CITY OF JOPLIN, MISSOURI,
As Lessor,

AND

HEARTLAND PET FOODS MANUFACTURING, INC.,
As Lessee

LEASE AGREEMENT

Dated as of August 1, 2016

Relating to:

$83,250,000
(Aggregate Maximum Principal Amount)
City of Joplin, Missouri
Taxable Industrial Development Revenue Bonds
(Heartland Pet Foods Manufacturing Project)
Series 2016

Certain rights of the City of Joplin, Missouri (the "City"), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., St. Louis, Missouri, as Trustee under the Trust Indenture dated as of August 1, 2016, between the City and the Trustee.

LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of August 1, 2016 (the "Lease"), is between the **CITY OF JOPLIN, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, as lessor (the "City"), and **HEARTLAND PET FOODS MANUFACTURING, INC.**, a corporation organized and existing under the laws of the State of Delaware, as lessee (the "Company");

RECITALS:

1. The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (the "Act"), to purchase, construct, extend, improve and equip certain "projects" (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed an ordinance (the "Ordinance") on August 15, 2016, authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Heartland Pet Foods Manufacturing Project), Series 2016, in the maximum principal amount of $83,250,000 (the "Bonds"), for the purpose of acquiring, constructing, improving, purchasing, equipping and installing an expansion of an existing dry pet food manufacturing facility on approximately 46 acres of land located at 8101 East 32nd Street in the City (the "Project Site," as more fully described on **Exhibit A** hereto), including such land and the associated buildings, structures and fixtures (the "Project Improvements," as more fully described on **Exhibit B** hereto) and equipment (the "Project Equipment," as more fully described on **Exhibit B** hereto, the Project Site, the Project Improvements, and the Project Equipment collectively being the "Project").

3. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the "Indenture") with UMB Bank, N.A., St. Louis, Missouri, as Trustee (the "Trustee"), for the purpose of issuing and securing the Bonds, as therein provided, and to enter into this Lease with the Company under which the City will construct, improve and equip the Project, and lease the Project to the Company in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds.

4. In consideration of the terms and conditions of this Lease, the Ordinance, issuance of the Bonds and certain other agreements, the City and the Company have concurrently herewith entered into a Performance Agreement of even date herewith (the "Performance Agreement"), pursuant to which the Company has agreed to make certain payments in lieu of taxes.

5. Pursuant to the foregoing, the City desires to lease the Project to the Company and the Company desires to lease the Project from the City, for the rentals and upon the terms and conditions hereinafter set forth.

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

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease and the words and terms defined in **Section 101** of the Indenture which definitions are hereby incorporated herein by reference, and terms defined, the following words and terms as used in this Lease shall have the following meanings:

"Additional Rent" means the additional rental described in **Sections 5.2** and **6.2** of this Lease.

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

"Environmental Law" means and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, any other "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials, as now or at any time hereafter in effect.

"Full Insurable Value" means the actual replacement cost of the Project less physical depreciation as determined in accordance with **Section 7.1(a)** hereof.

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

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

"Plans and Specifications" means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time prior to the Completion Date, the same being duly certified by the Company, and on file with the Company, or with the architect/engineers retained by the Company for the Project, and which shall be available for reasonable inspection by the City, the Trustee and their duly appointed representatives.

"Project Site" means the real property upon which the property comprising the Project is located as more fully described in **Exhibit A**.

"Remedies Notice" means notice to the Company from the City or the Trustee that the City or the Trustee intends to exercise remedies hereunder.

Section 1.2. Rules of Interpretation.

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

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

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

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

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

(f) Whenever an item or items are listed after the word "including," such listing is not intended to be a listing that excludes items not listed.

ARTICLE II

REPRESENTATIONS

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

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

(b) As of the date of delivery hereof, the City has acquired the Project Site and agrees to construct and improve or cause to be constructed, improved and installed thereon the Project Improvements and Project Equipment. The City agrees to lease the Project to the Company and sell the Project to the Company if the Company exercises its option to purchase the Project or upon termination of this Lease as provided for herein, all for the purpose of furthering the public purposes of the Act;

(c) The purchase, construction, extension, improvement and installation of the Project and the leasing of the Project by the City to the Company will further the public purposes of the Act;

(d) To the City's knowledge, no member of the City Council or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby;

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

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

(g) The City will not knowingly take any affirmative action that would permit a lien to be placed on the Project or pledge the revenues derived therefrom for any bonds or other obligations, other than the Bonds, except with the written consent of the Authorized Company Representative; and

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

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

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

(b) The Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its members the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives;

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Company will not, to the best of the Company's knowledge, conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Company is a party or by which it or any of its property is bound, or the Company's organizational documents, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party;

(d) The estimated costs of the construction, improvement and equipping of the Project are in accordance with sound engineering and accounting principles;

(e) The Project will comply in all material respects with all presently applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations and the Project Equipment will be located at the Project Site; and

(f) The Project is located wholly within the corporate limits of the City of Joplin, Missouri.

ARTICLE III

GRANTING PROVISIONS

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

Section 3.2. Lease Term. This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have a term commencing as of the date of this Lease and terminating on December 1, 2027.

Section 3.3. Possession and Use of the Project.

(a) The City covenants and agrees that as long as neither the City nor the Trustee has exercised any of the remedies set forth in **Section 12.2** hereof following the occurrence and continuance of an Event of Default, , as defined in **Section 12.1** hereof, the Company shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the City's and the Trustee's right of access pursuant to **Section 10.3** hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII** hereof, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Company, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project and will defend the Company's enjoyment and possession thereof against all parties.

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

Section 3.4. Title to the Project. The City shall be the sole owner of the Project during the Lease Term.

ARTICLE IV

CONSTRUCTION, IMPROVEMENT AND INSTALLATION OF THE PROJECT

Section 4.1. Issuance of the Bonds. To provide funds for the payment of Project Costs, the City agrees that, upon request of the Company, it will issue, sell and cause to be delivered the Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for deposit in the Project Fund. The Trustee shall promptly deposit such proceeds, when received, as provided in the Indenture, to be used and applied as hereinafter provided in this Lease and in the Indenture. Alternatively, the Trustee may, (pursuant to **Section 208(e)** of the Indenture) endorse the Bonds in an amount equal to the requisition certificates submitted pursuant to **Section 4.4** below. In that event, the purchaser of the Bonds shall be deemed to have deposited funds with the Trustee in an amount equal to the amount stated in the requisition certificate.

Section 4.2. Acquisition, Construction, Improvement and Installation of the Project. The City and the Company agree that the Company, as the agent of the City, shall, but solely from the Project Fund, acquire, construct, improve and install the Project Improvements and the Project Equipment as follows:

(a) The City has acquired the Project Site prior to the execution hereof. Concurrently with the execution of this Lease, (i) a deed and any other necessary instruments of transfer will be delivered to the City and placed of record, and (ii) the commitment for title insurance or ownership and encumbrance report required by **Article VII** hereof will be delivered to the City and the Trustee;

(b) On behalf of the City, the Company will construct and improve the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that would alter the intended purpose of the Project may be made only with the prior written approval of the City. The Company agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Company for its purposes, and that all real and personal property described in the Plans and Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.2**;

(c) The Company will purchase and install the Project Equipment at the Project Site. The Company shall transfer title to the Project Equipment to the City from time to time by bills of sale or other instruments of transfer. On or before March 1 of each year or such other date required by law for reporting personal property declarations, the Company shall furnish to the City, Jasper County and the Trustee a list of items (based on the Company's internal record keeping) comprising the Project Equipment as of January 1 of such year. If the Company makes additions to, or replacements of, the Project Equipment for the purpose of repairing damage or

normal wear and tear, such additions and/or replacements shall become part of the Project Equipment and shall be entitled to the tax exemption afforded by virtue of the City's ownership of the Project Equipment (such addition or replacement may be placed in service on or after the Completion Date). The improper inclusion or exclusion of any Project Equipment pursuant to such list may be rectified by the Company within 30 days after notice of such improper inclusion or exclusion. The improper inclusion or exclusion of an item on or from such list shall not affect the items comprising the Project Equipment for the purpose of this Lease or title thereto as intended by the parties hereto. The Company shall provide such information to the City, Jasper County and the Trustee as may be requested in order to ensure that such list corresponds to the list of Project Equipment maintained by the Trustee pursuant to **Section 10.8**. Each bill of sale or other instrument of transfer and each personal property declaration form shall be of sufficient specificity so as to enable Jasper County's officials (including representatives of the Assessor's office) to determine which personal property as reported on the annual personal property declaration constitutes Project Equipment (and therefore is owned by the City) and which personal property does not constitute Project Equipment (and therefore is owned by the Company). The City and the Company agree that, pursuant to **Section 4.8**, property purchased in whole or in part by the Company with its own funds, and not Bond proceeds, shall not constitute part of the Project Equipment and shall remain the property of the Company and therefore subject to taxation.

(d) The Company will comply with the provisions of Section 107.170 of the Revised Statutes of Missouri, as amended, to the extent applicable to the construction of the Project Improvements; and

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

Section 4.3. Project Costs. The City hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a certificate pursuant to **Section 4.4** hereof. The Company may not submit any requisition certificates for Project Costs incurred after the Completion Date. The Company must submit all requisitions for Project Costs incurred before the Completion Date within three months after the Completion Date.

Section 4.4. Payment for Project Costs. All Project Costs as specified in **Section 4.3** hereof shall be paid by the Trustee from the Project Fund as more fully provided in the Indenture, and the City hereby authorizes and directs the Trustee to make disbursements from the Project Fund, upon receipt by the Trustee of certificates in substantially the form attached hereto as **Exhibit C**, signed by an Authorized Company Representative, which disbursements may be recorded via a transaction entry on the trust records held by the Trustee. The Trustee may rely conclusively on any such certificate and shall not be required to make any independent investigation in connection therewith. The submission of any requisition certificate by an Authorized Company Representative shall constitute unto the Trustee an irrevocable determination that all conditions precedent to the payments requested have been satisfied.

Section 4.5. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee by a certificate signed by the Authorized Company Representative stating (a) the acquisition, construction, improvement and installation of the Project has been completed in accordance

with the Plans and Specifications, (b) that all costs and expenses incurred in the acquisition, construction, improvement and installation of the Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Company, and (c) amounts to be retained by Trustee with respect to item (b) above. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The Company and the City agree to cooperate in causing such certificate to be furnished to the Trustee.

Section 4.6. Surplus or Deficiency in Project Fund.

(a) Upon receipt of the certificate described in **Section 4.5** hereof, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely to (1) the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (2) at the option of the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

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

Section 4.7. Project Property of City. The Project Site, the Project Improvements and the Project Equipment, which the Company desires to convey to the City, including all work and materials on the Project as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the City, subject only to this Lease, the Indenture, Permitted Encumbrances, the Financing Documents and the Leasehold Security Agreement, if any.

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

Section 4.9. Environmental Matters. The Company acknowledges that is it responsible for maintaining the Project in compliance with all Environmental Laws. In the event that the Company fails to undertake to comply with any final, non-appealable order issued by any local, state or federal authority under applicable Environmental Law, the City or the Trustee, immediately after notice to the Company, may elect (but shall not be required) to undertake such compliance. Any moneys expended by the City or the Trustee in efforts to comply with any applicable Environmental Law (including the reasonable cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and reasonable attorneys' fees) shall be due and payable as Additional Rent hereunder with interest thereon at the average rate of interest per annum on the Bonds, plus two (2)

percentage points, from the date such cost is incurred. There shall be unlimited recourse to the Company to the extent of any liability incurred by the City or the Trustee with respect to any breaches of the provisions of this section.

The Company shall and does hereby indemnify the City, the Trustee and the Bondowners and agree to defend and hold them harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs associated incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the Project during the term of this Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim is raised before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, this indemnity shall only relate to claims resulting from the City's ownership of the Project and the Trustee's acceptance of its duties as Trustee hereunder.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Company covenants and agrees to pay to the Trustee in same day funds for the account of the City during this Lease Term, for deposit in the Bond Fund on or before 11:00 a.m., Trustee's local time, on or before each December 1, commencing December 1, 2016 and continuing until the principal of and interest on the Bonds shall have been fully paid, an amount which, when added to any collected funds then on deposit in the Bond Fund and available for the payment of principal of the Bonds and the interest thereon on such Payment Date, shall be equal to the amount payable on such Payment Date as interest on the Bonds (except as offset pursuant to the right of the Company described herein). On **December 1, 2027** (or such earlier date as the Company may elect to redeem the Bonds), the Company shall also pay an amount equal to all principal then due on the Bonds in connection with such maturity or redemption (subject to the right of the Company to surrender the Bonds in lieu of such payment). All payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture. In furtherance of the foregoing, and notwithstanding any other provision in this Lease, the Indenture, the Bond Purchase Agreement or the Performance Agreement to the contrary, and provided that the Company is the sole holder of the Bonds, the Company may set-off the then-current Basic Rent payment against the City's obligation to the Company as Bondholder under the Indenture in lieu of delivery of the Basic Rent on any Payment Date, without providing notice of such set-off to the Trustee. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company will (a) if the Trustee holds the Bonds, notify the Trustee of the Bonds not previously paid that are to be cancelled or (b) if an entity other than the Trustee holds the Bonds, deliver or cause to be delivered to the Trustee for cancellation Bonds not previously paid. The Company shall receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

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

(a) all fees, charges and expenses, including reasonable agent and counsel fees and expenses, of the City, the Trustee and the Paying Agent incurred under or arising from the Indenture, this Lease or the Performance Agreement, including but not limited to claims by contractors or subcontractors, as and when the same become due;

(b) all costs incident to the issuance of the Bonds (which are to be paid on the Closing Date) and the payment of the principal of and interest on the Bonds as the same become due and payable, including all costs and expenses in connection with the call, redemption and payment of all Outstanding Bonds;

(c) all fees, charges and expenses incurred in connection with the enforcement of any rights under this Lease, the Indenture or the Performance Agreement by the City, the Trustee or the Owners, including reasonable counsel fees and expenses; and

(d) all other payments of whatever nature which Company has agreed in writing to pay or assume under the provisions of this Lease, the Performance Agreement or the Indenture.

Section 5.3. Obligations of Company Absolute and Unconditional.

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this **Section 5.3(a)** or **Section 5.3(b)** is intended or shall be deemed to affect or impair in anyway the rights of the Company to tender Bonds for redemption in satisfaction of Basic Rent as provided in **Section 5.1** and **Section 5.4** hereof, nor the right of the Company to terminate this Lease and repurchase the Project as provided in **Article XI** hereof, nor the right of the offset as provided in **Section 5.1** hereof.

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

with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

Section 5.4. Prepayment of Basic Rent. The Company may at any time and from time to time prepay all or any part of the Basic Rent provided for hereunder (subject to the limitations of **Section 301(a)** of the Indenture relating to the partial redemption of the Bonds. During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then remaining unpaid, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

The Company, at its option, may deliver to the Trustee for cancellation Bonds owned by the Company and not previously paid, and the Company shall receive a credit against amounts payable by the Company for the redemption of Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest thereon.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

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

Section 6.2. Taxes, Assessments and Other Governmental Charges.

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

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Company, before instituting any such contest, gives the City written notice of its intention to do so, (2) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official

or judicial sale therefor, under execution or otherwise, and (3) the Company promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge and to take such actions as may be reasonably requested by the Company related to such proceedings. The Company shall save and hold harmless the City and the Trustee from any costs and expenses the City and the Trustee may incur related to any of the above.

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

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

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

ARTICLE VII

INSURANCE

Section 7.1. Title Commitment or Report. Before conveying title to any real property to the City, the Company will purchase, from a title insurance company reasonably acceptable to the City, a commitment for title insurance or provide such other report in a form reasonably acceptable to the City showing the ownership of and encumbrances on the Project Site. Copies of such report shall be provided to the City and the Trustee.

Section 7.2. Property Insurance.

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term a policy or policies of insurance to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions); provided, however, that during the period of time while the facility at the Project Site is under construction, the Company shall obtain and maintain a policy of builder's risk insurance. The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers as may be selected by the Company. The Company shall deliver certificates of insurance for such policies to the City and the Trustee before the

initial acquisition of the Project and promptly after renewal of each insurance policy. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the City and the Company as additional insureds, as their respective interests may appear, shall name the Trustee as loss payee and shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 10 days' advance written notice to the City, the Company and the Trustee, to the extent such a provision can be obtained and is available from the insurer.

(b) In the event of loss or damage to the Project, the Net Proceeds of property insurance carried pursuant to this Section shall be (i) paid over to the Trustee and shall be applied as provided in **Article IX** of this Lease, or (ii) if otherwise directed by, or on behalf of, the Owners of 100% in principal amount of the Bonds Outstanding, as so directed. Insurance monies in an amount less than $1,000,000 may be paid to or retained by the Company to be held in trust and used as provided in **Section 9.1(a)** hereof.

Section 7.3. Commercial General Liability Insurance.

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term commercial general liability insurance (including but not limited to coverage for operations, contingent liability, operations of subcontractors, completed operations and contractual liability), under which the City, the Company and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri, as amended (subject to reasonable loss deductible clauses not to exceed the amounts normally or generally carried by the Company). The policies of said insurance shall contain a provision that such insurance may not be canceled by the issuer thereof without at least 10 days' advance written notice to the City, the Company and the Trustee, to the extent such a provision can be obtained and is available from the insurer. Certificates of such policies shall be furnished to the Trustee on the date of execution of this Lease and not less than 30 days before the expiration date of each insurance policy.

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

Section 7.4. Workers' Compensation. The Company agrees throughout the Lease Term to maintain or cause to be maintained the Workers' Compensation coverage required by the laws of the State of Missouri.

Section 7.5. Blanket Insurance Policies; Self-Insurance. The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with. The Company may satisfy any of the insurance requirements set forth in this Article using self-insurance or insurance through a subsidiary or affiliate; so long as (i) the insurance is underwritten by a subsidiary or other affiliate of the Company with a separate net worth of at least $150,000,000, or (ii) the Company funds such self-insurance by appropriate reserves in the amounts recommended by independent actuarial reports obtained not less than every three (3) years for the term of this Lease. The Company shall provide to the City and the Trustee copies of financial statements or similar evidence of net worth of such affiliate on the date hereof and every three (3) years, or, in the case of actuarial reports, on the date of delivery of this Lease and, thereafter, not less than 30 days after receipt of such reports.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements at the Project Site. The Company shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project Improvements or the Project Equipment as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to this Section shall (a) be made in a good and workmanlike manner and in material compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project; provided, however, that additions of improvements, machinery and equipment installed on the Project Site by the Company but not purchased or acquired with proceeds of the Bonds shall not become part of the Project and such property shall be subject to *ad valorem* taxes.

The Company may, at its sole cost and expense, construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Company, and not paid for with Bond proceeds, pursuant to the authority of this Section shall not be included as Project Improvements and, during the life of this Lease, shall remain the property of the Company and may be added to, altered or razed and removed by the Company at any time. All additional buildings and improvements shall be made in a good and workmanlike manner and in strict compliance with all material laws, orders and ordinances applicable thereto and when commenced shall be prosecuted to completion with due diligence. The Company covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, and (b) to promptly and with due diligence either raze and remove or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty. The Company shall pay all *ad valorem* taxes and assessments payable with respect to such additional buildings and improvements which remain the property of the Company. If for any reason the County Assessor determines that such additional buildings and improvements are not subject to *ad valorem* taxes based upon City ownership of the Project, the Company shall make payments in lieu of taxes in an amount equal to the taxes that would otherwise be due.

Section 8.2. Removal and Replacement of Project Equipment.

(a) The Company may, if no uncured Event of Default (as defined in **Section 12.1** hereof) exists and is continuing, remove from the Project Site and sell, exchange, replace or otherwise dispose of, without responsibility or accountability to the City or the Trustee with respect thereto, any items of machinery and equipment, or parts thereof, which constitute a part of the Project Equipment and which have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary or which, in the sound discretion of the Company, are otherwise no longer useful to the Company in its operations. Before any such removal of any item of equipment or machinery with a then-market value of greater than $1,000,000, the Company shall deliver to the City and the Trustee a certificate signed by an Authorized Company Representative containing a complete description of any machinery or equipment that the Company proposes to remove. Upon request by the Company, the City will execute and deliver a bill of sale that transfers full and complete title to the Company of the Project Equipment removed. Notwithstanding anything contained herein to the contrary, title to any item of the Project removed from the Project Site shall automatically vest in the Company without further instrument or action, and such

vesting of title shall be self-operative effective upon removal. Any Project Equipment removed from the Project Site shall no longer be entitled to the tax exemption afforded by virtue of the City's ownership thereof.

(b) In all cases, the Company shall pay all of the costs and expenses of any such removal. The Company's right under this Section to remove machinery and equipment constituting a part of the Project Equipment is intended only to permit the Company to maintain an efficient operation by the removal of machinery and equipment that is no longer suitable for any of the reasons set forth in this Section, and such right is not to be construed to permit a removal under any other circumstances and specifically is not to be construed to permit the Company to make a wholesale removal of the Project Equipment.

(c) If the Company makes additions to the Project Equipment or otherwise replaces any Project Equipment for the purpose of repairing damage or normal wear and tear, such additions and/or replacements shall become part of the Project Equipment and shall be entitled to the tax exemption afforded by virtue of the City's ownership of the Project Equipment.

Section 8.3. Permits and Authorizations. The Company shall not do or permit others under its control to do any work on the Project Site related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. The City agrees to act promptly on all requests for such municipal permits and authorizations. All such work shall be done in a good and workmanlike manner and in material compliance with all applicable material building and zoning laws and governmental regulations and requirements, and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of **Article VII** hereof.

Section 8.4. Mechanics' Liens.

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

(b) Notwithstanding paragraph (a) above, the Company may contest any such mechanics' or other similar lien if the Company (1) promptly notifies the City and the Trustee in writing of its intention so to do, (2) diligently prosecutes such contest, (3) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (4) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (5) thereafter promptly procures the record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of any such contest and any appeal therefrom, so long as the Project is not subject to loss or forfeiture. The Company shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall

reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

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

If the Company elects to repair, restore or replace the Project, for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings, improvements and fixtures and all additions thereto and all replacements and alterations thereof and any reference to the words "Project Equipment" shall be deemed to also include any such new machinery and equipment.

Unless the Company makes the determination described in subsection (f) below, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof. Insurance monies in an amount less than $1,000,000 may be paid to or retained by the Company to be held in trust and used as provided herein. Insurance monies in any amount of $1,000,000 or more shall be (i) paid to the Trustee and deposited in the Project Fund and shall be disbursed as provided in **Section 4.4** hereof to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof, or (ii) if determined by the Owners of 100% in principal amount of the Bonds Outstanding, applied as directed by, or on behalf of, such Owners of 100% in principal amount of the Bonds Outstanding. If the Company makes the determination described in subsection (f) below, the Net Proceeds shall be deposited with the Trustee and used to redeem Bonds as provided in subsection (f).

(b) If any of the insurance monies paid by the insurance company as hereinabove provided remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease has not been terminated, the excess shall be deposited in the Bond Fund, subject to the rights of any leasehold mortgagee or Financing Party. Completion of such repairs, restoration, replacement or rebuilding shall be evidenced by a certificate of completion in accordance with the provisions of **Section 4.5** hereof. Unless the Company makes the determination described in subsection (f) below, if the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Company shall pay the deficiency.

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

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

(e) The Company agrees to give prompt notice to the City and the Trustee with respect to all fires and any other casualties occurring in, on, at or about the Project Site causing (in the Company's opinion) damage of more than $1,000,000.

(f) If the Company determines that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, or if the Company does not have the right under any Leasehold Security Agreement to use any Net Proceeds for repair or restoration of the Project, any Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same become due, all subject to rights of the mortgagee under the Leasehold Security Agreement (if any) and the Financing Party under the Financing Documents (if any). The Company agrees to be reasonable in exercising its judgment pursuant to this subsection (f). Alternatively, if the Company is the sole owner of the Bonds and it has determined that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the casualty insurance, and retain such proceeds for its own account.

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

Section 9.2. Condemnation.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than $1,000,000, the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City, the Trustee, the mortgagee under the Leasehold Security Agreement (if any) and the Financing Party under the Financing Documents (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire and install or construct substitute improvements and/or equipment.

(b) If the Company determines that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition, installation

or construction of such substitute improvements and/or equipment, so as to place the Project in substantially the same condition as existed before the exercise of the said power of eminent domain, including the acquisition, installation or construction of other improvements suitable for the Company's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Company without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by the Indenture and this Lease other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds).

(c) If the Company determines that it is not practicable or desirable to acquire, install or construct substitute improvements or equipment, any Net Proceeds of condemnation awards received by the Company shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due and payable, provided that if the Company is the sole owner of the Bonds and it has determined that acquiring and constructing substitute improvements is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the condemnation awards, and retain such proceeds for its own account, all subject to the rights of the mortgagee under the Leasehold Security Agreement (if any) and Financing Party under the Financing Documents (if any).

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

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

Section 9.3. Bondowner Approval. Notwithstanding anything to the contrary contained in this **Article IX**, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) shall before the application thereof by the City or the Trustee be applied as directed by the Owners or pledgees of 100% of the principal amount of Bonds Outstanding, subject and subordinate to (a) the rights of the City and the Trustee to be paid all their expenses (including reasonable attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds and (b) the rights of the City to any amounts then due and payable under the Performance Agreement.

ARTICLE X

SPECIAL COVENANTS

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

Section 10.2. Surrender of Possession. Upon accrual of the City's right of re-entry to the Project Site to the extent provided in **Section 12.2(b)**, the Company shall peacefully surrender possession of the Project to the City in reasonably good condition and repair; provided, however, the Company may within 90 days (or such later date as the City may agree to) after the termination of this Lease remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and which are not so removed from the Project before the expiration of said period shall be the separate and absolute property of the City.

Section 10.3. City's Right of Access to the Project. The City may conduct such periodic inspections of the Project as may be generally provided in the City's code. In addition, the Company agrees that the City and the Trustee and their duly authorized agents may, at reasonable times during normal business hours and, except in the event of emergencies, upon not less than two Business Day's prior notice, subject to the Company's usual business propriety, safety, confidentiality and security requirements, enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) to monitor the purchase and installation provided for in **Section 4.2** hereof as may be reasonably necessary, (c) to examine all files, records, books and other materials in the Company's possession pertaining to the purchase, installation or maintenance of the Project, and (d) upon the occurrence and continuance of an Event of Default, to enforce the remedies provided in in **Section 12.2** hereof.

Section 10.4. Granting of Easements; Leasehold Security Agreements and Financing Arrangements.

(a) Subject to **Sections 10.4(c)** and **(d)**, if no Event of Default under this Lease has happened and is continuing, the Company may at any time or times (i) grant subleases (as permitted in **Section 13.1(b)** hereof), easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (ii) release or terminate existing subleases, easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine, or (iii) incur Permitted Encumbrances. The Company may take such actions

and may execute any applicable documents in the Company's own name. No separate signature of or authorization from the City shall be required for the execution and delivery of any such document, although the City agrees to execute and deliver such confirming documents as are described below, under the procedures described below, if the Company chooses to make such a request. All third parties entering into agreements with the Company or receiving delivery of or the benefit of such agreements or documents shall be entitled to rely upon the same as having been executed and delivered by the City, unless such third party has actual or constructive notice, expressly in writing, that the agency herein granted by the City to the Company has been terminated by the City because of an uncured Event of Default hereunder. The City agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any such sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the City and the Trustee of: (i) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (ii) a written application signed by an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, will not materially adversely affect the security intended to be given by or under the Indenture and will be a Permitted Encumbrance or release of a Permitted Encumbrance. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(c)** and **(d)**, upon (i) termination of this Lease for any reason other than the redemption of the Bonds and/or the purchase of the Project by the Company or (ii) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) The Company may mortgage the leasehold estate created by this Lease, with prior notice to but without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each such mortgage, and the note or other obligation secured thereby, is delivered to the Coity within thirty (30) days after the execution thereof. The sale of the Company's leasehold estate at a foreclosure sale or trustee's sale under the Leasehold Security Agreement or any assignment in lieu thereof shall not require the consent of the City, if (i) written notice of the proposed sale or assignment is provided to the City at least fifteen (15) days prior thereto, and (ii) before such sale or assignment, all payments then owing to the City under the Performance Agreement are paid.

(c) The City acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project, this Lease and the leasehold estate created hereby and, in connection therewith, the Company may execute Financing Documents with one or more Financing Parties. Notwithstanding anything contained to the contrary in this Lease, the Company may, at any time and from time to time, with prior notice to but without the consent of the City, (i) execute one or more Financing Documents upon the terms contained in this **Section 10.4** and (ii) sublease or assign this Lease, the leasehold estate, any sublease and rights in connection therewith, and/or grant liens or security interests therein, to any Financing Party. Any further sublease or assignment by any Financing Party shall be subject to the provisions of **Section 13.1(c)**. At the expense of the Company, the City agrees to cooperate fully with the Company and take all actions as reasonably requested by the Company in connection with any financing or refinancing of the Company's rights and interests in the Project, including but not limited to the granting of security interests in the Project, the Bonds and the leasehold estate created hereunder, as may from time to time be reasonably requested by any of the Financing Parties.

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

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

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

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

(4) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of the Financing Parties under this **Section 10.4(d)** as to such other events of default. Without limiting the generality of the foregoing, the holder of the Leasehold Security Agreement may cause the sale of the leasehold interest of the Company to be sold at foreclosure sale conducted in accordance with applicable law and the terms of the Leasehold Security Agreement, to accept assignment of this Lease in lieu of foreclosure and to appoint a receiver for the Project, all without obtaining the prior written consent of the City but subject to the provisions of **Section 10.4(b)**;

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

(6) the Financing Parties (and their designees, nominees, assignees or transferees) shall have the right to enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Financing Documents and this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without prior written consent of such Financing Party.

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

(f) Notwithstanding the foregoing, the City may agree to other provisions and documents requested by the Company or any Financing Party not contemplated by this **Section 10.4**, subject to approval by ordinance of the City Council.

Section 10.5. Indemnification of City and Trustee. The Company shall indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees from and against all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, by or on behalf of any Person, firm or corporation arising from the issuance of the Bonds and the execution of the Performance Agreement, this Lease or the Indenture and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under the Performance Agreement, this Lease or any related document, (c) any contract entered into in connection with the purchase and installation of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1(c)**, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, and (g) any claim relating to the presence on, escape or removal from the Project during the term of the Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim arises before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, the indemnification contained in this **Section 10.5** shall not extend to the City or Trustee to the extent that such claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, are (i) the result of work being performed at the Project Site by employees or agents of the City, or (ii) the result of gross negligence or willful misconduct by the City or the Trustee, or their respective employees or agents. Upon written notice from the City or the Trustee of any such claims or demand, the Company shall defend them or either of them in any such action or proceeding; provided, that the City shall cooperate with the Company and provide reasonable assistance in such defense. All costs related to the defense of the City and/or the Trustee shall be paid by the Company. This **Section 10.5** shall survive any termination of the Performance Agreement and this Lease or the satisfaction and discharge of the Indenture.

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

Section 10.7. Company to Maintain its Corporate Existence. The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another Person or permit one or more other Persons to consolidate with or merge into it, or may sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter cease operations, dissolve and/or convert into a different type of legal entity, if the surviving, resulting or transferee Person expressly assumes in writing all the obligations of the Company contained in this Lease and the Performance Agreement.

Section 10.8. Security Interests. The City and the Company hereby authorize the Trustee to file all appropriate financing and continuation statements as may be required under the Uniform Commercial Code in order to fully preserve and protect the security of the Owners and the rights of the Trustee under the Indenture. Upon the written instructions of the Owners or pledgees of 100% of the Bonds then Outstanding, the Trustee shall file all instruments the Owners deem necessary to be filed and shall continue or cause to be continued such instruments for so long as the Bonds are Outstanding. The City and the Company shall cooperate with the Trustee in this regard by providing such information as the Trustee may require to file or to renew such statements. The Trustee shall maintain a file showing a description of all Project components, said file to be compiled from the certificates furnished to the Trustee pursuant to **Section 4.4** and **Section 8.2** hereof. At the written request of all of the Owners of the Bonds, the City, at the expense of the Company, and the Company further agree to enter into any other instruments necessary for the creation and perfection of (and continuance of the perfection of) the security interests in the Project benefiting the Owners of the Bonds then outstanding.

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1. Option to Purchase the Project.

(a) *Purchase of the Entire Project*. The Company shall have, and is hereby granted, the option to purchase the Project at any time, upon payment in full of all Bonds then outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture. To exercise such option the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the forgoing, if the City or the Trustee provides a Remedies Notice to the Company, the Company shall be deemed to have exercised its repurchase option under this Section on the 29th day following the issuance of the Remedies Notice without any further action by the Company; provided said Remedies Notice has not been rescinded by such date (such option to take place on the 29th day following the issuance of the Remedies Notice). The Company may rescind such exercise by providing written notice to the City and the Trustee on or prior to the 29th and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Company in the event of its exercise of the option granted in this subsection shall be the sum of the following:

(1) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all the then outstanding Bonds on the earliest redemption

date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus

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

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

(4) an amount of money equal to the City's reasonable fees and expenses for its counsel in connection with such purchase of the Project; plus

(5) the sum of $10.00.

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

(b) *Purchase of Project Equipment*. The Company shall have, and is hereby granted, the option to purchase all or a portion of the Project Equipment at any time, upon payment in full of a portion of the Bonds then outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture, in the amount described in this subsection. To exercise such option the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and in case of a redemption of Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. The purchase price payable by the Company in the event of its exercise of the option granted in this subsection shall be the sum of the following:

(1) the amount of money equal to the portion of the Cumulative Outstanding Principal Amount on the closing date for such purchase that is attributable to the portion of the Project Equipment to be removed, which shall be determined by dividing (i) the total Project Costs paid with respect to such Project Equipment under **Section 4.4** hereof, by (ii) the total of all Project Costs paid under **Section 4.4** hereof, and then multiplying such quotient by the Cumulative Outstanding Principal Amount at the time of the closing date for such purchase and rounding such product to the nearest $1,000, which amount shall be deposited to the Bond Fund and applied to redeem outstanding Bonds in an equal principal amount on the earliest redemption date next succeeding the closing date); plus

(2) an amount of money equal to the interest to accrue to such redemption date on the Bonds to be redeemed pursuant to paragraph (1) immediately above and redemption expense, which amount shall be deposited to the Bond Fund; plus

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

(4) an amount of money equal to the City's reasonable fees and expenses for its counsel in connection with such purchase of Project Equipment; plus

(5) the sum of $10.00.

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

Upon payment of the purchase price relating to all or a portion of the Project Equipment, the Trustee shall note in its records the removal of such portion of the Project Equipment from the Project. The Company shall deliver to the City UCC Termination Statements and a bill of sale for such portion of the Project Equipment to be executed and delivered by the City upon deposit of such purchase price in the Bond Fund. If the Project Equipment is to be physically removed from the Project, the Company shall pay all the costs and expenses of any such removal and shall immediately repair at its expense all damage to the remaining Project caused thereby.

Section 11.2. Conveyance of the Project. At the closing of the purchase of the entire or all remaining portions of the Project pursuant to this Article, the City will upon receipt of the purchase price deliver to the Company the following:

(a) A release from the Trustee of the Project from the lien and/or security interest of the Indenture and this Lease and appropriate termination of financing statements as required under the Uniform Commercial Code; and

(b) Documents, including without limitation a special warranty deed as to the Project Site, conveying to the Company legal title to the Project, as it then exists, in recordable form, subject to the following: (i) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the City; (ii) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease; (iv) Permitted Encumbrances other than the Indenture, this Lease and the Performance Agreement; and (v) if the Project or any part thereof is being condemned, the rights and title of any condemning authority.

Section 11.3. Relative Position of Option and Indenture. The option to purchase the Project granted to the Company in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default under this Lease or the Indenture, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option (including the payment of all amounts specified in **Section 11.1** hereof) and further provided that all options herein granted shall terminate upon the termination of this Lease.

Section 11.4. Obligation to Purchase the Project. The Company hereby agrees to purchase, and the City hereby agrees to sell, the Project upon the occurrence of (a) the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (b) the final payments due under the Performance Agreement. The amount of the purchase price under this Section shall be $10.00 plus an amount sufficient to redeem all the then Outstanding Bonds, plus accrued interest and the reasonable fees and expenses of the City and the Trustee.

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. Events of Default. If any one or more of the following events occurs and is continuing beyond any applicable notice and/or cure period, it is hereby defined as and declared to be and to constitute an "Event of Default" under this Lease:

(a) Default in the due and punctual payment of Basic Rent or Additional Rent within 10 days after written notice thereof from the City or the Trustee to the Company that the Company failed to make such payment. Anything herein to the contrary notwithstanding, no failure or default specified in paragraph (a) of this **Section 12.1** shall constitute an Event of Default until actual notice of such failure to make such payment by registered or certified mail shall be given by the City or the Trustee to the Company and the Company shall have had ten (10) days after receipt of such notice to correct said failure and shall not have corrected said failure within such period; or

(b) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company's part to be observed or performed, and such default shall continue for 60 days after the City or the Trustee has given the Company written notice specifying such default (or such longer period as is reasonably required to cure such default; provided that (1) the Company has commenced such cure within said 60-day period, and (2) the Company diligently prosecutes such cure to completion); or

(c) The Company: (1) admits in writing its inability to pay its debts as they become due; or (2) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (3) makes an assignment for the benefit of creditors; or (4) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the Company's consent or acquiescence, vacated or set aside; or (5) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (7) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(d) the Company vacates, abandons, ceases operations, fails to occupy or is ejected from the Project Site or any material portion thereof, and the same remains uncared for or abandoned for a period of one year; or

(e) The occurrence and continuance of an "Event of Default" by the Company under the Performance Agreement, following any applicable notice and grace period provided in the Performance Agreement.

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

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable, as provided in the Indenture; provided that if the Company has paid all obligations due and owing under the Indenture, this Lease and the Performance Agreement, the City shall convey the Project to the Company in accordance with **Section 11.2** hereof; or

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

Section 12.3. Survival of Obligations. The Company covenants and agrees with the City and Owners that its obligations under this Lease shall survive the cancellation and termination of this Lease, for any cause, and that the Company shall continue to pay the Basic Rent and Additional Rent (to the extent the Bonds remain Outstanding) and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease; provided, however, that except for the indemnification contained in **Section 10.5** hereof, upon the payment of all Basic Rent and Additional Rent required under **Article V** hereof, and upon the satisfaction and discharge of the Indenture under **Section 1301** thereof, and upon the Company's exercise of the purchase option contained in **Article XI** hereof or upon the events provided in **Section 12.2(b)** hereof, the Company's obligation under this Lease shall thereupon cease and terminate in full, except that obligations with respect to compensation and indemnification of the City and the Trustee shall not so terminate.

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

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the City and the Company hereunder are in addition to those otherwise provided by law and shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. Notwithstanding anything in this **Section 12.5** or elsewhere in this Lease to the contrary, however, the Company's option to purchase the property as provided in **Article XI** above shall not be terminated upon an Event of Default unless and until this Lease is terminated to the extent permitted pursuant to **Section 12.2(b)** above.

Section 12.6. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of any covenant, agreement or undertaking by the Company, the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving City's right to exercise any of its rights and remedies provided for herein with respect to any such default or defaults of the Company which were in existence at the time such payment or payments were accepted by the City.

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

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The Company may assign this Lease in whole or in part, without the necessity of obtaining the consent of the Trustee, subject, however, to each of the following conditions:

(i) The Company shall obtain the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, to each assignment, unless such sale, transfer or assignment is to an entity controlled by or under common control with or controlling the Company, or such sale, transfer or assignment is otherwise permitted under **Section 10.7** hereof, in which event no written consent of the City shall be required, but, in such event, the Company shall provide the City with advance written notice of such assignment.

(ii) The assignee shall assume the obligations of the Company hereunder to the extent of the interest assigned; and

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

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

(v) The Company shall, promptly following the completion of any such assignment, furnish or cause to be furnished to the City and to the Trustee a true and complete copy of each such assignment and assumption of obligations, as the case may be.

(c) Any assignee of all the rights of the Company shall agree to be bound by the terms of this Lease, the Performance Agreement and any other documents related to the issuance of the Bonds. Upon such assignment of all the rights of the Company and agreement by the assignee to be bound by the terms of this Lease, the Performance Agreement and any other documents related to the Bonds, the Company shall be released from and have no further obligations under this Lease, the Performance Agreement or any agreement related to the issuance of the Bonds.

(d) The Company may sublet less than 10% of the Project to a single entity for any lawful purpose under the Act. The Company shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the Trustee a true and correct copy of each such sublease. Any sublease may provide, at the Company's option, that the City's consent shall not be required in respect of any further subletting thereunder if such further subletting is for a similar purpose as the original sublease and is for a purpose permissible under the Act.

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

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

Section 13.4. Restrictions on Sale or Encumbrance of Project by City. During this Lease Term, the City agrees that, except to secure the Bonds to be issued pursuant to the Indenture, it will not sell, assign, encumber, transfer or convey the Project or any interest therein, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

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

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be governed by **Section 1403** of the Indenture.

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

Section 15.3. Net Lease. The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same become due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the City and the Trustee) have been paid in full the Trustee or the City holds unexpended funds received in accordance with the terms hereof such unexpended funds shall, after payment therefrom of all sums then due and owing by the Company under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Company.

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

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

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

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

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

Section 15.9. Electronic Storage. The parties hereto agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 15.10 Complete Agreement. THE COMPANY AND THE CITY UNDERSTAND THAT ORAL OR UNEXECUTED AGREEMENTS OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT INCLUDING PROMISES TO EXTEND OR RENEW SUCH DEBT ARE NOT ENFORCEABLE. TO PROTECT THE COMPANY AND THE CITY FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS THE COMPANY AND THE CITY REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS LEASE AND THE PERFORMANCE AGREEMENT, WHICH ARE THE COMPLETE AND EXCLUSIVE STATEMENTS OF THE AGREEMENT BETWEEN THE COMPANY AND THE CITY, EXCEPT AS THE COMPANY AND THE CITY MAY LATER AGREE IN WRITING TO MODIFY THIS LEASE OR THE PERFORMANCE AGREEMENT.

Section 15.11. City Consents. The Mayor of the City is authorized, unless expressly provided herein, to grant on behalf of the City such consents and waivers relating to the Bonds, the Indenture, the Performance Agreement or this Lease as may be requested during the term thereof; provided, such consents and/or waivers shall not increase the principal amount of the Bonds, increase the term of this Lease or the tax exemption as provided for herein, or materially change the nature of the transaction.

[remainder of page intentionally left blank]

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

CITY OF JOPLIN, MISSOURI

By: _____
Name: Michael Seibert
Title: Mayor

[SEAL]

ATTEST:

By: _____
Name: Barbara Hogelin
Title: City Clerk

Approved as to form:

_____
City Attorney

HEARTLAND PET FOODS MANUFACTURING, INC.,
a Delaware corporation

By: _____
Name:
Title:

EXHIBIT A

PROJECT SITE

The following described real estate located in Jasper County, Missouri:

[**INSERT LEGAL DESCRIPTION FOR EXISTING FACILITY AND NEWLY ACQUIRED PROPERTY**]

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

An expansion of an existing dry pet food manufacturing facility including buildings, site improvements and related fixtures and improvements.

PROJECT EQUIPMENT

The Project Equipment consist of the following, to the extent paid for in whole with Bond proceeds:

All items of machinery, equipment and parts or other personal property installed or acquired or to be acquired for installation in the Project Improvements or elsewhere on the Project Site.

EXHIBIT C

FORM OF REQUISITION CERTIFICATE

Requisition No. _____
Date: _____

REQUISITION CERTIFICATE

TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF AUGUST 1, 2016, BETWEEN CITY OF JOPLIN, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF AUGUST 1, 2016, BETWEEN CITY OF JOPLIN, MISSOURI AND HEARTLAND PET FOODS MANUFACTURING, INC..

The undersigned Authorized Company Representative hereby states and certifies that:

1. A total of $_____ is requested to pay for Project Costs (as defined in the Indenture) of the Project Improvements and/or Project Equipment. The total amount of this requisition and all prior requisitions are as follows:

Date of Project Costs	***Amount Submitted in this Requisition***	***Requisitions Submitted to Date (Including this Requisition)***

2. Said Project Costs shall be paid in whole from Bond proceeds in such amounts, to such payees and for such purposes as set forth on **Schedule 1** hereto.

3. Each of the items for which payment is requested are or were desirable and appropriate in connection with the construction and improvement of the Project (as defined in the Trust Indenture), have been properly incurred and are a proper charge against the Project Fund, and have been paid by the Company or are justly due to the Persons whose names and addresses are stated on **Schedule 1**, and have not been the basis of any previous requisition from the Project Fund.

4. As of this date, except for the amounts referred to above, to the best of my knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the construction and improvement of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof.

HEARTLAND PET FOODS MANUFACTURING, INC.

By: _____
Authorized Company Representative

Approved this _____ day of _____, 20___.

CITY OF JOPLIN, MISSOURI

By: _____
Authorized City Representative

SCHEDULE 1 TO REQUISITION CERTIFICATE

PROJECT COSTS

Payee and Address	Description	Amount

With respect to any personal property described in this Requisition Certificate and for which Project Costs are disbursed pursuant to this Requisition Certificate, in consideration of such disbursement, such personal property is hereby BARGAINED and SOLD, and the Company by these presents does now GRANT and CONVEY, unto the CITY OF JOPLIN, MISSOURI, and its successors and assigns, all of its right, title and interest, if any, in and to such personal property, and such personal property shall constitute a portion of the "Project" as defined under the Lease Agreement dated as of August 1, 2016, between the Company and the City. The property is being conveyed "as is," "where is" and "with all faults" as of the date of this Requisition Certificate, without any representation or warranty whatsoever as to its condition, fitness for any particular purpose, merchantability, or any other warranty, express or implied.

APPENDIX I

PERFORMANCE AGREEMENT

(See Tab No. __)