

---

LEASE AGREEMENT

By and Between

THE CITY OF OZARK, MISSOURI

and

THE PUBIC FUNDING CORPORATION OF THE CITY OF OZARK, MO.

Dated as of July 1, 2003

---

---

\$185,000

The Public Funding Corporation of the City of Ozark, Mo.  
(Refunding Obligation for Finley Valley Water Company)

---

\*\*\*\*\*

*Yates, Mauck, Bohrer, Elliff & Croessmann, P.C.  
Southwest Bancshares Financial Center, Suite 1000  
3333 East Battlefield Road  
Springfield, Missouri 65804  
(417) 883-7411*

*Special Counsel*

\*\*\*\*\*

## **TABLE OF CONTENTS**

### **ARTICLE I DEFINITIONS AND EXHIBITS**

Section 1.01. Rules of Construction and Definitions . . . . .	1
Section 1.02. Schedules . . . . .	2

### **ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES**

Section 2.01. Representations, Covenants and Warranties of the Corporation. . . . .	3
Section 2.02. Representations, Covenants and Warranties of the City . . . . .	4

### **ARTICLE III GRANTING PROVISION**

Section 3.01. Granting of Estate . . . . .	5
Section 3.02. Commencement of Lease Term; Renewals . . . . .	5
Section 3.03. Termination of Lease Term . . . . .	6
Section 3.04. Intent to Continue Lease Term; Appropriations . . . . .	6
Section 3.05. Effect of Termination . . . . .	7

### **ARTICLE IV ENJOYMENT OF THE PROJECTS**

Section 4.01. Enjoyment and use of the Projects . . . . .	7
---	---

### **ARTICLE V ACQUISITION OF THE PROJECTS**

Section 5.01. Execution and Delivery of the Documents . . . . .	8
Section 5.02. Projects Acquisition . . . . .	8
Section 5.03. Payment of Project Costs . . . . .	8
Section 5.04. Establishment of Completion Date . . . . .	9
Section 5.05. Surplus of Deficiency in the Projects . . . . .	9

### **ARTICLE VI PAYMENTS BY CITY**

Section 6.01. Payment of Rental Payments . . . . .	9
Section 6.02. Payments to Constitute Currently Budgeted Expenditures of the City . . . . .	10
Section 6.03. Manner of Payment . . . . .	10
Section 6.04. Option to Demand Conveyance of Title . . . . .	11
Section 6.05. Additional Rentals . . . . .	11
Section 6.06. Expression of City's Need for the Projects; Determination As Fair Market Value and Fair Purchase Price . . . . .	12
Section 6.07. Non-Appropriation . . . . .	12
Section 6.08. Unconditional Obligation . . . . .	13

Section 6.09. Qualification as Small Governmental Unit; Designation of the Lease as a Qualified Tax Exempt Obligation .....	13
Section 6.10. Arbitrage Covenant. ....	13
Section 6.11. Tax Exempt Status .....	13

## ARTICLE VII MAINTENANCE, TAXES, INSURANCE AND INDEMNIFICATION

Section 7.01. Liability Insurance .....	14
Section 7.02. Property Insurance .....	14
Section 7.03. Worker's Compensation Insurance .....	14
Section 7.04. Requirement for All Insurance .....	14
Section 7.05. Provisions Regarding Casualty, Public Liability and Property Damage .....	15
Section 7.06. Indemnification .....	15
Section 7.07. Damage to or Destruction of Projects .....	15
Section 7.08. Maintenance, Repairs and Utilities .....	16

## ARTICLE VIII SALE OF PROJECTS; ADDITIONS, MODIFICATIONS AND OTHER OBLIGATIONS OF THE CITY

Section 8.01. Sale of Certain Portions of Projects .....	16
Section 8.02. Use; Permits .....	17
Section 8.03. Maintenance of Projects by the City .....	17
Section 8.04. Taxes and Other Governmental Charges .....	17
Section 8.05. Advance .....	18

## ARTICLE IX DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.01. Damage and Destruction .....	18
Section 9.02. Condemnation or Insured Deficiency of Title .....	19
Section 9.03. Title .....	19
Section 9.04. Security Interest .....	20
Section 9.05. Liens .....	20
Section 9.06. Installation of the City's Equipment .....	20
Section 9.07. Modification of Projects .....	20
Section 9.08. Reports of Modifications. ....	21
Section 9.09. Use of Projects .....	21

## ARTICLE X PROJECTS WARRANTIES

Section 10.01. Selection of Projects .....	21
Section 10.02. Installation and Maintenance of Projects .....	21
Section 10.03. Contractor's Warranties .....	21

Section 10.04. Patent Infringement . . . . .	22
Section 10.05. Disclaimer of Warranties . . . . .	22

## ARTICLE XI PREPAYMENT

Section 11.01. When Available. . . . .	22
Section 11.02. Exercise of Option . . . . .	22
Section 11.03. Release of the Corporation's Interest . . . . .	22

## ARTICLE XII ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

Section 12.01. Assignment by the Corporation . . . . .	22
Section 12.02. Assignment and Subleasing by the City . . . . .	23
Section 12.03. Restriction on Mortgage or Sale of Projects . . . . .	23

## ARTICLE XIII EVENTS OF DEFAULT, REMEDIES

Section 13.01. Events of Default Defined . . . . .	23
Section 13.02. Remedies on Default . . . . .	24
Section 13.03. Return of Projects. . . . .	25
Section 13.04. No Remedy Exclusive . . . . .	25
Section 13.05. Late Charge . . . . .	25
Section 13.06. Waivers . . . . .	26
Section 13.07. Agreement to Pay Attorney Fees and Expenses . . . . .	26
Section 13.08. Waiver of Appraisalment, Valuation, Stay, Extension and Redemption Laws . . . . .	26

## ARTICLE XIV MISCELLANEOUS PROVISIONS

Section 14.01. Notices . . . . .	26
Section 14.02. Financial Information. . . . .	27
Section 14.03. Binding Effect . . . . .	27
Section 14.04. Severability . . . . .	27
Section 14.05. Amendments, Changes and Modifications . . . . .	27
Section 14.06. Captions . . . . .	27
Section 14.07. Further Assurances and Corrective Instruments . . . . .	27
Section 14.08. Execution in Counterparts . . . . .	27
Section 14.09. Applicable Law . . . . .	27
Section 14.10. Termination of Lease. . . . .	27
SCHEDULE 1 . . . . .	30
SCHEDULE 2 . . . . .	31
SCHEDULE 3 . . . . .	35

## LEASE AGREEMENT

THIS LEASE AGREEMENT, any amendments or supplements hereto entered into in accordance herewith and the exhibits hereto (collectively the "Lease") dated as of July 1, 2003, entered into by and between The Public Funding Corporation of the City of Ozark, Mo., a non-profit corporation organized under and existing by virtue of the laws of the State of Missouri as Lessor hereunder (the "Corporation"), and the City of Ozark, Missouri, hereunder as lessee (the "City") a body corporate and politic and political subdivision of the State of Missouri duly organized and existing under the Constitution and the laws of the State of Missouri;

### WITNESSETH:

WHEREAS, the Corporation is a non-profit corporation duly organized and existing under The General Non-Profit Corporation Law, Chapter 355 of the Revised Statutes of Missouri, 1994, as amended, for the purpose of benefitting and carrying out the purposes of the City, by providing for the acquisition, construction, improvement, extension, repair, remodeling, renovation and financing of real estate, buildings, facilities, furnishings and equipment for the use of the City in the discharge of its public purposes; and

WHEREAS, the City is a duly created, organized and existing political subdivision of the State of Missouri, existing as such under and by virtue of the Constitution and laws of the State of Missouri and is authorized pursuant as to the Revised Statutes of the State of Missouri (the "Act") to (i) acquire, erect, purchase, hold, sell, or otherwise dispose of property or lease any property, real or personal and (ii) to permit the Corporation to acquire, construct, improve, extend, repair, remodel, renovate, furnish and equip buildings and facilities located on any real property in which it has an interest, and then lease back or purchase such sites, buildings and facilities from the Corporation; and

WHEREAS, this Lease shall not directly or indirectly obligate the City to make any payments, (including Rental Payments as hereafter defined), beyond those appropriated for the City's then current fiscal year; and

WHEREAS, since the City has no obligation to make any payments, (including Rental Payments as hereafter defined), under this Lease beyond those appropriated for the City's then current fiscal year, the election requirements and other limitations of law concerning the creation of indebtedness by the City, are inapplicable to this Lease; and

WHEREAS, this Lease is for the benefit of the public and is in furtherance of the public purpose of the City and the execution, performance and delivery of this Lease has been authorized, approved and directed by the Board of Aldermen of the City.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions hereafter set forth and herein contained, the Corporation and the City agree as follows:

### ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.01. Rules of Construction and Definitions. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons. In this Lease, unless the context otherwise requires:

1. Articles and Sections referred to by number shall mean the corresponding Articles and Sections of Lease.

2. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms refer to this Lease, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of execution and delivery of this Lease .

3. Any Fiduciary shall be deemed to have received delivery of and to hold any Governmental Obligation in which moneys are invested pursuant to the provisions of this Lease, even though such Governmental Obligation is evidenced only by a book entry or similar record of investment.

4. References in this Lease to particular sections of the Act or any other legislation shall be deemed to refer also to any successor sections thereto or other redesignation for codification purposes and shall be deemed to include any related regulations.

5. The terms "receipt," "received," "recovery," "recovered" and any similar terms, when used in this Lease with respect to moneys or payments due, shall be deemed to refer to the passage of physical possession and control of such moneys and payments to the Corporation.

6. The terms "the Corporation" or "the City" or reference to either of them shall include those succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

7. Any reference to a section or provision of the Constitution of the State, or to the Act or to a section, provision or chapter of the Act shall include such section, provision or chapter as from time to time amended, modified, revised, supplemented or superseded; provided that no such change in said Constitution or State laws shall be applicable solely by reason of this provision if such change would constitute an impairment of the rights or obligations of the City or the Corporation under this Lease.

8. "Rental Payments" as used herein shall include all rents, issues, profits, revenues, royalties, rights and benefits whatsoever to which the Corporation is entitled under this Lease (including 'Additional Rental Payments', as hereinafter defined).

**Section 1.02. Schedules.** The following Schedules are attached to and by reference made a part of this Lease:

- Schedule 1: a description and definition of the Project;
- Schedule 2: indicating the date, amount and specified Rental Payments coming due during the Lease Term;
- Schedule 3: showing as of specified dates, the price at which the Corporation may prepay the unpaid Rental Payments in accordance with Article VI.

## ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01. Representations, Covenants and Warranties of the Corporation. The Corporation represents, covenants and warrants as follows:

1. The Corporation is a non-profit corporation duly organized, existing and in good standing under and by virtue of the laws of the State of Missouri; the Corporation has all necessary power and authority to enter into and perform its duties under this Lease; has full power and authority to cause the Project to be acquired, pursuant to this Lease; is possessed of full power to own and hold real and personal property, and to lease the same as lessor, as herein contemplated; and has duly authorized the execution and delivery of this Lease.
2. The Corporation acknowledges and joins in the representations, covenants and warranties set forth in paragraphs (b), (d), (e) and (g) of Section 2.02 hereof. The Corporation has authorized the execution, delivery, and due performance of this Lease and the taking of any and all action as may be required on the part of Corporation to carry out, give effect to and consummate the transactions contemplated by this Lease, and all approvals, notifications, filings, recordings and registrations necessary in connection with the foregoing have been received or made, as the case may be, and the Corporation shall do or cause to be done all things necessary to preserve their existence and to keep them in full force and effect.
3. Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, nor the fulfillment by the Corporation of, or compliance by the Corporation with, the terms and conditions hereof violates any provision of law or conflicts with, or results in a breach of, or default under the terms, conditions or provisions of, any regulatory, contractual or other restriction on the Corporation, or agreement or instrument of whatever nature to which the Corporation is now a party or by which it is bound.
4. There is no action, suit or proceeding pending, or, to the knowledge of the Corporation threatened, against or affecting the Corporation before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which would in any way adversely affect the validity or enforceability of this Lease or of the transactions contemplated hereby.
5. The Corporation, acting through the agency of the City, will repay a Promissory Note dated January 31, 1996, the proceeds of which were used to acquire and construct the Project from the proceeds of a loan from Ozark Bank, a banking corporation located in Ozark, Missouri (the "Bank") in the amount of \$185,000 evidenced by a Promissory Note dated July 9, 2003, (the "Note"). All proceeds of the Note shall be deposited by the City into a special trust fund held by the Bank designated as the City of Ozark, Missouri, Acquisition Fund (the "Acquisition Fund") and used to refund the Promissory Note dated January 31, 1996 which was used to acquire the Project and pay certain costs of issuance. The City has estimated the Project Costs to be approximately \$185,000, which estimate has been approved by the Board of Aldermen of the City and the City has agreed that all Project Costs in excess of such \$185,000 will be borne by the City.
6. The Corporation acknowledges and recognizes that this Lease will be terminated at the end of the Lease term in the event that sufficient funds are not budgeted and appropriated by the City, specifically with respect hereto to continue paying all Rental Payments and Additional Rentals during the next occurring Renewal Term hereof and that the acts of such budgeting and appropriating funds are legislative acts and, as such, are solely within the discretion of the Board of Aldermen of the City and cannot be delegated.

7. Nothing in this Lease shall be construed so as to require the Corporation to operate the Projects other than as lessor or to require the City to exercise its right to purchase the Projects as provided in Section 6.04 hereof. The Corporation shall have no authority to operate the Projects as a business or in any manner except as a lessor thereof.

8. To finance the costs of the Projects, the Corporation proposes to lease the Project to the City with Rental Payments to be paid on the dates and in the amounts shown on Schedule 2 attached hereto and the Rental Payments derived by the Corporation hereunder will be pledged and assigned to the Bank as security for payment of the principal and interest on the Note pursuant to an Assignment (the "Assignment") entered into and dated as of July 1, 2003.

9. By Resolution duly adopted, the Board of Directors of the Corporation duly authorized the execution, delivery and performance of this Lease, the Note, the Deed of Trust and the Assignment (collectively, the "Financing Documents") and to enter into the transactions contemplated by the Financing Documents and to carry out its obligation thereunder.

10. No member of the Board of Directors of the Corporation or any officer of the Corporation is an officer or employee of the City or any of its boards or agencies, and further, no officer or employee of the City has any financial interest, direct or indirect in this Lease or the Projects.

**Section 2.02. Representations, Covenants and Warranties of the City.** The City represents, covenants and warrants as follows:

(a) The City is a political subdivision and body politic duly organized and existing under the Constitution and laws of the State. The City is authorized by the Revised Statutes of Missouri and by Ordinance duly passed by the Board to execute, deliver and perform this Lease and to enter into the transactions contemplated by the this Lease, and to carry out its obligations thereunder.

(b) The Projects Costs will be financed with the proceeds of the Loan, deposited in the Acquisition Fund by the Corporation, and the financing of the Projects is to be accomplished by the Corporation on behalf of the City as provided in Article V of this Lease.

(c) Neither the execution and delivery of the Lease, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any written restriction or any agreement or instrument by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien or encumbrance whatsoever upon any of the property or assets of the City.

(d) To the knowledge of the City, there is no litigation or proceeding pending or threatened against the City or any other person affecting the right of the City to execute this Lease, or the ability of the City to make payments required thereunder or to otherwise comply with the obligations contained herein.

(e) The Projects will be operated by the City to comply with all applicable ordinances and regulations, if any. No member of the Board or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, with the Corporation, the Projects or in the transactions contemplated hereby.



(f) In authorizing and executing this Lease, the City has complied with all public bidding and other State and Federal Laws applicable to this Lease and the acquisition of the Projects by the City.

(g) The City will not pledge, mortgage or assign this Lease or any interest in the Projects, or its duties and obligations hereunder to any other person, firm or corporation, except to Ozark Bank, as provided under the terms of this Lease. No mortgage, security interest or other lien (including without limitation claims by or judgments against the City and liens arising out of any agreement or instrument to which the City is a party or by which it is bound), which now covers or affects, the Projects or any interest therein, shall during the term of this Lease attach to the Projects, or in any manner to City's right and interest under this Lease.

(h) The Projects will be used during the term of this Lease only to carry out the public purposes of the City and will, with such changes and additions as may be made hereunder, result in substantial and needed improvements to the City, all as more fully described on Schedule 1 attached hereto, to be used by the City for governmental purposes.

(i) The City is legally obligated during the Initial Term and agrees to make the Rental Payments as due during such period under this lease; provided that the Corporation and the City agree and hereby state their intention that nothing in this Lease shall be construed to require the City to operate the Projects other than as a lessee, or to require the City to exercise its right to purchase the Projects as provided in Section 6.05 hereof.

### ARTICLE III GRANTING PROVISION

**Section 3.01. Granting of Estate.** The Corporation hereby rents, leases and lets the Projects to the City, and the City hereby rents and leases the Projects from the Corporation, subject to Permitted Encumbrances, for the Rental Payments and upon and subject to the terms and conditions herein contained.

#### **Section 3.02. Commencement of Lease Term; Renewals.**

(a) Initial Term. This Lease shall become effective upon its delivery, and subject to earlier termination pursuant to the provisions of this Lease, shall have an initial term (the "Initial Term") commencing as of the date of this Lease and terminating on December 31, 2003 upon the expiration of the Initial Term..

(b) Renewal Terms. This Lease may be extended and the Lease term continued, solely at the option of the City, for up to eight (8) successive renewal terms thereafter. Each renewal term except the final Renewal Term (the "Renewal Term") shall be for a period of one year commencing on January 1 of the year following the expiration of any prior Lease term and extended to December 31 of the same year. The final Renewal Term shall commence on January 1, 2011, and shall terminate on or before January 1, 2011. In the event that the City shall determine, for any reason, not to renew this Lease, the City shall give written notice to such effect to the Corporation not later than December 1st of the Initial Term or then current Renewal Term; provided, however, that a failure to give such notice shall not prevent the City from declining to renew this Lease, nor result in any liability on the part of the City. The City's option to renew or not to renew this Lease shall be conclusively determined by whether or not the Board of Aldermen of the City has, on or before December 1st, of the Initial Term or of any Renewal Term, budgeted and appropriated, specifically with

respect to the Rental Payments hereunder, moneys sufficient to pay all the Rental Payments and reasonably estimated Additional Rentals for such ensuing Renewal Term, all as further provided in Article VI hereof. The budgetary officer of the City or any other officer at any time charged with the responsibility of formulating budget proposals is hereby directed to include in the budget proposals submitted to the Board, in any year in which this Lease shall be in effect, items for all Rental Payments and Additional Payments required for the ensuing Renewal Term under this Lease; it being the intention of the Board of Aldermen of the City that the decision to renew or not to renew this Lease shall be made solely by the Board of Aldermen of the City and not by any other official of the City. The City shall in any event, whether or not this Lease is to be renewed, furnish the Corporation with copies of its annual budget promptly as the same is prepared for consideration of the Board of Directors of the City and after the budget is adopted.

In order for the City to exercise the option to renew this Lease, the City shall deliver to the Bank, on or before November 1st in each year during the period when the Note is outstanding, a copy of a Resolution or Ordinance adopted by the Board of Aldermen of the City and certified by the Clerk of the Board of Aldermen of the City, which Resolution shall:

- (a) authorize the renewal of this Lease for an additional Renewal Term; and
- (b) irrevocably budget and appropriate funds in an amount sufficient to pay the anticipated Rental Payments and Additional Payments to become due during the forthcoming Renewal Terms, as specified in the notice delivered to the Bank pursuant to Section 6.01 hereof.

The terms and conditions of this Lease shall apply during any Renewal Term, except that the Prepayment Price, and the Rental Payments shall be as provided in Schedule 2, as it may be amended hereunder.

**Section 3.03. Termination of Lease Term.** The Lease Term shall terminate upon the earliest of any of the following events:

- (a) The expiration of the Initial Term or any Renewal Term not accompanied by a valid exercise of the City's right to renew the Lease.
- (b) The expiration of the Initial Term or any Renewal Term during which there occurs an Event of Non-Appropriation (which is not thereafter waived) pursuant to this Lease;
- (c) An Event of Default and termination of the Lease Term under Article XIII of this Lease;
- (d) On January 1, 2011, which date constitutes the last day of the final possible Renewal Term of this Lease, or such later date as all Rental Payments and Additional Rentals required hereunder shall be paid.

Termination of the Lease Term shall terminate all obligations of the City under this Lease and shall terminate the City's rights of possession under this Lease (except to the extent of any conveyance pursuant to Section 6.04 of this Lease); but all other provisions of this Lease shall be continuing.

**Section 3.04. Intent to Continue Lease Term; Appropriations.** The City presently intends to continue this Lease until its termination January 1, 2011, and to pay all Rental Payments specified in Schedule

2 hereto. The budgetary officer of the City will use all reasonable and lawful means at his disposal to secure the appropriation of money for each Renewal Term hereunder sufficient to pay the Rental Payments coming due therein under this Lease. The budgetary officer of the City believes that moneys in an amount sufficient to pay all such Rental Payments can and will lawfully be appropriated and made available for this purpose and agrees to use his best efforts to secure such continuing appropriations. A copy of the City's proposed budget will be provided to the Corporation by December 1<sup>st</sup> of each year during the Lease Term.

**Section 3.05. Effect of Termination.** Upon termination of this Lease as provided in Section 3.03 hereof, the City shall not be responsible for the payment of any additional Rental Payments coming due with respect to succeeding Fiscal Years. However, in consideration of use of the Projects by the City through the end of the Fiscal Year in which the City uses the Projects, the City shall pay to the Corporation on the last day of such Fiscal Year such pro rata portion of the Rental Payments coming due immediately following the end of such Fiscal Year as relates to the period of time from the last Rental Payment Date (as shown on Schedule 2) to the end of such Fiscal Year. If the City has not delivered possession of the Projects to the Corporation in accordance with Section 6.07 and conveyed the Projects and the real property on which it is located to the Corporation or released its interest, if any, in the Projects within 15 days after the termination of this Lease, the termination shall nevertheless be effective, but the City shall be responsible for the payment of damages in an amount equal to the amount of the Rental Payments thereafter coming due under Schedule 2 which are attributable to the number of days after such termination of the Lease during which the City fails to take such actions and for any other loss suffered by the Corporation as a result of the City's failure to take such actions as required.

#### ARTICLE IV ENJOYMENT OF THE PROJECTS

##### **Section 4.01. Enjoyment and use of the Projects.**

(a) The Corporation covenants and agrees that as long as the City shall not be in default under this Lease and an Event of Non-Appropriation has not occurred, the City shall have sole and exclusive possession and use and enjoyment of the Projects (subject to the Corporation's right of access to inspect the Projects during the City's business hours). The Corporation covenants and agrees that it will not take any action, other than pursuant to Articles V, VI and XIII of this Lease, to prevent the City from having quiet and peaceable possession and enjoyment of the Projects during the Lease term and will, at the request and expense of the City, cooperate with the City in order that the City may have quiet and peaceable possession and enjoyment of the Projects.

(b) The Corporation shall have a right of access to inspect the Projects throughout the Lease term during the City's business hours.

(c) Subject to the provisions of this Section, the City shall have the right to use the Projects for any lawful purpose. The City shall comply 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 Projects as to the manner and use or the condition of the Projects. The City shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried by the provisions of Article VII hereof. The City 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 City to comply with the provisions of this Section. Notwithstanding any provision contained in

this Section, however, the City 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 City may refrain from complying therewith, if the City furnishes on request of the Corporation, at the City's expense, indemnity satisfactory to the Corporation.

## ARTICLE V ACQUISITION OF THE PROJECTS

**Section 5.01. Execution and Delivery of the Documents.** In order to provide funds to pay the Projects Costs, the Corporation agrees that it will execute and deliver this Lease, the Note and the Assignment. The Bank will deposit the proceeds of the Loan into the Acquisition Fund, as hereinafter provided to be used and applied as hereinafter provided.

**Section 5.02. Projects Acquisition.** The City and the Corporation agree that the Projects will be constructed, installed and acquired by the Corporation, but solely from the moneys in the Acquisition Fund and from any other funds of the City made available for such purpose.

### **Section 5.03. Payment of Project Costs.**

(a) All Projects Costs shall be paid by the Bank from moneys in the Acquisition Fund, and the Corporation hereby authorizes and directs the Bank to make disbursements from the Acquisition Fund, upon receipt by the Bank of certificates and other information provided in a form satisfactory to the Bank signed by a Authorized City Representative:

(i) requesting payment of a specified amount of such moneys and stating the name and address of the person, firm or corporation to whom such amount shall be paid;

(ii) describing in reasonable detail each item of Projects Costs for which payment is being requested;

(iii) stating that each item for which payment is requested is or was necessary and appropriate in connection with the acquisition, installation and purchase of the Projects, has been properly incurred and is a proper charge against the Acquisition Fund, that the amount requested either has been paid, or is justly due, and has not been the basis of any previous requisition from the Acquisition Fund; and

(iv) stating that, except for the amounts, if any, set forth in said certificate, to the best of the knowledge of the representative signing such certificate, there are no outstanding statements which are then due and payable for labor, wages, materials, supplies or services in connection with the acquisition and purchase of the Projects which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or other similar lien upon the Projects or any part thereof, or setting out (A) all disputed statements and the reason for such disputes, and (B) all statements in process but not yet presented to the Corporation for payment; and,

The Bank may rely conclusively on any such certificate and shall not be required to make any independent investigation in connection therewith. Any request for payment submitted for the payment of Projects Costs that are costs of financing the Projects need only be signed by the Authorized City Representative.

(b) The City covenants and agrees that it will not make or cause or permit to be made any use of the proceeds of the Note in any way so as to cause the interest on the Note to become subject to Federal income taxation, and the City further covenants and agrees that it will not submit any requisition certificate pursuant to subsection (a) of this Section, which, if paid, would result in less than all of the proceeds of the Note (excluding costs of financing the Loan and excluding a de minimus amount, but including all income from the investment of Loan proceeds), being used to provide tangible real or tangible personal property within the meaning of Revenue Ruling 82-26.

**Section 5.04. Establishment of Completion Date.** The Completion Date shall be established by a certificate signed by the Authorized City Representative stating that the acquisition and construction of the Projects has been completed.

**Section 5.05. Surplus of Deficiency in the Projects.**

(a) Upon the receipt of the certificate described in Section 5.04 hereof, the Bank shall apply any remaining moneys then in the Acquisition Fund as directed by the City solely to (i) payment of unpaid amounts of the Note; or (ii) at the option of the City, to the prepayment of the Rental Payments due under this Lease.

(b) If the Acquisition Fund shall be insufficient to pay, fully, all Projects Costs and to complete, fully, the Projects free of liens, the City shall pay, in cash, the full amount of any such deficiency by making payments therefor directly to any contractor, seller, or suppliers of materials and services as the same shall become due, and the City shall save the Corporation whole and harmless from any obligation to pay such deficiency and the Corporation shall have no obligation to advance additional funds therefor.

**ARTICLE VI  
PAYMENTS BY CITY**

**Section 6.01. Payment of Rental Payments.**

(a) On or prior to the date of delivery of this Lease and the Note, the City shall irrevocably budget and appropriate the amount of Rental Payments as shown on Schedule 2, due or coming due during the Initial Term of this Lease.

(b) On or before July 1<sup>st</sup> of each year during which the City is a lessee under this Lease, the Bank shall make estimates of the Rental Payments to be required during the forthcoming Renewal Term and shall give, to the extent such estimates vary from the Rental Payments shown on Schedule 2, written notice of such estimates to the City and the Corporation.

(c) The City covenants and agrees that, during each Renewal Term in effect, it will pay to the Bank at its principal corporate trust office for the account of the Corporation, Rental Payments at such time and in such amounts which shall be sufficient to pay principal of, premium, if any, and interest on the Note at the

next Payment Date. All Rental Payments provided for in this Section shall be paid by the City directly to the Bank for the account of the Corporation to be used and applied by the Bank in the manner and for the purposes set forth in the herein. The estimated amount of the Rental Payments is set forth on Schedule 2 attached hereto and incorporated herein by reference. All Rental Payments shall be paid to the Bank in immediately available funds in accordance with the terms hereof.

**Section 6.02. Payments to Constitute Currently Budgeted Expenditures of the City.** The City and the Corporation acknowledge and agree that the Rental Payments hereunder shall constitute currently budgeted expenditures of the City. The City's obligation under this Lease shall be from year to year only (as further provided in Sections 3.02, 3.03 and 6.08 hereof), and shall not constitute an indebtedness, liability or a mandatory payment obligation of the City in any ensuing Fiscal Year. Since the City has no obligation to make any payment under this Lease, beyond those appropriated for the City's then current Fiscal Year, the election requirements and other limitations of law concerning the creation of indebtedness by the City are inapplicable to this lease. No provision of this Lease shall be construed or interpreted as creating a general obligation or other indebtedness of the City within the meaning of any constitutional or statutory debt limitation. This Lease shall not directly or indirectly obligate the City to make any payments beyond those currently appropriated by the Resolution for the City's then current Fiscal Year. The City shall be under no obligation whatsoever to exercise its option to purchase the Projects. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of City moneys, nor shall any provision of the Lease restrict the future issuance of any bonds by the City or any other obligations payable from any class or source of City moneys or revenues. There shall be credited against the amount of Rental Payments otherwise payable by the City hereunder amounts equal to earnings derived from the investment of any funds on deposit hereunder with Corporation during the construction period.

Notwithstanding any provision or covenant contained in this Lease or the Note, the City is not obligated to renew the Lease beyond any current Lease term, nor is the City obligated to budget or appropriate moneys or to make Rental Payments beyond the end of the Lease term in effect at a given date and the City shall be under no obligation to levy taxes in order to raise revenues to make Rental Payments.

Nothing in this Lease shall be construed to release the Corporation from the performance of any agreement on its part herein contained or as a waiver by the City of torts or claims which the City may have against the Corporation under this Lease or otherwise, but any recovery of such rights and claims shall be had from the Corporation solely, it being the intent of this Lease that the City shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to make Rental Payments and Additional Payments), for the benefit of the Owner and Holder of the Note, but only during a given Lease term. The City may, however, at its own costs and expense and in its own name or the name of the Corporation, prosecute and defend any action or proceeding or take any other action involving any person or persons which the City deems reasonably necessary in order to secure or protect its right of action, occupancy and use hereunder, and in such event the Corporation hereby agrees to cooperate fully with the City and to take all action necessary to effect the cooperation of the City for the Corporation in any action or proceeding if the City shall so elect.

**Section 6.03. Manner of Payment.** The Rental Payments and, if paid, the Prepayment Price as shown on Schedule 3 shall be paid in immediately available funds in lawful moneys of the United States of America to the Corporation. The obligation of the City to pay the Rental Payments and Additional Rentals required under this Article and other Articles hereof, during the Lease Term, shall be absolute and unconditional, and

payment of the Rental Payments and Additional Rentals shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Corporation and the City, or any other person, the City shall, during the Lease Term, make all payments of Rental Payments and Additional Rentals when due and shall not withhold any Rental Payments or Additional Rentals pending final resolution of such dispute (except to the extent permitted by Sections 6.05 and 9.05 hereof with respect to certain Additional Rentals), nor shall the City assert any right of set-off or counterclaim against its obligation to make such payment required hereunder. No action or inaction on the part of the City shall affect the City's obligation to pay all Rental Payments and Additional Rentals (except to the extent provided by Sections 6.05 and 9.05 hereof with respect to certain Additional Rentals), during the Lease Term.

**Section 6.04. Option to Demand Conveyance of Title.** The City shall have, the option to demand that, the Corporation convey to the City unencumbered fee title to the Projects at any time, upon the City giving written notice to the Corporation, specifying thereon the date of closing such purchase, which date shall be not less than 30 nor more than 45 days from the date when such notice is mailed. The purchase price payable by the City in the event 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 with the Bank in the Acquisition Fund will be sufficient to redeem all of the then outstanding obligations of the Corporation shown on Schedule 2 attached to this Lease; plus
- (b) an amount of money equal to the amount of the Additional Rentals accrued and to accrue until such prepayment; plus
- (c) the sum of \$1.00.

At the closing of the purchase option, the Corporation shall, upon receipt of the payment of the prepayment sum, deliver to the City documents conveying to the City legal title to the Projects, as it exists on the date of the conveyance, and shall remit payment to the Bank in an amount sufficient to payoff the Note.

The option shall be and remain prior and superior to the right of the Assignment and may be exercised by the City whether or not the City is in default under this Lease provided that such default will not result in non-fulfillment 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.

The City hereby agrees to accept conveyance of and the Corporation hereby agrees to convey, title to the Projects to the City, at the expiration of the Lease Term following full payment of the Prepayment Purchase Price shown on Schedule 3 or provision for such payment having been made.

**Section 6.05. Additional Rentals.** The City covenants and agrees to pay Additional Rentals during the Initial Term and any Renewal Term as herein provided. All Additional Rentals shall be paid by the City on a timely basis directly to the person or entity to which such Additional Rentals are owed.

In the event that the Projects or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the City shall, during the Lease Term, pay the amount of all such taxes, assessments and governmental charges then due as Additional Rentals. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the City shall be obligated to provide for Additional Rentals only for such installments as are

required to be paid during the Initial Term or any Renewal Term. The City shall not allow any liens for taxes, assessments or governmental charges to exist with respect to the Projects, or any portion thereof which, if not paid, could become a charge the Projects or any portion thereof, or any interest therein, including the interest of the City or the rentals and revenues derived therefrom or hereunder. The City shall also pay as Additional Rentals, as the same respectively become due, all gas, maintenance, licensing, inspection and other charges incurred in the maintenance and upkeep of the Projects.

The City may, at the expense and in the name of the City and on written notice to the Corporation, in good faith contest any such charges and, in the event of any such contest, may permit such charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the City that, in the opinion of legal counsel, by non-payment of any such items the security afforded pursuant to this Lease will be materially endangered or the Projects or any portion thereof will be subject to loss or forfeiture, or the Corporation will be subject to liability, in which event such charges shall be paid forthwith (provided, however, that such payment shall not constitute a waiver of the right to continue to contest such charges).

**Section 6.06. Expression of City's Need for the Projects; Determination As Fair Market Value and Fair Purchase Price.** The City hereby declares its current need for the Projects and further declares that the assistance of the Corporation, as provided herein, is for a public purpose and qualified governmental purpose as defined in the Code. The City further declares that the Projects is necessary for the public safety and welfare and essential to the City in the performance of its lawful governmental functions. The City hereby determines that the Rental Payments do not exceed a reasonable amount so as to place the City under an economic compulsion to renew this Lease. In making such determinations the City has given consideration to the uses and purposes for which the Projects will be employed by the City, the benefit to the City by reason of the acquisition of the Projects and the use and operation of the Projects pursuant to the terms and provisions of this Lease and the City's option to purchase the Projects. The City hereby determines and declares that the acquisition of the Projects and the leasing of the Projects pursuant to this Lease will result in equipment of comparable quality and meeting the same requirements and standards as would be necessary if the acquisition of the Projects were performed by the City other than pursuant to this Lease. The City hereby determines and declares that the period during which the City has an option to purchase the Projects (i.e., the maximum term of this Lease including all Renewal Terms) does not exceed the useful life of the Projects.

**Section 6.07. Non-Appropriation.** In the event that the Board shall not budget and appropriate, specifically with respect to the Rental Payments, on or before December 1st of each year, moneys sufficient to pay all Rental Payments and the reasonably estimated Additional Rentals coming due for the then current Renewal Term hereunder, an Event of Non-Appropriation shall be deemed to have occurred hereunder. In the event that during the Initial Term or any Renewal Term, any Additional Rentals shall become due which were not included in the City's current budget, or which exceed the amounts which were included therefor in the City's current budget, then, in the event the moneys are not specifically budgeted and appropriated to pay such Additional Rentals within 30 days subsequent to the date upon which such Additional Rentals are due, an Event of Non-Appropriation shall be deemed to have occurred.

If an Event of Non-Appropriation occurs, the City shall not be obligated to make payment of the Rental Payments or Additional Rentals or any other payments provided for hereunder beyond the then current Lease term. Upon July 1<sup>st</sup> of any such year in which an Event of Non-Appropriation shall occur, this Lease shall terminate.



The Corporation may in all events require the City to vacate the Projects within 15 days after the occurrence of an Event of Non-Appropriation.

**Section 6.08. Unconditional Obligation.** Subject to the provisions of Section 6.07 hereof, and except as otherwise provided in this Lease, the obligations of the City to make payment of the Rental Payments and Additional Rentals and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events. Notwithstanding any dispute between the City and the Corporation or any other person, the City shall pay all of the Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute nor shall the City assert any right to set off or counterclaim against its obligation to make such payments required under this Lease.

**Section 6.09. Qualification as Small Governmental Unit; Designation of the Lease as a Qualified Tax Exempt Obligation.** The City represents and warrants that (a) it is a governmental unit under Missouri law with general taxing powers; (b) the obligation due under this Lease is not a private activity bond as defined in Section 141 of the Code; (c) 95% or more of the net proceeds of the Loan will be used for local governmental activities of the City; and (d) the aggregate face amount of all tax exempt bonds (other than private activity bonds) issued by the City (and all subordinate entities thereof) during the calendar year 2003 is not reasonably expected to exceed \$5,000,000. The City hereby covenants that the City and all its subordinate entities will not issue in excess of \$5,000,000 of tax exempt bonds (including the Note, but excluding private activity bonds) during the calendar year 2003 without first obtaining an opinion of nationally recognized counsel in the area of municipal finance that the excludability of the interest on the bonds from gross income for federal tax purposes will not be adversely affected.

The City and the Corporation hereby designate the Loan as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code. The aggregate face amount of all tax exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds) issued or to be issued by the City (and all subordinate entities thereof) during calendar year 2003 is not reasonably expected to exceed \$10,000,000. The City hereby covenants that the City and all its subordinate entities will not issue in excess of \$10,000,000 of qualified tax exempt obligations (including the Note but excluding private activity bonds other than qualified 501(c)(3) bonds) during the calendar year 2003 without first obtaining an opinion of nationally recognized counsel in the area of municipal finance that the designation of the Loan as a qualified tax exempt obligations will not be adversely affected.

**Section 6.10. Arbitrage Covenant.** The City covenants and agrees that it will not make or cause or permit to be made, whether by the Bank or otherwise, any use of the proceeds of the Loan in the Rental Payments which, if such use had been reasonably expected on the date of the execution and delivery of this Lease and the Note, which would cause the Lease or the Note to be "arbitrage obligations" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended. The City further covenants and agrees that it will comply with and will take all action reasonably required to insure that the Bank complies with all applicable requirements of said Section 148 and the rules and regulations of the United States Treasury Department promulgated thereunder for so long as any of the payments due under this Lease or the Note, including interest thereon and any applicable redemption premium, remain Outstanding and unpaid.

**Section 6.11. Tax Exempt Status.**

(a) The Corporation covenants that it shall: (i) maintain its status as a non-profit corporation, with its activities and purposes limited to those permitted by Chapter 355 of the Revised Statutes of the State of

Missouri, 1986, as amended; (ii) not permit its income to inure to the benefit of any private person; (iii) not permit the original and investment proceeds (as these terms are defined in Revenue Procedure 82-26) of the this Lease or the Note to be used for any purpose other than to provide tangible real and tangible personal property, in accordance with Revenue Procedure 82-26; and (iv) after the Note has been paid, convey unencumbered fee title to the Projects back to the City.

(b) The City covenants that: (i) it has adopted an Ordinance generally approving the purposes and activities of the Corporation, and specifically approving the execution and delivery of the Note and the Assignment to finance the Projects, which Ordinance was adopted within one (1) year of the date of this Lease (ii) it has adopted an Ordinance authorizing the execution and delivery of this Lease and which recognized the execution and delivery of the Note and the Assignment, (iii) it shall use the proceeds of Loan, in accordance with this Lease, solely to provide tangible real and tangible personal property (as those terms are defined in Revenue Procedure 82-26), (iv) it has in the Lease, required that the Corporation convey back to the City unencumbered fee title to the Projects when all of the Rental Payments have been paid.

## ARTICLE VII MAINTENANCE, TAXES, INSURANCE AND INDEMNIFICATION

**Section 7.01. Liability Insurance.** Upon receipt of possession of the Projects, the City shall take such measures as may be necessary to ensure that any liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition or the operation of the Projects or any part thereof, is covered by a blanket or other general liability insurance policy maintained by the City. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which any Net Proceeds may be paid.

**Section 7.02. Property Insurance.** Upon receipt of possession of the Projects or any portion thereof, the City shall have and assume the risk of loss with respect thereto. The City shall procure and maintain continuously in effect during the term of this Lease, all-risk insurance, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part of the Projects damaged or destroyed and to pay the applicable Prepayment Price of the Projects. Such insurance may be provided by a rider to an existing policy or under a separate policy. Such insurance may be written with customary deductible amounts. The Net Proceeds of insurance required by this Section shall be applied to the prompt repair, restoration or replacement of the Projects or to the purchase of the Projects, as provided herein. Any Net Proceeds not needed for those purposes shall be paid to the City.

**Section 7.03. Worker's Compensation Insurance.** If required by state law, the City shall carry Worker's Compensation Insurance covering all employees operating the Projects, and upon request, shall furnish to the Corporation certificates evidencing such coverage throughout the term of this Lease.

**Section 7.04. Requirement for All Insurance.** All insurance policies (or riders) required by this Article shall be taken out and maintained with responsible and highly-rated insurance companies under the laws of one of the states of the United States and qualified to do business in the State; and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least 30 days before the cancellation or revision becomes effective. All insurance policies or riders required

by Sections 7.01 and 7.02 shall name the City and the Corporation as insured parties, and any insurance policy or rider required by Section 7.03 shall name the City as the insured party. The Bank shall be named as an additional insured under any policies required by Section 7.02. The City shall deposit with the Corporation policies (and riders) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the City shall furnish to the Corporation evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is no longer obtainable in which event the City shall notify the Corporation of this fact.

**Section 7.05. Provisions Regarding Casualty, Public Liability and Property Damage.** The City shall cause casualty and property damage insurance to be carried and maintained with respect to the Projects in the amount of \$500,000 or the replacement cost of the Projects whichever is greater. Each such insurance policy may have a deductible clause in an amount not to exceed \$1,000. The Projects may be insured under a blanket insurance policy which insures not only the Projects, but other property owned by the City and used in conjunction with the Projects as well, as long as such blanket insurance policy complies with the requirements of this Lease and contains a waiver of co-insurance.

Upon the execution and delivery of this Lease, the City shall, at its own expense, cause comprehensive liability and property damage insurance to be carried and maintained with respect to the activities to be undertaken by and on behalf of the City in connection with the use of the Projects. Such comprehensive, liability and property damage insurance shall be in an amount not less than \$500,000. The Public liability insurance required by this Section may be by a blanket insurance policy.

Any casualty and property damage insurance policy required by this Section provided by the City shall be so written or endorsed as to make losses, if any, payable to the City, the Corporation and the Bank. Each insurance policy provided for in this Section shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially and adversely to the interest of the City and the Corporation and approved by the Bank, without first giving written notice thereof to the City, Corporation and the Bank at least thirty (30) days in advance of such cancellation or modification. All insurance policies issued pursuant to this Section shall be deposited with the Corporation. No agent or employee of the City shall have the power to adjust or settle any loss with respect to the Projects, whether or not covered by insurance, without the prior written consent of the Corporation.

**Section 7.06. Indemnification.** The City assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Projects or any portion thereof and for injury to or death of any person or damage to any property, in any manner arising out of or incident to any possession, use, operation or condition of the Projects or any portion thereof, whether such injury or death be with respect to agents or employees of the City or of third parties, and whether such property damage be to the City's property or the property of others. The City hereby assumes responsibility for and agrees to indemnify, protect, save and keep harmless the Corporation from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorney's fees) of whatsoever kind and nature, imposed on, incurred by or asserted against the Corporation that in any way relate to or arise out of the possession, use, operation or condition of the Projects or the financing related thereto, unless caused by the Corporation or its agents, to the maximum extent permitted by law.

**Section 7.07. Damage to or Destruction of Projects.** If after delivery of the Projects or any portion thereof to the City, all or any part of the Projects is lost, stolen, destroyed or damaged beyond repair, the City

shall as soon as practicable after such event either: (i) replace the same at the City's sole cost and expense, such replacement to be of equal or greater value to the Projects or any portion thereof, if applicable, immediately prior to the time of the loss occurrence, such replacement to be subject to the Corporation's reasonable approval, whereupon such replacement shall be substituted in this Lease by appropriate endorsement; or (ii) pay the applicable Prepayment Price for the Projects as set forth in Schedule 3. The City shall notify the Corporation of which course of action it will take within 15 days after the loss occurrence. If the City fails or refuses to notify the Corporation within the required period, the Corporation may, at its option, declare the applicable Prepayment Price of the Projects set forth in Schedule 3 immediately due and payable, and the City shall be obligated to pay the same. The Net Proceeds of all insurance payable with respect to the Projects shall be available to the Corporation and shall be used to discharge the City's obligation under this Section. On payment of the Prepayment Price, this Lease shall terminate and the City thereupon shall become entitled to the Projects AS IS, WITHOUT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY, except that the Projects shall not be subject to any lien or encumbrance created by or arising through the Corporation on the date of this Lease.

#### Section 7.08. Maintenance, Repairs and Utilities.

The City shall throughout the Lease Term and at its own expense (i) keep and maintain the Projects and all part thereof in good repair and operating condition, making from time to time all necessary repairs thereto and renewals and replacements thereof, and (ii) keep the Projects and all parts thereof in safe condition.

### ARTICLE VIII SALE OF PROJECTS; ADDITIONS, MODIFICATIONS AND OTHER OBLIGATIONS OF THE CITY

#### Section 8.01. Sale of Certain Portions of Projects.

(a) Notwithstanding any other provision of this Lease, but subject to the provisions of subsection (b) and (c) of this Section, the City reserves the right at any time to either (i) purchase from the Corporation the unencumbered fee title to any one or more portions of the Projects, at a price agreed to by the City, the Corporation and the Bank, subject to the terms of the Note and the Assignment, or (ii) surrender possession of any such Projects and direct the Corporation to sell or dispose of such Projects, either by negotiated private sale or by public sale.

(b) In the case of a disposition pursuant to either clause (i) or (ii) of subsection (a) above, the proceeds of the sale shall be deposited by the Corporation with the Bank for credit to the payment of the Note.

(c) If the City elects to dispose of any portion of the Projects pursuant to this Section, the following procedures must be followed:

(i) The Board of Aldermen of the City shall adopt an ordinance which shall contain the following provisions:

(a) adequate description of the portion of the Projects to be sold;

(b) if the Projects is to be sold, an order directing the Corporation to sell the portion of the Projects and specifying the method of sale (either by private or public sale) and a recital of the agreed to value of such Projects;

(c) if the City intends to purchase the Projects, a declaration of such intent and a recital of the appraised value of such Projects or portion thereof;

(d) if the City intends to purchase the Projects, an appropriation by the City of funds sufficient to pay the appraised price of the Projects and the incidental costs;

(e) authorization for an officer of the City to execute and deliver and to record such instruments and documents as are necessary to effect the transaction.

(ii) The Board of Directors of the Corporation shall take action in accordance with the direction of the City to sell the Projects and shall deposit the proceeds of such sale with the Bank for pay off of the Note.

(a) No sale or disposition of the Projects pursuant to this Section shall entitle the City to any reimbursement of any Rental Payments or Additional Payments from the Corporation or the Bank, nor shall the City be entitled to any abatement or diminution in Rental Payments or Additional Payments under this Lease, except such diminution as results from redemption of the Note from the proceeds of such disposition pursuant to subsection (b) of this Section.

**Section 8.02. Use; Permits.** The City shall exercise due care in the installation, use, operation and maintenance of the Projects, and shall not install, use, operate or maintain the Projects improperly, carelessly, in violation of any State and Federal Law or for a purpose or in a manner contrary to that contemplated by this Lease. The City shall obtain all permits and licenses necessary for the installation, operation, possession and use of the Projects. The City shall comply with all State and Federal Laws applicable to the installation, use, possession and operation of the Projects, and if compliance with any such State and Federal Law requires changes or additions to be made to the Projects, such changes or additions shall be made by the City at its expense.

**Section 8.03. Maintenance of Projects by the City.** The City shall, at its own expense, maintain, preserve and keep the Projects in good repair, working order, condition and/or operation, and shall from time to time make all repairs and replacements necessary to keep the Projects in such condition. The Corporation shall have no responsibility for any of these repairs or replacements. In any event the City shall for the term of this Lease and at its own expense, maintain, preserve and keep the Projects in such repair, working order, condition and/or operation as is necessary to provide for the payment of all Rental Payments required to be paid by the City hereunder.

**Section 8.04. Taxes and Other Governmental Charges.** Except as expressly limited by this Section, the City shall pay all taxes and other charges of any kind which are at any time lawfully assessed or levied against or with respect to the Projects, the Rental Payments or any part thereof, or which become due during the term of this Lease, whether assessed against the City or the Corporation. The City shall also pay when due all gas, insurance, maintenance, licensing, titling and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Projects, and all special assessments and charges lawfully made by any

governmental body for public improvements that may be secured by a lien on the Projects; provided that with respect to special assessments or other governmental charges that may lawfully be paid during the term of this Lease as and when the federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate, or other similar tax payable by the City, its successors or assigns, unless such tax is made in lieu of or as a substitute for any tax, assessment or charge which is the obligation of the City under this Section.

The City may, at its own expense and in its own name, in good faith contest any such taxes, assessments, utility and other charges and notify the Corporation of such good faith contest and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the City that, in the opinion of legal counsel, by non-payment of any such items the interest of the Corporation in the Projects will be materially endangered or the Projects or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments, utility or other charges or provide the Corporation with full security against any loss which may result from non-payment, in form satisfactory to the Corporation.

**Section 8.05. Advance.** If the City shall fail to perform any of its obligations under this Article, the Corporation may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances on demand with interest at the rate of 2% per annum in excess of the rate being charged by the Corporation as the interest rate on the Note or the maximum rate permitted by law, whichever is less, from the date of the advance to the date of repayment.

## ARTICLE IX DAMAGE, DESTRUCTION AND CONDEMNATION

### **Section 9.01. Damage and Destruction.**

(a) If during the Lease term, the Projects is damaged or destroyed, in whole or in part, by fire or other casualty, to such extent that the claim for loss (including any deductible amount pertaining thereto) resulting from such damage or destruction is greater than \$10,000, the City shall promptly notify the Corporation and the Bank in writing as to the nature and extent of such damage or loss and whether it is practicable and desirable to rebuild, repair, restore or replace such damage or loss.

(b) If the City shall determine that such rebuilding, repairing, restoring or replacing is practicable and desirable, the City shall proceed promptly with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing of the property damaged or destroyed so as to place said Projects in substantially the same condition as existed prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the City and will not impair the utility of the Projects. In such case, any Net Proceeds of casualty insurance required by Section 7.01 hereof and received with respect to any such damage or loss to such Projects, if such Net Proceeds exceed \$10,000, shall be deposited into a separate account to be established at the Bank and shall be used and applied in accordance with the disbursement requirements of Section 5.02 hereof for the purpose of paying the costs of such rebuilding, repairing, restoring or replacing such damage or loss. If said Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or

restoration, the City shall nonetheless complete the work thereof and shall pay that portion of the costs thereof in excess of the amount of said Net Proceeds.

(c) If the City shall determine that rebuilding, repairing, restoring or replacing such Projects is not practicable and desirable, any Net Proceeds of casualty insurance required by Section 7.01 hereof and received with respect to any such damage or loss to such Projects shall be used to pay the Note on the earliest possible redemption date or to pay the principal and interest on any payment date on the Note as the same becomes due. The City agrees to be reasonable in exercising its judgment pursuant to this subsection (c).

(d) The City shall not, by reason of its inability to use all or any part of such Projects during any period in which such Projects is damaged or destroyed, or is being repaired, rebuilt, restored or replaced, or by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the Corporation, the Bank or any abatement or diminution of the rentals payable by the City under the Lease or of any other obligations of the City under this Lease except as expressly provided in this Section.

#### **Section 9.02. Condemnation or Insured Deficiency of Title.**

(a) In the event that title to all or any portion of the Projects is challenged or threatened by means of competent legal or equitable action, the City covenants that it shall cooperate with the Corporation and the Bank and shall take all reasonable actions, including where appropriate the lawful exercise of the City's power of eminent domain, or order of quiet title to such Projects in the Corporation. If title to all or a portion of any Projects is found to be deficient or non-existent by a court of competent jurisdiction, the City covenants that it shall, in such an event, deposit with the Bank for the account of the Corporation an amount equal to the Prepayment Value (or a pro-rata portion thereof, as appropriate), of such Projects. Under this Lease, the Bank is obligated to use such amounts for the payment of the Note at the earliest possible date.

(b) If during any Lease Term title to all or part of any Projects is condemned by any authority having the power of eminent domain, the condemnation proceeds shall be deposited with the Bank in the Acquisition fund in an amount equal to the amount of such proceeds and shall be use by the Bank to pay the Note.

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

**Section 9.03. Title.** Upon termination of this Lease for the reason specified in Section 3.03 (c), full and unencumbered legal title to the Projects shall revert and be conveyed to the City, and the Corporation shall have no further interest therein. In such event the Corporation shall execute and deliver to the City such documents as the City may request to evidence the passage of legal title to the Projects to the City and the termination of the Corporation's interest therein, and upon request by the City, shall deliver possession of the Projects to the City in accordance with Section 13.03. Upon termination of this Lease for any of the other reasons specified in Section 3.03, the City's leasehold or other interest in the Projects shall terminate, and the

City shall execute and deliver to the Corporation such documents as the Corporation may request to evidence the termination of the City's leasehold or other interest in the Projects.

**Section 9.04. Security Interest.** The Corporation shall have and retain a security interest under the Uniform Commercial Code in all portions of the Projects that are deemed personal property pursuant to applicable law, the proceeds thereof and all repairs, replacements, substitutions and modifications thereto or thereof made pursuant to Section 9.07, and a security interest in the proceeds of all insurance policies, in order to secure the City's payment of all Rental Payments due during the term of this Lease and the performance of all other obligations herein. The City will not cause or suffer to exist any mortgage, pledge, lien, charge, statements or interest in the Projects adverse to the Corporation, and will perform such acts as the Corporation may request to establish and maintain a valid security interest in the Projects. If requested by the Corporation, the City shall conspicuously mark such portions of the Projects with appropriate lettering, labels or tags, and maintain such markings during the term of this Lease, so as clearly to disclose the Corporation's security interest in such portion of the Projects. The City shall at all times execute and deliver to the Corporation such documents as may be required to identify the Projects or the lien of the Corporation in and to any part of the Projects.

**Section 9.05. Liens.** During the term of this Lease, the City shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Projects, which is adverse to the interest of the Corporation provided. Except as expressly provided in Section 8.04 and this Article, the City shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The City shall reimburse the Corporation for any expense incurred by the Corporation in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

**Section 9.06. Installation of the City's Equipment.** The City may at any time and from time to time, in its sole discretion and at its own expense, install other items of equipment in or upon the Projects, which items shall be identified by tags or other symbols affixed thereto as property of the City. All such items so identified shall remain the sole property of the City, in which the Corporation shall have no interest, and may be modified or removed by the City at any time provided that the City shall repair and restore any and all damage to the Projects resulting from the installation, modification or removal of any such items. Nothing in this Lease shall prevent the City from purchasing items to be installed pursuant to this Section under a conditional sale or lease-purchase contract, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Projects.

**Section 9.07. Modification of Projects.** The City shall, at its own expense, have the right to make repairs to the Projects, and to make repairs, replacements, substitutions and modifications to all or any of the parts thereof. All such work and any part or component used or installed to make a repair or as a replacement, substitution or modification, shall thereafter comprise part of the Projects and be subject to the provisions of this Lease. Such work shall not in any way damage the Projects or cause it to be used for purposes other than those authorized under the provisions of State and Federal Law or those contemplated by this Lease; and the Projects, upon completion of any such work shall be of value which is not less than the value of the Projects immediately prior to the commencement of such work. Any property for which a replacement or substitution is made pursuant to this Section may be disposed of by the City in such manner and on such terms as are determined by the City. The City will not permit any mechanic's or other lien to be established or remain



against the Projects for labor or materials furnished in connection with any repair, replacement, substitution or modification made by the City pursuant to this Section; provided that if any such lien is established and the City shall first notify the Corporation of the City's intention to do so, the City may in good faith contest any lien filed or established against the Projects, and in such event may permit the liens so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Corporation shall notify the City that, in the opinion of legal counsel, by non-payment of any such item the interest of the Corporation in the Projects will be materially endangered or the Projects or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide the Corporation with full security against any such loss or forfeiture, in form satisfactory to the Corporation. The Corporation will cooperate fully with the City in any such context, upon the request and at the expense of the City.

**Section 9.08. Reports of Modifications.** The City shall promptly report to the Corporation any changes in or modifications made to the Projects. The City shall have the privilege, as provided in Section 9.07, of making substitutions, additions, modifications and improvements to the Projects, at its expense; provided that such remodeling, substitutions, additions, modifications and improvements shall not in any way damage the Projects or cause the Projects and the Projects to be used for purposes other than approved by the City in its plan.

The City shall not do, or permit others under its control to do, any work in or about the Projects or related to any repair, rebuilding, restoration, replacement, alteration of or addition to the Projects, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have first been procured and paid for. All such work shall be done in a good and workmanlike manner and in compliance with all applicable laws, ordinances, 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 this Lease.

**Section 9.09. Use of Projects.** The City will use the Projects for a qualified governmental purpose of the City throughout the Lease Term and will not permit any person not also a governmental unit to become the principal user of the Projects throughout the Lease Term.

## ARTICLE X PROJECTS WARRANTIES

**Section 10.01. Selection of Projects.** The Projects has been selected by the City, and the Corporation shall have no responsibility in connection with the selection of the Projects, or its suitability for the use intended by the City.

**Section 10.02. Installation and Maintenance of Projects.** The Corporation shall have no obligation to acquire, test, inspect, service or maintain the Projects or any portion thereof under any circumstances, but such actions shall be the obligation of the City.

**Section 10.03. Contractor's Warranties.** The Corporation hereby assigns to the City for and during the term of this Lease, all of its interest in all contractors' or sellers' warranties and guarantees, express or implied, issued on or applicable to the Projects, and the Corporation hereby authorizes the City to obtain the customary services furnished in connection with such warranties and guarantees at the City's expense.

**Section 10.04. Patent Infringement.** The City hereby assigns to the Corporation for and during the term of this Lease all of its interest in patent indemnity protection, if any, provided by any seller with respect to the Projects or any portion thereof. Such assignment of patent indemnity protection by the City to the Corporation shall constitute the entire liability of the Corporation for any patent infringement by the Projects or any portion thereof furnished pursuant to this Lease.

**Section 10.05. Disclaimer of Warranties.** THE PROJECTS IS DELIVERED AS IS, AND THE CORPORATION MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE DISTRICT OF THE PROJECTS, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECTS.

## ARTICLE XI PREPAYMENT

**Section 11.01. When Available.** Except as provided in Article VIII, the City shall have the option to prepay its obligation for all future Rental Payments in the manner set forth in Section 6.03 for the then applicable Prepayment Price, as set forth in Schedule 3, but only if the City is not in default under this Lease, and only in the manner provided herein.

**Section 11.02. Exercise of Option.** The City shall give notice to the Corporation of its intention to exercise its option of prepayment hereunder not less than sixty (60) days prior to the Payment Date on which the option is to be exercised and shall deposit with the Corporation on the date of exercise an amount equal to all Rental Payments and any other amounts then due or past due and the applicable Prepayment Price set forth in Schedule 3. The closing shall be on the Payment Date on which the option is to be exercised at the office of the Bank.

**Section 11.03. Release of the Corporation's Interest.** Upon exercise by the City of its option to pay all of its Rental Payment obligations, the Corporation shall convey or release to the City, all of its right, title and/or interest in and to the Projects by delivering to the City such documents as the City reasonably deems necessary for this purpose including a bill of sale.

## ARTICLE XII ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING

**Section 12.01. Assignment by the Corporation.** The Corporation shall assign and pledge any rents, revenues and receipts receivable, including Rental Payments and Additional Payments, by it under this Lease, to the Bank as security for payment of the Note and the City hereby consents to the assignment. The Rental Payments and other amounts due hereunder and the Projects may be assigned and reassigned in whole or in part to one or more assignees or sub-assignees by the Bank at any time, without the consent of the City. No such assignment shall be effective as against the City unless and until the assignor shall have filed with the City a copy of written notice thereof identifying the assignee. The City shall pay all Rental Payments due hereunder

to or at the direction of the Corporation or the assignee named in the most recent assignment or notice of assignment filed with the City.

**Section 12.02. Assignment and Subleasing by the City.** The City may not assign this Lease in whole or in part, and may not sublease the Projects in whole or in part as long as the Note remains outstanding, without the consent of the Corporation and the Bank.

**Section 12.03. Restriction on Mortgage or Sale of Projects.** Neither the Corporation nor the City shall mortgage, sell, assign, transfer or convey the Projects or any portion thereof during the term of this Lease, without the written consent of the Bank.

### ARTICLE XIII EVENTS OF DEFAULT, REMEDIES

**Section 13.01. Events of Default Defined.** The following shall be "events of default" under this Lease and the terms "events of default" and "default" shall mean, whenever they are used in this Lease, with respect to the Projects, any one or more of the following events:

(a) Failure by the City to pay any Rental Payment or other payment required to be paid under this Lease at the time specified herein and the continuation of said failure for a period of three (3) days after telephonic or telegraphic notice given by the Corporation that the payment referred to in such notice has not been received, such telephonic or telegraphic notice to be subsequently confirmed in writing, or after written notice.

(b) Failure by the City to return the Projects to the Corporation within fifteen (15) days after the occurrence of an Event of Non-Appropriation by the City.

(c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Clauses (i) and (ii) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation, unless the Corporation, with the written consent of the Bank shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Corporation and the Bank will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected.

(d) the City 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 Act as now or in the future amended 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 City's consent or acquiescence, vacated or set aside within 60 days after such appointment; 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 receiver, trustee 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 Act, as now or in the future amended, which order or proceedings, if not consented to by it, shall not be dismissed, vacated, denied, set aside or stayed within 60 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 any stay is vacated or set aside; or

(e) the City shall return or abandon any portion of the Projects for a period of 30 days; or

(f) the Net Proceeds of any insurance claim or condemnation award shall be insufficient to repair or replace the Projects and the City shall not exercise its option to purchase the Projects under Section 9.01 hereof or does not elect to pay any excess cost to repair or replace the Projects pursuant to Section 9.02 hereof; or

(g) the occurrence of an Event of Non-Appropriation.

The provisions of this Section 13.01 and Section 13.02 are subject to the following limitation: (i) the City shall be obligated to pay the Rental Payments and Additional Payments only during the then current Lease term, except as otherwise expressly provided in this Lease; and (ii) if, by reason of *force majeure*, the City is unable in whole or in part to carry out its obligations under this Lease with respect to the Projects, other than its obligation to pay Rental Payments with respect thereto which shall be paid when due notwithstanding the provisions of this paragraph. The City shall not be deemed in default during the continuance of such inability up to a period of six (6) months from the inception thereof. The term "*force majeure*" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other labor disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of the City and not resulting from its negligence. The City agrees, however, to remedy, with all reasonable dispatch, the cause or causes preventing the City from carrying out its obligations under this Lease; provided that the settlement of strikes, lockouts and other labor disturbances shall be entirely within the discretion of the City and the City shall not be required to make settlement of strikes, lockouts and other labor disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the City unfavorable to the City.

**Section 13.02. Remedies on Default.** Whenever any event of default referred to in Section 13.01 hereof shall have happened and be continuing with respect to the Projects, the Corporation shall have the right, at its option and without any further demand or notice, to take one or any combination of the following remedial steps:

(a) The Corporation, with or without terminating this Lease may declare all Rental Payments due or to become due during the term of the Lease to be immediately due and payable by the City, whereupon such Rental Payments shall be immediately due and payable.

(b) The Corporation, with or without terminating this Lease, may repossess the Projects or any portion thereof by giving the City written notice to deliver and/or return to the Corporation any portion of the Projects whereupon the City shall do so in the manner provided in Section 13.03; or in the event the City fails

to do so within ten days after receipt of such notice, the Corporation may enter upon the Projects and take possession of any portion thereof and charge the City for costs incurred in repossessing such portion of the Projects, including reasonable attorneys' fees. The City hereby expressly waives any damages occasioned by such repossession. If the Projects or any portion of it has been destroyed, wasted, or damaged beyond repair, the City shall pay the applicable Prepayment Price of the Projects, as set forth in Schedule 3 (less credit for Net Proceeds), to the Corporation. The City shall continue to be responsible for the payment of Rental Payments. If this Lease has not been terminated, the Corporation shall return the Projects or any portion thereof to the City, at the City's expense, when the event of default is cured.

(c) If the Corporation terminates this Lease and takes possession of the Projects or any portion thereof, the Corporation shall within a commercially reasonable period thereafter (such period to be in any event not more than two [2] years) use its best efforts to sell the Projects or any portion thereof in a commercially reasonable manner at public or private sale in accordance with applicable State laws. The Corporation shall apply the proceeds of such sale to pay the following items in the following order: (a) all amounts owed to the Bank under the Note; (b) all costs incurred in securing possession of the Projects; (c) all expenses incurred in completing the sale; (d) the applicable Prepayment Price of the Projects; and (e) the balance of any Rental Payments owed by the City. Any sale proceeds remaining after the requirements of clauses (a), (b), (c), (d) and (e) have been met may be retained by the City.

(d) The Corporation may take any other action available at law or in equity to require the City to perform any of its obligations hereunder.

**Section 13.03. Return of Projects.** Upon the termination of this Lease prior to the payment of all Rental Payments in accordance with Schedule 2, the City, upon request of the Corporation, shall return the Projects or any portion thereof to the Corporation in the condition, repair, appearance and working order required in Section 8.03, in the following manner as may be specified by the Corporation; (i) with respect to such portions of the Projects as are deemed personal property under this Lease (a) by delivering such portion of the Projects, at the City's cost and expense, to such place within the State as the Corporation shall specify, or (b) by loading such portions of the Projects, at the City's cost and expense, on board such carrier as the Corporation shall specify and shipping the same, freight prepaid, to the place specified by the Corporation; and (ii) with respect to such portions of the Assets and the Projects as are deemed real property or fixtures under this Lease, (a) by executing such documents as the Corporation reasonably deems necessary to transfer all of the City's right, title and interest in and to such Projects to the Corporation, and (b) by paying all reasonable costs and expenses whether incurred by the Corporation or the Bank (including attorneys' fees) with respect to such transfer of the Projects. If the City refuses to return the Projects in the manner designated, the Corporation may repossess the Projects and charge to the City the costs of such repossession or pursue any remedy described in Section 13.02.

**Section 13.04. No Remedy Exclusive.** No remedy conferred upon or reserved to the Corporation by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by the Corporation or its assignee.

**Section 13.05. Late Charge.** Whenever any Event of Default referred to in Section 13.01(a) hereof shall have happened and be continuing with respect to the Projects, the Corporation shall have the right, at its

option and without any further demand or notice, to require a late payment charge for each 30 day period or part thereof during which such event of default occurs equal to two percent (2%) above the interest rate being charged on the Note the delinquent amount, and the City shall be obligated to pay the same immediately upon receipt of the Corporation's written invoice therefor; provided, however, that this Section 13.05 shall not be applicable if or to the extent that the application thereof would affect the validity of this Lease.

**Section 13.06. Waivers.** In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 13.07. Agreement to Pay Attorney Fees and Expenses.** In the event that either party hereto shall default under any of the provisions hereof and the non-defaulting party shall employ attorneys or incur other expenses for the collection of Rental Payments and Additional Rentals, or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it shall pay on demand therefor to the non-defaulting party the fees of such attorneys and such other expenses so incurred by the non-defaulting party.

**Section 13.08. Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws.** Extension and Redemption Laws. The Corporation and the City agree, to the extent permitted by law, that in the case of a termination of the Lease Term by reason of an Event of Non-appropriation or an Event of Default, neither the Corporation nor the City, or any one claiming through or under either of them shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of this Lease; and the Corporation and the City, for themselves and all who may at any time claim through or under either of them each hereby waives, to the full extent that it may lawfully do so, the benefit of all such laws.

#### ARTICLE XIV MISCELLANEOUS PROVISIONS

**Section 14.01. Notices.** All notices, certificates, legal opinions or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered or certified form with postage fully prepaid to the addresses specified below; provided that the Corporation and the City, by notice given hereunder, may designate different addresses to which subsequent notices, certificates, legal opinions or other communications will be sent, to wit:

If to the City:                      City of Ozark, Missouri  
   205 North 1<sup>st</sup> Street  
   P.O. Box 295  
   Ozark, Missouri 65721

If to the Corporation:              The Public Funding Corporation of the City of Ozark, Mo.  
   205 North 1<sup>st</sup> Street  
   P.O. Box 295  
   Ozark, Missouri 65721

**Section 14.02. Financial Information.** During the term of this Lease, the City will annually provide the Corporation with current financial statements, budgets, and such other financial information relating to the ability of the City to continue this Lease as may be requested by the Corporation or its assignee.

**Section 14.03. Binding Effect.** This Lease shall inure to the benefit of and shall be binding upon the Corporation and the City and their respective successors and assigns subject to the provisions of Article XII hereof.

**Section 14.04. Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 14.05. Amendments, Changes and Modifications.** This Lease may be amended or any of its terms modified only by written document duly authorized, executed and delivered by the Corporation and the City.

**Section 14.06. Captions.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provision, Article, Section or Clause of this Lease.

**Section 14.07. Further Assurances and Corrective Instruments.** The Corporation and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Projects hereby leased or intended so to be, or for otherwise carrying out the expressed intention of this Lease.

**Section 14.08. Execution in Counterparts.** This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 14.09. Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Missouri.

**Section 14.10. Termination of Lease.** The Lease Agreement dated as of January 1, 1966, by and between the Corporation and the City is hereby terminated.

IN WITNESS WHEREOF, the Corporation has caused this Lease to be executed in its name by its duly authorized officer and the City has caused this Lease to be executed in its name by its duly authorized officer, as of the date first above written.

July 9, 2003

/ozark/finley.refund.2003/lease

THE PUBLIC FUNDING CORPORATION OF  
THE CITY OF OZARK, MO.

By: \_\_\_\_\_  
Name: Daniel L. Serven  
Title: President

SEAL

ATTEST:

By: \_\_\_\_\_  
Name: Amos Smith  
Title: Assistant Secretary

STATE OF MISSOURI        )  
                                      ) ss  
COUNTY OF CHRISTIAN    )

Before me a notary public in the state aforesaid, on this 9th day of July, 2003, in the County and State aforesaid, appeared Daniel L. Serven and Amos Smith, who being by me duly sworn, did say that they are the President and Assistant Secretary, respectively, of The Public Funding Corporation of the City of Ozark, Mo., a non-profit corporation, organized and existing under the laws of the State of Missouri, who are personally know to me to be the same persons who executed, as such officers, the within instrument on behalf of said Corporation, and such persons 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 notarial seal the day and year first above written.

\_\_\_\_\_  
Michelle L. Mueller, Notary Public

[SEAL]

My commission expires:



July 9, 2003

THE CITY OF OZARK, MISSOURI

By: \_\_\_\_\_  
Name: Donna McQuay  
Title: Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Name: Lana Calley  
Title: City Clerk

STATE OF MISSOURI       )  
                                  ) ss  
COUNTY OF CHRISTIAN    )

Before me a notary public in the state aforesaid, on this 9th day of July, 2003, in the County and State aforesaid, appeared Donna McQuay and Lana Calley, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ozark, Missouri, a political subdivision duly authorized, incorporated and existing under and by virtue of the Constitution and laws of the State of Missouri, who are personally know 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 notarial seal the day and year first above written.

\_\_\_\_\_  
Michelle L. Mueller, Notary Public

[SEAL]

My commission expires:

**SCHEDULE 1  
DESCRIPTION OF PROJECTS**

The water supply system operated by the Finley Valley Water Company further described as:

All personal property to include but not limited to the pump, pressure system, storage tanks, distribution lines and other inventory.

All right title and interest in all easements for water distribution lines, whether recorded or unrecorded, as now used or reserved for future use by Finley Valley Water Company or its successors described as follows:

All easements of record for water distribution lines to include but not limited to those described in Book 206, Page 318, Book 280, Page 4510, Book 280, Page 4508, Book 300, Page 846, and as shown in the plat books in the office of the Recorder of Deeds, Christian County, Missouri.

A PART OF LOT 14 AND ALL OF THE ROAD AND PART OF THE WELL TRACT, ALL LOCATED IN FINLEY VALLEY SUBDIVISION, ACCORDING TO PLAT FILED IN PLAT BOOK G AT PAGE 29, IN THE CHRISTIAN COUNTY RECORDER'S OFFICE DESCRIBED AS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 14 THENCE ALONG THE EAST LINE THEREOF N 02 DEGREES 27'W 15.00 FEET, THENCE N 87 DEGREES 41'W 169.00 FEET, THENCE S 02 DEGREES 27'W 84.00 FEET, THENCE S 87 DEGREES 41'E 208 FEET TO THE POINT OF BEGINNING. TRACT CONTAINS 0.41 ACRE MORE OR LESS. SUBJECT TO ALL RIGHT-OF-WAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

ALSO:

A PART OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER (NW 1/4 SE 1/4) OF SECTION 20, TOWNSHIP 27N, RANGE 21W, CHRISTIAN COUNTY, MISSOURI DESCRIBED AS COMMENCING AT THE SOUTHEAST CORNER OF LOT 14 OF FINLEY VALLEY SUBDIVISION, ACCORDING TO PLAT FILED IN PLAT BOOK G AT PAGE 29 IN THE CHRISTIAN COUNTY RECORDER'S OFFICE, THENCE S 87 DEGREES 43'E 20.00 FEET; THENCE S 02 DEGREES 13'W 20.00 FEET; THENCE N 87 DEGREES 43'W 20.00 FEET, THENCE N 02 DEGREES 13'E 10.00 FEET TO THE POINT OF BEGINNING. TRACT CONTAINS 0.01 ACRE MORE OR LESS. SUBJECT TO ALL RIGHT-OF-WAYS EASEMENT AND RESTRICTIONS OF RECORD.

THE NORTH 54 FEET OF LOT 14, FINLEY VALLEY SUBDIVISION, A SUBDIVISION IN CHRISTIAN COUNTY, MISSOURI.

# SCHEDULE 2

## SCHEDULE OF PAYMENTS

Date	Amount	Payment	Principal	Interest	Remaining Balance
07-09-2003 Variable Rate	3.625				
07-09-2003 Funding	185,000.00				185,000.00
08-01-2003 Regular Pmt		2,353.57	1,925.12	428.45	183,074.88
09-01-2003 Regular Pmt		2,353.57	1,782.10	571.47	181,292.78
10-01-2003 Regular Pmt		2,353.57	1,805.91	547.66	179,486.87
11-01-2003 Regular Pmt		2,353.57	1,793.30	560.27	177,693.57
12-01-2003 Regular Pmt		2,353.57	1,816.79	536.78	175,876.78
2003 Totals:		11,767.85	9,123.22	2,644.63	
01-01-2004 Regular Pmt		2,353.57	1,804.57	549.00	174,072.21
02-01-2004 Regular Pmt		2,353.57	1,810.20	543.37	172,262.01
03-01-2004 Regular Pmt		2,353.57	1,850.54	503.03	170,411.47
04-01-2004 Regular Pmt		2,353.57	1,821.63	531.94	168,589.84
05-01-2004 Regular Pmt		2,353.57	1,844.29	509.28	166,745.55
06-01-2004 Regular Pmt		2,353.57	1,833.07	520.50	164,912.48
07-01-2004 Regular Pmt		2,353.57	1,855.40	498.17	163,057.08
08-01-2004 Regular Pmt		2,353.57	1,844.58	508.99	161,212.50
09-01-2004 Regular Pmt		2,353.57	1,850.34	503.23	159,362.16
10-01-2004 Regular Pmt		2,353.57	1,872.16	481.41	157,490.00
11-01-2004 Regular Pmt		2,353.57	1,861.96	491.61	155,628.04
12-01-2004 Regular Pmt		2,353.57	1,883.44	470.13	153,744.60
2004 Totals:		28,242.84	22,132.18	6,110.66	

01-01-2005	Regular Pmt	2,353.57	1,873.65	479.92	151,870.95
02-01-2005	Regular Pmt	2,353.57	1,879.50	474.07	149,991.45
03-01-2005	Regular Pmt	2,353.57	1,930.68	422.89	148,060.77
04-01-2005	Regular Pmt	2,353.57	1,891.39	462.18	146,169.38
05-01-2005	Regular Pmt	2,353.57	1,912.02	441.55	144,257.36
06-01-2005	Regular Pmt	2,353.57	1,903.27	450.30	142,354.09
07-01-2005	Regular Pmt	2,353.57	1,923.54	430.03	140,430.55
08-01-2005	Regular Pmt	2,353.57	1,915.21	438.36	138,515.34
09-01-2005	Regular Pmt	2,353.57	1,921.19	432.38	136,594.15
10-01-2005	Regular Pmt	2,353.57	1,940.94	412.63	134,653.21
11-01-2005	Regular Pmt	2,353.57	1,933.25	420.32	132,719.96
12-01-2005	Regular Pmt	2,353.57	1,952.65	400.92	130,767.31

---

2005 Totals:		28,242.84	22,977.29	5,265.55	
--------------	--	-----------	-----------	----------	--

01-01-2006	Regular Pmt	2,353.57	1,945.38	408.19	128,821.93
02-01-2006	Regular Pmt	2,353.57	1,951.45	402.12	126,870.48
03-01-2006	Regular Pmt	2,353.57	1,995.87	357.70	124,874.61
04-01-2006	Regular Pmt	2,353.57	1,963.77	389.80	122,910.84
05-01-2006	Regular Pmt	2,353.57	1,982.28	371.29	120,928.56
06-01-2006	Regular Pmt	2,353.57	1,976.09	377.48	118,952.47
07-01-2006	Regular Pmt	2,353.57	1,994.23	359.34	116,958.24
08-01-2006	Regular Pmt	2,353.57	1,988.48	365.09	114,969.76
09-01-2006	Regular Pmt	2,353.57	1,994.69	358.88	112,975.07
10-01-2006	Regular Pmt	2,353.57	2,012.29	341.28	110,962.78
11-01-2006	Regular Pmt	2,353.57	2,007.20	346.37	108,955.58
12-01-2006	Regular Pmt	2,353.57	2,024.43	329.14	106,931.15

---

2006 Totals:		28,242.84	23,836.16	4,406.68	
--------------	--	-----------	-----------	----------	--

01-01-2007	Regular Pmt	2,353.57	2,019.78	333.79	104,911.37
02-01-2007	Regular Pmt	2,353.57	2,026.09	327.48	102,885.28
03-01-2007	Regular Pmt	2,353.57	2,063.49	290.08	100,821.79
04-01-2007	Regular Pmt	2,353.57	2,038.85	314.72	98,782.94
05-01-2007	Regular Pmt	2,353.57	2,055.16	298.41	96,727.78

06-01-2007 Regular Pmt	2,353.57	2,051.63	301.94	94,676.15
07-01-2007 Regular Pmt	2,353.57	2,067.57	286.00	92,608.58
08-01-2007 Regular Pmt	2,353.57	2,064.49	289.08	90,544.09
09-01-2007 Regular Pmt	2,353.57	2,070.93	282.64	88,473.16
10-01-2007 Regular Pmt	2,353.57	2,086.31	267.26	86,386.85
11-01-2007 Regular Pmt	2,353.57	2,083.91	269.66	84,302.94
12-01-2007 Regular Pmt	2,353.57	2,098.90	254.67	82,204.04
2007 Totals:	28,242.84	24,727.11	3,515.73	
01-01-2008 Regular Pmt	2,353.57	2,096.97	256.60	80,107.07
02-01-2008 Regular Pmt	2,353.57	2,103.51	250.06	78,003.56
03-01-2008 Regular Pmt	2,353.57	2,125.79	227.78	75,877.77
04-01-2008 Regular Pmt	2,353.57	2,116.72	236.85	73,761.05
05-01-2008 Regular Pmt	2,353.57	2,130.75	222.82	71,630.30
06-01-2008 Regular Pmt	2,353.57	2,129.97	223.60	69,500.33
07-01-2008 Regular Pmt	2,353.57	2,143.62	209.95	67,356.71
08-01-2008 Regular Pmt	2,353.57	2,143.31	210.26	65,213.40
09-01-2008 Regular Pmt	2,353.57	2,150.00	203.57	63,063.40
10-01-2008 Regular Pmt	2,353.57	2,163.07	190.50	60,900.33
11-01-2008 Regular Pmt	2,353.57	2,163.47	190.10	58,736.86
12-01-2008 Regular Pmt	2,353.57	2,176.14	177.43	56,560.72
2008 Totals:	28,242.84	25,643.32	2,599.52	
01-01-2009 Regular Pmt	2,353.57	2,177.01	176.56	54,383.71
02-01-2009 Regular Pmt	2,353.57	2,183.81	169.76	52,199.90
03-01-2009 Regular Pmt	2,353.57	2,206.40	147.17	49,993.50
04-01-2009 Regular Pmt	2,353.57	2,197.51	156.06	47,795.99
05-01-2009 Regular Pmt	2,353.57	2,209.19	144.38	45,586.80
06-01-2009 Regular Pmt	2,353.57	2,211.27	142.30	43,375.53
07-01-2009 Regular Pmt	2,353.57	2,222.54	131.03	41,152.99
08-01-2009 Regular Pmt	2,353.57	2,225.11	128.46	38,927.88
09-01-2009 Regular Pmt	2,353.57	2,232.06	121.51	36,695.82
10-01-2009 Regular Pmt	2,353.57	2,242.72	110.85	34,453.10
11-01-2009 Regular Pmt	2,353.57	2,246.02	107.55	32,207.08
12-01-2009 Regular Pmt	2,353.57	2,256.28	97.29	29,950.80
2009 Totals:	28,242.84	26,609.92	1,632.92	

01-01-2010 Regular Pmt	2,353.57	2,260.08	93.49	27,690.72
02-01-2010 Regular Pmt	2,353.57	2,267.13	86.44	25,423.59
03-01-2010 Regular Pmt	2,353.57	2,281.89	71.68	23,141.70
04-01-2010 Regular Pmt	2,353.57	2,281.33	72.24	20,860.37
05-01-2010 Regular Pmt	2,353.57	2,290.55	63.02	18,569.82
06-01-2010 Regular Pmt	2,353.57	2,295.60	57.97	16,274.22
07-01-2010 Regular Pmt	2,353.57	2,304.41	49.16	13,969.81
08-01-2010 Regular Pmt	2,353.57	2,309.96	43.61	11,659.85
09-01-2010 Regular Pmt	2,353.57	2,317.17	36.40	9,342.68
10-01-2010 Regular Pmt	2,353.57	2,325.35	28.22	7,017.33
11-01-2010 Regular Pmt	2,353.57	2,331.67	21.90	4,685.66
12-01-2010 Regular Pmt	2,353.57	2,339.42	14.15	2,346.24

---

2010 Totals:	28,242.84	27,604.56	638.28	
--------------	-----------	-----------	--------	--

01-01-2011 Regular Pmt	2,353.57	2,346.25	7.32	-0.01
------------------------	----------	----------	------	-------

---

2011 Totals:	2,353.57	2,346.25	7.32	
--------------	----------	----------	------	--

Loan Totals:	211,821.30	185,000.01	26,821.29	
--------------	------------	------------	-----------	--

Printed on: 06-30-2003

**SCHEDULE 3  
PREPAYMENT PRICE SCHEDULE**

All amounts required to be paid by the City pursuant to Section 6.04 hereof.

## ASSIGNMENT

This Assignment (the "Assignment") dated as of this 1st day of July, 2003 is by and between The Public Funding Corporation of the City of Ozark, Mo., a Missouri not for profit corporation, Assignor, herein (the "Corporation"), to Ozark Bank, a Missouri banking corporation, Assignee, herein (the "Bank").

### W-I-T-N-E-S-S-E-T-H:

For value received and as additional security for the loan herein mentioned, the Corporation hereby grants, transfers and assigns unto the Bank, its successors and assigns, all the right, title and interest of the Corporation in and to all of the rents, issues, profits, revenues, royalties, rights and benefits (the "Rental Payments") of a certain Lease Agreement (the "Lease") dated as of July 1, 2003 by and between the Corporation and the City of Ozark, Missouri (the "City") all as more particularly described in said Lease, as well as all of its interest in and to the Project.

The term of this Assignment shall be until the certain Note made by the Corporation payable to the order of the Bank and dated July 9, 2003 for the principal sum of One Hundred Eighty-Five Thousand Dollars (\$185,000) (the "Note") and all future advances, the aggregate obligation being referred to as the "Secured Indebtedness" is paid in full.

And the Corporation does hereby authorize and empower the Bank, its successors and assigns, to collect the Rental Payments as they shall become due to the Corporation, and does hereby direct the City, its successors and assigns, to pay such Rental Payments as may now be due or shall hereafter become due to the Bank, its successors and assigns, upon demand for payment thereof by the Bank, its successors and assigns. It is understood and agreed, however, that no such demand shall be made unless and until there has been either a default in the payment of the Secured Indebtedness or a failure by the Corporation to carry out the covenants, agreements and obligations set out in any instrument given with respect to the Secured Indebtedness, including but not limited to the Note, the Lease and this Assignment; but the City shall pay the Rental Payments to the Bank upon such demand without further inquiry. Until such demand is made, the Corporation is authorized to collect, or continue collecting, such Rental Payments, but that such privilege to collect or continue collecting the Rental Payments shall not operate to permit the collection by the Corporation, its successors or assigns, of any installment of Rental Payments in advance of the date prescribed in the Lease for the payment thereof.

This Assignment is given as additional security for the performance of each and all of the obligations and covenants of the Note and all other documents and security instruments given with respect to the Secured Indebtedness; and the amounts collected hereunder, less the expense of collection, including reasonable attorney's fees, shall be applied to the Secured Indebtedness.

The Corporation hereby covenants and warrants that it has not executed any prior assignment or pledge of the Lease or the Rental Payments thereunder nor performed any act or executed any other instrument which might prevent the Bank from operating under any of the terms and conditions of this Assignment, or which would limit the Bank in such operation.

The Corporation hereby agrees that so long as the Secured Indebtedness or any part thereof, shall remain unpaid, the Corporation will make no other assignment, pledge or disposition of such Lease or of the Rental Payments thereunder.

Subject to the terms of the Lease and Note, the Corporation agrees that at its sole expense it (a) will duly and punctually perform and comply with any and all representations, warranties, covenants, terms and provisions to be performed or complied with by it in any of the aforesaid Lease, (b) will not voluntarily



terminate, cancel or waive its rights or the obligations of any other party under any of the Lease without the express written consent of the Bank, (c) will maintain such Lease in full force and effect, (d) will enforce the Lease in accordance with its terms, (e) will appear in and defend any action or proceeding arising under or in any manner connected with any of the terms of the Lease or the representations, warranties, covenants and agreements thereof or the other party or parties thereto, (f) will furnish the Bank upon demand with executed copies of all leases now or hereafter created on the premises, (g) if requested by the Bank, at least fifteen (15) days prior to execution of any lease relating to the premises, will submit it to the Bank for approval, which approval shall not be unreasonably withheld, (h) will not accept payment of rent for the Lease more than two (2) months in advance without the Bank's express consent, except prepayments in the nature of security for the performance by the City thereunder, and (i) will take all additional action to these ends as from time to time may be requested in writing by the Bank in connection with the Lease.

The Corporation agrees from time to time to execute and deliver all such instruments and to take all such action for the purpose of further effectuating this Assignment and perfecting the Bank's interest therein, and the carrying out of the terms hereof, as may be requested in writing by the Bank, including the execution of UCC-1 financing statements.

Neither the execution of this Assignment nor any action or inaction on the part of the Bank under this Assignment shall release the Corporation from any of its obligations under any or all of the aforesaid Lease, or constitute an assumption of any such obligations on the part of the Bank. No action or failure to act on the part of the Corporation shall adversely affect or limit in any way the rights of the Bank under this Assignment or under any and all provisions of the aforesaid Lease.

It is understood and agreed that neither the existence of this Assignment nor the exercise of its privilege to collect the Rental Payments thereunder shall be construed as a waiver by the Bank, or its successors and assigns, of the right to enforce payment of the Secured Indebtedness in strict accordance with the terms and provisions of the Note for which this Assignment is given as additional security.

July 9, 2003

bonds/ozark/finley.refund2003/assignment

IN WITNESS WHEREOF, the Corporation hereto caused this Assignment to be executed and delivered on this 9th day of July, 2003.

**THE PUBLIC FUNDING CORPORATION  
OF THE CITY OF OZARK, MO.**

By: \_\_\_\_\_  
Name: Daniel L. Serven  
Title: President

[SEAL]

ATTEST:

By: \_\_\_\_\_  
Name: Amos Smith  
Title: Assistant Secretary

STATE OF MISSOURI            )  
  )ss.  
COUNTY OF CHRISTIAN        )

Before me personally appeared Daniel L. Serven and Amos Smith as President and Assistant Secretary, respectively, of The Public Funding Corporation of the City of Ozark, Mo., a Missouri corporation, to me well known, and known to me to be the persons described in and who executed the foregoing instrument as such officers of such corporation, and they acknowledged to and before me that they executed the instrument as such officers of the corporation, and that the instrument is the free act and deed of the corporation.

Witness my hand and official seal this 9th day of July, 2003.

\_\_\_\_\_  
Michelle L. Mueller, Notary Public

[SEAL]

My Commission Expires:

July 9, 2003

bonds/ozark/finley.refund2003/assignment

Agreed to:

CITY OF OZARK, MISSOURI

[SEAL]

By: \_\_\_\_\_  
Name: Donna McQuay  
Title: Mayor

ATTEST:

By: \_\_\_\_\_  
Name: Lana Calley  
Title: City Clerk

STATE OF MISSOURI            )  
  )ss.  
COUNTY OF CHRISTIAN        )

Before me personally appeared Donna McQuay and Lana Calley as Mayor and City Clerk, respectively, of the City of Ozark, Missouri, a body corporate and political subdivision of the State of Missouri, to me well known, and known to me to be the persons described in and who executed the foregoing instrument as such officers of such City, and they acknowledged to and before me that they executed the instrument as such officers of the City, and that the instrument is the free act and deed of the City.

Witness my hand and official seal this 9th day of July, 2003.

\_\_\_\_\_  
Michelle L. Mueller, Notary Public

[SEAL]

My Commission Expires:

# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional) Carson W. Elliff, Attorney (417) 883-7411	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)  Carson W. Elliff, Attorney Yates, Mauck, Bohrer, Elliff & Croessmann, P.C. 3333 East Battlefield, Suite 1000 Springfield, MO 65804	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (1a or 1b) - do not abbreviate or combine names				
1a. ORGANIZATION'S NAME The Public Funding Corporation of the City of Ozark, Mo.				
OR				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 205 N. 1st Street, Box 295		CITY Ozark	STATE MO	POSTAL CODE 65721
1d. TAX ID # SSN OR EIN 43-1605086		1e. TYPE OF ORGANIZATION Non-profit Corporation	1f. JURISDICTION OF ORGANIZATION Missouri	1g. ORGANIZATIONAL ID #, if any N00045095
<input type="checkbox"/> NONE				

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (2a or 2b) - do not abbreviate or combine names				
2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d. TAX ID # SSN OR EIN		2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
<input type="checkbox"/> NONE				

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only <u>one</u> secured party name (3a or 3b)				
3a. ORGANIZATION'S NAME Ozark Bank				
OR				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS Box 220		CITY Ozark	STATE MO	POSTAL CODE 65721
				COUNTRY U.S.A.

4. This FINANCING STATEMENT covers the following collateral:

Please See Attached "Exhibit A"

5. ALTERNATIVE DESIGNATION (if applicable):		LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum		7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (if applicable) (optional)		All Debtors		Debtor 1	Debtor 2
8. OPTIONAL FILER REFERENCE DATA							

City of Ozark-2003 Refunding of Finley Valley Water Company 03-2416

# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional) Carson W. Elliff, Attorney (417) 883-7411	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)  Carson W. Elliff, Attorney Yates, Mauck, Bohrer, Elliff & Croessmann, P.C. 3333 East Battlefield, Suite 1000 Springfield, MO 65804	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME The City of Ozark, Missouri				
OR				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 205 N. 1st Street, Box 295		CITY Ozark	STATE MO	POSTAL CODE 65721
COUNTRY U.S.A.				
1d. TAX ID #: SSN OR EIN 44-6000241	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION Municipality	1f. JURISDICTION OF ORGANIZATION Missouri	1g. ORGANIZATIONAL ID #, if any <input checked="" type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
COUNTRY				
2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME The Public Funding Corporation of the City of Ozark, Mo.				
OR				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 205 N. 1st Street, Box 295		CITY Ozark	STATE MO	POSTAL CODE 65721
COUNTRY U.S.A.				

4. This FINANCING STATEMENT covers the following collateral:

Please See Attached "Exhibit A"

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)		All Debtors	Debtor 1	Debtor 2	
8. OPTIONAL FILER REFERENCE DATA						

City of Ozark-2003 Refunding of Finley Valley Water Company 03-2416

# **EXHIBIT "A"**

ALL OF THE RIGHT, TITLE AND INTEREST OF THE DEBTOR IN AND TO ALL OF THE RENTS, ISSUES, PROFITS, REVENUES, ROYALTIES, RIGHTS AND BENEFITS OF A CERTAIN LEASE AGREEMENT DATED AS OF JULY 1, 2003 BY AND BETWEEN THE PUBLIC FUNDING CORPORATION OF THE CITY OF OZARK, MO., (THE "CORPORATION") AND THE CITY OF OZARK, MISSOURI (THE "CITY"). ALL PERSONAL PROPERTY OF THE FINLEY VALLEY WATER COMPANY INCLUDING BUT NOT LIMITED TO THE PUMP PRESSURE SYSTEM, STORAGE TANKS, DISTRIBUTION LINES AND OTHER INVENTORY.

## CLOSING CERTIFICATE OF OZARK BANK

Ozark Bank, Ozark, Missouri (the "Lender") in connection with a \$185,000 loan to The Public Funding Corporation of the City of Ozark, Missouri (the "Corporation"), pursuant to a promissory note dated July 9, 2003 (the "Note"), states and certifies as follows:

1. Power and Authority. The Lender is a banking corporation duly authorized to conduct business under laws of the State of Missouri.

2. Purpose of Loan. The Lender understands that the Corporation shall use the proceeds of the Note to refund a loan in the original principal amount of \$275,000, the records of which were used to acquire Finley Valley Water Company (the "Projects") for the City of Ozark, Missouri (the "City"). Such Projects shall be leased by the Corporation to the City pursuant to a Lease Agreement dated as of July 1, 2003 (the "Lease") to permit it to perform functions in furtherance of its public purposes.

3. Security for Loan. The rental payments (the "Rental Payments") to be made by the City pursuant to the Lease have been assigned by the Corporation to the Lender pursuant to the terms of an Assignment dated as of July 1, 2003 (the "Assignment") to secure repayment of the Note.

4. Nature of the Lease. The requirement of the City to make Rental Payments under the Lease is a limited obligation of the City as more fully set forth in the Lease. Such Rental Payments, under the Lease, are from year to year only; are obligations of the City only to the extent they are currently budgeted obligations; are subject to annual appropriation during the budgeting process by the City; and are not general obligations or other indebtedness of the City nor a mandatory payment obligation of the City in any ensuing fiscal year beyond the current fiscal year. The Rental Payments under the Lease do not create an indebtedness nor pledge the credit or taxing power of the City or of the State of Missouri or any political subdivision thereof. The Bank understands that the Corporation may not have any other source of income other than the Rental Payments.

5. Sufficiency of Information. The Lender has been provided with all financial data or other information requested by it from the City and the Corporation.

DATED this 9th day of July, 2003.

OZARK BANK

By: \_\_\_\_\_  
Name: R. Scott Harris  
Title: Sr. Executive Vice President

THE PUBLIC FUNDING CORPORATION OF THE CITY OF  
OZARK, MO 205 N 1ST ST  
OZARK, MO 65721

70051642 FIN  
OZARK BANK  
P O BOX 220  
OZARK, MO 65721



PAID

1-3-2011

Loan Number TIN #43-1605086

Date 07-09-2003

Maturity Date 01-01-2011

Loan Amount \$ 185,000.00

Renewal Of \_\_\_\_\_

**BORROWER'S NAME AND ADDRESS**

"I" includes each borrower above, jointly and severally.

**LENDER'S NAME AND ADDRESS**

"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of ONE HUNDRED EIGHTY FIVE THOUSAND AND NO/100 Dollars \$ 185,000.00

☒ **Single Advance:** I will receive all of this principal sum on 07-09-2003. No additional advances are contemplated under this note.

☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On \_\_\_\_\_ I will receive the amount of \$ \_\_\_\_\_ and future principal advances are contemplated.

**Conditions:** The conditions for future advances are \_\_\_\_\_

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on \_\_\_\_\_.

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

**INTEREST:** I agree to pay interest on the outstanding principal balance from 07-09-2003 at the rate of 3.650 % per year until 01-01-2011.

☐ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be \_\_\_\_\_ the following index rate: \_\_\_\_\_

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as \_\_\_\_\_.  
A change in the interest rate will take effect \_\_\_\_\_.

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than \_\_\_\_\_ % or less than \_\_\_\_\_ %.

**Effect of Variable Rate:** A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ \_\_\_\_\_

**ACCUAL METHOD:** Interest will be calculated on a ACTUAL/360 basis.

**POST MATURITY RATE:** I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to \_\_\_\_\_.

☒ **LATE CHARGE:** If a payment is made more than 15 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF \$1.00.

\_\_\_\_\_ are not included in the principal amount