

Exhibit No.

Issue:

Financing &
Affiliate

Transaction

Witness:

Dennis R. Williams

Sponsoring Party:

Aquila, Inc.

Type of Exhibit:

Direct Testimony

Case No.:

EO-2005-0156

Date Testimony Prepared:

January 13, 2005

MISSOURI PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY

OF

DENNIS R. WILLIAMS

ON BEHALF OF

AQUILA, INC.

January 13, 2005

Exhibit No. 1
Case No(s) EO-2005-0156
Date 9-21-05 Rptr FF

AFFIDAVIT

Dennis R. Williams, being first duly sworn, deposes and says that he is the witness who sponsors the accompanying testimony entitled "Direct Testimony of Dennis R. Williams;" that said testimony and schedules attached hereto were prepared by him and/or under his direction and supervision; that if inquiries were made as to the facts in said testimony and schedules, he would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of his knowledge, information and belief.

Dennis R. Williams
Dennis R. Williams

State of Missouri
County of Jackson

SUBSCRIBED and sworn to before me this 3rd day of January 2005.

Terry D. Lutes
Notary Public
Terry D. Lutes

My Commission Expires: 8-20-2008



TERRY D. LUTES
Jackson County
My Commission Expires
August 20, 2008

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Dennis R. Williams
Aquila, Inc.
Direct Testimony
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MISSOURI PUBLIC SERVICE COMMISSION

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ON BEHALF OF

AQUILA, INC.

January 13, 2005

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF DENNIS WILLIAMS
ON BEHALF OF AQUILA, INC.**

1 Q. Please state your name and business address.

2 A. My name is Dennis R. Williams. My business address is 10700 E. 350 Hwy.,
3 Kansas City, Missouri 64138.

4 Q. By whom are you employed and in what capacity?

5 A. I am employed by Aquila, Inc. ("Aquila" or "Company") as Vice President –
6 Electric Regulatory Services for our electric network operations.

7 Q. Briefly describe your education and work experience.

8 A. I graduated in 1974 from Central Missouri State University, receiving a Bachelor
9 of Science in Business Administration degree – Summa Cum Laude with majors
10 in Accounting and Finance. After graduation I was licensed in Missouri as a
11 Certified Public Accountant and employed as an auditor in the regulated
12 industries division of Arthur Anderson & Company. After leaving Arthur
13 Anderson, I was employed for five years with the regulatory consulting firm of
14 Lubow, McKay, Stevens and Lewis. Since 1986 I have been employed by Aquila
15 in various capacities.

16 Q. What is the nature of the Company's operations in the State of Missouri?

17 A. Aquila is a Delaware corporation having its principal office and place of business
18 at 20 W. 9th St., Kansas City, Missouri. It is authorized to conduct its business in
19 Missouri through its Aquila Networks-MPS and Aquila Networks-L&P operating
20 divisions and is engaged in providing regulated electrical, natural gas and
21 industrial steam service in those areas of the state certificated to it by the

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF STEVE YATES
ON BEHALF OF AQUILA, INC.**

1 Missouri Public Service Commission ("Commission"). It is authorized to do
2 business in the State of Missouri as a foreign corporation as evidenced by
3 documentation on file with the Secretary of State of the State of Missouri.

4 Q. What is the nature of your responsibilities as Vice President – Electric Regulatory
5 Services?

6 A. I have overall responsibility for matters involving electric operations before state
7 regulatory commissions in Missouri, Kansas and Colorado.

8 Q. Where does Aquila Networks-MPS have its operations?

9 A. Aquila Networks-MPS is one of two public utility operating divisions of Aquila
10 doing business in the State of Missouri. It provides regulated electric and natural
11 gas utility services to residential, commercial and industrial customers in the
12 State of Missouri, primarily in the central West region of the state in those areas
13 certificated to it by the Commission. It does so pursuant to rate schedules and
14 tariff sheets on file with and approved by the Commission.

15 Q. What is the purpose of your testimony in this case?

16 A. I will describe the nature of the transactions that are the subject of the Application
17 in this case and provide the reasons why the Commission should grant the relief
18 requested by the Company.

19 Q. Are you familiar with the subject matter of this case?

20 A. Yes I am. This case involves an Application by Aquila for various determinations
21 by and approvals from the Commission related to the construction of an electric
22 power generation station under construction in an area near the City of Peculiar

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF STEVE YATES
ON BEHALF OF AQUILA, INC.**

1 in Cass County, Missouri. In this regard, the Company, through its Aquila
2 Networks-MPS operating division in Missouri, will acquire from an affiliated entity
3 three (3) 105 megawatt ("MW") natural gas-fired combustion turbines to provide
4 electric power for its customers. In conjunction with the construction of the new
5 electric power station, Aquila will enter into a series of agreements with the City
6 of Peculiar, Missouri, the purpose of which is to finance the construction costs
7 with tax-advantaged Chapter 100 revenue bonds.

8 Q. What has caused Aquila to commence with the construction of a new power
9 generation station in its Aquila Networks-MPS service area?

10 A. It is anticipated that the output from the new power station will replace a
11 purchase power contract that expires in June of 2005. The current contract is for
12 500 MW of capacity during the summer months and 200 MW in the winter. With
13 the increase of demand in the Aquila Networks-MPS service area, including
14 portions of Cass County, and the need for year-round peaking capability, the
15 three (3) combustion turbines will provide better flexibility to meet the needs of
16 Aquila's customers. The additional capacity need of approximately 200 – 250
17 MW are planned to be met with purchased power contracts that resemble more
18 of a base and intermediate load type units.

19 Q. How did Aquila go about making a determination about its resource needs?

20 A. Aquila, on behalf of its Aquila Networks operating divisions in Missouri issued
21 several requests for proposals and conducted multiple independent solicitations
22 seeking in excess of 500 MW of power supply beginning in 2005; 500 MW

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF STEVE YATES
ON BEHALF OF AQUILA, INC.**

1 replacing an existing purchase power agreement from a combined cycle facility
2 interconnected with the Aquila Networks-MPS transmission system and
3 approximately 25 MW – 100 MW necessitated by system load growth. Aquila
4 Networks' evaluation of the comprehensive list of responses/solicitations
5 determined that a portfolio of alternatives rather than one single response
6 provided the least cost supply plan. Specifically, Aquila Networks determined the
7 least cost supply plan to be comprised of three (3) combustion turbine generators
8 with a combined nominal rating of 300 MW and power supply arrangements of
9 approximately 225 MW. A memorandum of understanding was entered into for
10 75 MW (8 year duration) and 150 MW (5 year duration), respectively. On
11 December 30, 2004 the 75 MW power supply agreement was consummated.

12 Q. Please provide some background on the combustion turbines that are being
13 installed by Aquila.

14 A. MEP Investments, LLC ("MEP") is a wholly-owned subsidiary of Aquila. MEP in
15 September of 2001 acquired from Siemens Westinghouse Power Corporation
16 ("SWPC") three (3) 105 MW natural gas-fired combustion turbines and
17 associated transformers and breakers (hereinafter, collectively, the "CTs") at a
18 cost of \$78,716,233. In September of 2002, the CTs were transferred from MEP
19 to another wholly-owned subsidiary of Aquila, Aquila Equipment LLC ("AE") at
20 book cost. These CTs are owned by AE and comprise the only material assets
21 owned by that company. There is approximately an additional \$3 million in
22 preliminary survey charges associated with the CTs but it is currently being

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF STEVE YATES
ON BEHALF OF AQUILA, INC.**

1 evaluated as to what portion, if any, would be transferred to Aquila Networks-
2 MPS. The total value of the CTs including preliminary survey charges is \$81.7
3 million.

4 Q. Are the CTs currently in use?

5 A. The CTs are not currently in use and presently are stored at two locations; the
6 Ralph Green plant site in Pleasant Hill, Missouri and Richards Gebaur Airforce
7 Base. AE is not engaged in any ongoing line of business.

8 Q. Has Aquila made any determination as to the current fair market value of the
9 CTs?

10 A. Yes. Aquila retained the services of an independent engineering consulting firm
11 of R.W. Beck ("Beck") to perform an appraisal to determine the fair market value
12 of the CTs. Beck produced a report entitled "Limited Appraisal of the Three
13 SWPC 501 D5A Combustion Turbines and Auxiliaries" dated as of November 22,
14 2004. Beck concluded that the fair market value of the CTs is \$70, 796,850 as of
15 November 2004, a figure that does not include the preliminary survey charges of
16 \$3 million that I described above. A copy of the Beck appraisal report is attached
17 to my testimony as Schedule DRW-1 (HC).

18 Q. Please describe for the Commission the location of the power station where the
19 CTs will be installed.

20 A. The CTs will be installed in an unincorporated area in Cass County at the
21 location near the city limits of the City of Peculiar (hereinafter, "Peculiar").
22 Peculiar is a city of the fourth class located in Cass County, Missouri. Aquila

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF STEVE YATES
ON BEHALF OF AQUILA, INC.**

1 holds a certificate of convenience and necessity ("Certificate") to provide electric
2 service throughout portions of Cass County, Missouri, including Peculiar,
3 pursuant to the Commission's prior decisions and orders, including in Case Nos.
4 9,470, 11,892, EM-87-26 and EM-2002-297.

5 Q. What is involved in the construction of the power station?

6 A. The new power station involves the construction and development of a new
7 generation facility consisting of the CTs together with any and all real estate,
8 improvements, facilities, equipment and installations related thereto (hereinafter,
9 the "Project"). The exact location of the Project is near the city limits of Peculiar
10 at East 241 Street and South Harper Road. A copy of a map showing the
11 location of the Project is attached to my testimony as Schedule DRW-2.

12 Q. Is the Project within the area of the Company's Certificate?

13 A. Yes. The Project is being constructed at a location that is within the area of Cass
14 County certificated to the Company's predecessor in interest, Missouri Public
15 Service Corporation, in Commission Case No. 9470.

16 Q. What is the involvement of Peculiar in the Project you have described?

17 A. Peculiar is a political subdivision having the authority under Article VI, Section 27
18 (b) of the Constitution of the State of Missouri and Sections 100.010 – 100.200 of
19 the Revised Statutes of Missouri, as amended, (hereinafter, the "Act") to issue
20 and sell revenue bonds for the purpose of paying all or part of the cost of
21 purchasing, constructing or improving any project to be leased to a private
22 person or corporation for industrial development purposes.

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF STEVE YATES
ON BEHALF OF AQUILA, INC.**

1 Q. Will that authority under the Act come into play in the financing of the
2 construction of the Project?

3 A. Yes. Aquila has entered into an Economic Development Agreement with
4 Peculiar (the "Agreement"). A copy of the Agreement is attached to my testimony
5 as Schedule DRW-3. In connection therewith, Peculiar has agreed, upon the
6 request of Aquila, to issue up to and including \$140 million of revenue bonds (the
7 "Bonds") in furtherance of the construction of the Project, the maximum term of
8 which shall not exceed thirty (30) years after the commencement of commercial
9 operations of the Project. Under the terms of the Agreement, Aquila has agreed
10 to make, or cause to be made, to Peculiar, certain annual grants and payment in
11 lieu of tax ("PILOT") payments. In addition, Aquila will incur approximately \$1
12 million of up-front bond issuance fees and legal costs necessary to implement
13 the financing structure. The PILOT payments and up-front fees will, however,
14 facilitate significant property tax abatement such that Aquila expects to generate
15 a net savings over the expected thirty (30) year life of the Project of between \$14
16 – \$17 million. These savings will contribute to the provision of reliable and
17 affordable power to the customer of Aquila Networks-MPS.

18 Q. How, generally, will the Project transaction be structured?

19 A. In the event the Bonds are issued, it is expected that the Project will be conveyed
20 to and owned by Peculiar and leased back to Aquila, an arrangement that will
21 exempt the Project from property taxes levied by any applicable taxing authority
22 for as long as Peculiar owns the Project. The Lease payments made by Aquila

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF STEVE YATES
ON BEHALF OF AQUILA, INC.**

1 to Peculiar shall be equal to and timed to coincide with the due date, and pledged
2 to pay, all applicable principal and interest as it shall become due and payable
3 with respect to the Bonds. A copy of the summary term sheet is attached to my
4 testimony as Schedule DRW-4.

5 Q. How will this structure come about?

6 A. Aquila first will cause AE to transfer the CTs to Aquila Networks-MPS. At the
7 conclusion of construction of the new power station, the Project will be
8 transferred to Peculiar. Concurrently with the issuance of the Bonds, Peculiar
9 will lease the Project back to the Company pursuant to a lease agreement
10 between Peculiar and Aquila (the "Lease"). The term of the Lease will be the
11 same as the final maturity of the Bonds and will be a net lease with the applicant
12 being responsible for rental payments in an amount sufficient to pay the debt
13 service on the Bonds. Aquila will be responsible to maintain, ensure and pay any
14 taxes related to the Project. During the term of the Lease, Aquila will be
15 responsible to operate and control the Project and have the right, at its own
16 expense, to make certain additions, modifications or improvements thereto. A
17 copy of the Lease is attached to my testimony as Schedule DRW-5.

18 Q. Will the Project assets be pledged or encumbered in connection with the
19 financing structure you have described?

20 A. Yes. The Lease also provides that the Project will be pledged to a trustee (the
21 "Trustee") under the terms of an Indenture of Trust (the "Indenture") and a Deed
22 of Trust and Security Agreement ("Security Agreement") as security for the

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF STEVE YATES
ON BEHALF OF AQUILA, INC.**

1 benefit of the holders of the Bonds. Copies of the Indenture and Security
2 Agreement are attached to my testimony, respectively, as Schedule DRW-6 and
3 Schedule DRW-7.

4 Q. What occurs at the conclusion of the term of the Lease?

5 A. When the Lease expires, or otherwise terminates, the Agreement provides that
6 Aquila will purchase the Project from Peculiar at a price of \$1000.

7 Q. How will the Lease be handled for accounting purposes?

8 A. Aquila will treat the Lease as a capital lease. The resulting accounting treatment
9 will be the same as if the Project were an electric power plant owned outright by
10 Aquila Networks-MPS.

11 Q. Will the Project be treated as a rate base addition to the Company's regulated
12 electric plant?

13 A. Aquila anticipates that the new Project, once operational, will be rate based for
14 purposes of determining cost of service for Aquila Networks-MPS electric
15 operations.

16 Q. Has the Board of Directors of Aquila authorized the transactions you have
17 described?

18 A. Yes. Attached to my testimony as Schedule DRW-8 is a certified copy of the
19 Resolutions of the Board of Directors of Aquila authorizing and approving the
20 transactions I have described including the terms of the Agreement and Lease.

21 Q. Will any aspect of the transaction that you have described be detrimental to the
22 public interest?

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF STEVE YATES
ON BEHALF OF AQUILA, INC.**

1 A. No. There will be no adverse impact on the tax revenues on the various
2 jurisdictions where the Project will be located because the Project has not yet
3 been constructed and no tax revenues with respect thereto are being paid to any
4 political subdivision or *quasi*-governmental entity. Also, because grant payments
5 are being allocated to various political subdivisions by Peculiar after construction
6 of the Project, the future impact on other taxing jurisdictions is not known by
7 Aquila. Finally, the proposed transactions will not be detrimental to the public
8 interest but, rather, advantageous to the interest of the Company and its
9 customers because of the substantial cost savings that will be realized through
10 the tax-advantaged financing structure I have described above.

11 Q. What is the basis for Aquila's need for Commission approval in this case?

12 A. Generally, Aquila is requesting three things. First, the Commission has
13 requested to make a determination that the acquisition of the CTs from AE by its
14 regulated Aquila Networks-MPS division at a fair market transfer value of
15 \$70,796,850 does not provide a financial advantage to AE. Second, Aquila
16 requests permission to enter into a sale and lease back arrangement whereby
17 legal title to the Project, including the CTs, will be conveyed to Peculiar to pay for
18 the installation and construction of the Project through the issuance by Peculiar
19 of tax-advantaged Bonds under the Act. Finally, Aquila is requesting
20 authorization to cause the Project assets to be pledged and conveyed to the
21 Trustee under the Indenture as security for the benefit of the holders of the

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
DIRECT TESTIMONY OF STEVE YATES
ON BEHALF OF AQUILA, INC.**

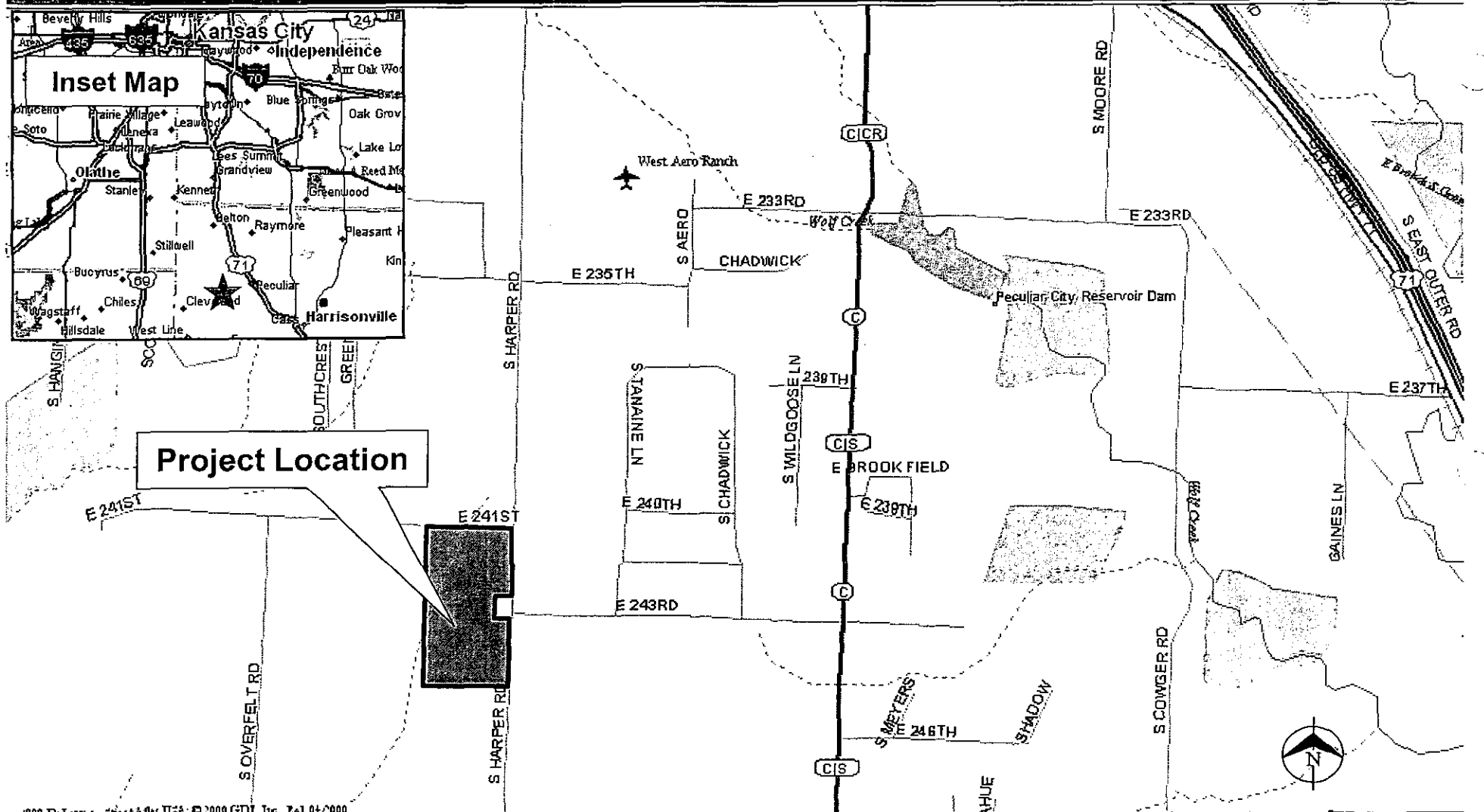
- 1 Bonds. The specific and additional related elements of relief being requested by
2 Aquila are set forth in the prayer of the Application.
- 3 Q. Does this complete your direct testimony?
- 4 A. Yes it does.

HIGHLY
CONFIDENTIAL
SCHEDULE



Aquila

Project Location



ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made as of this 30th day of December, 2004 (the "Effective Date") by and between the CITY OF PECULIAR, MISSOURI, a city of the fourth class and political subdivision of the State of Missouri for governmental, political and public purposes located in Cass County, Missouri (the "City"), and Aquila, Inc., a Delaware corporation having a principal office in Kansas City, Missouri ("Aquila").

WHEREAS, the City is a political subdivision organized and existing under the Constitution and laws of the State of Missouri; and

WHEREAS, the City is authorized under Article VI, Section 27(b) of the Constitution of the State and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (the "Acts") to issue and sell revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing or improving any project to be leased to a private person or corporation for commercial and industrial development purposes; and

WHEREAS, Aquila is currently investigating the viability of and intends to build or cause to be built, in one or more phases, additional electric power generating and transmission facilities on certain real property located in Cass County, Missouri; and

WHEREAS, Aquila desires that the City issue revenue bonds to finance the Project (as defined below) and, while such bonds are outstanding, to have legal title to the Project and lease the Project to Aquila or an Affiliate, or another permitted entity which would in turn lease the Project to Aquila; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals and elsewhere in this Agreement, the following terms shall have the meanings set forth below:

"Acts" means collectively Article VI, section 27(b) of the Missouri constitution and sections 100.010 through 100.200 of the Revised Statutes of Missouri, as from time to time amended.

"Affiliate" means any person or entity directly or indirectly controlling, controlled by or under common control with Aquila.

"Approved Purchaser" means Aquila, an Affiliate or any other purchaser or purchasers acceptable to Aquila and the City that acquires the Bonds and provides Lender Financing.

"Aquila Approvals" has the meaning set forth in Section 4.01 of this Agreement.

"Bonds" means any revenue bonds or other obligations issued by or on behalf of the City financing the Project in accordance with this Agreement and the Acts.

"Bond Documents" means the form of the Bonds, the indenture of trust, the Lease and other transactional documents allowing the City to issue and secure the Bonds.

"City Administrator" means the duly appointed City Administrator of the City of Peculiar, Missouri, or his/her designee.

"Financing Document" means any loan agreement, credit agreement, security agreement, mortgage, participation agreement, lease agreement, sublease, hedging agreement or other document executed by or on behalf of a Financing Party for the Project.

"Financing Party" means any person or entity providing debt, lease or equity financing (including equity contributions or commitments) or hedging arrangements, or any renewal, extension or refinancing of any financing or hedging arrangements, or any guarantee, insurance, letters of credit or credit support for any financing or hedging arrangements, financing the development, construction, ownership, lease, operation or maintenance of the Project or interests or rights in the Lease, or any part thereof, including any trustee or agent acting on any such person's behalf.

"Grant" or **"Grants"** means payments in lieu of taxes made by Aquila to the City pursuant to Sections 4.03(b) and 4.03(c) of this Agreement.

"Lease" means the lease purchase agreement between the City and Aquila leasing the Project to Aquila under the provisions of the Acts and this Agreement.

"Leasehold Mortgage" means any leasehold mortgage, leasehold deed of trust, assignment of rents and leases, security agreement or other agreement relating to the Project permitted pursuant to the provisions of Section 5.02 hereof.

"Lender Financing" means the proceeds or the funds from the issuance of the Bonds to the Approved Purchaser of the Bonds used to pay for costs of the Project or from any Financing Document with a Financing Party.

"Litigation" means litigation arising in respect of the Project or the transactions contemplated by this Agreement, the Bond Documents or the Lease, including without limitation (a) the Petition for Declaratory Judgment and Injunction filed against the City in Case Number CV104-1355 CC on November 8, 2004 in the Circuit Court of Cass County, Missouri, (b) the Application for Temporary Restraining Order and for Preliminary Injunction filed against Aquila in Case Number CV104-1443 CC on December 1, 2004 in the Circuit Court of Cass County, Missouri, and (c) the Application for Preliminary Injunction to Stop Building of Power Plant filed against Aquila in Case Number CV104-1380 CC on November 15, 2004 in the Circuit Court of Cass County, Missouri.

"Mayor" means the duly elected and serving Mayor of the City.

"North Property" means certain real property situated in Cass County, Missouri, as described under the heading "North Property" on Exhibit A to this Agreement.

"Peculiar 345 kv Substation" means the electric transmission substation constructed and installed on the North Property pursuant to this Agreement, including the fixtures and appurtenances attached thereto, but excluding rights of way, materials, supplies, and other personal property located thereon, and as more generally described under the heading "Peculiar 345 kv Substation" on Exhibit B to this Agreement.

"Preliminary Funds" means the sum of Fifteen Thousand Dollars (\$15,000.00) provided by Aquila to the City as set forth in **Article II** of this Agreement.

"Project" means, collectively, the South Harper Peaking Facility and the Peculiar 345 kv Substation.

"Property" means, collectively, the North Property and the South Harper Property.

"South Harper Peaking Facility" means the electric generating and transmission facilities constructed and installed on the South Harper Property pursuant to this Agreement, including the fixtures and appurtenances attached thereto, but excluding rights of way, materials, supplies, fuel, inventory, vehicles and other personal property located thereon, and as more generally described under the heading "South Harper Peaking Facility" on Exhibit B to this Agreement.

"South Harper Property" means certain real property situated in Cass County, Missouri, as described under the heading "South Harper Property" on **Exhibit A** to this Agreement.

"Turbines" means three Siemens Westinghouse 105 MW natural gas-fired combustion turbine units owned by Aquila that have been designated by Aquila for the generation of electricity at the South Harper Peaking Facility and transferred to the City pursuant to the Bond Documents.

ARTICLE II

PRELIMINARY FUNDING

Section 2.01. Advance Funds. City hereby acknowledges receipt of the Preliminary Funds to be used by the City to pay costs incurred by the City in connection with the preparation and review of this Agreement as described in **Section 4.01** hereof, and the financing and development of the Project, but not including costs of issuance of the Bonds which shall be paid by Aquila from Bond proceeds. The City shall deposit the Preliminary Funds in an interest bearing account and shall allocate and use the Preliminary Funds as a source of payment of actual costs incurred by the City for all legal, consulting, and administrative costs of the City incurred pursuant to this **Article II**.

Section 2.02. Disbursements. The City shall disburse the Preliminary Funds to pay costs for the work set forth in **Section 2.01** of this Agreement on a monthly basis for any month in which such costs are actually incurred by the City. Disbursements shall be made only upon receipt of: (a) invoices for work reasonably and actually performed by attorneys and consultants selected by the City in the City's sole discretion; (b) receipts for any and all necessary direct out of pocket expenditures incurred by the attorneys and consultants in connection with such work; and (c) such other supporting documentation as may be requested by the City (collectively, a "Disbursement Request"); *provided that* any invoice or portion thereof or supporting documentation of the selected attorneys as part of a Disbursement Request shall at all times be and remain subject to attorney-client and attorney work product privilege and nothing in this Agreement shall be construed to be a waiver of attorney-client and attorney work product privilege by the City. The City Administrator shall examine each Disbursement Request and all disbursements made by the City shall be approved in writing by the Mayor. The City shall use reasonable care in ascertaining that all amounts charged to the City pursuant to each Disbursement Request are fair and reasonable amounts for the work represented on each Disbursement Request. Within ten (10) days after the City receives a Disbursement Request, the City shall forward a summary of such Disbursement Request to Aquila. If Aquila has questions regarding any Disbursement Request, Aquila shall direct such questions to the City Administrator; *provided, however,* that the City shall not be required to obtain Aquila's approval for payment of any Disbursement Request.

Section 2.03. Remaining Balances. In the event Aquila elects not to proceed with the Project pursuant to this Agreement, Aquila shall provide notice of such election to the City and the City shall pay Aquila within forty-five (45) days of the receipt of such notice the then-existing balance of the Preliminary Funds remaining after the City's payment of any invoices for work performed by any attorney or consultant through the date of receipt of such notice. Any Preliminary Fund balances remaining after all payments by the City for all work specified in **Section 2.01** of this Agreement shall be promptly returned to Aquila.

ARTICLE III

THE PROJECT

Section 3.01. Initiation of the Project. Prior to issuance of Bonds, Aquila will develop certain plans and specifications for constructing the Project. The Project plans and specifications shall be prepared by a professional engineer or architect licensed to practice in the State of Missouri and shall be in conformity with all applicable federal, state and local laws, ordinances, and regulations. Aquila agrees to provide to the City copies of the plans and specifications upon the City's reasonable request. The parties hereto acknowledge and agree that prior to the issuance of any Bonds by the City, Aquila may notify the City in writing of its election not to finance the Project with the proceeds of the Bonds pursuant to the Acts, and this Agreement shall terminate, subject to Section 2.03 and the provisions of this Agreement that expressly survive the termination hereof. Aquila shall construct or cause to be constructed the Project in accordance with the plans and specifications prepared pursuant to this **Section 3.01**. In constructing or causing the construction of the Project Aquila may enter into one or more construction contracts; *provided that* prior to the issuance of any Bonds Aquila shall obtain or shall ensure that any such contractor obtains workers' compensation, comprehensive public liability and builder's risk insurance coverage in amounts customary in the industry for similar type projects and shall ensure that the insurance required is maintained by any such contractor for the duration of the construction of the Project and the City shall be named as an additional insured. To the extent that competitive bidding and award requirements and prevailing wage or other wage and hour statutes or requirements apply to the Project or any portion thereof, Aquila covenants and agrees to take all such actions as are necessary to comply with such laws, regulations or requirements. Upon issuance of the Bonds, Aquila shall convey unencumbered fee simple title to the Project and the Property to the City and the City shall lease the Project and the Property to Aquila for a term coterminous with the term of the Bonds, all in accordance with terms and conditions set forth in the Bond Documents.

Section 3.02. Project Budget. Aquila estimates that the Project will cost approximately \$133,000,000. The costs of the Project shall be funded from any combination of equity or Lender Financing determined in the sole and absolute discretion of Aquila.

Section 3.03. City Approvals.

(a) Prior to the issuance of the Bonds, Aquila shall prepare, and the City agrees to consider, a plan for the Project meeting the requirements of Section 100.050, RSMo, as amended (the "Plan"). Approval of the Plan by a majority vote of the governing body of the City shall be a precondition to the issuance of the Bonds by the City for the Project. This Agreement may be incorporated into the Plan approved by the City.

(b) Aquila agrees that, so long as the City has legal title to the Project, the City must approve any use or additional development of the Property other than for the Project.

(c) The approval of this Agreement shall not affect or constitute any approval required by any City department or pursuant to any City ordinance, code, regulation or any other governmental approval required by law, nor does any approval by the City pursuant to this Agreement constitute approval of the quality, structural soundness or safety of any portion of the Project. The City will not unreasonably withhold any consent or approval required by any City ordinance, code, regulation or any other governmental approval required by law related to the Project; *provided that* nothing herein shall be construed to obligate the City to grant municipal permits or other approvals the City would not be obligated to grant, acting as a political subdivision, absent this Agreement. The City agrees that the City will not adopt or approve any ordinance, code, or regulation not in force and effect on the Effective Date which would materially adversely affect the Project and which would exclude or exempt other similarly situated properties or facilities within the City.

Section 3.04. Permit Fees. In connection with the Project, Aquila shall be obligated to pay only those permit, engineering, tap on, inspection and similar fees that are assessed on a uniform basis by the City and are of general applicability to other property or facilities within the territorial jurisdiction of the City.

Section 3.05. Economic Development Tariff. To the extent required by applicable law or regulation, Aquila agrees to grant discounted electric rates to any electric customer locating in the City qualifying for economic development tariffs.

ARTICLE IV

ISSUANCE OF BONDS, GRANTS AND OTHER OBLIGATIONS

Section 4.01. Issuance of Bonds. The City intends to issue, upon the written request of Aquila, an aggregate principal amount not to exceed \$140,000,000 of Bonds pursuant to the Acts to finance the costs of the Project, with the actual amount of such Bonds, and the number and series of such Bonds, to be specified in writing by Aquila. The maximum term of the Bonds issued pursuant to this section shall be for thirty (30) years after the date on which the Project becomes operational. The Bonds issued by the City may be redeemed by Aquila (acting in its sole discretion) if Aquila does not receive any approval (the "Aquila Approvals") required to (a) consummate the Project, (b) perform its obligations under this Agreement, the Lease or the Bond Documents, or (c) recover through electric rates, in the applicable service territory in the State of Missouri, the Project costs. The City shall cooperate with and provide reasonable assistance to Aquila in obtaining any required regulatory approvals. The City and Aquila shall mutually select the trustee and, if desirable, the designated underwriter (and such financial advisors and consultants as the underwriter, with the approval of the City and Aquila, deems necessary for the issuance of the Bonds). The parties agree that Gilmore & Bell, P.C., Kansas City, Missouri, shall be bond counsel for the transaction ("Bond Counsel"). The fees of Bond Counsel and McLiney and Company, financial advisor to the City, shall be paid by Aquila concurrently with the issuance of the Bonds. The fee payable to McLiney and Company upon the first issuance of the Bonds will be \$130,000, and no other fees will be payable to McLiney and Company in connection with the Bonds. The City shall be paid by Aquila an issuance fee of \$700,000 for the Bonds when Bonds are first issued by the City; provided, that (x) the City agrees to return \$630,000 of the issuance fee to Aquila within 30 days after January 1, 2006, if Aquila has redeemed the Bonds on or before December 31, 2005, due to a failure to obtain (or obtain on terms acceptable to Aquila, acting in its sole discretion) one or more Aquila Approvals or the issuance of an adverse ruling, decision or court order with respect to Litigation, and (y) until the earlier of (i) the date on which the City returns funds to Aquila pursuant to clause (x) above and (ii) January 1, 2006, if Aquila has not redeemed the Bonds on before December 31, 2005, the City will keep at least \$630,000 of the issuance fee in a restricted account that shall not be commingled with any other funds. The

Bonds shall bear interest at such rates, shall be subject to redemption and shall have such terms as the City and Aquila shall mutually determine.

Section 4.02. Financing.

(a) The parties hereto acknowledge that concurrent with or subsequent to the issuance of the Bonds as set forth in **Section 5.01**, Lender Financing may be desired, upon such terms as Aquila determines in its sole and absolute discretion. The City shall cooperate and provide reasonable assistance in connection with the marketing of any Bonds to the Approved Purchaser of the Bonds and obtaining any Lender Financing, including but not limited to making representations and warranties and providing information and assisting Aquila in preparing an official statement to sell the Bonds. The City acknowledges and agrees that Aquila may finance and refinance its rights and interests in the Project, the Lease and the leasehold estate created thereby and that Aquila may execute Financing Documents or a Leasehold Mortgage with one or more Financing Parties, or may sublease or assign the Lease, the leasehold estate or any sublease, and/or grant liens or security interests in the Project, to any Financing Party (or to the designee, nominee, assignee or transferee of such Financing Party).

(b) The City intends to lease the Project to Aquila or other permitted entity pursuant to the Lease, and the payments made under the Lease shall be equal to and timed to coincide with the due dates of, and pledged to pay, the principal of and interest on the Bonds.

(c) The Bond Documents shall contain such terms and conditions as are acceptable to Aquila and the City. The Bonds shall be secured solely by the Project and the Lease, and the City shall have no liability to make payments with respect to the Bonds except from payments made under the Lease and other Bond documents and related transaction documents (other than the Grants described herein). Other than the security interest in the Project and the Property granted pursuant to the Bond Documents, the City may not encumber, pledge or grant any lien or security interest in the Project or the Property.

Section 4.03. Grants and Other Payments.

(a) If the Bonds are issued, Aquila and the City expect that the Project, the Property, and the Turbines will be conveyed to and legal title held by the City (and Aquila hereby agrees to timely take such actions and execute such documents as may be required to convey title to the Project and the Property to the City consistent with this Section) and leased to Aquila and, accordingly, will be exempt from property taxes (whether real, personal or otherwise) levied by any applicable taxing authority, including, without limitation, the City, Cass County, Missouri, West Peculiar Fire Protection District, Cass County Library District and the Raymore Peculiar R-II School District, for as long as the City holds legal title to the Project and the Property. Aquila hereby agrees to make, or cause to be made, the Grants described in Section 4.03(b) below through the end of any year in which the City holds legal title to the Project and the Property. Within 30 days of the date of receipt of each Grant payment, the City shall divide each Grant payment among the taxing jurisdictions identified above in proportion to the amount of the then current *ad valorem* tax levy of each taxing jurisdiction as provided in the Acts. Failure to make a scheduled Grant payment shall be an event of default under the Lease described herein.

(b) Aquila shall pay, or cause to be paid, to the City a Grant for the Project in the amounts, and on the dates set forth, on Exhibit C hereto.

(c) If one or more additional Project phases are pursued to be conveyed to the City and financed with additional bonds issued pursuant to the Acts, Aquila agrees to pay, or cause to be paid, annual Grants in addition to that required to be paid pursuant to subsection (b) above equal to \$2,210 per

\$1 million of Bonds issued to finance the additional Project phases, and an issuance fee to the City in an amount equal to .5% of the maximum principal amount of the additional bonds to be issued for the addition Project phases. The City acknowledges that Aquila is not obligated to finance part or all of the costs of any additional Project phases with additional bonds issued pursuant to the Acts.

(d) Notwithstanding the foregoing, at any time that property taxes or any alternative taxes meant to replace or supplement property taxes are imposed on or with respect to the Project (or any component thereof) while the City holds legal title to the Project, Aquila may reduce, or cause to be reduced, the amount of any annual Grant payments pursuant to subsections (b) and (c) above by the amount of annual property or alternative taxes imposed on or with respect to the Project (or any component thereof) and payable to the City or any other political subdivision; *provided that* no such reductions shall be made or effective during the pendency of any actions taken by the City in cooperation with Aquila pursuant to **Section 4.05** of this Agreement.

(e) Prior to the issuance of the Bonds, the City shall use the City's best efforts to obtain the cooperation and acceptance of the property tax exemptions contemplated in this Agreement of all affected taxing jurisdictions. The City and Aquila hereby agree that the property tax exemptions described in this Agreement shall not apply to special assessments and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project. Aquila hereby agrees to make payments with respect to all special assessment, licenses and fees that would otherwise be due with respect to the Project if such Project was not exempt from taxation.

(f) Any amounts due hereunder which are not paid when due shall bear interest at the interest rate of 10% per annum from the date such payment was first due.

Section 4.04. Option To Purchase the Project and the Property. Unless otherwise specified in writing by Aquila at the time the Bonds are issued, when all principal and interest due on the Bonds shall have been paid in full, Aquila or its permitted successors and assigns shall purchase the Project and the Property for \$1,000. In addition, if the terms of the Bonds permit the Bonds to be assumed by Aquila or its permitted successors and assigns, Aquila and its permitted successors and assigns shall also have the option to purchase the Project and the Property for \$1,000 upon such an assumption of the Bonds.

Section 4.05. Obligation of City with Respect to Tax Forbearance. The City agrees to take all actions within the City's control to obtain and/or maintain in effect the exemption from property taxes related to the Project and the Property referred to in this **Article IV**, including any filings required with any governmental authorities; provided, however, the City shall not be liable for any failure of the State of Missouri, any agency thereof or any other governmental taxing authority to recognize the exemption contemplated herein. The City covenants that the City will not voluntarily take any action that may cause or induce the levy or assessment of property taxes on the Project or the Property conveyed to the City pursuant to this Agreement or the Bond Documents. In the event such a levy or assessment should occur, the City shall, at Aquila's request and expense, fully cooperate with Aquila in all reasonable ways to prevent and/or remove any such levy or assessment. The City and Aquila covenant and agree that the property tax exemption contemplated in this Agreement and the issuance of the Bonds shall only apply to the City's fee title interest in the Project and the Property. Any property taxes levied against the interest of Aquila in the Project or the Property by any taxing authority shall be and remain solely the responsibility of the Aquila. In the event such a levy or assessment should occur, the City shall, at the request and expense of Aquila, fully cooperate with Aquila in all reasonable ways to prevent and/or challenge such levy or assessment.

ARTICLE V

COVENANTS, REPRESENTATIONS AND WARRANTIES OF AQUILA

Section 5.01. General. Aquila represents, warrants and covenants that as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:

(a) Aquila is a Delaware corporation duly organized, validly existing and qualified to do business in Missouri;

(b) Aquila has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(c) the execution, delivery and performance by Aquila of this Agreement has been duly authorized by all necessary corporate action, and does not violate the articles of incorporation or bylaws of Aquila, as the same may be amended and supplemented, or any applicable provision of law, nor does it constitute a breach of or default under or require any consent under any agreement, instrument or document to which Aquila is now a party or by which Aquila is now or may become bound;

(d) except for those Aquila Approvals which must be obtained for the Project and the Bonds referred to in **Section 4.01** herein and the Litigation, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting Aquila which would impair its ability to perform under this Agreement; and

(e) except for approvals, permits, certificates or consents being contested in the Litigation, Aquila has obtained (or will, prior to the commencement of construction obtain) and shall maintain all other government approvals, permits, certificates and consents (including without limitation appropriate environmental approvals) necessary to conduct its business and to construct, complete and operate the Project.

Section 5.02. Compliance with Laws. To the best of Aquila's knowledge, the Property and the Project are and shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project and the Property, including environmental laws. Aquila agrees that the City and its duly authorized agents shall have the right at reasonable times during business hours, subject to at least 48 hours advance notice and to Aquila's usual business proprietary, safety and security requirements, to enter upon the Project and the Property to examine and inspect the Project and the records of Aquila which demonstrate compliance with this Agreement.

Section 5.03. Survival of Covenants. All warranties, representations, covenants and agreements of Aquila contained in this **Article VI** (including, without limitation, Aquila's covenant to indemnify and hold harmless the City set forth in **Section 5.04** hereof) and elsewhere in this Agreement shall survive termination of this Agreement for any reason.

Section 5.04. Indemnification of City. Aquila shall indemnify, defend and save the City harmless from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees and expenses, by or on behalf of any person, firm or corporation arising from the condition, conduct or management of, or from any work or thing done in, on or about, the Project or the Property during the term of the Lease and the Bonds, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees and expenses, arising during the term of the Lease from (a) any

condition of the Project or the Property, (b) any breach or default on the part of Aquila in the performance of any of its obligations under this Agreement or the Lease, (c) any action requested of the City by Aquila pursuant to the Lease or this Agreement, (d) any contract entered into in connection with the purchase, construction, extension or improvement of the Project, (e) any act of negligence of Aquila or of any of its agents, contractors, servants, employees or licensees, (f) any act of negligence of any assignee or sublessee of Aquila, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of Aquila.

Section 5.05. Sales Tax Exemption. The City will cooperate with Aquila and will execute such documentation as may be required in obtaining any applicable sales tax exemption for materials, goods and other personal property that may become part of the Project; provided, however, that the City makes no representation or warranty to Aquila as to the availability of any such exemption.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF CITY

Section 6.01. General. The City represents:

(a) the City has the authority as a unit of government to execute and deliver this Agreement and to perform the City's obligations hereunder;

(b) the City has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(c) the execution, delivery and performance by the City of this Agreement has been (or will be) duly authorized by all necessary action, and does not violate any applicable provision of law, nor does it constitute a breach of or default under or require any consent under any agreement, instrument or document to which the City is now a party or by which the City is now or may become bound;

(d) there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or to the City's actual knowledge affecting the City which would impair the City's ability to perform under this Agreement, other than the Litigation.

Section 6.02. Survival of Covenants. All warranties, representations and covenants of the City contained in this Article VI or elsewhere in this Agreement shall be true, accurate and complete at the time of the City's execution, of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.01. Events of Default. If any one or more of the following events occurs and is continuing, it is hereby defined as and declared to be and to constitute an Event of Default hereunder:

(a) Aquila fails to materially perform any of its obligations hereunder for (i) a period of 30 days (or such longer period as the City and Aquila may agree in writing) following written notice to Aquila from the City of such failure, or (ii) if such failure is not subject to cure within

such 30 days, Aquila has failed to initiate action to cure such default and shall pursue such action diligently;

(b) Aquila breaches any material covenant contained herein and continues such breach for a period of 30 days (or such longer period as the City and Aquila may agree in writing) after the City gives written notice thereof to Aquila, specifying such breach and requiring it to be remedied; provided, that if such breach cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied, such breach shall not constitute an event of default if Aquila promptly upon receipt of such notice commences the curing of such breach and thereafter prosecutes and completes the same with due diligence and dispatch; or

(c) any representation of Aquila contained herein proves to be materially false or erroneous and is not corrected or brought into compliance within 30 days (or such longer period as the City and Aquila may agree in writing) after there has been given to Aquila by the City a written notice specifying such false or erroneous representation and requiring it to be remedied; provided, that if such default cannot be fully remedied within such 30-day period, but can reasonably be expected to be fully remedied, such default shall not constitute an event of default if Aquila shall promptly upon receipt of such notice commence the curing of such default and shall thereafter prosecute and complete the same with due diligence and dispatch.

Section 7.02. Remedies on Default. If any Event of Default referred to in **Section 7.01** hereof has occurred and is continuing, then the City may, then or at any time thereafter (subject to any restrictions under the Lease), and while such default is continuing, provide notice to appropriate parties under the Lease that it has elected to (a) cause all amounts payable with respect to the Bonds for the remainder of the Lease Term to become due and payable, as provided in the Indenture and (b) terminate the Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Owners of the Bonds shall tender or be deemed to have tendered the outstanding principal amount of Bonds to the Trustee for cancellation with instructions that such tender is in lieu of payment in accordance with the Lease, the Lease shall thereupon be terminated, and the City will convey the Project in accordance with the Lease. In addition, the City may pursue any other applicable legal remedy.

Section 7.03 Enforcement. The obligation to make the Grant payments provided in this Agreement may be enforced by the City or any taxing jurisdictions that would benefit from the payments. In the event of litigation pertaining to the enforcement of this Agreement, the losing party shall pay all costs of litigation, including reasonable attorneys' fees and expenses.

ARTICLE VIII

NOTICES

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) telecopy or facsimile; (c) overnight courier; or (d) registered or certified mail, return receipt requested.

If to the City: City of Peculiar, Missouri
 600 Schug Ave.
 Peculiar, Missouri 64078
 Attn: City Administrator

With a copy to: E. Sid Douglas III, Esq.
Gilmore & Bell, P.C.
2405 Grand, Suite 1100
Kansas City, Missouri 63102

If to Aquila: Aquila, Inc.
10700 E. 350 Highway
Raytown, Missouri 64138
Attn: Beth Armstrong

With a copy to: Aquila, Inc.
20 West Ninth Street
Kansas City, Missouri 64105
Attn: General Counsel

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Mutual Assistance. The City and Aquila agree to take such actions as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent. In addition, if legislation is proposed by or in any governmental body having jurisdiction over the Project with the effect of limiting the ability of the City to issue the Bonds to finance the Project, the City agrees to use its best efforts to issue the Bonds prior to the effective date of any such legislation. Each party shall give assurances, provide information, take actions and execute and deliver documents and instruments as, in each case, are reasonably requested by the other party and are within its power to give, provide and take to give full force and effect to the agreements and other provisions contained in this Agreement.

Section 9.02. Amendment. This Agreement may not be amended without the prior written consent of the parties hereto.

Section 9.03. Entire Agreement. This Agreement (including the Exhibits attached hereto, which are hereby incorporated herein by reference) constitutes the entire Agreement between the parties hereto and supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

Section 9.04. Limitation of Liability. No member, official or employee of the City shall be personally liable to Aquila, any Affiliates, any Financing Party or any Lender or any successor in interest to such parties in the event of any default or breach by the City or for any amount which may become due to Aquila from the City or any successor in interest or on any obligation under the terms of this Agreement.

Section 9.05. Waiver. Waiver by the City or Aquila with respect to any breach or default under this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other breach or default or with respect to any particular breach or default, except to the extent specifically waived by the City or Aquila in writing.

Section 9.06. Remedies Cumulative. The remedies of a party hereunder are cumulative, and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

Section 9.07. Opportunity to Cure Preserved. In the event of any default in or breach of any term or conditions of this Agreement by either party, or any successor, the aggrieved party, prior to instituting any action at law or in equity, shall give written notice to the breaching or defaulting party (or successor) specifying, in the opinion of the aggrieved party the nature of the breach, and the defaulting or breaching party (or successor) shall, upon receipt of such written notice from the other party, proceed immediately to cure or remedy such default or breach, and, shall, in any event, within thirty (30) days after receipt of notice, commence to cure or remedy such default. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may then institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching party.

Section 9.08. Disclaimer. Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

Section 9.09. Headings. The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

Section 9.10. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

Section 9.11. Severability. If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application thereof, in any circumstance, is held invalid by a court of competent jurisdiction, this Agreement shall be construed as if such invalid part were never included herein and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

Section 9.12. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Missouri, without regard to its conflicts of law principles.

Section 9.13. Assignment. Except in connection with the transfer of this Agreement to an Affiliate, a Financing Party or a Lender, which is expressly authorized by the City, Aquila may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City, which consent shall not be unreasonably withheld. Any successor in interest to Aquila under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement (and the representations, warranties and covenants related thereto) through the term of this Agreement, or such other period as may be expressly provided for herein. Upon such successor's certification, Aquila shall be released from the performance of such executory terms (and the representations, warranties and covenants related thereto other than the City's right to indemnification under Section 6.04, hereof).

Section 9.14. Binding Effect. This Agreement shall be binding upon Aquila, the City and their respective permitted successors and permitted assigns (as provided herein).

Section 9.15. Force Majeure. Neither the City nor Aquila nor any permitted successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. Any delay described under this section shall result in a day-for-day extension of any obligations, deadlines or dates set forth in this Agreement that are directly affected by such delay. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement.

Section 9.16. Approval. Wherever this Agreement provides for the approval or consent of the City, or any matter is to be to the City's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City in writing and in the reasonable discretion thereof. The City Administrator or other persons designated by the City shall act for the City in making all administrative or ministerial decision related to this Agreement for the City.

Section 9.17. Term of Agreement. This Agreement shall continue in force for so long as (a) any Bonds shall remain outstanding; or (b) any phase of the Project is titled in the name of the City. This Agreement shall terminate on the earlier of (x) retirement of all Bonds issued with respect to all phases of the Project; or (y) three years from the Effective Date, provided that no Bonds have been issued; or (z) the date of termination by Aquila pursuant to **Section 3.01**.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on or as of the day and year first above written.

AQUILA, INC.

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

CITY OF PECULIAR, MISSOURI

By: _____
Name: George Lewis
Title: Mayor

STATE OF MISSOURI)
)
COUNTY OF JACKSON) ss.

I, the undersigned, a notary public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that Leslie J. Parrette, Jr., personally known to me to be the Senior Vice President, General Counsel and Secretary of **AQUILA, INC.** ("Aquila"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument, pursuant to the authority given to him by Aquila, as his free and voluntary act and as the free and voluntary act of Aquila, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 30th day of December, 2004.

Notary Public

[SEAL]

My Commission Expires: _____

STATE OF MISSOURI)
)
COUNTY OF CASS) ss.

I, the undersigned, a notary public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that George Lewis, personally known to me to be the Mayor of the **CITY OF PECULIAR, MISSOURI** and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument, pursuant to the authority given to him by the Board of Aldermen of the City of Peculiar, Missouri as his free and voluntary act and as the free and voluntary act of the City of Peculiar, Missouri, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 30th day of December, 2004.

Notary Public

[SEAL]

My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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.

EXHIBIT B

PROJECT DESCRIPTION

South Harper Peaking Facility

The South Harper Peaking Facility will comprise the Turbines with 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 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.

Peculiar 345 kV Substation

The Peculiar 345/161 kV 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.

EXHIBIT C
GRANT SCHEDULE

| Payment Date | Grant |
|---------------------|--------------|
| May 1, 2005 | \$ 214,455* |
| September 1, 2005 | \$ 241,832 |
| December 31, 2006 | \$ 241,832 |
| December 31, 2007 | \$ 241,832 |
| December 31, 2008 | \$ 241,832 |
| December 31, 2009 | \$ 241,832 |
| December 31, 2010 | \$ 241,832 |
| December 31, 2011 | \$ 241,832 |
| December 31, 2012 | \$ 241,832 |
| December 31, 2013 | \$ 241,832 |
| December 31, 2014 | \$ 241,832 |
| December 31, 2015 | \$ 241,832 |
| December 31, 2016 | \$ 241,832 |
| December 31, 2017 | \$ 241,832 |
| December 31, 2018 | \$ 241,832 |
| December 31, 2019 | \$ 241,832 |
| December 31, 2020 | \$ 241,832 |
| December 31, 2021 | \$ 241,832 |
| December 31, 2022 | \$ 241,832 |
| December 31, 2023 | \$ 241,832 |
| December 31, 2024 | \$ 241,832 |
| December 31, 2025 | \$ 241,832 |
| December 31, 2026 | \$ 241,832 |
| December 31, 2027 | \$ 241,832 |
| December 31, 2028 | \$ 241,832 |
| December 31, 2029 | \$ 241,832 |
| December 31, 2030 | \$ 241,832 |
| December 31, 2031 | \$ 241,832 |
| December 31, 2032 | \$ 228,143 |
| December 31, 2033 | \$ 182,515 |
| December 31, 2034 | \$ 91,257 |
| June 1, 2035 | \$ 54,166 |

* This Grant will be payable only if the City has been conveyed the Project on or before January 1, 2005.

Grants will be reduced on a "rolling," dollar-for-dollar basis by amounts paid by Aquila to the City (or its designees) concerning litigation to which the City is party and which relates to the Bonds or any other aspect of the Chapter 100 financing contemplated by the Agreement. For purposes of illustration only, if (a) the City has been conveyed the Project on or before January 1, 2005 and (b) on March 31, 2005, Aquila reimburses the City for \$300,000 of legal fees incurred in connection with litigation over the City's right to issue Bonds without a vote of its residents, then Aquila would be credited for having paid

to the City (x) \$214,455 on May 1, 2005 and (y) \$85,545 ($\$300,000 - \$214,455 = \$85,545$) on September 1, 2005, which would result in Aquila owing only \$156,285 to the City on September 1, 2005. This process will continue until all applicable Aquila credits have been used up or, if sooner, the date on which the Bonds are redeemed by Aquila.

Summary of the Economic Development Agreement Between Aquila and the City of Peculiar, Missouri

Aquila and the City are negotiating an Economic Development Agreement (the "Agreement") for a sale-leaseback financing that is expected to close by December 31, 2004. The Agreement contemplates: (a) Aquila selling to the City the land and equipment then owned by Aquila in connection with a 315 MW generating facility and related transmission facilities (the "Project") being constructed by Aquila just south of the City; (b) the City leasing the Project back to Aquila for a period not to exceed 30 years from the Project's commercial operation date; and (c) the issuance of revenue bonds by the City to finance the acquisition, construction and development costs of the Project. The Project will provide electric power to Aquila's Missouri Public Service and St. Joseph Light & Power customers. The lease payments will be structured to facilitate payment on the bonds outstanding, noting that the lease payments and the bond payments are equal in amount. Aquila will be the initial purchaser of the bonds, and Aquila may relinquish bonds in lieu of cash for lease payments.

This tax-abated financing will be effected through (a) a trust indenture, pursuant to which the City will issue the Chapter 100 revenue bonds; (b) a lease agreement, pursuant to which the City will lease the Project to Aquila; (c) the Agreement, pursuant to which Aquila will make payment-in-lieu-of-taxes (or, PILOT) payments to the City while it owns the Project, and (d) a deed of trust, pursuant to which the City will encumber the project as security for the Chapter 100 revenue bonds and the PILOT payments to the City. Aquila intends to enter into all agreements contemporaneously after the City approves the Agreement and the Chapter 100 financing in general. The City and a trustee will be parties to the trust indenture and the City will grant the deed of trust to secure the payments under the trust indenture and the Agreement.

Other key terms of the Agreement include:

- Project Unwinding: Aquila may redeem the revenue bonds (and, therefore, "unwind" the sale-leaseback financing) if the Commission does not approve the Project;
- Issuance Costs: Aquila will pay the fees, costs and expenses of bond counsel (\$100,000 estimate) and the City's financial advisor (\$130,000) when the bonds are issued. Aquila will also pay the City an issuance fee of \$700,000 when the bonds are issued, provided the City will return \$630,000 to Aquila if the City doesn't own the Project on December 31, 2005;
- Tax Exemption: so long as the City owns the Project, it will be exempt from property taxes levied by taxing authorities, including the City, Cass County, West Peculiar Fire Protection District, Cass County Library District, and the Raymore Peculiar R-II School District. The City will also cooperate with Aquila to obtain sales tax exemption for materials, goods and other personal property to be used for the Project;
- PILOT Payments: in lieu of the foregone property taxes relating to the Project, Aquila will make PILOT payments (as described on Schedule "A" hereto) to the City, which the City will divide among the applicable taxing jurisdictions in proportion to the amount of the then current *ad valorem* tax levy of each taxing jurisdiction;

Key terms -continued:

- Project Expansion (Additional Revenue Bonds): if the Project is expanded and financed with additional revenue bonds, Aquila will make additional PILOT payments equal to \$2,210 per \$1 million of the additional revenue bonds issued by the City to finance the Project expansion; and
- Purchase Price: when the lease expires or otherwise terminates, Aquila will purchase the Project for \$1,000.

Schedule "A"

| Payment Date | Grant |
|-------------------|-------------|
| May 1, 2005 | \$ 214,455* |
| September 1, 2005 | \$ 241,832 |
| December 31, 2006 | \$ 241,832 |
| December 31, 2007 | \$ 241,832 |
| December 31, 2008 | \$ 241,832 |
| December 31, 2009 | \$ 241,832 |
| December 31, 2010 | \$ 241,832 |
| December 31, 2011 | \$ 241,832 |
| December 31, 2012 | \$ 241,832 |
| December 31, 2013 | \$ 241,832 |
| December 31, 2014 | \$ 241,832 |
| December 31, 2015 | \$ 241,832 |
| December 31, 2016 | \$ 241,832 |
| December 31, 2017 | \$ 241,832 |
| December 31, 2018 | \$ 241,832 |
| December 31, 2019 | \$ 241,832 |
| December 31, 2020 | \$ 241,832 |
| December 31, 2021 | \$ 241,832 |
| December 31, 2022 | \$ 241,832 |
| December 31, 2023 | \$ 241,832 |
| December 31, 2024 | \$ 241,832 |
| December 31, 2025 | \$ 241,832 |
| December 31, 2026 | \$ 241,832 |
| December 31, 2027 | \$ 241,832 |
| December 31, 2028 | \$ 241,832 |
| December 31, 2029 | \$ 241,832 |
| December 31, 2030 | \$ 241,832 |
| December 31, 2031 | \$ 241,832 |
| December 31, 2032 | \$ 228,143 |
| December 31, 2033 | \$ 182,515 |
| December 31, 2034 | \$ 91,257 |
| December 31, 2035 | \$ 54,166 |

* This Grant will be payable only if the City owns the Project on January 1, 2005.

Grants will be reduced on a "rolling," dollar-for-dollar basis by amounts paid by Aquila to the City regarding litigation to which the City is party and which relates to the Chapter 100 financing contemplated by the Agreement. For example, if (a) the City owns the Project on January 1, 2005 and (b) on March 31, 2005, Aquila reimburses the City for \$300,000 of legal fees incurred in connection with litigation over the City's right to issue Bonds without a vote of its residents, then Aquila would be credited for having paid to the City (x) \$214,455 on May 1, 2005 and (y) \$85,545 ($\$300,000 - \$214,455 = \$85,545$) on September 1, 2005, which would result in Aquila owing only \$156,285 to the City on September 1, 2005. This process will continue until all applicable Aquila credits have been used up or, if sooner, the date on which the Bonds are redeemed by Aquila.

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

AND

**AQUILA, INC.,
As Lessee**

LEASE AGREEMENT

Dated as of December 30, 2004

Relating to:

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

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

LEASE AGREEMENT

TABLE OF CONTENTS

| | <u>Page</u> |
|----------------|-------------|
| Parties | 1 |
| Recitals | 1 |

ARTICLE I

DEFINITIONS

| | | |
|--------------|--------------------------------------|---|
| Section 1.1. | Definitions of Words and Terms | 2 |
| Section 1.2. | Rules of Interpretation | 3 |

ARTICLE II

REPRESENTATIONS

| | | |
|--------------|--------------------------------------|---|
| Section 2.1. | Representations by the City | 4 |
| Section 2.2. | Representations by the Company | 5 |

ARTICLE III

GRANTING PROVISIONS

| | | |
|--------------|---|---|
| Section 3.1. | Granting of Leasehold Estate | 6 |
| Section 3.2. | Lease Term | 6 |
| Section 3.3. | Possession and Use of the Project | 6 |

ARTICLE IV

PURCHASE, CONSTRUCTION, INSTALLATION AND EQUIPPING OF THE PROJECT

| | | |
|--------------|---|----|
| Section 4.1. | Issuance of the Bonds | 7 |
| Section 4.2. | Purchase, Construction, Installation and Equipping of the Project | 7 |
| Section 4.3. | Project Costs | 8 |
| Section 4.4. | Payment for Project Costs | 8 |
| Section 4.5. | Establishment of Completion Date | 9 |
| Section 4.6. | Surplus or Deficiency in Construction Fund | 9 |
| Section 4.7. | Project Property of City | 9 |
| Section 4.8. | Non-Project Improvements, Machinery and Equipment Property of the Company | 10 |

ARTICLE V

RENT PROVISIONS

| | | |
|--------------|---|----|
| Section 5.1. | Basic Rent | 10 |
| Section 5.2. | Additional Rent | 10 |
| Section 5.3. | Obligations of Company Absolute and Unconditional | 11 |
| Section 5.4. | Prepayment of Basic Rent | 11 |
| Section 5.5. | Redemption of Bonds | 12 |

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

| | | |
|--------------|---|----|
| Section 6.1. | Maintenance and Repairs | 12 |
| Section 6.2. | Taxes, Assessments and Other Governmental Charges | 12 |
| Section 6.3. | Utilities | 13 |
| Section 6.4. | Property Tax Exemption | 13 |

ARTICLE VII

INSURANCE

| | | |
|--------------|----------------------------------|----|
| Section 7.1. | Title Insurance | 13 |
| Section 7.2. | Casualty Insurance | 13 |
| Section 7.3. | Public Liability Insurance | 14 |
| Section 7.4. | Blanket Insurance Policies | 14 |
| Section 7.5. | Worker's Compensation..... | 14 |

ARTICLE VIII

ALTERATION OF THE PROJECT

| | | |
|--------------|--|----|
| Section 8.1. | Additions, Modifications and Improvements of the Project | 14 |
| Section 8.2. | Removal of Project Equipment | 15 |
| Section 8.3. | Additional Improvements on the Project Site | 15 |
| Section 8.4. | Permits and Authorizations | 15 |
| Section 8.5. | Mechanics' Liens | 16 |
| Section 8.6. | Option to Purchase Unimproved Portions of the Project Site | 16 |

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

| | | |
|--------------|-----------------------------|----|
| Section 9.1. | Damage or Destruction | 17 |
| Section 9.2. | Condemnation | 19 |
| Section 9.3. | Bondowner Approval | 20 |

ARTICLE X

SPECIAL COVENANTS

| | | |
|---------------|--|----|
| Section 10.1. | No Warranty of Condition or Suitability by the City; Exculpation and Indemnification | 20 |
| Section 10.2. | Surrender of Possession | 21 |
| Section 10.3. | City's Right of Access to the Project | 21 |
| Section 10.4. | Granting of Easements; Leasehold Mortgages | 21 |
| Section 10.5. | Indemnification of City and Trustee | 23 |
| Section 10.6. | Depreciation, Investment Tax Credit and Other Tax benefits..... | 24 |
| Section 10.7. | Company to Maintain its Existence | 24 |
| Section 10.8. | Security Interests | 24 |
| Section 10.9. | Environmental Matters, Warranties, Covenants and Indemnities Regarding Environmental Matters | 25 |

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

| | | |
|---------------|---|----|
| Section 11.1. | Option to Purchase the Project | 26 |
| Section 11.2. | Conveyance of the Project | 27 |
| Section 11.3. | Relative Position of Option and Indenture | 27 |
| Section 11.4. | Obligation to Purchase the Project | 27 |

ARTICLE XII

DEFAULTS AND REMEDIES

| | | |
|---------------|--|----|
| Section 12.1. | Events of Default | 28 |
| Section 12.2. | Remedies on Default | 29 |
| Section 12.3. | Survival of Obligations | 30 |
| Section 12.4. | Performance of the Company's Obligations by the City | 30 |
| Section 12.5. | Rights and Remedies Cumulative | 30 |
| Section 12.6. | Waiver of Breach | 30 |
| Section 12.7. | Opportunity of Company to Cure Defaults | 31 |
| Section 12.8. | Trustee's Exercise of the City's Remedies | 31 |

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

| | | |
|---------------|--|----|
| Section 13.1. | Assignment; Sublease | 31 |
| Section 13.2. | Assignment of Revenues by City | 32 |
| Section 13.3. | Prohibition Against Fee Mortgage of Project | 32 |
| Section 13.4. | Restrictions on Sale or Encumbrance of Project by City | 32 |

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

| | | |
|---------------|---|----|
| Section 14.1. | Amendments, Changes and Modifications | 32 |
|---------------|---|----|

ARTICLE XV

MISCELLANEOUS PROVISIONS

| | | |
|---------------|---|----|
| Section 15.1. | Notices | 32 |
| Section 15.2. | City Shall Not Unreasonably Withhold Consents and Approvals | 33 |
| Section 15.3. | Net Lease | 33 |
| Section 15.4. | No Pecuniary Liability | 34 |
| Section 15.5. | Governing Law | 34 |
| Section 15.6. | Binding Effect | 34 |
| Section 15.7. | Severability | 34 |
| Section 15.8. | Execution in Counterparts | 34 |

| | |
|----------------------------|-----|
| Signatures and Seals | S-1 |
| Acknowledgments | S-2 |

| | |
|-----------|-----------------------------------|
| Exhibit A | - Project |
| Exhibit B | - Form of Requisition Certificate |

LEASE AGREEMENT

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

WITNESSETH:

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

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

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

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1.2. Rules of Interpretation.

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

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

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

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

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

ARTICLE II

REPRESENTATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

GRANTING PROVISIONS

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

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

Section 3.3. Possession and Use of the Project.

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

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

ARTICLE IV

PURCHASE, CONSTRUCTION, INSTALLATION AND EQUIPPING OF THE PROJECT

Section 4.1. Issuance of the Bonds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4.6. Surplus or Deficiency in Construction Fund.

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

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

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

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

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

ARTICLE V

RENT PROVISIONS

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

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

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

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

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

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

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

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

Section 5.3. Obligations of Company Absolute and Unconditional.

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

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

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

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

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

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

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

Section 6.2. Taxes, Assessments and Other Governmental Charges.

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

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

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

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

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

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

ARTICLE VII

INSURANCE

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

Section 7.2. Casualty Insurance.

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

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

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

Section 7.3. Public Liability Insurance.

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

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

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

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

ARTICLE VIII

ALTERATION OF THE PROJECT

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

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

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

Section 8.2. Removal and Replacement of Project Equipment.

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

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

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

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

Section 8.5. Mechanics' Liens.

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

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

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

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

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

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

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

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

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

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

(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, 10th 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 30th 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 30th 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

Amount

Payee and Address

Description

Amount

SCHEDULE 2 TO REQUISITION CERTIFICATE

ADDITIONAL PROJECT EQUIPMENT

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

**CITY OF PECULIAR, MISSOURI,
The City,**

AND

**COMMERCE BANK, N.A.
As Trustee**

TRUST INDENTURE

Dated as of December 30, 2004

Relating to:

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

TRUST INDENTURE

TABLE OF CONTENTS

| | <u>Page</u> |
|------------------------|-------------|
| Parties | 1 |
| Recitals | 1 |
| Granting Clauses | 1 |

ARTICLE I

DEFINITIONS

| | | |
|--------------|--------------------------------------|---|
| Section 101. | Definitions of Words and Terms | 3 |
| Section 102. | Rules of Interpretation | 7 |

ARTICLE II

THE BONDS

| | | |
|--------------|--|----|
| Section 201. | Title and Amount of Bonds | 8 |
| Section 202. | Nature of Obligation | 8 |
| Section 203. | Denomination, Number and Dating of Bonds | 8 |
| Section 204. | Method and Place of Payment of Bond | 8 |
| Section 205. | Execution and Authentication of Bonds | 9 |
| Section 206. | Registration, Transfer and Exchange of Bonds | 9 |
| Section 207. | Persons Deemed Owners of Bonds | 10 |
| Section 208. | Authorization of the Bonds | 10 |
| Section 209. | Authorization of Additional Bonds | 12 |
| Section 210. | Mutilated, Lost, Stolen or Destroyed Bonds | 12 |
| Section 211. | Cancellation and Destruction of Bonds Upon Payment | 13 |

ARTICLE III

REDEMPTION OF BONDS

| | | |
|--------------|-------------------------------------|----|
| Section 301. | Redemption of Bonds Generally | 13 |
| Section 302. | Redemption of Bonds | 13 |
| Section 303. | Effect of Call for Redemption | 13 |
| Section 304. | Notice of Redemption | 14 |

ARTICLE IV

FORM OF BONDS

| | | |
|--------------|---|----|
| Section 401. | Form Generally | 14 |
| Section 402. | Form of Bond | 14 |
| Section 403. | Form of Certificate of Authentication | 20 |

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

| | | |
|--------------|--|----|
| Section 501. | Creation of Construction Fund | 20 |
| Section 502. | Deposits into the Construction Fund | 20 |
| Section 503. | Disbursements from the Construction Fund | 20 |
| Section 504. | Completion of the Project | 21 |
| Section 505. | Disposition Upon Acceleration | 21 |

ARTICLE VI

REVENUES AND FUNDS

| | | |
|--------------|---|----|
| Section 601. | Creation of the Bond Fund | 21 |
| Section 602. | Deposits into the Bond Fund | 21 |
| Section 603. | Application of Moneys in the Bond Fund | 21 |
| Section 604. | Payments Due on Saturdays, Sundays and Holidays | 22 |
| Section 605. | Nonpresentment of Bonds | 22 |

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

| | | |
|--------------|---|----|
| Section 701. | Moneys to be Held in Trust | 23 |
| Section 702. | Investment of Moneys in Construction Fund and Bond Fund | 23 |
| Section 703. | Record Keeping | 23 |

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

| | | |
|--------------|--|----|
| Section 801. | Payment of Principal and Interest | 23 |
| Section 802. | Authority to Execute Indenture and Issue Bonds | 24 |
| Section 803. | Performance of Covenants | 24 |
| Section 804. | Instruments of Further Assurance | 24 |
| Section 805. | Payment of Taxes and Charges | 24 |

| | | |
|--------------|---|----|
| Section 806. | Insurance | 24 |
| Section 807. | Maintenance and Repair | 24 |
| Section 808. | Recordings and Filings | 24 |
| Section 809. | Inspection of Project Books | 25 |
| Section 810. | Enforcement of Rights Under the Lease | 25 |

ARTICLE IX

DEFAULT AND REMEDIES

| | | |
|--------------|--|----|
| Section 901. | Events of Default; Notice; Opportunity to Cure | 25 |
| Section 902. | Acceleration of Maturity in Event of Default | 25 |
| Section 903. | Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession | 26 |
| Section 904. | Appointment of Receivers in Event of Default | 26 |
| Section 905. | Exercise of Remedies by the Trustee | 26 |
| Section 906. | Limitation on Exercise of Remedies by Bondowners | 27 |
| Section 907. | Right of Bondowners to Direct Proceedings | 27 |
| Section 908. | Application of Moneys in Event of Default | 27 |
| Section 909. | Remedies Cumulative | 28 |
| Section 910. | Waivers of Events of Default | 28 |

ARTICLE X

THE TRUSTEE

| | | |
|---------------|--|----|
| Section 1001. | Acceptance of the Trusts | 29 |
| Section 1002. | Fees, Charges and Expenses of the Trustee | 31 |
| Section 1003. | Notice to Bondowners if Default Occurs | 31 |
| Section 1004. | Intervention by the Trustee | 31 |
| Section 1005. | Successor Trustee Upon Merger, Consolidation or Sale | 31 |
| Section 1006. | Resignation of Trustee | 32 |
| Section 1007. | Removal of Trustee | 32 |
| Section 1008. | Appointment of Successor Trustee | 32 |
| Section 1009. | Vesting of Trusts in Successor Trustee | 32 |
| Section 1010. | Right of Trustee to Pay Taxes and Other Charges | 32 |
| Section 1011. | Trust Estate May be Vested in Co-trustee | 33 |
| Section 1012. | Accounting | 33 |
| Section 1013. | Performance of Duties under the Lease | 33 |

ARTICLE XI

SUPPLEMENTAL INDENTURES

| | | |
|---------------|---|----|
| Section 1101. | Supplemental Indentures Not Requiring Consent of Bondowners | 34 |
| Section 1102. | Supplemental Indentures Requiring Consent of Bondowners | 34 |
| Section 1103. | Company's Consent to Supplemental Indentures | 35 |

ARTICLE XII

SUPPLEMENTAL LEASES

| | | |
|---------------|---|----|
| Section 1201. | Supplemental Leases Not Requiring Consent of Bondowners | 35 |
| Section 1202. | Supplemental Leases Requiring Consent of Bondowners | 35 |

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

| | | |
|---------------|--|----|
| Section 1301. | Satisfaction and Discharge of this Indenture | 36 |
| Section 1302. | Bonds Deemed to be Paid | 36 |

ARTICLE XIV

MISCELLANEOUS PROVISIONS

| | | |
|---------------|--|----|
| Section 1401. | Consents and Other Instruments by Bondowners | 37 |
| Section 1402. | Limitation of Rights Under this Indenture | 37 |
| Section 1403. | Notices | 37 |
| Section 1404. | Severability | 38 |
| Section 1405. | Execution in Counterparts | 38 |
| Section 1406. | Governing Law | 38 |
| | Signatures and Seals | 39 |
| | Acknowledgments | 41 |
| | Exhibit A - Project | |
| | Exhibit B - Project Equipment | |
| | Exhibit C - Project Site | |
| | Exhibit D - Form of Representation Letter | |

TRUST INDENTURE

THIS TRUST INDENTURE dated as of December 30, 2004 (this "**Indenture**"), between **CITY OF PECULIAR, MISSOURI**, a fourth class city organized and existing under the laws of the State of Missouri (the "**City**"), and **COMMERCE BANK, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, with its principal corporate trust office located in Kansas City, Missouri, as Trustee (together with any other corporation that may from time to time become Trustee pursuant to the terms of this Indenture the "**Trustee**");

WITNESSETH:

WHEREAS, the City is authorized under Sections 100.010 through 100.200 of the Revised Statutes of Missouri and Article VI Section 27(b) of the Missouri Constitution (collectively, 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 an Ordinance on December 28, 2004 (the "**Ordinance**"), authorizing the City to issue its industrial development revenue bonds in a principal amount not to exceed \$140,000,000, for the purpose of purchasing, constructing, installing and equipping the project described on **Exhibit A** hereto (the "**Project**"), and authorizing the City to lease the Project to Aquila, Inc., a Delaware corporation (the "**Company**");

WHEREAS, pursuant to the Ordinance and the Act, the City is authorized to execute and deliver this Indenture for the purpose of issuing and securing the Bonds (as hereinafter defined), and to enter into the Lease Agreement of even date herewith (the "**Lease**"), with the Company under which the City as Lessor, will purchase, construct and equip the Project and will lease the Project to the Company, as Lessee, in consideration of rentals which will be sufficient to pay the principal of and interest on the Bonds;

WHEREAS, all things necessary to make the Bonds, when authenticated by the Trustee and issued as in this Indenture provided, the valid and legally binding obligations of the City, and to constitute this Indenture a valid and legally binding pledge and assignment of the Trust Estate herein made for the security of the payment of the principal of and interest on the Bonds, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:

GRANTING CLAUSES

That the City, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the owners thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Bonds issued and outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the City of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign to

the Trustee the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to-wit:

(a) All right, title and interest in and to the Project together with the tenements, hereditaments, appurtenances, rights, privileges and immunities thereunto belonging or appertaining thereto;

(b) All right, title and interest of the City in, to and under the Lease (excluding the City's right to receive moneys for its own account and the City's rights to indemnification or to be protected from liabilities by insurance policies required by the Lease, as provided therein or herein), and all rents, revenues and receipts derived by the City from the Project, including, without limitation, all rentals and other amounts to be received by the City and paid by the Company under and pursuant to and subject to the provisions of the Lease; and

(c) All moneys and securities from time to time held by the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned or agreed or intended so to be, to the Trustee;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of the owners from time to time of the Bonds outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

PROVIDED, HOWEVER, that if the City shall well and truly pay, or cause to be paid, the principal of and interest on the Bonds, at the time and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or shall provide for the payment thereof (as provided in **Article XIII** hereof), and shall pay or cause to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights thereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the City does hereby agree and covenant with the Trustee and with the owners from time to time of the Bond, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. Words and terms defined in **Section 1.1** of the Lease are hereby incorporated by reference unless otherwise defined below, in which case the words and terms below shall have the following meanings, unless some other meaning is plainly intended:

"**Act**" means, collectively, Sections 100.010 through 100.200 of the Revised Statutes of Missouri, and Article VI Section 27(b) of the Missouri Constitution, as amended.

"**Additional Bonds**" means any Bonds issued pursuant to **Section 209** of this Indenture.

"**Authorized City Representative**" means the Mayor, City Administrator, City Clerk or any other Person at the time designated to act on behalf of the City as evidenced by written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the City by its Mayor. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of the Authorized City Representative.

"**Authorized Company Representative**" means any Person at the time designated to act on behalf of the Company as evidenced by written certificate furnished to the City and the Trustee containing the specimen signature of such person and signed on behalf of the Company by an authorized officer. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of the Authorized Company Representative.

"**Bond**" or "**Bonds**" means the Taxable Industrial Revenue Bonds (Aquila Project) Series 2004 in the maximum principal amount of \$140,000,000, issued pursuant to **Section 208** of this Indenture and any Additional Bonds issued, authenticated and delivered under and pursuant to this Indenture.

"**Bond Fund**" means the fund designated as "City of Peculiar, Missouri, Taxable Industrial Revenue Bond Fund -- Aquila Project" and created in **Section 601** of this Indenture.

"**Bondowner**" means the registered owner of any Bond outstanding.

"**Bond Purchase Agreement**" means the agreement by that name with respect to the Bonds by and between the City and the purchaser identified therein.

"**Business Day**" means any day other than a Saturday or Sunday or legal holiday or a day on which banks located in the city in which the principal corporate trust office or the principal payment office of the Trustee are required or authorized by law to remain closed.

"**City**" means the City of Peculiar, Missouri and its successors and assigns.

"**Company**" means Aquila, Inc., a Delaware corporation, and its successors or assigns.

"**Completion Date**" means the date of execution of the certificate required pursuant to **Section 504** hereof.

"**Construction Fund**" means the fund designated as "City of Peculiar, Missouri, Construction Fund -- Aquila Project" and created in **Section 501** of this Indenture.

"**Cumulative Outstanding Principal Amount**" means the aggregate principal amount of all Bonds outstanding under the provisions of this Indenture, as reflected in the records maintained by the Trustee as provided in the Bond and this Indenture.

"**Deed of Trust**" means the Deed of Trust and Security Agreement dated as of the date hereof granted by the City to secure payment of the Bond.

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

"Event of Default" means, with respect to this Indenture, any Event of Default as defined in Section 901 hereof and, with respect to the Lease, means any Event of Default as described in Section 12.1 of the Lease.

"Financing Document" means any loan agreement, credit agreement, security agreement, mortgage, participation agreement, lease agreement, sublease, hedging agreement or other document executed by or on behalf of a Financing Party for the Project.

"Financing Party" means any Person providing debt, lease or equity financing (including equity contributions or commitments) or hedging arrangements, or any renewal, extension or refinancing of any such financing or hedging arrangements, or any guarantee, insurance, letters of credit or credit support for or in connection with any financing or hedging arrangements, in connection with the development, construction, ownership, lease, operation or maintenance of the Project or interests or rights in the Lease, or any part thereof, including any trustee or agent acting on any such Person's behalf.

"Full Insurable Value" means the reasonable replacement cost of the Project, less physical depreciation, as determined in accordance with Section 7.2(a) of the Lease.

"Fund" means either the Bond Fund or the Construction Fund, as applicable.

"Government Securities" means direct obligations of, or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America.

"Grant" has the meaning set forth in Article 1 of the Economic Development Agreement.

"Indenture" means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of Article XI hereof.

"Investment Securities" means any of the following securities:

(a) any Government Securities, including obligations of any of the federal agencies set forth in clause (b) below to the extent they are unconditionally guaranteed by the United States of America;

(b) obligations of the Fannie Mae, the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;

(c) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by a nationally-recognized bond rating agency;

(d) certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee), provided that such certificates of deposit shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c), inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit and shall be deposited with the Trustee or a custodian bank, trust

company or national banking association; *provided* that the bank, trust company or national banking association holding each such certificate of deposit required to be so secured must be able to furnish to the Trustee written evidence satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount at least equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(e) shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least \$100,000,000, and which shares, at the time of purchase, are rated by Standard & Poor's and Moody's in one of the two highest rating categories (without regard to any refinements or gradation of rating category by numerical modifier or otherwise) assigned by such rating agencies for obligations of that nature; and

(f) any other investment approved in writing by the Authorized City Representative and the Company (unless the Company fails to own a majority of the Bonds Outstanding, in which case the approval of a majority of the owners of the Outstanding Bonds shall be required in lieu of the Company's approval).

"Lease" means the Lease Agreement dated as of the date of this Indenture between the City, as Lessor, and the Company, as Lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII** of this Indenture.

"Litigation" has the meaning set forth in **Article 1** of the Economic Development Agreement.

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

"Outstanding," when used with reference to Bonds, means, as of a particular date, all Bonds theretofore authenticated and delivered, except:

(a) Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of **Section 1302** hereof; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

"Paying Agent" means the Trustee or any other bank or trust company designated from time to time by this Indenture as paying agent for the Bonds at which the principal of or interest on the Bond shall be payable.

"Person" means an individual, partnership, corporation, business trust, joint stock company, limited liability company, bank, insurance company, unincorporated association, joint venture or other entity of whatever nature.

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

"Project Costs" means all costs of purchase, construction, installation and equipping of the Project, including the following:

(a) all costs and expenses necessary or incident to the acquisition of the Project Site and Project Equipment at the execution of the Lease and which the Company conveys to the City;

(b) fees and expenses of architects, appraisers, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of construction, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of architects, appraisers, surveyors and engineers in relation to the purchase, construction, installing and equipping of the Project or the issuance of the Bonds;

(c) all costs and expenses of every nature incurred in constructing the Project (including the costs of all additions, modifications, fixtures, improvements, replacements and substitutions made to the Project during the term of the Lease pursuant to the terms thereof) and otherwise improving the Project Site, and equipping and installing the Project (including the costs of all machinery, equipment and other personal property required in addition to the Project Equipment), including the actual cost of labor, materials, machinery, furnishings and equipment as payable to contractors, builders and materialmen in connection with the purchase, construction, installing and equipping of the Project;

(d) an allowance for the Company's cost of funds used during the construction period of the Project, which may include interest accruing on the Bonds during such period;

(e) the cost of title insurance policies and the cost of any insurance maintained during the construction period in accordance with **Article VII** of the Lease, respectively;

(f) reasonable expenses of administration, supervision and inspection properly chargeable to the Project, underwriting expenses, legal fees and expenses, fees and expenses of accountants and other consultants, publication and printing expenses, and initial fees and expenses of the Trustee to the extent that said fees and expenses are necessary or incident to the issuance and sale of the Bonds or the purchasing, construction, installing and equipping of the Project;

(g) all other items of expense not elsewhere specified in this definition as may be necessary or incident to the authorization, issuance and sale of the Bonds; the purchase, construction, installing and equipping of the Project; and the financing thereof; and

(h) reimbursement to the Company or those acting for it for any of the above enumerated costs and expenses incurred and paid by them before or after the execution of the Lease.

"Project Equipment" means the machinery, equipment or other personal property described on **Exhibit B** attached hereto.

"Project Site" means all of the real estate described on **Exhibit C** attached hereto.

"Series 2004 Bond" means the Taxable Industrial Revenue Bond (Aquila Project), Series 2004 to be issued pursuant to Section 208 of this Indenture in the maximum principal amount of \$140,000,000.

"Supplemental Indenture" means any indenture supplemental or amendatory to this Indenture entered into by the City and the Trustee pursuant to **Article XI** hereof.

"Supplemental Lease" means any supplement or amendment to the Lease entered into pursuant to Article XII hereof.

"Table " means the Table of Cumulative Outstanding Principal on the Bond, the form of which is set forth in Article IV hereof.

"Trust Estate" has the meaning set forth in the Granting Clauses of this Indenture.

"Trustee" means Commerce Bank, N.A., a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, and its successor or successors and any other corporation which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

Section 102. Rules of Interpretation.

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

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

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

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

ARTICLE II

THE BONDS

Section 201. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as "City of Peculiar, Missouri Taxable Industrial Revenue Bond (Aquila Project) Series 2004." The maximum total principal amount of the Series 2004 Bond that may be issued hereunder is hereby expressly limited to \$140,000,000, plus the principal amount of any Additional Bonds.

Section 202. Nature of Obligation. The Bonds and the interest thereon shall be special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease, and not from any other fund or source of the City, and are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Bondowners, as provided in this Indenture. The

Bonds and the interest thereon shall not constitute general obligations of the City or the State of Missouri, and neither the City nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 203. Denomination, Number and Dating of Bonds.

(a) The Series 2004 Bond shall be issuable in the form of one fully registered Bond without coupons in the maximum principal denomination of \$140,000,000. The Bonds shall be substantially in the form hereinafter set forth in **Article IV** of this Indenture.

(b) The Bonds shall be dated by the Trustee as of the date of initial delivery thereof as provided herein. If a Bond is at any time thereafter transferred, any Bond replacing such Bond shall be dated as of the date of authentication thereof.

Section 204. Method and Place of Payment of Bonds.

(a) The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for payment of public and private debts.

(b) Payment of the principal of the Bonds shall be made upon the presentation and surrender of such Bond at the principal payment office of any Paying Agent named in the Bond; **provided**, that so long as the Company or any entity controlled by or under common control with the Company is the sole Bondowner, the Trustee is authorized to make payments of principal on such Bond by internal bank transfer or by wire transfer to an account at a commercial bank or savings institution designated by such Bondowner and located in the continental United States; **provided, further**, that upon such payment by internal bank transfer or by wire transfer of principal on such Bond, the Trustee shall record the amount of such principal payment on the registration books for the Bonds maintained by the Trustee on behalf of the City. If any Bond is presented to the Trustee together with such payment, or for such payment, the Trustee shall enter the amount of such principal payment on the Table in the manner provided by **Section 402** hereof. Notwithstanding the foregoing, the registration books maintained by the Trustee shall be the official record of the Cumulative Outstanding Principal Amount on the Bond at any time, and the Bondowner is not required to present the Bond for action by the Trustee, as bond registrar, with each payment of principal on the Bond. Payment of the interest on the Bonds shall be made by the Trustee on each interest payment date to the person appearing on the registration books of the City hereinafter provided for as the registered owner thereof on the 15th day (whether or not a business day) of the calendar month next preceding such interest payment date by check or draft mailed to such registered owner at such owner's address as it appears on such registration books. In the event that the Company or any entity controlled by or under common control with the Company is the sole Bondowner, the Trustee is authorized to make interest payments on any Bond by internal bank transfer or by wire transfer to an account at a commercial bank or savings institution designated by such Bondowner and located in the continental United States.

Section 205. Execution and Authentication of Bonds.

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. In case any officer whose signature or facsimile thereof appears on the Bonds shall cease to be such officer before the delivery of such Bond, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such Person had remained in office until delivery. Any Bond may be signed by such Persons as at the actual time of the

execution of such Bond shall be the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Section 403** hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purposes unless and until such Certificate of Authentication shall have been duly executed by the Trustee. Such executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee.

Section 206. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and for the transfer of Bonds as provided in this Indenture.

(b) The Bond may be transferred only upon the books kept for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or such owner's attorney or legal representative in such form as shall be satisfactory to the Trustee. The Series 2004 Bond has not been registered under the Securities Act of 1933 or any state securities law, and the Series 2004 Bond may not be transferred unless the City and the Trustee are furnished a written legal opinion from counsel acceptable to the City, the Trustee and the Company, to the effect that such transfer is exempt from the registration requirements of the Securities Act of 1933 and any applicable state securities law. Notwithstanding the preceding sentence, the Series 2004 Bond may be transferred to any successor to the Company or any entity owned or under common ownership with the Company without the necessity of obtaining such an opinion. In connection with any such transfer of the Series 2004 Bond, the City and the Trustee shall receive an executed representation letter signed by the proposed assignee containing substantially the same representations contained in the representation letter delivered to the Trustee from the Owner upon the initial issuance of the Bond. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Series 2004 Bond a new fully registered Bond, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the outstanding principal amount of such Bond, of the same maturity and bearing interest at the same rate.

(c) In all cases in which Bonds shall be exchanged or transferred hereunder the provisions of any legend restrictions on the Bonds shall be complied with and the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be cancelled by the Trustee. The City or the Trustee may make a reasonable charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid by the transferee before any such new Bond shall be delivered. Neither the City nor the Trustee shall be required to make any such exchange or transfer of Bonds during the 15 days immediately preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) If any Bondowner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against the Bondowner sufficient to pay any governmental charge required to be paid as a result of such failure, which amount may be deducted by the Trustee from amounts otherwise payable to the Bondowner under its Bonds.

Section 207. Persons Deemed Owners of Bonds. As to any Bond, the person in whose name the same shall be registered as shown on the bond registration books required by **Section 206** hereof shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the Owner thereof or a legal representative thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Authorization of the Series 2004 Bond.

(a) There shall be issued and secured by this Indenture a series of Bonds in the aggregate maximum principal amount of \$140,000,000 for the purpose of providing funds for paying the costs of the Project, which Bonds shall be designated "City of Peculiar, Missouri Taxable Industrial Revenue Bond (Aquila Project) Series 2004." The Series 2004 Bond shall be dated as provided in **Section 203(b)** hereof, shall become due on June 1, 2035 (subject to prior redemption as hereinafter provided in **Article III**) and shall bear interest as specified in **Section 2.08(e)** hereof, payable on the dates specified in **Section 2.08(e)** hereof.

(b) The Trustee is hereby designated as the Paying Agent for the payment of the principal of and interest on the Series 2004 Bond.

(c) The Series 2004 Bond shall be executed without material variance from the form and in manner set forth in **Article IV** hereof and delivered to the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of the Series 2004 Bond by the Trustee, there shall be filed with the Trustee the following:

(1) An original or certified copy of the ordinance passed by the governing body authorizing the issuance of the Bonds and the execution of this Indenture and the Lease;

(2) An original executed counterpart of this Indenture, the Lease, the Deed of Trust and the Bond Purchase Agreement;

(3) A representation letter from the purchaser of the Series 2004 Bond in substantially the form as Exhibit D hereto;

(4) A request and authorization to the Trustee on behalf of the City, executed by the Authorized City Representative, to authenticate the Series 2004 Bond and deliver the same to the purchaser identified in the Bond Purchase Agreement upon payment to the Trustee, for the account of the City, of the purchase price thereof specified in the Bond Purchase Agreement. The Trustee shall be entitled to conclusively rely upon such request and authorization as to names of the purchaser and the amount of such purchase price;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the Series 2004 Bond constitutes a valid and legally binding limited and special revenue obligation of the City; and

(6) Such other certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of the Series 2004 Bond.

(d) When the documents specified in subsection (c) of this Section shall have been filed with the Trustee, and when the Series 2004 Bond shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Series 2004 Bond to or upon the order of the purchaser thereof, but only upon payment to the Trustee of the Closing Price (as defined in the Bond Purchase Agreement). The

proceeds of the sale of the Series 2004 Bond shall be immediately paid over to the Trustee, and the Trustee shall deposit and apply such proceeds as provided in **Article V** hereof.

(e) The Series 2004 Bond shall bear interest at the rate of 8% per annum on the Cumulative Outstanding Principal Amount thereof, and such interest shall be payable in arrears on each December 31 commencing on December 31, 2005, and continuing thereafter until the said Cumulative Outstanding Principal Amount is paid in full. Interest shall be calculated on the basis of a year of 360 days consisting of twelve months of 30 days each.

(f) The Trustee shall keep and maintain a record of the amounts deposited into the Construction Fund pursuant to the terms of the Indenture, or the value of property transferred to the City in exchange for the issuance of additional principal amount of the Series 2004 Bond, as "Principal Amount Issued" and shall enter the aggregate principal amount of the Series 2004 Bond then outstanding on its records as the "Cumulative Outstanding Principal Amount" on its records maintained for the Series 2004 Bond. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the registered owner hereof, pursuant to the redemption provisions of the Indenture, the Trustee shall enter on its records the principal amount paid on the Series 2004 Bond as "Principal Amount Paid Pursuant to Redemption Provisions," and shall enter the then outstanding principal amount of this Bond as "Cumulative Outstanding Principal Amount" on its records. The registered owner may from time to time enter the respective amounts deposited into the Construction Fund pursuant to the terms of the Indenture, or the value of property transferred to the City in exchange for the issuance of additional principal amount of the Series 2004 Bond, under the column headed "Principal Amount Issued" on the Table and may enter the aggregate principal amount of the Series 2004 Bond then outstanding under the column headed "Cumulative Outstanding Principal Amount" on the Table. On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the registered owner hereof pursuant to the redemption provisions of the Indenture, the registered owner may enter the principal amount paid on the Series 2004 Bond under the column headed "Principal Amount Paid Pursuant to Optional Redemption Provisions" on the Table and may enter the then outstanding principal amount of the Series 2004 Bond under the column headed "Cumulative Outstanding Principal Amount" on the Table. However, the records maintained by the Trustee as to principal amount issued or principal amounts paid on the Series 2004 Bond shall be the official records of the Cumulative Outstanding Principal Amount for all purposes.

Section 209. Authorization of Additional Bonds.

(a) If permitted by law and upon written agreement by the City and the Company as to all applicable terms (including any contribution payments and payments in lieu of taxes), Additional Bonds may be issued under and equally and ratably secured by this Indenture on a parity with the Series 2004 Bond, and any other Additional Bonds which remain Outstanding after the issuance of such Additional Bonds, at any time or from time to time, upon compliance with the conditions hereinafter provided in this Section, for the purpose of (i) providing funds to pay the cost of completing the Project or the making of additional improvements to the Project or the acquisition and installation of additional Project Equipment or (ii) providing funds for refunding all or part of the Bonds then Outstanding of any series, including the payment of any premium thereon and interest to accrue to the designated redemption date and any expenses in connection with such refunding. Additional Bonds may be issued only with the written consent of the Company and the Bondowners of a majority in principal amount of the Outstanding Bonds.

(b) Before any Additional Bonds shall be issued under the provisions of this Section, the City shall pass an ordinance authorizing the issuance of such Additional Bonds, fixing the amount thereof and describing the Bonds, if any, to be refunded, authorizing the City to enter into a Supplemental Indenture for the purpose of issuing such Additional Bonds and, if required, authorizing the City to enter into a Supplemental Lease with the Company.

(c) Such Additional Bonds shall be dated, shall be stated to mature in such year or years, shall bear interest at such rate or rates not exceeding the maximum rate then permitted by law, and shall be redeemable at such times and prices, all as may be provided by the Supplemental Indenture authorizing the issuance of such Additional Bonds. Except as to any difference in the date, the maturity or maturities, the rate or rates of interest or the provisions for redemptions, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Indenture as the Series 2004 Bond, and any other Additional Bonds which remain Outstanding after the issuance of such Additional Bonds.

(d) The proceeds, excluding accrued interest, of all Additional Bonds shall be deposited in accordance with the terms of the ordinance authorizing their issuance, after payment or making provision for payment of all expenses incident to such financing to be used for the sole and exclusive purposes provided in the Supplemental Indenture authorizing the issuance of such Additional Bonds.

Section 210. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond shall become mutilated, or be lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City and the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee to save each of the City and the Trustee harmless. In the event any such Bond shall have matured, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the City and the Trustee may require the payment of an amount sufficient to reimburse the City and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 211. Cancellation and Destruction of Bonds Upon Payment.

(a) All Bonds which have been paid or redeemed or which the Trustee has purchased or which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity shall be cancelled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee.

(b) All Bonds cancelled under any of the provisions of this Indenture shall be destroyed by the Trustee. The Trustee shall execute a certificate describing the Bonds so destroyed, and shall file executed counterparts of such certificate with the City and the Company.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption of Bonds Generally. The Series 2004 Bond shall be subject to redemption prior to maturity in accordance with the terms and provisions set forth in this Article. Additional Bonds shall be subject to redemption prior to maturity in accordance with the terms and provisions contained in this Article and as may be specified in the Supplemental Indenture authorizing such Additional Bonds.

Section 302. Redemption of the Series 2004 Bond. The Series 2004 Bond shall be subject to redemption and payment in whole or in part, as follows: