

law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the City of Billings, Contractor or a separate contractor of the City of Billings, whose interest or responsibility is insubstantial, shall be included as an original third party or additional third party to an arbitration. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

18.4.9. Claims and Timely Assertion of Claims. The party filing a demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

18.4.10. Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The parties agree that the costs of the arbitrator(s)' compensation and expenses shall be borne equally. The parties further agree that the arbitrator(s) shall have authority to award to either party some or all of the costs and expenses involved, including attorney's fees. The parties agree that the costs of the arbitrator(s)' compensation and expenses shall be borne equally by the parties, except that the arbitrator(s) shall have authority to award to either party some or all of that parties' costs and expenses involved, including arbitrator costs and attorney's fees.

ARTICLE 19. CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 19.1. Force Majeure

In no event shall the City of Billings be liable to the Contractor, any subcontractor, any supplier, Contractor's surety, or any other person or organization, for damages or costs arising out of or resulting from: (1) delays caused by or within the control of the Contractor which include but are not limited to labor issues or labor strikes on the Project, federal, state, or local jurisdiction enforcement actions related directly to the Contractor's Work (e.g. safety or code violations, etc.); or, (2) delays beyond the control of both parties including but not limited to fires, floods, earthquakes, abnormal weather conditions, acts of God, nationwide material shortages, actions or inaction by utility owners, emergency declarations by federal, state, or local officials enacted in the immediate vicinity of the project, or (3) delays caused by other contractors performing work for the City of Billings unless said delays are the direct result of negligent acts on the part of the City of Billings or its contractor.

Section 19.2 Conditions Beyond Control of the Parties

If Contractor reasonably is unable to perform any of its obligations under this Contract due to unforeseeable events beyond Contractor's control, at the City of Billings' option, the Contract shall: (i) remain in effect but the Contractor's obligations are suspended until such events have ended; or, (ii) the City of Billings may terminate the Contract upon ten (10) business days written notice to the performing party, in which event neither party has any further liability to the other under this Contract.

Additionally, if the City of Billings reasonably is unable to perform any of its obligations under this Contract due to unforeseeable events beyond the City of Billings' control, at the Contractor's option, the Contract shall: (i) remain in effect but the City of Billings' obligations are suspended until such events have ended; or, (ii) the Contractor may terminate the Contract upon ten (10) business days written notice to the City of Billings, in which event neither party has any further liability to the other under this Contract.

ARTICLE 20. ADDITIONAL DUTIES AND REPRESENTATIONS OF THE PARTIES

Section 20.1. For the term of this contract, as set forth in Section 2.5 (Effective Date/Duration) or as subsequently amended, the City of Billings timely shall provide the Contractor with accurate and complete copies of all records relating to the Contract, including, but not limited to, records relating to energy usage and energy-related maintenance of Project Site(s) requested by Contractor that have not already been provided. Said information shall be provided to Contractor within thirty (30) calendar days after the end of each calendar quarter for as long as Contractor will be providing the annual services and Measurement and Verification reporting as specified in Article 3 (Savings Guarantee; Annual Reconciliation; Payments to Contractor) and Schedule A (Energy and Cost Savings Guarantee), herein.

Section 20.2. The City of Billings represents that it has not entered into any lease or other contract regarding energy efficiency equipment, provision of energy management services for the Project Site(s), or servicing of any energy related equipment located in the Project Site(s). If the City of Billings enters into any such lease or other contract, within ten (10) calendar days after execution, it shall provide Contractor with a copy of the lease or other contract.

Section 20.3. Contractor represents that it is financially solvent, able to pay its debts as they mature, and has sufficient working capital to perform its duties under this Contract.

Section 20.4. Within thirty (30) calendar days after executing this Contract, and before commencing performance of this Contract, Contractor shall provide the City of Billings with written documentation that it is licensed to perform its duties under this Contract within the State of Montana and that all insurance and bonding requirements applicable to Contractor under this Contract have been met. Contractor must also have a valid City of Billings Business License.

Section 20.5. Upon request, Contractor shall make available to the City of Billings all documents relating to its performance under this Contract, including all contracts and subcontracts.

Section 20.6. All subcontractors used by Contractor in performing its duties under this Contract must be qualified, licensed, and bonded in the State of Montana to perform the subcontracted work. Subcontractor must also have a valid City of Billings Business License.

Section 20.7. All Equipment installed by Contractor under this Contract must meet, or exceed, the requirements specified in **Section 8.2 (Systems Start Up and Equipment Commissioning)** and in **Schedule J (Systems Start-Up and Commissioning;**

Operating Parameters of Installed Equipment).

Section 20.8. All Equipment installed by Contractor under this Contract must be compatible with all other Project Site(s) mechanical and electrical systems, subsystems, and components with which the Equipment interacts.

ARTICLE 21. MISCELLANEOUS DOCUMENTATION PROVISIONS

Section 21.1. Construction Performance and Payment Bonds, Labor and Material Payment Bonds

Contractor shall obtain and maintain the bonds shown in **Exhibit I (Performance Bond)** and **Exhibit II (Labor and Material Payment Bond)** for the term of this Contract.

Section 21.2. Further Documents

The parties to this Contract shall timely execute and deliver to each other all documents and shall perform all further acts reasonably necessary to effectuate the provisions of this Contract.

Section 21.3. The City of Billings Responsibilities

(a) Methods of Operation by the City of Billings

The parties agree that the guaranteed Energy and Cost Savings may not be obtained unless certain procedures and methods of operation designed for energy and water conservation are implemented and followed by the City of Billings on a regular and continuous basis.

(b) The City of Billings Maintenance Responsibilities

The City of Billings shall implement and follow the conservation procedures and methods of operation specified in **Schedule N (City of Billings Maintenance Responsibilities)**.

(c) Inspection of Project Site(s)

Once per month, with prior notice to the City of Billings, Contractor may inspect the Project Site(s) to determine whether the City of Billings is complying with **Section 21.3(b)**. Compliance is to be determined by Contractor using the checklist shown in **Schedule O (Facility Maintenance Checklist)**, as completed by Contractor during its monthly inspections. The City of Billings shall make the Project Site(s) available to Contractor during each monthly inspection and may witness each inspection and Contractor's notations on the checklist. The City of Billings may complete its own checklist at the same time. Contractor may not interfere with the City of Billings operations during any monthly inspection.

Section 21.4. Waiver Of Liens

Contractor shall obtain, and furnish to the City of Billings a Waiver of Liens from each

vendor, material manufacturer, and laborer related to the supply, installation, and servicing of each piece of Equipment.

ARTICLE 22. CONFLICTS OF INTEREST

Section 22.1. Conflicts of interest relating to this Contract are strictly prohibited. Neither party to this Contract, nor any director, employee, or agent of either party may give to, or receive from, any director, employee, or agent of the other party any gift, entertainment, or other favor of significant value, or any commission, fee, or rebate in connection with this Contract.

Section 22.2. Neither party to this Contract, nor any director, employee, or agent of either party may, without prior notice to the other party, enter into any business relationship with any director, employee, or agent of the other party or of any affiliate of the other party.

Section 22.3. The parties to this Contract promptly shall notify the other party of any violation of this article, and any consideration received as a result of such violation shall be paid or credited to the other party.

Section 22.4. Any representative of a party to this Contract, authorized by that party, may, upon reasonable notice to the other party and during regular business hours, audit the records of the other party related to this Contract, including the expense records of the parties' employees involved in this Contract, for the purpose of determining whether there has been compliance with this section.

ARTICLE 23. SCOPE, AMENDMENT AND INTERPRETATION

Contract. This Contract consists of thirty-six (36) numbered pages, Attachments, and Exhibits. In the case of dispute or ambiguity about the minimum levels of performance required of Contractor, the order of precedence of document interpretation is in the same order.

Entire Contract. These documents contain the entire Contract of the parties. Any enlargement, alteration, or modification requires a written amendment signed by both parties.

ARTICLE 24. CHOICE OF LAW AND VENUE

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract must be brought in the District Court of the Montana Thirteenth Judicial District, Billings, Yellowstone County, State of Montana, and each party shall pay its own costs and attorney fees. (MCA § 18-1-401)

ARTICLE 25. DISPUTE RESOLUTION

Questions of fact that arise in relation to interpretation of this Contract are subject to the Alternative Dispute Resolution procedures described in **Schedule Q (Alternative Dispute Resolution Procedures)**. Unless the Parties agree otherwise, or the Work cannot be continued without a resolution of the question of fact, Alternative Dispute

Resolution procedures are not cause for delay of the Work under this Contract. Continuation of the Work does not constitute a waiver of any rights accruing to Contractor or the City of Billings.

ARTICLE 26. LIAISON AND SERVICE OF NOTICES

All project management and coordination on behalf of the City of Billings shall be through a single point of contact at each designated City of Billings' project location. Contractor shall designate a liaison who will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this Contract shall be coordinated between the City of Billings liaisons and Contractor's liaison. All written notice required by this Contract shall be sent by mail through the United States Postal Service or electronically by e-mail.

Mark Evangeline will be the liaison for the City of Billings Airport Project.

1901 Terminal Circle, Room 216
Billings, MT 59105
Telephone: 406-657-8499
Cell Phone: 406-698-7350
Fax: 406-657-8438
E-mail: evangelinem@ci.billings.mt.us

Chris Mallow will be the liaison for the City of Billings Parking Garage Project.

210 North 27th Street
Billings, MT 59101
Telephone: 406-237-6188
Cell Phone:
Fax:
E-mail: mallow@ci.billings.mt.us

Jeff Davis, PE, will be the liaison for Contractor.

McKinstry Essention, Inc.
1982 Stadium Drive, Suite #1
Bozeman, MT 59715
Telephone: 406-582-7573
Cell Phone: 406-579-9058
Fax: 406-586-0486
E-mail: jeffd@mckinstry.com

Notices will also be sent to:

Paul Zasada
McKinstry Essention, Inc.
9 S. Washington St. #605
Spokane, WA 99201
Telephone: 509-625-7246
Cell Phone: 208-640-9294
Fax: 206-658-1743
E-mail: PaulZ@mckinstry.com

The City of Billings liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison.

ARTICLE 27. GENERAL TERMS AND CONDITIONS

DESIGN/ENGINEERING

All analysis, design, equipment selections, specifications, and all aspects connected with design, installation, and construction of energy-savings measures, completed by the Contractor shall be performed by an engineer licensed in the State of Montana in accordance with 18-2-121 and 12-2-122, MCA.

ACCESS AND RETENTION OF RECORDS

Access to Records: The Contractor agrees to provide the City of Billings or its authorized agents, access to any records necessary to determine contract compliance. (MCA § 18-1-118).

Retention Period: The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the City of Billings or third party.

ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

The Contractor may not assign, transfer, or subcontract any portion of this Contract without the express written consent of the City of Billings. (MCA § 18-4-141) The City of Billings will not unreasonably withhold consent. The Contractor shall be responsible to the City of Billings for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between subcontractor(s) and the City of Billings.

COMPLIANCE WITH LAWS

The Contractor and any subcontractor must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the City of Billings.

Supplies delivered which do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense.

DISABILITY ACCOMMODATIONS

The City of Billings does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to the City of Billings. Interested parties should provide as much advance notice as possible.

HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the City of Billings, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, or subcontractors, except the sole negligence of the City of Billings, under this Contract.

REFERENCE TO CONTRACT

The Contract number **MUST** appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract.

REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with Sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their Website at <http://sos.mt.gov>.

SEPARABILITY CLAUSE

A declaration by any court, or any other binding legal source, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

SHIPPING

Supplies shall be shipped prepaid, F.O.B. Destination, unless the Contract specifies otherwise.

TAX EXEMPTION

The City of Billings is exempt from Federal Excise Taxes (#81-6001237).

VENUE

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract must be brought in the District Court of the Montana Thirteenth Judicial District, Billings, Yellowstone County, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

The parties through their authorized agents have executed this contract on the dates set out below.

CITY OF BILLINGS
CITY HALL
210 NORTH 27TH STREET
BILLINGS, MT 59101

MCKINSTRY ESSENTION, INC.
5005 3RD AVENUE SOUTH
SEATTLE, WA 98134
FEDERAL ID # 91-2055773

BY: THOMAS W. HANEL
MAYOR, CITY OF BILLINGS

BY: JOSEPH HAGAR
DIRECTOR OF FINANCE

(SIGNATURE)

(SIGNATURE)

DATE: _____

DATE: _____

APPROVED AS TO FORM AND
LEGAL CONTENT:

APPROVED AS TO FORM AND
LEGAL CONTENT:

CITY ATTORNEY

MCKINSTRY ESSENTION, INC.

EXHIBIT B

LEASE-PURCHASE AGREEMENT

MASTER TAX-EXEMPT INSTALLMENT PURCHASE AGREEMENT

Between: U.S. Bancorp Equipment Finance, Inc. (the "Seller")
13010 SW 68th Parkway, Suite 100
Portland, Oregon 97223

And: City of Billings, Montana (the "Purchaser")
P.O. Box 1178
Billings, Montana 59103
Attention: Finance Director
Telephone: (406) 657-8209

Dated: October 28, 2011

ARTICLE I DEFINITIONS

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Master Tax-Exempt Installment Purchase Agreement, including all exhibits and schedules attached hereto.

"Code" is defined in Section 3.01(f).

"Commencement Date" is the date when the term of a Property Schedule and Purchaser's obligation to pay Installment Payments thereunder commences, which date shall be set forth in such Property Schedule.

"Event of Default" is defined in Section 13.01.

"Installment Payments" means the installment payments payable by Purchaser under Article VI of this Agreement and each Property Schedule, as set forth in each Property Schedule.

"Installment Payment Dates" means the Installment Payment dates for the Installment Payments as set forth in each Property Schedule.

"Net Proceeds" is defined in Section 9.01.

"Nonappropriation Event" is defined in Section 6.06.

“Property” means, collectively, the property purchased pursuant to this Agreement, and with respect to each Property Schedule, the property described in such Property Schedule, and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article IX.

“Property Schedule” means a Property Schedule in the form attached hereto for Property Schedule 1. Subsequent Property Schedules pursuant to this Agreement shall be numbered consecutively, beginning with Property Schedule 2.

“Purchaser” means the entity identified as such in the first paragraph hereof, and its permitted successors and assigns.

“Seller” means the entity identified as such in the first paragraph hereof, and its successors and assigns.

“State” means the state where Purchaser is located.

“Term” means, with respect to a Property Schedule, the Term set forth in such Property Schedule.

“Vendor” means the manufacturer or contractor of the Property as well as the agents or dealers of the manufacturer or contractor from whom Seller or Purchaser arranged for the purchase of all or any portion of the Property.

ARTICLE II

2.01 Property Schedules Separate Financings. Each Property Schedule executed and delivered under this Agreement shall be a separate financing, distinct from other Property Schedules. Without limiting the foregoing, upon the occurrence of an Event of Default with respect to a Property Schedule, Seller shall have the rights and remedies specified herein with respect to the Property financed and the Installment Payments payable under such Property Schedule, and except as expressly provided in Section 12.02 below, Seller shall have no rights or remedies with respect to Property financed or Installment Payments payable under any other Property Schedules unless an Event of Default has also occurred under such other Property Schedules.

ARTICLE III

3.01 Covenants of Purchaser. As of the Commencement Date for each Property Schedule executed and delivered hereunder, Purchaser shall be deemed to represent, covenant and warrant for the benefit of Seller as follows:

- (a) Purchaser is a public body corporate and politic duly organized and existing under the constitution and laws of the State and its home rule charter with full power and authority to enter into this Agreement and the

Property Schedule and the transactions contemplated thereby and to perform all of its obligations thereunder.

- (b) Purchaser will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent Purchaser should merge with another entity under the laws of the State, Purchaser agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Purchaser's rights and shall assume Purchaser's obligations hereunder.
- (c) Purchaser has been duly authorized to execute and deliver this Agreement and the Property Schedule by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Property Schedule, and Purchaser has complied with such public bidding requirements as may be applicable to this Agreement and the Property Schedule and the acquisition by Purchaser of the Property thereunder. On or before the Commencement Date for the Property Schedule, Purchaser shall cause to be delivered an opinion of counsel in substantially the form of Exhibit 2 to the Property Schedule.
- (d) During the Term for the Property Schedule, the Property thereunder will perform and will be used by Purchaser only for the purpose of performing essential governmental uses and public functions within the permissible scope of Purchaser's authority.
- (e) Purchaser will provide Seller with current financial statements, budgets and proof of appropriation for the ensuing fiscal year and other financial information relating to the ability of Purchaser to continue this Agreement and the Property Schedule in such form and containing such information as may be requested by Seller.
- (f) Purchaser will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Installment Payments under the Property Schedule and will not use or permit the use of the Property in such a manner as to cause a Property Schedule to be a "private activity bond" under Section 141(a) of the Code. Purchaser covenants and agrees that it will use the proceeds of the Property Schedule as soon as practicable and with all reasonable dispatch for the purpose for which the Property Schedule has been entered into, and that no part of the proceeds of the Property Schedule shall be invested in any securities, obligations or other

investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Agreement, would have caused any portion of the Property Schedule to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Property Schedule.

- (g) The execution, delivery and performance of this Agreement and the Property Schedule and compliance with the provisions hereof and thereof by Purchaser does not conflict with or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease or other instrument to which Purchaser is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over Purchaser or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of Purchaser or to which it is subject.
- (h) Purchaser's exact legal name is as set forth on the first page of this Agreement. Purchaser will not change its legal name in any respect without giving thirty (30) days prior notice to Seller.

ARTICLE IV

4.01 Sale of Property. On the Commencement Date of each Property Schedule executed hereunder, Seller will be deemed to sell, transfer and convey to Purchaser, and Purchaser will be deemed to purchase and accept from Seller, the Property described in such Property Schedule, in accordance with this Agreement and such Property Schedule, for the Term set forth in such Property Schedule.

4.02 Term. The term of each Property Schedule shall commence on the Commencement Date set forth therein and shall terminate upon payment of the final Installment Payment set forth in such Property Schedule, unless terminated sooner pursuant to this Agreement or the Property Schedule.

4.03 Delivery, Installation and Acceptance of Property. Purchaser shall order the Property, shall cause the Property to be delivered and installed at the locations specified in the applicable Property Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. To the extent funds are deposited under an escrow agreement or trust agreement for the acquisition of the Property, such funds shall be disbursed as provided therein. When the Property described in such Property Schedule is delivered, installed and accepted as to Purchaser's specifications, Purchaser shall immediately accept the Property and evidence said acceptance by

executing and delivering to Seller the Acceptance Certificate substantially in the form attached to the Property Schedule.

ARTICLE V

5.01 Location; Inspection. The Property will be initially located or based at the location specified in the applicable Property Schedule. Seller shall have the right at all reasonable times during business hours to enter into and upon the property of Purchaser for the purpose of inspecting the Property.

ARTICLE VI

6.01 Payment of Installment Payments. Purchaser shall pay Installment Payments under a Property Schedule, exclusively from the funds or accounts described in such Property Schedule, in lawful money of the United States of America, to Seller in such amounts and on such dates as described in such Property Schedule, at Seller's address set forth on the first page of this Agreement, unless Seller instructs Purchaser otherwise. Purchaser shall pay a late charge of five cents per dollar or the highest amount permitted by applicable law, whichever is lower, on all delinquent Installment Payments and interest on said delinquent amounts from the date such amounts were due until paid at the rate of 12% per annum or the maximum amount permitted by applicable law, whichever is less, subject to appropriation by Purchaser.

6.02 Installment Payments to Constitute Binding Contractual Obligation. The Seller and the Purchaser understand and intend that the obligation of the Purchaser to pay Installment Payments shall constitute a current expense of the funds or accounts described in the applicable Property Schedule and shall not in any way be construed to be a debt of the Purchaser in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the Purchaser, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or money of the Purchaser. Installment Payments due shall be payable only from current funds which are budgeted or appropriated from the funds or accounts described in the applicable Property Schedule for such purpose during the fiscal year of the Purchaser for which such funds were budgeted and appropriated. The Purchaser has not pledged the full faith and credit of the Purchaser, the State or any agency or department of the Purchaser to the payment of the Installment Payments or any other payment due under this Agreement.

The person or entity in charge of preparing the Purchaser's budget will include in the budget request for each fiscal year the Installment Payments to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all such Installment Payments coming due therein, and the Purchaser reasonably believes that moneys in an amount sufficient to make all such Installment Payments can and will lawfully be appropriated and made available for this purpose.

6.03 Interest Component. A portion of each Installment Payment due under each Property Schedule is paid as, and represents payment of, interest, and each Property Schedule hereunder shall set forth the interest component (or method of computation thereof) of each Installment Payment thereunder during the Term.

6.04 Installment Payments to be Unconditional. EXCEPT AS PROVIDED IN SECTION 6.06, THE OBLIGATIONS OF PURCHASER TO PAY THE INSTALLMENT PAYMENTS DUE UNDER THE PROPERTY SCHEDULES AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT PURCHASER'S RIGHTS OR ACTIONS AGAINST ANY VENDOR AS PROVIDED IN SECTION 10.02.

6.05 Defeasance of Installment Payments. Purchaser may at any time irrevocably deposit in escrow with a defeasance escrow agent for the purpose of paying all of the principal component and interest component accruing under a Property Schedule, a sum of cash and non-callable securities consisting of direct obligations of, or obligations the principal of an interest on which are unconditionally guaranteed by, the United States of America or any agency or instrumentality thereof, in such aggregate amount, bearing interest at such rates and maturing on such dates as shall be required to provide funds sufficient for this purpose. Upon such defeasance, all right, title and interest of Seller in the Property under said Property Schedule shall terminate. Purchaser shall cause such investment to comply with the requirements of federal tax law so that the exclusion from gross income of the interest component of Installment Payments on said Property Schedule is not adversely affected.

6.06 Nonappropriation. If during the Term, sufficient funds are not appropriated to make Installment Payments required under a Property Schedule for the following fiscal year, Purchaser shall be deemed to not have renewed such Property Schedule for the following fiscal year and the Property Schedule shall terminate at the end of the fiscal year for which funds have been appropriated and Purchaser shall not be obligated to make Installment Payments under said Property Schedule beyond the fiscal year for which funds have been appropriated. Upon the occurrence of such nonappropriation (a "Nonappropriation Event") Purchaser shall, no later than the end of the fiscal year for which funds have been appropriated, deliver possession of the Property under said Property Schedule to Seller. If Purchaser fails to deliver possession of the Property to Seller upon termination of said Property Schedule by reason of a Nonappropriation Event, the termination shall nevertheless be effective but Purchaser shall be responsible for the payment of damages in an amount equal to the portion of Installment Payments thereafter coming due that is attributable to the number of days after the termination during which the Purchaser fails to deliver possession and for any

other loss suffered by Seller as a result of Purchaser's failure to deliver possession as required. In addition, Seller may, by written instructions to any escrow agent who is holding proceeds of the Property Schedule, instruct such escrow agent to release all such proceeds and any earnings thereon to Seller, such sums to be credited to Purchaser's obligations under the Property Schedule and this Agreement. Purchaser shall notify Seller in writing within seven (7) days after the failure of the Purchaser to appropriate funds sufficient for the payment of the Lease Payments, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Purchaser.

ARTICLE VII

7.01 Title to the Property. Upon acceptance of the Property by Purchaser and unless otherwise required by the laws of the State, title to the Property shall vest in Purchaser, subject to Seller's interests under the applicable Property Schedule and this Agreement.

7.02 Personal Property. The Property is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Property or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Seller, Purchaser will, at Purchaser's expense, furnish a waiver of any interest in the Property from any party having an interest in any such real estate or building.

7.03 Security Interest. To secure the performance of all of Purchaser's obligations under this Agreement with respect to a Property Schedule, including without limitation all Property Schedules now existing and hereafter executed, Purchaser grants to Seller, for the benefit of Seller and its successors and assigns, a security interest constituting a first lien on Purchaser's interest in all of the Property under the Property Schedule, whether now owned or hereafter acquired, all additions, attachments, alterations and accessions to the Property, all substitutions and replacements for the Property, and on any proceeds of any of the foregoing, including insurance proceeds. Purchaser shall execute any additional documents, including financing statements, affidavits, notices and similar instruments, in form and substance satisfactory to Seller, which Seller deems necessary or appropriate to establish, maintain and perfect a security interest in the Property in favor of Seller and its successors and assigns. Purchaser hereby authorizes Seller to file all financing statements which Seller deems necessary or appropriate to establish, maintain and perfect such security interest.

ARTICLE VIII

8.01 Maintenance of Property by Purchaser. Purchaser shall keep and maintain the Property in good condition and working order and in compliance with the manufacturer's specifications, shall use, operate and maintain the Property in conformity with all laws and regulations concerning the Property's ownership, possession, use and maintenance, and shall keep the Property free and clear of all liens and claims, other than those created by this Agreement. Purchaser shall have sole responsibility to maintain and

repair the Property. Should Purchaser fail to maintain, preserve and keep the Property in good repair and working order and in accordance with manufacturer's specifications, and if requested by Seller, Purchaser will enter into maintenance contracts for the Property in form approved by Seller and with approved providers.

8.02 Liens, Taxes, Other Governmental Charges and Utility Charges.

Purchaser shall keep the Property free of all levies, liens and encumbrances, except for the interest of Seller under this Agreement. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of Purchaser and, therefore, that the Property will be exempt from all property taxes. The Installment Payments payable by Purchaser under this Agreement and the Property Schedules hereunder have been established to reflect the savings resulting from this exemption from taxation. Purchaser will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession or acquisition of the Property is determined to be subject to taxation or later becomes subject to such taxes, Purchaser shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. Purchaser shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property. Purchaser shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Purchaser shall be obligated to pay only such installments as accrue during the then-current fiscal year of the Term for such Property.

8.03 Insurance. At its own expense, Purchaser shall maintain (a) casualty insurance insuring the Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Seller in an amount equal to at least the outstanding principal component of Installment Payments, and (b) liability insurance that protects Seller from liability in all events in an amount reasonably acceptable to Seller, and (c) worker's compensation insurance covering all employees working on, in, near or about the Property; provided that Purchaser may self-insure against all such risks (other than rental interruption). All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. All such insurance shall be with insurers that are authorized to issue such insurance in the State. All such liability insurance shall name Seller as an additional insured. All such casualty insurance shall contain a provision making any losses payable to Seller and Purchaser as their respective interests may appear. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Seller and Purchaser at least thirty (30) days in advance of such cancellation or modification. Such changes shall not become effective without Seller's prior written consent. Purchaser shall furnish to Seller, on or before the Commencement Date for each Property Schedule, and thereafter at Seller's request, certificates evidencing such coverage, or, if Purchaser self-insures, a written description of its self-insurance program together with a certification from Purchaser's risk manager or insurance agent or consultant to the effect that Purchaser's self-insurance program provides adequate coverage against the risks listed above.

8.04 Advances. In the event Purchaser shall fail to either maintain the insurance required by this Agreement or keep the Property in good repair and working order, Seller may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums thereof or maintain and repair the Property and pay the cost thereof. All amounts so advanced by Seller shall constitute additional rent for the Term for the applicable Property Schedule and shall be due and payable on the next Installment Payment Date and Purchaser covenants and agrees to pay such amounts so advanced by Seller with interest thereon from the date such amounts are advanced until paid at the rate of 12% per annum or the maximum amount permitted by applicable law, whichever is less, subject to appropriation by Purchaser.

ARTICLE IX

9.01 Damage or Destruction. If (a) the Property under a Property Schedule or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Property under a Property Schedule or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Seller and Purchaser will cause the Net Proceeds (as hereinafter defined) of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, unless Purchaser shall have exercised its right to defease the Property Schedule as provided herein, or unless Purchaser shall have exercised its option to prepay the Installment Payments if the Property Schedule so provides. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Purchaser. For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

9.02 Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01, Purchaser shall (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds and, if Purchaser shall make any payments pursuant to this Section, Purchaser shall not be entitled to any reimbursement therefor from Seller nor shall Purchaser be entitled to any diminution of the amounts payable under Section 6.01, or (b) defease the Property Schedule pursuant to Section 6.05, or (c) exercise its option to prepay the Installment Payments pursuant to the optional prepayment provisions if the Property Schedule so provides. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after such defeasance or purchase may be retained by Purchaser.

ARTICLE X

10.01 Disclaimer of Warranties. SELLER MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND SELLER HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS SOLD TO PURCHASER "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY PURCHASER. Purchaser acknowledges that it has made (or will make) the selection of the Property from the Vendor based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Seller. Purchaser understands and agrees that (a) neither the Vendor nor any sales representative or other agent of Vendor, is (i) an agent of Seller, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall Seller be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Property Schedules, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Property Schedules.

10.02 Vendor's Warranties. Seller hereby irrevocably assigns to Purchaser all rights that Seller may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Vendor. Purchaser's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor, and not against Seller, nor shall such matter have any effect whatsoever on the rights and obligations of Seller with respect to this Agreement, including the right to receive full and timely payments hereunder. Purchaser expressly acknowledges that Seller makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Vendor.

10.03 Use of the Property. Purchaser will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement and the applicable Property Schedule. Purchaser shall provide all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, Purchaser agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property; provided that Purchaser may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of Seller, adversely affect the interest of Seller in and to the Property or its interest or rights under this Agreement. Purchaser shall promptly notify

Seller in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Property Schedule or the Property thereunder.

10.04 Modifications. Subject to the provisions of this Section, Purchaser shall have the right, at its own expense, to make alterations, additions, modifications or improvements to the Property. All such alterations, additions, modifications and improvements shall thereafter comprise part of the Property and shall be subject to the provisions of this Agreement. Such alterations, additions, modifications and improvements shall not in any way damage the Property, substantially alter its nature or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, on completion of any alterations, additions, modifications or improvements made pursuant to this Section, shall be of a value which is equal to or greater than the value of the Property immediately prior to the making of such alterations, additions, modifications and improvements. Purchaser shall, at its own expense, make such alterations, additions, modifications and improvements to the Property as may be required from time to time by applicable law or by any governmental authority.

ARTICLE XI

11.01 Option to Prepay. Purchaser shall have the option to prepay in whole the Installment Payments due under a Property Schedule, but only if the Property Schedule so provides, and on the terms set forth in the Property Schedule.

ARTICLE XII

12.01 Assignment by Seller. Seller's right, title and interest in, to and under each Property Schedule and the Property under such Property Schedule may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Seller without the necessity of obtaining the consent of Purchaser; provided that any assignment shall not be effective until Purchaser has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Purchaser shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Purchaser agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Seller or any assignee to protect its interests in this Agreement and the Property Schedules.

12.02 Property Schedules Separate Financings. Assignees of the Seller's rights in one Property Schedule shall have no rights in any other Property Schedule unless such rights have been separately assigned.

12.03 Release and Indemnification Covenants. To the extent permitted by applicable law, Purchaser shall indemnify, protect, hold harmless, save and keep harmless Seller from and against any and all liability, obligation, loss, claim and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith,