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CASS COUNTY, MISSOURI

FILE COPY

39.00

# MEMORANDUM OF LEASE AGREEMENT

BETWEEN

CITY OF PECULIAR, MISSOURI,  
As Lessor/Grantor

AND

AQUILA, INC.,  
As Lessee/Grantee

DATED AS OF DECEMBER 30, 2004

Grantor Address: 600 Schug Avenue, Peculiar, MO 64078  
Grantee Address: 20 West Ninth Street, Kansas City, MO 64105  
Legal Description on Page A-1.

Attachment B

SEP 22 2005

## MEMORANDUM OF LEASE AGREEMENT

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

### WITNESSETH:

**WHEREAS**, the City is authorized under Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended and Article VI Section 27(b) of the Missouri Constitution (the "Act"), to issue revenue bonds to provide funds for the carrying out of a project under the Act and to sell, lease or mortgage to private persons, partnerships or corporations the facilities purchased, constructed or extended by the City for manufacturing, commercial, warehousing and industrial development purposes pursuant to the Act; and

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

**WHEREAS**, pursuant to the Act, the governing body of the City has heretofore passed an Ordinance (the "Ordinance") on December 28, 2004, authorizing the City to issue its Taxable Industrial Revenue Bonds (Aquila Project) Series 2004 (the "Bonds"), for the purpose of purchasing, constructing and equipping the Project, as more fully described herein, and authorizing the City to lease the Project to the Company;

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

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

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

1. **Granting of Leasehold Estate.** The City rents, leases and lets the Project to the Company, and the Company rents, leases and hires the Project from the City, subject to Permitted Encumbrances, for the rentals and upon and subject to the terms and conditions contained in the Lease.

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

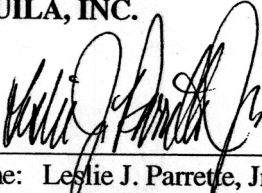
3. **Basic Rent.** The Company covenants and agrees to pay to the Trustee in same day funds for the account of City during the Lease Term, for deposit in the Bond Fund on or before 11:00 a.m., Trustee's local time, on the appropriate dates and in the appropriate amounts, the principal of and the interest on the Bonds in accordance with the provisions of the Indenture and the Bonds, as Basic Rent for the Project, in an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal on the Bonds and the interest thereon on such payment date, shall be equal to the amount payable on such payment date as principal of the Bonds and the interest thereon as provided in the Indenture.

4. **Definition of Terms.** Capitalized terms not defined herein shall have the meanings ascribed thereto in the Indenture and the Lease.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

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

AQUILA, INC.

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

ATTEST:



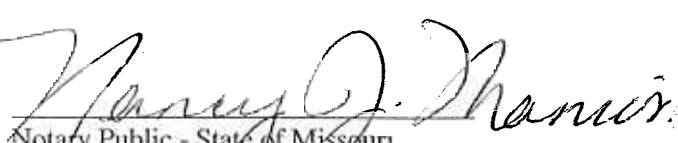
Name: Randal P. Miller  
Title: Vice President, Finance and Treasurer

#### ACKNOWLEDGMENT

STATE OF MISSOURI       )  
                                      ) SS.  
COUNTY OF JACKSON     )

On this 31st day of December, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Leslie J. Parrette, Jr. and Randal P. Miller, who acknowledged themselves to be the Senior Vice President, General Counsel and Secretary and Vice President, Finance and Treasurer, respectively, of AQUILA, INC., and that as such officers being authorized so to do executed the foregoing instrument for the purposes therein contained by signing the name of the company as such officers.

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

  
Notary Public - State of Missouri  
Commissioned in Jackson County

My Commission Expires: 10/02/05

Memorandum of Lease

NANCY A MANION  
NOTARY PUBLIC STATE OF MISSOURI  
JACKSON COUNTY  
MY COMMISSION EXPIRES 10/02/05

CITY OF PECULIAR, MISSOURI

By: George G. Lewis  
Title: Mayor

(SEAL)

ATTEST:

Nora L. Dodge  
City Clerk

ACKNOWLEDGMENT

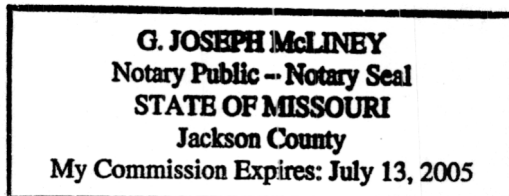
STATE OF MISSOURI       )  
                                      ) SS.  
COUNTY OF Cass       )

On this 28<sup>th</sup> day of December, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared **GEORGE LEWIS** and **NORA DODGE**, who acknowledged themselves to be the Mayor and City Clerk, respectively, of the **CITY OF PECULIAR, MISSOURI**, and that as such officers being authorized so to do executed the foregoing instrument for the purposes therein contained by signing their names as such officers.

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

G. Joseph McLiney  
Notary Public - State of Missouri  
Commissioned in Jackson County

My Commission Expires: 7-13-05



Memorandum of Lease

**EXHIBIT A  
TO THE MEMORANDUM OF LEASE AGREEMENT**

**PROJECT SITE**

All of the following described real estate situated in the County of Cass, State of Missouri

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 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.