section 3.8. Execution	7
Section 3.9. Interchangeability of Certificates.....	7
Section 3.10. Negotiability, Transfer and Registry.....	7
Section 3.11. Transfer of Certificates	8
Section 3.12. Regulations with Respect to Exchange and Transfer	8
Section 3.13. Register	8
Section 3.14. Temporary Certificates	8
Section 3.15. Certificates Mutilated, Lost, Destroyed or Stolen	9
Section 3.16. Place of Payment.....	9
Section 3.17. Evidence of Signatures of Certificate Owners and Ownership of Certificates	10
Section 3.18. Securities Depository for Certificates.....	10
Section 3.19. Selection of Certificates for Redemption.....	12
Section 3.20. Notice of Redemption.....	12
Section 3.21. Effect of Redemption.....	13
Section 3.22. Additional Certificates	13
ARTICLE IV ESTABLISHMENT AND ADMINISTRATION OF FUNDS AND ACCOUNTS	15
Section 4.1. Trust Fund; Accounts; Payment of Costs of Issuance	15
Section 4.2. Reserved.....	16
Section 4.3. Establishment and Application of Rental Payment Account.....	16
Section 4.4. Establishment and Application of Redemption Account.....	16
Section 4.5. Deposit and Investment of Moneys in Funds	17
Section 4.6. Unclaimed Moneys	18

ARTICLE V COVENANTS; DEFAULT AND LIMITATION OF LIABILITY	18
Section 5.1. City to Perform Agreement.....	18
Section 5.2. Trustee to Perform Agreement.....	18
Section 5.3. Notice of Non-Payment	18
Section 5.4. Notice of Event of Default or Nonappropriation	18
Section 5.5. Action on Default, Nonappropriation or Termination	19
Section 5.6. No Remedy Exclusive.....	19
Section 5.7. Agreement to Pay Attorneys' Fees and Expenses	19
Section 5.8. No Additional Waiver Implied by One Waiver.....	19
Section 5.9. Application of Moneys Upon Default or Nonappropriation.....	19
Section 5.10. Collection of Rental Payments.....	20
Section 5.11. Action by Owners	20
Section 5.12. No Obligation by the City to Owners	20
Section 5.13. No Obligation with Respect to Performance by Trustee	20
Section 5.14. No Liability to Owners for Payment.....	21
Section 5.15. No Responsibility for Sufficiency	21
Section 5.16. Indemnification to Trustee.....	21
ARTICLE VI THE TRUSTEE	21
Section 6.1. Employment of Trustee.....	21
Section 6.2. Acceptance of Employment.....	21
Section 6.3. Trustee; Duties, Removal and Resignation.....	21
Section 6.4. Appointment of Successor Trustee	22
Section 6.5. Compensation of the Trustee	22
Section 6.6. Protection to the Trustee	22
ARTICLE VII AMENDMENT; DEFEASANCE; ADMINISTRATIVE PROVISIONS	23
Section 7.1. Amendment.....	23
Section 7.2. Amendment to Trust Agreement or Lease Not Requiring Consent of Certificate Owners	23
Section 7.3. Defeasance	24
Section 7.4. Recording and Filing.....	24
Section 7.5. Trustee to Keep Records.....	24
Section 7.6. Notices	25
Section 7.7. Montana Law	25
Section 7.8. Severability	25
Section 7.9. Binding on Successors	25
Section 7.10. Headings	25
Section 7.11. Execution in Counterparts.....	25
Section 7.12. Business Days	25
EXHIBIT A FORM OF REFUNDING CERTIFICATE OF PARTICIPATION	A-1

DECLARATION OF TRUST

THIS DECLARATION OF TRUST is dated as of March 5, 2013 (the "*Trust Agreement*"), by U.S. Bank National Association, Seattle, Washington, a national banking association duly organized and existing under the laws of the United States (the "*Trustee*"), and joined in by the City of Billings, Montana, a political subdivision of the State of Montana (the "*City*").

W I T N E S S E T H:

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*"), pursuant to Montana Code Annotated, Sections 7-1-4124 and 7-8-4101;

WHEREAS, the City has determined that it is necessary to refinance the City's obligations with respect to the Refunded Lease;

WHEREAS, the City and the Trustee have entered into a Ground Lease dated as of the date hereof (the "*Ground Lease*"), whereby the City leases the Land to the Trustee;

WHEREAS, the Trustee, as lessor (the "*Lessor*"), and the City, as lessee (the "*Lessee*"), have entered into a Lease Purchase Agreement dated as of the date hereof (the "*Lease*"), which provides, among other things, for the lease and sale by Lessor to Lessee of the Premises (as hereinafter defined) and for the payment of periodic Rental Payments (as hereinafter defined) to Lessor by Lessee with respect thereto;

WHEREAS, the City has requested that the Trustee serve both as Lessor under the Lease and as trustee hereunder, and the Trustee has agreed to serve in those capacities;

WHEREAS, the City, in order to obtain the most advantageous terms of financing, has requested the Trustee to create the trust and Trust Fund (as hereinafter defined) to assign to the trust its right, title and interest in and to the Lease, including, without limitation, the Rental Payments and other amounts due thereunder, and the Ground Lease, and to issue Refunding Certificates of Participation, Series 2013 (the "*Certificates*"), in the trust, representing undivided interests in the Lease and the right to receive the Rental Payments thereunder; and

WHEREAS, Piper Jaffray & Co., in Denver, Colorado (the "*Original Purchaser*") has agreed to purchase the Certificates;

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 RULES OF CONSTRUCTION

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

Additional Certificates: means any additional Certificates issued pursuant to Section 3.23 hereof.

Authorized Officer: when used with respect to the City, means the Mayor, City Finance Director or City Clerk or any other person who is designated in writing by the City Council as an Authorized Officer for purposes of this Trust Agreement. The term "Authorized Officer," when used with respect to the Trustee, means any vice president and/or trust officer who is authorized to take the action in question on behalf of the Trustee.

Certificates: means the Certificates prepared and delivered by the Trustee pursuant to this Trust Agreement.

Certificate Payment Date: means March 1 and September 1 of each year commencing September 1, 2013.

Closing Date: means March 5, 2013.

Costs of Issuance: means all fees and expenses incurred by the City in connection with the execution and delivery of the Lease and the issuance of the Certificates, including, but not limited to, costs of preparing the Certificates, this Trust Agreement, the Lease, the Ground Lease, the Official Statement relating to the Certificates, and related documents; legal fees (including those of counsel to the Trustee, the City and the Original Purchaser); and the Trustee's initial fees.

Escrow Agreement: means the Escrow Agreement dated as of the date hereof by and between the City and U.S. Bank National Association, as escrow agent.

Ground Lease: means the Ground Lease dated as of the date hereof by and between the City, as lessor, and Trustee, as lessee, relating to the Land, and any amendment thereof or supplement thereto.

Improvements: means the design, construction and equipping of the City's Operations Center.

Land: means the real property legally described on Exhibit A to the Lease.

Lease: means the Lease Purchase Agreement dated as of the date hereof by and between the Trustee, as Lessor, and the City, as Lessee, and any amendment thereof or supplement thereto.

Original Purchaser: means Piper Jaffray & Co., in Denver, Colorado.

Outstanding: when used with reference to the Certificates and as of any particular date, means all Certificates theretofore delivered except: (i) any Certificate canceled or fully paid by the Trustee at or before said date; (ii) any Certificate in lieu of or in substitution for which another Certificate shall have been delivered pursuant to this Trust Agreement; and (iii) for the sole purpose of determining the percentage of Certificate Owners consenting to an amendment to this Trust Agreement or authorizing any action by the Trustee or the exercise of any remedy hereunder, any Certificate owned by the City or any of its departments, agencies, institutions, instrumentalities or political subdivisions. For all other purposes, Certificates owned by the City or any such entity which are not described in paragraphs (i) and (ii) shall be treated as Outstanding hereunder.

Owner: when used with respect to the Certificates, means the registered owner of any Outstanding Certificate.

Permitted Investments: means any one or more of the following:

(1) The following direct obligations of the United States:

(a) United States government treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations;

(b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or

(c) general obligations of the following agencies of the United States, provided that the investment has a fixed or zero-coupon rate and does not have prepayments based on underlying assets or collateral:

- (i) federal home loan bank;
- (ii) federal national mortgage association;
- (iii) federal home mortgage corporation; and
- (iv) federal farm credit bank;

(2) Shares of a money market mutual fund or other collective investment fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least \$100,000,000, and having a rating AAAM or AAAM-G by a nationally recognized rating agency, including money market

mutual funds from which the Trustee or its affiliates derive a fee for investment advisory or other services to the fund; and

(3) Time or savings deposits placed in a bank, savings and loan association, or credit union in the State, or demand deposits placed in a bank, provided that the institution in which the money is deposited shall pay on the money no less than the rate of interest as is paid on money from private sources on the same terms.

Premises: means the Land and the Improvements.

Principal Office: means (i) when used with respect to the Trustee, the principal corporate trust office of the Trustee, which at the date of this Agreement is located at 1420 Fifth Avenue, 7th Floor, Seattle, Washington, provided that with respect to payments on the Certificates and any exchange, transfer or surrender of the Certificates, means c/o U.S. Bank National Association, 60 Livingston Avenue, St. Paul, Minnesota 55107, or such other location designated in writing by the Trustee; and (ii) when used with respect to any Paying Agent other than the Trustee, such office as is designated in writing to the Trustee.

Record Date: means the 15th day of the calendar month next preceding any Certificate Payment Date, regardless whether such day is a business day.

Redemption Account: means the Redemption Account within the Trust Fund established pursuant to Article IV hereof.

Register: means the Register maintained by the Registrar pursuant to Section 3.14 of this Trust Agreement.

Registrar: means the Trustee or any successor Registrar appointed pursuant to Section 6.3 hereof.

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

Rental Payment Account: means the Rental Payment Account within the Trust Fund established pursuant to Article IV hereof.

Supplemental Trust Agreement: means any trust agreement supplemental or amendatory to this Trust Agreement entered into by the City and the Trustee pursuant to Section 3.23 hereof.

Section 1.2. Rules of Construction. Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Trust Agreement, refer to this Trust Agreement.

ARTICLE II

RECITALS AND REPRESENTATIONS

Section 2.1. Lease of the Premises. The Trustee and the City have entered into the Ground Lease whereby the City has leased to the Trustee the Land for a term as described therein. The Trustee and the City have entered into the Lease whereby the Trustee agrees to lease and sell the Improvements and sublease the Land to the City and the City agrees to lease and purchase the Improvements and sublease the Land from the Trustee.

Section 2.2. Creation of Trust. The Trustee hereby, at the request of the City, creates a trust for the benefit of the Owners from time to time of the Certificates issued hereunder. The trust created hereunder shall be irrevocable while any Certificates are Outstanding hereunder. The corpus of the trust shall consist of (i) all of the Trustee's right, title and interest in and to the Lease, including, without limitation, the Rental Payments and other amounts due thereunder, and except the rights of the Trustee to compensation, reimbursement or indemnity from the City thereunder, which rights are specifically reserved by the Trustee, (ii) all of the Trustee's right, title and interest in and to the Ground Lease, (iii) the Trust Fund established pursuant to Article IV hereof, including all money and securities held in the accounts created therein and (iv) any other property or rights hereafter assigned or contributed to the trust by the City or the Trustee by amendment or supplement hereto.

Section 2.3. Conditions Precedent Satisfied. All acts, conditions and things required by law to exist, happen and be performed precedent to and in connection with the execution and entering into of this Trust Agreement have happened and have been performed in regular and due time, form and manner as required by law and the parties hereto are now duly empowered to execute and enter into this Trust Agreement.

ARTICLE III

CERTIFICATES; TERMS AND PROVISIONS

Section 3.1. Preparation of Certificates. The Trustee is hereby directed to prepare, execute and deliver to the Original Purchaser, Certificates in an aggregate principal amount of \$4,100,000 evidencing undivided ownership interests in the Rental Payments to be paid by the City under the Lease, in exchange for the purchase price thereof.

Section 3.2. Form; Denominations; Medium of Payment. The Certificates shall be delivered in fully registered form without coupons in the denominations of \$5,000 each or any integral multiple thereof (which form shall be substantially in the form set forth in Exhibit A hereto and by this reference herein incorporated), with such further appropriate particular designation added to or incorporated in such title for the Certificates as may be set forth in this Trust Agreement. The Certificates shall be payable in any lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 3.3. Date of Certificates. The Certificates shall be originally dated as of the Closing Date. Interest with respect to Certificates shall accrue from their date of original issue or from the most recent date to which interest has been paid or duly provided for.

Section 3.4. Payment of Principal and Interest with Respect to Certificates.

(a) The Certificates shall mature on September 1 on the dates and in the amounts set forth below, and shall bear interest from date of issue to the next succeeding Certificate Payment Date or to maturity or prior redemption at the annual rates set forth below:

<u>Certificate</u> <u>Maturity</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2013	\$180,000	2.000%
2014	370,000	2.000
2015	375,000	3.000
2016	385,000	3.000
2017	400,000	3.000
2018	410,000	3.000
2019	425,000	3.000
2020	435,000	3.000
2021	450,000	3.000
2022	460,000	3.000
2023	210,000	3.000

Principal due on the Certificates at maturity or redemption thereof, whichever is earlier, shall represent the sum of the portion of the Rental Payments designated as principal coming due on the Certificate Payment Dates in each year.

(b) Interest with respect to the Certificates shall be payable on March 1 and September 1 of each year, commencing September 1, 2013, as described on Exhibit B to the Lease. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

(c) The Certificates shall be subject to redemption as provided in this Article III.

Section 3.5. Optional Redemption. The Certificates are not subject to optional redemption.

Section 3.6. Extraordinary Redemption of Certificates. The Certificates shall be subject to extraordinary redemption and prepayment, in whole or in part, at the option of the City on any date upon the conditions and terms set forth below:

(a) there occurs an event of damage, destruction or condemnation relating to the Premises and the City elects in its sole discretion not to repair or rebuild the Premises; or

(b) the agreements contained in this Trust Agreement shall have become impossible to perform in accordance with the intent and purposes of the City as expressed therein, or unreasonable burdens or excessive liabilities shall have been imposed upon the City as a result of (i) any changes in the Constitution of the State of Montana or the Constitution of the United States of America, or of any legislative or administrative action, whether state or federal or (ii) any final decree, judgment or order of any court or administrative body, whether state or federal, entered after the contest thereof by the City in good faith.

Certificates redeemed as a result of any of the events described above in this Section 3.6 shall be redeemed at a price equal to the principal amount to be redeemed plus accrued interest thereon to the redemption date, without premium.

Section 3.7. Legends. The Certificates may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with this Trust Agreement as may be necessary or desirable to comply with custom, or otherwise as may be determined by the City prior to delivery thereof.

Section 3.8. Execution. The Certificates shall be executed in the name of and by the Trustee, as trustee under this Trust Agreement, by the manual signature of an Authorized Officer of the Trustee. The Trustee shall execute and deliver the Certificates upon delivery to the Trustee of the following:

- (1) An original or certified copy of the resolution adopted by the governing body of the City authorizing or approving the issuance of such Certificates and the execution of this Trust Agreement, Lease and Ground Lease;
- (2) An original executed Trust Agreement providing for the issuance of such Certificates;
- (3) An original executed Lease;
- (4) An original executed Ground Lease; and
- (5) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of the Certificates.

Section 3.9. Interchangeability of Certificates. Certificates, upon surrender thereof at the Principal Office of the Trustee with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or the Owner's attorney duly authorized in writing, may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of Certificates of the same maturity of other authorized denominations.

Section 3.10. Negotiability, Transfer and Registry. All the Certificates issued pursuant to this Trust Agreement shall be negotiable as provided by law subject to the provisions for registration and transfer contained in this Article III and in the Certificates.

Section 3.11. Transfer of Certificates.

(a) The registration of each Certificate shall be transferable only upon the Register, which shall be kept for the purpose at the Principal Office of the Registrar, upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the Owner or the Owner's duly authorized attorney. The Registrar, however, may close the books for registration of any transfer after the fifteenth day of the month preceding any Rental Payment Date and until such payment. Upon the registration of the transfer and the surrender of any such Certificate, the Registrar shall provide, in the name of the transferee, a new Certificate or Certificates of the same aggregate principal amount and maturity as the surrendered Certificates.

(b) The Registrar shall deem and treat the person in whose name any Outstanding Certificate shall be registered upon the Register as the absolute Owner of such Certificate, whether such Certificate shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal and interest payments with respect to such Certificate and for all other purposes, and all such payments so made to any such Owner or upon the Owner's order shall be valid and effectual to satisfy and discharge the liability upon such Certificate to the extent of the sum or sums so paid, and neither the Registrar, the City nor the Trustee shall be affected by any notice to the contrary.

Section 3.12. Regulations with Respect to Exchange and Transfer. In all cases in which the privilege of exchanging or transferring Certificates is exercised, the Registrar shall execute and deliver Certificates in accordance with this Article III. All Certificates surrendered in any such exchanges or transfers shall forthwith be canceled and destroyed by the Registrar. For every such exchange or transfer of Certificates, whether temporary or definitive, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge, required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. The cost of transfers and exchanges of Certificates shall be charged to the person requesting them.

Section 3.13. Register. The Registrar shall keep or cause to be kept at its Principal Office a Register, which shall at all times be open to inspection by the Original Purchaser and the City; and, upon presentation for such purpose, the Registrar shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Register, Certificates as hereinbefore provided.

Section 3.14. Temporary Certificates. Pending preparation of the definitive Certificates, any Certificates delivered under this Trust Agreement may be initially delivered in temporary form exchangeable for definitive Certificates when ready for delivery. The temporary Certificates may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the City, shall be without coupons and may contain such reference to any of the provisions of this Trust Agreement as may be appropriate. Every temporary Certificate shall be executed by the Registrar and be delivered by the Registrar upon the same conditions and in

substantially the same manner as definitive Certificates. If the Registrar delivers temporary Certificates, it shall execute and furnish definitive Certificates without delay and, thereupon, the temporary Certificates shall be surrendered for cancellation at the Principal Office of the Registrar and the Registrar shall deliver in exchange for such temporary Certificates an equal aggregate principal amount of definitive Certificates of authorized denominations and of the same maturity and interest rate or rates. Until so exchanged, the temporary Certificates shall be entitled to the same benefits under this Trust Agreement as definitive Certificates delivered pursuant hereto.

Section 3.15. Certificates Mutilated, Lost, Destroyed or Stolen. If any Certificate shall become mutilated, the Registrar, at the expense of the Owner of said Certificate shall execute and deliver a new Certificate of like tenor, maturity and number in exchange and substitution for the Certificate so mutilated, but only upon surrender to the Registrar of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Registrar shall be canceled by it and either destroyed or delivered upon the order of the City. If any Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Registrar, and, if such evidence is satisfactory to the Registrar and if an indemnity satisfactory to the Registrar shall be given, the Registrar, at the expense of the Certificate Owner, shall execute and deliver a new Certificate of like tenor and maturity and numbered as the Registrar shall determine in lieu of and in substitution for the Certificate so lost, destroyed or stolen. The Registrar may require payment of an appropriate fee for each new Certificate delivered under this Section 3.16 and of the expenses which may be incurred by the Registrar in carrying out the duties under this Section 3.16, from the person requesting the same. Any Certificate issued under this Section 3.16 in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. The Registrar shall not be required to treat both the original Certificate and any duplicate Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be issued hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and duplicate Certificate shall be treated as one and the same. Notwithstanding any other provision of this Section 3.16, in lieu of delivering a new Certificate for a Certificate which has been mutilated, lost, destroyed or stolen and which has matured, the Registrar may make payment of such Certificate.

Section 3.16. Place of Payment. The Trustee is hereby appointed as the paying agent for the Certificates. The principal of all Certificates shall be payable upon surrender thereof at the Principal Office of the Trustee. Interest with respect to Certificates shall be payable by check or draft of the Trustee mailed on the Certificate Payment Date to the Owner of record as of the Record Date at the address shown on the Register. Any interest on any Certificate which is payable but which is not punctually paid or duly provided for (“*Defaulted Interest*”) shall be payable, on a date selected by the Trustee, to the Person in whose name such Certificate is registered in the Register at the close of business on a Special Record Date selected by the Trustee and which shall be at least ten (10) days but not more than thirty (30) days before the date selected by the Trustee for payment of such Defaulted Interest. The Trustee shall give notice by mail of the Special Record Date and date for payment of Defaulted Interest at least ten (10) days before the Special Record Date.

Notwithstanding any other provisions of this Agreement, so long as any Certificate is registered in the name of Cede & Co., as nominee of DTC, the Trustee shall pay all principal of and interest on such Certificate, and shall give all notices with respect to such Certificate, only to Cede & Co. in accordance with the Representation Letter, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of and interest on the Certificates to the extent of the sum or sums so paid.

Section 3.17. Evidence of Signatures of Certificate Owners and Ownership of Certificates. Any request, direction, consent, revocation of consent, or other instruments in writing required or permitted by this Trust Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Certificate Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the holding and ownership of Certificates shall be sufficient for any purpose of this Trust Agreement (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Certificate Owner or the Owner's attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in such jurisdictions that the person signing such instrument acknowledged before him or her the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of authority.

(b) The ownership of Certificates shall be proved by the Register held by the Registrar under the provision of this Trust Agreement.

Nothing contained in this Article III shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which may reasonably seem sufficient to the Trustee. Any request or consent of the Owner of any Certificate shall bind every future Owner of the same Certificate in respect of anything done or suffered to be done by the City or the Trustee in pursuance of such request or consent.

Section 3.18. Securities Depository for Certificates. For purposes of this Section 3.19 the following terms shall have the following meanings:

"Beneficial Owner" shall mean, whenever used with respect to a Certificate, the person in whose name such Certificate is recorded as the beneficial owner of such Certificate by a Participant on the records of such Participant, or such person's subrogee.

"Cede & Co." shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Certificates.

"DTC" shall mean The Depository Trust Company of New York, New York.

“Participant” shall mean any broker-dealer, bank or other financial institution for which DTC holds Certificates as securities depository.

“Representation Letter” shall mean the Representation Letter pursuant to which the sender agrees to comply with DTC’s Operational Arrangements.

- (A) The Certificates shall be initially issued as authenticated fully registered Certificates, and one Certificate shall be issued in the principal amount of each stated maturity of the Certificates. Upon initial issuance, the ownership of such Certificates shall be registered in the Register in the name of Cede & Co., as nominee of DTC. The Trustee and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Certificates registered in its name for the purposes of payment of the principal of or interest on the Certificates, selecting the Certificates or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of Certificates under the Trust Agreement, registering the transfer of Certificates, and for all other purposes whatsoever; and neither the Trustee nor the City shall be affected by any notice to the contrary. Neither the Trustee nor the City shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Certificates under or through DTC or any Participant, or any other person which is not shown on the Register as being a registered owner of any Certificates, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Certificates, with respect to any notice which is permitted or required to be given to owners of Certificates under the Trust Agreement, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Certificates, or with respect to any consent given or other action taken by DTC as registered owner of the Certificates. So long as any Certificate is registered in the name of Cede & Co., as nominee of DTC, the Trustee shall pay all principal of and interest on such Certificate, and shall give all notices with respect to such Certificate, only to Cede & Co. in accordance with the Representation Letter, and all such payments shall be valid and effective to fully satisfy and discharge the City’s obligations with respect to the principal of and interest on the Certificates to the extent of the sum or sums so paid. No person other than DTC shall receive an authenticated Certificate for each separate stated maturity evidencing the obligation of the City to make payments of principal and interest. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Certificates will be transferable to such new nominee in accordance with paragraph (D) hereof.
- (B) In the event the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain Certificates in the form of bond certificates, the City may notify DTC and the Trustee, whereupon DTC shall notify the Participants of the availability through DTC of Certificates in the form of bond certificates. In such event, the Certificates will be transferable in accordance with

paragraph (D) hereof. DTC may determine to discontinue providing its services with respect to the Certificates at any time by giving notice to the City and the Trustee and discharging its responsibilities with respect thereto under applicable law. In such event the Certificates will be transferable in accordance with paragraph (D) hereof.

- (C) A Representation Letter, executed by an appropriate officer of the City, is on file with DTC. The Representation Letter sets forth certain matters with respect to, among other things, notices, consents and approvals by registered owners of the Certificates and Beneficial Owners and payments on the Certificates. The Trustee shall have the same rights with respect to its actions thereunder as it has with respect to its actions under the Trust Agreement.
- (D) In the event that any transfer or exchange of Certificates is permitted under paragraph (A) or (B) hereof, such transfer or exchange shall be accomplished upon receipt by the Trustee of the Certificates to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with this Trust Agreement. In the event Certificates in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Certificates, or another securities depository as owner of all the Certificates, this Trust Agreement shall also apply to all matters relating thereto, including, without limitation, the printing of such Certificates in the form of bond certificates and the method of payment of principal of and interest on such Certificates in the form of bond certificates.

Section 3.19. Selection of Certificates for Redemption. The Certificates shall be called for redemption in such order as the City shall determine or, if the City does not so determine, in inverse order of maturity and by lot within any maturity as selected by the Trustee or other manner it deems fair and in \$5,000 principal amounts.

Section 3.20. Notice of Redemption. When redemption is authorized or required pursuant to this Article III, the Trustee shall give to the Certificate Owners notice at the expense of the City of the redemption of the Certificates. Such notice shall specify: (a) the Certificates to be redeemed, (b) the date of redemption and (c) the place or places where the redemption will be made. Such notice shall further state that on the specified date of redemption there shall become due and payable upon each Certificate to be redeemed, the principal thereof and premium, if any, together with interest accrued to said date of redemption, and that from and after such date of redemption interest thereon shall cease to accrue and be payable. Notice of any such redemption shall be given to the Registrar not less than 45 days prior to redemption date and to the Owners not earlier than ninety (90) days nor later than thirty (30) days prior to the redemption date by mailing a copy of the redemption notice by first class, postage prepaid, to the Original Purchaser and to the Owners whose Certificates are to be redeemed; provided that notice shall be given to any securities depository in accordance with its operational arrangements. Failure to mail such notice or any defect therein shall not affect the validity of the proceedings for the redemption of any Certificates not affected by such failure or defect.

Section 3.21. Effect of Redemption. Notice having been given as aforesaid, and the moneys for the redemption, including premium, if any, and interest to the applicable date of redemption, having been set aside in the Redemption Account, the Certificates to be redeemed shall become due and payable on said date of redemption, and, upon presentation and surrender thereof at the office or offices specified in said notice, said Certificates shall be paid in the unpaid principal amount thereof, plus any premium due, plus any unpaid and accrued interest to said date of redemption. If, on said date of redemption, moneys for the redemption of all the Certificates to be redeemed, together with interest to said date of redemption, shall be held by the Trustee so as to be available therefor on such date of redemption, and, if notice of redemption thereof shall have been given as aforesaid, then, from and after said date of redemption, interest on the Certificates to be redeemed shall cease to accrue and become payable. If said moneys shall not be available on said date of redemption, such Certificates shall continue to bear interest until paid at the same rates as they would have borne had they not been notified for redemption. All moneys held by or on behalf of the Trustee for the redemption of particular Certificates shall be held in trust for the account of the Owners of the Certificates so to be redeemed for a period ending twenty-four months from the date of redemption. All such moneys held by the Trustee at the end of such period, including interest or other investment income thereon, shall be paid to the City, and thereafter the Trustee shall have no responsibility for the redemption of Certificates presented for redemption after such date.

Section 3.22. Additional Certificates.

(a) Additional Certificates may be issued under and be equally and ratably secured by this Trust Agreement on a parity with the Certificates and any other Additional Certificates Outstanding, at any time and from time to time, upon compliance with this Section 3.23, for any of the following purposes:

(1) To provide funds to pay all or any part of the costs of acquisition, construction, furnishing and equipping of additions or other improvements to the Premises.

(2) To provide funds to pay all or any part of the costs of repairing, replacing or restoring the Premises in the event of damage, destruction or condemnation thereto or thereof, but only to the extent that such costs exceed the Net Proceeds of the insurance or condemnation awards out of which such costs are to be paid pursuant to Article VI of the Lease.

(3) To provide funds for refunding all or any portion of the Certificates of any series then Outstanding, including the payment of any premium thereon and interest to accrue to the designated redemption date and any expenses in connection with such refunding.

(b) Before any Additional Certificates shall be issued under this Section 3.23, the City shall adopt a resolution (i) authorizing or approving the issuance of such Additional Certificates; (ii) authorizing or approving the execution of a Supplemental Trust Agreement for the purpose of issuing such Additional Certificates and fixing the amount and terms thereof and describing the purpose or purposes for which such Additional

Certificates are being issued or describing the Certificates to be refunded; and (iii) if required, authorizing the execution of an amendment to the Lease to provide for Rental Payments at least sufficient to pay on any Rental Payment Date amounts representing principal, premium, if any, and interest with respect to the Certificates then Outstanding (including the Additional Certificates to be issued) as the same become due on such Rental Payment Date.

(c) Such Additional Certificates shall have the same designation as the Certificates (except for an identifying series designation and the addition of the word “Refunding” when applicable), shall be dated, shall mature on March 1 or September 1 in such year or years, shall provide for amounts representing interest at such rate or rates not exceeding the maximum rate then permitted by law, and shall be redeemable at such times and prices, all as may be provided by a Supplemental Trust Agreement authorizing the issuance of such Additional Certificates. Except as to any difference in date, maturity, interest rate or redemption provisions, such Additional Certificates shall be on a parity with and shall be entitled to the same benefit and security of this Trust Agreement as the Certificates and any other Additional Certificates Outstanding after the issuance of such Additional Certificates.

(d) Such Additional Certificates shall be executed substantially in the form and manner set forth in Exhibit A hereto, but prior to or simultaneously with the execution of such Additional Certificates there shall be filed with the Trustee the following:

(1) An original or certified copy of the resolutions adopted by the governing body of the City authorizing or approving the issuance of such Additional Certificates and the execution of a Supplemental Trust Agreement.

(2) An original executed counterpart of the Supplemental Trust Agreement providing for the issuance of such Additional Certificates.

(3) An original executed counterpart of the amendment to the Lease, if required, which amendment shall clearly establish that the City has agreed that the Additional Certificates shall constitute Certificates for the purpose of computing the required Rental Payments.

(4) A certificate of an Authorized Officer of the City the effect that the Lease is in effect and no “event of default” (as such term is defined in the Lease) exists thereunder which shall not be cured upon the issuance of the Additional Certificates.

(5) An opinion of counsel nationally recognized in the area of municipal finance to the effect that the issuance of such Additional Certificates will not result in amounts representing interest payable with respect to any Certificates then Outstanding becoming includable in gross income for federal income tax purposes.

(6) A certificate of an Authorized Officer of the City to the effect that the proceeds of the Additional Certificates, together with any additional funds

supplied or to be supplied by the City, will be sufficient to finance the cost of improvements to the Premises or the cost of the refunding, as the case may be.

(7) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of such Additional Certificates.

(e) When the documents described in subsection (D) of this Section 3.23 have been filed with the Trustee, and when such Additional Certificates have been executed as required by this Trust Agreement, the Trustee shall deliver such Additional Certificates to or upon the order of the original purchaser thereof upon payment to the Trustee of the purchase price of such Additional Certificates. The proceeds of the sale of such Additional Certificates (except Additional Certificates issued to refund Outstanding Certificates), including any accrued interest and premium thereon, shall be immediately paid over to the Trustee and the Trustee shall deposit such proceeds in accordance with Article IV hereof and the Supplemental Trust Agreement authorizing the issuance of such Additional Certificates. The proceeds of all Additional Certificates issued to refund Outstanding Certificates shall be deposited by the Trustee, after payment or making provision for payment of all expenses incident to such financing, to the credit of a special trust fund, to be held in trust for the sole and exclusive purpose of paying amounts representing principal, premium, if any, and interest with respect to the Certificates to be refunded.

(f) Except as provided in this Section 3.23, no obligations payable from the sources pledged for payment or security of the Certificates shall be issued on a parity with the Certificates, but obligations subordinate to the Certificates may be issued upon the express written direction of the City.

ARTICLE IV

ESTABLISHMENT AND ADMINISTRATION OF FUNDS AND ACCOUNTS

Section 4.1. Trust Fund; Accounts; Payment of Costs of Issuance. There is hereby established with the Trustee a special trust fund to be designated as the “City of Billings, Montana, Lease Purchase Agreement Trust Fund” (the “*Trust Fund*”). The Trustee shall keep the Trust Fund separate and apart from all other funds and moneys held by it. Within the Trust Fund, there are hereby established the Rental Payment Account more particularly described in Section 4.3 and the Redemption Account more particularly described in Section 4.4. On the Closing Date the Trustee will receive and deposit in the Trust Fund proceeds of the Certificates in the amount of \$4,203,436.77, together with \$266,028.00 from the City’s debt service account for the Refunded Lease. \$4,469,464.77 shall be deposited in the Escrow Account created by the Escrow Agreement, which shall be applied to the prepayment of the Refunded Lease on the Closing Date.

The City will also deposit with the Trustee on the Closing Date proceeds of the Certificates in the amount of \$109,043.28, which shall be held by the Trustee and used to pay Costs of Issuance immediately upon receipt of written statements therefor. Upon payment of

costs and expenses of the refunding of the Refunded Lease and the issuance of the Certificates, any amounts remaining with respect thereto shall be deposited in the Rental Payment Account.

Section 4.2. Reserved.

Section 4.3. Establishment and Application of Rental Payment Account. Within the Trust Fund, there is hereby established a separate account to be designated and referred to herein as the “Rental Payment Account.” Such Rental Payment Account shall be maintained by the Trustee until the Rental Payments are paid in full pursuant to the terms of the Lease, or the City has prepaid the Rental Payments in accordance with Article XI of the Lease, or this Trust Agreement is terminated. The Trustee shall administer the Rental Payment Account as provided in this Section 4.3.

(a) In addition to the moneys required to be deposited in the Rental Payment Account pursuant to Sections 4.1 and 4.5, except as provided in Section 4.4, all Rental Payments, and all other moneys received by the Trustee with respect to the Lease or the Premises shall be deposited by the Trustee in the Rental Payment Account immediately upon their receipt.

(b) The Trustee shall withdraw from the Rental Payment Account, on or before each Certificate Payment Date, an amount equal to the principal and interest payments due with respect to the Certificates on such Certificate Payment Date, and shall transmit the same to the Registrar to be applied to the payment of principal and interest payments due with respect to the Certificates on such Certificate Payment Date.

(c) The Trustee shall transfer to the Redemption Account from the Rental Payment Account, all moneys on hand or received in the Rental Payment Account which are to be used for the redemption of Certificates in accordance with Section 3.6.

(d) No amounts shall be withdrawn or transferred from or paid out of the Rental Payment Account except as provided in this Article IV and Section 5.9.

Section 4.4. Establishment and Application of Redemption Account.

(a) Within the Trust Fund there is hereby established a separate account to be designated and referred to herein as the “Redemption Account.” The Trustee shall administer the Redemption Account as provided in this Section 4.4.

(b) The Trustee shall deposit in the Redemption Account as received, all moneys paid to it by the City pursuant to Article XI of the Lease; and in the event of termination of the Lease pursuant to Section 4.5 or 13.2 of the Lease, all net proceeds received from the sale, lease or other disposition of the Premises. Also, in the event of termination of the Lease pursuant to Section 4.5 or 13.2 of the Lease or the exercise by the City of its option to prepay Rental Payments pursuant to Article XI of the Lease, the Trustee shall transfer to the Redemption Account, all moneys on hand in the Rental Payment Account not needed to pay principal and interest due or past due on the Certificates. All of said moneys shall be set aside in the Redemption Account for the purpose of redeeming the Certificates in advance of their maturity and shall be applied

on or after the date of redemption designated pursuant to Section 3.6 hereof to the payment of principal and interest with respect to the Certificates to be redeemed upon presentation and surrender of such Certificates.

(c) Moneys held in the Redemption Account after the date on which such moneys are to be applied for the redemption of the Certificates, shall, upon redemption of all Outstanding Certificates, or upon expiration of the applicable time period specified in Section 3.21, whichever occurs first, be paid to the City.

Section 4.5. Deposit and Investment of Moneys in Funds.

(a) All moneys held by the Trustee in the Trust Fund shall be deposited or invested in Permitted Investments, pursuant to written instructions of an Authorized Officer of the City. Any Permitted Investments may be purchased from or sold to the Trustee or any of its affiliates.

(b) All interest or income received by the Trustee on investment of the Rental Payment Account hereof shall be retained in said Rental Payment Account and be applied to the payment of delinquent payments due on the Certificates, if any, and otherwise shall be applied as set forth in subsection (c) of this Section 4.5. Provided that there are no delinquent Rental Payments, amounts retained or deposited in or transferred to the Rental Payment Account pursuant to this subsection (b) of this Section 4.5 shall be applied as a credit against the next Rental Payment due from the City under the Lease following the date of deposit or transfer. At the time of deposit or transfer of said moneys in or to the Rental Payment Account, the Trustee shall report the amount thereof to the City and the amount of the next Rental Payment payable by the City under the Lease shall be reduced by an amount equal to the amount of said deposit or transfer.

(c) All interest or income received by the Trustee on investment of the Redemption Account shall be retained in said Redemption Account pursuant to Section 4.4.

(d) The Trustee shall not be liable for any loss resulting from the making or disposition of any investment pursuant to this Section 4.5, except where such loss arises out of the Trustee's wrongful or negligent act or failure to act. Any loss not resulting from the Trustee's wrongful or negligent conduct shall be charged to the account with respect to which such investment was made.

(e) The City covenants and agrees that it will at all times direct the Trustee to invest the moneys held in the Trust Fund in a manner which will not violate the provisions of Section 103 and Sections 141 through 150 of the Internal Revenue Code of 1986, as amended (the "*Code*"), and the regulations promulgated thereunder from time to time.

(f) Upon payment by the City of all Rental Payments set forth in Exhibit B to the Lease, or of the Prepayment Price for all of the Premises pursuant to Article XI of the Lease, and the payment or redemption of all Certificates and the interest coming

due thereon or the provision for the payment thereof as provided in Section 7.3 hereof, and the payment of all amounts owed to the Trustee under Section 6.6 hereof, all moneys remaining on hand in the Trust Fund shall be paid to the City.

(g) The City acknowledges that regulations of the Comptroller of the Currency grant the City the right to receive brokerage confirmations of the security transactions as they occur. The City specifically waives such notification to the extent permitted by law and will receive periodic cash transaction statements from the Trustee which will detail all investment transactions.

Section 4.6. Unclaimed Moneys. All moneys held by the Trustee for the payment or redemption of Certificates shall be held in trust for the account of the Owners of the Certificates so to be paid or redeemed for a period ending twenty-four months from the date of redemption or the date such payment was due. All such moneys held by the Trustee at the end of such period, including interest or other investment income thereon, shall be paid to the City, and thereafter the Trustee shall have no responsibility for the payment or redemption of such Certificates presented for payment or redemption after such date.

ARTICLE V

COVENANTS; DEFAULT AND LIMITATION OF LIABILITY

Section 5.1. City to Perform Agreement. The City covenants and agrees with the Owners of the Certificates, to perform all obligations and duties imposed on it under the Lease and the Ground Lease.

Section 5.2. Trustee to Perform Agreement. The Trustee covenants and agrees with the Owners of the Certificates, to perform all obligations and duties imposed on it under the Lease and the Ground Lease.

Section 5.3. Notice of Non-Payment. In the event of delinquency in the payment of Rental Payments due by the City pursuant to the Lease, the Trustee shall, after five (5) business days following the date upon which such delinquent Rental Payments were due, immediately give written notice of the delinquency and the amount thereof to the City and the Original Purchaser.

Section 5.4. Notice of Event of Default or Nonappropriation. In the event the City is in default pursuant to Section 13.1 of the Lease or in the event of Non-Appropriation by the governing body of the City pursuant to Section 4.2(a) of the Lease, the Trustee shall give, within ten (10) business days of an Authorized Officer learning of such event, written notice thereof to the Owners of the Certificates by mail at their addresses as they appear on the Register, with a copy to the Municipal Securities Rulemaking Board (“MSRB”) through its Electronic Municipal Market Access system website (“EMMA”). Such notice shall specify that the City is in default under the Lease or that the City has terminated the Lease for Non-Appropriation of funds, together with a brief description of such default or that the City has terminated the Lease for Non-Appropriation of funds; provided, however, that failure to give such notice shall not affect any rights of the Owners of the Certificates. Notwithstanding the foregoing, except in the case of

default with respect to the payment of one or more Rental Payments or termination for Non-Appropriation of funds, the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determine that the withholding of such notice is in the interests of the Owners of the Certificates.

Section 5.5. Action on Default, Nonappropriation or Termination. Upon the occurrence of an event of default by the City under Section 13.1 of the Lease, and in each and every such case during the continuance of such event of default, or the termination of the Lease pursuant to Section 4.2(a) thereof, the Trustee or, pursuant to Section 5.11 hereof, the Owners of not less than a majority in aggregate principal amount of Certificates at the time Outstanding shall be entitled, upon notice in writing to the City and the Original Purchaser, to enforce the rights and exercise the remedies provided to the Trustee in the Lease, the Ground Lease or this Trust Agreement, as appropriate.

Section 5.6. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Trust Agreement or under the Lease to the Trustee, or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default 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. In order to entitle the Trustee to exercise any remedy reserved to it, it shall not be necessary to give any notice other than such notice as may be required in this Article V or by law.

Section 5.7. Agreement to Pay Attorneys' Fees and Expenses. In the event the City shall default hereunder and the Trustee should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the City herein contained, the City agrees that it will on demand therefor pay to the Trustee the reasonable fees of such attorneys and such other related expenses incurred by the Trustee.

Section 5.8. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Trust Agreement should be breached by a party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 5.9. Application of Moneys Upon Default or Nonappropriation. If at any time after an event of default under the Lease or termination of the Lease pursuant to Section 4.5 thereof has occurred, the moneys in the Rental Payment Account shall not be sufficient to pay the Rental Payments as the same become due and payable, such moneys together with any moneys available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for herein or otherwise, shall be applied by the Trustee as follows:

First: To the payment of costs, expenses and fees, and reasonable compensation of the Trustee, its agents and attorneys, and all expenses and liabilities incurred and advances made by the Trustee under this Trust Agreement or the Lease;

Second: To the payment to the persons entitled thereto of all interest components of Rental Payments with respect to Certificates as they become due, in the order of the maturity of such Certificates and, if the amount available shall not be sufficient to pay in full any particular interest component of a Rental Payment when due, then to the payment ratably, according to the amounts due on such interest component, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Certificates;

Third: To the payment to the persons entitled thereto of the principal components of Rental Payments with respect to Certificates as they become due, in the order of the maturity of such Certificates, and, if the amount available shall not be sufficient to pay in full any particular principal component of a Rental Payment due, then to the payment ratably, according to the amounts due on such principal component, to the persons entitled thereto, without any discrimination or preference; and

Fourth: To the City.

Section 5.10. Collection of Rental Payments. Upon written request and authorization by the Owners of a majority in aggregate principal amount of the Certificates then Outstanding and unpaid, and upon being satisfactorily indemnified by such Owners against any expense and liability with respect thereto, the Trustee shall take any and all appropriate action to collect any Rental Payment not paid when due.

Section 5.11. Action by Owners. In the event the Trustee fails to take any action to eliminate or cure an event of default under the terms of this Trust Agreement, the Lease or the Ground Lease, the Owners of not less than a majority in aggregate principal amount of Certificates then Outstanding may institute any suit, action, mandamus or other proceeding in equity or at law for the protection or enforcement of any right under this Trust Agreement, the Lease or the Ground Lease, but only if the Trustee shall have been given written notice of such default (unless such default shall consist of a failure to pay a Rental Payment when due) and the continuance thereof and if such percentage of Certificate Owners have first made written request of the Trustee to institute such action or proceedings in its own name as Trustee hereunder and shall have afforded the Trustee sixty (60) days either to proceed to exercise the powers granted herein or granted under law or to institute such action, suit or proceeding in its name and only if the Trustee shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time.

Section 5.12. No Obligation by the City to Owners. Except for the payment of Rental Payments when due in accordance with the Lease and the performance of the other covenants and agreements of the City contained in the Lease, the Ground Lease and in this Trust Agreement, the City shall have no obligation or liability to the Owners of the Certificates with respect to this Trust Agreement or the terms, execution, delivery or transfer of the Certificates, or the distribution of Rental Payments to the Owners by the Trustee.

Section 5.13. No Obligation with Respect to Performance by Trustee. The City shall not have any obligation or liability to any of the other parties or to the Owners of the Certificates

with respect to the performance by the Trustee of any duty imposed upon it under this Trust Agreement.

Section 5.14. No Liability to Owners for Payment. Except as provided in this Trust Agreement, the Trustee shall not have any obligation or liability to the Owners of the Certificates with respect to the payment of the Rental Payments by the City when due, or with respect to the performance by the City of any other covenant in the Lease or the Ground Lease.

Section 5.15. No Responsibility for Sufficiency. The Trustee shall not be responsible for the sufficiency of the Lease or the Ground Lease or of the assignment made to it of rights to receive moneys pursuant to the Lease, or the value of or title to its interest in the Premises. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it under the terms of and in accordance with this Trust Agreement, except where such loss arises out of the Trustee's wrongful or negligent act or failure to act.

Section 5.16. Indemnification to Trustee. To the extent permitted by law, the City shall and hereby agrees to indemnify and hold harmless the Trustee, without any payment being made by the Trustee, from and against all claims, losses, liability and damages, including legal fees and expenses, arising out of (i) any breach or default on the part of the City in the performance of any of its obligations under this Trust Agreement, the Lease or the Ground Lease, or (ii) any tortious act or failure to act of the City or of any officer, servant or employee of the City with respect to the Premises. The Indemnification provided to the Trustee hereunder shall survive the termination of this Trust Agreement and the resignation or removal of the Trustee.

ARTICLE VI

THE TRUSTEE

Section 6.1. Employment of Trustee. In consideration of the recitals hereinabove set forth and for other valuable consideration, the Trustee and the City hereby agree to employ the Trustee to receive, hold, invest and disburse the moneys to be paid to it pursuant to the Lease for credit to the various accounts in the Trust Fund established by this Trust Agreement; to prepare, execute and deliver the Certificates; to apply and disburse the Rental Payments received from the City to the Owners of Certificates; and to perform certain other functions; all as herein provided and subject to the terms and conditions of this Trust Agreement.

Section 6.2. Acceptance of Employment. In consideration of the compensation herein provided for, the Trustee accepts the employment above referred to subject to the terms and conditions of this Trust Agreement.

Section 6.3. Trustee; Duties, Removal and Resignation. By executing and delivering this Trust Agreement, the Trustee accepts the duties and obligations of the Trustee provided in this Trust Agreement, but only upon the terms and conditions set forth in this Trust Agreement. In carrying out its duties and exercising its powers under this Trust Agreement, the Trustee shall, only under a condition of Default which exists and is continuing, exercise that degree of care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own business affairs. The City may, or the holders of a

majority in aggregate principal amount of all Certificates Outstanding may by written request, remove the Trustee initially a party to this Trust Agreement and any successor thereto, and may appoint a successor Trustee, but any such successor shall be a trust company or bank having trust powers and having a reported capital and surplus not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving sixty (60) days written notice to the City and by first class mail to each Certificate Owner as shown on the Register, and such resignation shall take effect upon the appointment of a successor trustee by the Owners or by the City. Such notice to the City may be served personally or sent by registered or certified mail. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within sixty (60) days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

Section 6.4. Appointment of Successor Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the City or the Owners of a majority in aggregate principal amount of the then Outstanding Certificates, by an instrument or concurrent instrument in writing signed by such Owners or by their attorney-in-fact duly authorized. Nevertheless, in case of such vacancy, the City by resolution of its governing body may appoint a temporary trustee to fill such vacancy until a successor trustee shall be appointed; and any such temporary trustee so appointed by the City shall immediately and without further act be superseded by the Trustee so appointed. Every such Trustee appointed pursuant to this Section 6.4 shall be a trust company or bank having trust powers and having a reported capital and surplus not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Section 6.5. Compensation of the Trustee. The City shall from time to time pay to the Trustee reasonable compensation for the acceptance, administration and performance of the trust created hereby, and shall reimburse the Trustee for all its advances and expenditures made in accordance with this Trust Agreement (including the reasonable expenses and disbursements of its counsel), from the date of execution of this Trust Agreement through the date of redemption or maturity of all the Certificates.

Section 6.6. Protection to the Trustee. The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any written resolution, notice, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or provided pursuant to this Trust Agreement, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall not be bound to recognize any person as an Owner of any Certificate or to take any action at such person's request unless such Certificate shall be deposited with the Trustee or satisfactory evidence of the ownership of such Certificate shall be furnished to the Trustee. The Trustee may consult with counsel with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and

protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith. Whenever in the administration of its duties under this Trust Agreement, the Trustee shall deem it necessary to or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) shall be deemed to be conclusively proved and established by the certificate of an Authorized Officer of the City and such certificate shall be full warranty to the Trustee for any action taken or suffered under this Trust Agreement upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable. The Trustee may buy, sell, own, hold and deal in any of the Certificates issued pursuant to this Trust Agreement, and may join in any action which any Owner may be entitled to take with like effect as if the Trustee were not a party to this Trust Agreement. The Trustee, either as principal or agent, may also engage in or be interested in any other unrelated financial or other transaction with the City or the Trustee, and may act as depositary, trustee, or agent for any committee or body of Owners of Certificates or other obligations of the City as freely as if it were not Trustee hereunder.

The recitals, statements and representations in this Trust Agreement or in the Certificates shall be taken and construed as made by and on the part of the Trustee, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duties hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent or receiver selected by it with reasonable care.

ARTICLE VII

AMENDMENT; DEFEASANCE; ADMINISTRATIVE PROVISIONS

Section 7.1. Amendment. This Trust Agreement, the Lease and the Ground Lease may be amended in writing by agreement among all of the parties hereto or thereto, but, except as provided in Section 7.2 hereof no such amendment shall become effective without the prior written consent of two-thirds in aggregate principal amount of the Certificates then Outstanding; provided that no such amendment shall impair the right of any Owner to receive the Owner's proportionate share of any Rental Payment in accordance with the Owner's Certificate.

Section 7.2. Amendment to Trust Agreement or Lease Not Requiring Consent of Certificate Owners. Notwithstanding Section 7.1, The City and the Trustee may, without the consent of or notice to any of the Owners of the Certificates, enter into one or more amendments to the Trust Agreement, the Lease or the Ground Lease for one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission herein or to correct or supplement any provision herein or therein which may be inconsistent with any other provision herein or therein, or to make provisions with respect to matters or questions

arising hereunder or thereunder provided such action shall not materially adversely affect the interests of the Owners of the Certificates;

(b) To grant or confer upon the Owners of the Certificates any additional rights, remedies, power or authority that may lawfully be granted or conferred upon them;

(c) To comply with the requirements of any State or federal securities laws or the Trust Indenture Act of 1939, as from time to time amended, if required by law or regulation lawfully issued thereunder;

(d) To provide for the appointment of a successor trustee or co-trustee pursuant to the terms hereof;

(e) To subject to this Trust Agreement additional revenues, properties or collateral; or

(f) To issue Additional Certificates as provided in Section 3.23 hereof.

Section 7.3. Defeasance. If and when the Certificates delivered pursuant hereto shall become due and payable in accordance with their terms, or shall have been called for redemption in accordance with Article III hereof, and the whole amount of the principal and interest due and payable upon all of the Certificates shall be paid, or provision shall have been made for the payment of the same, by the deposit with the Trustee of cash or the types of securities listed in the definition of Permitted Investments, in an amount sufficient (together with interest earnings thereon), to provide for payment of said principal and interest to the maturity or redemption date of the Certificates, and all administrative expenses of the Trustee shall have been paid or provided for, then and in that case, the right, title and interest of the City and the Trustee under this Trust Agreement shall thereupon cease, terminate and become void, and the Trustee shall assign and transfer to or upon the order of the City all property, money, investments and rights in the Premises (in excess of the amounts required for the foregoing) then held by the Trustee (including the Lease and all payments thereunder and all balances in any fund or account created under this Trust Agreement) and shall execute such documents as may be reasonably required by the City in this regard. All investments made pursuant to this Section 7.3 shall be made in a manner which will comply with the covenant made by the City in Section 4.5, clause (e).

Section 7.4. Recording and Filing. The City shall be responsible for the recording and filing of initial financing statements. The Trustee shall be responsible for the recording and filing of continuation statements in connection with any financing statements relating hereto.

Section 7.5. Trustee to Keep Records. The Trustee shall keep a copy of this Trust Agreement and books and records of all moneys received and disbursed under this Trust Agreement, which shall be available for inspection by the City, the Trustee and any Owner at any time during regular business hours. The Trustee shall, for each month of the calendar year while any Certificates remain Outstanding, provide the City with an accounting for the Trust Fund maintained by it pursuant to this Trust Agreement.

Section 7.6. Notices. All written notices to be given under this Trust Agreement shall be given by mail to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other parties in writing from time to time:

If to the City: City of Billings, Montana
201 North 27th Street
Billings, Montana 59101
Attention: City Clerk

If to the Trustee: U.S. Bank National Association
1420 Fifth Avenue, 7th Floor
Seattle, Washington 98101
Attention: Corporate Trust Services

Section 7.7. Montana Law. This Trust Agreement shall be construed and governed in accordance with the laws of the State of Montana.

Section 7.8. Severability. If any provision of this Trust Agreement shall for any reason be determined to be invalid, illegal or unenforceable in any respect, the remainder of this Trust Agreement 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. In the event that there is a conflict between the terms of this Trust Agreement and the Lease, this Trust Agreement shall control.

Section 7.9. Binding on Successors. This Trust Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Section 7.10. Headings. Headings preceding the text of the several Articles and Sections hereof, and the table of contents, are solely for convenience of reference and shall not constitute a part of this Trust Agreement or affect its meaning, construction or effect.

Section 7.11. Execution in Counterparts. This Trust Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 7.12. Business Days. If the day upon which any action required by this Trust Agreement shall fall on a Saturday, Sunday or banking holiday, then such actions shall be deemed timely if made or taken on the next succeeding business day.

[Signatures continue on the following page.]

IN WITNESS WHEREOF, the parties have executed this Trust Agreement by their officers thereunto duly authorized as of the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

Vice President

[Signatures continued on the following page.]

-

[Counterpart signature page to the Trust Agreement.]

CITY OF BILLINGS, MONTANA

Mayor

Finance Director

City Clerk

EXHIBIT A

REFUNDING CERTIFICATE OF PARTICIPATION, SERIES 2013

**Evidencing a Proportionate Interest of the Registered Owner
Hereof in
Rental Payments to be Made by**

City of Billings, Montana

pursuant to a Lease-Purchase Agreement

R-[_____] \$[_____]

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP No.</u>
%	September 1, 20__	March 5, 2013	090099

REGISTERED OWNER: CEDE & CO.

PRINCIPAL SUM: [_____] THOUSAND DOLLARS

This is to certify that the registered owner named above of this Certificate of Participation (the "Certificate") is the owner of the proportionate interest hereinafter stated in that certain Lease Purchase Agreement, dated as of March 5, 2013 (the "Lease"), by and between U.S. Bank National Association (the "Trustee"), having a principal office at which it conducts corporate business in Seattle, Washington, and the City of Billings, Montana (the "City").

The registered owner of this Certificate is entitled to receive, subject to the terms of the Trust Agreement described below, on the maturity date specified above (the "Maturity Date"), or if selected for redemption, on the redemption date, the principal sum specified above, representing a portion of the Rental Payments designated as principal coming due on or before the Maturity Date, and to receive the registered owner's proportionate share of Rental Payments designated as interest coming due on or before March 1 and September 1 of each year commencing September 1, 2013, and continuing to and including the Maturity Date or the redemption date, whichever is earlier. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months. All amounts payable hereunder are to be paid in lawful money of the United States of America, which at the time of payment is legal tender. Amounts representing interest payable with respect to this Certificate on any Rental Payment Date are payable by check or draft drawn on the Trustee and mailed to the person in whose name this Certificate is registered at the close of business on the 15th day (whether or not a business day) of the calendar month next preceding such Rental Payment Date. The principal payable on all Certificates shall be payable at the principal office of the Trustee.

Notwithstanding any other provisions of this Certificate, so long as this Certificate is registered in the name of Cede & Co., as nominee of The Depository Trust Company, or in the name of any other nominee of The Depository Trust Company or other securities depository, the Registrar shall pay all principal of and interest on this Certificate, and shall give all notices with respect to this Certificate, only to Cede & Co. or other nominee in accordance with the operational arrangements of The Depository Trust Company or other securities depository as agreed to by the City.

The Certificates are payable from the Rental Payments (as defined in the Lease) and the moneys held in the funds and accounts established pursuant to the Declaration of Trust, dated as of March 5, 2013 (the "Trust Agreement"), by the Trustee and joined in by the City, subject to the provisions of the Trust Agreement permitting the application thereof for or to the purposes and on the terms and conditions set forth in the Trust Agreement. The obligations of the City under the Lease, including the obligation to make Rental Payments, is subject to termination

by the City at the end of any fiscal year, if the governing body of the City fails, for any reason, to appropriate sufficient funds to continue the Lease for the subsequent fiscal year, in which case the Lease will terminate at the end of the last fiscal year for which funds were appropriated and the City will have no further obligation to make Rental Payments under the Lease. Neither the Certificates nor the Rental Payments constitute a general obligation of the City, and the full faith and credit and taxing powers of the City are not pledged to the payment thereof.

The Trustee has no obligation or liability to the Certificate owners for the payment of principal or interest due with respect to the Certificates; the Trustee's sole obligation is to administer, for the benefit of the City and the Certificate owners, the various funds and accounts established in the Trust Agreement. The Trustee has no obligation to pay any portion of the principal or interest due with respect to the Certificates from any source other than the funds and accounts established in the Trust Agreement as described herein and the payment of such principal or interest is not a liability or charge upon the credit of the Trustee.

This Certificate has been executed by the Trustee pursuant to the terms of the Trust Agreement. Copies of the Trust Agreement and the Lease are on file at the office of the City and at the principal office of the Trustee, and reference to the Trust Agreement and any and all amendments thereto is made for a description of the pledges and covenants of the City securing the Certificates, the nature, extent and manner of enforcement of such pledges, the rights and remedies of the registered owners of the Certificates with respect thereto and the other terms and conditions upon which the Certificates are delivered thereunder. To the extent and in the manner permitted by the terms of the Trust Agreement, certain provisions of the Trust Agreement may be amended by the parties thereto without consent of the owners of the Certificates, while other amendments are permitted only with the written consent of the owners of at least two-thirds in principal amount of the Certificates then outstanding.

This Certificate shall be transferable only upon the register maintained by the Trustee, which shall be kept for that purpose at the principal office of the Trustee, upon surrender hereof together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or the owner's duly authorized attorney. Upon the registration of the transfer and the surrender of this Certificate, the Trustee shall provide in the name of the transferee, a new fully registered Certificate or Certificates of the same maturity and aggregate principal amount as the surrendered Certificates. The Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Trustee shall not be affected by any notice to the contrary.

The Certificates are issuable in fully registered form, without coupons in denominations of \$5,000 or any integral multiple thereof. The Certificates, upon surrender thereof at the office of the Trustee with a written request for exchange satisfactory to the Trustee duly executed by the registered owner or the owner's attorney duly authorized in writing, may be exchanged for an equal aggregate principal amount of fully registered Certificates without coupons of any other authorized denomination of the same maturity.

The Certificates are not subject to optional redemption.

The Certificates are subject to extraordinary redemption and prepayment, in whole or in part, at the option of the City on any date upon if: (1) there occurs an event of damage, destruction or condemnation relating to the Premises and the City elects in its sole discretion not to repair or rebuild the Premises; or (2) the agreements contained in the Trust Agreement have become impossible to perform in accordance with the intent and purposes of the City as expressed therein, or unreasonable burdens or excessive liabilities shall have been imposed upon the City as a result of (a) any changes in the Constitution of the State of Montana or the Constitution of the United States of America, or of any legislative or administrative action, whether state or federal, (b) any final decree, judgment or order of any court or administrative body, whether state or federal, entered after the contest thereof by the City in good faith, or (c) the imposition of new state or local ad valorem, property, income or other taxes not imposed on the date of the Trust Agreement, other than special assessments levied in amounts proportionate to and not exceeding the benefits of future public improvements to the Premises. Certificates redeemed as a result of any of the events described above in this paragraph shall be redeemed at a price equal to the principal amount to be redeemed plus accrued interest thereon to the redemption date, without premium.

If on the date on which any Certificate is called for redemption, moneys are available sufficient to pay the principal of, premium, if any, and interest on the Certificates called for redemption, interest hereon shall cease to accrue from and after the date fixed for redemption.

Notice of any such redemption shall be published if, and to the extent, then required by law, and shall also be given to the registered owner of each Certificate to be redeemed by first-class mail, addressed to such owner at the owner's registered address, not earlier than ninety (90) days nor later than thirty (30) days prior to the date fixed for redemption. On or prior to the date fixed for redemption, funds are required to be deposited with the Trustee sufficient to pay the Certificates called and accrued interest thereon. Upon the happening of the above conditions, Certificates thus called shall not bear interest after the redemption date and, except for the purpose of payment from the funds so deposited, shall no longer be protected by the Trust Agreement.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by the Constitution and statutes of the State of Montana and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of this Certificate, exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, this Certificate has been executed by the manual signature of an authorized representative of the Trustee.

Date of Authentication: _____

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Representative

The following abbreviations, when used in the inscription on the face of this Certificate, shall be construed as though they were written out in full according to the applicable laws or regulations:

TEN COM — as tenants in common	UTMA _____ as Custodian for _____ (Cust) (Minor)
TEN ENT — as tenants by the entireties	under Uniform Transfers to Minors Act _____ (State)
JT TEN — as joint tenants with right of survivorship and not as tenants in common	

Additional abbreviations may also be used.

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within Certificate and all rights thereunder, and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Certificate on the books kept for registration of the within Certificate, with full power of substitution in the premises.

Dated: _____

NOTICE: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Certificate in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

PLEASE INSERT SOCIAL SECURITY NUMBER OR OTHER IDENTIFYING NUMBER OF ASSIGNEE:
