

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended December 31, 2006.

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 0-17196

**MGP INGREDIENTS, INC.**

(Exact name of registrant as specified in its charter)

**KANSAS**

(State or other jurisdiction of incorporation or organization)

**48-0531200**

(I.R.S. Employer Identification  
No.)

**1300 Main Street, Atchison Kansas**  
(Address of principal executive offices)

**66002**  
(Zip Code)

**(913) 367-1480**

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.  
 Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.  
(Check One)  Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicated by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).  
 Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common stock, no par value  
16,456,460 shares outstanding  
as of December 31, 2006

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**Report of Independent Registered Public Accounting Firm**

Audit Committee, Board of Directors and Stockholders  
MGP Ingredients, Inc.  
Atchison, Kansas

We have reviewed the accompanying condensed consolidated balance sheet of MGP Ingredients, Inc. as of December 31, 2006 and the related condensed consolidated statements of income for the three-month and six-month periods ended December 31, 2006 and 2005, and cash flows for the six-month periods ended December 31, 2006 and 2005. These interim financial statements are the responsibility of the Company's management.

We conducted our reviews in accordance with the standards of the Public Company Accounting Oversight Board (United States). A review of interim financial information consists principally of applying analytical procedures to financial data and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our reviews, we are not aware of any material modifications that should be made to the condensed consolidated financial statements referred to above for them to be in conformity with accounting principles generally accepted in the United States of America.

We have previously audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet as of June 30, 2006 and the related consolidated statements of income, stockholders' equity and cash flows for the year then ended (not presented herein); and in our report dated August 22, 2006, we expressed an unqualified opinion on those consolidated financial statements. In our opinion, the information set forth in the accompanying condensed consolidated balance sheet as of June 30, 2006 is fairly stated, in all material respects, in relation to the consolidated balance sheet from which it has been derived.

/s/ BKD, LLP

Kansas City, Missouri  
February 7, 2007

**MGP INGREDIENTS, INC.**

**CONSOLIDATED BALANCE SHEETS**

	<u>December 31, 2006</u>	<u>June 30, 2006</u>
	Unaudited Dollars in thousands, except share and per share amounts	
<b>ASSETS</b>		
Current Assets		
Cash and cash equivalents	\$ 10,479	\$ 14,495
Segregated cash and investments	3,146	2,291
Receivables, net of allowance of \$320 at December 31, 2006 and June 30, 2006.	35,861	32,197
Inventories	35,339	30,467
Prepaid expenses	3,256	1,098
Deferred income taxes	4,277	1,990
<b>Total current assets</b>	<u>92,358</u>	<u>82,538</u>
Property and Equipment, at cost	346,311	336,428
Less accumulated depreciation	(221,505)	(214,593)
<b>Property and equipment, net</b>	<u>124,806</u>	<u>121,835</u>
Other Assets	205	211
<b>Total assets</b>	<u>\$ 217,369</u>	<u>\$ 204,584</u>

See Notes to Condensed Consolidated Financial Statements

## MGP INGREDIENTS, INC.

## CONSOLIDATED BALANCE SHEETS

	December 31, 2006	June 30, 2006
	Unaudited Dollars in thousands, except share and per share amounts	
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current Liabilities		
Current maturities of long-term debt	\$ 3,761	\$ 3,796
Accounts payable	16,211	10,661
Accrued expenses	5,958	10,028
Income taxes payable	1,614	4,210
Deferred revenue	8,609	9,374
<b>Total current liabilities</b>	<b>36,153</b>	<b>38,069</b>
Long-Term Debt	10,612	12,355
Post Retirement Benefits	6,775	6,554
Deferred Income Taxes	16,955	12,694
Stockholders' Equity		
Capital stock		
Preferred, 5% non-cumulative; \$10 par value; authorized 1,000 shares; issued and outstanding 437 shares	4	4
Common stock		
No par value; authorized 40,000,000 shares; issued 19,530,344 shares	6,715	6,715
Additional paid-in capital	9,500	7,203
Retained earnings	146,732	136,267
Accumulated other comprehensive loss – cash flow hedges	(547)	(482)
	162,404	149,707
Treasury stock, at cost		
Common; December 31, 2006 – 3,073,884 shares, June 30, 2006 - 3,256,784 shares	(15,530)	(14,795)
<b>Total stockholders' equity</b>	<b>146,874</b>	<b>134,912</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 217,369</b>	<b>\$ 204,584</b>

See Notes to Condensed Consolidated Financial Statements

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## MGP INGREDIENTS, INC.

CONSOLIDATED STATEMENTS OF INCOME  
(Unaudited)

	Quarter Ended		Year to Date	
	December 31, 2006	December 31, 2005	December 31, 2006	December 31, 2005
	Dollars in thousands, except per share amounts			
<b>Net sales</b>	\$ 87,645	\$ 75,671	\$ 172,640	\$ 152,717
Cost of sales	71,322	69,931	141,380	134,793
<b>Gross profit</b>	<b>16,323</b>	<b>5,740</b>	<b>31,260</b>	<b>17,924</b>
Selling, general and administrative expenses	5,108	5,039	9,967	10,748
Other operating income	175	281	771	449
<b>Income from operations</b>	<b>11,390</b>	<b>982</b>	<b>22,064</b>	<b>7,625</b>
Other income, net	200	521	560	637
Interest expense	(232)	(267)	(451)	(832)
<b>Income before income taxes</b>	<b>11,358</b>	<b>1,236</b>	<b>22,173</b>	<b>7,430</b>
Provision for income taxes	4,523	418	8,362	2,881
<b>Net income</b>	<b>6,835</b>	<b>818</b>	<b>13,811</b>	<b>4,549</b>
Other comprehensive income (loss), net of tax:	125	393	(65)	258
<b>Comprehensive income</b>	<b>\$ 6,960</b>	<b>\$ 1,211</b>	<b>\$ 13,746</b>	<b>\$ 4,807</b>
<b>Per Share Data</b>				
Total basic earnings per common share	\$ 0.42	\$ 0.05	\$ 0.84	\$ 0.28
Total diluted earnings per common share	\$ 0.40	\$ 0.05	\$ 0.82	\$ 0.27
<b>Dividends per common share</b>	<b>\$ 0.20</b>	<b>\$ —</b>	<b>\$ 0.20</b>	<b>\$ 0.15</b>

See Notes to Condensed Consolidated Financial Statements

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**MGP INGREDIENTS, INC.**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**Year to Date Ended**  
**(Unaudited)**

	December 31, 2006	December 31, 2005
Dollars in thousands		
<b>Cash Flows from Operating Activities</b>		
Net income	\$ 13,811	\$ 4,549
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	6,993	6,011
Gain on sale of assets	(3)	(14)
Deferred income taxes	1,974	(299)
Changes in working capital items:		
Segregated cash and investments	(855)	—
Accounts receivable	(3,664)	(4,565)
Inventories	(4,937)	(5,781)
Accounts payable and accrued expenses	2,295	4,535
Deferred revenue	(765)	(788)
Income taxes payable/receivable	(2,596)	3,190
Other	(2,158)	(1,091)
<b>Net cash provided by operating activities</b>	<b>10,095</b>	<b>5,747</b>
<b>Cash Flows from Investing Activities</b>		
Additions to property and equipment	(9,281)	(11,264)
Proceeds from disposition of equipment	87	51
<b>Net cash used in investing activities</b>	<b>(9,194)</b>	<b>(11,213)</b>
<b>Cash Flows from Financing Activities</b>		
Purchase of treasury stock	(1,938)	—
Proceeds from stock plans	2,142	832
Principal payments on long-term debt	(1,778)	(10,497)
Proceeds from issuance of long-term debt	—	7,000
Proceeds from line of credit	—	4,000
Dividends paid	(3,343)	(2,482)
<b>Net cash used in financing activities</b>	<b>(4,917)</b>	<b>(1,147)</b>
Decrease in cash and cash equivalents	(4,016)	(6,613)
Cash and cash equivalents, beginning of year	14,495	10,384
Cash and cash equivalents, end of year	\$ 10,479	\$ 3,771

See Notes to Condensed Consolidated Financial Statements

**MGP INGREDIENTS, INC.**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1. Basis of Presentation.**

The accompanying unaudited condensed consolidated financial statements reflect all adjustments that are, in the opinion of the Company's management, necessary to fairly present the financial position, results of operations and cash flows of the Company. Those adjustments consist only of normal recurring adjustments. The condensed consolidated balance sheet as of June 30, 2006 has been derived from the audited consolidated balance sheet of the Company as of that date. Certain information and note disclosures normally included in the Company's annual financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto in the Company's Form 10-K Annual Report for the fiscal year ended June 30, 2006 filed with the Securities and Exchange Commission. The results of operations for the period are not necessarily indicative of the results to be expected for the full year.

The Company's most recently completed fiscal year ended on June 30, 2006. On June 8, 2006 the Board of Directors amended the Company's Bylaws to effect a change in the fiscal year from a fiscal year ending June 30 to a 52/53 week fiscal year. The Company's 2007 fiscal year will end on July 1, 2007. As a result of this change, the first quarter of fiscal 2007 included one additional day than the first quarter of fiscal 2006 while the second quarter of fiscal 2007 includes one less day than the second quarter of fiscal 2006, the results of which are included in the accompanying condensed consolidated financial statements for the quarter and year to date ended December 31, 2006.

**Note 2. Earnings Per Share.**

Basic earnings per share data is computed by dividing income available to common shareholders by the weighted average number of common shares outstanding for the period. Potentially dilutive instruments are stock options and unvested restricted stock awards. The following is a reconciliation from the weighted average shares used for the basic earnings per share computation to the shares used for the diluted earnings per share computation for each of the quarter and year-to-date periods ended December 31, 2006 and 2005.

	Quarter Ended		Year to Date	
	December 31, 2006	December 31, 2005	December 31, 2006	December 31, 2005
Weighted average shares:				

Basic Shares:	16,440,705	16,064,041	16,374,787	16,035,482
Additional weighted average shares attributable to:				
Stock options:	262,886	318,878	263,873	298,731
Unvested restricted stock awards:	261,948	283,118	263,924	267,429
Diluted Shares:	<u>16,965,539</u>	<u>16,666,037</u>	<u>16,902,584</u>	<u>16,601,642</u>

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### Note 3. Contingencies.

There are various legal proceedings involving the Company and its subsidiaries. Except as noted below, management considers that the aggregate liabilities, if any, arising from such actions would not have a material adverse effect on the consolidated financial position or operations of the Company.

The Company has been in negotiations with the Illinois Attorney General's Office and the Illinois Environmental Protection Agency ("IEPA") to settle an enforcement proceeding related to emissions at the Pekin, Illinois location. The Company has reached a settlement with the IEPA. A Stipulation and Proposal for Settlement has been signed providing for a total payment by the Company of \$500,000, including a contribution to a state special project fund. The settlement proposal was submitted to the Illinois Pollution Control Board ("the Board") for final judgment. The Board accepted and approved the settlement proposal on January 26, 2007. As of December 31, 2006, the Company has accrued \$500,000, which is included in other accrued liabilities, with respect to this matter.

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### Note 4. Operating Segments.

The Company is a fully integrated producer of ingredients and distillery products. Products included within the ingredients segment consist of starches, including commodity wheat starch and modified and specialty wheat and potato starches, proteins, including commodity wheat gluten, specialty wheat, soy and other proteins, and mill feeds. Distillery products consist of food grade alcohol, including beverage alcohol and industrial alcohol, fuel alcohol, commonly known as ethanol, and distiller's grain and carbon dioxide, which are by-products of the Company's distillery operations.

The operating profit for each segment is based on net sales less identifiable operating expenses. Interest expense, investment income and other general miscellaneous expenses have been excluded from segment operations and classified as Corporate. Receivables, inventories and equipment have been identified with the segments to which they relate. All other assets are considered as Corporate.

(in thousands)	Quarter Ended		Year to Date	
	December 31, 2006	December 31, 2005	December 31, 2006	December 31, 2005
Sales to Customers				
Ingredients	\$ 15,963	\$ 22,012	\$ 31,953	\$ 44,462
Distillery products	71,682	53,659	140,687	108,255
Total	<u>87,645</u>	<u>75,671</u>	<u>172,640</u>	<u>152,717</u>
Depreciation				
Ingredients	1,625	1,552	3,283	3,098
Distillery products	1,715	1,325	3,396	2,650
Corporate	176	129	309	256
Total	<u>3,516</u>	<u>3,006</u>	<u>6,988</u>	<u>6,004</u>
Income before Income Taxes				
Ingredients	(4,575)	(2,174)	(8,137)	(2,393)
Distillery products	15,978	3,856	31,220	10,805
Corporate	(45)	(446)	(910)	(982)
Total	<u>\$ 11,358</u>	<u>\$ 1,236</u>	<u>\$ 22,173</u>	<u>\$ 7,430</u>
Identifiable Assets			December 31, 2006	June 30, 2006
Ingredients			\$ 74,887	\$ 72,992
Distillery products			104,479	96,222
Corporate			38,003	35,370
Total			<u>\$ 217,369</u>	<u>\$ 204,584</u>

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### Note 5. Pension and Post Retirement Benefit Obligations.

The Company and its subsidiaries provide certain post-retirement health care and life benefits to all employees. The liability for such benefits is unfunded. The Company uses a May 31 measurement date for the plan

The components of the Net Periodic Benefit Cost for the quarter and year to date periods ended December 31, 2006 and 2005, respectively, are as follows:

(in thousands)	Quarter Ended		Year to Date	
	December 31, 2006	December 31, 2005	December 31, 2006	December 31, 2005
Service cost	\$ 61	\$ 74	\$ 122	\$ 148

Interest cost	115	74	230	148
Prior service cost	(9)	(9)	(18)	(18)
(Gain) loss	9	—	16	—
Total post-retirement benefit cost	<u>\$ 176</u>	<u>\$ 139</u>	<u>\$ 350</u>	<u>\$ 278</u>

The Company previously disclosed in its financial statements for the year ended June 30, 2006, amounts expected to be paid to plan participants. There have been no revisions to these estimates and there have been no changes in the estimate of total employer contributions expected to be made for the fiscal year ended July 1, 2007.

Total employer contributions for the quarter ended December 31, 2006 were \$195,000.

The Medicare Prescription Drug Improvement Modernization Act of 2003 (the Act) provides certain drug benefits under Medicare Part D, as well as a federal subsidy to sponsors of retiree health care benefit plans that provide benefits at least actuarially equivalent to Medicare Part D. The Company has been unable to conclude whether the benefits provided under the plan are actuarially equivalent to Medicare Part D. Accordingly, the net periodic post-retirement benefit costs above do not reflect any amount associated with the subsidiary.

**Note 6. 4.90% Industrial Revenue Bond Obligation.**

On December 28, 2006, the Company engaged in an industrial revenue bond transaction with the City of Atchison, Kansas pursuant to which the City (i) under a trust indenture, (“the Indenture”), issued \$7.0 million principal amount of its industrial revenue bonds (“the Bonds”) to the Company and used the proceeds thereof to acquire from the Company its newly constructed office building and technical center in Atchison, Kansas, (“the Facilities”)and (ii) leased the Facilities back to the Company under a capital lease (“the Lease”). The bonds mature on December 1, 2016 and bear interest, payable annually on December 1st of each year commencing December 1st, 2007 at the rate of 4.90% per annum. Basic rent under the lease is payable annually on December 1st in an amount sufficient to pay principal and interest on the bonds. The Indenture and Lease contains certain

provisions, covenants and restrictions customary for this type of transaction. In connection with the transaction, the Company agreed to pay the city an administrative fee of \$50,000 payable over 10 years.

In connection with the foregoing transaction, the Company also entered a Fifth Amendment to its Line of Credit Loan Agreement with Commerce Bank excluding the application of specified sections of the Line of Credit Loan Agreement to the transaction.

The purpose of the transaction was to facilitate certain property tax abatement opportunities available to the Company related to the newly constructed Facilities. The Company will be eligible to apply for 10 years property tax abatement on the facilities acquired with bond proceeds. These property tax abatements terminate upon maturity of the Bonds on December 1st, 2016. The issuance of the Bonds is integral to the tax abatement process. Financing for the Facilities has been provided internally from the Company’s operating cash flow. Accordingly, upon consummation of the transaction and issuance of the Bonds, the Company acquired all bonds issued for \$7.0 million excluding transaction fees. As a result, the Company holds all of the outstanding Bonds. It is management’s intention to hold these bonds to their maturity. Because the Company holds all outstanding bonds, management considers the debt *de-facto* cancelled and, accordingly, no amount for these Bonds is reflected as debt outstanding on the Balance Sheet as of December 31, 2006.

**Note 7. Recently Issued Accounting Pronouncements.**

In June 2006, the FASB issued FASB Interpretation No. 48, Accounting for Uncertainty in Income taxes (“FIN 48”). FIN 48, which is an interpretation of SFAS No. 109, “Accounting for Income Taxes,” provides guidance on the manner in which tax positions taken or to be taken on tax returns should be reflected in an entity’s financial statements prior to their resolution with taxing authorities. The Company is required to adopt FIN 48 during the first quarter of fiscal 2008. The Company is currently evaluating the requirements of FIN 48 and has not yet determined the impact, if any; this interpretation may have on its consolidated financial statements.

In September 2006, the FASB released SFAS Statement No. 158 (“SFAS 158”), *Employers’ Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106 and 132(R)*. SFAS 158 requires the Company to recognize in its statement of financial position an asset for a defined benefit postretirement plan’s overfunded status or a liability for a plan’s underfunded status. This section of the standard is effective for the Company as of the end of its fiscal year on July 1, 2007. The statement also eliminates the option of using a measurement date prior to the Company’s fiscal year-end effective June 28, 2009. SFAS 158 provides two methods for transition to a fiscal year-end measurement date, both of which are to be applied prospectively. Under the first approach, plan assets are measured on May 31, 2008 and then re-measured on June 30, 2008 (the first day of the fiscal year ended June 28, 2009). Under the second approach, a 13-month measurement will be determined on May 31, 2008 that will cover the period until the fiscal year-end measurement is required on June 28, 2009. The Company currently uses a measurement date prior to its fiscal year-end and is currently evaluating which measurement transition alternative it will use. SFAS 158 is not expected to have a material impact on the Company’s results of operations, financial condition, liquidity or compliance with debt covenants.

**ITEM 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.**

**FORWARD-LOOKING STATEMENTS**

This section contains forward-looking statements as well as historical information. All statements, other than statements of historical facts, included in this Quarterly Report on Form 10-Q regarding the prospects of our industry and our prospects, plans, financial position and business strategy may constitute forward-looking statements. In addition, forward-looking statements are usually identified by or are associated with such words as “intend,” “plan”, “believe,” “estimate,” “expect,” “anticipate,” “hopeful,” “should,” “may,” “will”, “could” and or the negatives of these terms or variations of them or similar terminology. They reflect management’s current beliefs and estimates of future economic circumstances, industry conditions, Company performance and financial results and are not guarantees of future performance. All such forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those contemplated by the relevant forward-looking statement. Important factors that could cause actual results to differ materially from our expectations include, among others: (i) the availability and cost of grain, (ii) fluctuations in gasoline prices, (iii) fluctuations in energy costs, (iv) competitive environment and related market conditions, (vi) our ability to realize operating efficiencies, (vii) the effectiveness of our hedging programs, (viii) access to capital and (ix) actions of governments. For further information on these and other risks and uncertainties that may affect our business, see *Item 1A. Risk Factors* of our Annual Report on Form 10-K for the fiscal year ended June 30, 2006.

**RESULTS OF OPERATIONS**

## General

Reference is made to *Management's Discussion and Analysis of Financial Condition and Results of Operations—General*, incorporated by reference to Item 7 of our Annual Report on Form 10-K for the fiscal year ended June 30, 2006 for certain general information about our principal products and costs.

## Critical Accounting Policies

Reference is made to *Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies*, incorporated by reference to Item 7 of our Annual Report on Form 10-K for the fiscal year ended June 30, 2006 for accounting policies which are considered by management to be critical to an understanding of the Company's financial statements.

## DEVELOPMENTS IN THE INGREDIENTS SEGMENT

A previously reported loss of sales to a major pet industry customer is the primary reason for the decline in our ingredient sales. Sales of specialty ingredients for food applications were also lower compared to the second quarter a year ago, due principally to lower unit sales of both specialty proteins and starches combined with a slight decline in specialty starch prices. Selling prices for specialty proteins averaged higher than a year ago.

Recently, we have taken steps to size the ingredients portion of our business, particularly in the food area, to more appropriately align with current production and sales requirements. These steps have included adjustments in the size of our workforce across multiple disciplines within our organization. We are also concentrating our production and marketing efforts on supplying our core base of loyal customers with a more select array of high quality, premium ingredients that address nutritional, sensory and convenience

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issues and that can help build value while making more efficient use of our existing capacities. We continue to step up our research and development efforts and are revamping the responsibilities of our technical applications scientists, who in the future will perform a significantly more integral role as solutions providers to our customers. We are putting more focus on fewer core products, specifically Fibersym®, Arise®, Wheatex®, and FiberRite™ RW.

## DEVELOPMENTS IN THE DISTILLERY PRODUCTS SEGMENT

During the second quarter of fiscal 2007, we implemented measures to strengthen alcohol production efficiencies. These measures improved our capacity and permitted higher throughput, which contributed to distillery profits in the quarter. The capacity improvements were part of a previously announced plan to incrementally expand our alcohol production capacity by approximately 15 percent. Complete phase-in of this plan is scheduled to occur by late this summer at a total projected investment of \$10 million..

## SEGMENT RESULTS

The following is a summary of revenues and pre-tax profits/(loss) allocated to each reportable operating segment for the quarterly and year-to-date periods ended December 31, 2006 and 2005.

(in thousands)	Quarter Ended		Year to Date	
	December 31, 2006	December 31, 2005	December 31, 2006	December 31, 2005
<b>Ingredients</b>				
Net Sales	\$ 15,963	\$ 22,012	\$ 31,953	\$ 44,462
Pre-Tax Income (Loss)	(4,575)	(2,174)	(8,137)	(2,393)
<b>Distillery products</b>				
Net Sales	\$ 71,682	53,659	\$ 140,687	108,255
Pre-Tax Income (Loss)	15,978	3,856	31,220	10,805

## GENERAL

Our total earnings in the second quarter of fiscal 2007 increased significantly compared to the second quarter of fiscal 2006 as the result of increased profitability in our distillery products segment, which more than offset a loss in our ingredients segment. Our profit performance in the ingredients segment was adversely affected by reduced sales of our higher valued specialty ingredients for non-food applications, principally in the pet area along with higher raw material prices for wheat compared to the prior year's second quarter.

The increase in total sales revenue compared to the prior year's second quarter resulted from increased sales in the distillery products segment. Distillery products sales rose by approximately \$18 million, or 34 percent, above distillery products sales in the second quarter of fiscal 2006. Sales of ingredients, on the other hand, decreased by approximately \$6 million, or 27 percent, compared to a year ago.

The increase in distillery products sales resulted from higher unit sales and improved selling prices for both fuel grade and food grade alcohol over the comparable period in the prior year. However, the average selling price of fuel alcohol was lower in the current quarter than in the first quarter of fiscal 2007. Sales of distillers feed, the principal by-product of our alcohol production process, also increased compared to the prior year's second quarter due to an improvement in selling prices, which offset slightly lower unit sales. A significant percentage of our fuel grade alcohol sales are made pursuant to contracts

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ranging from six to nine months duration. In line with this practice, at April 1, 2006 we had contracted a sizeable portion of our total current alcohol capacity to customers in the fuel alcohol area through the end of calendar 2006. These contracts were at prices similar to prices in the fourth quarter of fiscal 2006.

The decrease in ingredients sales principally resulted from lower sales of specialty ingredients for both food and non-food applications. Sales of commodity ingredients increased compared to the prior year's second quarter mainly due to higher sales of commodity wheat gluten, which more than offset lower sales of commodity starch.

The decline in sales of specialty ingredients for non-food applications resulted primarily from decreased sales of our MGPI Chewtex™ line of protein- and starch-based resins, which are produced for use in the manufacture of pet chews and related treats. Sales of ingredients for use in personal care products also decreased compared to the prior year's second quarter. The decline in sales of specialty ingredients for food applications was principally due to lower unit sales of our specialty starches and specialty proteins. However, while the average selling price for specialty starches was just slightly lower than during the second quarter of fiscal 2006, the average selling price for

specialty proteins experienced an increase. The increase in sales of commodity gluten was due to higher unit sales and improved prices. The reduction in commodity starch sales revenue was due to lower unit sales, as the average selling price was higher than a year ago.

## INGREDIENTS

Total ingredient sales in the second quarter of fiscal 2007 decreased by approximately \$6 million, or approximately 27 percent, compared to the prior year's second quarter. This principally was due to a \$3.3 million, or 58 percent, reduction in sales of specialty ingredients for non-food food applications, and a \$3.0 million, or approximately 24 percent, decline in sales of specialty ingredients for food applications. Sales of commodity ingredients rose by approximately \$170,000, or 6 percent. This was due to a \$243,000, or 12 percent, increase in sales of commodity gluten, which was partially offset by a \$73,000, or 7 percent decline in sales of commodity starch. Sales of mill feed and other mill products increased by \$88,000, or 15 percent. The decrease in sales of specialty ingredients for non-food applications principally occurred in sales of our Chewtex® protein- and starch-based resins for use in pet industry products due to loss of sales to a major customer. The decrease in sales of specialty ingredients for food applications compared to the prior year's second quarter mainly occurred as a result of lower unit sales of our Fibersym® and Pregel™ lines of specialty starches and Arise® wheat protein isolates. Sales of our Wheatex® textured wheat proteins increased compared to a year ago due to improved pricing, which offset lower unit sales.

## DISTILLERY PRODUCTS

Total sales of our distillery products in the second quarter of fiscal 2007 rose by approximately \$18 million, or 34 percent, compared to the second quarter of fiscal 2006. This improvement was due to a \$9.5 million, or 32 percent, increase in sales of fuel grade alcohol and a \$7.8 million, or 45 percent, increase in sales of food grade alcohol. In the food grade area, sales of alcohol for industrial applications rose by \$6.9 million, or 55 percent, and sales of food grade alcohol for beverage applications rose by approximately \$1 million, or 19 percent, in each case due to a combination of higher prices and increased unit sales. The increased sales of fuel grade alcohol also resulted from higher average selling prices and higher unit sales. Distillers feed sales increased by approximately \$690,000, or nearly 10 percent, as a result of higher selling prices.

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## SALES

Net sales in the second quarter of fiscal 2007 increased by \$11.9 million, or 16 percent, above net sales in the second quarter of fiscal 2006. This improvement was due to increased distillery products sales. Ingredients sales decreased compared to the prior year. The increase in distillery products sales resulted from higher unit sales and prices for food grade alcohol for industrial and beverage applications combined with increased unit sales and prices for fuel grade alcohol and higher prices for distillers grain. The decrease in ingredients sales principally resulted from reduced unit sales of specialty ingredients for food and non-food applications together with lower unit sales of commodity starches.

For the first six months of fiscal 2007, net sales increased by \$19.9 million, or 13 percent, above net sales for the first six months of fiscal 2006. This improvement was due to increased distillery products sales in both the first and second quarters of fiscal 2006. Sales of ingredients decreased in both the first and second quarters compared to the same periods the prior year. The increase in distillery products sales resulted from higher unit sales and prices for fuel grade alcohol, food grade alcohol and distillers feed. The decline in ingredients sales was due to reduced sales of specialty ingredients for both food and non-food applications, together with a slight decline in sales of commodity ingredients. Lower sales of specialty ingredients for food applications was mainly attributable to decreased unit sales of both specialty starches and proteins, which offset higher specialty protein selling prices. Selling prices for specialty starches were slightly lower than prices experienced during the first six months of fiscal 2006. The reduction in sales of commodity ingredients was mainly due to lower unit sales of commodity gluten and starches. However, selling prices for both commodity gluten and starches averaged higher in the first six months of fiscal 2007 compared to the first six months of the prior fiscal year.

## COST OF SALES

The cost of sales in the second quarter of fiscal 2007 rose by approximately \$1.4 million, or nearly 2 percent, over cost of sales in the second quarter of fiscal 2006. This increase was mainly due to higher grain costs and higher costs of supplies used in our manufacturing processes, largely offset by a decrease in energy costs related to lower natural gas prices. Additionally, the increase was a function of higher depreciation expense resulting from a higher depreciable asset base due to certain assets being placed in service in the prior fiscal year. The higher costs of manufacturing-related grain and supplies were primarily due to increased prices. Wheat prices were approximately 27 percent higher than those experienced in the second quarter of fiscal 2006. Wheat costs were not hedged in either the second quarter of fiscal 2007 or 2006. The per-bushel cost of corn, adjusted for the impact of our hedging practices, averaged nearly 25 percent higher compared to a year ago. For the second quarter of fiscal 2007, the cost of natural gas, adjusted for the impact of our hedging practices, decreased approximately 30 percent compared to the same period the prior year.

The cost of sales for the first six months of fiscal 2007 increased by approximately \$6.6 million, or nearly 5 percent, compared to the first six months of fiscal 2006 as a result of the same factors cited above in relation to the second quarter of fiscal 2007. For the first six months of fiscal 2007, the per-bushel cost of wheat, adjusted for the impact of our hedging practices, averaged nearly 31 percent higher compared to a year ago. The per-bushel cost of corn, adjusted for the impact of our hedging practices, averaged nearly 15 percent higher compared to a year ago. The cost of natural gas, adjusted for the impact of our hedging practices, decreased approximately 22 percent compared to the same period the prior year.

In connection with the purchase of raw materials, principally corn and wheat, for anticipated operating requirements, we enter into commodity contracts to hedge the risk of future grain price increases. During the second quarter of fiscal 2007, we hedged approximately 35 percent of corn processed compared with approximately 42 percent of corn processed in the second quarter of fiscal 2006. No wheat was hedged in

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either the second quarter of fiscal 2007 or 2006. During the first six months of fiscal 2007, we hedged approximately 41 percent of corn processed compared with approximately 39 percent of corn processed in the first six months of fiscal 2006. Of the wheat that we processed, 6 percent was hedged in the first six months of fiscal 2007 compared with 0 percent hedged in the first six months of fiscal 2006.

Raw material costs in the second quarter of fiscal 2007 included a net hedging gain of approximately \$2.0 million compared to a net hedging loss of \$714,000 in the second quarter of fiscal 2006.

In the first six months of fiscal 2007, raw material costs included a net hedging loss of approximately \$26,000 compared to a net hedging loss of approximately \$1,348,000 in the first six months of fiscal 2006. During the first six months of fiscal 2007, we experienced no losses on ethanol futures, compared to loss of \$24,000 on ethanol futures during the first six months of the prior fiscal year.

These hedge transactions are highly effective. Accordingly, nearly all related losses were entirely offset by reduced raw materials costs.

## SELLING, GENERAL AND ADMINISTRATIVE EXPENSES



Selling, general and administrative expenses in the second quarter of fiscal 2007 increased by approximately \$70,000, or approximately 1 percent, compared to selling, general and administrative expenses in the second quarter of fiscal 2006. This increase was mainly due to costs related to the implementation of our Enterprise Resource Planning system, increased research and development expenditures and increases in other salaries and compensation.

Selling, general and administrative expenses in the first six months of fiscal 2007 decreased by approximately \$800,000 compared to the same period in fiscal 2006. Increased costs related to the implementation of our Enterprise Resource Planning system, increased research and development expenditures and increases in other salaries and compensation were offset by reduced salary and management incentive costs. Additionally, during the year-to-date period ended December 31, 2005, the Company accrued costs related to the unvested portion of its stock option incentive plan of approximately \$320,000. During the year-to-date period ended December 31, 2006, these costs were minimal as all outstanding stock options have vested

#### OTHER INCOME

Other income decreased approximately \$321,000 and \$77,000 in the quarter and year-to-date periods ended December 31, 2006, respectively, compared to the same periods of fiscal 2006. These decreases were principally attributable to changes in interest capitalized as well as the effect of certain other non-recurring, non-operating revenue items. It is our practice to credit other income for interest incurred that is capitalized.

#### INTEREST EXPENSE

Interest expense in the quarter and year-to-date period ended December 31, 2006 decreased compared to the same prior year periods. These decreases were primarily due to the impact of a make-whole premium paid in the first quarter of fiscal 2006 related to the refinancing of our notes with the Principal Mutual Life Insurance Company. Additionally, we maintained lower balances on our outstanding debt during the quarter and year-to-date period ended December 31, 2006.

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#### TAXES AND INFLATION

For the quarter ended December 31, 2006, our income tax provision was \$4.5 million for an effective rate of 39.8 percent compared to a provision of \$418,000 for the quarter ended December 31, 2005 for an effective rate of 33.8 percent. For the year-to-date period ended December 31, 2006, our income tax provision was \$8.4 million for an effective rate of 37.7 percent compared to a provision of \$2.9 million for the year-to-date period ended December 31, 2005 for an effective rate of 38.8 percent.

During the quarter ended December 31, 2006, management reassessed and revised the methodology for deriving applicable deferred tax rates related to valuing deferred tax assets and liabilities. As a result, we recorded a one-time \$450,000 adjustment to deferred tax expense to reflect the impact of this assessment. Excluding this one-time adjustment, our effective rate was 35.9 percent and 35.7 percent for the quarter and year-to-date periods ended December 31, 2006.

As of December 31, 2006, we had approximately \$1.1 million in unused Kansas State Income Tax Credits ("tax credits") related to capital investments we have made at our Atchison, Kansas facility. These tax credits are available for use through June 30, 2015 and are contingent upon meeting certain criteria related to job training as well as wages paid relative to industry standards. Additionally, application of these tax credits is contingent upon having sufficient taxable income in the state of Kansas. It is our policy to take advantage of tax benefits whenever they are available. We recognize these tax credits within our tax provision as these criteria are substantially satisfied.

#### NET INCOME

As the result of the foregoing factors, we experienced net income of \$6,835,000 in the second quarter of fiscal 2007 compared to net income of \$818,000 in the second quarter of fiscal 2006. Our net income for the first six months of fiscal 2007 was \$13,811,000 compared to net income of \$4,549,000 for the first six months of fiscal 2006.

#### LIQUIDITY AND CAPITAL RESOURCES

The following table is presented as a measure of our liquidity and financial condition: (Dollars in thousands)

	December 31, 2006	June 30, 2006
Cash and cash equivalents	\$ 10,479	\$ 14,495
Working capital	56,205	44,469
Amounts available under lines of credit	20,000	20,000
Notes payable and long-term debt	14,373	16,151
Stockholders' equity	146,874	134,912

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#### CASH FLOW INFORMATION

Summary cash flow information follows for the year-to-date periods ended December 31, 2006 and 2005, respectively: (Dollars in thousands)

	Year-to-Date	
	December 31, 2006	December 31, 2005
Cash flows provided by (used for):		
Operating activities	\$ 10,095	\$ 5,747
Investing activities	(9,194)	(11,213)
Financing activities	(4,917)	(1,147)
Increase (decrease) in cash and cash equivalents	(4,016)	(6,613)
Cash and cash equivalents at beginning of year	14,495	10,384
Cash and cash equivalents at end of year	\$ 10,479	\$ 3,771

During the year-to-date period ended December 31, 2006, our consolidated cash decreased \$4,016,000 compared to a decrease of \$6,613,000 during the year-to-date period ended December 31, 2005. This net improvement in cash flow was a result of improved operating cash flows and reduced capital expenditures. These factors, which led to an overall improvement in cash flow versus the same period in fiscal 2006, were partially offset by increased financing cash outflow primarily related to the purchase of treasury stock and a higher dividend payment. The principal sources of cash are operating cash flow, proceeds from stock plans and the issuance of long-term debt. Principal uses of cash are capital expenditures, payment of debt and the payment of dividends.

**Operating Cash Flows.** Summary operating cash flow information for the year-to-date periods ended December 31, 2006 and 2005, respectively, is as follows: (Dollars in thousands):

	<b>Year-to-Date Ended</b>	
	<b>December 31, 2006</b>	<b>December 31, 2005</b>
Net income	\$ 13,811	\$ 4,549
Depreciation	6,993	6,011
Gain on sale of assets	(3)	(14)
Deferred income taxes	1,974	(299)
Changes in working capital items:		
Segregated cash and investments	(855)	—
Accounts receivable	(3,664)	(4,565)
Inventories	(4,937)	(5,781)
Accounts payable and accrued expenses	2,295	4,535
Deferred revenue	(765)	(788)
Income taxes payable	(2,596)	3,190
Other	(2,158)	(1,091)
<b>Net cash provided by operating activities</b>	<b>\$ 10,095</b>	<b>\$ 5,747</b>

Cash flow from operations for the year-to-date period ended December 31, 2006 increased \$4,348,000 to \$10,095,000 from \$5,747,000 for the year-to-date period ended December 31, 2005. This improvement in operating cash flow was primarily attributable to the increase in net income of \$9,262,000 and increases in deferred income taxes. These factors, which served to increase operating cash flow, were partially

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offset by cash outflows for segregated cash and investments related to our hedge trading accounts as well as increases in inventory and reductions to income taxes payable. The increase in inventory resulted primarily from higher prices for grain. Additionally, operating cash flow was impacted by the timing of cash receipts and disbursements resulting in increases in accounts receivable, increases in accounts payable and accrued expenses as well as the pre-payment of certain expenses in the year-to-date period ended December 31, 2006.

**Investing Cash Flows.** Net investing cash outflow was \$9,194,000 for the year-to-date period ended December 31, 2006 compared to \$11,213,000 for the year-to-date period ended December 31, 2005. During the year-to-date period ended December 31, 2006, we made \$9,281,000 in capital expenditures, including expenditures relating to distillery expansion at our Atchison plant, the acquisition of feed dryers at our Pekin plant; injection molding and packaging equipment at the Kansas City facility, equipment to improve the efficiency of our alcohol production facilities at Pekin as well as construction costs related to our new corporate headquarters and tech center in Atchison. The effect of these capital expenditures was partially offset by the sale of certain equipment and vehicles of \$87,000.

**Financing Cash Flows.** Net Financing cash outflow for the year-to-date period ended December 31, 2006, was \$4,917,000 compared to \$1,147,000 for the year-to-date period ended December 31, 2005. During the year-to-date period ended December 31, 2006, we used cash flows from operations to make principal payments on debt of \$1,778,000. No other debt activity occurred during this period. During the year-to-date period ended December 31, 2005, we borrowed \$7,000,000 from General Electric Capital Corporation ("GECC") and used those proceeds to pay the unsecured notes payable to The Principal Mutual Life Insurance Company of \$6,816,000. We used cash flows from operations to make principal payments on debt of \$3,681,000. Additionally, we drew \$4,000,000 on our line of credit for operating purposes. As a result, net cash inflows related to debt transactions in the year-to-date period ended December 31, 2005 were \$503,000.

During the year-to-date period ended December 31, 2006, we used cash flows from operations of \$1,938,000 to purchase 80,500 shares of our common stock at an average price of approximately \$24.09 per share in connection with elections by employees to surrender shares to pay withholding taxes on 230,000 shares of restricted stock that had vested and had been awarded to the participants of the Company's long-term incentive plan. We also used cash flows from operations to pay dividends of \$3,343,000.

These factors were partially offset by proceeds from stock plans related to the exercise of outstanding stock options and tax benefits related to the restricted stock awards of \$2,142,000.

We did not purchase any shares of our common stock as part of any publicly announced plans or programs during the year-to-date period ended December 31, 2006. As of December 31, 2006, the Board has authorized the purchase of approximately 1,626,000 additional shares of our common stock.

#### **CONTRACTUAL OBLIGATIONS.**

As of December 31, 2006, the amount of long-term debt was \$14,373,000 compared to \$16,151,000 at June 30, 2006.

#### **FINANCIAL COVENANTS**

In connection with our loan and capital lease agreements, we are required to comply with certain covenants, a summary of which are as follows:

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- We must maintain a current ratio (current assets to current liabilities) of 1.5 to 1.
- We must maintain minimum consolidated tangible net worth (stockholders' equity less intangible assets) equal to the greater of (i) \$86 million or (ii) the sum of \$86 million plus 50 percent of consolidated net income since September 30, 2001.
- We must maintain a ratio of debt to tangible net worth of not more than 2.5 to 1.
- We may not permit consolidated funded debt (generally, asset acquisition related debt plus capitalized lease obligations) to exceed 60 percent of total capitalization.
- We must maintain at the end of each fiscal quarter a fixed charge ratio (generally, the ratio of (x) the sum of (a) net income [adjusted to exclude gains or losses from the sale or other disposition of capital assets and other matters] plus (b) provision for taxes plus (c) fixed charges, to (y) fixed charges) for the period of the four consecutive fiscal quarters ended as of the measurement date of 1.5 to 1.

## LINES OF CREDIT

Our line of credit for \$20 million, available for general corporate purposes, was amended on July 1, 2006 so that it now extends to July 1, 2007. As of December 31, 2006, we had no outstanding borrowings under the line.

## WORKING CAPITAL

Our working capital increased \$11,736,000 from June 30, 2006 to December 31, 2006. This increase was primarily the result of increased accounts receivable, inventories, and prepaid expenses as well as decreased accrued expenses, income taxes payable and deferred revenue. These factors, which led to an increase in working capital, were partially offset by reduced cash balances (including segregated cash held with our hedge trading broker), and increased accounts payable.

## ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Company produces its products from wheat, corn and milo and, as such, is sensitive to changes in commodity prices. Grain futures and/or options are used as a hedge to protect against fluctuations in the market. The information regarding inventories and futures contracts at June 30, 2006, as presented in the annual report, is not significantly different from December 31, 2006.

## ITEM 4. CONTROLS AND PROCEDURES.

### (a) Evaluation of disclosure controls and procedures.

Our Chief Executive Officer, President and Chief Financial Officer, after evaluating the design and effectiveness of the Company's disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) or 15d-15(e)) as of the end of the period covered by this report (the "Evaluation Date"), have concluded that as of the Evaluation Date, for the reasons noted in (b) (2) below the Company's disclosure controls and procedures were not adequately designed and operating effectively to ensure that material information relating to the Company would be made known to them by others within the Company, particularly during the period in which this Form 10-Q Quarterly Report was being prepared. The Company has taken the action noted in paragraph (b)(2) below to correct this deficiency.

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### (b) Changes in Internal Controls.

(1) In our Annual Report on Form 10K dated June 30, 2006, we disclosed two material weaknesses in internal control over financial reporting, one of which resulted in the accumulation of several significant deficiencies. In connection with the evaluation required by paragraph (d) of Securities Exchange Act Rule 13a-15 or 15d-15 that occurred during our second fiscal quarter, we have identified the following changes in internal that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. We have implemented these changes to address the material weaknesses identified in our Annual Report. However, because these control activities have not been in place for a sufficient period of time to permit adequate testing, we are unable to state at this time that the previously noted weaknesses have been remedied.

- We are no longer using the CMMS System to process purchasing, receiving, maintenance materials and chemicals/packaging transactions at our Atchison facility. We have implemented a fully integrated ERP system that has eliminated the need to operate such offline systems. Further, ERP system security has been established to prevent the initiation, authorization, recording, processing and recording of transactions by employees with incompatible duties. Based upon our initial testing, it appears that incompatible duties have been adequately segregated through the use of system access controls. Management will continue to monitor system access controls to ensure adequate segregation of duties within the system.
- We have implemented written procedures involving cycle counting and full physical inventories of maintenance materials at our Pekin, Illinois and Atchison, Kansas locations. Internal control testing has not been performed as of the date of this report, as control activities have not been in place for the prescribed period of time necessary for testing.

In regard to the period end accrual process, we have implemented internal controls over the mandatory reconciliation of all balance sheet accounts to determine the adequacy of accruals. Management will continue to ensure that these accounts are reconciled on a quarterly basis. In regard to tax accruals, we have retained Deloitte Touche, LLP to assist with all tax preparation and advisory services for the Company. Services will include quarterly evaluation of deferred taxes and federal/state income tax accruals.

(2) In the course of engaging the audit of employee benefit plans, management determined that certain employee benefit plans for the Atchison and Pekin plants that had previously been classified and reported as defined contribution plans did in fact contain aspects of defined benefit plans as well. Based upon an actuarial study of the defined benefit segment of the employee benefit plans, management performed an evaluation of the impact of this misclassification on the Company's Consolidated Financial Statements for the Year ended June 30, 2006 and determined the amount to be immaterial. Nonetheless, we regard this as a significant deficiency which we will address in future periods by establishing procedures to identify and evaluate existing contractual obligations (including but not limited to collective bargaining agreements) and the related impact of any changes in those contracts on financial reporting to allow management to evaluate the propriety of the accounting treatment for such contracts. These will include periodic and/or period end review of our significant contracts by our financial reporting and other accounting staff as well as other management and, if appropriate, legal counsel.

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## PART II – OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS.

Reference is made to *Item 3. Legal Proceedings* in the Company's Annual Report on Form 10-K for the year ended June 30, 2006 and to Part II, *Item 1 Legal Proceedings* in the Company's Quarterly Report on Form 10-Q for the quarter ended October 1, 2006 for information regarding certain legal proceedings to which the Company or its Illinois subsidiary are subject.

One matter referred to in our annual report on Form 10-K and quarterly report on Form 10-Q was an administrative proceeding brought in 1997 by the Illinois Attorney General on behalf of the Illinois Environmental Protection Agency relating to our subsidiary's Pekin facility. We have reached a settlement with the State. A Stipulation and Proposal for Settlement has been signed by all parties which provides for a total payment of the Company of \$500,000, including a contribution to a state special project fund. The Stipulation has been filed with the Illinois Pollution Control Board and was approved by the Board on January 26, 2007. The Stipulation requires us to make the payment by February 26, 2007 and to complete specified compliance activities relating to the construction of a Swiss Combi system which will replace two existing feed

dryers. The compliance activities and related timetable are included among those previously agreed to and already commenced pursuant to a previously announced consent decree with the United States Environmental Protection Agency.

Another matter referred to in our annual report on Form 10-K and quarterly report on Form 10-Q was *MGP Ingredients, Inc. v. Mars, Incorporated et. al.*, Civil Action No 06-2318, U.S. District Court, District of Kansas. On September 25, the defendants filed an answer denying the Company's substantive claims and a partial motion to dismiss the Company's tortious interference and misappropriation of trade secrets claims for failure to state a claim upon which relief can be granted. Defendants also pled various other affirmative defenses, including waiver, estoppel, unclean hands, non-infringement and invalidity of patent claims. On December 7, 2006, the court denied Mars' partial motion to dismiss the Company's tortious interference and misappropriation of trade secrets claims.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS. [TO BE COMPLETED]**

The following table shows repurchase information regarding purchases by the Company of shares of its stock during the quarter ended December 31, 2006.

Period	Total Number of Shares (or Units) Purchased	Average Price Paid per Share (or Unit)	Total Number of shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs
October 2-October 31, 2006	0	—	0	
November 1-November 30, 2006	0	—	0	
December 1-December 31 2006	0	—	0	1,613,716(a)

- (a) On various dates, the Board of directors authorized the purchase of an aggregate of 6,000,000 shares of Common Stock of which 4,386,284 shares had been purchased as of December 31, 2006. This program was first announced on June 5, 1997. During the three months ended December 31, 2006, no shares were purchased under the program. The program has no expiration date.

**ITEM 5. OTHER INFORMATION**

Reference is made to Item 1. Legal Proceedings, in which we refer to a Stipulation and Proposal for Settlement resolving certain environmental proceedings to which our subsidiary, MGP Ingredients, Inc. of Illinois, has been a party. The Stipulation is between our subsidiary, the State of Illinois and the Illinois Environmental Protection Agency. It was approved by the Illinois Pollution Control Board on January 26, 2007, at which time it became binding.

**ITEM 6. EXHIBITS**

- 3.1 Amended and Restated Articles of Incorporation (incorporated by reference to Exhibit 3.1 of the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004.)
- 3.2 Bylaws of the Company (Incorporated by reference to Exhibit 3(b) of the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2006 (File Number 0-17196)

- \*4.1 Fifth Amendment to Line of Credit Loan Agreement dated as of December 28, 2007
- \*4.2 Trust Indenture Dated as of December 28, 2006 relating to \$7,000,000 Taxable Industrial Revenue Bonds Series 2006 (MGP Ingredients Project)
- \*4.3 Lease dated as of December 28, 2006 between the City of Atchison, as Issuer and MGP Ingredients, Inc., as tenant relating to \$7,000,000 Taxable Industrial Revenue Bonds Series 2006 (MGP Ingredients Project (filed herewith as exhibit 10.6)
- \*10.1 Form of Indemnification Agreement between the Company and Directors and Executive Officers
- \*10.2 Guidelines for Issuance of Fiscal 2007 Restricted Share Awards
- \*10.3 Agreement with Ladd M. Seaberg as to Award of Restricted Shares Granted under the Stock Incentive Plan of 2004 with respect to Fiscal 2007 (Similar agreements have been made with the following named executive officers as to the number of shares indicated following their respective names: Timothy W. Newkirk – 9,200 shares; Randy M. Schrick – 9,300 shares; Brian T. Cahill – 8,900 shares; Sukh Bassi, Ph.D. – 9,400 shares
- \*10.4 Separation Agreement and Release of Claims relating to Michael J. Trautschold
- \*10.5 Consultation Agreement with Michael J. Trautschold
- \*10.6 Lease dated as of December 28, 2006 between the City of Atchison, as Issuer and MGP Ingredients, Inc., as tenant relating to \$7,000,000 Taxable Industrial Revenue Bonds Series 2006 (MGP Ingredients Project)
- \*10.7 Stipulation and Proposal for Settlement
- \*10.8 Ordered dated January 26, 2007 of Illinois Pollution Control Board approving Stipulation and Proposal for Settlement
- \*15.1 Letter from independent public accountants pursuant to paragraph (d) of Rule 10-01 of Regulation S-X (incorporated by reference to Independent Accountants' Review Report at page 3 hereof)

\*15.2 Letter from independent public accountants concerning the use of its Review Report in the Company's Registration Statement Nos.333-137593, 333-119860 and 333-51849

\*31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Acts of 2002

\*31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

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\*31.3 Certification of President pursuant to Section 302 of the Sarbanes-Oxley Acts of 2002

\*32.1 Certification of Chief Executive Officer furnished pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

\*32.2 Certification of Chief Financial Officer furnished pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

\*32.3 Certification of President pursuant to Section 302 of the Sarbanes-Oxley Acts of 2002

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\* Filed herewith

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#### SIGNATURES

Pursuant to the requirements on the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

MGP INGREDIENTS, INC.

Date: February 8, 2007

By /s/ Ladd M. Seaberg  
Ladd M. Seaberg, Chairman of the  
Board and Chief Executive Officer

Date: February 8, 2007

By /s/ Brian T. Cahill  
Brian T. Cahill, Vice President  
and Chief Financial Officer

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**FIFTH AMENDMENT  
TO  
LINE OF CREDIT LOAN AGREEMENT**

THIS FIFTH AMENDMENT TO LINE OF CREDIT LOAN AGREEMENT ("Fifth Amendment") is made effective as of December 28, 2006, by and between MGP INGREDIENTS, INC. ("Company") and COMMERCE BANK, N.A. ("Bank").

WHEREAS, Company and Bank entered into that certain Line of Credit Loan Agreement dated November 25, 2003, as amended pursuant to (i) that certain First Amendment to Line of Credit Loan Agreement dated September 17, 2004, (ii) that certain Second Amendment to Line of Credit Loan Agreement dated as of November 30, 2004, (iii) that certain Third Amendment to Line of Credit Agreement dated as of September 9, 2005 and (iv) that certain Fourth Amendment to Line of Credit Agreement dated as of June 30, 2006 (as previously amended, the "Loan Agreement"); and

WHEREAS, Section 3.1(a) of the Loan Agreement requires the company to comply with all of the Company Covenants as defined and contained in Section 5 of the Note Agreement dated as of August 1, 1993, between Borrower and the Principal Mutual Life Insurance Company (the "Principal Agreement"); and

WHEREAS, the Company is constructing a new office facility and technical center in Atchison, Kansas (the "Facilities"), which it intends to finance through a sale/leaseback transaction with the City of Atchison Kansas (the "Transaction"), pursuant to which the City of Atchison will issue its industrial revenue bonds in the principal amount of \$7 million under a trust indenture to finance the Facilities, the Company will purchase the Bonds from the City pursuant to a Bond Purchase Agreement, the City will use the proceeds of the Bonds to purchase the Facilities from the Company and the Company will then lease the Facilities from the City pursuant to a capital lease agreement;

WHEREAS, certain provisions of the Principal Agreement might prohibit or restrict the Company from engaging in the Transaction, and the parties desire to amend the Line of Credit Agreement to permit the Company to effect the Transaction;

NOW, THEREFORE, Company and Bank agree as follows:

1. Terms used herein which are defined in the Loan Agreement shall have the meanings given to them in the Loan Agreement.
2. Section 3.1 of the Loan Agreement is hereby amended by adding a new paragraph (c) to read in its entirety as follows:

Notwithstanding subparagraph (a) of this Section 3.1, the Borrower may engage in a transaction (the "Transaction") with the City of Atchison, Kansas pursuant to which the City of Atchison will issue its industrial revenue bonds (the "Bonds") in the principal amount of \$7 million and under a trust indenture ("Indenture") to finance a new office building and a new technical center for the Company

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(the "Facilities"), the Company will purchase the Bonds from the City pursuant to a Bond Purchase Agreement ("Bond Purchase Agreement"), the City will use the proceeds to purchase the Facilities from the Company and the Company will then lease the Facilities from the City pursuant to a capital lease agreement ("the Lease Agreement"). Borrower has provided Bank copies of said Bond Purchase Agreement, Indenture and Lease Agreement. The following provisions of the Principal Agreement shall not apply to the Transaction: Section 5.11 relating to limitation on liens, Section 5.13 relating to limitations on investments, Section 5.14 relating to sales of assets and Section 5.15 relating to guaranties.

3. Except to the extent specifically amended by this Fifth Amendment, the Loan Agreement, as amended, shall remain in full force and effect.
4. **ORAL 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 YOU (BORROWER) AND US (CREDITOR) FROM MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY AGREEMENTS WE REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS WRITING, WHICH IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN US EXCEPT AS WE MAY LATER AGREE IN WRITING TO MODIFY IT.**

**BY SIGNING BELOW, YOU AND WE AGREE THAT THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN US.**

5. This Fifth Amendment shall be governed by, and construed in accordance with, the laws of the State of Missouri.

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IN WITNESS WHEREOF, the parties hereto have caused this Fifth Amendment to be executed by their respective officers as of the date written above.

MGP INGREDIENTS, INC.

By: /s/ Brian T. Cahill  
Title: CFO

By: /s/ Ladd M. Seaberg  
Title: CEO

COMMERCE BANK, N.A.

By: /s/ Wayne C. Lewis  
Title: Vice President



CITY OF ATCHISON, KANSAS

AS ISSUER

AND

COMMERCE BANK, N.A.  
KANSAS CITY, MISSOURI

AS TRUSTEE

TRUST INDENTURE

DATED AS OF THE ISSUE DATE OF THE BONDS

\$7,000,000  
TAXABLE INDUSTRIAL REVENUE BONDS  
SERIES 2006  
(MGP INGREDIENTS PROJECT)

TRUST INDENTURE

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**TRUST INDENTURE**

**THIS TRUST INDENTURE**, dated as of the Issue Date of the Series 2006 Bonds (the "Indenture"), between the City of Atchison, Kansas (the "Issuer"), and Commerce Bank, N.A., Kansas City, Missouri (the "Trustee");

**WITNESSETH:**

**WHEREAS**, the Issuer is authorized by K.S.A. 12-1740 *et seq.*, as amended (the "Act"), to acquire, construct, improve and equip certain facilities (as defined in the Act) for commercial, industrial and manufacturing purposes, and to enter into leases and lease-purchase agreements with any person, firm or corporation for said facilities, and to issue revenue bonds for the purpose of paying the cost of any such facilities; and

**WHEREAS**, pursuant to such authorization, the Issuer's governing body has passed an ordinance authorizing the Issuer to issue its Taxable Industrial Revenue Bonds, Series 2006 (MGP Ingredients Project), in the principal amount of \$7,000,000 (the "Series 2006 Bonds"), for the purpose of acquiring, constructing and equipping an office building and technical center facility (jointly, the "Project" as hereinafter more fully described), and authorizing the Issuer to lease the Project to MGP INGREDIENTS, INC., a Kansas corporation (the "Tenant"); and

**WHEREAS**, pursuant to such ordinance, the Issuer is authorized (i) to execute and deliver this Indenture for the purpose of issuing and securing the Series 2006 Bonds and any Additional Bonds (collectively the "Bonds"), as hereinafter provided, and (ii) to enter into a Lease of even date herewith (the "Lease"), between the Issuer and the Tenant, pursuant to which Issuer shall lease the Project to the Tenant, in consideration of rentals which are intended to be sufficient to provide for the payment of the principal of, premium, if any, and interest on the Series 2006 Bonds as the same become due; and

**WHEREAS**, all things necessary to make the Series 2006 Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding limited obligations of the Issuer, and to make this Indenture a valid and legally binding pledge and assignment of the Trust Estate herein made for the security of the payment of the principal of, premium, if any, and interest on the Bonds issued hereunder, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Series 2006 Bonds, subject to the terms hereof, have in all respects been duly authorized;

**NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

**GRANTING CLAUSES**

That the Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Series 2006 Bonds by the Tenant, as Original Purchaser thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest

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on all of the Bonds issued and Outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign unto the Trustee and its successors and assigns, and grant to the Trustee and its successors and assigns a security interest in the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to wit:

(a) The real property or interests therein situated in Atchison County, Kansas, described in *Schedule I* attached hereto and constituting the Land (as defined herein), with all Improvements (as defined herein) now or hereafter located thereon, to the extent and subject to the limitations provided in the Lease, with the tenements, hereditaments, appurtenances, rights, privileges and immunities thereunto belonging or appertaining.

(b) All right, title and interest of the Issuer in, to and under the Lease (except the Issuer's right to indemnity thereunder), and all rents, revenues and receipts derived by the Issuer from the Project including, without limitation, all Basic Rent derived by the Issuer under and pursuant to and subject to the provisions of the Lease; provided that the pledge and assignment hereby made shall not impair or diminish the obligations of the Issuer under the provisions of the Lease.

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

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

**IN TRUST NEVERTHELESS**, upon the terms and subject to the conditions herein set forth, for (i) the equal and proportionate benefit, protection and security of the Series 2006 Bonds (herein defined) and any Additional Bonds issued and Outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds (herein defined) over any other of the Bonds except as expressly provided in or permitted by this Indenture;

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

**THIS INDENTURE FURTHER WITNESSETH**, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured

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hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee and with the respective Owners from time to time of the Bonds, as follows:

## DEFINITIONS

Section 101. **Definitions of Words and Terms.** In addition to the words and terms defined elsewhere in this Indenture, the capitalized words and terms used in this Indenture and in the Lease shall have the meanings assigned in the Glossary attached hereto as *Appendix B*, unless some other meaning is plainly intended.

### Section 102. **Rules of Interpretation.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations, trusts and corporations, including public bodies, as well as natural persons.

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

(c) All references in this instrument to designated "Articles", "Sections" 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 Indenture as a whole and not to any particular Article, Section or subdivision.

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

## ARTICLE II

### THE BONDS

Section 201. **Title and Amount of Bonds.** No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as "City of Atchison, Kansas Taxable Industrial Revenue Bonds,

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Series 2006 (MGP Ingredients Project)," with such other appropriate particular designation added to or incorporated in such title for the Bonds of any particular series of Additional Bonds as the Issuer may determine. The total principal amount of Bonds that may be issued hereunder is hereby expressly limited to the \$7,000,000 principal amount of Series 2006 Bonds and any Additional Bonds permitted hereunder.

### Section 202. **Limited Nature of Obligations.**

(a) The Bonds and the interest thereon shall be limited obligations of the Issuer payable solely and only from the net earnings and revenues derived by the Issuer from the Project, including but not limited to the rents, revenues and receipts under the Lease, and are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Bondowners, as provided in this Indenture. The Bonds and the interest thereon shall not be a debt or general obligation of the Issuer or the State, or any municipal corporation thereof, and neither the Bonds, the interest thereon, nor any judgment thereon or with respect thereto, are payable in any manner from tax revenues of any kind or character. The Bonds shall not constitute an indebtedness or a pledge of the faith and credit of the Issuer, the State or any municipal corporation thereof, within the meaning of any constitutional or statutory limitation or restriction.

(b) No provision, covenant or agreement contained in this Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit or powers of taxation. In making the agreements, provisions and covenants set forth in this Indenture, the Issuer has not obligated itself except with respect to the Project and the application of the payments, revenues and receipts therefrom as hereinabove provided. Neither the officers of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof.

### Section 203. **Denomination, Numbering and Dating of Bonds.**

(a) The Bonds shall be fully registered Bonds in the denomination of \$5,000 or any integral multiple thereof not exceeding the principal amount of the Bonds maturing on any Principal Payment Date. The Bonds shall be substantially in the form set forth in *Article IV* of this Indenture. The Bonds of each series of Bonds shall be numbered in such manner as the Trustee shall determine.

(b) The Bonds of each series of Bonds shall be dated as provided in this Indenture or the Supplemental Indenture authorizing the issuance of such series of Bonds. The Bonds shall bear interest from their effective date of registration. The effective date of registration shall be the Interest Payment Date next preceding the date of authentication thereof by the Trustee, unless such date of authentication shall be an Interest Payment Date, in which case the effective date of registration shall be as of such date of authentication, or unless the date of authentication shall be prior to the first Interest Payment Date for such series of Bonds, in which case the effective date of registration shall be the Issue Date of such series of Bonds; provided, however, that if payment of the interest on any Bonds of any series shall be in default at the time of authentication of any Bond

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certificates issued in lieu of Bonds surrendered for transfer or exchange, the effective date of registration shall be as of the date to which interest has been paid in full on the Bonds surrendered.

Section 204. **Method and Place of Payment of Bonds.** Payment of interest on each Bond shall be made by the Trustee on each Payment Date to the person appearing on the registration books of the Issuer maintained by the Trustee as the registered owner thereof by check or draft mailed to such Bondowner at the address appearing on such registration books. At the written request of any Owner of at least \$100,000 in principal amount of the Bonds, interest shall be paid to such Owner by electronic transfer to the address specified by such Owner in writing to the Trustee at least 15 days prior to the Record Date preceding the applicable Interest Payment Date. Any such written request for electronic transfer shall be signed by such Owner and shall include the name of the bank (which shall be in the continental United States), its address, its ABA routing number, and the name, number, and contact name related to such Owner's account at such bank to which payment is to be credited. Final payment of principal and redemption premium, if any, on all Bonds shall be made by check or draft upon the presentation and surrender of the certificate(s) representing such Bonds at the stated maturity or earlier required redemption thereof at the principal office of the Paying Agent.

Section 205. **Execution and Authentication of Bonds.**

(a) Bond certificates shall be executed on behalf of the Issuer by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its City Clerk, and shall have the corporate seal of the Issuer affixed thereto or imprinted thereon. In case any officer whose signature or facsimile thereof appears on any Bond certificates shall cease to be such officer before the delivery of such Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until delivery. Any Bond certificate may be signed by such persons as at the actual time of the execution of such Bond certificate shall be the proper officers to sign although on the date of issuance of such Bond such persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in *Article IV* hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purpose unless and until such Certificate of Authentication shall have been duly executed. Such executed Certificate of Authentication upon any Bond certificate shall be conclusive evidence that the Bonds described in such Bond certificate have been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond certificate shall be deemed to have been duly executed if signed by any authorized officer or employee of the Trustee, but it shall not be necessary that the same officer or employee sign the Certificate of Authentication on all of the Bond certificates that may be delivered hereunder at any one time.

Section 206. **Registration, Transfer and Exchange of Bonds.**

(a) The Trustee shall keep books for the registration and for the transfer of the Series 2006 Bonds and any Additional Bonds as provided in this Indenture.

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(b) Bonds may be transferred only upon the books maintained by Trustee for the registration and transfer of Bonds upon surrender of the certificate(s) representing such Bonds to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Bondowner or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange for such Bonds new Bond certificate(s), registered in the name of the transferee, of any denomination or denominations authorized by this Indenture in an aggregate principal amount equal to the principal amount of such Bonds, of the same series and maturity and bearing interest at the same rate. In the event that any Bondowner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Bondowner sufficient to pay any governmental charge required to be paid as a result of such failure.

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

(d) Any proposed transfer of Series 2006 Bonds shall be made by the Trustee only upon delivery to the Trustee, the Issuer and the Tenant of an opinion of counsel to the proposed transferor either (1) that the proposed transfer is a part of a transaction exempt from the application of the Securities Act of 1933, as amended (the "1933 Act"), or (2) that the transfer is a part of a transaction that is in compliance with the registration provisions of the 1933 Act, which opinion shall be in form and substance acceptable to both the Trustee and the Tenant.

(e) All of the duties of the Trustee set forth in this *Section 206* may be performed by any co-trustee or co-paying agent appointed by the Trustee, to the extent specified in the instrument appointing such co-trustee or co-paying agent.

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

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Section 208. **Authorization of Series 2006 Bonds.**

(a) There shall be initially issued and secured pursuant to this Indenture, a series of Bonds in the aggregate principal amount of \$7,000,000 for the purpose of providing funds to pay Project Costs, which series of Bonds shall be designated the "City of Atchison, Kansas, Taxable Industrial Revenue Bonds, Series 2006 (MGP Ingredients Project)." The Series 2006 Bonds shall be dated their Issue Date, and shall bear interest on the Outstanding principal amount thereof at the rate of 4.90% per annum.

(b) Interest on the Bonds shall be payable to the Owners thereof in accordance with the provisions of *Article II* hereof.

(c) The Trustee is hereby designated as the Issuer's Paying Agent for the payment of the principal of, premium, if any, and interest on the Series 2006 Bonds. The Trustee may appoint one or more financial institutions to act as co-paying agent for the Series 2006 Bonds.

(d) Upon the original issuance and delivery of the Series 2006 Bonds, the effective date of registration thereof shall be their Issue Date.

(e) The Series 2006 Bonds shall be substantially in the form and manner set forth in *Article IV* hereof and delivered to the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

(1) An original or certified copy of the ordinance enacted by the Issuer's governing body authorizing the issuance of the Series 2006 Bonds and the execution of this Indenture and the Lease.

- (2) An original executed counterpart of this Indenture.
- (3) An original executed counterpart of the Lease.
- (4) An opinion of Bond Counsel to the effect that the Series 2006 Bonds constitute valid and legally binding obligations of the Issuer, subject to such limitations and restrictions as shall be described therein.
- (5) Such other certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of the Series 2006 Bonds.

(f) When the documents specified in subsection (e) of this Section shall have been filed with the Trustee, and when certificates representing all the Series 2006 Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Series 2006 Bonds to or upon the order of the Original Purchaser thereof, but only upon payment to the Trustee of the purchase price of the Series 2006 Bonds. The Original Proceeds, including accrued interest and premium thereon, if any, shall be immediately paid over to the Trustee, and the Trustee shall deposit and apply such proceeds as provided in *Article V* hereof.

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#### Section 209. Authorization of Additional Bonds.

(a) Additional Bonds may be issued under and equally and ratably secured by this Indenture on a parity with the Series 2006 Bonds and any other Additional Bonds Outstanding at any time and from time to time, upon compliance with the conditions hereinafter provided in this Section, for any of the following purposes:

- (1) To provide funds to pay the costs of completing the Improvements, the total of such costs to be evidenced by a certificate signed by the Authorized Tenant Representative.
- (2) To provide funds to pay all or any part of the costs of repairing, replacing or restoring Improvements in the event of damage, destruction or condemnation thereto or thereof.
- (3) To provide funds to pay all or any part of the costs of acquisition, purchase or construction of such additions, improvements, extensions, alterations, expansions or modifications of the Project (including additional Land or Improvements) or any part thereof as the Tenant may deem necessary or desirable and as will not impair the nature of the Project as a "facility" within the meaning and purposes of the Act.
- (4) To provide funds for refunding all or any part of the Bonds of any series then Outstanding, including the payment of any premium thereon and interest to accrue to the designated redemption date and any expenses in connection with such refunding.

(b) Before any Additional Bonds shall be issued under the provisions of this Section, the Original Purchaser shall give its written consent thereto, and the Issuer's governing body shall enact an ordinance (i) authorizing the issuance of such Additional Bonds, fixing the amount and terms thereof and describing the purpose or purposes for which such Additional Bonds are being issued or describing the Bonds to be refunded, (ii) authorizing the Issuer to enter into a Supplemental Indenture for the purpose of providing for the issuance of and securing such Additional Bonds and, if required, (iii) authorizing the Issuer to enter into a supplemental lease with the Tenant to provide for rental payments at least sufficient to pay the principal of, premium, if any, and interest on the Bonds then to be Outstanding (including the Additional Bonds to be issued) as the same become due, for the acquisition, purchase, construction or installation of additional Improvements, for the inclusion of any such addition, expansion or modification as a part of the Project, and for such other matters as are appropriate because of the issuance of the Additional Bonds proposed to be issued which, in the judgment of the Issuer, is not to the prejudice of the Issuer or the owners of the Bonds previously issued.

(c) Such Additional Bonds shall have the same designation as the Series 2006 Bonds, except for an identifying series letter or date and the addition of the word "Refunding" when applicable, shall be dated, shall be stated to mature on Principal Payment Dates in such year or years, shall bear interest at such rate or rates not exceeding the maximum rate then permitted by law, and shall be redeemable at such times and prices (subject to the provisions of *Article III* of this Indenture), all as may be provided by the Supplemental Indenture authorizing the issuance of such

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Additional Bonds. Except as to any difference in the date, the maturity or maturities, the rate or rates of interest or the provisions for redemption, such Additional Bonds shall be on a parity with and shall be entitled to the same benefit and security of this Indenture as the Series 2006 Bonds and any other Additional Bonds Outstanding at the time of the issuance of such Additional Bonds.

(d) Such Additional Bonds shall be substantially in the form and executed in the manner set forth in this Article and *Article IV* hereof and certificates representing such Bonds shall be deposited with the Trustee for authentication, but prior to or simultaneously with the authentication and delivery of such Bond certificates by the Trustee, there shall be filed with the Trustee the following:

- (1) An original or certified copy of the ordinance enacted by the Issuer's governing body authorizing the issuance of such Additional Bonds and the execution of such Supplemental Indenture and the appropriate amendments or supplements to the Lease.
- (2) An original executed counterpart of the Supplemental Indenture providing for the issuance of the Additional Bonds.
- (3) An original executed counterpart of the amendment or supplement to the Lease, if required.
- (4) In the case of Additional Bonds being issued to refund Outstanding Bonds, such additional documents as shall be reasonably required by the Trustee to establish that provision has been duly made for the payment of all of the Bonds to be refunded in accordance with the provisions of *Article XIII* of this Indenture.
- (5) A copy of the written consent of the Original Purchaser.
- (6) Such other instructions, certificates, statements, receipts and documents as the Trustee shall reasonably require for the delivery of such Additional Bonds.

(e) When the documents mentioned in subsection (d) of this Section shall have been filed with the Trustee, and when such Additional Bonds shall have been executed and authenticated as required by this Indenture, the Trustee shall deliver such Additional Bonds to or upon the order of the purchasers thereof, but only upon payment to the Trustee of the purchase price of such Additional Bonds. The proceeds of the sale of such Additional Bonds, (except Additional Bonds issued to refund Outstanding Bonds), including accrued interest and premium thereon, if any, shall be immediately paid over to the Trustee and shall be deposited and applied by the Trustee

as provided in *Article V* hereof and in the Supplemental Indenture authorizing the issuance of such Additional Bonds. The proceeds, (excluding accrued interest and premium, if any, which shall be deposited in the Debt Service Fund) of all Additional Bonds issued to refund Outstanding Bonds shall be deposited by the Trustee, after payment or making provision for payment of all expenses incident to such financing, to the credit of a special trust fund, appropriately designated, to be held in trust for the sole and exclusive purpose of paying the principal of, premium, if any, and interest on the Bonds to be refunded, as provided in *Section 1302* hereof and in the Supplemental Indenture authorizing the issuance of such refunding Bonds.

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(f) Except as provided in this Section, the Issuer will not otherwise issue any obligations ratably secured and on a parity with the Bonds, but the Issuer may issue other obligations specifically subordinate and junior to the Bonds with the express written consent of the Tenant.

**Section 210. Temporary Bonds.**

(a) Until definitive Bonds of any series are available for delivery, the Issuer may execute, and upon request of the Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds, but subject to the same limitations and conditions as definitive Bonds, temporary printed, engraved, lithographed or typewritten Bonds, in the form of fully registered Bonds in denominations of \$5,000 or any integral multiple thereof, substantially of the tenor hereinabove set forth and with such appropriate omissions, insertions and variations as may be required with respect to such temporary Bonds.

(b) If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it at its principal office of any temporary Bond shall cancel the same and authenticate and deliver in exchange therefor, without charge to the Owner thereof, a definitive Bond or Bonds of an equal aggregate principal amount, of the same series and maturity and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds to be issued and authenticated hereunder.

**Section 211. Mutilated, Lost, Stolen or Destroyed Bonds.** In the event any Bond certificate shall become mutilated, or be lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond certificate of like series, date and tenor as the Bond certificate mutilated, lost, stolen or destroyed. In the case of any mutilated Bond certificate, such mutilated Bond shall first be surrendered to the Trustee; and in the case of any lost, stolen or destroyed Bond certificate, there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. In the event any such Bond shall have matured, instead of issuing a substitute Bond certificate the Issuer may pay or authorize the payment of the same without surrender thereof. Upon the issuance of any substitute Bond certificate, the Issuer and the Trustee may require the payment of an amount sufficient to reimburse the Issuer and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

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**Section 212. Cancellation and Destruction of Bonds Upon Payment.**

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

(b) All Bonds canceled under any of the provisions of this Indenture shall be delivered by the Trustee to the Issuer, or, upon request of the Issuer, shall be destroyed by the Trustee. The Trustee shall execute a certificate in triplicate describing the Bonds so delivered or destroyed, and shall file executed counterparts of such certificate with the Issuer and the Tenant.

**ARTICLE III**

**REDEMPTION OF BONDS**

**Section 301. Redemption of Bonds Generally.** The Series 2006 Bonds shall be subject to redemption prior to maturity in accordance with the terms and provisions of this Article. Additional Bonds shall be subject to redemption prior to maturity in accordance with the terms and provisions contained in this Article and as may be specified in the Supplemental Indenture authorizing such Additional Bonds.

**Section 302. Redemption of Series 2006 Bonds.** The Bonds shall be subject to redemption as follows:

(a) *Extraordinary Optional Redemption.* In the event of a Change of Circumstances, the Series 2006 Bonds shall be subject to redemption and payment prior to the stated maturity thereof, at the option of the Issuer, upon instructions from the Tenant, on any date at the par value of the principal amount thereof, plus accrued interest thereon to the redemption date, without premium, provided all of the Series 2006 Bonds are so redeemed and paid according to their terms.

(b) *Optional Redemption.* The outstanding principal amount of the Series 2006 Bonds shall be subject to redemption and payment prior to maturity, at the option of the Issuer, upon instructions from the Tenant, as a whole or in part on any date at the redemption price of the par value of the principal amount thereof, without premium, plus accrued interest thereon to the date fixed for redemption and payment.

**Section 303. Selection of Bonds to be Redeemed.**

(a) Bonds shall be redeemed only in the principal amount of \$5,000 or integral multiples thereof. If less than all of the Outstanding Bonds of any series are to be redeemed and paid prior to maturity, such Bonds shall be redeemed as directed in writing by the Tenant. Bonds

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of less than a full maturity are to be selected by the Trustee in such equitable manner as it may determine.

(b) In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than \$5,000 are then Outstanding, then for all purposes in

connection with such redemption each \$5,000 of face value shall be treated as though it was a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all, of the \$5,000 units of face value represented by any fully registered Bond is selected for redemption, then the Owner of such Bond or his attorney or legal representative shall forthwith present and surrender such Bond to the Trustee (1) for payment of the redemption price (including the premium, if any, and interest to the redemption date) of the \$5,000 unit or units of face value called for redemption, and (2) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the owner of any such Bond of a denomination greater than \$5,000 shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the redemption date to the extent of the principal amount thereof called for redemption (and to that extent only).

**Section 304. Trustee's Duty to Redeem Bonds.** The Trustee shall call bonds for mandatory redemption immediately upon receipt of written advice from the Issuer that the event giving rise to mandatory redemption has occurred, and stating the redemption date (except with respect to mandatory redemption of Term Bonds, no further notice of which is required). Upon receipt by the Trustee of such written advice, if required, and upon its own initiative if not required, the Trustee shall give at least 30 days' written notice of redemption to the Bondowners as provided herein. The Trustee shall call Bonds for redemption and payment as herein provided and shall give notice of redemption as provided in *Section 305* hereof upon receipt by the Trustee at least 45 days prior to the proposed redemption date (unless waived) of a written request of the Issuer together with a copy of the redemption instructions of the Tenant. Such instructions shall specify the principal amount and the respective maturities of Bonds to be called for redemption, the applicable redemption price or prices and the provision or provisions of this Indenture pursuant to which such Bonds are to be called for redemption. In the event of a mandatory redemption as provided herein, no request from the Issuer or instructions from the Tenant shall be necessary.

**Section 305. Notice of Redemption.** Notice of the call for any redemption identifying the Bonds or portions thereof to be redeemed shall be given by the Trustee, in the name of the Issuer, by mailing by first class mail, postage prepaid, a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed at the address shown on the registration books maintained by the Trustee; provided, however, that failure to give such notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of the Bonds. Any notice of redemption shall state the date of redemption, the place or places at which such Bonds shall be presented for payment, the series, maturities and numbers of the Bonds or portions of Bonds to be redeemed (and in the case of the redemption of a portion of any Bond the principal amount thereof being redeemed), the redemption price and shall state that interest on the Bonds described in such notice will cease to accrue from and after the redemption date. A copy of each such notice of redemption shall be provided to any authorized co-paying agent appointed by the Trustee.

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**Section 306. Effect of Call for Redemption.** Prior to the date fixed for redemption, funds or Government Securities maturing on or before the date fixed for redemption shall be deposited with the Trustee in amounts sufficient to provide for payment of the Bonds called for redemption, accrued interest thereon to the redemption date and the redemption premium, if any. Upon the deposit of such funds or Government Securities, and notice having been given as provided in *Section 305* hereof, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

#### ARTICLE IV

##### FORM OF BONDS

**Section 401. Forms Generally.** The Series 2006 Bonds, and the Trustee's certificate of authentication to be endorsed thereon shall be, respectively, in substantially the form set forth in *Appendix A*. Any Additional Bonds, and the Trustee's Certificate of Authentication to be endorsed thereon shall also be in substantially such form, with such necessary or appropriate variations, omissions and insertions as are permitted or required by this Indenture or any Supplemental Indenture. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirement of law with respect thereto.

**Section 402. Form of Bond Counsel's Approving Opinion.**

Bond Counsel's approving opinion with respect to the authorization and issuance of the Bonds shall be substantially in form acceptable to Bond Counsel and the Original Purchaser and, if printed on the Bond certificates, shall be preceded by the following certificate:

I, the undersigned, City Clerk of the City of Atchison, Kansas hereby certify that the following is a true and correct copy of the complete final legal opinion of Gilmore & Bell, P.C., Bond Counsel, on the within Bond and the series of which said Bond is a part, except that it omits the date of such opinion, that said legal opinion was manually executed and was dated and issued as of the date of delivery of and payment for such Bonds, and is on file with Commerce Bank, N.A., Kansas City, Missouri.

(facsimile signature)

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City Clerk of the City of  
Atchison, Kansas

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#### ARTICLE V

##### CUSTODY AND APPLICATION OF BOND PROCEEDS

**Section 501. Creation of Project Fund.** There is hereby established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the "City of Atchison, Kansas Project Fund (MGP Ingredients Project)." The Project Fund shall consist of two accounts: a Project Account and a Costs of Issuance Account. The Trustee may create separate subaccounts in the Project Account for each series of Bonds issued pursuant to the Indenture.

**Section 502. Deposits into the Project Fund.** The following funds shall be paid over to and deposited by the Trustee into the Project Fund, as and when received:

(a) The proceeds from the sale of the Series 2006 Bonds, excluding such amounts thereof as are required to be paid into the Debt Service Fund pursuant to *Section 602* hereof.

(b) The earnings accrued on the investment of moneys in the Project Fund and required to be deposited into the Project Fund pursuant to *Section 702*



hereof.

(c) The proceeds from the sale of any Additional Bonds (except Additional Bonds issued to refund Outstanding Bonds) (excluding such amounts thereof required to be paid into the Debt Service Fund pursuant to *Section 602* hereof).

(d) The Net Proceeds of casualty insurance, condemnation awards or title insurance required to be deposited into the Project Fund pursuant to the Lease.

(e) Any and all payments from any contractors or other suppliers by way of breach of contract, refunds or adjustments required to be deposited into the Project Fund pursuant to the Lease.

(f) Except as otherwise provided herein or in the Lease, any other money received by or to be paid to the Trustee from any other source for the purchase or construction of the Improvements, or payment of Costs of Issuance, when accompanied by directions by the Tenant that such moneys are to be deposited into the Project Fund.

(g) Moneys received for payment of Costs of Issuance shall be deposited in the Costs of Issuance Account. The balance shall be deposited in the Project Account.

**Section 503. Disbursements from the Project Fund.**

(a) The moneys in the Project Account of the Project Fund shall be disbursed by the Trustee for the payment of Project Costs (other than Costs of Issuance) in accordance with the provisions of *Article V* of the Lease. Costs of Issuance shall be paid from the Costs of Issuance Account of the Project Fund upon receipt of a properly executed requisition therefor. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions. If the

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Issuer so requests, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the Issuer.

(b) The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and after the Improvements have been completed and a certificate of payment of all costs filed as provided in *Section 504* hereof, the Trustee shall file a statement of receipts and disbursements with respect thereto with the Issuer and the Tenant.

**Section 504. Disposition Upon Completion of the Improvements.** The completion of the Improvements and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee by the Tenant of the Certificate of Completion required by *Section 5.6* of the Lease. As soon thereafter as practicable, any balance remaining in the Project Account of the Project Fund shall without further authorization be deposited in the Debt Service Fund and applied by the Trustee solely to the payment of principal of the Bonds through the payment or redemption thereof on any redemption date specified in *Section 302(c)* hereof or as otherwise permissible in the opinion of Bond Counsel. Any amounts remaining in the Costs of Issuance Account 30 days prior to the first Interest Payment Date shall be transferred to the Debt Service Fund as Basic Rent Credits.

**Section 505. Disposition Upon Acceleration.** If the principal of the Bonds shall have become due and payable pursuant to *Section 901* of this Indenture, upon the date of payment by the Trustee of any moneys due as hereinafter provided in *Article IX*, any balance remaining in the Project Fund shall, without further authorization, be deposited in the Debt Service Fund by the Trustee.

**ARTICLE VI**

**REVENUES AND FUNDS**

**Section 601. Creation of the Debt Service Fund.** There is hereby directed to be established in the custody of the Trustee a special trust fund in the name of the Issuer to be designated the "City of Atchison, Kansas Debt Service Fund for Taxable Industrial Revenue Bonds (MGP Ingredients Project)" (herein called the "Debt Service Fund"). The Trustee may create separate subaccounts in the Debt Service Fund for each series of Bonds issued pursuant to this Indenture.

**Section 602. Deposits into the Debt Service Fund.** The Trustee shall deposit into the Debt Service Fund, as and when received, the following:

(a) All accrued interest on the Series 2006 Bonds and premium, if any, paid by the Original Purchaser of the Bonds to be applied to payment of interest on the Series 2006 Bonds accruing prior to the Completion Date.

(b) If required by a Supplemental Indenture authorizing the issuance of Additional Bonds, an additional amount from the proceeds of such Additional Bonds, such additional amount

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not to exceed the sum which, when added to the accrued interest and premium, if any, received from the sale of such Additional Bonds, will be sufficient to pay the interest accruing on such Additional Bonds during the estimated period of construction of the Project Additions financed through the issuance of such Additional Bonds.

(c) All Basic Rent payable by the Tenant to the Issuer specified in *Section 3.1* of the Lease.

(d) Any amount in the Project Fund to be transferred to the Debt Service Fund pursuant to *Section 504* hereof upon completion of the Improvements and any amount remaining in the Project Fund to be transferred to the Debt Service Fund pursuant to *Section 509* hereof upon acceleration of the maturity of the Bonds.

(e) All interest and other income derived from investments of Debt Service Fund moneys as provided in *Section 702* hereof.

(f) All other moneys received by the Trustee under and pursuant to any of the provisions of the Lease, except Additional Rent, or when accompanied by directions from the person depositing such moneys that such moneys are to be paid into the Debt Service Fund.

**Section 603. Application of Moneys in the Debt Service Fund.**

(a) Except as provided in subsection (d) of this Section, moneys in the Debt Service Fund shall be expended solely for the payment of the principal of,

premium, if any, and interest on the Outstanding Bonds as the same mature and become due or upon the redemption thereof prior to maturity.

(b) The Issuer hereby authorizes and directs the Trustee to withdraw sufficient funds from the Debt Service Fund to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal, premium, if any, and interest.

(c) The Trustee, upon written direction of the Issuer and the Tenant, shall use any excess moneys in the Debt Service Fund (other than investment earnings credited to such account) and any moneys paid to the Trustee for deposit in the Debt Service Fund pursuant to *Section 17.2* of the Lease to redeem Outstanding Bonds, interest accruing thereon prior to such redemption, and redemption premium, if any, in accordance with and to the extent permitted by *Article III* hereof so long as the Tenant is not in Default with respect to payments of Basic Rent under the Lease and to the extent said moneys are in excess of amounts required for payment of Bonds theretofore matured or called for redemption and past due interest in all cases when such Bonds have not been presented for payment. The Tenant may also direct such excess moneys in the Debt Service Fund or such part thereof or other moneys of the Tenant, as the Tenant may direct, to be applied by the Trustee for the purchase of Bonds in the open market for the purpose of cancellation.

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(d) Any amount remaining in the Debt Service Fund after the principal of, premium, if any, and interest on the Bonds shall have been paid in full or provision made therefor in accordance with *Article XIII* hereof, shall be paid to the Tenant by the Trustee.

**Section 604. Payments Due on Saturdays, Sundays and Holidays.** In any case where the date of maturity of principal of, premium, if any, or interest on the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of principal, premium, if any, or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

**Section 605. Nonpresentment of Bonds.** In the event that any Bond shall not be presented for payment when the principal thereof becomes due, either at its stated maturity or at the date called for redemption, or the Trustee is unable to locate the Owner for the payment of accrued interest or an accrued interest check remains uncashed, if funds sufficient to pay such Bond and accrued interest shall have been made available to the Trustee, all liability of the Issuer to the Bondowner for the payment of such Bond and accrued interest shall cease and be completely discharged, and the Trustee shall hold such funds, without interest, for the benefit of such Bondowner, who shall thereafter be restricted exclusively to such funds for any claim on, or with respect to, such Bond and interest. If any Bond shall not be presented for payment within four years following the date when it becomes due, whether by maturity or otherwise, or the accrued interest cannot be paid as set out above, the Trustee shall repay to the Tenant the funds theretofore held by it for payment of such Bond and interest, and such Bond and interest shall thereafter be an unsecured obligation of the Tenant, subject to the defense of any applicable statute of limitation, and the Owner thereof shall be entitled to look only to the Tenant for payment, and then only to the extent of the amount so repaid, and the Tenant shall not be liable for any additional interest thereon.

## ARTICLE VII

### SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

**Section 701. Moneys to be Held in Trust.** All moneys deposited with or paid to the Trustee for the account of any fund or account under any provision of this Indenture, and all moneys deposited with or paid to the Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and the Lease and, until used or applied as so provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except interest earned on investments made pursuant to *Section 702* of this Indenture and such other interest as may be agreed upon.

**Section 702. Investment of Moneys in Funds.** Moneys held in the Project Fund and the Debt Service Fund shall be separately invested and reinvested by the Trustee at the written direction of the Tenant (or in the absence of such written direction, at the discretion of the Trustee)

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in Investment Securities which mature or are subject to redemption by the owner prior to the date such funds will be needed; provided, however, that such moneys shall not be invested in such manner as will violate the provisions of *Sections 703* hereof. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund or account in which such moneys are originally held, and except as otherwise specifically provided in this Indenture, the interest accruing thereon and any profit realized from such Investment Securities shall be credited to and accumulated in such fund or account, and any loss resulting from such Investment Securities shall be charged to such fund or account. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any fund or account is insufficient for the purposes of such fund or account. In determining the balance in any fund or account, investments in such fund or account shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or short-term investment department. The Trustee shall have no liability for any loss experienced on any investment made pursuant to this Section.

**Section 703. Record Keeping.** The Trustee shall maintain records demonstrating compliance with the provisions of this Article and with the provisions of *Article VI* for at least six years after the payment of all of the Outstanding Bonds.

## ARTICLE VIII

### GENERAL COVENANTS AND PROVISIONS

**Section 801. Payment of Principal of, Premium, if any, and Interest on the Bonds.** The Issuer covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project (as well as moneys held for such purposes hereunder) as described herein, promptly pay or cause to be paid the principal of, premium, if any, and interest on the Bonds as the same become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof, and to this end the Issuer covenants and agrees that it will use its best efforts to cause the Project and any Improvements to be continuously leased as a revenue and income producing undertaking, and that, should there be a default under the Lease with the result that the right of possession of the Project and any Improvements is returned to the Issuer, the Issuer shall fully cooperate with the Trustee and with the Bondowners to protect the rights and security of the Bondowners and shall diligently proceed in good faith and use its best efforts to secure another tenant for the Project and any Improvements to the end that at all times sufficient rents, revenues and receipts will be derived by Issuer from the Project to provide for payment of the principal of, premium, if any, and interest on the Bonds as the same become due and payable. If the Issuer is unable to procure a new tenant who will enter into such a lease, the Issuer may take such good faith action as shall be in the best interests of the Bondowners which may include the sale of the Project and any Improvements, and if the Project is sold, after deducting all costs of the sale, any moneys derived from such

sale shall be used for the purpose of paying the principal of and interest and redemption premium, if any, on the Bonds. Nothing herein shall be construed as requiring the Issuer to operate the Project as a business other

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than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 802. **Authority to Execute Indenture and Issue Bonds.** The Issuer covenants that it is duly authorized under the constitution and laws of the State to execute this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth (including the creation of a security interest therein); that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable limited obligations of the Issuer according to the import thereof.

Section 803. **Performance of Covenants.** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its governing body pertaining thereto.

Section 804. **Instruments of Further Assurance.** The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to secure the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer hereby acknowledges that this Indenture constitutes a security agreement with respect to the Trust Estate, and authorizes the Trustee to file financing statements to perfect its security interest in the Trust Estate, or any part thereof. The Issuer covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

Section 805. **Maintenance, Taxes and Insurance.** The Issuer represents that pursuant to the provisions of *Articles VI, VII and X* of the Lease, the Tenant has agreed to cause the Project to be maintained and kept in good condition, repair and working order, to pay, as the same respectively become due, all taxes, assessments and other governmental charges at any time lawfully levied or assessed upon or against the Project or any part thereof, and to keep the Project constantly insured to the extent provided for therein, all at the sole expense of Tenant.

Section 806. **Inspection of Project Books.** The Issuer covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 807. **Enforcement of Rights Under the Lease.** The Issuer covenants and agrees that it shall enforce all of its rights and all of the obligations of the Tenant (at the expense of the Tenant) under the Lease to the extent necessary to preserve the Project in good order and repair, and to protect the rights of the Trustee and the Bondowners hereunder with respect to the pledge and assignment of the rents, revenues and receipts coming due under the Lease. The Trustee as assignee of the Lease in its name or in the name of the Issuer shall enforce all rights of the Issuer

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and all obligations of the Tenant under and pursuant to the Lease for and on behalf of the Bondowners, whether or not the Issuer is in default hereunder.

Section 808. **Possession and Use of Project.** So long as not otherwise provided in this Indenture, the Tenant shall be suffered and permitted to possess, use and enjoy the Project and appurtenances so as to carry out its obligations under the Lease.

## ARTICLE IX

### REMEDIES ON DEFAULT

#### Section 901. **Acceleration of Maturity in Event of Default.**

(a) If an Event of Default shall have occurred and be continuing, the Trustee may, and upon the written request of Bondowners owning not less than 25% in aggregate principal amount of Bonds then Outstanding shall, by notice in writing delivered to the Issuer and the Tenant, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

(b) If, at any time after such declaration, but before the Bonds shall have matured by their terms, all overdue installments of principal and interest on the Bonds, together with all Default Administration Costs, all overdue installments of Basic Rent and Additional Rent under the Lease and all other sums then payable by the Issuer under this Indenture shall either be paid or provision satisfactory to the Trustee shall be made for such payment, then and in every such case the Trustee may in its discretion, and shall upon the written consent of Bondowners owning at least 51% in aggregate principal amount of the Bonds Outstanding, rescind such declaration and annul such default in its entirety.

(c) In case of any rescission, then and in every such case the Issuer, the Trustee and the Bondowners shall be restored to their former position and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

#### Section 902. **Exercise of Remedies by the Trustee.**

(a) If an Event of Default shall have occurred and be continuing, the Trustee may, and if requested to do so in writing by Bondowners owning not less than 25% of the aggregate principal amount of Bonds Outstanding, and if indemnified to its satisfaction and satisfactory provision has been offered as to payment of Default Administration Costs and third-party liability, shall pursue and exercise any available remedy at law or in equity by suit, action, mandamus or other proceeding or exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondowners to enforce the payment of the principal of, premium, if any, and interest on the Bonds

then Outstanding, and to enforce and compel the performance of the duties and obligations of the Issuer as herein set forth.

(b) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Bondowners, and any recovery of judgment shall be for the equal benefit of all Outstanding Bonds.

(c) In any litigation with the Tenant after an Event of Default, the Trustee may, after obtaining the written approval of Bondowners owning at least 51% of the aggregate principal amount of Bonds Outstanding, enter into an agreement to settle the litigation upon such terms as the Trustee in its sole discretion determines to be in the best interest of the Bondowners, even if such settlement involves selling the Project and Improvements for less than the amount needed to pay the Owners of the Bonds Outstanding the full amounts of the principal and accrued interest on the Bonds.

**Section 903. Limitation on Exercise of Remedies by Bondowners.** No Bondowner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (i) a default has occurred of which the Trustee has knowledge, (ii) such default shall have become an Event of Default, (iii) Bondowners owning at least 25% in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed to exercise the powers herebefore granted or to institute such action, suit or proceeding in its own name, and (iv) satisfactory indemnity and provision for payment of Default Administration Costs and third-party liability shall have been offered to the Trustee and (v) the Trustee shall thereafter fail or refuse to exercise the powers granted in this section to institute such action, suit or proceeding in its own name; and such knowledge and request are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Bondowners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Bonds then Outstanding.

**Section 904. Right of Bondowners to Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, Bondowners owning at least 51% in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, and upon providing the Trustee indemnification satisfactory to it as provided above, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this

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Indenture, and Trustee shall have the right to decline to follow such direction if the Trustee shall in good faith, and upon the advice of counsel, determine that proceedings so directed would expose the Trustee to personal liability.

**Section 905. Remedies Cumulative.** No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Bondowners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondowners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Trustee or by the Bondowners, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

**Section 906. Waivers of Events of Default.** The Trustee may in its discretion waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on Bonds, and shall do so upon the written request of Bondowners owning at least 51% in aggregate principal amount of all the Bonds then Outstanding and satisfaction of the conditions set forth in *Section 901(b)*. In case of any such waiver or rescission, or in case any proceedings taken by the Trustee under this Indenture on account of any such default shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Bondowners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 907. Application of Money Received after Event of Default.** If the principal of all Bonds shall have become due and payable after the occurrence of an Event of Default, all moneys thereafter received from the Tenant, from sale or reletting of the Project:

*first:* to the payment of all installments of interest due and payable on or prior to maturity, if any, in the order in which such installments became due and payable and, if the amount available is not sufficient to pay in full any particular installment, then to the payment, ratably, according to the amounts due on such installment, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds, and then to the payment of any interest due and payable after maturity on the Bonds, ratably, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds; and

*second:* to the payment of the principal of the Bonds, ratably, without preference or priority of any obligation over any other obligation.

Whenever moneys are to be applied by the Issuer or the Trustee pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee in

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its sole discretion determines, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Trustee in trust for the proper purpose shall constitute proper application by the Issuer; and the Issuer shall incur no liability to any Bondowner or to any other person for any delay in applying any such moneys, so long as the Issuer acts with reasonable diligence, having due regard to the circumstances, and moneys are applied in accordance with such provisions of this Indenture. Whenever the Trustee exercises such discretion in applying such moneys, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date, and shall not be required to make payment to any Bondowner of any unpaid Bond until the Bond certificate(s) representing Bonds owned are surrendered to the Trustee as Bond Registrar for appropriate endorsement, or for cancellation if fully paid.

## THE TRUSTEE

Section 1001. **Acceptance of the Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts in the manner in which a corporate trustee ordinarily would perform said trusts under a corporate indenture, and the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care and skill in its exercise as a prudent corporate trust officer would exercise or use under the circumstances, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) Prior to the occurrence of an Event of Default and after the cure of all Events of Default which may have occurred, the Trustee's duties and responsibilities shall include only those expressly set forth in this Trust Indenture and those rights, duties, responsibilities, and obligations which are reserved to or imposed upon the Issuer under this Trust Indenture and the Lease, excepting only such of those rights, duties, responsibilities, and obligations as may only be properly and lawfully exercised by or imposed upon the Issuer.

(b) Upon the occurrence of an Event of Default the Trustee shall be and is hereby authorized to bring appropriate action for judgment or such other relief as may be appropriate and such action may be in the name of the Trustee or in the name of the Issuer and Trustee jointly; but in such case, neither the Issuer nor the Trustee shall have any obligation for any fees and expenses of such action except out of any funds available by reason of the ownership of the Project and moneys available under this Trust Indenture and the Lease. In addition, the Trustee may file such proof of claim and such other documents as may be necessary and advisable in order to have the claims of the Trustee and the Bondowners relative to the Bonds or the obligations relating thereto allowed in any judicial proceeding.

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(c) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys or receivers. The Trustee shall be entitled to rely upon the opinion or advice of counsel, who may be counsel to the Trustee, Issuer or the Tenant, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof.

(d) The Trustee, in its individual or any other capacity, may become the owner or pledgee of Bonds with the same rights which it would have if it were not Trustee.

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

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

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

(h) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect any and all of the Project and all books, papers and records of the Issuer and Tenant pertaining to the Project and the Bonds, and to make such notes and copies as may be desired.

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

(j) The Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purpose of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the

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terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(k) The Trustee shall not be required to take notice of, or be deemed to have notice of, any default hereunder or under the Lease, except the failure by the Issuer to cause to be made any of the payments required to be made under the Lease or in accordance with *Article VII* hereof, or the failure by the Issuer to cause compliance by the Tenant with the provisions of *Article VI* of the Lease, unless the Trustee shall have been specifically notified in writing of such default by the Issuer or by Bondowners owning at least 25% in aggregate principal amount of all Bonds then Outstanding.

(l) The Trustee may inform the Bondowners of environmental hazards that the Trustee has reason to believe exist with respect to the Project, the Project or the Improvements, and the Trustee shall have the right to take no further action with respect thereto, and, in such event, no fiduciary duty shall exist which imposes any obligation for further action by the Trustee with respect to the Project, the Project, the Improvements, the enforcement of any remedies hereunder or under this Lease, the Trust Estate, or any portion thereof, if, in the reasonable opinion of the Trustee, such action would subject the Trustee to environmental or other liability for which the Trustee has not received indemnity satisfactory to it.

Section 1002. **Fees, Charges and Expenses of the Trustee; Lien for Fees and Costs and Additional Rent.** The Trustee shall be entitled to payment of or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary costs, charges and expenses

reasonably and necessarily made or incurred by the Trustee in connection with such ordinary services and, in the event that it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees, costs, expenses and charges of the Trustee as Paying Agent for the Bonds. The Trustee agrees that the Issuer shall have no liability for any fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Tenant for the payment of all fees, charges and expenses of the Trustee and any Paying Agents as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment prior to payment of principal of, redemption premium, if any, or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing advances, fees, costs and expenses incurred, for Default Administration Costs and for any unpaid Additional Rent owing under the Lease.

**Section 1003. Notice to Bondowners if Default Occurs.** If an Event of Default occurs, of which the Trustee is aware and of which it is required to take notice, the Trustee shall give written notice thereof to the Bondowners, as shown by the bond registration books required to be maintained by the Trustee and kept at the principal office of the Trustee.

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**Section 1004. Intervention by the Trustee.** In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Bondowners, the Trustee may intervene on behalf of the Bondowners and shall do so if requested in writing by Bondowners owning at least 25% of the aggregate principal amount of Bonds then Outstanding and if provided with indemnity satisfactory to the Trustee.

**Section 1005. Successor Trustee Upon Merger, Consolidation or Sale.** Any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

**Section 1006. Resignation of Trustee.** The Trustee may resign by an instrument in writing delivered by registered or certified mail to the Issuer and the Tenant to take effect not sooner than 90 days after its delivery, whereupon the Issuer, with the consent of the Tenant, shall immediately, in writing, designate a successor Trustee; provided, however, that the Trustee's resignation shall not become effective unless and until a successor Trustee is approved and qualified. In the event the Issuer and the Tenant do not promptly designate a successor trustee, then the Trustee shall have the right to petition a court of competent jurisdiction for the appointment of a successor.

**Section 1007. Removal of Trustee.** As long as no Default or Event of Default shall have occurred and be continuing, the Trustee may be removed at any time by the Issuer or the Tenant; provided, that such removal shall not be effective unless and until a successor trustee is appointed and qualified, and provided further than such removal shall not become effective until after 60 days from the date written notice of such proposed removal is given to the Trustee by first class mail. The Issuer or the Tenant, concurrently with giving notice to the Trustee, shall give notice by first class mail of the proposed removal of the Trustee to all Bondowners. Unless Bondowners owning at least 51% in principal amount of Bonds then Outstanding object in writing to the proposed removal of the Trustee, such removal shall become effective from the date specified in the notices, provided that the successor trustee shall have been qualified and have accepted the duties and responsibilities of the Trustee as of such date. The Trustee may be removed at any time by the written direction of Bondowners owning at least 51% in aggregate principal amount of Bonds then Outstanding.

**Section 1008. Qualifications of Successor Trustee.** Every successor Trustee appointed pursuant to the provisions of this Article shall be a trust company or bank in good standing, qualified to accept such trust and acceptable to the Issuer and the Tenant.

**Section 1009. Vesting of Trusts in Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Tenant an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its

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predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

**Section 1010. Right of Trustee to Pay Taxes and Other Charges.** In case any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, and the Tenant has failed after 30 days written notice to make such payment, the Trustee may pay such tax, assessment or governmental charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Bondowners hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment at a rate per annum equal to the Trustee's published prime rate in effect at the time, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of, premium, if any, or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by Bondowners owning at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

**Section 1011. Trust Estate May Be Vested in Co-trustee.**

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

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

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

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

Section 1012. **Annual Accounting.** The Trustee shall render an annual accounting to the Tenant, to the Issuer upon request, and to any Bondowner requesting the same in writing and remitting reasonable charges for preparing such copies, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 1013. **Recordings and Filings.** The Issuer shall cause the Lease and all amendments to the Lease or appropriate memoranda thereof and all appropriate financing statements and other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Bondowners and the rights of the Trustee hereunder. The Issuer hereby authorizes the Trustee to make any such filings for it. The Trustee shall cause all appropriate continuation statements of financing statements initially recorded to be recorded and filed in such manner and in such places as may be required by law to continue the effectiveness of such financing statements.

Section 1014. **Performance of Duties under the Lease.** The Trustee hereby accepts and agrees to perform, in such manner as is consistent with the terms of those instruments and this Indenture, all duties and obligations assigned to it under the Lease.

## ARTICLE XI

### SUPPLEMENTAL INDENTURES

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

(a) To cure any ambiguity or formal defect or omission in this Indenture or to make any other change not prejudicial to the Bondowners;

(b) To grant to or confer upon the Trustee for the benefit of the Bondowners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondowners or the Trustee or either of them;

(c) To more precisely identify the Project or to add additional property thereto;

(d) To subject to this Indenture additional revenues, properties or collateral; and

(e) To issue Additional Bonds as provided in *Section 209* hereof.

#### Section 1102. **Supplemental Indentures Requiring Consent of Bondowners.**

(a) Exclusive of Supplemental Indentures described in *Section 1101* hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Bondowners owning not less than 66-2/3% in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that except as provided in subparagraph (b) of this *Section 1102*, nothing in this Section contained shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the accrual of, or dates of payment of, interest on any Bond issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture.

(b) Any provision of this Indenture or the Bonds may be amended with the written consent of the Owners owning 100% in aggregate principal amount then Outstanding.

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

## LEASE AMENDMENTS

Section 1201. **Lease Amendments** The provisions of the Lease may be amended to the extent and upon the terms and conditions provided therein.

### ARTICLE XIII

#### SATISFACTION AND DISCHARGE OF INDENTURE

##### Section 1301. **Satisfaction and Discharge of the Indenture**

(a) When the principal of, premium, if any, and interest on all Bonds shall have been paid in accordance with their terms or provision has been made for such payment, as provided in *Section 1302* hereof, and provision shall also have been made for paying all other sums payable hereunder, including the fees and expenses of the Trustee and the Paying Agent to the date of retirement of the Bonds, then the duties of the Trustee under this Indenture shall cease. Thereupon the Trustee shall discharge and release this Indenture and shall execute, acknowledge and deliver to the Issuer such instruments of satisfaction and discharge or release as shall be requisite to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the Issuer any property at the time subject to this Indenture which may then be in its possession, except amounts in the Debt Service Fund required to be paid to the Tenant under *Section 603(d)* hereof and except funds or securities in which such funds are invested and held by the Trustee for the payment of the principal of, and interest accrued on, the Bonds. Notwithstanding anything otherwise provided herein, the provisions of this Indenture relating to compensation and indemnification of the Trustee shall survive satisfaction and discharge of the Indenture.

(b) The Issuer is hereby authorized to accept a certificate by the Trustee that the principal of, premium, if any, and interest due and payable upon all of the Bonds then Outstanding and all amounts required to be paid to the United States have been paid or such payment provided for in accordance with *Section 1302* hereof as evidence of satisfaction of this Indenture, and upon receipt thereof shall deem this Indenture discharged.

##### Section 1302. **Bonds Deemed to be Paid**

(a) Bonds shall be deemed to be paid within the meaning of this Indenture when payment of the principal of and the applicable premium, if any, on such Bonds, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) moneys sufficient to make such payment or (2) non-callable Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient

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moneys to make such payment. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of the redemption of Bonds which by their terms may be redeemed prior to the stated maturities thereof, no deposit under clause (ii) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until proper notice of such redemption shall have been given in accordance with *Article III* of this Indenture or irrevocable instructions shall have been given to the Trustee to give such notice.

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

### ARTICLE XIV

#### MISCELLANEOUS PROVISIONS

##### Section 1401. **Consents and Other Instruments by Bondowners**

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

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

(2) The fact of ownership of Bonds and the amount or amounts, number and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee.

(b) In determining whether the Bondowners owning the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, unless 100% of the Bonds are owned by Tenant or an affiliate of Tenant, Bonds owned by the Tenant or any affiliate of the Tenant shall be disregarded and deemed

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not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. For purposes of this paragraph, the word "affiliate" means any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Tenant; and for the purposes of this definition, "control" means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Tenant or any affiliate of the Tenant.



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

Section 1403. **Notices** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Indenture shall be in writing and shall be deemed duly given or filed if the same shall be duly mailed by registered or certified mail, postage prepaid, to the Notice Representative.

All notices given by certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Tenant to the other shall also be given to the Trustee. The Issuer, the Trustee and the Tenant may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 1404. **Suspension of Mail Service** If, because of the temporary or permanent suspension of regular mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such other form of notice as shall be made with the approval of the Trustee shall constitute a sufficient notice.

Section 1405. **Severability** If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

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Section 1406. **Execution in Counterparts** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1407. **Governing Law** This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

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**IN WITNESS WHEREOF**, the Issuer has caused this Indenture to be signed by an authorized official, such signature to be attested by an authorized officer and its official seal to be applied.

**CITY OF ATCHISON, KANSAS**

[SEAL]

By: /s/ Dan Garrity  
Mayor

ATTEST:

/s/ Sheldon Hamilton  
City Clerk

“ISSUER”

**ACKNOWLEDGMENT**

STATE OF KANSAS )  
 ) SS:  
COUNTY OF ATCHISON )

This instrument was acknowledged before me on the 27th day of December, 2006 by Dan Garrity as Mayor of the City of Atchison, Kansas, a municipal corporation of the State of Kansas.

[SEAL]

/s/Rona M. Downing  
Notary Public

My Appointment Expires: 6/27/09

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**IN WITNESS WHEREOF**, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf and such signature to be attested by its duly authorized officers, and its corporate seal to be applied, all as of the date first above written.

**COMMERCE BANK, N.A.**  
Kansas City, Missouri,  
as Trustee

[SEAL]

By: /s/ Merry Evans  
Name: Merry Evans  
Title: Vice President

ATTEST:

/s/ Illegible  
Title:

“TRUSTEE”

**ACKNOWLEDGMENT**

STATE OF MISSOURI )  
 ) SS. )  
COUNTY OF JACKSON )

This instrument was acknowledged before me on the 27th day of December, 2006, by Merry Evans, Vice President of Commerce Bank, N.A., a banking corporation or association organized under the laws of the United States of America or one of the states thereof.

[SEAL]

/s/ Lynda S. Thurston  
Notary Public

My Appointment Expires:  
April 25, 2008

**SCHEDULE I**

**DESCRIPTION OF PROPERTY**

The following property acquired by the City of Atchison, Kansas (the “Issuer”) in connection with the issuance by the City of its Taxable Industrial Revenue Bonds, Series 2006 (MGP Ingredients Project) (the “Series 2006 Bonds”):

(a) The following described real estate in Atchison County, Kansas:

Tract 1: Beginning at the Northeast corner of Lot Fourteen (14), Block Twenty (20); Thence North 90°00’00” East 90.16 feet along the South line of Commercial Street to a point 24.84 feet West of the Northeast corner of Lot One (1), in Block Twenty (20); Thence South 00°11’50” West 135.0 feet to a point 25.19 feet West of the Southeast corner of Lot Three (3) in Block Twenty (20); Thence South 90°00’00” West 189.81 feet to the Southwest corner of Lot Twelve (12) in said Block; Thence North 00°03’00” East 67.50 feet along the East line of Second Street to the North one-half of Lot Thirteen (13) in said Block; Thence North 90°00’00” East 100.0 feet along the North one-half of Lot Thirteen (13) to the East line of Lot Thirteen (13); Thence North 00°03’00” East 67.50 feet along the East line of the North one-half of Lot Thirteen (13) and all of Lot Fourteen (14) to the point of beginning, all lying in Block Twenty (20) in that part of the City of Atchison known and designated as “Old Atchison.”

Tract 2: The North One-half (N 1/2) of Lot Thirteen (13), and all of Lot Fourteen (14), in Block Twenty (20), in that part of the City of Atchison usually known and designated as “Old Atchison.”

Tract 3: Lots One (1), Two (2) and Three (3), in Block Nineteen (19), in that part of the City of Atchison usually known and designated as “Old Atchison.”

said real property constituting the “Land” as defined in the Lease entered into by the Issuer concurrently with the issuance of the Series 2006 Bonds (the “Lease”), subject to the following (“Permitted Encumbrances”):

- (1) 2006 real estate taxes due but not yet payable;
- (2) Assessments, if any, attributable to watershed district;
- (3) Any other general or special assessments, any and all recorded easements, reservations, restrictions, agreements, encroachments and encumbrances, matters which would be shown by an accurate survey, underground and overhead cables, lines and utility services, and all existing zoning ordinances, laws, codes, statutes and subdivision regulations and other governmental laws, rules, codes, statutes and regulations limiting or restricting the use to which the property may be put.

(b) All buildings, building additions, improvements, machinery and equipment constructed, located or installed on the Land, all or any portion of the costs of which were paid from the proceeds of the Series 2006 Bonds, and which constitute Improvements as referred to in the Lease, together with any substitutions or replacements thereof, the property described in paragraphs (a) and (b) of this Schedule I together constituting the “Project” as referred to in the Lease.

## APPENDIX A

## FORM OF BONDS

## FACE OF THE BOND

No. \_\_\_\_\_ \$ \_\_\_\_\_

United States of America

State of Kansas

City of Atchison, Kansas

Taxable Industrial Revenue Bond  
Series 2006  
(MGP Ingredients Project)

Rate of Interest: _____%	Maturity Date: 12-01-16	Dated Date: Issue Date
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Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_ Dollars

The City of Atchison, Kansas, a body politic and corporate, incorporated as a city of the first class of the State of Kansas (the "Issuer"), for value received, promises to pay, but solely from the sources hereinafter referred to, to the registered owner identified above, or registered assigns, upon the presentation and surrender of this Certificate, the principal sum identified above on the maturity date shown, in lawful money of the United States of America, at the principal offices of Commerce Bank, N.A. (the "Paying Agent" and "Trustee"), and in like manner to pay to the registered Owner (the "Owner") hereof, by check or draft mailed to the Owner at his address as it appears on the bond registration books of the Issuer kept by the Trustee under the within mentioned Indenture, or at such other address as is furnished in writing by such registered Owner to the Paying Agent at the close of business on the 15th day of the month next preceding the applicable Interest Payment Date (the "Record Date"), interest on said principal sum from the dated date hereof or the most recent Interest Payment Date to which interest has been paid or duly provided for at the rate of interest per annum set forth above (computed on the basis of a 360-day year of twelve 30-day months), annually on December 1 of each year, commencing December 1, 2007 (the "Interest Payment Dates"), until the principal sum is paid, unless the Bonds represented by this certificate shall have been previously called for redemption and payment as hereinafter set forth.

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This Bond certificate evidences ownership of a part of a duly authorized series of Bonds of the Issuer designated "City of Atchison, Kansas, Taxable Industrial Revenue Bonds, Series 2006 (MGP Ingredients Project)," in the aggregate original principal amount of \$7,000,000 (the "Series 2006 Bonds"), issued for the purpose of providing funds to pay the costs of acquiring, constructing, furnishing and equipping an office building and technical center facility (the "Project"), to be leased by the Issuer to MGP Ingredients, Inc., a Kansas corporation (the "Tenant"), under the terms of a Lease dated as of the Issue Date of the Series 2006 Bonds, between the Issuer and the Tenant (said Lease, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Lease"), all pursuant to the authority of and in conformity with the provisions, restrictions and limitations of the constitution and statutes of the State of Kansas, including particularly K.S.A. 12-1740 *et seq.*, as amended, and pursuant to proceedings duly had by the governing body of the Issuer.

The Series 2006 Bonds are issued under and are equally and ratably secured and entitled to the protection of the Trust Indenture, dated as of the Issue Date of the Series 2006 Bonds (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the "Indenture"), between the Issuer and the Trustee. Subject to the terms and conditions set forth therein, the Indenture permits the Issuer to issue Additional Bonds (as defined therein) secured by the Indenture ratably and on a parity with the Series 2006 Bonds (the Series 2006 Bonds together with such Additional Bonds being herein referred to collectively as the "Bonds"). Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Bondowners, and the terms upon which the Bonds are issued and secured.

## REDEMPTION OF BONDS

**Extraordinary Optional Redemption.** In the event of a Change of Circumstances (as defined in the Indenture), the Series 2006 Bonds shall be subject to redemption and payment prior to the stated maturity thereof at the option of the Issuer, upon instructions from the Tenant, on any date, at the par value of the principal amount thereof, plus accrued interest thereon to the redemption date, without premium.

**Optional Redemption.** The outstanding principal of the Series 2006 Bonds is subject to redemption and payment prior to maturity at the option of the Issuer, upon instructions from the Tenant, as a whole or in part on any date, at the redemption price of the par value of the principal amount thereof, without premium, plus accrued interest thereon to date fixed for redemption and payment.

When any Bonds are called for redemption as aforesaid, unless waived, notice thereof identifying the Bonds to be redeemed will be given by mailing a copy of the redemption notice at least 30 days prior to the date fixed for redemption to the Owner of each Bond to be redeemed at the address shown on the registration books maintained by the Trustee; provided, however, that failure to give such notice by mailing as aforesaid, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds. If less than all of the Outstanding Bonds of this series are called for redemption, Bonds shall be redeemed as directed in writing by the

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Tenant. Bonds of less than a full maturity shall be selected by the Trustee in such equitable manner as it may determine. All Bonds so called for redemption will cease to bear interest on the specified redemption date and shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture.

The Bonds and the interest thereon are limited obligations of the Issuer payable exclusively out of the Trust Estate under the Indenture, including but not limited to the rents, revenues and receipts under the Lease, and are secured by a pledge of the Project (including any Project Additions) as described in the Lease and a pledge and assignment of the Trust Estate, including all rentals and other amounts to be received by the Issuer under and pursuant to the Lease, all as provided in the Indenture. The Bonds and the interest thereon do not constitute a debt or general obligation of the Issuer, the State of Kansas or any municipal corporation thereof, and are not payable in any manner by taxation. The Bonds do not constitute an indebtedness within the meaning of constitutional or statutory debt limitations or restrictions. Pursuant to the provisions of the Lease, Basic Rent is to be paid by the Tenant directly to the Trustee for the account of the Issuer and deposited in a special trust account created by the Issuer and designated "City of Atchison, Kansas, Debt Service Fund for Taxable Industrial Revenue Bonds (MGP Ingredients Project)."

No Owner of Bonds shall have the right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding may become or may be declared due and payable prior to the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and under the circumstances permitted by the Indenture.

This Bond certificate is transferable, as provided in the Indenture, only upon the registration books of the Trustee maintained for the Issuer kept for that purpose at the above mentioned office of the Bond Registrar and Paying Agent by the Owner hereof in person or by his duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the Owner or such Owner's duly authorized attorney, and thereupon a new Bond certificate in the same aggregate principal amount, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The Tenant has agreed to pay as Additional Rent under the Lease all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds except (a) the reasonable fees and expenses in connection with the replacement of certificates mutilated, stolen, lost or destroyed or (b) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds. The Issuer, the Trustee and any Paying Agent may deem and treat the person in whose name this Bond certificate is registered as the absolute Owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

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This Bond certificate shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

**IT IS HEREBY CERTIFIED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

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**IN WITNESS WHEREOF**, Issuer has caused this Bond certificate to be executed in its name by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk and its official seal to be affixed hereto or imprinted hereon, and has caused the Bonds to be dated as of the Issue Date of the Bonds.

**CITY OF ATCHISON, KANSAS**

(Facsimile Seal)

By: \_\_\_\_\_  
Dan Garrity, Mayor

ATTEST:

\_\_\_\_\_  
Sheldon Hamilton, City Clerk

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**(FORM OF CERTIFICATE OF AUTHENTICATION)**

This Bond certificate evidences ownership of the City of Atchison, Kansas Taxable Industrial Revenue Bonds, Series 2006 (MGP Ingredients Project), as described herein and in the Bond Agreement described herein. The Issue Date of this Bond is \_\_\_\_\_, 2006.

**COMMERCE BANK, N.A.**  
**Kansas City, Missouri,**  
**as Trustee**

By: \_\_\_\_\_  
Authorized Officer

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(FORM OF ASSIGNMENT)

For value received, the undersigned hereby sells, assigns and transfers unto

Print or Type Name and Address of Transferee

the Bonds represented by this certificate and all rights thereunder, and hereby authorizes the transfer of the within Bond on the books kept by the Bond Registrar and Paying Agent for the registration and transfer of Bonds.

Dated: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular.

Signature Guaranteed By:

[Seal of Bank]

(Name of Eligible Guarantor Institution)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature must be guaranteed by an eligible guarantor institution as defined by S.E.C. Rule 17 Ad-15 (17 C.F.R. 240. 17-Ad-15)

**THIS BOND MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS, OR IN A TRANSACTION EXEMPT FROM THE APPLICATION OF FEDERAL AND STATE SECURITIES LAWS.**

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APPENDIX B

GLOSSARY OF WORDS AND TERMS

“Act” means K.S.A. 12-1740 *et seq.*, as amended.

“Additional Bonds” means any Bonds issued in addition to the Series 2006 Bonds pursuant to Section 209 of this Indenture.

“Authorized Tenant Representative” means Chief financial Officer of the Tenant, or such other person as is designated to act on behalf of the Tenant as evidenced by written certificate furnished to Trustee, containing the specimen signature of such person and signed on behalf of the Tenant by its Chief Executive Officer. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Tenant Representative.

“Bond” or “Bonds” means the Series 2006 Bonds and any Additional Bonds.

“Bond Counsel” means the firm of Gilmore & Bell, P.C. or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to Issuer and Tenant.

“Bondowner” means the Tenant.

“Business Day” means a day which is not a Saturday, Sunday or any day designated as a holiday by the Congress of the United States or by the legislature of the State and on which banks in the State are not authorized to be closed.

“Change of Circumstances” means the occurrence of any of the following events:

- (1) title to, or the temporary use of, all or any substantial part of the Land or the Project shall be condemned by any authority exercising the power of eminent domain;
- (2) title to such portion of the Land is found to be deficient or nonexistent to the extent that the Project is untenable or the efficient utilization of the Project by the Tenant is substantially impaired;
- (3) substantially all of the Improvements are damaged or destroyed by fire or other casualty; or
- (4) as a result of: (i) changes in the constitution of the State; or (ii) any legislative or administrative action by the State or any political subdivision thereof, or by the United States; or (iii) any action instituted in any court, the Lease shall become void or unenforceable, or impossible of performance without unreasonable delay, or in any other way by reason of such changes of circumstances, unreasonable burdens or excessive liabilities are imposed upon Issuer or Tenant.

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**“Completion Date”** means the date of actual completion of the acquisition, purchase, construction and installation of the Project and any Improvements pursuant to the Lease.

**“Construction Period”** means the period from the beginning of acquisition or construction of the Project and any Improvements to their Completion Date.

**“Costs of Issuance”** means any and all expenses of whatever nature incurred in connection with the issuance and sale of Bonds, including, but not limited to, underwriting fees and expenses, underwriting discount, initial fees of the Trustee, administrative fees or expenses of the Issuer, bond and other printing expenses and legal fees and expenses of Bond Counsel, Issuer’s counsel and counsel for the Tenant.

**“Debt Service Fund”** means the “City of Atchison, Kansas Debt Service Fund for Taxable Industrial Revenue Bonds (MGP Ingredients Project)” created pursuant to *Section 601* of this Indenture.

**“Default Administration Costs”** means the reasonable fees, charges, costs, advances and expenses of the Trustee incurred in anticipation of an Event of Default, or after the occurrence of an Event of Default, including, but not limited to, counsel fees, litigation costs and expenses, the expenses of maintaining and preserving the Project and the expenses of re-letting or selling the Project.

**“Event of Default”** means one of the following events:

(a) Default in the due and punctual payment of any interest on any Bond;

(b) Default in the due and punctual payment of the principal of or premium, if any, on any Bond on the stated maturity or accelerated maturity date thereof, or at the redemption date thereof;

(c) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in this Indenture or in any Bonds contained, and the continuance thereof for a period of 30 days after written notice thereof shall have been given to the Issuer and the Tenant by the Trustee, or to the Trustee, the Issuer and the Tenant by Bondowners owning not less than 25% in aggregate principal amount of Bonds then Outstanding; provided, however, if any default shall be such that it cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer or the Tenant within such period and diligently pursued until such default is corrected; or

(d) An “Event of Default” as defined in the Lease.

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

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**“Improvements”** means all buildings, building improvements, machinery and equipment (whether affixed or not) purchased in whole or in part from the proceeds of the Series 2006 Bonds or any Additional Bonds.

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

**“Interest Payment Date”** means any date on which any interest is payable on any Bond. With respect to the Series 2006 Bonds, it means December 1 in each year, commencing as of December 1, 2007.

**“Investment Contract”** means an agreement to deposit all or any portion of the proceeds of the sale of the Bonds with a bank, with the deposits to bear interest at an agreed rate.

**“Investment Securities”** means any of the following securities, and to the extent the same are at the time permitted for investment of funds held by the Trustee pursuant to this Indenture:

(i) Government Securities;

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

(iii) savings or other depository accounts or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee and its affiliates) approved by Tenant, provided that, if Tenant is not the sole bondholder, such deposits shall be either of a bank, trust company or national banking association continuously and fully insured by the Federal Deposit Insurance Corporation, or continuously and fully secured by excess deposit insurance purchased through a private insurer, or such securities as are described above in clauses (i) or (ii), which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such deposits and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association accepting such deposit or issuing such certificate of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(iv) any Investment Contract or repurchase agreement with any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in clauses (i) or (ii) above;

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(v) any investment in shares or units of a money market fund or trust determined by Trustee to be suitable for investment of trust funds (including one

offered, managed or otherwise made available through the Trustee or any affiliate);

(vi) investments in shares or units of a money market fund or trust, the portfolio of which is comprised entirely of securities described in clauses (i), (ii) or (iii) above.

**“Issue Date”** means the date on which the initial Bond certificates representing the Bonds is authenticated by the bond registrar and delivered in exchange for payment of their purchase price.

**“Issuer”** means the City of Atchison, Kansas, a body politic and corporate incorporated as a city of the first class under the laws of the State, and its successors and assigns.

**“Land”** means the real property (or interests therein) described in *Schedule I*.

**“Lease”** means the Lease delivered concurrently with this Indenture between the Issuer and the Tenant, as from time to time amended and supplemented in accordance with the provisions thereof and of *Article XII* of this Indenture.

**“Notice Representative”** means:

- (1) With respect to the Tenant, its chief executive officer at its Notice Address (as defined in the Lease).
- (2) With respect to the Issuer, its duly acting clerk at its Notice Address (as defined in the Lease).
- (3) With respect to the Trustee, any corporate trust officer at its Notice Address (as defined in the Lease).

**“Original Proceeds”** means all sale proceeds, including accrued interest, from sale of the Series 2006 Bonds to the Original Purchaser and all investment earnings credited to the Project Fund prior to the Completion Date.

**“Original Purchaser”** means MGP Ingredients, Inc., Atchison, Kansas.

**“Outstanding”** means, as of a particular date all Bonds issued, authenticated and delivered under this Indenture (including any Supplemental Indentures), except:

- (a) Bonds canceled by the Trustee or delivered to the Trustee for cancellation pursuant to this Indenture;
- (b) Bonds for the payment or redemption of which moneys or investments have been deposited in trust with the Trustee and irrevocably pledged to such payment of redemption in accordance with the provisions of *Section 1302* of this Indenture; and

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

**“Owner”** means the owner of any Bond as shown on the registration books of the Trustee maintained as provided in this Indenture.

**“Paying Agent”** means the Trustee.

**“Payment Date”** means any Interest Payment Date or any Principal Payment Date.

**“Permitted Encumbrances”** means any mortgages, liens or other encumbrances specifically described in *Schedule I*; easements and rights-of-way of record at the time of conveyance of the Land to the Issuer, and any other title exceptions not affecting marketability or the usefulness of the Project to Tenant.

**“Principal Payment Date”** means any date on which principal on any Bond is due and payable, whether at the stated maturity or earlier required redemption thereof. With respect to the Series 2006 Bonds, the Principal Payment Date is December 1, 2016.

**“Project”** means the Land and the Improvements, together with any Project Additions.

**“Project Additions”** means any additional Improvements or any modifications, extensions or enlargements of the Improvements acquired, constructed or installed from proceeds of any series of Additional Bonds authorized and issued pursuant to this Indenture. It also includes any alterations or additions made to the Project to the extent provided in *Articles XI* and *XIII* of the Lease.

**“Project Costs”** means those costs incurred in connection with the Land, and the construction or installation of any Improvements, including:

- (a) all costs and expenses necessary or incident to the acquisition of the Land and such of the Improvements as are acquired, constructed, installed or in progress at the date of such issuance of the Series 2006 Bonds;
- (b) fees and expenses of architects, appraisers, surveyors, engineers and other professional consultants for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of acquisition, construction, preparation of plans, drawings and specifications and supervision of construction and installation, as well as for the performance of all other duties of architects, appraisers, surveyors, engineers and other professional consultants in relation to the acquisition, construction or installation of the Improvements or the issuance of Bonds;
- (c) all costs and expenses incurred in constructing, acquiring or installing the Improvements;

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- (d) payment of interest actually incurred on any interim financing obtained from a lender unrelated to the Tenant for acquisition or performance of work on the Improvements prior to the issuance of the Bonds;

(e) the cost of the title insurance policies and the cost of any insurance and performance and payment bonds maintained during the Construction Period in accordance with *Article VI* of the Lease, respectively;

(f) interest accruing on the Series 2006 Bonds prior to the Completion Date, if and to the extent Original Proceeds deposited to the credit of the Debt Service Fund pursuant to *Section 602* of this Indenture are insufficient for payment of such interest; and

(g) Costs of Issuance.

**“Project Fund”** means the fund authorized and established with the Trustee pursuant to the Indenture and designated the “City of Atchison, Kansas Project Fund (MGP Ingredients Project), including the Project Account and the Costs of Issuance Account.”

**“Record Date”** means the 15th day of the month in each year preceding each Interest Payment Date, or if such date is not a Business Day, the Business Day immediately preceding such date.

**“Rental Payments”** means the aggregate of the Basic Rent and Additional Rent payments provided for pursuant to *Article III* of the Lease.

**“Series 2006 Bonds”** means the City of Atchison, Kansas Taxable Industrial Revenue Bonds, Series 2006 (MGP Ingredients Project) dated their Issue Date in the aggregate principal amount of \$7,000,000.

**“State”** means the State of Kansas.

**“Supplemental Indenture”** means any indenture supplementing or amending this Indenture entered into by the Issuer and the Trustee pursuant to *Article XI* of this Indenture.

**“Tenant”** means MGP Ingredients, Inc., its successors and assigns.

**“Trust Estate”** means the Trust Estate described in the Granting Clauses of this Indenture.

**“Trustee”** means Commerce Bank, N.A., Kansas City, Missouri, a banking corporation or association incorporated under the laws of the United States or one of the states thereof, in its capacity as trustee, bond registrar and paying agent, and its successor or successors serving as Trustee under this Indenture.



## INDEMNIFICATION AGREEMENT

THIS AGREEMENT, dated as of        day of the       , 2006, by and between **MGP INGREDIENTS, INC.**, a Kansas corporation (the “Company”) and (the “Indemnitee”).

WHEREAS, it is essential to the Company to retain and attract as directors and officers the most capable persons available; and

WHEREAS, Indemnitee is a director or officer of the Company; and

WHEREAS, both the Company and Indemnitee recognize the increased risk of litigation and other claims being asserted against directors and officers of public companies in today’s environment; and

WHEREAS, the Kansas legislature, in recognition of the need to secure the continued service of competent and experienced people in senior corporate positions and to assure that they will be able to exercise judgment without fear of personal liability so long as they fulfill the basic duties of honesty, care and good faith, has enacted K.S.A. 17-6305, which empowers the Company to indemnify its officers, directors, employees and agents and expressly provides that the indemnification provided by the statute is not exclusive; and

WHEREAS, the Bylaws of the Company require the Company to indemnify and advance expenses to its directors and officers to the fullest extent now or hereafter authorized by the Kansas Statutes Annotated, and the Bylaws, further, provide that the right to indemnification and payment of expenses conferred therein shall not be exclusive of any other right which any person may have or acquire under any statute, provision of the Articles of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors, or otherwise; and

WHEREAS, in recognition of the fact that the Indemnitee continues to serve as a director or officer of the Company, in part in reliance on the Bylaws, and of the fact of Indemnitee’s need for substantial protection against personal liability in order to enhance Indemnitee’s continued service to the Company in an effective manner, and in part to provide Indemnitee with specific contractual assurance that the protection promised by the Bylaws will be available to Indemnitee (regardless of, among other things, any amendment to the Bylaws or any change in the composition of the Company’s Board of Directors or any acquisition transaction relating to the Company), and due to the possibility that the Company’s directors’ and officers’ liability insurance coverage could at some future time become inadequate, the Company wishes to provide in this Agreement for the indemnification of, and the advancing of expenses to, Indemnitee to the fullest extent (whether partial or complete) now or hereafter authorized or permitted by law and as set forth in this Agreement, and, to the extent insurance is maintained, for the continued coverage of Indemnitee under the Company’s directors’ and officers’ liability insurance policies;

NOW, THEREFORE, in consideration of the premises and of Indemnitee continuing to serve the Company directly or, at its request, through service to another enterprise, and intending to be legally bound hereby, the parties hereto agree as follows:

1. CERTAIN DEFINITIONS:

- (a) “Acquiring Person” means a person, entity or group that has made an acquisition described in Section 1(e)(i) or the reorganized or surviving company in a reorganization or consolidation described in Section 1(e)(iii).
- (b) “Approved Law Firm” shall mean any law firm that has at least twenty (20) attorneys (wherever located) and an office located in Kansas and is rated “av” by Martindale-Hubbell Law Directory; provided, however, that such law firm shall not, for a five-year period prior to the earliest date as of which Indemnitee first has actual knowledge of the relevant Indemnifiable Claim, have been engaged by the Company, an Acquiring Person, any affiliate or associate of an Acquiring Person, or Indemnitee.
- (c) “Applicable Standard of Conduct” shall mean the standard of conduct that must be satisfied to permit indemnification under K.S.A. 17-6305(a) or (b), whichever is or would be applicable under the circumstances.
- (d) “Board of Directors” or “Board” shall mean the Board of Directors of the Company.
- (e) A “Change in Control” shall be deemed to have occurred upon:
  - (i) The acquisition (other than from the Company) by any person, entity or “group,” within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (excluding, for this purpose, the Company or its subsidiaries, any employee benefit plan of the Company or its subsidiaries, trustees of the MGP Ingredients, Inc. Voting Trust or of the Cray Family Trust, or any person who acquires common or preferred stock of the Company from Cloud L. Cray, Jr. or from any trust controlled by or for the benefit of Cloud L. Cray, Jr. prior to or as a result of his death), of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of at least 30% of the then outstanding shares of common stock and 50% of the then outstanding shares of \$10 par value preferred stock of the Company or 30% of the combined voting power of the Company’s then outstanding voting securities entitled to vote generally in the election of directors; or
  - (ii) The cessation, for any reason, of individuals who, as of the date hereof, constitute the Board (as of the date hereof the “Incumbent Board”) to constitute at least a majority of the Board, provided that any person becoming a director subsequent to the date hereof whose election, or nomination for election by the Company’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the directors of the Company) shall be, for

purposes of this Plan, considered as though such person were a member of the Incumbent Board; or

(iii) Approval by the stockholders of the Company of (A) a reorganization, merger or consolidation, in each case, with respect to which persons who were the stockholders of the Company immediately prior to such reorganization, merger or consolidation do not, immediately thereafter, own collectively as a group more than 50% of the combined voting power entitled to vote generally in the election of directors of the reorganized or surviving company’s then outstanding voting securities, or (B) a liquidation or dissolution of the Company or the sale of all or substantially all of the assets of the Company.

(f) “Claim” shall mean any threatened, pending or completed action, suit or proceeding, or any inquiry or investigation, whether conducted by the

Company or any other party, that Indemnitee in good faith believes might lead to the institution of any such action, suit or proceeding, whether civil, criminal, administrative, investigative or other.

(g) "Company-Related Enterprise" shall mean any corporation of any type or kind, domestic or foreign, partnership, joint venture, trust, employee benefit plan or other enterprise for which Indemnitee serves or has served as a Fiduciary at the request of the Company. For this purpose, and without limitation of any indemnification provided hereunder, if Indemnitee serves as a Fiduciary for (i) another corporation, partnership, joint venture or trust of which 20 percent or more of the voting power or residual economic interest is held, directly or indirectly, by the Company, or (ii) any employee benefit plan of the Company or any entity referred to in clause (i), Indemnitee shall be deemed to be doing or to have done so at the request of the Company.

(h) "Expenses" shall include attorneys' fees and all other costs, expenses and obligations reasonably paid or incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness in or participate in, any Indemnifiable Claim, together with interest, computed at the Company's average cost of funds for short-term borrowings, accrued from the date of payment of such expense to the date Indemnitee receives reimbursement therefor.

(i) "Fiduciary" shall mean director, officer, general partner, manager, employee, trustee, agent or other fiduciary.

(j) "Indemnifiable Claim" shall mean any Claim based upon, or arising in whole or in part out of (i) the fact that Indemnitee is or was a Fiduciary of the Company or is or was a Fiduciary of any Company-Related Enterprise, (ii) anything done or not done (or alleged to have been done or not done) by Indemnitee in any such capacity or (iii) anything done or not done (or alleged to have been done or not done) by Indemnitee in any other capacity for the Company or a Company-Related Enterprise while serving as a Fiduciary of the Company or a Company-Related Enterprise.

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(k) "Reviewing Party" shall be (i) the Board of Directors, acting by majority vote of directors (the "Disinterested Directors") who are not parties to the particular Claim with respect to which Indemnitee is seeking indemnification, even through less than a quorum, (ii) a committee of the Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum, or (iii) if there are no Disinterested Directors, or if the Disinterested Directors so direct, (A) independent legal counsel or (B) the stockholders.

2. BASIC INDEMNIFICATION ARRANGEMENT. If Indemnitee was, is or becomes at any time a party to, or witness or other participant in, or is threatened to be made a party to, or witness or other participant in, an Indemnifiable Claim, the Company shall indemnify Indemnitee to the fullest extent now or hereafter authorized or permitted by law as soon as practicable but in any event no later than 30 days after written demand is presented to the Company, against any and all Expenses, judgments, fines (including excise taxes assessed against Indemnitee with respect to an employee benefit plan), penalties and amounts paid in settlement of such Claim (including all interest, assessments and other charges paid or payable in connection with, or in respect of, such Expenses, judgments, fines, penalties or amounts paid in settlement). If so requested by Indemnitee, and upon compliance with the condition stated in Section 3, the Company shall advance (within two business days of such request and compliance) any and all Expenses to Indemnitee (an "Expense Advance"). Notwithstanding anything in this Agreement to the contrary, Indemnitee shall not be entitled to indemnification pursuant to this Agreement (i) in respect of any Claim based upon or arising out of conduct of Indemnitee that does not satisfy the Applicable Standard of Conduct, or (ii) in any action by or in the right of the Company in which Indemnitee has been finally adjudged to be liable to the Company, unless and only to the extent that the court in which the proceeding was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, the Indemnitee is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper, nor shall the Company be liable, unless otherwise provided by separate written agreement, bylaw or other provision for indemnity, to make any payment in connection with any Claim (x) for an accounting of profits made from the purchase or sale by the Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto, (y) for amounts paid in settlement of any proceeding effected without the written consent of the Company, which consent shall not be unreasonably withheld or (z) in connection with any Claim initiated prior to a Change in Control by Indemnitee, unless the Board of Directors has joined in or consented to the initiation of such Claim.

### 3. PAYMENT.

a. Notwithstanding the provisions of Section 2, the indemnification obligations of the Company under Section 2 (which shall in no event be deemed to preclude any right to indemnification to which Indemnitee may be entitled under K.S.A. 17-6305) shall be subject to the condition that unless indemnification is ordered by a court, the Reviewing Party shall have authorized such indemnification in the specific case upon a determination that Indemnitee has met the Applicable Standard of Conduct and

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that indemnification is not precluded by circumstances described in the last sentence of Section 2 of this Agreement. If the Reviewing Party is independent legal counsel, the determination shall be made in a written opinion.

b. The Company shall promptly call a meeting of the Board of Directors with respect to a Claim and agrees to use its best efforts to facilitate a prompt determination by the Reviewing Party with respect to the Claim. Indemnitee shall be afforded the opportunity to make submissions to the Reviewing Party with respect to the Claim.

c. The Company shall have no obligation under this Agreement to make an Expense Advance pursuant to Section 2 with respect to matters described in clauses (y) and (z) of the last sentence of Section 2.

d. The obligation of the Company to make an Expense Advance pursuant to Section 2 shall only be subject to the condition that the Indemnitee must first deliver to the Company a signed, written undertaking to repay the Expense Advance (i) if and when Indemnitee settles any proceeding without the written consent of the Company, which consent shall not be unreasonably withheld or (ii) if, when and to the extent that the Reviewing Party determines that Indemnitee is not entitled to be indemnified under Section 2 and applicable law; provided, however, with respect to clause (ii), that if Indemnitee has commenced legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee is entitled to be indemnified under Section 2, applicable law or both, any decision by the Reviewing Party not to authorize indemnification shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expense Advance until a final judicial determination is made with respect thereto and all rights of appeal therefrom have been exhausted or lapsed.

e. If a claim for indemnification or Expense advance has not been paid in full by the Company within ninety (90) days after written demand is presented to the Company, Indemnitee shall have the right to commence litigation in any court in the State of Kansas having subject matter jurisdiction thereof and in which venue is proper, seeking an initial determination by the court or challenging any determination by the Reviewing Party or any aspect thereof, and the Company hereby consents to service of process and agrees to appear in any such proceeding. It shall be a defense to any such action (other than an action brought to enforce a claim for Expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Company) that the Indemnitee has not met the

Applicable Standard of Conduct, but the burden of proving such defense shall be on the Company. However, neither the failure of the Reviewing Party to have made a determination prior to the commencement of such action that the Indemnitee has met the Applicable Standard of Conduct, nor an actual determination by the Reviewing Person that the Indemnitee had not met such Applicable Standard of Conduct, shall be a defense to the action or create a presumption that the Indemnitee has not met the Applicable Standard of Conduct.

4. The Company shall be entitled to participate at its expense in any proceeding for which Indemnitee may be entitled to indemnity hereunder, and it may

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assume the defense thereof with counsel satisfactory to the Indemnitee unless the Indemnitee reasonably concludes that there may be a conflict of interest between the Company and the Indemnitee in the conduct of such defense.

5. CHANGE IN CONTROL. If there is a Change in Control (other than a Change in Control which has been approved by a majority of the directors who were directors immediately prior to such Change in Control and were or are deemed to have been members of the Incumbent Board), then (i) for the purpose of all authorizations and determinations pursuant to the first sentence of Section 3 hereof and K.S.A. 17-6305, the Reviewing Party shall be independent legal counsel and (ii) with respect to all matters thereafter arising concerning the rights of Indemnitee to indemnification and Expense Advances under this Agreement, the Company (including the Board of Directors) shall seek legal advice from (and only from) special, independent counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld), and who (except in connection with such matters) has not performed services for the Company (or any subsidiary of the Company) or an Acquiring Person, any affiliate or associate of an Acquiring Person, or Indemnitee within the five-year period prior to the earliest date as of which Indemnitee first has actual knowledge of the relevant Indemnifiable Claim. Unless Indemnitee has theretofore selected counsel pursuant to this Section 4 and such counsel has been approved by the Company, any Approved Law Firm selected by Indemnitee shall be deemed to be approved by the Company. Such counsel, among other things, shall render their written opinion to the Company, the Board of Directors and Indemnitee as to whether and to what extent Indemnitee is entitled to be indemnified under applicable law. The Company agrees to pay the reasonable fees of the special, independent counsel referred to above and to fully indemnify such counsel, to the extent not prohibited by applicable rules of professional conduct, against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or counsel's engagement pursuant hereto. As used in this Agreement, the terms "affiliate" and "associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act as in effect on the date of this Agreement.

6. INDEMNIFICATION FOR ADDITIONAL EXPENSES. The Company shall indemnify Indemnitee against any and all expenses (including attorneys' fees) that are reasonably incurred by Indemnitee in connection with any claim successfully asserted, in whole or in part, or action brought by Indemnitee in which the Indemnitee prevails, in whole or in part, for (i) indemnification or advance payment of Expenses by the Company under this Agreement or any other agreement or Bylaw of the Company now or hereafter in effect relating to Indemnifiable Claims or (ii) recovery under any directors' and officers' liability insurance policies maintained by the Company.

7. PARTIAL INDEMNITY, ETC. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for a portion of the Expenses, judgments, fines, penalties and amounts paid in settlement relating to a Claim but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled. Moreover, notwithstanding any other provision of this Agreement, to the extent that Indemnitee has

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been successful on the merits or otherwise in defense of any or all Indemnifiable Claims or in defense of any issue or matter relating to an Indemnifiable Claim, including dismissal without prejudice, Indemnitee shall be indemnified, to the extent permitted by law, against all Expenses incurred in connection with such Indemnifiable Claims.

8. BURDEN OF PROOF. In connection with any determination by the Reviewing Party or a court as to whether Indemnitee is entitled to be indemnified hereunder, the burden of proof shall be on the Company to establish that Indemnitee is not so entitled.

9. NO PRESUMPTION. For purposes of this Agreement, the termination of any claim, action, suit or proceeding, whether civil or criminal, by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by applicable law.

10. NONEXCLUSIVITY, ETC. The rights of Indemnitee hereunder shall be in addition to any other rights Indemnitee may have under the Articles of Incorporation or Bylaws of the Company, applicable law, any other agreement, or otherwise. To the extent that a change in the law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under the Bylaws of the Company and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change.

11. LIABILITY INSURANCE. To the extent the Company maintains an insurance policy or policies providing directors' and officers' liability insurance, Indemnitee shall be covered by such policy or policies, in accordance with its or their terms, to the maximum extent of the coverage available for any director or officer of the Company.

12. AMENDMENTS, ETC. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be effective unless in writing and no written waiver shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

13. SUBROGATION. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights. Indemnitee shall not be obligated to incur any expense in connection with, and Indemnitee shall be entitled to reasonable compensation for any time devoted by Indemnitee to, securing such rights of recovery for the Company.

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14. NO DUPLICATION OF PAYMENTS. The Company shall not be liable under this Agreement to make any payment in connection with any Claim made against Indemnitee to the extent Indemnitee has otherwise actually received payment (under any insurance policy, the Articles of Incorporation or Bylaws of the Company, or

otherwise) of the amounts otherwise indemnifiable hereunder.

15. **SPECIFIC PERFORMANCE.** The parties recognize that if any provision of this Agreement is violated by the Company, Indemnitee may be without an adequate remedy at law. Accordingly, in the event of any such violation, the Indemnitee shall be entitled, if Indemnitee so elects, to institute proceedings, either at law or in equity, to obtain damages, enforce specific performance, enjoin such violation, obtain any other relief, or any combination of the foregoing.

16. **BINDING EFFECT, ETC.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets, or both, of the Company), assigns, spouses, heirs, and personal and legal representatives. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as a Fiduciary of the Company or a Company-Related Enterprise.

17. **SEVERABILITY.** The provisions of this Agreement shall be severable if any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

18. **GOVERNING LAW.** This Agreement shall be governed by, and be construed and enforced in accordance with, the laws of the State of Kansas applicable to contracts made and to be performed in such state, without giving effect to the principles of conflicts of laws.

IN WITNESS WHEREOF, the Company and Indemnitee have executed this Agreement as of the date first above written.

MGP INGREDIENTS, INC.

By: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
[Name of Indemnitee]

**Guidelines for Issuance of Fiscal 2007 Restricted Share Awards  
Adopted by the Human Resources Committee of the Board of Directors  
of MGP Ingredients, Inc.**

**RECITALS:**

1. MGP INGREDIENTS, INC. has adopted the Stock Incentive Plan of 2004 (the "Plan").
2. Under the provisions of Section 5 of the Plan, the Committee may grant Stock Incentives in the form of Stock Awards.
3. Under the provisions of the Plan, the Committee may provide for Stock Awards in the form of restricted shares (herein "Restricted Shares") to such eligible persons as may be selected by the Committee in its discretion.

Pursuant to the authority granted to it under the provisions of Section 13(c) of the Plan, the Committee adopts the following guidelines with respect to the issuance in 2005 of Stock Awards in the form of Restricted Shares.

**A. Terms of Awards of Restricted Shares.** Restricted Shares awarded under the Plan in 2006 are subject to the following terms and conditions.

(i) **Number of Shares.** The number of shares issued to a Participant pursuant to a Stock Award in the form of Restricted Shares shall be as determined by the Committee.

(ii) **Vesting.** Subject to the provisions of paragraphs C and D of these Guidelines, Restricted Shares issued as Stock Awards under the Plans shall vest (i.e., become owned by the Participant without a substantial risk of forfeiture) only upon either (a) the Participant's completion of seven (7) full years of employment with the Company, commencing on July 1, 2006 and ending on June 30, 2013, or (b) (1) the Participant's completion of three (3) full years of employment, commencing on July 1, 2006 and ending on June 30, 2009 and (2) the satisfaction by the Company of a Performance Measure, as specified below, established by the Committee (the "Restriction Period").

(c) **Performance Measure.** The Performance Measure shall be earnings per share on a cumulative basis over the period beginning on July 1, 2006 and ending on June 30, 2009 in the amount established by the Committee on or prior to the date of the 2006 Stock Awards. The Company's earnings per share shall be determined by the independent accounting firm regularly engaged by the Company and, except as follows, shall be determined in accordance with generally accepted accounting principles. The Committee may

determine whether the calculation of earnings per share should include or exclude any unusual or non-recurring item or be adjusted to reflect any unusual or non-recurring event, such as an acquisition, divestiture, change in accounting principles or tax regulations. Without limiting the foregoing, in the event of a sale by the Company of shares of its stock, a recapitalization, stock split, stock dividend, combination or exchange of shares, merger, consolidation, rights offering, reorganization or liquidation, or any other change in the corporate structure or shares of the Company, the Committee may make such equitable adjustments, designed to protect against dilution or enlargement, as it may deem appropriate with respect to the Performance Measure.

**B. Forfeiture.** Except as provided in paragraph C, if the employment of the Participant to whom Restricted Shares has been issued terminates for any reason prior to the end of the Restriction Period, such Restricted Shares shall be immediately forfeited by such Participant and cancelled by the Company.

**C. Further Conditions on Vesting and Forfeiture.**

(i) In the event of a Participant's death, Disability, Retirement or, in the sole discretion of the Committee, involuntary termination of employment without cause, in any such case after one year from the date of grant specified in the agreement evidencing the Stock Award but prior to June 30, 2009, the Restricted Shares issued to such Participant shall vest, on the date the Committee determines that the Performance Measure has been met, as to the number of Restricted Shares issued to such Participant multiplied by a fraction, the numerator of which shall equal the number of months (including fractional months as full months) that such Participant was employed by the Company, commencing as of July 1, 2006 and ending on the date of termination of employment, and the denominator of which shall be thirty-six. The balance of Restricted Shares issued to such Participant shall be forfeited by the Participant and cancelled by the Company. Pending determination by the Committee that the Performance Measure has been met, the provisions of paragraph E below shall continue to apply.

(ii) If the Performance Measure is not attained, then, in the event of a Participant's death, Disability, Retirement or, in the sole discretion of the Committee, involuntary termination of employment without cause, in any such case after three years from the date of grant specified in the agreement evidencing the Stock Award but prior to June 30, 2013, the Restricted Shares issued to such Participant shall vest on the date of termination as to the number of Restricted Shares issued to such Participant multiplied by a fraction, the numerator of which shall equal the number of months of employment (including fractional months as full months) that such Participant was employed by the Company, commencing as of July 1, 2006 and ending on the date of termination of employment, and the denominator of which shall be eighty-four. The balance of Restricted Shares issued to such Participant shall be forfeited by the Participant and cancelled by the Company.

(iii) Any Restricted Shares shall become fully vested in the Participant in the event of a Change of Control, as defined in the Plan.

(iv) As used herein, the term "Disability" shall mean the inability of a Participant to perform substantially such Participant's duties and responsibilities due to a physical or mental condition that would entitle such Participant to benefits under the Company's Long-Term Disability Plan (or any successor to the plan in effect on the date of adoption of these Guidelines) or, if no such plan is in effect, such condition as would enable the Participant to receive an award for permanent and total disability from the Social Security Administration, and the term "Retirement" means the attainment by the Participant of age 62.

(v) The Committee's determinations to permit vesting in the event of involuntary terminations of employment without cause need not be uniform and may be made selectively among participants, whether or not such participants are similarly situated.

**D. Issuance of Restricted Shares.** A certificate or certificates representing the number of shares awarded as a Stock Award in the form of Restricted Shares shall be issued from the Company's treasury shares and registered in the Participant's name and may bear substantially the following legend:

"The shares evidenced by this Certificate have been issued pursuant to the MGP Ingredients, Inc. Stock Incentive Plan of 2004 and a related

agreement (the "Agreement") between the Company and the registered holder. The holder's rights are subject to the restrictions, terms and conditions of the Plan and to the Agreement, which restricts the transfer of the shares and subjects them to forfeiture to the Company under the circumstances referred to in the Agreement. This legend may be removed when the holder's rights to the shares vest under the Agreement."

All certificates so registered in the Participant's name shall be deposited with the Company, together with stock powers or other instruments of assignment, each endorsed in blank with a guarantee of signature deemed appropriate by the Company which would permit transfer to the Company of all or a portion of the Restricted Shares in the event such award is forfeited in whole or in part. Upon vesting and provision for taxes required to be withheld, such certificate or certificates evidencing unrestricted ownership of the requisite number of shares of Common Stock shall be delivered to the holder of such Stock Award.

E. **Rights with Respect to Restricted Shares.** The holder of an award of Restricted Shares shall have the following rights of a stockholder of the Company: voting rights and the right to receive dividends during any applicable Restriction Period.

F. **Non-Assignability.** Except as may be permitted by the Plan, until they have vested, Restricted Shares may not, by operation of law or otherwise, be sold,

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assigned, transferred, pledged, hypothecated or otherwise disposed of by the holder thereof or be subject to execution, attachment or other legal process.

G. **Provisions of Plan Apply.** Even though not set forth herein or in any related grant agreement, the provisions of the Plan applicable to Stock Awards, including those relating to adjustment of Stock Awards, shall apply to Restricted Shares.

H. **Taxes.** No certificates evidencing ownership of shares shall be delivered to the holder of a Stock Award upon vesting until the holder makes such provision as the Company deems appropriate for the payment of any taxes which the Company may withhold in connection with the vesting of such Stock Award. Withholding taxes resulting from vesting of Stock Awards may be settled with cash or shares of the Company's Common Stock in accordance with the following guidelines.

(i) Holders may deliver to the Company a personal check satisfactory to the Company in the amount of the tax liability.

(ii) Holders may elect to pay the tax liability in shares of the Company's Common Stock by directing the Company to withhold from the number of shares to be delivered upon vesting that number of shares equal to the amount of the tax liability divided by the fair market value (as defined by the Plan) of one share of the Company's common stock on the date the tax to be withheld is to be determined (the "Tax Date"); or

(iii) Holders may elect to pay the tax liability in shares of the Company's Common Stock by delivering to the Company good and marketable title to that number of shares of Mature Stock (as defined in the Plan) owned by the holder as shall equal the amount of the tax liability divided by the fair market value of one share of the Company's common stock on the Tax Date.

(iv) If a holder does not notify the Company on or before the Tax Date as to the manner the holder wishes to provide for withholding taxes, the Company may, without notice to the holder, satisfy its withholding obligations as provided in clause (ii) above or any other manner permitted by law.

(v) No fractional shares will be issued in connection with any election to satisfy a tax liability by paying in shares. The balance of any tax liability representing a fraction of a share will be settled in cash by the Participant.

(vi) The amount of tax which may be paid pursuant to a stock payment election under clause (ii), (iii) or (iv) above will be the Company's minimum required federal (including FICA and FUTA) and state withholding amounts at the time of the election to pay the taxes with surrendered or withheld shares.

(vii) The foregoing provisions relating to the use of stock to satisfy obligations may be unilaterally revised by the Committee from time to time to conform the same to any applicable laws or regulations

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The undersigned Secretary of MGP Ingredients Inc. does hereby certify that the foregoing Guidelines were adopted by the Human Resources Committee of the Board of Directors of the Company on August 31, 2006.

/s/ Marta Myers

Marta Myers, Secretary

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**MGP INGREDIENTS, INC.**  
**AGREEMENT AS TO AWARD OF RESTRICTED SHARES**  
**GRANTED UNDER THE STOCK INCENTIVE PLAN OF 2004**

Date of Grant: December 6, 2006  
Time of Grant: 10:15 a.m. CST

Restricted Shares

In accordance with and subject to the terms and restrictions set forth in the MGP Ingredients, Inc. Stock Incentive Plan of 2004 (the "2004 Plan") and this Agreement, MGP INGREDIENTS, INC., a Kansas corporation (the "Company"), hereby grants to the Participant named below the number of Restricted Shares of Common Stock of the Company as set forth below:

Participant: **Ladd Seaberg**  
Number of Restricted Shares under the 2004 Plan: 20,600

NOW, THEREFORE, the Company and the Participant hereby agree to the following terms and conditions:

1. **Issuance of Restricted Shares.** The shares described above are being issued by the Company to the Participant as Restricted Shares pursuant to the terms and provisions of the 2004 Plan and of the Guidelines for Issuance of Fiscal 2007 Restricted Share Awards (the "Guidelines") adopted by the Human Resources Committee of the Board of Directors of the Company, true copies of which are attached hereto as Exhibits A and B and incorporated herein by reference. Upon the execution of this Agreement, the Company shall issue in the Participant's name the aggregate number of Restricted Shares described above, subject to the provisions of the Guidelines requiring that such certificate or certificates be held in the custody of the Company.
2. **Vesting in Restricted Shares.** Subject to the provisions of the Guidelines, Restricted Shares shall vest in the Participant upon the Participant's completion of seven (7) full years of employment with the Company commencing on July 1, 2006. However, in the event that the Performance Measure is achieved, the Restricted Shares shall vest in the Participant upon completion of three (3) full years of employment commencing on July 1, 2006. The Performance Measure means that the Company has achieved earnings per share on a cumulative basis for the period beginning on July 1, 2006 and ending on June 30, 2009 of \$3.28 per share. The Performance Measure is subject to adjustment, as provided in the Guidelines, and the inclusion or exclusion of unusual or non-recurring items is subject to the discretion of the Compensation Committee, as provided in the Guidelines. Except as provided in the Guidelines, the Restricted Shares issued to the Participant shall be forfeited to the Company if the Participant's employment with the Company is terminated prior to the end of the applicable Restriction Period.

3. **Restriction on Transfer.** The Participant shall not voluntarily sell, exchange, transfer, pledge, hypothecate, or otherwise dispose of any Restricted Shares to any other person or entity during the applicable Restriction Period. Any disposition or purported disposition made in violation of this paragraph shall be null and void, and the Company shall not recognize or give effect to such disposition on its books and records.
4. **Legend on Certificates.** In order that all potential transferees and others shall be put on notice of this Agreement and so long as the risk of forfeiture exists under the Plan and Guidelines, each certificate evidencing ownership of the Restricted Shares issued pursuant to the Plan (and any replacements thereto) shall bear a legend in substantially the following form:

"The shares evidenced by this Certificate have been issued pursuant to the MGP Ingredients, Inc. Stock Incentive Plan of 2004 and a related agreement (the "Agreement") between the Company and the registered holder. The holder's rights are subject to the restrictions, terms and conditions of the Plan and to the Agreement, which restricts the transfer of the shares and subjects them to forfeiture to the Company under the circumstances referred to in the Agreement. This legend may be removed when the holder's rights to the shares vest under the Agreement."

5. **Controlling Provisions.** The provisions of the Guidelines shall apply to the award made under this Agreement. In the event of a conflict between the provisions of this Agreement and the Guidelines, the provisions of the Guidelines will control.

IN WITNESS WHEREOF, this Instrument has been executed as of this 6<sup>th</sup> day of December 2006.

MGP INGREDIENTS, INC.

By: /s/ Brian T. Cahill  
Vice President and CFO

**ACKNOWLEDGEMENT**

I understand and agree that the Restricted Shares to be acquired by me are subject to the terms, provisions and conditions hereof and of the Plan and Guidelines, to all of which I hereby expressly assent. This Agreement shall be binding upon and inure to the benefit of the Company, myself, and our respective successors and legal representatives.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and may not be modified, amended, renewed or terminated, nor

may any term, condition or breach of any term or condition be waived, except in writing signed by the parties sought to be bound thereby. Any waiver of any term, condition or breach shall not be a waiver of any term or condition of the same term or condition for the future or any subsequent breach. In the event of the invalidity of any part or provision of this Agreement, such invalidity shall not affect the enforceability of any other part or provision of this Agreement.

Signed this 21st day of December, 2006.

/s/ Ladd M. Seaberg  
Signature of Participant





**MGP INGREDIENTS, INC.**  
**SEPARATION AGREEMENT AND RELEASE OF CLAIMS**

**WHEREAS**, the undersigned employee has been involuntarily terminated as a result of a restructuring;

**WHEREAS**, MGP Ingredients is making available to the undersigned employee a separation benefit conditioned upon a release of all claims by the undersigned employee; and

**WHEREAS**, the undersigned employee is not entitled otherwise to any separation benefit and wishes to accept the separation benefit described below.

The undersigned employee agrees as follows:

1. In exchange for the separation benefit described below, **Michael Trautschold** ("Employee") releases and forever discharges MGP Ingredients, Inc., its predecessors, successors, assigns, officers, directors, stockholders, agents, employees, and all related or subsidiary companies or divisions (collectively referred to as "Employer") from all claims, demands, suits, grievances, liabilities, or causes of action of any kind whatsoever now existing including but not limited to those that in any way relate to or are connected with or arise directly or indirectly out of the employment of Employee by Employer or the termination of that employment.

2. The claims released and discharged by Employee as of the date of this Agreement include, but are not limited to, claims that might be asserted under any federal, state or local law, regulation, ordinance, or decision concerning employment, discrimination in employment, or termination of employment including but not limited to:

- 
- A. The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. sec. 621, et seq.;
  - B. The Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. sec. 1001, et seq.;
  - C. The Kansas Acts Against Discrimination, as amended, Kan. State. Ann. sec. 44-1001, et seq.;
  - D. Title VII of Civil Rights Act of 1964 as amended, 42 U.S.C. sec 2000e, et seq.;
  - E. Americans With Disabilities Act, 42 U.S.C. sec. 12101, et seq.;
  - F. The Civil Rights Act of 1866, as amended, 42 U.S.C. sec. 1981;
  - G. The Civil Rights Act of 1991, 42 U.S.C. sec. 1981a; and
  - H. Family and Medical Leave Act.

The claims released and discharged by Employee also include, but are not limited to, any claim that Employer breached any contract, express or implied, with Employee, made any misrepresentations to Employee, discharged Employee in violation of public policy, or acted wrongfully in any way toward Employee. The claims released and discharged by Employee also include, but are not limited to, any claim relating in any manner to personal injuries, fringe benefits, medical, dental, hospitalization, life, disability, or other insurance benefits, pension or other retirement benefits, and any claims for attorney's fees, reinstatement or rehire.

Employee further agrees not to initiate any legal proceeding against Employer based on any fact or circumstance occurring up to and including the date of the execution by Employee of this Agreement.

Employee's last date of employment will be December 31, 2006. By this Agreement, Employee waives any claim for reinstatement and agrees not to seek re-employment

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with Employer at any time in the future. Employee agrees that any attempt to obtain re-employment following his signing this Agreement will constitute a breach of this Agreement, and that Employer may rely upon such breach in refusing employment, or in discharging Employee from employment.

- 3. The separation benefit shall be paid after the revocation period for this Agreement has expired and shall be as follows:
  - a. Employee shall receive gross compensation of Forty-two Hundred Dollars and Eleven Cents (\$4,200.11) per week from January 1, 2007 until December 23, 2007. Compensation checks will be paid at net pay after normal deductions and last weekly check will be paid on December 27, 2007. The above amounts are inclusive of accrued vacation that was not paid prior to December 31, 2006. If Employee does not accept this Agreement, any unpaid accrued vacation will be paid to Employee.
  - b. Health Care. If otherwise eligible, Employee may elect continuing healthcare coverage pursuant to COBRA. If Employee remains eligible for COBRA, Employer will pay 85% of the family premium through December 23, 2007. If Employee elects other healthcare coverage, Employer will reimburse Employee for the cost of such coverage through December 23, 2007 but not to exceed the amount Employer would have paid had Employee elected healthcare coverage pursuant to COBRA.
  - c. Retirement. Employee is vested in the ESOP and 401k Plans per the respective plan documents and may take withdrawals per the respective plan documents.
  - d. Options. Employee will be permitted to exercise options to the extent permitted under applicable option plans and related awards.
  - e. Restricted Stock Incentive Plan. If the Company attains the applicable performance goals, the Employee will be permitted to receive restricted shares on a pro rata basis as described in Attachments 1 and 2. Subject to the Company attaining performance goals, he will be entitled to receive 30/36 of the award whose performance period ends in 2007 and 18/36 of the award whose performance period ends in 2008. If the Company does not attain performance goals, then notwithstanding the provisions of Attachments 1 and 2, he will be entitled to receive 30/84 of the award whose performance period ends in 2007 during

- f. Outplacement. Employer will provide, at its expense of \$15,000.00, an outplacement program through CSG Partners, Inc. / Lee Hecht Harrison in the Kansas City area. If Employee elects before the expiration of 15 days after the effective time of this Release to waive the outplacement benefit, Employer will promptly pay Employee \$15,000.
  - g. Consulting. Employer and Employee will enter into a consulting arrangement on future projects in the form attached as Attachment 3 with prior written approval from the President of MGP concerning the scope of each project. A minimum of 400 hours will be guaranteed for calendar year 2007 at a rate of \$250 per hour. Fees will be based on ¼ hour increments with explanations required for invoicing as provided in the consulting agreement. The Confidentiality Obligations referred to in paragraph 5 below and in the consulting agreement will apply to any Confidential Information (as therein defined) or trade secrets made known to Employee during the period that he is consulting for Employer.
  - h. Long Term Care Policy. Employee may continue his long term care policy by paying the premium. Invoice will be sent direct to Employee from the carrier.
  - i. Withholding. All payments hereunder will be subject to applicable withholding.
4. Employee is not releasing Employer from any obligation concerning any claim for unemployment compensation Employee may make. Employer agrees not to protest any unemployment compensation claim if Employee's factual information provided to support the claim is truthful.
5. Employee acknowledges that he continues to be bound by confidentiality obligations as imposed by law or as referenced in the Acknowledgement of and Agreement with Respect to Ongoing Confidentiality Obligations, attached as Attachment 4.
6. Employee further agrees to assist in a smooth transition, to not be disruptive, and to cooperate with Employer concerning this change in employment status.
7. Employee will return on or before December 31, 2006, the laptop computer and mobile phone and other Company property, if any, in his possession.

- 8. Employee understands and agrees that the provisions of this Release and the requirement that the Release be signed in order for Employee to receive the separation benefit do not constitute an admission of any liability to Employee and that Employer expressly denies any such liability.
- 9. Employee does not waive any rights or claims that may arise after the date this Release is signed.
- 10. Employee agrees that prior to December 31, 2007 he will not, without the prior written consent of the Company, (a) except on behalf of the Employer in his capacity as consultant for the Employer, represent, approach, solicit, hire or otherwise deal with, directly or indirectly, any person associated with a customer of the Company with whom he had contact during the period of his employment with Employer regarding the wheat protein, starch or resin ingredients business ("Business") or (b) employ or retain or solicit for employment or retention by any other person, any employee of the Employer. Employee hereby acknowledges that the remedies at law of the Employer for any breach of employee's obligations contained in this Section would be inadequate and the Employer shall be entitled to injunctive relief or any other equitable relief for any violation hereof and Employee, in any equitable proceeding, agrees not to claim that a remedy at law is available to the Employer.
- 11. Employer hereby advises Employee in writing to consult with an attorney prior to executing this Release, and Employee has been given a period of at least 21 days within which to consider this Release, but Employee may accept or reject its terms, if he chooses, at any time prior to the expiration of the 21 day period (12/11/06). For a period of seven days following the signing of this Release, Employee may revoke the Release

and the Release shall not become effective or enforceable until the revocation period has expired.

- 12. Employee certifies that all transactions reportable under Section 16 of the Securities Exchange Act of 1934, as amended, by him in Employer's stock prior to the date hereof have been reported.
- 13. Employee acknowledges and agrees that no promise or agreement not expressed in this Release has been made; that this Release is not executed in reliance upon any statement or representation made by Employer or by any person employed by or representing Employer other than the statements contained in the Release itself; that the consideration recited above is the sole and only consideration for this Release; and that the terms of this Release are contractual and not mere recitals.

Date: 11/21/06

/s/Michael Trautschold  
/s/ David E. Rindom  
 Witness

Date: 11/21/06

/s/David E. Rindom  
 Authorized Officer  
 MGP Ingredients, Inc.

**MGP INGREDIENTS, INC.  
AGREEMENT AS TO AWARD OF RESTRICTED SHARES  
GRANTED UNDER THE STOCK INCENTIVE PLAN OF 2004**

Date of Grant: December 1, 2004  
Time of Grant: 10:15 a.m. CST

7,400 Restricted Shares

In accordance with and subject to the terms and restrictions set forth in the MGP Ingredients, Inc. Stock Incentive Plan of 2004 (the "2004 Plan") and this Agreement, MGP INGREDIENTS, INC., a Kansas corporation (the "Company"), hereby grants to the Participant named below the number of Restricted Shares of Common Stock of the Company as set forth below:

Participant: Micahel J. Trautschold  
Number of Restricted Shares under the 2004 Plan: 7,400

NOW, THEREFORE, the Company and the Participant hereby agree to the following terms and conditions:

1. **Issuance of Restricted Shares.** The shares described above are being issued by the Company to the Participant as Restricted Shares pursuant to the terms and provisions of the 2004 Plan and of the Guidelines for Issuance of Fiscal 2005 Restricted Share Awards (the "Guidelines") adopted by the Human Resources Committee of the Board of Directors of the Company, true copies of which are attached hereto as Exhibits A and B and incorporated herein by reference. Upon the execution of this Agreement, the Company shall issue in the Participant's name the aggregate number of Restricted Shares described above, subject to the provisions of the Guidelines requiring that such certificate or certificates be held in the custody of the Company.
2. **Vesting in Restricted Shares.** Subject to the provisions of the Guidelines, Restricted Shares shall vest in the Participant upon the Participant's completion of seven (7) full years of employment with the Company commencing on July 1, 2004. However, in the event that the Performance Measure is achieved, the Restricted Shares shall vest in the Participant upon completion of three (3) full years of employment commencing on July 1, 2004. The Performance Measure means that the Company has achieved earnings per share on a cumulative basis for the period beginning on July 1, 2004 and ending on June 30, 2007 of \$3.15 per share. The Performance Measure is subject to adjustment, as provided in the Guidelines, and the inclusion or exclusion of unusual or non-recurring items is subject to the discretion of the Compensation Committee, as provided in the Guidelines. Except as provided in the Guidelines, the Restricted Shares issued to the Participant shall be forfeited to the Company if the Participant's employment with the Company is terminated prior to the end of the applicable Restriction Period.

3. **Restriction on Transfer.** The Participant shall not voluntarily sell, exchange, transfer, pledge, hypothecate, or otherwise dispose of any Restricted Shares to any other person or entity during the applicable Restriction Period. Any disposition or purported disposition made in violation of this paragraph shall be null and void, and the Company shall not recognize or give effect to such disposition on its books and records.
4. **Legend on Certificates.** In order that all potential transferees and others shall be put on notice of this Agreement and so long as the risk of forfeiture exists under the Plan and Guidelines, each certificate evidencing ownership of the Restricted Shares issued pursuant to the Plan (and any replacements thereto) shall bear a legend in substantially the following form:

"The shares evidenced by this Certificate have been issued pursuant to the MGP Ingredients, Inc. Stock Incentive Plan of 2004 and a related agreement (the "Agreement") between the Company and the registered holder. The holder's rights are subject to the restrictions, terms and conditions of the Plan and to the Agreement, which restricts the transfer of the shares and subjects them to forfeiture to the Company under the circumstances referred to in the Agreement. This legend may be removed when the holder's rights to the shares vest under the Agreement."

5. **Controlling Provisions.** The provisions of the Guidelines shall apply to the award made under this Agreement. In the event of a conflict between the provisions of this Agreement and the Guidelines, the provisions of the Guidelines will control.

IN WITNESS WHEREOF, this Instrument has been executed as of this 3rd day of December, 2004.

MGP INGREDIENTS, INC.

By: /s/ Laidacker M. Seaberg  
Laidacker M. Seaberg  
President and Chief Executive Officer

**ACKNOWLEDGEMENT**

I understand and agree that the Restricted Shares to be acquired by me are subject to the terms, provisions and conditions hereof and of the Plan and Guidelines, to all of which I hereby expressly assent. This Agreement shall be binding upon and inure to the benefit of the Company, myself, and our respective successors and legal representatives.

/s/ Michael J. Trautschold  
Signature of Participant

**MGP INGREDIENTS, INC.  
AGREEMENT AS TO AWARD OF RESTRICTED SHARES  
GRANTED UNDER THE STOCK INCENTIVE PLAN OF 2004**

Date of Grant: August 30, 2005  
Time of Grant: 10:15 a.m. CST

14,600 Restricted Shares

In accordance with and subject to the terms and restrictions set forth in the MGP Ingredients, Inc. Stock Incentive Plan of 2004 (the "2004 Plan") and this Agreement, MGP INGREDIENTS, INC., a Kansas corporation (the "Company"), hereby grants to the Participant named below the number of Restricted Shares of Common Stock of the Company as set forth below:

Participant: Micahel J. Trautschold  
Number of Restricted Shares under the 2004 Plan: 14,600

NOW, THEREFORE, the Company and the Participant hereby agree to the following terms and conditions:

1. **Issuance of Restricted Shares.** The shares described above are being issued by the Company to the Participant as Restricted Shares pursuant to the terms and provisions of the 2004 Plan and of the Guidelines for Issuance of Fiscal 2006 Restricted Share Awards (the "Guidelines") adopted by the Human Resources Committee of the Board of Directors of the Company, true copies of which are attached hereto as Exhibits A and B and incorporated herein by reference. Upon the execution of this Agreement, the Company shall issue in the Participant's name the aggregate number of Restricted Shares described above, subject to the provisions of the Guidelines requiring that such certificate or certificates be held in the custody of the Company.
2. **Vesting in Restricted Shares.** Subject to the provisions of the Guidelines, Restricted Shares shall vest in the Participant upon the Participant's completion of seven (7) full years of employment with the Company commencing on July 1, 2005. However, in the event that the Performance Measure is achieved, the Restricted Shares shall vest in the Participant upon completion of three (3) full years of employment commencing on July 1, 2005. The Performance Measure means that the Company has achieved earnings per share on a cumulative basis for the period beginning on July 1, 2005 and ending on June 30, 2008 of \$1.73 per share. The Performance Measure is subject to adjustment, as provided in the Guidelines, and the inclusion or exclusion of unusual or non-recurring items is subject to the discretion of the Compensation Committee, as provided in the Guidelines. Except as provided in the Guidelines, the Restricted Shares issued to the Participant shall be forfeited to the Company if the Participant's employment with the Company is terminated prior to the end of the applicable Restriction Period.

3. **Restriction on Transfer.** The Participant shall not voluntarily sell, exchange, transfer, pledge, hypothecate, or otherwise dispose of any Restricted Shares to any other person or entity during the applicable Restriction Period. Any disposition or purported disposition made in violation of this paragraph shall be null and void, and the Company shall not recognize or give effect to such disposition on its books and records.
4. **Legend on Certificates.** In order that all potential transferees and others shall be put on notice of this Agreement and so long as the risk of forfeiture exists under the Plan and Guidelines, each certificate evidencing ownership of the Restricted Shares issued pursuant to the Plan (and any replacements thereto) shall bear a legend in substantially the following form:

"The shares evidenced by this Certificate have been issued pursuant to the MGP Ingredients, Inc. Stock Incentive Plan of 2004 and a related agreement (the "Agreement") between the Company and the registered holder. The holder's rights are subject to the restrictions, terms and conditions of the Plan and to the Agreement, which restricts the transfer of the shares and subjects them to forfeiture to the Company under the circumstances referred to in the Agreement. This legend may be removed when the holder's rights to the shares vest under the Agreement."

5. **Controlling Provisions.** The provisions of the Guidelines shall apply to the award made under this Agreement. In the event of a conflict between the provisions of this Agreement and the Guidelines, the provisions of the Guidelines will control.

IN WITNESS WHEREOF, this Instrument has been executed as of this 20th day of September, 2005.

MGP INGREDIENTS, INC.

By: /s/ Laidacker M. Seaberg  
Laidacker M. Seaberg  
President and Chief Executive Officer

**ACKNOWLEDGEMENT**

I understand and agree that the Restricted Shares to be acquired by me are subject to the terms, provisions and conditions hereof and of the Plan and Guidelines, to all of which I hereby expressly assent. This Agreement shall be binding upon and inure to the benefit of the Company, myself, and our respective successors and legal representatives.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and may not be modified, amended, renewed or terminated, nor may any term, condition or breach of any term or condition be waived, except in writing signed by the parties sought to be bound thereby. Any waiver of any term, condition or breach shall not be a waiver of any term or condition of the same term or condition for the future or any subsequent breach. In the event of the invalidity of any part or provision of this Agreement, such invalidity shall not effect the enforceability of any other part or provision of this Agreement.

Signed this 20th day of September, 2005.

/s/ Michael J. Trautschold  
Signature of Participant

**CONSULTATION AGREEMENT**

**THIS AGREEMENT** made as of the 1st day of January, 2007 between **MGP INGREDIENTS, INC.**, a Kansas corporation (“Company”) and **MICHAEL TRAUTSCHOLD** (“Trautschold”), a resident of Johnson County, Kansas.

WHEREAS, Company wishes to engage Trautschold to provide consulting services for it in connection with the operations of its business; and

NOW, THEREFORE, for and in consideration of the mutual covenants herein made, Trautschold and the Company agree as follows:

**1. Consultation Agreement.**

(a) In consideration for the Company’s agreement to pay him \$250 an hour, upon and subject to the terms of this Agreement, Trautschold agrees that for a period commencing on the effective date hereof and ending on the earlier of December 31, 2007 or the date of his death, he will provide the Company’s President such assistance, advice and consultation in connection with the Company’s ingredients business as the Company’s President may request from time to time after reasonable notice to Trautschold. In such capacity, Trautschold will use his best efforts, within the bounds of law and ethics, to preserve the good will of the Company with its customers, its employees, the ingredients industry and the general public. Trautschold’s work under this Agreement may include assisting in litigation involving the Company. Nothing in this Agreement shall in anyway compel Trautschold to respond to questions except with an honest truthful answer.

(b) It is understood that if the Company has not utilized Trautschold’s services for at least 400 hours before December 31, 2007, it will on January 15, 2008 pay him an amount equal to the difference between \$100,000 and the amount previously paid for his consulting services under this Agreement. It is also understood that if the Company requests in writing, Trautschold will continue to provide consulting services until December 31, 2012 at the hourly rate set forth above. However, any such election will not require the Company to actually utilize Trautschold’s services or to utilize them for any minimum amount of time after December 31, 2007. Fees will be based on 1/4 hour increments. Fees will be paid monthly commencing on February 15, 2007 for services rendered during the prior month as evidenced by a monthly invoice submitted by Trautschold. Such invoice will indicate the time spent and identify the matter worked on and any expenses incurred. If requested by the Company, Trautschold will supply additional supporting data.

(c) It is also understood that Trautschold’s services under this Agreement will be rendered primarily in the Kansas City, Missouri/Kansas City, Kansas metropolitan area but that upon request Trautschold will travel to such other places outside of the Kansas City, Missouri/Kansas City, Kansas metropolitan area as the Company may reasonably request. All reasonable expenses incurred by Trautschold in connection with any such travel will be reimbursed by the Company within fifteen (15) days after receipt of the monthly invoice submitted by Trautschold.

(d) It is anticipated that this Agreement may require on the average thirty to thirty-five (30-35) hours of work monthly, although there will be some months during which Trautschold may not perform any services at all, and, on the other hand, some months in which he will be required to work in excess of thirty to thirty-five hours. The hours during which Trautschold performs services hereunder on any given day shall be determined by him, although Trautschold will use reasonable efforts to respond timely to and to accommodate the requests of the Company’s President for his services.

(e) As a consultant, Trautschold will be an independent contractor and will not be considered an employee of the Company for any purpose.

(f) Trautschold may perform services for any other person or firm without the Company’s prior consent provided that in doing so he does not violate this Agreement or any other agreement with the Company. In this regard, Section 10 of the Separation Agreement and Release of Claims between Trautschold and the Company requires the Company’s prior written consent to certain contacts by Trautschold.

**2. Protection of Confidential Information.**

(a) As used in this paragraph 2 the term “Confidential Information” means attorney client or other confidential communications or information protected by the work product doctrine and any of the following, whether historical, current or proposed and whether the Company’s or a customer’s: customer lists, customer credit information, marketing data, production methods and formulas, recipes, processes, innovations, inventions, strategies, suppliers, pricing and pricing methods, sales techniques, advertising, traveling and canvassing methods, brochures or instructions relating to products, services or business of the Company or any customer of the Company, and any other information which the Company may from time to time identify in writing to Trautschold as information which it wishes to preserve as secret. Such other Confidential Information and the dates on which the Company so advised Trautschold may, but need not be, recorded as an exhibit to be attached to and deemed a part of this Agreement.

(b) By executing this Agreement, Trautschold acknowledges that he has been advised that the Company wishes to preserve Confidential Information as secret.

(c) Unless Trautschold shall first secure the written consent of the Company, Trautschold shall not disclose or use at any time, either during or subsequent to the term of this Agreement, any Confidential Information, whether or not patentable, of which Trautschold is presently aware or becomes informed during such time, whether or not developed by Trautschold, except as required in the exercise of Trautschold’s duties to the Company under this Agreement. This obligation shall not apply to any Confidential Information which is or shall become a part of the public domain through no fault of Trautschold. Trautschold shall not be deemed in breach of this provision for good faith actions undertaken in the performance of duties requested of him by the Company under this Agreement.

(d) Upon the Company’s request, Trautschold shall promptly deliver to the Company all manuals, sales materials, letters, notes, notebooks, reports, customer lists, and all

copies thereof, and all other materials of a secret or confidential nature related to the business of the Company or any customers of the Company, which are in the possession or under the control of Trautschold.

(e) Trautschold acknowledges that his breach of the covenants contained in this paragraph 2 will cause irreparable damage to the Company, and accordingly, Trautschold agrees that in addition to other remedies which it may have hereunder, the Company may seek equitable relief to enforce the obligations imposed hereunder.

(f) This paragraph 2 is intended to supplement, but not limit or supplant, any obligation of Trautschold or remedy of the Company which may be

otherwise imposed on Trautschold or available to the Company under common law or equity without written agreement.

3. **Other Considerations.**

The payment on January 15, 2008 referred to in subparagraph 1 (b) will be made notwithstanding Trautschold's death or disability. In the event of Trautschold's death, such payment will be made to such person or persons as he may designate in writing and in the absence of such designation to his estate. Notwithstanding the foregoing, the Company shall have no obligation to pay such amounts if Trautschold violates the terms of this Agreement or contests the validity of the Separation Agreement and Release of Claims with the Company or its application to any act or omission of the Company prior to the effective time thereof.

4. **Notices.** Any notice required or permitted to be given hereunder shall be sufficient if in writing and shall be deemed delivered upon the date of mailing if mailed by certified or registered mail, return receipt requested, to the address of Trautschold as reflected in the Company's records, or to the Company to 1300 Main Street, P.O. Box 130, Atchison, Kansas 66002-0130, Attn: President.

5. **Miscellaneous.** This Agreement constitutes the entire Agreement of the parties hereto respecting the subject matter hereof and supersedes all prior understandings or agreements, oral or written, among all or any of such parties. This Agreement shall not be amended except by a written agreement signed by all of the parties hereto. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and permitted assigns. This Agreement shall be governed by the laws of the State of Kansas. In the event any one or more of the provisions contained in this Agreement or any application thereof shall be held to be illegal, the enforceability of the remaining provisions of this Agreement or any other application thereof shall not in any way be affected or impaired thereby. No delay or failure on the part of any party hereto in exercising any rights hereunder, and no partial or single exercise thereof, shall constitute a waiver of any other rights hereunder. Whenever the context hereof shall require, the use of any gender shall include all genders and the singular shall include the plural, and vice versa. All exhibits attached hereto are incorporated herein by this reference.

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**"COMPANY"**

(CORPORATE SEAL)

**MGP INGREDIENTS, INC.**

By: /s/ Laidacker M. Seaberg

Laidacker M. Seaberg  
Chief Executive Officer

ATTEST:

Marta M. Myers  
Secretary

**"CONSULTANT"**

/s/ Michael J. Trautschold  
Michael Trautschold

CITY OF ATCHISON, KANSAS  
AS ISSUER  
  
AND  
  
MGP INGREDIENTS, INC.  
AS TENANT  
  
LEASE  
  
DATED AS OF THE ISSUE DATE OF THE BONDS  
  
\$7,000,000  
TAXABLE INDUSTRIAL REVENUE BONDS  
SERIES 2006  
(MGP INGREDIENTS PROJECT)

LEASE

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**LEASE**

**THIS LEASE**, made and entered into as of the Issue Date of the Bonds hereinafter defined between the City of Atchison, Kansas (the “Issuer”), and MGP Ingredients, Inc. (the “Tenant”).

**WITNESSETH:**

**WHEREAS**, the Issuer is a municipal corporation incorporated as a city of the first class, duly organized and existing under the laws of the State, with full lawful power and authority to enter into this Lease by and through its governing body; and

**WHEREAS**, the Issuer, in furtherance of the purposes and pursuant to the provisions of the laws of the State, particularly K.S.A. 12-1740et seq., as amended (the "Act"), and in order to provide for the economic development and welfare of the City of Atchison, Kansas and its environs and to provide employment opportunities for its citizens and to promote the economic stability of the State, has proposed and does hereby propose that it shall:

(a) Acquire the Project (as defined in the Indenture);

(b) Lease the Project to the Tenant for the rentals and upon the terms and conditions hereinafter set forth; and

(c) Issue, for the purpose of paying Project Costs (as defined in the Indenture), the Series 2006 Bonds under and pursuant to and subject to the provisions of the Act and the Indenture (herein defined), said Indenture being incorporated herein by reference and authorized by an ordinance of the governing body of the Issuer; and

**WHEREAS**, the Tenant, pursuant to the foregoing proposals of the Issuer, desires to lease the Project from the Issuer for the rentals and upon the terms and conditions hereinafter set forth;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein set forth, Issuer and the Tenant do hereby covenant and agree as follows:

**ARTICLE I**

Section 1.1. **Definitions.** Capitalized terms not otherwise defined in this Lease shall have the meanings set forth in *Appendix B* to the Indenture. In addition to the words, terms and phrases defined in *Appendix B* to the Indenture and elsewhere in this Lease, the capitalized words, terms and phrases as used herein shall have the meanings set forth in the Glossary of Words and Terms attached as *Appendix C*, unless the context or use indicates another or different meaning or intent.

Section 1.2. **Representations and Covenants by the Tenant** The Tenant makes the following covenants and representations as the basis for the undertakings on its part herein contained:

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(a) The Tenant is a Kansas corporation, duly organized and existing under the laws of said state, and is duly authorized and qualified to do business in the State, with lawful power and authority to enter into this Lease, acting by and through its duly authorized officers.

(b) Except as otherwise permitted herein, the Tenant shall (1) maintain and preserve its existence and organization as a corporation and its authority to do business in the State and to operate the Project, and (2) shall not initiate any proceedings of any kind whatsoever to dissolve or liquidate without in either case (A) securing the prior written consent thereto of the Issuer or (B) making provision for the payment in full of the principal of and interest and redemption premium, if any, on the Bonds.

(c) Neither the execution and/or delivery of this Lease, the consummation of the transactions contemplated hereby or by the Indenture, nor the fulfillment of or compliance with the terms and conditions of this Lease contravenes in any material respect any provisions of its articles of incorporation or bylaws, or conflicts in any material respect with or results in a material breach of the terms, conditions or provisions of any mortgage, debt, agreement, indenture or instrument to which the Tenant is a party or by which it is bound, or to which it or any of its properties is subject, or would constitute a material default (without regard to any required notice or the passage of any period of time) under any of the foregoing, or would result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Tenant under the terms of any mortgage, debt, agreement, indenture or instrument, or violates in any material respect any existing law, administrative regulation or court order or consent decree to which the Tenant is subject.

(d) This Lease constitutes a legal, valid and binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

(e) The Tenant agrees to operate and will operate the Project, or cause the Project to be operated as a "facility," as that term is contemplated in the Act, from the date of the Issuer's acquisition of the Project to the end of the Term.

(f) The Tenant has obtained or will obtain any and all permits, authorizations, licenses and franchises necessary to construct the Improvements and to enable it to operate and utilize the Project for the purposes for which it was leased by the Tenant under this Lease.

(g) The estimated total cost of the Improvements to be financed by the proceeds of the Series 2006 Bonds, plus interest on the Series 2006 Bonds during acquisition, and Costs of Issuance of the Series 2006 Bonds, will not be less than the original aggregate principal amount of the Series 2006 Bonds.

(h) After reasonable inquiry and investigation, the Tenant is not aware of (A) any Hazardous Substances generated from or located on the Project; (B) any prior use of the Land which might reasonably involve Hazardous Substances; or (C) any investigations, complaints or inquiries of any kind, from any source, concerning Hazardous Substances with respect to the Project or properties adjoining the Project.

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(i) The Tenant will not use or permit the Project to be used by any other person or entity in any manner which would involve the generation, storage, disposal or transportation of Hazardous Substances, except in strict compliance with applicable Environmental Laws.

Section 1.3. **Representations and Covenants by the Issuer.** The Issuer makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) It is a municipal corporation duly incorporated and existing as a city of the first class under the constitution and laws of the State. Under the provisions of the Act and the Ordinance, the Issuer has the power to enter into and perform the transactions contemplated by this Lease and the Indenture and to carry out its obligations hereunder and thereunder.

(b) It has not, in whole or in part, assigned, leased, hypothecated or otherwise created any other interest in, or disposed of, or caused or permitted any lien, claim or encumbrance to be placed against, the Project, except for this Lease, the assignment of this Lease to the Trustee, any Permitted Encumbrances, any Impositions, and the pledge of the Project pursuant to the Indenture.

(c) Except as otherwise provided herein or in the Indenture, it will not during the Term, in whole or in part, assign, lease, hypothecate or otherwise create any other interest in, or dispose of, or cause or permit any lien, claim or encumbrance to be placed against, the Project, except Permitted Encumbrances, this Lease, any Impositions and the pledge of the Project pursuant to the Indenture.

(d) It has pledged the Project and the net rentals therefrom generated under the Lease to payment of the Bonds in the manner prescribed by the Act, and has duly authorized the execution and delivery of this Lease and the Indenture and the issuance, sale and delivery of the Series 2006 Bonds.

(f) It has notified or obtained the consent to and/or approval of the issuance of the Series 2006 Bonds by each municipal corporation and political subdivision the notification, consent or approval of which is required by the provisions of the Act.

## ARTICLE II

Section 2.1. **Granting of Leasehold.** The Issuer by these presents hereby rents, leases and lets the Project unto the Tenant and the Tenant hereby rents, leases and hires the Project for the Term from the Issuer, for the rentals and upon and subject to the terms and conditions hereinafter set forth.

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## ARTICLE III

Section 3.1. **Basic Rent.** The Issuer reserves and the Tenant covenants and agrees to pay Basic Rent to the Trustee as assignee of the Issuer, for the account of the Issuer, for deposit in the Debt Service Fund, on each Basic Rent Payment Date. Basic Rent shall be payable at the principal office of the Trustee on each Basic Rent Payment Date.

Section 3.2. **Additional Rent.** Within 30 days after receipt of written notice thereof, the Tenant shall pay any Additional Rent required to be paid pursuant to this Lease not already paid.

Section 3.3. **Rent Payable Without Abatement or Setoff.** The Tenant covenants and agrees with and for the express benefit of the Issuer and the Bondowners that all payments of Basic Rent and Additional Rent shall be made by the Tenant as the same become due, and that the Tenant shall perform all of its obligations, covenants and agreements hereunder without notice or demand and without abatement, deduction, setoff, 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 Improvements shall have been acquired, started or completed, or whether the Issuer's title to the Project or any part thereof is defective or non-existent, and notwithstanding any failure of consideration or commercial frustration of purpose, the eviction or constructive eviction of the Tenant or any subtenant, any Change of Circumstances, any change in the tax or other laws of the United States of America, the State, or any municipal corporation of either, any change in the Issuer's legal organization or status, or any default of the Issuer hereunder, and regardless of the invalidity of any action of the Issuer or any other event or condition whatsoever, and regardless of the invalidity of any portion of this Lease, and the Tenant hereby waives the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Lease or which releases or purports to release the Tenant therefrom. Nothing in this Lease shall be construed as a waiver by the Tenant of any rights or claims the Tenant may have against the Issuer under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the Issuer separately, it being the intent of this Lease that the Tenant shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Bondowners.

Section 3.4. **Prepayment of Basic Rent.** The Tenant may at any time prepay all or any part of the Basic Rent. Prepayments of Basic Rent will be applied to redemption of Bonds, including payment of redemption premium, as directed in writing by the Tenant, to the extent that Bonds are subject to optional redemption at the time of prepayment. Otherwise, prepayments of Basic Rent will be deposited in the Debt Service Fund to be applied to purchase of Bonds, or to optional redemption of Bonds (including redemption premium and interest) at the earliest date on which Bonds are subject to optional redemption.

Section 3.5. **Deposit of Rent by the Trustee.** As assignee of the Issuer's rights hereunder, the Trustee shall deposit, use and apply all payments of Basic Rent and Additional Rent in accordance with the provisions of this Lease and the Indenture.

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Section 3.6. **Acquisition of Bonds.** If the Tenant acquires any Outstanding Bonds, it may present the certificate(s) representing such part of the Bonds to the Trustee for cancellation, and upon such cancellation, the Tenant's obligation to pay Basic Rent shall be reduced in the same manner as provided for prepayments by the Tenant of Basic Rent. In no event, however, shall the Tenant's obligation to pay Basic Rent be reduced in such a manner that the Trustee shall not have on deposit in the Debt Service Fund, on the next succeeding Payment Date, funds sufficient to pay the maturing principal of, redemption premium, if any, and interest on Outstanding Bonds as and when the same shall become due and according to the terms of the Bonds.

## ARTICLE IV

Section 4.1. **Disposition of Original Proceeds; Project Fund.** The Original Proceeds shall be paid over to the Trustee for the account of the Issuer. The Trustee shall pay from such Original Proceeds into the Debt Service Fund the full amount of any accrued interest received upon such sale. The remainder of such proceeds shall be deposited by the Trustee in the Project Fund to be used and applied as provided in this Lease and the Indenture.

## ARTICLE V

Section 5.1. **Acquisition of Land and Improvements.** The Tenant shall prior to or concurrently with the issuance of the Bonds, assign or cause to be conveyed to the Issuer by special warranty deed, subject to Permitted Encumbrances, the Land as described in *Schedule I*. The Tenant shall also concurrently with such conveyance make provisions for the discharge or subordination to the interests acquired by the Issuer of any liens or encumbrances incurred by it in connection with the construction, installation or development of any Improvements, other than Permitted Encumbrances.

Section 5.2. **Project Contracts.** Prior to the delivery of this Lease, the Tenant has or may have entered into a contract or contracts with respect to the acquisition and/or construction of Improvements. Those contracts, and any such contracts entered into by the Tenant after delivery of this Lease are hereinafter referred to as the "Project Contracts." Prior to the delivery hereof, certain work has been or may have been performed on the Improvements pursuant to said Project Contracts or otherwise. The Tenant hereby covenants with the Issuer to perform the Project Contracts for the benefit of the Issuer as holder of title to the Project as well as its own benefit as tenant under this Lease, and the Issuer hereby designates the Tenant as the Issuer's agent for the purpose of executing and performing the Project Contracts. After the execution hereof, the Tenant shall cause the Project Contracts to be fully performed by the contractor(s), subcontractor(s) and supplier(s) thereunder in accordance with the terms thereof, and the Tenant covenants to cause the Improvements to be acquired, constructed, installed and/or completed in accordance with the Project Contracts. The Tenant warrants that the

construction and/or acquisition of the Improvements in accordance with said Project Contracts will result in the Project being suitable for use by the Tenant as a commercial office building and tech center facility.” Any and all amounts received by the Issuer, the Trustee or the Tenant from any of the contractors or other suppliers by way of breach of contract, refunds or adjustments shall become a part of and be deposited in the

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Project Fund. The Trustee may, at its option, appoint an agent to review the Project Contracts, and make periodic inspections of the Improvements during construction to determine the satisfactory progress and completion of the work. The reasonable fees and expenses of such agent shall be paid by the Tenant as Additional Rent.

**Section 5.3. Payment of Project Costs for Buildings and Improvements.** The Issuer hereby agrees to pay for the acquisition or construction of the Improvements to be paid for from the proceeds of Bonds, or any repairs or replacements to be made pursuant to *Article XVIII* of this Lease, but solely from Original Proceeds of the Bonds (or Net Proceeds, as applicable) as deposited in the Project Fund, and hereby authorizes and directs the Trustee to pay for the same, but solely from the Project Fund, from time to time, after issuance of the Bonds while the Tenant is in compliance with the requirements of *Section 6.1* hereof, upon receipt by the Trustee of a requisition certificate signed by the Authorized Tenant Representative in the form set forth as *Appendix A* hereto which is incorporated herein by reference. With regard to materials and/or labor furnished to the Project site at the order of the Tenant without formal contract, or by subcontract with the Tenant acting as general contractor, which could form the basis of a statutory mechanic’s or subcontractor’s lien, unless Tenant is sole owner of the Bonds, the Trustee may disburse payment therefor only upon receipt of releases or waivers of statutory mechanic’s or subcontractor’s liens by all vendors or subcontractors receiving payment or furnishing labor or materials as a subcontractor of the vendor or subcontractor receiving payment.

The sole obligation of the Issuer under this paragraph shall be to cause the Trustee to make such disbursements upon receipt of such certificates and releases or waivers. The Trustee may rely fully on any such certificates and shall not be required to make any investigation in connection therewith.

**Section 5.4. Payment of Project Costs for Machinery and Equipment.** The Issuer hereby agrees to pay for the purchase and acquisition of any machinery and equipment constituting a part of the Improvements, but solely from the Project Fund, from time to time, upon receipt by the Trustee of a certificate signed by the Authorized Tenant Representative in the form provided by *Appendix A* hereto which is incorporated herein by reference and accompanied by the following specific information:

- (a) A copy of the seller’s invoice, purchase order or other like document evidencing the purchase by the Tenant of such machinery and/or equipment;
- (b) Common descriptive name of machinery or equipment;
- (c) Serial number, if any; and
- (d) Model number, if any.

The sole obligation of the Issuer under this Section shall be to cause the Trustee to make such disbursements upon receipt of said certificates and proof of mechanic’s or subcontractor’s lien waiver or release, if the item is to become a fixture on the Land. The Trustee may rely fully on any such certificate and supporting documentation and shall not be required to make any independent

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investigation in connection therewith. All machinery, equipment and/or personal property acquired, in whole or in part, from funds deposited in the Project Fund pursuant to this Section will be considered a part of the Project. With respect to items of machinery and equipment constituting a part of the Improvements, the Tenant shall maintain a running master list of such machinery and equipment, and within 30 days after the Completion Date, the Tenant shall prepare an accurate detailed final list of machinery and equipment constituting a part of the Improvements (but not installed as fixtures therein or thereon), which list shall be filed with the Trustee, and shall constitute a part of this Lease by reference. All machinery and equipment constituting a part of the Improvements shall be appropriately identified by separate schedule or other means acceptable to the Trustee.

**Section 5.5. Completion of Improvements .** The Tenant warrants that the Project, when completed, will be occupied and used by the Tenant for its lawful business purposes. The Tenant covenants and agrees to proceed diligently to complete any Improvements to be acquired with the proceeds of the Series 2006 Bonds. Upon completion of Improvements, the Tenant shall cause the Authorized Tenant Representative to deliver a Certificate of Completion, in the form substantially as attached hereto as *Appendix B*, to the Trustee. In the event funds remain on hand in the Project Fund on the date the Certificate of Completion is furnished to the Trustee, such remaining funds shall be transferred by the Trustee to the Debt Service Fund on the receipt of the Certificate of Completion and shall be applied in accordance with the provisions of the Indenture.

**Section 5.6. Deficiency of Project Fund.** If Original Proceeds in the Project Fund shall be insufficient to pay fully any Project Costs (including reimbursements to the Tenant for Project Costs advanced by the Tenant prior to issuance of the Bonds) and to fully complete any Improvements, lien free (except for Permitted Encumbrances), the Tenant covenants to pay the full amount of any such deficiency by making payments directly to the contractors and to the suppliers of materials, machinery, equipment, property and services as the same shall become due, and the Tenant shall save the Issuer and the Trustee whole and harmless from any obligation to pay such deficiency.

**Section 5.7. Right of Entry by the Issuer and the Trustee** The duly authorized agents of the Issuer and/or the Trustee shall have the right at any reasonable time and upon reasonable notice to the Tenant prior to the completion of the Improvements to have access to the Project or any part thereof for the purpose of inspecting the acquisition, installation or construction thereof.

**Section 5.8. Machinery and Equipment Purchased by the Tenant.** If no part of the purchase price of an item of machinery, equipment or personal property is paid from Original Proceeds deposited in the Project Fund pursuant to the terms of this Lease, then such item of machinery, equipment or personal property will not be considered a part of the Project.

**Section 5.9. Project Property of the Issuer.** All Improvements, all work and materials on Improvements as such work progresses, any Project Additions, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as fully completed, repaired, rebuilt, rearranged, restored or replaced by the Tenant under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the Issuer. Any Improvements that become a part of the real

estate as fixtures shall remain separate from the Tenant's property unless and until purchased by the Tenant from the Issuer as provided in this Lease.

#### Section 5.10. **Kansas Retailers' Sales Tax.**

The parties have entered into this Lease in contemplation that, under the existing provisions of K.S.A. 79-3606, subsections (b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of any Improvements are entitled to exemption from the tax imposed by the Kansas Retailers' Sales Tax Act. The parties agree that the Issuer shall, upon the request of and with the Tenant's assistance, promptly obtain from the State and furnish to the contractors and suppliers a project exemption certificate for the construction of the Improvements. The Tenant covenants that said exemption certificate shall be used only in connection with the purchase of tangible personal property or services becoming a part of the Project.

### ARTICLE VI

Section 6.1. **Insurance.** During the Term of this Lease, the Tenant shall obtain and maintain such general accident and public liability insurance covering the Tenant's operations in or upon the Project (including coverage for losses arising from the ownership, maintenance, use or operation of any automobile, truck or other vehicle in or upon the Project), such insurance insuring the Project against loss or damage by fire, lightning and all other risks covered by the broadest form extended coverage insurance endorsement then in use in the State, and such other property, casualty, liability and worker's compensation insurance as is customarily carried by business of the type in which the Tenant is engaged, subject to reasonable deductibles, all of which insurance shall name the Tenant, the Issuer, and the Trustee as insureds and loss payees, as their interests appear. The Trustee shall have no duty to review the insurance required by this *Article VI* (or certificates thereof) or to inquire as to the compliance thereof with this *Article VI*.

Section 6.2. **Evidence of Title.** The Tenant shall furnish evidence of title in the form of an updated title report describing Tenant's fee simple title to the Land (the "Updated Title Report"). The Issuer and the Tenant agree that any and all proceeds therefrom during the Basic Term (a) if received before the completion of the building Improvements shall be paid into and become a part of the Project Fund, (b) if received thereafter but before the Bonds and interest thereon have been paid in full, shall be paid into and become a part of the Debt Service Fund, and (c) if received after the Bonds, redemption premium, if any, and interest thereon have been paid in full, shall belong and be paid to the Tenant.

### ARTICLE VII

Section 7.1. **Impositions.** The Tenant shall, during the Term of this Lease, bear, pay and discharge, before the delinquency thereof, any and all Impositions. In the event any Impositions may be lawfully paid in installments, the Tenant shall be required to pay only such installments

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thereof as become due and payable during the term of this Lease as and when the same become due and payable.

Section 7.2. **Receipted Statements.** Unless the Tenant exercises its right to contest any Impositions in accordance with *Section 7.3* hereof, the Tenant shall, within 30 days after the last day for payment without penalty or interest of an Imposition which the Tenant is required to bear, pay and discharge pursuant to the terms hereof, deliver to the Trustee a copy of the statement issued therefor duly receipted to show the payment thereof.

Section 7.3. **Contest of Impositions.** The Tenant shall have the right, in its own or the Issuer's name or both, to contest the validity or amount of any Imposition by appropriate legal proceedings instituted before the Imposition complained of becomes delinquent if, and provided, the Tenant (i) before instituting any such contest, shall give the Issuer and the Trustee written notice of its intention to do so and, if requested in writing by the Issuer or the Trustee, shall deposit with the Trustee a surety bond of a surety company acceptable to the Issuer as surety, in favor of the Issuer and the Trustee, as their interests may appear, or cash, in a sum of at least the amount of the Imposition so contested, assuring the payment of such contested Impositions together with all interest and penalties to accrue thereon and court costs, (ii) diligently prosecutes any such contest and at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (iii) promptly pays any final judgment enforcing the Imposition so contested and thereafter promptly procures record release or satisfaction thereof. The Tenant shall indemnify and hold the Issuer whole and harmless from any costs and expenses the Issuer may incur related to any such contest.

Section 7.4. **Ad Valorem Taxes.** The parties acknowledge that under the existing provisions of K.S.A. 79-201a, as amended, the property acquired, constructed or purchased with the proceeds of the Bonds (except such property used for certain retail uses) is eligible to receive exemption from *ad valorem* taxation for a period up to 10 calendar years after the calendar year in which the Bonds are issued, provided the Issuer has complied with certain notice, hearing and procedural requirements established by law, and proper application has been made. The Issuer represents that such notice, hearing and procedural requirements will have been complied with at the Issue Date. Subject to the provisions of *Section 7.5* of this Lease, the Issuer will, at the Tenant's request, with information furnished by Tenant and the Trustee, make all necessary filings regarding the application for 100% *ad valorem* tax exemption for the full 10-year period on or before March 1 in the calendar year following the calendar year in which the Bonds were issued, and will renew said application from time to time and take any other action as may be necessary to maintain such *ad valorem* tax exemption in full force and effect, in accordance with K.S.A. 79-201a, 79-210 *et seq.* and the requirements of the State Board of Tax Appeals. If it becomes necessary to litigate the issue of availability or applicability of the *ad valorem* tax exemption, the Issuer will cooperate fully with Tenant in pursuing such litigation, but all litigation costs and reasonable attorney fees must be paid by Tenant, either directly or as Additional Rent.

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### ARTICLE VIII

Section 8.1. **Use of Project.** Subject to the provisions of this Lease, the Tenant shall have the right to use the Project for any and all purposes allowed by law and contemplated by the constitution of the State and the Act. The Tenant shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. The Tenant shall comply with the mandatory requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease. The Tenant 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 Tenant to comply with the provisions of this Article.

#### Section 8.2. **Environmental Provisions.**

(a) The Tenant hereby covenants that it will not cause or permit any Hazardous Substances (as defined herein) to be placed, held, located or disposed of, on, under or at the Land or the Project, other than in the ordinary course of business and in material compliance with all applicable Environmental Laws.

(b) In furtherance and not in limitation of any indemnity elsewhere provided to the Issuer hereunder and in the Indenture, the Tenant hereby agrees to indemnify and hold harmless the Issuer, the Trustee and the Bondowner(s) from time to time from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment, costs of investigation, consultants, testing, sampling, cleanup, or defense, and claims of any and every kind paid, incurred or suffered, with respect to, or as a direct or indirect result of, the actual or alleged presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Land or the Project of any Hazardous Substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under any federal, state or local Environmental Law or so-called "Superfund" or "Super lien" law, or any other applicable Environmental Law, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standard of conduct concerning, any Hazardous Substance) regardless of whether or not caused by or within the control of the Tenant.

(c) If the Tenant receives any notice of (1) the happening of any event involving the use, other than in the ordinary course of business and in compliance with all applicable Environmental Laws, spill, release, leak, seepage, discharge or cleanup of any Hazardous Substance on the Land or the Project or in connection with the Tenant's operations thereon or (2) any complaint, order, citation or notice with regard to air emissions, water discharges or any other environmental, health or safety matter affecting the Tenant (an "Environmental Complaint") from any person (including, without limitation, the United States Environmental Protection Agency (the "EPA"), and the Kansas Department of Health and Environment ("KDHE")) then the Tenant shall immediately notify the Issuer and the Trustee in writing. With respect to any such notice that relates to a condition or conditions on the Project site, the Tenant shall promptly initiate action to

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remediate the conditions cited in the notice, and shall diligently pursue such remediation at its expense to the satisfaction of the city authority.

(d) If an Event of Default shall have occurred, at the request of the Issuer or the Trustee, the Tenant shall periodically perform (at the Tenant's expense) an environmental audit and, if reasonably deemed necessary by the Issuer or the Trustee, an Environmental Assessment, (each of which must be reasonably satisfactory to the Issuer and the Trustee) of the Project, or the hazardous waste management practices and/or hazardous waste disposal sites used by the Tenant with respect to the Project. Said audit and/or Environmental Assessment shall be conducted by an environmental consultant satisfactory to the Issuer and the Trustee. Should the Tenant fail to perform any environmental audit or risk assessment within 30 days of the written request of the Issuer or the Trustee, either shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the Issuer or the Trustee in the exercise of such rights shall be payable by the Tenant as Additional Rent on demand, and if not so paid, shall bear interest until paid at the average rate of interest on the Bonds plus 200 basis points.

(e) The Tenant shall not install nor permit to be installed in the Project friable asbestos or any substance containing asbestos and deemed hazardous by Environmental Law applicable to the Project and respecting such material, and with respect to any such material currently present in the Project, shall promptly either (1) remove any material which such applicable regulations deem hazardous and require to be removed or (2) otherwise comply with such applicable Environmental Law, at the Tenant's expense. If the Tenant shall fail to so remove or otherwise comply, the Issuer may declare an Event of Default and/or do whatever is necessary to eliminate said substances from the Project or otherwise comply with the applicable Environmental Law or order, and the costs thereof shall be payable by the Tenant on demand, and if not so paid, shall bear interest until paid at the average rate of interest on the Bonds plus 200 basis points. The Tenant shall defend, indemnify, and save the Issuer, the Trustee and the Bondowner(s) harmless from all costs and expenses (including consequential damages) asserted or proven against the Tenant, or incurred to comply with such regulations.

(f) The provisions of *Section 8.2(d)* shall survive the termination of this Lease or exercise of the Tenant's option to purchase the Project, except with respect to obligations which arise solely and exclusively as a result of the use, spill, release, leak, seepage or discharge of Hazardous Substances on the Land or the Project after the Project is no longer occupied by the Tenant.

## ARTICLE IX

**Section 9.1. Sublease by the Tenant.** The Tenant may sublease the Project to a single party or entity. In the event of any such subleasing, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder, and no such subleasing and no dealings or transactions between the Issuer or the Trustee and any such subtenant shall relieve the Tenant of any of its duties and obligations hereunder.

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Any such sublease shall be subject and subordinate in all respects to the provisions of this Lease.

**Section 9.2. Assignment by the Tenant.** The Tenant may assign, mortgage, sell, or otherwise transfer its interest in this Lease only with the prior written consent of the Issuer. In the event of any such assignment, the Tenant shall remain fully liable for the performance of its duties and obligations hereunder, except to the extent hereinafter provided, and no such assignment and no dealings or transactions between the Issuer or the Trustee and any such assignee shall relieve the Tenant of any of its duties and obligations hereunder, except as may be otherwise provided in the following Section.

**Section 9.3. Release of the Tenant.** If, in connection with an assignment by the Tenant of its interest in this Lease, (a) the Issuer and the Owners of at least seventy-five percent (75%) in aggregate principal amount of the Outstanding Bonds (including any Additional Bonds) shall file with the Trustee and the Original Purchaser their prior written consent to such assignment, and (b) the proposed assignee shall expressly assume and agree to perform all of the obligations of the Tenant under this Lease; then the Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment.

**Section 9.4. Mergers and Consolidations.** Notwithstanding the provisions of *Sections 9.2* and *9.3* above, if the Tenant shall assign or transfer, by operation of law or otherwise, its interests in this Lease in connection with a transaction involving the merger or consolidation of the Tenant with or into, or a sale, lease or other disposition of all or substantially all of the property of the Tenant as an entirety to another person, association, corporation or other entity, and (a) the proposed assignee, transferee or surviving corporation shall expressly assume and agree to perform all of the obligations of the Tenant under this Lease with regard to the Bonds, and (b) if Tenant is not the sole owner of the Bonds, the Tenant shall furnish the Trustee and the Issuer with evidence in the form of financial statements accompanied by a proforma balance sheet prepared by an independent certified public accountant of recognized standing showing that the net worth of such proposed assignee, transferee or surviving entity immediately following such assignment, transfer or merger will be at least equal to the net worth of the Tenant as shown by the most recent financial statements of the Tenant furnished to the Trustee pursuant to this Lease; then and in such event the Tenant shall be fully released from all obligations accruing hereunder after the date of such assignment, transfer or merger.

**Section 9.5. Covenant Against Other Assignments.** The Tenant will not assign or in any manner transfer its interests under this Lease, nor will it suffer or permit any assignment thereof by operation of law, except in accordance with the limitations, conditions and requirements herein set forth.

## ARTICLE X

Section 10.1. **Repairs and Maintenance.** The Tenant covenants and agrees that it will, during the Term of this Lease, at its own expense, keep and maintain the Project and all parts thereof in good condition and repair, including but not limited to the furnishing of all parts,

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mechanisms and devices required to keep the machinery, equipment and personal property constituting a part of the Project in good mechanical and working order.

Section 10.2. **Removal, Disposition and Substitution of Machinery or Equipment.** The Tenant shall have the right, provided the Tenant is not in Default, to remove and sell or otherwise dispose of any machinery or equipment which constitutes a part of the Project and which is no longer used by the Tenant or, in the opinion of the Tenant, is no longer useful to the Tenant in its operations (whether by reason of changed processes, changed techniques, obsolescence, depreciation or otherwise).

All machinery or equipment constituting a part of the Project and removed by the Tenant shall become the absolute property of the Tenant and may be sold or otherwise disposed of by the Tenant without otherwise accounting to the Issuer. In all cases, the Tenant shall pay all the costs and expenses of any such removal and shall immediately repair at its expense all damage caused thereby. The Tenant's rights under this Section to remove machinery or equipment constituting a part of the Project is intended only to permit the Tenant to maintain an efficient operation by the removal of such machinery and equipment no longer suitable to the Tenant's use 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 shall not be construed to permit the wholesale removal of such machinery or equipment by the Tenant.

#### ARTICLE XI

Section 11.1. **Alteration of Project.** The Tenant shall have and is hereby given the right, at its sole cost and expense, to make such additions, changes and alterations in and to any part of the Project as the Tenant from time to time may deem necessary or advisable, provided however, the Tenant shall not make any major addition, change or alteration which will adversely affect the intended use or structural strength or value of any part of the Improvements. All additions, changes and alterations made by the Tenant pursuant to the authority of this Article shall (a) be made in a workmanlike manner and in strict compliance with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, shall be deemed a part of the Project; provided, however, that additions of machinery, equipment and/or personal property of the Tenant, not purchased or acquired from proceeds of the Bonds and not constituting a part of the Project shall remain the separate property of the Tenant and may be removed by the Tenant prior to or as provided in *Section 22.1* hereof.

#### ARTICLE XII

Section 12.1. **Additional Improvements.** The Tenant shall have and is hereby given the right, at its sole cost and expense, to construct on the Land or within areas occupied by the Improvements, or in airspace above the Project, such additional buildings and improvements as the Tenant from time to time may deem necessary or advisable. All additional buildings and improvements constructed by the Tenant pursuant to the authority of this Article shall, during the Term, remain the property of the Tenant and may be added to, altered or razed and removed by the Tenant at any time during the Term hereof. The Tenant covenants and agrees (a) to make all

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repairs and restorations, if any, required to be made to the Project because of the construction of, addition to, alteration or removal of, said additional buildings or improvements, (b) to keep and maintain said additional buildings and improvements in good condition and repair, ordinary wear and tear excepted, (c) to promptly and with due diligence either raze and remove from the Land, in a good, workmanlike manner, or repair, replace or restore such of said additional buildings or improvements as may from time to time be damaged by fire or other casualty, and (d) that all additional buildings and improvements constructed by the Tenant pursuant to this Article which remain in place after the termination of this Lease for any cause other than the purchase of the Project pursuant to *Article XVII* hereof shall, upon and in the event of such termination, become the separate and absolute property of the Issuer.

#### ARTICLE XIII

Section 13.1. **Securing of Permits and Authorizations.** The Tenant shall not do or permit others under its control to do any work in or in connection with the Project or related to any repair, rebuilding, restoration, replacement, alteration of or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have first been procured and paid for. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease.

Section 13.2. **Mechanic's Liens.** The Tenant shall not do or suffer anything to be done whereby the Project, or any part thereof, is encumbered by any mechanic's or other similar lien. Should any mechanic's or other similar lien ever be filed against the Project, or any part thereof, the Tenant shall discharge the same of record within 30 days after the date of filing. Notice is hereby given that the Issuer does not authorize or consent to and shall not be liable for any labor or materials furnished to the Tenant or anyone claiming by, through or under the Tenant upon credit, and that no mechanic's or similar liens for any such labor, services or materials shall attach to or affect the reversionary or other estate of the Issuer in and to the Project, or any part thereof.

Section 13.3. **Contest of Liens.** The Tenant, notwithstanding the above, shall have the right to contest any such mechanic's or other similar lien if within said 30-day period stated above it (a) notifies the Issuer and the Trustee in writing of its intention so to do, and if Tenant is not the sole owner of Bonds and if requested by the Trustee, deposits with the Trustee a surety bond issued by a surety company acceptable to the Issuer as surety, in favor of the Issuer, or cash, in the amount of the lien claim so contested, indemnifying and protecting the Issuer from and against any liability, loss, damage, cost and expense of whatever kind or nature growing out of or in any way connected with said asserted lien and the contest thereof, (b) diligently prosecutes such contest, at all times effectively staying or preventing any official or judicial sale of the Project or any part thereof or interest therein, under execution or otherwise, and (c) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and thereafter promptly procures record release or satisfaction thereof.

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Section 13.4. **Utilities.** All utilities and utility services used by the Tenant in, on or about the Project shall be contracted for by the Tenant in the Tenant's own name and the Tenant shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

#### ARTICLE XIV



Section 14.1. **Indemnity.** The Tenant shall and hereby covenants and agrees to indemnify, protect, defend and save the Issuer, the Trustee and the Bondowners harmless from and against any and all claims, demands, liabilities and costs, including attorneys' fees, arising from damage or injury, actual or claimed, of whatsoever kind or character, to property or persons, occurring or allegedly occurring in, on or about the Project during the Term hereof, and upon timely written notice from the Issuer or the Trustee, the Tenant shall defend the Issuer and the Trustee in any action or proceeding brought thereon; provided, however, that nothing contained in this Section shall be construed as requiring the Tenant to indemnify the Issuer or the Trustee for any claim resulting from any negligent, willful or malicious act or omission of the Issuer or the Trustee, or their respective agents and employees. The Tenant also covenants and agrees, at its expense, to pay and to indemnify the Issuer, the Trustee and the Bondowners from and against all costs, expenses and charges, including reasonable counsel fees (to the extent permitted by law), incurred in obtaining possession of the Project after default of the Tenant, or in enforcing any covenant or agreement of the Tenant contained in this Lease or the Indenture.

#### ARTICLE XV

Section 15.1. **Access to Project.** The Issuer, for itself and its duly authorized representatives and agents, including the Trustee, reserves the right to enter the Project at all reasonable times during usual business hours throughout the Term, upon reasonable notice, for the purpose of (a) examining and inspecting the same, (b) performing such work made necessary by reason of the Tenant's default under any of the provisions of this Lease, and (c) after an Event of Default, for the purpose of exhibiting the Project to prospective purchasers, lessees or mortgagees. The Issuer may, during the progress of said work mentioned in (b) above, keep and store on the Project all necessary materials, supplies and equipment and shall not be liable for inconvenience, annoyances, disturbances, loss of business or other damage suffered by reason of the performance of any such work or the storage of such materials, supplies and equipment. Prior to entry, Issuer will cause its representatives to enter a confidentiality agreement customarily used by Tenant to protect its trade secrets and other intellectual property.

#### ARTICLE XVI

Section 16.1. **Option to Extend Basic Term.** The Tenant shall have and is hereby given the right and option to extend the Basic Term of this Lease for the Additional Term provided that (a) the Tenant shall give the Issuer written notice of its intention to exercise the option at least 30 days prior to the expiration of the Basic Term and (b) the Tenant is not in Default hereunder at the

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time it gives the Issuer such notice or at the time the Additional Term commences. In the event the Tenant exercises such option, the terms, covenants, conditions and provisions set forth in this Lease shall be in full force and effect and binding upon the Issuer and the Tenant during the Additional Term except that the Basic Rent during any extended term herein provided for shall be the sum of \$100.00 per year, payable in advance on the first Business Day of such Additional Term.

#### ARTICLE XVII

Section 17.1. **Option to Purchase Project.** Subject to the provisions of this Article, the Tenant shall have the right and option to purchase the Project at any time during the Term hereof and for 120 days thereafter. The Tenant shall exercise its option by giving the Issuer written notice of the Tenant's election to exercise its option and specifying the date, time and place of closing, which date (the "Purchase Date"), unless waived, shall neither be earlier than 30 days nor later than 180 days after the notice is given. The Tenant may not, however, exercise such option if the Tenant is in Default hereunder on the Purchase Date unless all Defaults are cured upon payment of the purchase price specified in *Section 17.2*.

Section 17.2. **Quality of Title and Purchase Price.** If said notice of election to purchase is given, the Issuer shall sell and convey all of its interests in the Project to the Tenant on the Purchase Date free and clear of all liens and encumbrances except (a) Permitted Encumbrances, (b) those to which title was subject on the date of conveyance to the Issuer of the Land, or to which title became subject with the Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under this Lease, (c) taxes and assessments, general and special, if any, and (d) the rights of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the Project, for a price determined as follows (which the Tenant agrees to pay in cash at the time of delivery of the Issuer's deed or other instrument or instruments of transfer of the Project to the Tenant as hereinafter provided):

(1) The full amount which is required to provide the Issuer and the Trustee with funds sufficient, in accordance with the provisions of the Indenture, to pay at maturity or to redeem and pay in full (A) the principal of all of the Outstanding Bonds, (B) all interest due thereon to date of maturity or redemption, whichever first occurs, and (C) all costs, expenses and premiums incident to the redemption and payment of said Bonds in full, plus

(2) \$100.00.

Nothing in this Article shall release or discharge the Tenant from its duty or obligation under this Lease to make any payment of Basic Rent or Additional Rent which, in accordance with the terms of this Lease, becomes due and payable prior to the Purchase Date, or its duty and obligation to fully perform and observe all covenants and conditions herein stated to be performed and observed by the Tenant prior to the Purchase Date.

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Section 17.3. **Closing of Purchase.** On the Purchase Date the Issuer shall deliver to the Tenant its special warranty deed and/or other appropriate instrument or instruments of conveyance or assignment, properly executed and conveying the Project to the Tenant free and clear of all liens and encumbrances except as set forth in the preceding section above, or conveying such other title to the Project as may be acceptable to the Tenant, and the Tenant shall pay the full purchase price for the Project as follows: (a) the amount specified in clause (1) of *Section 17.2* shall be paid to the Trustee for deposit in the Debt Service Fund to be used to pay or redeem Bonds and the interest thereon as provided in the Indenture, and (b) the amount specified in clause (2) of said *Section 17.2* shall be paid to the Issuer; provided, however, nothing herein shall require the Issuer to deliver its appropriate instrument or instruments of assignment or conveyance to the Tenant until after all duties and obligations of the Tenant under this Lease to the date of such delivery have been fully performed and satisfied or adequate provision made for such performance and satisfaction. Upon the delivery to the Tenant of the Issuer's appropriate instrument or instruments of assignment or conveyance, payment of the purchase price by the Tenant and legal defeasance of the Bonds, this Lease shall *ipso facto* terminate, subject to the provisions of *Section 20.2* hereof.

Section 17.4. **Effect of Failure to Complete Purchase.** If, for any reason, the purchase of the Project by the Tenant pursuant to valid notice of election to purchase is not effected on the Purchase Date, this Lease shall be and remain in full force and effect according to its terms the same as though no notice of election to purchase had been given, except that if such purchase is not effected on the Purchase Date because the Issuer does not have or is unable to convey to the Tenant such title to the Project as the Tenant is required to accept, the Issuer shall use its best efforts to cure any such defect in its title to the Project. In the event the Issuer is unable to cure such defect in its title to the Project, or if the Issuer's failure to close would be a breach of its obligations hereunder, the Tenant shall have the right to cancel this Lease forthwith if, but only if, the principal of and interest on the Bonds and all costs incident to the redemption and payment of the Bonds have been paid in full. The Tenant shall also have the right to exercise any legal or equitable remedies, in its own name or in the name of the Issuer, to obtain acceptable title to the Project.

Section 17.5. **Application of Condemnation Awards if the Tenant Purchases Project** The right of the Tenant to exercise its option to purchase the Project under the provisions of this Article shall remain unimpaired notwithstanding any condemnation of title to, or the use for a limited period of, all or any part of the Project. If the Tenant shall exercise its said option and pay the purchase price as provided in this Article, all of the condemnation awards received by the Issuer after the payment of said purchase price, less all attorneys' fees and other expenses and costs incurred by the Issuer as the owner of the Project in connection with such condemnation, shall belong and be paid to the Tenant.

Section 17.6. **Option to Purchase Unimproved Portions of Land.** The Tenant shall have the option to purchase at any time and from time to time during the Term any vacant part or vacant parts of the unimproved Land constituting a part of the Project; provided, however, the Tenant shall furnish the Issuer and the Trustee with a certificate of an Authorized Tenant Representative, dated not more than thirty (30) days prior to the date of the purchase and stating that, in the opinion of the Authorized Tenant Representative, (a) the portion of said Land with respect to which the option is exercised is not needed for the operation of the Project for the purposes herein stated, (b) the purchase will not impair the usefulness or operating efficiency or

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materially impair the value of the Project and will not destroy or materially impair the means of ingress thereto and egress therefrom, and (c) the purchase will not materially adversely affect compliance of the remaining Land and any Improvements with applicable zoning laws or regulations. The Tenant shall exercise this option by giving the Issuer and the Trustee written notice of the Tenant's election to exercise its option and specifying (i) the legal description, (ii) the date, time and place of closing, which date shall neither be earlier than 45 days nor later than 60 days after the notice is given, (iii) the appraised current fair market value of the portions of the Land with respect to which the Tenant's option is exercised as determined by an independent, qualified appraiser whose report shall be furnished to the Trustee together with the Tenant's notice of election to purchase, and (iv) a certificate signed by the chief executive or chief financial officer of the Tenant stating that no event has occurred and is continuing which, with notice or lapse of time or both, would constitute an Event of Default; provided, however, that the Tenant may not exercise this option if there has occurred and is continuing any event which, with notice or lapse of time or both, would constitute an Event of Default at the time said notice is given and may not purchase said real property on the specified closing date if any such event has occurred and is continuing on said date unless all defaults are cured. The option hereby given shall include the right to purchase a perpetual easement for right-of-way to and from the public roadway and the right to purchase such land as is necessary to assure that there will always be access between the real property purchased pursuant to these Sections 17.6 through 17.10 and the public roadway.

Section 17.7. **Quality of Title - Purchase Price.** If said notice of election to purchase is given as provided in Section 17.6 the Issuer shall convey the real property described in the Tenant's notice to the Tenant on the specified date free and clear of all liens and encumbrances except (a) Permitted Encumbrances, (b) those to which the title was subject on the date of conveyance to the Issuer of the Land, or to which title became subject with the Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under this Lease, (c) taxes and assessments, general and special, if any, and (d) the interests of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the real property described in the Tenant's notice. The purchase price shall be an amount equal to the then current fair market value thereof, as determined with reference to the independent appraiser's report furnished to the Trustee or the original cost to the Tenant, whichever is less.

Section 17.8. **Closing of Purchase.** If the Issuer has title to such vacant real property free and clear of all liens and encumbrances except as stated above or has such other title to the such real property as may be acceptable to the Tenant, then on the specified date, the Issuer shall deliver to the Tenant its special warranty deed, properly executed and conveying such real property to the Tenant free and clear of all liens and encumbrances except as stated above, and the Tenant shall pay the purchase price for such real property, said purchase price to be paid to the Trustee for the account of the Issuer and deposited by the Trustee in the Debt Service Fund and shall be used to redeem Bonds on any date the Bonds are subject to optional redemption as provided in the Indenture. Nothing herein shall require the Issuer to deliver its special warranty deed to the Tenant until after all duties and obligations of the Tenant under this Lease to the date of such delivery have been fully performed and satisfied.

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Section 17.9. **Effect of Purchase on Lease.** The exercise by the Tenant of the option granted under these Sections 17.6 to 17.10 and the purchase and sale and conveyance of a portion or portions of the Land constituting a part of the Project pursuant hereto shall in no way whatsoever affect this Lease, and all the terms and provisions hereof shall remain in full force and effect the same as though no notice of election to purchase had been given, and specifically, but not in limitation of the generality of the foregoing, exercise of such option shall not affect, alter, diminish, reduce or abate the Tenant's obligations to pay all Basic Rent and Additional Rent required hereunder.

Section 17.10. **Effect of Failure to Complete Purchase** If, for any reason whatsoever, the purchase by the Tenant of the real property described in said notice is not effected on the specified date, this Lease shall be and remain in full force and effect according to its terms the same as though no notice of election to purchase had been given.

## ARTICLE XVIII

### Section 18.1. **Damage and Destruction.**

(a) If, during the Term, any Improvements are damaged or destroyed, in whole or in part, by fire or other casualty, the Tenant shall promptly notify the Issuer and the Trustee in writing as to the nature and extent of such damage or loss and whether it is practicable and desirable to rebuild, repair, restore or replace such damage or loss.

(b) If the Tenant shall determine that such rebuilding, repairing, restoring or replacing is practicable and desirable, the Tenant shall forthwith proceed with and complete with reasonable dispatch such rebuilding, repairing, restoring or replacing. If Tenant is the sole owner of Bonds and Section 18.3 is not applicable, all Net Proceeds shall be paid to Tenant. If Tenant is not the sole owner of Bonds, any Net Proceeds of property and/or casualty insurance required by this Lease and received with respect to any such damage or loss to the Improvements shall be paid to the Trustee and shall be deposited in the Project Fund and shall be used and applied for the purpose of paying the cost of such rebuilding, repairing, restoring or replacing such damage or loss. Any amount remaining in the Project Fund after such rebuilding, repairing, restoring or replacing shall be paid to the Tenant.

(c) If the Tenant shall reasonably determine that rebuilding, repairing, restoring or replacing the Improvements is not practicable and desirable, any Net Proceeds of property and/or casualty insurance required by this Lease and received with respect to any such damage or loss to the Project shall be paid into the Debt Service Fund. Such moneys shall be used to redeem Bonds at their earliest optional redemption date. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection (c).

(d) The Tenant shall not, by reason of its inability to use all or any part of the Improvements during any period in which the Improvements are damaged or destroyed, or are 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 or any abatement or

diminution of the Basic Rent or Additional Rent payable by the Tenant under this Lease nor of any other obligations of the Tenant under this Lease except as expressly provided in this Section.

#### Section 18.2. **Condemnation.**

(a) If, during the Term title to, or the temporary use of, all or any part of the Project shall be condemned by any authority exercising the power of eminent domain (other than the Issuer), the Tenant shall, within 30 days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify the Issuer and the Trustee in writing as to the nature and extent of such condemnation and whether it is practicable and desirable to acquire substitute land or construct substitute Improvements.

(b) If the Tenant shall determine that such substitution is practicable and desirable, the Tenant shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute Land or Improvements. If Tenant is the sole owner of Bonds and *Section 18.3* is not applicable, all Net Proceeds shall be paid to Tenant. If Tenant is not the sole owner of Bonds, 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 shall be paid to the Trustee for the account of the Tenant and shall be deposited in the Project Fund and shall be used and applied for the purpose of paying the cost of such substitution. Any amount remaining in the Project Fund after such acquisition or construction shall be paid to Tenant.

(c) If the Tenant shall reasonably determine that it is not practicable and desirable to acquire or construct substitute Improvements, any Net Proceeds of condemnation awards received by the Tenant shall be paid into the Debt Service Fund. Such moneys shall be used to redeem Bonds at their earliest optional redemption date. The Tenant agrees that it shall be reasonable in exercising its judgment pursuant to this subsection.

(d) The Tenant shall not, by reason of its inability to use all or any part of the Improvements 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 or any abatement or diminution of the Basic Rent or Additional Rent nor of any other obligations hereunder payable by the Tenant under this Lease.

(e) The Issuer shall cooperate fully with the Tenant in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof so long as the Issuer is not the condemning authority. In no event will the Issuer 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 written consent of the Tenant and the Trustee.

**Section 18.3. Effect of Tenant's Defaults.** Anything in this Article to the contrary notwithstanding, the Issuer and the Trustee shall have the right at any time and from time to time to withhold payment of all or any part of the Net Proceeds from the Project Fund attributable to damage, destruction or condemnation of the Project to the Tenant or any third party if an Event of Default has occurred and is continuing, or the Issuer or the Trustee has given notice to the Tenant

of any Default which, with the passage of time, will become an Event of Default. In the event the Tenant shall cure any Defaults specified herein, the Trustee shall make payments from the Net Proceeds to the Tenant in accordance with the provisions of this Article. However, if this Lease is terminated or the Issuer or the Trustee otherwise re-enters and takes possession of the Project without terminating this Lease, the Trustee shall pay all the Net Proceeds held by it into the Debt Service Fund and all rights of the Tenant in and to such Net Proceeds shall cease.

### ARTICLE XIX

**Section 19.1. Change of Circumstances.** If at any time during the Basic Term, a Change of Circumstances occurs, then the Tenant shall have the option to purchase the Project pursuant to *Article XVII* or the option to terminate this Lease by giving the Issuer notice of such termination within 90 days after the Tenant has actual knowledge of the event giving rise to such option. Such termination shall become effective when all of the Bonds Outstanding are paid or payment is provided for pursuant to the Indenture.

### ARTICLE XX

**Section 20.1. Remedies on Default.** Whenever any Event of Default shall have happened and be continuing, the Trustee (acting on behalf of the Issuer, as assignee of the Issuer's rights hereunder) may take any legal action, including but not limited to, one or more of the following remedial actions:

(a) By written notice to the Tenant upon acceleration of maturity of the Bonds as provided in the Indenture, the Trustee acting on behalf of the Issuer may declare the aggregate amount of all unpaid Basic Rent or Additional Rent then or thereafter required to be paid under this Lease by the Tenant to be immediately due and payable as liquidated damages from the Tenant, whereupon the same shall become immediately due and payable by the Tenant.

(b) The Trustee acting on behalf of the Issuer may give the Tenant written notice of intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given and, if all Defaults have not then been cured on the date so specified, the Tenant's rights to possession of the Project shall cease, and this Lease shall thereupon terminate. The Trustee acting on behalf of the Issuer may thereafter re-enter and take possession of the Project and pursue all its available remedies, including sale of the Project and judgment against the Tenant for possession of the Project and/or all Basic Rent and Additional Rent then owing, including costs and attorney fees.

(c) Without terminating the Term hereof, or this Lease, the Trustee acting on behalf of the Issuer may conduct inspections or an Environmental Assessment of the Project, and re-enter the Project or take possession thereof pursuant to legal proceedings or any notice provided for by law and this Lease. The Issuer or the Trustee acting on behalf of the Issuer may refuse to re-enter or take possession of the Project if it has reasonable cause for such refusal. "Reasonable cause" shall include the presence on the Project of conditions which are in violation of any

Environmental Law or the existence or threat of a remedial action against the Tenant under any Environmental Law resulting from conditions on the Project.

(d) Having elected to re-enter or take possession of the Project pursuant to subsection 20.1(c), the Trustee acting on behalf of the Issuer may relet the

Project, or parts thereof, for such term or terms and at such rental and upon such other terms and conditions as are deemed advisable, with the right to make alterations and repairs to the Project, and no such re-entry or taking of possession of the Project shall be construed as an election to terminate this Lease, and no such re-entry or taking of possession shall relieve the Tenant of its obligation to pay Basic Rent or Additional Rent (at the time or times provided herein), or of any of its other obligations under this Lease, all of which shall survive such re-entry or taking of possession. The Tenant shall continue to pay the Basic Rent and Additional Rent provided for in this Lease until the end of the Term, whether or not the Project shall have been relet, less the net proceeds, if any, of reletting the Project.

(e) Having elected to reenter or take possession of the Project pursuant to subsection 20.1(c), the Trustee acting on behalf of the Issuer may (subject, however, to any restrictions against termination of this Lease in the Trust Indenture), by notice to the Tenant given at any time thereafter while the Tenant is in Default in the payment of Basic Rent or Additional Rent or in the performance of any other obligation under this Lease, elect to terminate this Lease in accordance with subsection 20.1(b) and thereafter proceed to exercise any remedies lawfully available.

(f) If, in accordance with any of the foregoing provisions of this Article, the Issuer shall have the right to elect to re-enter and take possession of the Project, the Issuer or the Trustee acting on behalf of the Issuer, may enter and expel the Tenant and those claiming through or under the Tenant and remove the property and effects of both or either by all lawful means without being guilty of any manner of trespass and without prejudice to any remedies for arrears of Basic Rent or Additional Rent or preceding breach of contract by the Tenant.

(g) Net proceeds of any reletting or sale of the Project shall be deposited in the Debt Service Fund for application to pay the Bonds and interest thereon. "Net proceeds" shall mean the receipts obtained from reletting or sale after deducting all expenses incurred in connection with such reletting or sale, including without limitation, all repossession costs, brokerage commissions, legal fees and expenses, expenses of employees, alteration costs and expenses of preparation of the Project for reletting or sale.

(h) The Issuer may recover from the Tenant any attorney fees incurred in exercising any of its remedies under this Lease.

**Section 20.2. Survival of Obligations.** The Tenant covenants and agrees with the Issuer that until all Bonds and the interest thereon and redemption premium, if any, are paid in full or provision is made for the payment thereof in accordance with the Indenture, its obligations under this Lease shall survive the cancellation and termination of this Lease for any cause and/or sale of the Project, and that the Tenant shall be obligated to pay Basic Rent and Additional Rent (reduced by any net income the Issuer or the Trustee may receive from the Project after such termination)

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and perform all other obligations provided for in this Lease, all at the time or times provided in this Lease. Notwithstanding any provision of this Lease (other than *Section 8.2(f)*) or the Indenture, the Tenant's obligations under *Sections 8.2(b)* and *14.1* hereof shall survive any termination, release or assignment of this Lease or the Indenture and payment or provision for payment of the Bonds.

**Section 20.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute, subject to the provisions of the Indenture. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice required herein.

#### ARTICLE XXI

**Section 21.1. Performance of the Tenant's Obligations by the Issuer.** If the Tenant shall fail to keep or perform any of its obligations as provided in this Lease, then the Issuer may (but shall not be obligated to do so) upon the continuance of such failure on the Tenant's part for 90 days after notice of such failure is given the Tenant by the Issuer or the Trustee and without waiving or releasing the Tenant from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and the Tenant shall reimburse the Issuer for all sums so paid by the Issuer and all necessary or incidental costs and expenses incurred by the Issuer in performing such obligations through payment of Additional Rent. If such Additional Rent is not so paid by the Tenant within 10 days of demand, the Issuer shall have the same rights and remedies provided for in *Article XX* in the case of Default by the Tenant in the payment of Basic Rent.

#### ARTICLE XXII

**Section 22.1. Surrender of Possession.** Upon accrual of the Issuer's right of reentry as the result of the Tenant's Default hereunder or upon the cancellation or termination of this Lease by lapse of time or otherwise (other than as a result of the Tenant's purchase of the Project), the Tenant shall peacefully surrender possession of the Project to the Issuer in good condition and repair, ordinary wear and tear excepted; provided, however, the Tenant shall have the right, prior to or within 90 business days after the termination of this Lease, to remove from on or about the Project the buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures which the Tenant owns under the provisions of this Lease and are not a 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 Tenant. All buildings, improvements, machinery, equipment, personal property, furniture and trade fixtures owned by the Tenant and which are not so removed from on or about the Project prior to or within 90 business days after such termination of this Lease shall become the separate and absolute property of the Issuer.

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#### ARTICLE XXIII

**Section 23.1. Notices.** All notices required or desired to be given hereunder shall be in writing and shall be delivered in person to the Notice Representative or mailed by restricted mail to the Notice Address. All notices given by restricted mail as aforesaid shall be deemed duly given as of the date three days after they are so mailed. When mailed notices are given, the party giving notice will use reasonable diligence to contact the party being notified by telephone, electronic mail or facsimile on or before the date such notice is mailed.

#### ARTICLE XXIV

**Section 24.1. Triple-Net Lease.** The parties hereto agree (a) that this Lease is intended to be a triple-net lease, (b) that the payments of Basic Rent and Additional Rent are designed to provide the Issuer and the Trustee with funds adequate in amount to pay all principal of and interest on all Bonds as the same become due and payable and to pay and discharge all of the other duties and requirements set forth herein, and (c) that to the extent that the payments of Basic Rent and Additional Rent are not adequate to provide the Issuer and the Trustee with funds sufficient for the purposes aforesaid, the Tenant 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 as may from time to time be required for such purposes.

Section 24.2. **Funds Held by the Trustee After Payment of Bonds.** If, after the principal of and interest on all Bonds and all costs incident to the payment of Bonds have been paid in full, the Trustee holds unexpended funds received in accordance with the terms hereof, such unexpended funds shall, except as otherwise provided in this Lease and the Indenture and after payment therefrom to the Issuer of any sums of money then due and owing by the Tenant under the terms of this Lease, be the absolute property of and be paid over forthwith to the Tenant.

#### ARTICLE XXV

Section 25.1. **Rights and Remedies.** The rights and remedies reserved by the Issuer and the Tenant hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Issuer and the Tenant 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.

Section 25.2. **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 either party of any covenant, agreement or undertaking, the nondefaulting party may

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nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such Default or Defaults which were in existence at the time such payment or payments or performance were accepted by it.

Section 25.3. **The Issuer Shall Not Unreasonably Withhold Consents and Approvals.** Wherever in this Lease it is provided that the Issuer shall, may or must give its approval or consent, or execute supplemental agreements, exhibits or schedules, the Issuer shall not unreasonably or arbitrarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements, exhibits or schedules.

#### ARTICLE XXVI

Section 26.1. **The Issuer May Not Sell.** The Issuer covenants that unless an Event of Default under this Lease has occurred and is continuing, and the remaining Term of this Lease has been terminated, it will not, without the Tenant's written consent, unless required by law, sell or otherwise part with or encumber its fee title interest in the Project at any time during the Term of this Lease.

Section 26.2. **Quiet Enjoyment and Possession.** The Tenant shall enjoy peaceable and quiet possession of the Project as long as no Event of Default has occurred and is continuing.

#### ARTICLE XXVII

Section 27.1. **Investment Tax Credit; Depreciation.** The Tenant shall be entitled to claim the full benefit of (1) any investment credit against federal or state income tax allowable with respect to expenditures of the character contemplated hereby under any federal or state income tax laws now or from time to time hereafter in effect, and (2) any deduction for depreciation with respect to the Project from federal or state income taxes. The Issuer agrees that it will upon the Tenant's request execute all such elections, returns or other documents which may be reasonably necessary or required to more fully assure the availability of such benefits to the Tenant.

#### ARTICLE XXVIII

Section 28.1. **Amendments.** This Lease may be amended, changed or modified in writing in the following manner:

(a) With respect to an amendment, change or modification which reduces the Basic Rent or Additional Rent, or any amendment which reduces the percentage of Bondowners whose consent is required for any such amendment, change or modification, by an agreement in writing executed by the Issuer and the Tenant and consented to in writing by the Trustee and by Bondowners owning at least 90% of the aggregate principal amount of the Bonds then Outstanding;

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(b) With respect to any other amendment, change or modification which will materially adversely affect the security or rights of the Bondowners, by an agreement in writing executed by the Issuer and the Tenant and consented to in writing by the Trustee and by Bondowners owning at least 66-2/3% of the aggregate principal amount of the Bonds then Outstanding; and

(c) With respect to all other amendments, changes, or modifications, by an agreement in writing executed by the Issuer and the Tenant.

At least 15 days prior to the execution of any agreement pursuant to (c) above, the Issuer and the Tenant shall furnish the Trustee and the Original Purchaser of the Bonds with a copy of the amendment, change or modification proposed to be made.

Section 28.2. **Granting of Easements.** If no Event of Default under this Lease shall have happened and be continuing, the Tenant may, at any time or times, (a) grant easements, licenses and other rights or privileges in the nature of easements with respect to any property included in the Project, free from any rights of the Issuer or the Bondowners, or (b) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Tenant shall determine, and the Issuer agrees, to the extent that it may legally do so, that it will execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the Issuer of: (1) a copy of the instrument of grant or release or of the agreement or other arrangement, (2) a written application signed by the Authorized Tenant Representative requesting such instrument, and (3) a certificate executed by the Tenant stating (A) that such grant or release is not detrimental to the proper conduct of the business of the Tenant, and (B) that such grant or release will not impair the effective use or interfere with the efficient and economical operation of the Project and will not materially adversely affect the security of the Bondowners. If the instrument of grant shall so provide, any such easement or right and the rights of such other parties thereunder shall be superior to the rights of the Issuer and the Bondowners and shall not be affected by any termination of this Lease or default on the part of the Tenant hereunder.

Section 28.3. **Security Interests.** (a) The Issuer and the Tenant agree to execute and deliver all instruments (including financing statements and statements of continuation thereof) necessary for perfection of and continuance of the security interest of the Issuer in and to the Project. The Tenant hereby authorizes the Issuer to file or cause to be filed all such instruments required to be so filed and the Trustee to continue or cause to be continued the filings or liens of such instruments for so long as the Bonds shall be Outstanding.

(b) Under the Indenture, the Issuer will, as additional security for the Bonds assign, transfer, pledge and grant a security interest in its rights under this Lease to the Trustee. The Issuer hereby authorizes the Trustee to file financing statements or any other instruments necessary to perfect its security interest. The Trustee is hereby given the right to enforce, either jointly with the Issuer or separately, the performance of the obligations of the Tenant, and the Tenant hereby

consents to the same and agrees that the Trustee may enforce such rights as provided in the Indenture and the Tenant will make payments required hereunder directly to the Trustee.

Section 28.4. **Construction and Enforcement.** This Lease shall be construed and enforced in accordance with the laws of the State. The provisions of this Lease shall be applied and interpreted in accordance with the rules of interpretation set forth in the Indenture. 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.

Section 28.5. **Invalidity of Provisions of Lease.** If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

Section 28.6. **Covenants Binding on Successors and Assigns.** The covenants, agreements and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 28.7. **Section Headings.** The section headings hereof are for the convenience of reference only and shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof. The reference to section numbers herein or in the Indenture shall be deemed to refer to the numbers preceding each section.

Section 28.8. **Execution of Counterparts.** This Lease may be executed simultaneously in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one instrument.

**IN WITNESS WHEREOF**, the Issuer has caused this Lease to be signed by an authorized official, such signature to be attested by an authorized officer, and its official seal to be applied, as of the date first above written.

**CITY OF ATCHISON, KANSAS**

By: /s/ Dan Garrity  
Mayor

[SEAL]

ATTEST:

By: /s/ Sheldon Hamilton  
City Clerk

“ISSUER”

**ACKNOWLEDGMENT**

STATE OF KANSAS                    )  
  ) SS:  
COUNTY OF ATCHISON            )

This instrument was acknowledged before me on the 27th day of December 2006, by Dan Garrity, Mayor, and Sheldon Hamilton, City Clerk, of the City of Atchison, Kansas, a municipal corporation.

[SEAL]

Rona M. Downing  
Notary Public

My Appointment Expires:

6/27/09

**IN WITNESS WHEREOF**, the Tenant has caused this Lease to be signed by an authorized officer, as of the date first above written.

**MGP INGREDIENTS, INC.**

By: /s/ David E. Rindom  
Title: Vice President

“TENANT”

**ACKNOWLEDGMENT**

STATE OF KANSAS )  
 ) SS:  
COUNTY OF ATCHISON )

This instrument was acknowledged before me on the 27th day of December, 2006, by David Rindom, Vice President of MGP Ingredients, Inc., a Kansas corporation.

[SEAL]

Marta L. Myers  
Notary Public

My Appointment Expires:

01/03/2010

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**APPENDIX A**

**FORM OF REQUISITION FOR PAYMENT OF PROJECT COSTS**

**CITY OF ATCHISON, KANSAS  
Project Fund  
(MGP Ingredients Project)  
Payment Order No.**

Commerce Bank, n.a.  
Kansas City, Missouri  
Attn: Corporate Trust Department

You are hereby authorized and directed by the undersigned, the Authorized Tenant Representative, acting on behalf of MGP Ingredients, Inc. (the “Tenant”) to disburse funds held by you as Trustee in the above mentioned Project Fund for the purposes and in the amounts set forth in the Payment Schedules attached hereto and incorporated herein by reference (the “Payment Schedules”).

I hereby certify that the amounts requested in the attached Payment Schedules have either been advanced by the Tenant or are justly due to contractors, subcontractors, suppliers, vendors, materialmen, engineers, architects or other persons named in the Payment Schedules who have performed necessary and appropriate work in connection with any installation of machinery, equipment or personal property, or have furnished necessary and appropriate materials in the construction or acquisition of land, buildings and improvements constituting a part of the Project. I further certify that the fair value of such work or materials, machinery and equipment, is not exceeded by the amount requested, and such cost is one which may be capitalized for federal income tax purposes.

I further certify that, except for the amounts set forth in the Payment Schedules, there are no outstanding debts now due and payable for labor, wages, materials, supplies or services in connection with the construction of said buildings and improvements or the purchase and/or installation of machinery, equipment and personal property which, if unpaid, might become the basis of a vendor’s, mechanic’s, laborer’s or materialmen’s statutory or other similar lien upon the Land, the Project or any part thereof.

I further certify that no part of the amounts set forth in the Payment Schedules have been the basis for any previous withdrawal of any moneys from the said Project Fund.

I further certify that each of the representations and covenants on the part of the Tenant contained in the Lease dated as of the Issue Date of the Bonds by and between City of Atchison, Kansas, as the Issuer, and the Tenant are now true and correct in all material respects and are now being materially complied with.

I further certify that the amounts set forth in the Payment Schedules constitute Project Costs, as said term is defined in the Lease, and that all insurance policies which are required to be in force as a condition precedent to disbursement of funds from the Project Fund pursuant to the provisions of Section 6.1 of the Lease are in full force and effect.

DATED , 20 .

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Authorized Tenant Representative

MISCELLANEOUS PROJECT COSTS

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below, and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete:

PAYMENT SCHEDULE

Payee Name Payee Address Purpose or Nature of Payment Amount

Initials

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EXHIBIT B - Payment Order No.

PAYMENT SCHEDULE FOR MACHINERY AND EQUIPMENT

I hereby request payment of the amounts specified below to the payees whose names and addresses are stated below. I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete. I further certify that the items described are free and clear of any liens or security interests. I have attached to this schedule a copy of the purchase order or seller's invoice for each item, and, to the extent any payment is a reimbursement to the Tenant, a copy of the check tendered in payment for such item.

PAYMENT SCHEDULE

Payee Name Description of Equipment Amount

(include name and address of seller, manufacturer, descriptive name, technical description, capacity, serial number of model number as appropriate)

Initials

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APPENDIX B

FORM OF CERTIFICATE OF COMPLETION

CERTIFICATE OF COMPLETION

The undersigned, being the Authorized Tenant Representative for MGP Ingredients, Inc. (the "Tenant"), as tenant under a certain Lease dated as of the Issue Date of the Bonds (the "Lease") between the City of Atchison, Kansas, (the "Issuer") and the Tenant, and as beneficiary of the Issuer's Taxable Industrial Revenue Bonds, Series 2006 (MGP Ingredients Project) issued pursuant to a certain Trust Indenture dated as of the Issue Date of the Bonds (the "Indenture"), hereby certifies:

- 1. The Improvements purchased with Original Proceeds (as defined in the Indenture) have been substantially completed in accordance with the plans and specifications prepared at the Tenant's direction.
2. Such Improvements have been substantially completed in a good and workmanlike manner.
3. There are no mechanic's, materialmen's liens or other statutory liens on file encumbering title to the Land (as defined in the Indenture); all bills for labor and materials furnished for the Improvements which could form the basis of a mechanic's, materialmen's or other statutory lien against the Land have been paid in full, and within the past four months no such labor or materials have been furnished which have not been paid for.
4. All Improvements are located or installed upon the Land.
5. All material provisions of applicable building codes have been complied with and, if applicable, a certificate of occupancy has been issued with respect to the Project.
6. All moneys remaining in the Project Fund being held by the Trustee under the Indenture should be transferred to the Debt Service Fund being held by the Trustee under the Indenture as required by Section 504 of the Indenture, to be applied as provided therein.

IN WITNESS WHEREOF, the undersigned Authorized Tenant Representative has signed this Certificate, and states, under penalty of perjury, that the statements of fact made in this Certificate are true and correct.



STATE OF KANSAS )  
 ) SS:  
COUNTY OF ATCHISON )

Subscribed and sworn to or affirmed before me, a notary public, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Appointment Expires: \_\_\_\_\_

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*APPENDIX C*

*GLOSSARY OF WORDS AND TERMS*

**“Additional Rent”** means all fees, charges, costs and expenses of the Trustee (including reasonable attorney’s fees) payable under the Indenture, all Impositions, all Default Administration Costs (as defined in the Indenture), all other payments of whatever nature payable or to become payable pursuant to the Indenture or which the Tenant has agreed to pay or assume under the provisions of this Lease and any and all expenses (including reasonable attorney’s fees) incurred by the Issuer or the Trustee in connection with the issuance of the Bonds or the administration or enforcement of any rights under this Lease or the Indenture. The fees, charges, costs and expenses of the Trustee shall include all costs incurred in connection with the issuance, transfer, exchange, registration, redemption or payment of the Bonds and the administration or enforcement of any rights or obligations under this Lease or the Indenture except (a) the reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed or (b) any tax or other government charge imposed on the Trustee in relation to the transfer, exchange, registration, redemption or payment of the Bonds.

**“Additional Term”** shall mean that term commencing on the last day of the Basic Term and terminating 5 years thereafter.

**“Bankruptcy Code”** means Title 11 of the United States Code, as amended.

**“Basic Rent”** means the annual amount which, when added to Basic Rent Credits, will be sufficient to pay all principal of, redemption premium, if any, and interest on all Outstanding Bonds (as defined in the Indenture) which is due and payable on such Payment Date. If for any reason on any Payment Date the Trustee does not have on deposit in the Debt Service Fund sufficient moneys to pay all principal and interest due on the Bonds on such Payment Date, then the Tenant shall pay, as Basic Rent, on such Payment Date, the amount of such deficiency.

**“Basic Rent Credits”** means all funds on deposit in the Debt Service Fund and available for the payment of principal of, redemption premium, if any, and interest on the Bonds on any Basic Rent Payment Date.

**“Basic Rent Payment Date”** means December 1, 2007, and the first day of each December thereafter until the principal of, redemption premium, if any, and interest on all Outstanding Bonds have been fully paid or provision made for their payment in accordance with the provisions of the Indenture.

**“Basic Term”** means that term commencing as of the date of this Lease and ending on December 1, 2016, subject to prior termination as specified in this Lease, but ending, in any event, when all of the principal of, redemption premium, if any, and interest on all Outstanding Bonds shall have been paid in full or provision made for their payment in accordance with the provisions of the Indenture.

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**“CERCLA”** means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.

**“Certificate of Completion”** means a written certificate signed by the Authorized Tenant Representative stating that (1) the Improvements have been substantially completed in accordance with the plans and specifications prepared or approved by the Issuer or the Tenant, as the case may be; (2) the Improvements have been substantially completed in a good and workmanlike manner; (3) no mechanic’s or materialmen’s liens have been filed, nor is there any basis for the filing of such liens, with respect to the Project; (4) all Improvements constituting a part of the Project are located or installed upon the Land; and (5) if required by ordinances duly adopted by the Issuer or by applicable building codes, that an appropriate certificate of occupancy has been issued with respect to the Improvements. A form of Certificate of Completion is attached as *Appendix B*.

**“Completion Date”** means the date on which the Improvements are certified as substantially completed in accordance with *Section 5.4* of this Lease.

**“Default”** means any event or condition the occurrence of which, with the lapse of time or the giving of notice or both, may constitute an Event of Default.

**“Environmental Assessment”** means an environmental assessment with respect to the Project conducted by an independent consultant satisfactory to the Issuer and the Trustee which reflects the results of such inspections, records reviews, soil tests, groundwater tests and other tests requested, which assessment and results shall be satisfactory in scope, form and substance to the Issuer and the Trustee.

**“Environmental Law”** means CERCLA, SARA, and any other federal, state or local environmental statute, regulation or ordinance presently in effect or coming into effect during the Term of this Lease.

**“Event of Bankruptcy”** means an event whereby the Tenant shall: (i) admit in writing its inability to pay its debts as they become due; or (ii) file a petition in bankruptcy or for reorganization or for the adoption of an arrangement under the Bankruptcy Code as now or in the future amended, or file a pleading asking for such relief; or (iii) make an assignment for the benefit of creditors; or (iv) consent to the appointment of a trustee or receiver for all or a major portion of its property; or (v) be finally adjudicated as bankrupt or insolvent under any federal or state law; or (vi) suffer the entry of a final and nonappealable court order under any federal or state law appointing a receiver or trustee for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, which order, if the Tenant has not consented thereto, shall not be vacated, denied, set aside or stayed within 60 days after the day of entry; or (vii) suffer a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set

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**“Event of Default”** means any one of the following events:

(a) Failure of the Tenant to make any payment of Basic Rent within 10 business days after written notice from the Issuer or the Trustee to the Tenant of the time and the amounts required hereunder; or

(b) Failure of the Tenant to make any payment of Additional Rent at the times and in the amounts required hereunder, or failure to observe or perform any other covenant, agreement, obligation or provision of this Lease on the Tenant’s part to be observed or performed, and the same is not remedied within thirty (30) days after the Issuer or the Trustee has given the Tenant written notice specifying such failure (or such longer period as shall be reasonably required to correct such default; provided that (i) the Tenant has commenced such correction within said 30-day period, and (ii) the Tenant diligently prosecutes such correction to completion); or

(c) An Event of Bankruptcy; or

(d) Abandonment of the Project by the Tenant.

**“Full Insurable Value”** means full actual replacement cost less physical depreciation.

**“Hazardous Substances”** shall mean “hazardous substances” as defined in CERCLA.

**“Impositions”** means all taxes and assessments, general and special, which may be lawfully taxed, charged, levied, assessed or imposed upon or against or payable for or in respect of the Project or any part thereof, or any improvements at any time thereon or the Tenant’s interest therein, including any new lawful 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 water and sewer charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, which, if not paid when due, would encumber the Issuer’s title to the Project.

**“Improvements”** shall have the meaning defined in the Indenture.

**“Indenture”** means the Trust Indenture delivered concurrently with this Lease, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of *Article XI* of the Indenture.

**“Land”** means the real property described in *Schedule I*.

**“Lease”** means this Lease between the Issuer and the Tenant, as from time to time supplemented and amended in accordance with the provisions hereof and of the Indenture.

**“Net Proceeds”** means, when used with respect to any insurance or condemnation award with respect to the Project, the proceeds from the insurance or condemnation award remaining after the payment of all expenses (including the Tenant’s attorneys’ fees and any extraordinary expenses

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of the Trustee occasioned by such casualty or condemnation) incurred in the collection of such proceeds.

**The term “Notice Address” shall mean:**

(1) With respect to the Tenant:

MGP Ingredients, Inc.  
1300 Main Street  
Atchinson, Kansas 66002-0130  
Attn: Chief Financial Officer

(2) With respect to the Issuer:

City of Atchison  
515 Kansas Avenue  
Atchison, Kansas 66002  
Attn: City Clerk

(3) With respect to the Trustee:

Commerce Bank, n.a.  
922 N. Walnut, 10<sup>th</sup> Floor  
Kansas City, Missouri 64141  
Attn: Corporate Trust Department

**“Project Contracts”** means a contract or contracts with respect to the acquisition and/or construction of the Improvements entered into by the Tenant or the Issuer.

**“SARA”** means the Superfund Amendments and Reauthorization Act of 1986, as now in effect and as hereafter amended.

**“State”** means the State of Kansas.

**“Term”** means, collectively, the Basic Term and any Additional Term of the Lease.

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**SCHEDULE I****DESCRIPTION OF PROPERTY**

The following property acquired by the City of Atchison, Kansas (the "Issuer") in connection with the issuance by the City of its Taxable Industrial Revenue Bonds, Series 2006 (MGP Ingredients Project) (the "Series 2006 Bonds"):

(a) The following described real estate in Atchison County, Kansas:

Tract 1: Beginning at the Northeast corner of Lot Fourteen (14), Block Twenty (20); Thence North 90°00'00" East 90.16 feet along the South line of Commercial Street to a point 24.84 feet West of the Northeast corner of Lot One (1), in Block Twenty (20); Thence South 00°11'50" West 135.0 feet to a point 25.19 feet West of the Southeast corner of Lot Three (3) in Block Twenty (20); Thence South 90°00'00" West 189.81 feet to the Southwest corner of Lot Twelve (12) in said Block; Thence North 00°03'00" East 67.50 feet along the East line of Second Street to the North one-half of Lot Thirteen (13) in said Block; Thence North 90°00'00" East 100.0 feet along the North one-half of Lot Thirteen (13) to the East line of Lot Thirteen (13); Thence North 00°03'00" East 67.50 feet along the East line of the North one-half of Lot Thirteen (13) and all of Lot Fourteen (14) to the point of beginning, all lying in Block Twenty (20) in that part of the City of Atchison known and designated as "Old Atchison."

Tract 2: The North One-half (N 1/2) of Lot Thirteen (13), and all of Lot Fourteen (14), in Block Twenty (20), in that part of the City of Atchison usually known and designated as "Old Atchison."

Tract 3: Lots One (1), Two (2) and Three (3), in Block Nineteen (19), in that part of the City of Atchison usually known and designated as "Old Atchison."

said real property constituting the "Land" as defined in the Lease entered into by the Issuer concurrently with the issuance of the Series 2006 Bonds (the "Lease"), subject to the following ("Permitted Encumbrances"):

- (1) 2006 real estate taxes due but not yet payable;
- (2) Assessments, if any, attributable to watershed district;
- (3) Any other general or special assessments, any and all recorded easements, reservations, restrictions, agreements, encroachments and encumbrances, matters which would be shown by an accurate survey, underground and overhead cables, lines and utility services, and all existing zoning ordinances, laws, codes, statutes and subdivision regulations and other governmental laws, rules, codes, statutes and regulations limiting or restricting the use to which the property may be put.

(b) All buildings, building additions, improvements, machinery and equipment constructed, located or installed on the Land, all or any portion of the costs of which were paid from the proceeds of the Series 2006 Bonds, and which constitute Improvements as referred to in the Lease, together with any substitutions or replacements therefor, the property described in paragraphs (a) and (b) of this Schedule I together constituting the "Project" as referred to in the Lease.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	PCB 97-179
	)	(Enforcement)
v.	)	
	)	
MIDWEST GRAIN PRODUCTS OF	)	
ILLINOIS, INC.	)	
	)	
Respondent.	)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and MGP Ingredients of Illinois Inc., f/k/a Midwest Grain Products of Illinois, Inc. ("Respondent" or "MGP"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2002).

II. AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

III. STATEMENT OF FACTS

A. Parties

1. On April 7, 1997, a Complaint was filed on behalf of the People of the State of Illinois by Jim Ryan, then Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2002), against the Respondent.
2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002).
3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois. In the course of the pendency of this matter, the company was reorganized and the name was changed to MGP Ingredients of Illinois, Inc.

B. Site Description

1. At all times relevant to the Complaint, Respondent owned and operated a facility, located at 1301 South Front Street, Pekin, Tazewell County, Illinois ("facility"), that produces ethyl alcohol for beverages and industrial purposes, anhydrous fuel alcohol, wheat gluten and distiller's feed.

2. In 1993, Respondent submitted to the Illinois EPA an application for a construction permit to replace two existing feed dryers with two new feed dryers each controlled by cyclones in series with two new scrubbers in series.
3. The Illinois EPA issued to the Respondent Construction Permit #93020061 (originally issued May 11, 1993 and revised on May 3, 1995) and Construction Permit #93080045 (issued December 30, 1993 and revised December 6, 1995) allowing, in part, the construction of feed dryers 651 and 661.
4. Permit Condition #1b(I) of Construction Permit #93020061 limited particulate matter ("PM") emissions from dryer #651 to 1.1. pounds per hour. Permit Condition #2a Table 1A of Construction Permit #93080045 limits PM emissions from dryer #651 and dryer #661 combined to 3.2 pounds per hour.
5. Both Construction Permits #93080045 and #93020061 require PM emissions be controlled utilizing secondary scrubbers during the operation of both feed dryers.
6. Respondent contends dryers #651 and #661 and their related components were designed and constructed with the intent to meet the required conditions described in preceding paragraphs four and five of this section.
7. In May 1995, Respondent conducted a stack test of grain dryer #661. The test data demonstrated actual PM emissions generated during feed dryer operations total 17.1 pounds per hour.
8. Despite making modifications to the dryers after the initial stack tests, Respondent could not repair, reconstruct or modify the dryers so as to comply with

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**C. Allegations of Non-Compliance**

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

Count I:

1. By failing to conduct the requisite best available control technology ("BACT") analysis, install BACT level control, and apply for and obtain a construction permit granting PSD approval prior to constructing two feed dryers resulting in a major modification at a major stationary source, Respondent violated Section 165 of the Clean Air Act, 40 CFR 52.21(j) and Section 9.1 (d) of the Act, 415 ILCS 5/9.1(d)(1996).

Count II:

2. Respondent discharged into the environment PM emissions in excess of permitted emission limitations contained within Construction Permit #93020061 and #93080045, so as to cause or tend to cause air pollution in Illinois in violation of Section 9(a) of the Act, 415 ILCS 5/9(a)(1996), and 35 III. Adm. Code 201.141 of the Board regulations.

Count III:

3. Respondent failed to operate the secondary scrubbers and failed to modify the construction permit, in violation of Standard Construction Permit Condition 3, and thereby violated Section 9(b) of the Act, 415 ILCS 5/9(b) (1996).

4. By continuing to operate feed dryers #651 and #661 in excess of permitted PM emission limitations, and by continuing to operate the same dryers without secondary scrubbers, Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b)(1996), and Permit Condition 1 b(I) of Construction Permit #93020061 and Standard Condition 3 of both Construction Permit #93020061 and Construction Permit #93080045.

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Count IV:

5. By operating dryer #651 and dryer #661 without first obtaining an operating permit issued by the Illinois EPA, Respondent violated Section 9(b) of the Act, 415 ILCS 5/9(b) (1996), and 35 III. Adm. Code 201.143 of the Board's regulations.

**D. Non-Admission of Violations**

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section III.C herein, and this Stipulation shall not be interpreted as including such admission.

**E. Compliance Activities to Date**

1. On June 2, 2004, the Illinois EPA received from MGP a PSD permit application to construct feed dryer system number D6500 ("Swiss-Combi system") controlled by cyclones and thermal combustion, containing a BACT demonstration. Based upon information contained within the permit application, the Illinois EPA issued to MGP, on January 25, 2006, construction permit number 04060009 granting PSD approval to construct equipment mentioned above.

2. Respondent has agreed to remove from service existing feed dryers #661 and #651 and replace both dryers with the Swiss-Combi system consistent with the compliance plan set forth within Section VIII.C, contained herein, and thereafter conduct feed dryer operations in compliance with PSD requirements, the Act and the Board's regulations.

**F. Value of Settlement and Resulting Benefits**

1. Respondent has agreed to permanently disable feed dryers 651 and 661 consistent with Section VIII.C. Dryers 651 and 661 shall be replaced with a Swiss Combi system. The

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Swiss Combi system will be put into service by the Respondent in an effort to ensure Respondent's compliance with the Clean Air Act, the Illinois Environmental Protection Act, and related permits.

2. Defendant Midwest Grain projects the costs of these improvements to be greater than \$1 million. After the new Swiss-Combi dryer operations commence, the PM and PM<sub>10</sub> emissions will be limited to 8.8 and 17.1 tons per year, respectively.

**IV. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

1. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation.

2. In the event that the Respondent proposes to sell or transfer any real property or operations subject to any Order accepting and adopting the terms of this Stipulation and Proposal for Settlement, the Respondent shall notify the Complainant 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make the prospective purchaser or successor's compliance with any Order accepting and adopting the terms of this Stipulation a condition of

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any such sale or transfer and shall provide a copy of this Stipulation and any Order accepting and adopting the terms of this Stipulation to any such successor in interest. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

3. The Respondent shall notify each prime contractor to be retained of the existence and content of this Stipulation if its work is being performed pursuant to this Stipulation. Further, Respondent shall provide such prime contractor(s) with a copy of the compliance schedule set forth in Section VIII.C at the time of that notification. Respondent will provide a copy of this Stipulation upon the request of any prime contractor performing work pursuant to this Stipulation.

#### V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 III. Adm. Code, Subparts A through H.

#### VI. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2002), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

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4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and

5. any subsequent compliance.

In response to these factors, the parties state the following:

1. The construction and operation of feed dryers #651 and #661 without first conducting the requisite pre-construction review to determine BACT, and without first installing BACT, resulted in the discharge of PM in excess of federal PSD and State permit emission limits causing a threat to public health and the environment. MGP did not apply for and obtain the requisite construction permit granting PSD approval prior to constructing a major modification at a major stationary source resulting in the Illinois EPA's inability to monitor and ensure compliance with federal PSD and state permit requirements.

2. There is social and economic benefit to the facility.

3. Operation of the facility is suitable in the area in which it exists.

4. The construction and operation of feed dryers and air pollution control equipment to ensure compliance with federal PSD and state permit requirements, the Act and the Board's regulations was both technically practicable and economically reasonable.

5. Respondent has implemented measures to ensure feed dryer operations are performed in compliance with federal PSD and state permit requirements, in the future, including obtaining the requisite construction permit granting PSD approval to construct feed dryer system D6500, the purchase of said equipment, and the removal of existing feed dryers #651 and #661 from service consistent with the Compliance Plan contained herein.

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#### VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2002), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;

2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. The Respondent did not conduct a BACT analysis, install BACT level control, apply for and obtain a construction permit granting PSD approval prior to constructing two feed dryers resulting in a major modification at a major stationary source, and comply with permit requirements. The violations began on the date the Respondent commenced construction of feed dryers #651 and #661, a date better known to the Respondent. Subsequent emission testing performed by Respondent during feed dryer operations, in May 1995, demonstrated the emission of PM in excess of applicable PSD and state permit limits.

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On June 2, 2004, the Illinois EPA received from Respondent a permit application for PSD approval to construct the Swiss-Combi system that will replace feed dryers #651 and #661. The permit was issued on January 25, 2006. The new equipment has not yet been installed as of the date of entry of this Consent Order, but pursuant to the terms and conditions of this Order will be installed consistent with the compliance schedule set forth in Section VIII.C.

2. After receiving from the Illinois EPA notice that PM emissions generated during the operation of feed dryers #651 and #661 violated Clean Air Act requirements, the Act and Board regulations, Respondent disputed violations of PSD requirements existed. Subsequently, Respondent worked cooperatively with the Illinois EPA to assemble and review information and emissions data necessary to conduct the requisite National Ambient Air Quality Standards ("NAAQS") and air quality impact analyses specified by PSD requirements. Given the level of complexity associated with NAAQS and air quality modeling, in addition to conflicting and/or incomplete emissions data, the time required to complete the PSD approval and permitting process was significant.

3. The Complainant maintains a settlement amount totaling \$500,000.00 reflects the duration of non-compliance and lowest cost alternative for achieving compliance associated with economic benefits derived by Respondent. The Respondent disagrees any economic benefit was received resulting from its failure to operate in compliance with the Clean Air Act, the Act, and Board's regulations.

4. Complainant has determined, based upon the specific facts of this matter, that a settlement amount totaling \$500,000.00 will serve to deter further violations by Respondent and aid in future voluntary compliance with the Act and Board regulations.

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5. A previous enforcement matter was resolved by a Board order approving settlement, PCB 95-5, which resolved two alleged violations against Respondent relating to a fluidized bed boiler. In that matter, Complainant alleged that the Respondent violated PSD and state permit requirements resulting from the emission of sulfur dioxide ("SO<sub>2</sub>") in excess of applicable PSD and state permit emission limits. Compliance was achieved by Respondent in the resolution of the matter, in part, by removing the non-compliant emissions source from service.

6. Self-disclosure is not at issue in this matter.

7. As described above, settlement of this matter includes a \$300,000.00 contribution to Illinois EPA special projects.

#### VIII. TERMS OF SETTLEMENT

##### A. Settlement Amount

1. The Respondent shall pay the sum of Two Hundred Thousand Dollars (\$200,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment will be made directly to Illinois EPA within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The amount described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency  
Fiscal Services Section  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

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The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), 480911013, shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Jane E. McBride  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

Dennis Brown  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2002). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

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3. For purposes of payment and collection, Respondent may be reached at the following address:

MGP Ingredients of Illinois  
1301 South Front Street  
Pekin, IL 61554

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

**B. Special Projects Fund Payment**

1. The Respondent shall make a payment to the Illinois EPA's Special Projects Fund in the sum of Three Hundred Thousand Dollars (\$300,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that the payment will be made directly to Illinois EPA within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The payment described in this Stipulation shall be made by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois EPA Special Projects Fund and submitted to:

Illinois Environmental Protection Agency  
Fiscal Services Section  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), 480911013, shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

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Jane E. McBride  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

Dennis Brown  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

**C. Future Compliance**

Respondent shall complete the following compliance activities by the deadlines set forth below:

<b>Compliance action</b>	<b>Deadline</b>
Commence on-site construction of Swiss Combi system to replace dryers 651 and 661.	On or before January 26, 2007.
Commence start-up of Combi system.	On or before December 26, 2007. Swiss



Conduct emissions testing consistent with testing requirements prescribed by PSD permit number 04060009.

Within 180 days after initial start-up of feed dryer system D6500

Physically disable feed dryers 651 and 661 by removing the fuel and preventing wet feed supply to the dryers.

Within one year of start-up of feed dryer system D6500.

Dryers 651 and 661 permanently disabled up removing the fuel and preventing wet feed supply to the dryers.

Within 18 months after initial start-up of feed dryer system D6500.

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**D. Stipulated Penalties**

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in Section VIII.C (“Compliance Plan”) of this Stipulation, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation. In addition, the Respondent shall pay to the Complainant, for payment into the EPTF, stipulated penalties per violation for each day of violation in the amount of \$250.00 per day until such time that compliance is achieved.

2. Following the Complainant’s determination that the Respondent has failed to complete performance of any task or other portion of work, failed to provide a required submittal, including any report or notification, Complainant may make a demand for stipulated penalties upon Respondent for its noncompliance with this Stipulation. Failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties.

3. All penalties owed the Complainant under this section of this Stipulation that have not been paid shall be payable within thirty (30) days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

4. a. All stipulated penalties shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA for deposit into the EPTF and shall be sent by first class mail, unless submitted by electronic funds transfer, and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

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b. The name and number of the case and the Respondent’s FEIN shall appear on the face of the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Jane E. McBride  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

5. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

**E. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.G, below, the Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding pursuant to Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and (i) and/or 5/42(h)(2002) as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter. Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

**F. Cease and Desist**

The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C (“Allegations of Non-Compliance”) of this Stipulation.

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**G. Release from Liability**

In consideration of the Respondent’s \$200,000 payment to the Environmental Protection Trust Fund, \$300,000.00 payment to the Special Projects Fund, and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.F and upon the Pollution Control Board’s

acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on April 7, 1997. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as

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defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), or entity other than the Respondent.

#### **H. Right of Entry**

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

#### **I. Correspondence, Reports and Other Documents**

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VIII.A ("Penalty Payment") and C ("Stipulated Penalties") of this Stipulation shall be submitted as follows:

As to the Complainant

Jane E. McBride  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

Dennis Brown  
Assistant Counsel  
Illinois EPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

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As to the Respondent

Patrick Flachs  
Husch & Eppenberger, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105

MGP Ingredients of Illinois, Inc.  
Attn: Robert Taphorn  
1301 South Front Street  
Pekin, IL 61554

#### **J. Modification of Stipulation**

The parties may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.I. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

#### **K. Enforcement of Board Order**

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by certified mail.

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3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

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WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

BY: /s/Thomas Davis  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 10/23/06

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

BY: /s/ Robert A. Messina  
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 10/18/06

MGP INGREDIENTS OF ILLINOIS, INC.

BY: /s/ Asif Malik  
ASIF MALIK  
General Manager

DATE: 11/10/06

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ILLINOIS POLLUTION CONTROL BOARD  
January 26, 2007

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	PCB 97-179
v.	)	(Enforcement — Air)
	)	
MIDWEST GRAIN PRODUCTS OF ILLINOIS, INC., an Illinois corporation,	)	
	)	
Respondent.	)	
	)	

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On April 7, 1997, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Midwest Grain Products of Illinois, Inc., an Illinois corporation (Midwest), (415 ILCS 5/31(c)(1) (2004)); 35 Ill. Adm. Code 103.204. The complaint concerns a Midwest facility located at South Front Street and Distillery, Pekin, Tazwell County that produces ethyl alcohol for beverages and industrial purposes, anhydrous fuel alcohol, wheat gluten and distiller’s feed.

In the complaint, the People allege that Midwest violated Section 9(a) and (b), and 9.1 (d) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/9(a),(b), and 9.1(d) (2004)); Section 165 of the Clean Air Act, 40 C.F.R. 52.210; 35 Ill. Adm. Code 201.141 and 201.143; and Permit Condition 1 b(1) of Construction Permit #93020061 and Standard Condition 3 of Construction Permit #93020061 and Construction Permit #93080045. The People further allege that Midwest violated these provisions by (1) by failing to conduct the requisite best available control technology (BACT) analysis, install BACT level control, and apply for and obtain a construction permit prior to constructing two feed dryers resulting in a major modification at a major stationary source; (2) by discharging into the environment emissions in excess of permitted emission limitations; (3) by failing to operate the secondary scrubbers and failing to modify its construction permit; (4) by operating feed dryers #651 and #661 in excess of permitted emission limitations, and by continuing to operate the same dryers without secondary scrubbers; and (5) by operating dryer #651 and dryer #661 without first obtaining an operating permit issued by the Agency.

On November 16, 2006, the People and Midwest filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act. 415 ILCS 5131(c)(1) (2004). These filings are authorized by Section 31(c)(2) of the Act. 415 ILCS 5/31(c)(2) (2004). See 35 Ill. Adm. Code 103.300(a). Under the proposed stipulation, Midwest does not affirmatively admit the violations alleged in the complaint, but agrees to pay a civil penalty of \$200,000, and contribute \$300,000 to Agency’s Special Projects Fund.

The Board provided notice of the stipulations, proposed settlements, and requests for relief from hearing. The Board published newspaper notice in the *Pekin Daily Times* on December 21, 2006. The Board did not receive any requests for hearing. The Board grants the parties’ request for relief from the hearing requirement. See 415 ILCS 5/31(c)(2) (2004); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board’s procedural rules sets forth the required contents of stipulations and proposed settlements. 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of the respondents’ operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

As previously stated, Midwest does not affirmatively admit the violations alleged in the complaint, but agrees to pay a civil penalty of \$200,000, and contribute \$300,000 to Agency’s Special Projects Fund. The stipulation addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2004), *as amended* by P.A. 93-575, (eff. Jan. 1, 2004), which may mitigate or aggravate the civil penalty amount. The People determined that a settlement amount of \$500,000 is appropriate.

The People and Midwest have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board’s findings of fact and conclusions of law.

**ORDER**

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Midwest Grain Products of Illinois, Inc., an Illinois corporation (Midwest) must pay a civil penalty of \$200,000 on or before February 26, 2007, the first business day following 30 days from the date of this order.
3. Midwest must pay the civil penalty by certified check, money order or electronic funds transfer, payable to the Environmental Protection Trust Fund. The case number, case name, and the respondents’ federal employer identification or social security numbers must be included on the certified checks or money orders. If submitting an electronic funds transfer to the Agency, the electronic funds transfer must be made in accordance to the specific instructions provided to respondents.
4. Midwest must submit the certified check, money order or electronic funds transfer to:

Illinois Environmental Protection Agency  
Fiscal Services Section  
1021 North Grand Avenue East

5. Midwest must make a payment of \$300,000 to the Agency's Special Projects Fund on or before February 26, 2007, the first business day following 30 days from the date of this order.
6. The payment to the Agency's Special Projects Fund must be made by certified check, money order or electronic funds transfer payable to the Agency, designated to the Illinois EPA Special Projects Fund. The case number, case name, and the respondents' federal employer identification or social security numbers must be included on the certified checks or money orders. If submitting an electronic funds transfer to the Agency, the electronic funds transfers must be made in accordance to the specific instructions provided to respondents.
7. Midwest must submit the payment to the Agency's Special Projects Fund by certified check, money order or electronic funds transfer to:  
  
Illinois Environmental Protection Agency  
Fiscal Services Section  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276
8. A copy of both certified checks, money orders or records of the electronic funds transfers and any transmittal letters must be sent to the following:  
  
Jane E. McBride  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702  
  
Dennis Brown  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276
9. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act. 35 ILCS 5/1003(a) (2004).
10. Midwest must follow the future compliance schedule and stipulated penalties provision as set forth in the stipulation and proposed settlement.

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11. Midwest must cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2004); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 26, 2007, by a vote of 4-0.

/s/ Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board



**Accountants' Acknowledgement**

We acknowledge the incorporation by reference in the Registration Statements on Form S-8 (Registration Nos. 333-137593, 333-119860 and 333-51849) of MGP Ingredients, Inc. (Company) of our report dated February 7, 2007, included with the Quarterly Report on Form 10-Q for the quarter ended December 31, 2006. Pursuant to Rule 436(c) under the Securities Act of 1933, this report should not be considered part of the Registration Statement prepared or certified by us within the meaning of Sections 7 and 11 of the Act.

/s/ BKD, LLP

Kansas City, Missouri  
February 7, 2007

Twelve Wyandotte Plaza 120 West 12<sup>th</sup> Street, Suite 1200 Kansas City, MO 64105-1936 816 221-6300  
Fax 816-221-6380

Beyond Your Numbers



**CERTIFICATION**

I, Laidacker M. Seaberg, certify that:

1. I have reviewed this quarterly report on Form 10-Q of MGP Ingredients, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonable likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 8, 2007

/s/ Laidacker M. Seaberg  
Laidacker M. Seaberg  
Chairman of the Board and Chief Executive Officer

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**CERTIFICATION**

I, Brian T. Cahill, certify that:

1. I have reviewed this quarterly report on Form 10-Q of MGP Ingredients, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonable likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 8, 2007

/s/ Brian T. Cahill  
Brian T. Cahill  
Vice President and Treasurer and Principal Financial and Accounting  
Officer

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**CERTIFICATION**

I, Timothy W. Newkirk, certify that:

1. I have reviewed this quarterly report on Form 10-Q of MGP Ingredients, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonable likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 8, 2007

/s/ Timothy W. Newkirk  
Timothy W. Newkirk  
President

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**CERTIFICATION**  
**OF**  
**PERIODIC REPORT**

I, Laidacker M. Seaberg, Chairman of the Board and Chief Executive Officer of MGP Ingredients, Inc. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

(1) the Quarterly Report on Form 10-Q of the Company for the quarter ended December 31, 2006 the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 8, 2007

/s/ Laidacker M. Seaberg  
Laidacker M. Seaberg  
Chairman of the Board and Chief Executive Officer

[A signed original of this written statement required by Section 906 has been provided to MGP Ingredients, Inc. and will be retained by MGP Ingredients, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]

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**CERTIFICATION**  
**OF**  
**PERIODIC REPORT**

I, Brian T. Cahill, Vice President and Chief Financial Officer of MGP Ingredients, Inc. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

(1) the Quarterly Report on Form 10-Q of the Company for the quarter ended December 31 2006, (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 8, 2007

/s/ Brian T. Cahill  
Brian T. Cahill  
Vice President and Chief Financial Officer

[A signed original of this written statement required by Section 906 has been provided to MGP Ingredients, Inc. and will be retained by MGP Ingredients, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]

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**CERTIFICATION**  
**OF**  
**PERIODIC REPORT**

I, Timothy W. Newkirk, President of MGP Ingredients, Inc. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that:

(1) the Quarterly Report on Form 10-Q of the Company for the quarter ended December 31, 2006 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: February 8, 2007

/s/ Timothy W. Newkirk  
Timothy W. Newkirk  
President

[A signed original of this written statement required by Section 906 has been provided to MGP Ingredients, Inc. and will be retained by MGP Ingredients, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.]

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