

interest, if any, on Bonds, and shall do so upon the written request of the holders of more than 50% in aggregate principal amount of all the Bonds then Outstanding, provided, however, that (1) there shall not be waived without the consent of the City an Event of Default hereunder as a result of an event of default under Section 12.1(c), (d) or (e) of the Lease, and (2) there shall not be waived without the consent of the holders of all the Bonds Outstanding (a) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (b) any Event of Default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, all arrears of interest, or all arrears of payments of principal when due, as the case may be, and all reasonable expenses of the Trustee and the City (including attorneys fees and expenses), in connection with such default, shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the City, the Company, the Trustee and the Bondowners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

ARTICLE X

THE TRUSTEE

Section 1001. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default shall have occurred and be continuing, subject to **Section 1001(l)** below, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care, and the Trustee shall be entitled to act upon the opinion or advice of counsel, who may be counsel to the City or to the Company, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel addressed to the City and the Trustee.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or except as provided in the Lease and particularly Section 10.8 thereof, for the recording or rerecording, filing or refiling of this Indenture or any security agreement in connection therewith (excluding the continuation of Uniform Commercial Code financing statements), or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security of the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article VII** hereof.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the owner or pledgee of Bonds with the same rights which it would have if it were not Trustee. The Trustee shall not be accountable for the use or application by the City or the Company of the proceeds of any of the Bonds or of any money paid to or upon the order of the City or Company under any provision of this Indenture.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent is a Bondowner, shall be conclusive and binding upon all future holders of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the Authorized City Representative or an Authorized Company Representative as sufficient evidence of the facts therein contained, and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its bad faith, negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made in **Article VI** hereof, unless the Trustee shall be specifically notified in writing of such default by the City or by the holders of at least 25% in aggregate principal amount of all Bonds then Outstanding.

(i) Upon reasonable request and subject to the Company's reasonable and standard security procedures, the Trustee and its duly authorized agents and representatives shall have the right, but shall not be required, to inspect any and all of the Project, and all books, papers and records of the City and the Company pertaining to the Project and the Bonds, and to copy such non-confidential memoranda related thereto as may be desired. The Trustee shall treat all proprietary information of the Company as confidential.

(j) The Trustee shall not be required to give any bond or surety in respect to the execution of its trusts and powers hereunder or otherwise in respect of the Project.

(k) The Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions,

appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Notwithstanding anything in the Indenture or the Lease to the contrary, before taking any action under this Indenture other than payments from moneys on deposit in the Construction Fund or the Bond Fund, as provided herein, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its bad faith, negligence or willful misconduct by reason of any action so taken.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

Section 1002. Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances and external counsel fees and other ordinary expenses reasonably made or incurred by the Trustee in connection with such ordinary services and, in the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the bad faith, neglect or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Company has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the City shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Company for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment prior to payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred.

Section 1003. Notice to Bondowners if Default Occurs. If a default occurs of which the Trustee is by subsection (h) of **Section 1001** hereof required to take notice or if notice of default be given as in said subsection (h) provided, then the Trustee shall give written notice thereof to the last known holders of all Bonds then Outstanding as shown by the bond registration books required by **Section 206** to be kept at the corporate trust office of the Trustee.

Section 1004. Intervention by the Trustee. In any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Bondowners, the Trustee may intervene on behalf of Bondowners and, subject to the provisions of **Section 1001(i)** hereof, shall do so if requested in writing by the holders of at least 25% of the aggregate principal amount of Bonds then Outstanding.

Section 1005. Successor Trustee Upon Merger, Consolidation or Sale. With the prior written consent of the Company, any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business

and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 1006. Resignation of Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 90 days' written notice to the City, the Company and, unless the Company is the sole Bondholder, the Bondowners, and such resignation shall take effect at the end of such 90 days, or upon the earlier appointment of a successor Trustee by the Bondowners or by the City.

Section 1007. Removal of Trustee. The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the City and the Company and signed by the holders of a majority in aggregate principal amount of Bonds then Outstanding, or (b) so long as no Event of Default under this Indenture or the Lease shall have occurred and be continuing, delivered to the Trustee, the City and the Bondowners and signed by the Company.

Section 1008. Appointment of Successor Trustee. In case the Trustee hereunder shall resign or be removed, or shall otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee (a) reasonably acceptable to the City may be appointed by the Company (so long as no Event of Default shall have occurred and be continuing), or (b) reasonably acceptable to the City and the Company may be appointed by the holders of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the City, by an instrument executed and signed by its Mayor and attested by its City Clerk under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed in the manner above provided. Any such temporary Trustee so appointed by the City shall immediately and without further acts be superseded by the successor Trustee so appointed as provided above. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and qualified to accept such trust having, or whose obligations are guaranteed by a financial institution having, a reported capital, surplus and undivided profits of not less than \$50,000,000. If no successor Trustee has been so appointed and accepted appointment in the manner herein provided, the Trustee or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor shall have been appointed as above provided.

Section 1009. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor, and the duties and obligations of such predecessor hereunder shall thereafter cease and terminate; but such predecessor shall, nevertheless, on the written request of the City, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the City be required by any predecessor or successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

Section 1010. Right of Trustee to Pay Taxes and Other Charges. In case any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment or governmental charge or

insurance premium, without prejudice, however, to any rights of the Trustee or the Bondowners hereunder arising in consequence of such failure; any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of 10% per annum, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the holders of at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

Section 1011. Trust Estate May be Vested in Co-trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including the State of Missouri) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either on default or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) In the event that the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall be subject to the approval of the Company), each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the City be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to such co-trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

(d) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

Section 1012. Accounting. The Trustee shall render an annual accounting for the period ending December 31 of each year to the City, the Company and to any Bondowner requesting the same and, upon the request of the Company or the Bondowner, a monthly accounting to the Company and the Bondowner, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 1013. Performance of Duties Under the Lease. The Trustee hereby accepts and agrees to perform all duties and obligations assigned to it under the Lease.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101. Supplemental Indentures Not Requiring Consent of Bondowners. The City and the Trustee may from time to time, without the consent of or notice to any of the Bondowners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture, or to make any other change not materially adverse to the security for the Bondowners;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondowners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondowners or the Trustee or either of them;
- (c) To more precisely identify the Project or the Project Site or to add additional property thereto;
- (d) To conform the Indenture to amendments to the Lease made by the City and the Company;
- (e) To subject to this Indenture additional revenues, properties or collateral; or
- (f) To issue Additional Bonds as provided in **Section 209** hereof.

Section 1102. Supplemental Indentures Requiring Consent of Bondowners.

(a) Exclusive of Supplemental Indentures covered by **Section 1101** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the City and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or the interest, if any, on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Bondowners of which are required for consent to any such Supplemental Indenture.

(b) If at the time the City shall request the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Bondowner as shown on the bond registration books required by **Section 206** hereof. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Bondowners. If within 60 days or such longer period as may be prescribed by the City following the mailing and final publication of such notice, the holders of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation

thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1103. Company's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article which affects any rights of the Company shall not become effective unless and until the Company shall have consented in writing to the execution and delivery of such Supplemental Indenture, provided that receipt by the Trustee of a Supplemental Lease executed by the Company in connection with the issuance of Additional Bonds under **Section 209** hereof shall be deemed to be the consent of the Company to the execution of a Supplemental Indenture pursuant to **Section 209** hereof, respectively. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such Supplemental Indenture (other than a Supplemental Indenture proposed to be executed and delivered pursuant to **Section 209** hereof) together with a copy of the proposed Supplemental Indenture to be mailed to the Company at least 15 days prior to the proposed date of execution and delivery of any such Supplemental Indenture.

Section 1104. Opinion of Counsel. In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee and the City may request, and, shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture and will, upon the execution and delivery thereof, be a valid and binding obligation of the City. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's rights, duties or immunities under this Indenture or otherwise.

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201. Supplemental Leases Not Requiring Consent of Bondowners. The City and the Trustee shall, without the consent of or notice to the Bondowners, consent to the execution of any Supplemental Lease or Supplemental Leases by the City and the Company as may be required (a) by the provisions of the Lease and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease, (c) so as to more precisely identify the Project or add additional property thereto, (d) in connection with the issuance of Additional Bonds under **Section 209** hereof, or (e) in connection with any other change therein which, in the judgment of the Trustee, does not materially and adversely affect the Trustee or security for the Bondowners.

Section 1202. Supplemental Leases Requiring Consent of Bondowners. Except for Supplemental Leases as provided for in **Section 1201** hereof, neither the City nor the Trustee shall consent to the execution of any Supplemental Lease or Supplemental Leases by the City or the Company without the mailing of notice and the obtaining of the written approval or consent of the holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102** hereof. If at any time the City and the Company shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed Supplemental Lease and shall state that copies of the same are on file in the principal corporate trust office of the Trustee for inspection by all Bondowners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the holders of not less than 50% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Lease shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the

propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1203. Opinion of Counsel. In executing or consenting to any Supplemental Lease permitted by this Article, the City and the Trustee may request, and shall be fully protected in relying upon, an opinion of counsel addressed to the Trustee and the City stating that the executing of such Supplemental Lease is authorized or permitted by the Lease and applicable law and will upon the execution and delivery thereof be valid and binding obligations of the parties thereof.

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301. Satisfaction and Discharge of this Indenture.

(a) When the principal of and interest on all the Bonds shall have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 1302** hereof, and provision shall also be made for paying all other sums payable hereunder, under the Lease and the Economic Development Agreement (including the reasonable fees and expenses of the Trustee, the City and Paying Agent) to the date of retirement of the Bonds, then the right, title and interest of the Trustee in respect hereof shall thereupon cease, determine and be void, and thereupon the Trustee shall cancel, discharge and release this Indenture and shall, upon the written request of the City or the Company, execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the City any property at the time subject to this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Company under **Section 606** hereof and except funds or securities in which such funds are invested held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The City is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds then Outstanding has been paid or such payment provided for in accordance with **Section 1302** hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) shall have been made or caused to be made in accordance with the terms thereof, or (2) shall have been provided for by depositing with the Trustee or other commercial bank or trust company having full trust powers and authorized to accept trusts in the State of Missouri in trust and irrevocably set aside exclusively for such payment (i) moneys sufficient to make such payment or (ii) Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, or (3) have been provided for by surrendering the Bonds to the Trustee for cancellation. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed prior to the stated maturities thereof, no deposit under clause (2) of the immediately preceding paragraph

shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed prior to their respective stated maturities, proper notice of such redemption shall have been given in accordance with **Article III** of this Indenture or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds, with respect to which such moneys and Government Securities have been so set aside in trust.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Consents and Other Instruments by Bondowners.

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds (other than the assignment of ownership of a Bond), if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(1) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgements within such jurisdiction that the person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(2) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the City maintained by the Trustee pursuant to **Section 206** hereof.

Section 1402. Limitation of Rights Under this Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Bondowners, if any, any right, remedy or claim under or in respect to this Indenture, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Bondowners, as herein provided.

Section 1403. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the City, the Trustee, the Company or Bondowners if the same shall be duly mailed by registered or certified mail addressed:

- | | |
|---------------------|--|
| (a) To the City: | City of Peculiar, Missouri
600 Schug Avenue
Peculiar, MO 64078
ATTN: City Administrator |
| (b) To the Trustee: | Commerce Bank, N.A.
922 Walnut, 6 th Floor |

Kansas City, Missouri 64106
ATTN: Corporate Trust Department

(c) 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

(d) To the Bondowners if the same shall be duly mailed by first class, registered or certified mail addressed to each Bondowner at the time Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the principal corporate trust office of the Trustee.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed. All notices given by overnight delivery or other delivery service shall be deemed fully given as of the date when receipted. All notices given by facsimile shall be deemed fully given as of the date when receipted. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Trustee to the other shall also be given to the Company. 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 1404. Severability. If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

Section 1405. Execution in Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1406. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

IN WITNESS WHEREOF, City of Peculiar, Missouri, has caused this Indenture to be signed in its name and behalf by its Mayor and attested by its City Clerk, and to evidence its acceptance of the trusts hereby created, Commerce Bank, N.A. has caused this Indenture to be signed in its name and behalf by its duly authorized President or Vice-President or Trust Officer and attested by its Secretary or Assistant Secretary, all as of the date first above written.

CITY OF PECULIAR, MISSOURI

By _____
Mayor

ATTEST:

By _____
City Clerk

ACKNOWLEDGEMENT

STATE OF MISSOURI)
) SS.
COUNTY OF _____)

On this 30th day of December, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, and _____, who acknowledged themselves to be the Mayor and City Clerk of CITY OF PECULIAR, MISSOURI, a fourth class city organized and existing under the laws of the State of Missouri, and that they, as such Mayor and City Clerk are authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the City by themselves as Mayor and City Clerk.

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

Notary Public

My commission expires:

Aquila, Inc.
Trust Indenture

COMMERCE BANK, N.A.,
as Trustee

By _____
Name:
Title:

ATTEST:

By _____
Name:
Title:

ACKNOWLEDGEMENT

STATE OF MISSOURI)
) SS.
COUNTY OF _____)

On this _____ day of _____, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, who acknowledged himself to be a Vice President of COMMERCE BANK, N.A., Kansas City, Missouri, a national banking association duly organized and existing under the laws of the United States of America, and that he as such Vice President being authorized so to do executed the foregoing instrument for the purposes therein contained by signing the name of the association by himself as Vice President.

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

Notary Public

My commission expires:

Aquila, Inc.
Trust Indenture

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 own (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

PROJECT EQUIPMENT

All machinery, equipment or other personal property acquired and installed (or acquired for installation) on, in or at the Project Site in connection with the Project, including:

- a. the equipment described in the Bill of Sale dated as of December 30, 2004, between the City and the Company, including three Siemens Westinghouse Model 501D5A Econopac Combustion Turbine/Generators systems including the following major equipment:
 1. Combustion Turbine Package (Mod 501D5A)
 - Unit #1 Serial Number 37A7740
 - Unit #2 Serial Number 37A7741
 - Unit #3 Serial Number 37A7742
 2. Generator Package (Mod TLRI 100/30-36)
 - Unit #1 Serial Number 6659
 - Unit #2 Serial Number 6667
 - Unit #3 Serial Number 6739
 3. Per Econopac Unit –
 - A. Walk-in Turbine Enclosure
 - B. Mechanical Package
 - C. Electrical/Control Package
 - D. Fuel Gas System
 - E. Starting System
 - F. Pre-engineered Pipe Rack & Interconnecting Piping
 - G. Turbine and Generator Accessory Equipment
 - H. Power Electrics
 - I. Electrical Interconnecting Equipment
 - J. Tools and Maintenance Equipment
 - K. Other Contract Services; and
- b. transformers, breakers and associated transmission equipment required to construct a 161/69 kV transmission substation adjacent to the electric “peaking” power plant and a 345/161 kV transmission substation located on the real estate described under the “North Peculiar Property” heading on Exhibit A.

EXHIBIT C

PROJECT SITE

South Harper Property

A TRACT OF LAND SITUATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 45 NORTH, RANGE 32 WEST OF THE FIFTH PRINCIPAL MERIDIAN AND THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 45 NORTH, RANGE 32 WEST OF THE FIFTH PRINCIPAL MERIDIAN, EXCEPT THAT PART DEEDED TO CITIES SERVICE GAS COMPANY BY DEED RECORDED IN BOOK 398, PAGE 518, RECORDED CASS COUNTY, MISSOURI AND EXCEPT EASEMENTS OF RECORD, ALL IN TOWNSHIP 45, RANGE 32 ALL IN CASS COUNTY, MISSOURI.

North Peculiar Property

PART OF A TRACT OF LAND DESCRIBED IN BOOK 689, PAGE 71 IN THE OFFICE OF THE RECORDER OF DEEDS IN CASS COUNTY, MISSOURI, BEING PART OF THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 45, RANGE 32, CASS COUNTY, MISSOURI, DESCRIBED AS BEGINNING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SECTION 5, AFORESAID, RUN THENCE SOUTH 89°35'49" EAST ALONG THE NORTH LINE THEREOF, 400.00 FEET; THENCE SOUTH 17°21'24" EAST, 1189.30 FEET; THENCE NORTH 89°43'10" EAST, 570.00 FEET; THENCE SOUTH 0°14'25" EAST, PARALLEL WITH THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 5, 1320.00 FEET TO A POINT IN AN EXISTING FENCE LINE AS NOW LOCATED; THENCE SOUTH 89°43'10" WEST ALONG SAID EXISTING FENCE LINE, 1320.00 FEET TO A POINT IN THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 5; THENCE NORTH 0°14'25" WEST ALONG SAID WEST LINE, 2461.64 FEET TO THE POINT OF BEGINNING. CONTAINS 55.03 ACRES, MORE OR LESS, SUBJECT TO THE RIGHT OF WAY OF EAST 203RD STREET AND SOUTH KNIGHT ROAD, AND SUBJECT TO ANY EXISTING EASEMENTS.

In addition to the real estate described under the "South Harper Road" and "North Peculiar Property" headings above, the Project Site consists of all buildings, structures, fixtures, and improvements located on (or attached to) the aforementioned real estate.

EXHIBIT D

FORM OF REPRESENTATION LETTER

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

Commerce Bank, N.A.
922 Walnut, 6th Floor
Kansas City, Missouri 64106
ATTN: Corporate Trust Department

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

Ladies and Gentlemen:

In connection with the purchase of the above-referenced Bonds (the "Bonds"), the undersigned purchaser of the Bonds hereby represents, warrants and agrees as follows:

1. The undersigned purchaser fully understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of December 30, 2004 (the "Indenture," and terms capitalized but not otherwise defined herein have the meanings ascribed thereto in the Indenture), between City of Peculiar, Missouri (the "City") and Commerce Bank, N.A., as trustee (the "Trustee"), and (b) the Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Project to Aquila, Inc. (the "Company"), under a Lease Agreement dated as of December 30, 2004 (the "Lease"), between the City and the Company, with certain of such rents, revenues and receipts being pledged and assigned by the City to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds.
2. The undersigned purchaser understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds is not made with a view toward their distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.
3. The undersigned purchaser agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture and upon receipt of any required opinion of counsel acceptable to the City, the Company and the purchaser that all registration and disclosure requirements of the Securities and Exchange Commission and all other appropriate federal and Missouri securities laws and the securities law of any other applicable state are complied with.
4. The Company has (a) furnished to the undersigned purchaser such information about itself as the undersigned deems necessary in order for it to make an informed investment decision with

respect to the purchase of the Bonds, (b) made available to the undersigned, during the course of this transaction, ample opportunity to ask questions of, and to receive answers from, appropriate officers of the City and the terms and conditions of the offering of the Bonds, and (c) provided to the undersigned all additional information which it has requested.

5. The undersigned purchaser is now, and was when it agreed to purchase the Bonds, familiar with the operations of the Company and fully aware of terms and risks of the Bond. The undersigned believes that the Bonds which it is acquiring is a security of the kind that it wishes to purchase and hold for investment and that the nature and amount thereof are consistent with its investment program.

6. The undersigned is fully aware of and satisfied with (i) the current status of the title to the Project and any issues related thereto and (ii) the terms, amounts and providers of the insurance maintained pursuant to **Article VII** of the Lease, and the undersigned is purchasing the Bonds with full knowledge of such matters.

7. The undersigned understands and agrees that the interest on the Bonds is subject to federal and state income taxation.

Dated: _____

[PURCHASER OF BONDS]

By: _____

Name: _____

Title: _____