

(i) there shall be paid to the Company from the Net Proceeds such part thereof as shall equal the cost to the Company of making such temporary repairs or doing such other work, as, in the Company's reasonable opinion, may be necessary in order to protect the Project pending adjustment of the insurance loss or the making of permanent repairs, restoration, replacement or rebuilding;

(ii) there shall be paid to the Company from the Net Proceeds such part thereof as shall equal the cost to the Company of repairing, restoring, replacing or rebuilding the Project or any part thereof;

(iii) payment to the Company pursuant to subdivisions (i) or (ii) of this subsection (a) from such Net Proceeds shall be made to the Company from time to time as the work progresses, in amounts equal to the cost of labor and material incorporated into and used in such work, the buildings', architects' and engineers' fees, and other charges in connection with such work, upon delivery to the City, the Trustee and the mortgagee under the Leasehold Mortgage or the Financing Party under any Financing Document (if any) of a certificate of the Company's architect or general contractor, as the case may be, in charge of such work, certifying: (1) that the amounts so to be paid to the Company are payable to the Company in accordance with the provisions of this Article and that such amounts are then due and payable by the Company or have theretofore been paid by the Company; (2) the progress of the work; (3) that the work has been done in accordance with the plans and specifications therefor and all insurance requirements of **Article VII** hereof; (4) that the sum requested when added to all sums previously paid out under this Article for the work does not exceed the value of the work done to the date of such certificate; and (5) the estimated cost of completing the work, in reasonable detail;

(iv) at the request of the City, the Trustee or the mortgagee under the Leasehold Mortgage or the Financing Party under any Financing Document (if any), the Company shall furnish to the person requesting the same, at the time of any such payment, with an official search, or other evidence reasonably satisfactory to such person, that there has not been filed with respect to the Project Site or the Project Improvements any lien, other than a Permitted Encumbrance, which has not been discharged of record, in respect of any work, labor, services or materials performed, furnished or supplied, in connection with the work and that all of said materials have been purchased free and clear of all security interest or other encumbrances. Upon the termination of this Lease and the payment in full of the Bonds, any monies then held by the Trustee or the mortgagee under the Leasehold Mortgage or the Financing Party under any Financing Document (if any) shall be paid over to the Company, subject to the rights of any Leasehold Mortgage mortgagee or Financing Party.

(b) Completion of such repairs, restoration or replacement shall be evidenced by a certificate of completion in accordance with the provisions of **Section 4.5** hereof. If the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration or replacement, the Company shall pay the deficiency.

(c) If any of the insurance monies paid by the insurance company to the Trustee, the mortgagee under the Leasehold Mortgage (if any), the Financing Party under any Financing Document (if any) or the Company as hereinabove provided, shall remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease shall not have terminated, the excess shall be deposited in the Bond Fund, subject to the rights of any Leasehold Mortgage mortgagee or Financing Party. If the Net

Proceeds shall be insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Company shall pay the deficiency.

(d) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Company shall remain and continue liable for the payment of all Basic Rent and Additional Rental and all other charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.

(e) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(f) The Company agrees to give prompt notice to the City and the Trustee with respect to all fires and any other property damage occurring in, on, at or about the Project.

(g) If the Company shall determine that rebuilding, repairing, restoring or replacing the Project is not practicable and desirable, any Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same become due, all subject to rights of the secured party under any Leasehold Mortgage (if any) and the Financing Party under any Financing Documents (if any). The Company agrees to be reasonable in exercising its judgment pursuant to this subsection (g).

(h) The Company shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City, the Trustee or the Bondowners or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

## **Section 9.2. Condemnation.**

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project shall be condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$10,000,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City, the Trustee and the mortgagee under the Leasehold Mortgage (if any) and the Financing Party (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Company shall determine that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed prior to the exercise of the said power of eminent domain, including the acquisition or construction of other improvements suitable for the Company's operations at the Project (which

improvements will be deemed a part of the Project and available for use and occupancy by the Company without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances prior to the lien and/or security interest afforded by the Indenture other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds).

(c) If the Company shall determine that it is not practicable and desirable to acquire or construct substitute improvements, any Net Proceeds of condemnation awards received by the Company shall be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due and payable, all subject to the rights of the mortgagee under the Leasehold Mortgage (if any) and Financing Party under the Financing Documents (if any).

(d) The Company shall not, by reason of its inability to use all or any part of the Project during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the City, the Trustee or the Bondowners or to any abatement or diminution of the rentals payable by the Company under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The City shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Company.

**Section 9.3. Bondowner Approval.** Notwithstanding anything to the contrary contained in this **Article IX**, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) may prior to the application thereof by the City or the Trustee be applied as directed by the owners of 100% of the principal amount of Bonds outstanding, subject and subordinate to the rights of the City and the Trustee pursuant to the Indenture, this Lease and the Economic Development Agreement..

## ARTICLE X

### SPECIAL COVENANTS

**Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification.** The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the City from, agrees that the City shall not be liable for and agrees to hold the City harmless against, any loss or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project or the Company's use thereof; unless such loss is the result of the City's gross negligence or willful misconduct. This provision shall survive termination of this Lease.

**Section 10.2. Surrender of Possession.** Upon accrual of the City's right of re-entry because of the Company's default hereunder or upon the cancellation or termination of this Lease for any reason other than the Company's purchase of the Project pursuant to **Article XI** hereof, the Company shall peacefully surrender possession of the Project to the City; provided, however, the Company shall have the right within 90 days (or such later date as the City may agree to) after the termination of this Lease to remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and which are not so removed from the Project prior to the expiration of said period shall be the separate and absolute property of the City.

**Section 10.3. Right of Access to the Project.** The Company agrees that the City and the Trustee and their duly authorized agents shall have the right at reasonable times during normal business hours and, except in the event of emergencies, upon not less than one Business Days' prior notice, subject to the Company's usual safety and security requirements, to enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) to perform such work in and about the Project made necessary by reason of the Company's default under any of the provisions of this Lease, and (c) to exhibit the Project to prospective purchasers, lessees or trustees subsequent to an Event of Default.

**Section 10.4. Granting of Easements; Leasehold Mortgages and Financing Arrangements.**

(a) Subject to **Section 10.4(c)** and **(d)**, if no Event of Default under this Lease shall have happened and be continuing, the Company may at any time or times (i) grant subleases (as permitted in **Section 13.1(b)** hereof), easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (ii) release or terminate existing subleases, easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine, or (iii) incur Permitted Encumbrances. The Company may take such actions and may execute any applicable documents in the Company's own name. No separate signature of or authorization from the City shall be required for the execution and delivery of any such document, although the City agrees to execute and deliver such confirming documents as are described below, under the procedures described below, if the Company chooses to make such a request. All third parties entering into agreements with the Company or receiving delivery of or the benefit of such agreements or documents shall be entitled to rely upon the same as having been executed and delivered by the Company, unless such third party has actual or constructive notice that the agency herein granted by the City to the Company has been terminated by the City because of an uncured Event of Default hereunder. The City agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any such sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the City and the Trustee of: (x) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (y) a written application signed by an Authorized Company Representative requesting such instrument, and (z) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, will not materially adversely affect the security intended to be given by or under the Indenture and will be a Permitted

Encumbrance. If no Event of Default shall have happened and be continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company, but, subject to **Sections 10.4(c) and (d)**, upon (i) termination of this Lease for any reasons other than the redemption of the Bonds and/or the purchase of the Project by the Company or (ii) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) The Company may mortgage the leasehold estate created by this Lease, with prior notice to but without the City's consent, provided and upon condition that:

(i) a duplicate original or certified copy or photostatic copy of each such mortgage, and the note or other obligation secured thereby, is delivered to the City within thirty (30) days after the execution thereof; and

(ii) such mortgage shall contain a covenant to the effect that the net proceeds of all insurance policies and the condemnation award shall be held, used and applied for the purposes and in the manner provided for in this Lease.

(c) The City acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project, this Lease and the leasehold estate created hereby and, in connection therewith, the Company may execute Financing Documents with one or more Financing Parties. Notwithstanding anything contained to the contrary in this Lease, the Company may, at any time and from time to time, with prior notice to but without the consent of the City (i) execute one or more Financing Documents upon the terms contained in this **Section 10.4** and (ii) sublease or assign this Lease, the leasehold estate, any sublease and rights in connection therewith, and/or grant liens or security interests therein, to any Financing Party. Any further sublease or assignment by any Financing Party shall be subject to the provisions of Section 13.1(c).

(d) Upon notice by the Company to the City in writing that it has executed one or more Financing Documents under which it has granted rights in this Lease or the Project to a Financing Party, which includes the name and address of such Financing Party, then the following provisions shall apply in respect of each such Financing Party:

(i) this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without the prior written consent of such Financing Party;

(ii) there shall be no merger of this Lease or of the leasehold estate created hereby with the fee title to the Project, notwithstanding that this Lease or said leasehold estate and said fee title shall be owned by the same Person or Persons, without the prior written consent of such Financing Party;

(iii) the City shall serve upon each such Financing Party (at the address, if any, provided to the City) a copy of each notice of the occurrence of an Event of Default and each notice of termination given to the Company under this Lease, at the same time as such notice is served upon the Company. No such notice to the Company shall be effective unless a copy thereof is thus served upon each Financing Party;

(iv) each Financing Party shall have the same period of time which the Company has, after the service of any required notice upon it, within which to remedy or cause to be remedied any payment default under this Lease which is the basis of the notice plus 30 business days, and the City shall accept performance by such Financing Party as timely performance by the Company;

(v) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of the Financing Parties under this **Section 10.4(d)** as to such other events of default;

(vi) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Financing Party and permitting such Financing Party a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured (provided that the period to remedy such event of default shall continue beyond any period set forth in the Lease to effect said cure so long as the Financing Party is diligently prosecuting such cure); provided that the Financing Party (or its designee, nominee, assignee or transferee) shall pay or cause to be paid to the City and the Trustee all expenses, including reasonable counsel fees, court costs and disbursements incurred by the City or the Trustee in connection with any such default; and

(vii) the Financing Parties shall have the right to enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Financing Documents.

(e) In connection with the execution of one or more Financing Documents, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a Financing Party and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Financing Documents. The Company agrees to reimburse the City for any and all costs and expenses incurred by the City pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(f) The Company's obligations under any mortgage or Financing Document relating to the Project shall be subordinate the Company's obligations under this Lease.

**Section 10.5. Indemnification of City and Trustee.** The Company shall indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any Person, firm or corporation arising from the issuance of the Bonds and the execution of this Lease, the Deed of Trust or the Indenture and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Lease or any related document, (c) any contract entered into in connection with the construction, purchase, equipping or installation of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1(c)**, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, and (f) any violation of Section

107.170 of the Revised Statutes of Missouri; provided, however, the indemnification contained in this **Section 10.5** shall not extend to the City or Trustee if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are (i) the result of work being performed on the Project by employees of the City, or (ii) the result of gross negligence or willful misconduct by the City or the Trustee. Upon notice from the City or the Trustee, the Company shall defend them or either of them in any such action or proceeding. This **Section 10.5** shall survive any termination of this Lease or the satisfaction and discharge of the Indenture.

**Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits.** The City agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the City will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits.

**Section 10.7. Company to Maintain its Existence.** The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it, or may sell or otherwise transfer to one or more Persons all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee Person or Persons (a) expressly assumes in writing all the obligations of the Company contained in this Lease, and (b) (i) the long term debt rating of such Person or Persons or the long term debt rating of an entity controlled by, under common control with or controlling such Person or Persons, is in any of the top three long term debt rating categories by any nationally recognized rating service, or (ii) such Person or Persons is controlled by, under common control with or controls the Company.

**Section 10.8. Security Interests.**

(a) To secure the payment of all of the Company's obligations under this Lease, to the extent permitted by law and not provided to the contrary elsewhere in this Lease, the Trustee retains a security interest in all personal property consisting of the Project, including all additions, attachments, accessions thereto, substitutions therefor and on any proceeds therefrom.

(b) The City and the Company hereby authorize the Trustee to file all appropriate financing and continuation statements as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Bondowners and the rights of the Trustee hereunder. At the written request of all of the Bondowners, the City and the Company agree to enter into any other instruments necessary for perfection of and continuance of the perfection of the security interests of the City and the Trustee in the Project. Upon the written instructions of the owners of 100% of the Bonds then Outstanding, the Trustee shall file all instruments the Bondowners deem necessary to be filed and shall continue or cause to be continued such instruments for so long as the Bonds are Outstanding. The City and the Company shall cooperate with the Trustee in this regard by providing such information as the Trustee may require to file or to renew such statements. The Trustee shall maintain a file showing a description of the Project (including the Project Equipment and Additional Project Equipment), said file to be compiled from the certificates furnished to the Trustee pursuant to **Section 4.4** and **Section 8.2** hereof.

**Section 10.9. Environmental Matters, Warranties, Covenants and Indemnities Regarding Environmental Matters.**

(a) As used in this Section, the following terms have the following meanings:

"**Environmental Laws**" means any now-existing or hereafter enacted or promulgated federal, state, local, or other law, statute, ordinance, rule, regulation or court order pertaining to (i) environmental protection, regulation, contamination or clean-up, (ii) toxic waste, (iii) underground storage tanks, (iv) asbestos or asbestos-containing materials, or (v) the handling, treatment, storage, use or disposal of Hazardous Substances, including the Comprehensive Environmental Response, Compensation and Liability Act and The Resource Conservation and Recovery Act.

"**Hazardous Substances**" means all (i) "hazardous substances" (as defined in 42 U.S.C. §9601(14)), (ii) "chemicals" subject to regulation under Title III of the Superfund Amendments and Reauthorization Act of 1986, (iii) natural gas liquids, liquefied natural gas or synthetic gas, (iv) any petroleum, petroleum-based products or crude oil or any fraction, or (v) any other hazardous or toxic substances, wastes or materials, pollutants, contaminants or any other substances or materials which are included under or regulated by any Environmental Law.

(b) The Company warrants and represents to the City and the Trustee that to the knowledge of the Company there are no conditions on the Project Site which are materially violative of any Environmental Laws and no claims or demands have been asserted or made by any third parties arising out of, relating to or in connection with any Hazardous Substances on or allegedly on the Project Site for any injuries suffered or incurred or allegedly suffered or incurred by reason of the foregoing.

(c) The Company will provide the City and the Trustee with copies of any notifications of releases of Hazardous Substances or of any materially adverse environmental hazards or potentially materially adverse hazards which are given by or on behalf of the Company to any federal, state or local or other agencies or authorities or which are received by the Company from any federal, state or local or other agencies or authorities with respect to the Project Site. Such copies shall be sent to the City and the Trustee concurrently with their being mailed or delivered to the governmental agencies or authorities or within ten days after they are made or received by the Company. The Company will provide to the City for review only, any environmental assessment ("**Assessments**") and reports regarding the repair or remediation of environmental issues addressed in the Assessment ("**Reports**") concerning the Project Site and the Project Improvements; upon the completion of the City's review of the Assessments and the Reports, the City shall immediately return to the Company all originals and copies of the Assessments and Reports.

(d) The Company warrants and represents that the Company has provided the City and the Trustee with copies of all emergency and hazardous chemical inventory forms (hereinafter "**Environmental Notices**") that relate to the Project Site previously given, as of the date hereof, by the Company to any federal, state or local governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §11001 *et seq.*, or any other Environmental Laws. The Company will provide the City and the Trustee with copies of all Environmental Notices that relate to the Project Site subsequently sent to any such governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986 or any other Environmental Laws. Such copies of subsequent Environmental Notices shall be sent to the City and the Trustee concurrently with their being mailed to any such governmental authority or agency.



(e) The Company will use its commercially reasonable best efforts to comply with and operate and at all times use, keep and maintain the Project and every part thereof (whether or not such property constitutes a facility, as defined in 42 U.S.C. § 9601 *et. seq.*) in material conformance with all applicable Environmental Laws. Without limiting the generality of the foregoing, the Company will not use, generate, treat, store, dispose of or otherwise introduce any Hazardous Substance into or on the Project or any part thereof nor cause, suffer, allow or permit anyone else to do so except in the ordinary course of the operation of the Company's business and in compliance with all applicable Environmental Laws.

(f) The Company agrees to indemnify, defend, protect and hold harmless the City and the Trustee from and against any and all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising from (i) any release (as defined in 42 U.S.C. § 9601 (22)) or threat of a release, actual or alleged, of any Hazardous Substances, upon the Project or respecting any products or materials previously, now or thereafter located upon, delivered to or in transit to or from the Project, regardless of whether such release or threat of release or alleged release or threat of release has occurred prior to the date hereof or hereafter occurs and regardless of whether such release occurs as a result of any act, omission, negligence or misconduct of the Company or any third party or otherwise, (ii) (A) any violation now existing or hereafter arising (actual or alleged) of, or any other liability under or in connection with, any Environmental Laws relating to or affecting the Project, or (B) any now existing or hereafter arising violation, actual or alleged, or any other liability, under or in connection with, any Environmental Laws relating to any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Project, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen prior to the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises, as the result of any act, omission, negligence or misconduct of the Company or any third party or otherwise, (iii) any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any Hazardous Substances on or allegedly on the Project Site, or (iv) any breach, falsity or failure of any of the representations, warranties, covenants and agreements contained in this Section. This subsection (f) shall survive any termination of this Lease.

## ARTICLE XI

### OPTION AND OBLIGATION TO PURCHASE THE PROJECT

**Section 11.1. Option to Purchase the Project.** The Company shall have, and is hereby granted, the option to purchase the Project at any time, upon payment in full of all Bonds then Outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture. To exercise such option the Company shall give written notice to the City and to the Trustee, if any of the Bonds remain unpaid or provision for their payment shall not have been made in accordance with the terms of the Indenture, and shall specify therein the date of closing such purchase, which date shall be not less than 30 nor more than 180 days from the date such notice is mailed, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the foregoing, if the City or the Trustee provides notice of its intent to exercise its remedies hereunder (a "**Remedies Notice**") following the occurrence and during the continuance of an Event of Default, the Company shall be deemed to have exercised its repurchase option under this Section on the 10th day following the Company's receipt of the Remedies Notice without any further action by the Company; provided said notice has not been rescinded by the City or the Trustee, as applicable. The Company may cause the City or the Trustee, as the case may be, to rescind such exercise by providing written notice to the City and the Trustee on or prior to the 20th

day after receiving the Remedies Notice and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Company in the event of its exercise of the option granted in this Section shall be the sum of the following:

(a) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all the then outstanding Bonds on the earliest redemption date next succeeding the closing date, including principal and interest to accrue to said redemption date and redemption expense; plus

(b) an amount of money equal to the Trustee's and the Paying Agent's agreed to and reasonable fees and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus

(c) an amount of money equal to all payments due and payable pursuant to the Economic Development Agreement through the end of the calendar year in which the date of purchase occurs; plus

(d) the sum of \$1,000.

At its option, to be exercised at least 5 days prior to the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

**Section 11.2. Conveyance of the Project.** At the closing of the purchase of the Project pursuant to this Article, the City will upon receipt of the purchase price deliver, or cause to be delivered, to the Company the following:

(a) If the Indenture shall not at the time have been satisfied in full, a release from the Trustee of the Project from the lien and/or security interest of the Indenture, the Deed of Trust and this Lease.

(b) Documents, including a special warranty deed, conveying to the Company legal title to the Project, as it then exists, subject to the following: (i) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the City; (ii) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease; (iv) Permitted Encumbrances other than the Indenture, the Deed of Trust and this Lease; and (v) if the Project or any part thereof is being condemned, the rights and title of any condemning authority.

**Section 11.3. Relative Position of Option and Indenture.** The options and obligation to purchase the Project granted to the Company in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default under this Lease, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option and further provided that all options herein granted shall terminate upon the termination of this Lease.

**Section 11.4. Obligation to Purchase the Project.** The Company hereby agrees to purchase, and the City hereby agrees to sell, the Project (a) for the sum of \$1,000 at the expiration of the Lease Term

following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (b) at least 30 days and not more than 90 days subsequent to the early termination of the Economic Development Agreement, in an amount sufficient to redeem all the then Outstanding Bonds, plus accrued interest and the reasonable fees and expenses of the Trustee.

## ARTICLE XII

### DEFAULTS AND REMEDIES

**Section 12.1. Events of Default.** Notwithstanding any provisions to the contrary contained in the Economic Development Agreement, if any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an "**Event of Default**" or "default" under this Lease:

(a) Default in the due and punctual payment of Basic Rent or Additional Rent, and such default shall continue for 10 days after the City or the Trustee has given the Company written notice specifying such default (or such longer period as shall be reasonably required to cure such default, provided that the Company (i) has commenced such cure within the 10-day period and (ii) diligently prosecutes such cure to completion); or

(b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company's part to be observed or performed, and such default shall continue for 60 days after the City or the Trustee has given the Company written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that the Company (i) has commenced such cure within said 60-day period, and (ii) diligently prosecutes such cure to completion); or

(c) The Company shall: (i) admit in writing its inability to pay its debts as they become due; or (ii) file a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code or any other similar present or future federal or state statute or regulation, or file a pleading asking for such relief; or (iii) make an assignment for the benefit of creditors; or (iv) consent to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or shall fail to have the appointment of any trustee, receiver or liquidator made without the Company's consent or acquiescence, vacated or set aside; or (v) be finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) be subject to any proceeding, or suffer the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, which order or proceeding, if not consented to by it, shall not be dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (vii) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(d) The Company shall vacate or abandon the Project, or shall have been ejected from the Project or any material portion thereof by reason of a defect in title to the Project, and the same

shall remain uncared for and unoccupied for a period of 90 days, or if the Company ceases operations at the Project Site or is permanently ejected from the Project Site; or

(e) The Company shall fail to (i) pay amounts due under the Economic Development Agreement or (ii) comply with the other material terms of the Economic Development Agreement, and such default referred to in clause (ii) shall continue for 30 days after the City, the Trustee or any other party to the Economic Development Agreement has given the Company written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that the Company (A) has commenced such cure within such 30 day period, and (B) diligently prosecutes such cure to completion).

**Section 12.2. Remedies on Default.** If any Event of Default referred to in **Section 12.1** hereof shall have occurred and continues beyond the applicable cure period, then the City may at the City's election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of this Lease in the Indenture), then or at any time thereafter, and while such default shall continue, take any one or more of the following actions:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable, as provided in the Indenture; or

(b) give the Company written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 60 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Bondowners shall tender or be deemed to have tendered the outstanding principal amount of the Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with Section 11.1 hereof, the Company's rights to possession of the Project shall cease and this Lease shall thereupon be terminated, and the City may re-enter and take possession of the Project or, if the Company has paid all obligations due and owing under the Indenture, this Lease, the Deed of Trust and the Economic Development Agreement, convey the Project in accordance with Section 11.2 hereof; or

(c) without terminating this Lease, re-enter the Project to take possession thereof pursuant to legal proceedings or pursuant to any notice provided for by law, and having elected to re-enter or take possession of the Project without terminating this Lease, the City shall use reasonable diligence to relet the Project, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as the City may deem advisable, with the right to make alterations and repairs to the Project, and no such re-entry or taking of possession of the Project by the City shall be construed as an election on the City's part to terminate this Lease, and no such re-entry or taking of possession by the City shall relieve the Company of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or any of its other obligations under this Lease, all of which shall survive such re-entry or taking of possession, and the Company shall continue to pay the Basic Rent and Additional Rent provided for in this Lease until the end of this Lease Term, whether or not the Project shall have been relet, less the Net Proceeds, if any, of any reletting of the Project after deducting all of the City's reasonable expenses in or in connection with such reletting, including all repossession costs, brokerage commissions, legal expenses, expenses of employees, alteration costs and expenses of preparation for reletting. Said Net Proceeds of any reletting shall be deposited in the Bond Fund. Having elected to re-enter or take possession of the Project without terminating this Lease, the City may (subject, however, to any restrictions against termination of this Lease in the Indenture), by notice to the Company given at any time thereafter while the Company is in default in the payment of Basic Rent or Additional Rent or in the performance of any other obligation under this Lease, elect to terminate this Lease on a date to be specified in such notice, which date shall be not earlier

than 30 days after re-entry under (c) above, and if all defaults shall not have then been cured, on the date so specified this Lease shall thereupon be terminated. If in accordance with any of the foregoing provisions of this Article the City shall have the right to elect to re-enter and take possession of the Project, the City may enter and expel the Company and those claiming through or under the Company and remove the property and effects of both or either (forcibly if necessary) without being guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenant. The City may take whatever action at law or in equity which may appear necessary or desirable to collect rent then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Lease.

**Section 12.3. Survival of Obligations.** The Company covenants and agrees with the City and Bondowners that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Company shall continue to pay the Basic Rent and Additional Rent and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease; provided, however, that upon payment of all Basic Rent and Additional Rent required under **Article V** hereof, and upon the satisfaction and discharge of the Indenture under **Section 1301** thereof, the Company's obligation under this Lease shall thereupon cease and terminate in full, except to the extent such obligations expressly survive the termination of this Lease.

**Section 12.4. Performance of the Company's Obligations by the City.** If the Company shall fail to keep or perform any of its obligations as provided in this Lease in the making of any payment or performance of any obligation, then the City, or the Trustee in the City's name, may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 60 days after written notice of such failure is given the Company by the City or the Trustee, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so paid by the City or the Trustee and all necessary incidental reasonable costs and expenses incurred by the City or the Trustee (including attorney's fees and expenses) in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the Trustee on demand, and if not so paid by the Company, the City or the Trustee shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the Company in the payment of Basic Rent.

**Section 12.5. Rights and Remedies Cumulative.** The rights and remedies reserved by the City and the Company hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. The City agrees that neither the City nor the Trustee shall enforce any right or obligation hereunder (except for the City's or the Trustee's right to receive payments for their own account under the Indenture, the Lease, the Economic Development Agreement or any other agreement related to the Bonds or for their rights of indemnification) if so directed in writing by the owners of 100% of the Outstanding Bonds.

**Section 12.6. Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of any covenant, agreement or undertaking by the Company, the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving City's right to exercise any of its rights and

remedies provided for herein with respect to any such default or defaults of the Company which were in existence at the time such payment or payments were accepted by the City.

**Section 12.7. Trustee's Exercise of the City's Remedies.** Whenever any Event of Default has occurred and is continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

**Section 12.8 Opportunity to Cure Defaults.** With regard to any alleged default concerning which notice is given to the Company under the provisions of this Article, the City hereby grants the Company full authority for account of the City to perform any covenant or obligation, the nonperformance of which is alleged in said notice to constitute a default, in the name and stead of the City, with full power to do any and all things and acts to the same extent that the City could do and perform any such things and acts in order to remedy the default.

## **ARTICLE XIII**

### **ASSIGNMENT AND SUBLEASE**

#### **Section 13.1. Assignment; Sublease.**

(a) Subject to **Sections 10.4(c) and (d)**, the Company shall have the right to assign, transfer, encumber or dispose of this Lease or any interest herein or part hereof for any lawful purpose under the Act. With respect to any assignment, the Company shall comply with the following conditions:

(1) Such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;

(2) Such assignment shall include the entire then unexpired term of this Lease; and

(3) A duplicate original of such assignment shall be delivered to the City and the Trustee within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee and in proper form for recording, by which the assignee shall assume all of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

(b) The Company shall have the right to sublet all or any part of the Project to a single entity for any lawful purpose under the Act. No sublease of the Project shall release or discharge the Company from its primary liability for the payment of the Basic Rent and Additional Rent hereunder and the performance of each and all of the covenants and agreements herein contained, and its duties and obligations under this Lease shall continue as if no such sublease had been made. The Company shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the Trustee a true and correct copy of each such sublease. Any sublease may provide, at the Company's option, that the City's consent shall not be required in respect of any further subletting thereunder if such further subletting is for a similar purpose as the original sublease and is for a purpose permissible under the Act.

(c) Notwithstanding the foregoing, the right of the Company to assign or sublease any interest in this Lease without the prior written consent of the City shall only apply to assignments made (i) to any Person whose long-term debt, or the long term debt of any entity controlled by, under common control with or controlling such Person has at least a rating in any of the top three long term debt rating categories by any nationally recognized rating agency; (ii) so long as the Company shall remain secondarily liable, to any such Person; or (iii) to an entity controlled by or under common control with or controlling the Company. Any assignee of all the rights of the Company shall agree to be bound by the terms of this Lease, the Economic Development Agreement and any other documents related to the issuance of the Bonds. Upon such assignment of all the rights of the Company and agreement by the assignee to be bound by the terms of this Lease, the Economic Development Agreement and any other documents related to the Bonds, the Company shall be released from and have no further obligations under this Lease, the Economic Development Agreement or any agreement related to the issuance of the Bonds.

**Section 13.2. Assignment of Revenues by City.** The City shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the Trustee pursuant to the Indenture as security for payment of the principal of, interest and premium, if any, on the Bonds and the Company hereby consents to such pledge and assignment.

**Section 13.3. Prohibition Against Fee Mortgage of Project.** The City shall not mortgage its fee interest in the Project, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

**Section 13.4. Restrictions on Sale or Encumbrance of Project by City.** During this Lease Term, the City agrees that, except to secure the Bonds to be issued pursuant to the Indenture, it will not sell, assign, encumber, mortgage, transfer or convey the Project or any interest therein.

## ARTICLE XIV

### AMENDMENTS, CHANGES AND MODIFICATIONS

**Section 14.1. Amendments, Changes and Modifications.** Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of Bonds and prior to the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture, which consent, however, shall not be unreasonably withheld.

## ARTICLE XV

### MISCELLANEOUS PROVISIONS

**Section 15.1. Notices.** All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (i) mailed by registered or certified mail, postage prepaid, or (ii) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

(a) To the City:

City of Peculiar, Missouri  
600 Schug Avenue  
Peculiar, MO 64078  
ATTN: City Administrator

(b) To the Company:

Aquila, Inc.  
10700 E. 350 Highway  
Raytown, MO 64138  
ATTN: Beth Armstrong

With a copy to:

Aquila, Inc.  
20 West Ninth Street  
Kansas City, MO 64105  
ATTN: General Counsel

(c) To the Trustee:

Commerce Bank, N.A.  
922 Walnut, 10<sup>th</sup> Floor  
Kansas City, MO 64106  
ATTN: Corporate Trust Department

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided, however, that notice to the Trustee shall be effective only upon receipt. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Company to the other shall also be given to the Trustee. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

**Section 15.2. City Shall Not Unreasonably Withhold Consents and Approvals.** Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold, delay or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any additional project or matter unrelated to the Project subject to zoning, building permit or other regulatory approvals by the City.

**Section 15.3. Net Lease.** The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same become due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further



sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the City and the Trustee) have been paid in full the Trustee or the City holds unexpended funds received in accordance with the terms hereof such unexpended funds shall, after payment therefrom of all sums then due and owing by the Company under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Company.

**Section 15.4. Limitation on Liability of City.** No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, or any obligation herein or therein imposed upon the City shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

**Section 15.5. Governing Law.** This Lease shall be construed in accordance with and governed by the laws of Missouri.

**Section 15.6. Binding Effect.** This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns.

**Section 15.7. Severability.** If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

**Section 15.8. Execution in Counterparts.** This Lease may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

**CITY OF PECULIAR, MISSOURI**

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

**ACKNOWLEDGMENT**

STATE OF MISSOURI            )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED that on this 30<sup>th</sup> day of December, 2004, before me, the undersigned, a notary public in and for said county and state, came \_\_\_\_\_, Mayor of the **CITY OF PECULIAR, MISSOURI**, a fourth class city duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Missouri, and \_\_\_\_\_, City Clerk of the City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My Appointment Expires: \_\_\_\_\_

**AQUILA, INC.**

By: \_\_\_\_\_  
Name: Leslie J. Parrette, Jr.  
Title: Senior Vice President, General Counsel  
and Secretary

**ACKNOWLEDGMENT**

STATE OF MISSOURI       )  
                                      ) SS.  
COUNTY OF JACKSON     )

BE IT REMEMBERED, that on this 30<sup>th</sup> day of December, 2004, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Leslie J. Parrette, Jr., Senior Vice President, General Counsel and Secretary of AQUILA, INC., a Delaware corporation, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said corporation, and such officer duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Notary Public

My Appointment Expires: \_\_\_\_\_

## **EXHIBIT A**

### **PROJECT**

The Project consists of electricity generation, transmission and distribution facilities described below.

#### **A. South Harper Peaking Facility**

The South Harper electric “peaking” facility will comprise the three gas-fired turbine units and associated transformers and breakers. Continuous emissions monitoring equipment will be integrated into each turbine unit, and natural gas fuel will be supplied through on-site infrastructure and a connecting interstate pipeline system. The power generation facility will be capable of producing 315 MWs of electric “peaking” power. A 161/69 kV substation will be located adjacent to the peaking facility for transmission purposes.

#### **B. Peculiar 345 kV Substation**

The Peculiar 345/161 kV transmission substation, which will be located five miles north of the South Harper peaking facility, will comprise a 345/161 KV transformer, breakers, and associated electrical transmission equipment. The substation will provide the interconnection between the existing 345 kV system and a 161 kV system.

In connection with the ownership of the Project, the City will hold legal title to (a) the real estate comprising the Project Site and all buildings, structures, improvements and fixtures attached thereto, (b) all additions, modifications and improvements made to the real property described in clause (a) above or otherwise resulting from, or acquired in connection with, the constructing, equipping or improving of the Project, to the extent financed by Bond proceeds, (c) the Project Equipment, and (d) all replacements and substitutions related to the Project Equipment and all additional personal property acquired in connection with the constructing or equipping of the Project, to the extent financed by Bond proceeds.

**EXHIBIT B**

**[FORM OF REQUISITION CERTIFICATE]**

Requisition No. \_\_\_\_\_  
Date: \_\_\_\_\_

**REQUISITION CERTIFICATE**

TO: COMMERCE BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF DECEMBER 30, 2004, BETWEEN THE CITY OF PECULIAR, MISSOURI, AND COMMERCE BANK, N.A., AS TRUSTEE, AND LEASE AGREEMENT DATED AS OF DECEMBER 30, 2004, BETWEEN THE CITY OF PECULIAR, MISSOURI, AND AQUILA, INC.

The undersigned hereby requests that a total of \$ \_\_\_\_\_ be paid for Project Costs (as defined in said Trust Indenture) in such amounts, to such payees and for such purposes as set forth on **Schedule 1** and **Schedule 2** attached hereto.

I hereby state and certify that: (i) the amounts requested are or were necessary and appropriate in connection with the purchase, construction, installation and equipping of the Project (as defined in the Trust Indenture), have been properly incurred and are a proper charge against the Construction Fund, and have been paid by the Company or are justly due to the persons whose names and addresses are stated on **Schedule 1**, and have not been the basis of any previous requisition from the Construction Fund and (ii) as of this date, except for the amounts referred to above, there are no, to the best of my knowledge, 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, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof.

**AQUILA, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1 TO REQUISITION CERTIFICATE**

<u>Amount</u>	<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
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## SCHEDULE 2 TO REQUISITION CERTIFICATE

### ADDITIONAL PROJECT EQUIPMENT

Item ( <u>Description</u> )	<u>Serial or Identification Number</u>
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