
**CITY OF PECULIAR, MISSOURI,
As Lessor,**

AND

**AQUILA, INC.,
As Lessee**

LEASE AGREEMENT

Dated as of December 30, 2004

Relating to:

**\$140,000,000
(Aggregate Maximum Principal Amount)
City of Peculiar, Missouri
Taxable Industrial Revenue Bonds
(Aquila Project)
Series 2004**

The interest of the City of Peculiar, Missouri (the "City"), in this Lease Agreement has been pledged and assigned to Commerce Bank, N.A., as Trustee under the Trust Indenture dated as of December 30, 2004, between the City and the Trustee.

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of December 30, 2004 (this "**Lease**"), between the **CITY OF PECULIAR, MISSOURI**, a fourth class city organized and existing under the laws of the State of Missouri (the "**City**"), as lessor, and **AQUILA, INC.**, a Delaware corporation (the "**Company**"), as lessee;

WITNESSETH:

WHEREAS, the City is authorized under the Act to issue revenue bonds to provide funds for the carrying out of a project under the Act and to sell, lease or mortgage to private persons, partnerships or corporations the facilities purchased, constructed or extended by the City for manufacturing, commercial, warehousing and industrial development purposes pursuant to the Act; and

WHEREAS, pursuant to the Act, the governing body of the City adopted a Resolution expressing the intent of the City to issue its industrial development revenue bonds in a principal amount not to exceed \$140,000,000, for the purpose of purchasing, constructing, installing and equipping the project described on **Exhibit A** hereto (the "**Project**"), and authorizing the City to lease the Project to the Company;

WHEREAS, pursuant to the Act, the governing body of the City has adopted the Ordinance, authorizing the City to issue its Taxable Industrial Revenue Bonds (Aquila Project) Series 2004, in the maximum principal amount of \$140,000,000 (the "**Bonds**"), for the purpose of purchasing, constructing, installing and equipping the Project, and authorizing the City to lease the Project to the Company;

WHEREAS, pursuant to the Ordinance, the City is authorized to execute and deliver a Trust Indenture of even date herewith (the "**Indenture**"), with Commerce Bank, N.A., as Trustee (the "**Trustee**"), for the purpose of issuing and securing the Bonds, as therein provided, and to enter into this Lease with the Company under which the City will purchase, construct, install and equip the Project and will lease the Project to the Company in consideration of rental payments by the Company which will be sufficient to pay the principal of and interest on the Bonds; and

WHEREAS, pursuant to the foregoing, the City desires to lease the Project to the Company and the Company desires to lease the Project from the City, for the rentals and upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Company do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. Words and terms defined in **Section 101** of the Indenture are incorporated herein by reference unless otherwise defined below, in which case the words and terms below shall have the following meanings:

"Additional Project Equipment" means, in addition to the Project Equipment, the machinery, equipment and other personal property required to construct, equip and operate the Project in accordance

with its intended purposes, acquired pursuant to **Article IV** of the Lease and paid for in whole or in part from the Construction Fund, and all replacements thereof and substitutions therefor made pursuant to the Lease.

"Additional Rent" means the additional rental described in **Sections 5.2** of this Lease.

"Assessments" has the meaning set forth in **Section 10.9(c)** of this Lease.

"Basic Rent" means the rental described in **Section 5.1** of this Lease.

"City" has the meaning set forth in the introductory paragraph of this Lease.

"Company" has the meaning set forth in the introductory paragraph of this Lease.

"Economic Development Agreement" means the Economic Development Agreement dated December 30, 2004 between the City and the Company.

"Environmental Laws" has the meaning set forth in **Section 10.9(a)** of this Lease.

"Environmental Notices" has the meaning set forth in **Section 10.9(d)** of this Lease.

"Event of Default" has the meaning set forth in **Section 12.1** of this Lease.

"Full Insurable Value" means the reasonable replacement cost of the Project less physical depreciation and exclusive of land, excavations, footings, foundation and parking lots as determined in accordance with **Section 7.2(a)** hereof.

"Hazardous Substances" has the meaning set forth in **Section 10.9(a)** of this Lease.

"Indenture" has the meaning set forth in the recitals of this Lease.

"Lease" has the meaning set forth in the introductory paragraph of this agreement.

"Leasehold Mortgage" means any leasehold mortgage, leasehold deed of trust, assignment of rents and leases, security agreement or other agreement relating to the Project permitted pursuant to the provisions of **Section 10.4** hereof.

"Lease Term" means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** of this Lease.

"Net Proceeds" means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds.

"Permitted Encumbrances" means, as of any particular time (a) liens for ad valorem taxes and special assessments not then delinquent, (b) the Indenture, (c) this Lease, (d) the Deed of Trust, (e) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements

granted to the City, (f) such minor defects, irregularities, encumbrances, easements, mechanic's liens, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the City, (g) any other liens, encumbrances, leases, easements, restrictions or covenants consented to in writing by the owner of 100% of the principal amount of the Bonds, (h) any exceptions to the title of the Project Site which are contained in the title insurance policy provided in **Section 7.1** herein, and (i) liens or security interests granted pursuant to any Financing Documents.

"Plans and Specifications" means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time prior to the Completion Date, the same being on file at an office of the Company and which shall be available for reasonable inspection during normal business hours and upon not less than three business days' prior notice by the City, the Trustee and their duly appointed representatives.

"Project" has the meaning set forth in the recitals of this Lease.

"Project Costs" has the meaning set forth in **Section 4.3** of this Lease.

"Project Improvements" means the buildings, structures, improvements and fixtures used to operate the Project in accordance with its intended purposes, all of which will be located on or otherwise attached or fixed to the Project Site, as constructed or acquired pursuant to **Article IV** of the Lease and paid for in whole or in part from moneys in the Construction Fund, and all additions, alterations, modifications and improvements thereof made pursuant to the Lease.

"Remedies Notices" has the meaning set forth in **Section 11.1** of this Lease.

"Reports" has the meaning set forth in **Section 10.9(c)** of this Lease.

"Trustee" has the meaning set forth in the recitals of this Lease.

Section 1.2. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, (i) words importing the singular number shall include the plural, and *vice versa*, (ii) words importing persons shall include firms, associations and corporations, including governmental entities, as well as natural persons, (iii) references to any person shall be construed to include that person's successors and assigns, (iv) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation", and (v) any definition or reference to any law, agreement, instrument or other document shall be construed as referring to such law, agreement, instrument or document as from time to time amended, supplemented or otherwise modified.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated "Articles," "Sections," "Exhibits" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections, Exhibits and subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section, Exhibit or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a fourth class city duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. Subject to the Litigation, by proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers.

(b) The City has acquired the Project Site and the Project Equipment, in each case subject to Permitted Encumbrances, and proposes to purchase and construct (or cause to be purchased and constructed) thereon the Project Improvements, and proposes to purchase and install (or cause to be purchased and installed) the Additional Project Equipment on the Project Site. The City proposes to lease the Project to the Company and sell the Project to the Company if the Company exercises its option to purchase the Project, all for the purpose of furthering the public purposes of the Act, and the governing body of the City has found and determined that the purchase, construction, installation and equipping of the Project will further the public purposes of the Act.

(c) To finance the costs of the Project, the City proposes to issue the Series 2004 Bond which will be scheduled to mature as set forth in **Article II** of the Indenture and will be subject to redemption prior to maturity in accordance with the provisions of **Article III** of the Indenture.

(d) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project and the net earnings therefrom, consisting of all rents, revenues and receipts to be derived by the City from the leasing or sale of the Project, will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Bonds and amounts owing pursuant to this Lease.

(e) The City will not mortgage, grant any interest in or otherwise encumber the Project or pledge the revenues derived therefrom for any bonds or other obligations other than the Bonds except with the written consent of the Authorized Company Representative or, **if the Company or other entity controlled by or controlling the Company is not the owner of the Bonds**, the owners of 100% of the principal amount of the Bonds.

(f) The City shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof except subsequent to an Event of Default hereunder.

(g) The purchase, construction, installation and equipping of the Project and the leasing of the Project by the City to the Company will further the public purposes of the Act.

(h) No member of the governing body of the City or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby.

(i) The Project is located in or near the City and will promote the development of commercial property within the City resulting from a stabilization of electric power within the City and the acquisition of electric power to promote economic development within the City.

Section 2.2. Representations by the Company. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation, validly existing and in good standing under the laws of the State of Delaware and is authorized to conduct business in the State of Missouri.

(b) Subject to the Litigation, the Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives.

(c) Subject to the Litigation, the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Company will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Company is a party or by which it or any of its property is bound, or the Company's organizational documents or bylaws, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party, in each case, except where such breach, conflict or default would not adversely effect in any material way the rights and obligations of the parties hereto or the rights of the City, the Trustee or the Bondowners under the Indenture.

(d) The design of the Project is in accordance with sound engineering principles, and the estimated costs of the Project were prepared using reasonable assumptions.

(e) To the Company's knowledge, the Project (as currently designed and planned) will comply in all material respects with all presently applicable building and zoning, health, environmental and safety ordinances and laws and all other applicable laws, rules and regulations.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City hereby rents, leases and lets the Project to the Company, and the Company hereby rents, leases and hires the Project from the City, subject to Permitted Encumbrances, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term. This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have an initial term commencing as of the date of this Lease and terminating on June 1, 2035.

Section 3.3. Possession and Use of the Project.

(a) The City covenants and agrees that as long as neither the City nor the Trustee has exercised any of the remedies set forth in **Section 12.2** following the occurrence and continuance of an Event of Default, the Company shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the City's and the Trustee's right of access pursuant to **Section 10.3** hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII** of this Lease, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Company, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project and will defend the Company's enjoyment and possession thereof against all parties.

(b) Subject to the provisions of this Section, the Company shall have the right to use the Project for any lawful purpose contemplated by the Act and consistent with the terms of the Economic Development Agreement. The Company shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

ARTICLE IV

PURCHASE, CONSTRUCTION, INSTALLATION AND EQUIPPING OF THE PROJECT

Section 4.1. Issuance of the Bonds.

(a) In order to provide funds for purchasing, constructing and equipping of the Project, the City agrees that it will issue, sell and cause to be delivered to the purchaser thereof the Series 2004 Bond in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Series 2004 Bond, when and if received, shall be paid over to the Trustee for the account of the City. The Trustee shall promptly deposit such proceeds, when and if received, as provided in the Indenture, to be used and applied as hereinafter provided in this Article and in the Indenture. The Trustee will also endorse the Series 2004 Bond in an amount equal to the value of property transferred by the Company to the City related to the Project.

(b) The City may authorize the issuance of Additional Bonds from time to time upon the terms and conditions provided in **Section 209** of the Indenture.

(c) If the Company is not in default hereunder, the City will, at the request of the Company, from time to time, use its best efforts to issue the amount of Additional Bonds specified by the Company; *provided* that the terms of such Additional Bonds, the purchase price to be paid therefor and the manner in which the proceeds therefrom are to be disbursed shall have been approved in writing by the Company; *provided further* that the Company and the City shall have entered into an amendment to this Lease to provide for rent in an amount at least sufficient to pay principal and interest on the Additional Bonds when due, an amendment to the Economic Development Agreement, if any, related to any improvements to the Project, and the City shall have otherwise complied with the provisions of the Indenture with respect to the issuance of such Additional Bonds.

Section 4.2. Purchase, Construction, Installation and Equipping of the Project. The City and the Company agree that the City will and the Company as the agent of the City shall, but solely from the Construction Fund, purchase, construct, install and equip the Project as follows:

(a) The City will acquire the Project Site and the Project Equipment at the execution hereof and which the Company desires to convey to the City in exchange for the issuance of the Series 2004 Bond in an amount equal to the value of the property transferred to the City pursuant to **Section 4.1**. Concurrently with the execution of this Lease (i) a deed and any other necessary instruments of transfer will be delivered to the City, (ii) said deed will be placed of record, and (iii) the title insurance policies required by **Article VII** hereof or commitments to issue such policies will be delivered to the Trustee.

(b) The Company will, on behalf of the City, purchase and construct the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may make minor changes in and to the construction contracts and the Plans and Specifications incorporated therein, but major changes shall be made only with the approval of the City, which approval will not be unreasonably withheld. Major changes shall be any change in respect of an item which has an estimated cost (increase or decrease) of more than \$10,000,000. The Company agrees that, based on the Plans and Specifications existing currently, the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in a Project suitable for use by the Company for its purposes, and that all real and personal property described in the Plans and Specifications,

with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project.

(c) The Company will, on behalf of the City, install the Project Equipment, and purchase and install the Additional Project Equipment, on the Project Site in accordance with the Plans and Specifications. The City and the Company recognize that each of the Project Equipment and the Additional Project Equipment is subject to change during the Construction Period and thereafter pursuant to the provisions of this Lease, and agree that the definitive list of these assets shall be the list maintained by the Trustee pursuant to **Section 10.8** of this Lease. Except as provided in the next sentence, title to the Project Equipment and Additional Project Equipment shall be evidenced by bills of sale or other instruments of transfer, including purchase orders or other instruments pursuant to which the City acquires title to personal property directly from the vendor thereof. Subject to **Section 8.2**, all Project Equipment or Additional Project Equipment substituted by the Company shall automatically become part of the Project subject to this Lease, and full title and ownership of such equipment shall be automatically vested in the City, without the requirement of a bill of sale or other instrument of conveyance unless otherwise requested by the City. In any event, on or before April 1 of each year, the Company shall furnish to the City and the Trustee a list of items (based on the Company's internal record keeping) comprising the Project Equipment and the Additional Project Equipment as of January 1 of such year. The improper inclusion or exclusion of any Project Equipment or Additional Project Equipment pursuant to such list may be rectified by the Company within 30 days notice of such improper inclusion or exclusion. The improper inclusion or exclusion of an item from such list shall not affect the items comprising the Project Equipment or the Additional Project Equipment, as the case may be, for the purpose of this Lease or title thereto as intended by the parties hereto. The Company shall provide such information to the Trustee as may be requested in order to ensure that such list corresponds to the list of Project Equipment and the Additional Project Equipment maintained by the Trustee pursuant to **Section 10.8**.

(d) The Company agrees that it will use its commercially reasonable efforts to cause the acquisition, purchase, construction, installation and equipping of the Project to be completed as soon as practicable. In the event such purchase, construction, installation and equipping commences prior to the receipt of proceeds from the sale of the Bonds, the Company agrees to advance all funds necessary for such purpose.

(e) The Company will comply with the provisions of Section 107.170 of the Revised Statutes of Missouri, as amended, to the extent applicable to the installation of the Project.

Section 4.3. Project Costs. The City hereby agrees to pay for, but solely from the Construction Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Construction Fund, all costs of the Project ("**Project Costs**") upon receipt by the Trustee of a certificate pursuant to **Section 4.4** hereof.

Section 4.4. Payment for Project Costs. All Project Costs as specified in **Section 4.3** hereof shall be paid by the Trustee from the Construction Fund, and the City hereby authorizes and directs the Trustee to make disbursements from the Construction Fund, upon receipt by the Trustee of certificates in substantially the form attached hereto as **Exhibit B**, signed by an Authorized Company Representative:

(a) requesting payment of a specified amount of such funds and directing to whom such amount shall be paid (whose name and address shall be stated);

(b) describing each item of Project Costs for which payment is being requested including, for Additional Project Equipment, a description of the item and a serial or other identifying number, if any, for such item;

(c) stating that each item for which payment is requested is or was desirable and appropriate in connection with the purchase, construction, installation and equipping of the Project, has been properly incurred and is a proper charge against the Construction Fund, that the amount requested either has been paid by the Company, or is justly due, and has not been the basis of any previous requisition from the Construction Fund; and

(d) stating that, except for the amounts, if any, stated in said certificate, to the best of his knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the purchase, construction, installation and equipping of the Project which might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or other similar lien upon the Project or any part thereof.

The Trustee may rely conclusively on any such certificate and shall not be required to make any independent inspection or investigation in connection therewith. The approval of any requisition certificate by the Authorized Company Representative shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payments requested have been completed.

Section 4.5. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee by a certificate signed by the Authorized Company Representative stating (a) that the purchase, construction, installation and equipping of the Project has been completed in accordance with the Plans and Specifications in all material respects and the date thereof, and (b) that all costs and expenses incurred in the purchase, construction, installation and equipping of the Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Company. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The Company and the City agree to cooperate in causing such certificate to be furnished to the Trustee.

Section 4.6. Surplus or Deficiency in Construction Fund.

(a) Upon receipt of the certificate described in **Section 4.5** hereof, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Construction Fund to the Bond Fund to be applied as directed by the Company solely to (i) the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (ii) at the option of the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect.

(b) If the Construction Fund shall be insufficient to pay fully all Project Costs and to complete the Project free of liens and encumbrances other than Permitted Encumbrances, the Company shall pay, in cash, the full amount of any such deficiency by making payments thereof directly to the contractors and to the suppliers of materials and services as the same shall become due in accordance with the applicable contracts entered into with such contractors and suppliers, and the Company shall save and hold harmless the City and the Trustee whole and harmless from any obligation to pay such deficiency.

Section 4.7. Project Property of City. The Project Site and Project Equipment at the execution hereof and which the Company conveys to the City, all work and materials on the Project

Improvements (including Additional Project Equipment installed with respect thereto) as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the property of the City, subject only to Permitted Encumbrances.

Section 4.8. Non-Project Improvements, Machinery and Equipment Property of the Company. Any improvements or item of machinery or equipment which do not constitute part of the Project Improvements, Project Equipment or Additional Project Equipment and the entire purchase price of which is paid for by the Company with the Company's own funds, and no part of the purchase price of which is paid for from funds deposited pursuant to the terms of this Lease in the Construction Fund, shall be the property of the Company and shall not constitute a part of the Project for purposes of **Section 6.4.**

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Company covenants and agrees to pay to the Trustee in same day funds for the account of City during this Lease Term, on or before 11:00 a.m., Trustee's local time, on the appropriate dates and in the appropriate amounts, the principal of and the interest on the Bonds in accordance with the provisions of the Indenture and the Bonds, as Basic Rent for the Project, in an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal on the Bonds and the interest thereon on such payment date, shall be equal to the amount payable on such payment date as principal of the Bonds and the interest thereon as provided in the Indenture. All payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture. At its option, the Company may deliver to the Trustee for cancellation Bonds not previously paid and the Company shall receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

Section 5.2. Additional Rent. The Company shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts:

(a) all fees, charges and expenses for which the Company is required to reimburse the City, the Trustee and the Paying Agent incurred under the terms of the Indenture, this Lease, the Deed of Trust or the Economic Development Agreement, as and when the same become due;

(b) all costs incident to the payment of the principal of and interest on the Bonds as the same becomes due and payable, including all costs and expenses in connection with the call, redemption and payment of all Outstanding Bonds;

(c) all fees, charges and expenses reasonably incurred in connection with the reasonable and necessary enforcement of any rights under this Lease, the Deed of Trust or the Indenture by the City, the Trustee or the Bondowners, including counsel fees and expenses;

(d) an amount sufficient to reimburse the City for extraordinary expenses reasonably incurred by the City hereunder in connection with the performance of its obligations under this Lease, the Indenture, the Deed of Trust or the Economic Development Agreement.

(e) all amounts payable under the Economic Development Agreement.

(f) all other payments of whatever nature which Company has agreed to pay or assume under the provisions of this Lease.

Section 5.3. Obligations of Company Absolute and Unconditional.

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project shall have been started or completed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Company of any rights or claims the Company may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Bondowners, the Trustee and the City. The Company may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

Section 5.4. Prepayment of Basic Rent. The Company may at any time and from time to time prepay all or any part of the Basic Rent provided for hereunder. During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then remaining unpaid, the Company shall be entitled to credit such amount against payments of Basic Rent or Additional Rent under the provisions of this Lease.

At its option, the Company may deliver to the Trustee for cancellation Bonds owned by the Company and not previously paid, and the Company shall receive a credit against amounts payable by the Company as Basic Rent or Additional Rent, as the case may be, for the redemption of Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest thereon.

Section 5.5. Redemption of Bonds. The City and the Trustee, at the written direction of the Company, at any time the aggregate moneys in the Bond Fund are sufficient for such purposes, shall (a) if the same are then redeemable under the provisions of **Article III** of the Indenture, take all steps that may be necessary under the applicable redemption provisions of the Indenture to effect the redemption of all or such part of the then outstanding Bonds as may be specified by the Company, on such redemption date as may be specified by the Company, or (b) cause such moneys in the Bond Fund or such part thereof as the Company shall direct, to be applied by the Trustee for the purchase of Bonds in the open market for the purpose of cancellation at prices not exceeding the principal amount thereof, or (c) a combination of (a) and (b) as provided in such direction. At its option, the Company may deliver to the Trustee for redemption Bonds not previously paid and the Company shall receive a credit against the Basic Rent or other amounts payable by the Company for the redemption of such Bonds in an amount equal to the principal amount of the Bonds so tendered for redemption plus accrued interest.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Maintenance and Repairs. Throughout the Lease Term the Company shall, at its own expense, keep the Project in reasonably safe operating condition and keep the Project in good repair, reasonable wear, tear, depreciation and obsolescence excepted, making from time to time all repairs thereto and renewals and replacements thereof it determines to be necessary. Without limiting the generality of the foregoing, the Company shall, if applicable, at all times remain in material compliance with all applicable provisions of the City's code and ordinances relating to maintenance and appearance of the Project.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

(a) Subject to subsection (b) of this Section, the Company shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom, including any new taxes and assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the City's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company shall have the right, in its own name or in the City's name, to contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (i) the Company, before instituting any such contest, gives the City written notice of its intention so to do, (ii) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (iii) the Company promptly

pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the City from any costs and expenses the City may incur related to any of the above.

(c) Nothing in this Lease shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit against the Grants to be made by the Company under the Economic Development Agreement to the extent of any *ad valorem* taxes imposed on or with respect to the Project paid pursuant to this section.

Section 6.3. Utilities. All utilities and utility services used by the Company in, on or about the Project shall be paid by the Company and shall be contracted by the Company in the Company's own name, and the Company shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.4. Property Tax Exemption. The City and the Company expect that while the Project is owned by the City and is subject to the Lease, the Project will be exempt from all *ad valorem* property taxes by reason of such ownership, and the City agrees that it will (at the expense of the Company) cooperate with the Company to defend such exemption against all parties. The City and the Company further acknowledge and agree that the City's obligations hereunder are contingent upon the Company making the payments and otherwise complying with the terms of the Economic Development Agreement during the term of this Lease. The terms and conditions of the Economic Development Agreement are incorporated herein as if fully set forth herein.

ARTICLE VII

INSURANCE

Section 7.1. Title Insurance. The Company will purchase, on behalf of the City and the Trustee, at its expense, from a company duly qualified to issue such insurance in the State of Missouri, an owner's policy of title insurance in the amount of not less than \$2,000,000, subject only to Permitted Encumbrances. Copies of said policy will be delivered to the Trustee by the Company not later than 90 days after the date of issuance of the Series 2004 Bond.

Section 7.2. Casualty Insurance.

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term, a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained at the Company's sole cost and expense, shall be maintained with generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of "A-" or the equivalent thereof as may be selected by the Company. Copies of the insurance policies required under this Section, or originals or certificates thereof, each bearing notations evidencing payment of the premiums or other evidence of such payment, shall be delivered by the Company upon request to the City and the

Trustee. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the City and the Company as insureds as their respective interests may appear, shall name the Trustee as loss payee and shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 10 days' advance written notice to the City, the Company and the Trustee.

(b) In the event of loss or damage to the Project, the Net Proceeds of property insurance carried pursuant to this Section shall be paid over to the Trustee and shall be applied as provided in **Article IX** of this Lease, or as may be directed by, or on behalf of, the owners of 100% in principal amount of the Bonds outstanding.

Section 7.3. Public Liability Insurance.

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term general accident and public liability insurance (including coverage for all losses whatsoever arising from the ownership, maintenance, operation or use of any automobile, truck or other motor vehicle), under which the City and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri (subject to reasonable loss deductible clauses not to exceed the amounts normally or generally carried by the Company or its affiliates). The policies of said insurance shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 10 days' advance written notice to the City, the Company and the Trustee. Such policies or copies or certificates thereof shall be furnished to the Trustee upon request.

(b) In the event of a public liability occurrence, the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 7.4. Blanket Insurance Policies. The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with.

Section 7.5. Worker's Compensation. The Company agrees throughout the Lease Term to maintain or cause to be maintained the Worker's Compensation coverage or the approval to self insure as required by the laws of the State of Missouri.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements of the Project.

The Company shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to the authority of this Section shall (a) be made in workmanlike manner and in material compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project; provided, however, that additions of machinery and equipment installed in the Project by the Company not purchased or acquired from funds deposited with the Trustee hereunder shall remain the property of the Company and may be removed by the Company, and are not part of the Project; provided, further, that prior to the

Company making improvements to the Project, the City and the Company shall agree upon additional contribution payments and other matters related to the improvements of the Project and amend the Economic Development Agreement, if necessary, regardless of the improvements being made pursuant to this **Section 8.1** or pursuant to **Section 8.3** hereof.

Section 8.2. Removal and Replacement of Project Equipment.

(a) The Company shall have the right, provided the Company is not in default in the payment of Basic Rent or Additional Rent hereunder, to remove from the Project and (on behalf of the City) sell, exchange, replace or otherwise dispose of, without responsibility or accountability to the City or the Trustee with respect thereto, any items of the Project Equipment or Additional Project Equipment which the Company shall certify to the Trustee have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary or are otherwise no longer useful to the Company in its utility operations. The Trustee will amend the list of Project Equipment or Additional Project Equipment, as the case may be, maintained by it pursuant to Section 10.8 hereof upon receipt of any such certificates. Notwithstanding anything contained herein to the contrary, title to any item of the Project removed from the Project Site shall automatically vest in the Company without further instrument or action, and such vesting of title shall be self-operative effective upon removal.

(b) In all cases, the Company shall pay all the costs and expenses of any such removal and shall immediately repair at its expense all damage to the Project caused thereby in a good and workmanlike manner.

Section 8.3. Additional Improvements on the Project Site. The Company shall have and is hereby given the right, at its sole cost and expense, to construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Company pursuant to the authority of this Section shall, during the life of this Lease, remain the property of the Company and may be added to, altered or razed and removed by the Company at any time. The Company covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, and (b) to promptly and with due diligence either raze and remove or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty. The Company will pay all *ad valorem* taxes and assessments payable with respect to such additional buildings and improvements which remain the property of the Company.

Section 8.4. Permits and Authorizations. The Company shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. The City agrees to act promptly on all requests for such municipal permits and authorizations. All such work shall be done in a good and workmanlike manner and in material compliance with all applicable material building and zoning laws and governmental regulations and requirements, and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII** hereof.

Section 8.5. Mechanics' Liens.

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project, except Permitted Encumbrances, and the Company shall promptly notify the City of the imposition of such lien of which the Company is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project, the Company shall discharge the same of record. Notice is hereby given that the City shall not be liable for any labor or materials furnished the Company or anyone claiming by, through or under the Company upon credit, and that no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City in and to the Project or any part thereof.

(b) Notwithstanding paragraph (a) above, the Company may contest any such mechanics' or other similar lien if the Company (i) notifies the City and the Trustee in writing of its intention so to do, (ii) diligently prosecutes such contest, (iii) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (iv) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (v) thereafter promptly procures record release or satisfaction thereof. The Company shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall reimburse the City for any expense incurred by it in order to discharge or remove any such pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

Section 8.6. Option to Purchase Unimproved Portions of the Project Site. The City hereby grants to the Company the right at any time and from time to time to purchase any unimproved portion or portions of the Project Site. For the purposes of this Section "unimproved" shall mean real property upon which no Project Improvements are located, excluding improvements relating to streets, sidewalks, bridges, stormwater, grading, utility, parking or other similar improvements. As conditions to such purchase the City and the Trustee shall receive from the Company at least 30 days prior to the proposed date for completing the purchase the following (1) a written certificate from the Company to the effect (a) that the Company desires to purchase an unimproved portion of the Project Site, (b) the proposed date for completing the purchase, and (c) that the Company is not in material default under any of the provisions of this Lease Agreement, (2) an adequate legal description of that portion (together with the interest in such portion) of the property to be purchased, (3) a certificate of an independent engineer or surveyor, dated not more than 30 days prior to the date of the request stating that, in the opinion of the person signing such certificate, (a) the unimproved portion of the Project Site is unimproved within the definition contained in this Section, (b) the unimproved portion of the Project Site so proposed to be purchased is not needed for the operation of the Project, and (c) the proposed purchase will not impair the usefulness of the Project for its intended purposes and will not destroy the means of ingress thereto and egress therefrom, and (4) the written consent of all Bondowners.

The purchase price for such unimproved portion of the Project Site shall be determined by the owners of all of the Bonds and shall be received in writing by the City and the Trustee at least 10 days prior to the proposed date for completing the purchase. Such purchase price shall be paid to the Trustee at the time the City executes and delivers a special warranty deed conveying the property which is to be purchased to the Company. The Trustee shall deposit such amount (if any) into the Bond Fund. If such amount is more than \$1,000, such amount shall be used by the Trustee to redeem Bonds in accordance with **Section**

302(a) of the Indenture. If such amount is \$1,000 or less the Trustee shall apply such amount to the next interest payment on the Bonds.

Upon the City's receipt of written notice from the Trustee that the Trustee has received all of the items required by this Section, the Mayor and City Clerk of the City shall execute a special warranty deed conveying such property to the Company and shall deliver such deed to the Company. Such deed shall be subject to the following: (1) those liens and encumbrances, if any, to which title to that portion of the Project Site was subject when conveyed to the City; (2) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (3) those liens and encumbrances resulting from the failure of the Company to perform or observe any agreement on its part contained in this Lease; (4) Permitted Encumbrances other than the Indenture, the Deed of Trust and this Lease; and (5) if the unimproved portion of the Project Site or any part thereof is being condemned, the rights and title of any condemning authority.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

(a) If the Project shall be damaged or destroyed by fire or any other event, whether or not covered by insurance, the Company, as promptly as practicable, shall either (i) make the determination required by subsection (g) below or (ii) repair, restore, replace or rebuild the same so that upon completion of such repairs, restoration, replacement or rebuilding such Project shall be of a value not less than the value thereof immediately prior to the occurrence of such damage or destruction or, at the Company's option, shall construct upon the Project Site new buildings and improvements thereafter together with all new machinery, equipment and fixtures which are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (i) the value thereof shall not be less than the value of such destroyed or damaged Project Improvements, Project Equipment and/or Additional Project Equipment immediately prior to the occurrence of such damage or destruction and (ii) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Project as an enterprise permitted by the Act.

If the Company shall elect to construct any such new buildings and improvements, for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings and improvements and all additions thereto and all replacements and alterations thereof and any reference to the words "Project Equipment" and "Additional Project Equipment" shall be deemed to include any such new machinery, equipment and fixtures which are either attached to or are used in connection with the operation or maintenance of such new buildings and improvements and all additions or replacements thereof.

Unless the Company makes the determination described in subsection (g) below, the Net Proceeds of property insurance required by **Article VII** hereof received with respect to such damage or loss to the Project, if such Net Proceeds exceed \$10,000,000, shall be paid to the mortgagee under the Leasehold Mortgage or the Financing Party under any Financing Document (or if there is no Leasehold Mortgage or Financing Document, to the Trustee) and shall be applied in the following manner: