

GROUND LEASE

THIS GROUND LEASE (the "Lease") made this ____ day of _____, 2010, by and between the **City of Lawrence**, a municipal corporation organized under the laws of the State of Kansas (the "City") and **The Bowersock Mills and Power Company**, a corporation organized under the laws of the State of Kansas (the "Lessee").

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements contained herein, the parties to this Lease agree as follows:

1. **PREMISES.** That the City, for and in consideration of the rent, covenants, agreements and conditions hereinafter set forth, to be kept and performed by the Lessee, has this day rented, leased and let, and by these presents does rent, lease, and let unto the Lessee the real property generally located on the north side of the Kansas River, immediately east of the Kansas River Bridge, commonly known as 250 North Powerhouse Road in the City of Lawrence, County of Douglas, State of Kansas (sometimes referred to herein as the "Leased Premises" or the "Premises"). A legal description of the Leased Premises is attached hereto as Exhibit A and incorporated herein by reference.
2. **EXISTING AGREEMENTS BETWEEN PARTIES.** The parties acknowledge and affirm certain agreements including an agreement titled, "Agreement" dated April 5, 1977 (hereinafter the "Base Agreement"), an agreement titled, "Extension of Agreement" dated November 21, 2000 ("Extension Agreement"), an agreement titled, "Ground Lease" dated November 11, 2002 (the "2002 Agreement"), an agreement titled, "Extension and Modification Agreement" dated August 25, 2009 ("Extension and Modification Agreement"), and an agreement titled "BMPC South Agreement" dated the same date as this Lease. All of the foregoing agreements are in addition to and are not modified by this Lease.
3. **TERM.** This Lease shall be for a term beginning on the date of execution of this Lease and expiring on April 5, 2077; provided, however, that if Lessee does not obtain all necessary financing to fully construct a new hydroelectric powerhouse ("BMPC North") on the north bank of the Kansas River in Lawrence, Kansas, in accordance with the Special Use Permit No. SUP 3-4-10 (a copy of which is attached hereto as Exhibit B) and does not apply for and obtain a building permit from the City within 18 months of the execution date of this Lease, Lessee shall be in material default of the terms and provisions of this Lease and the City shall have the right to cancel this Lease on 60 days written notice to Lessee, subject to the rights of a Mortgagee to cure the Lessee Default pursuant to Section 24 of this Lease.
4. **OPTION TO RENEW.** The term of this Lease may be extended for one additional twenty year period, at the option of Lessee, provided Lessee shall give written notice to the City of its intention to exercise this option on or before April 5, 2075.

5. **RENT.** Lessee agrees to pay to City annual rent in the amount of \$10.00 (Ten and 00/100 Dollars) during the term of this Lease. Annual rent shall be received by the City on or before January 31 of each year the Lease is in effect.

6. **TAXES AND ASSESSMENTS.** If by reason of this Lease, or if by reason of the use of the Leased premises by Lessee as provided herein, ad valorem or other taxes should accrue against the Leased Premises, then Lessee shall pay all such taxes prior to the taxes becoming delinquent. Lessee shall be responsible to pay any taxes imposed upon the improvements, facilities, equipment or goods owned by Lessee and Lessee shall not permit them to become delinquent.

7. **USE OF PREMISES.** As an integral part of the consideration for the leasing of the Leased Premises hereunder, Lessee covenants and agrees it shall construct, maintain, and cause to be operated at its sole cost and expense a hydroelectric powerhouse on the north bank of the Kansas River in accordance with the approved Special Use Permit No. SUP-3-4-10 (approved by Ordinance No. 8529). Lessee agrees that in the event the use of the Leased Premises is changed from the approved and designated uses without the consent of the City, the City shall have the right to cancel this Lease on 60 days written notice to Lessee, subject to the rights of a Mortgagee to cure the Lessee Default pursuant to Section 24 of this Lease.

8. **CONDITION OF PREMISES.** It is hereby understood that the Leased Premises described and leased by the City to Lessee shall be taken by Lessee in their present condition, without any obligation by the City to make any changes or improvements to, or to do any construction or repairs of any kind in connection with access, utilities or otherwise. Lessee shall have the right to inspect any and all aspects of the Leased Premises Lessee deems necessary or appropriate, at its sole cost and expense, including conducting such engineering, environmental, and other studies of the Leased Premises as it deems necessary. **LESSEE SHALL RELY EXCLUSIVELY ON ITS INSPECTION AND ANALYSIS OR THAT OF ITS AGENTS IN PROCEEDING WITH ITS CONSTRUCTION OF THE HYDROELECTRIC POWERHOUSE HEREUNDER AND SHALL NOT RELY ON ANY WARRANTY OR REPRESENTATION OF CITY OR ANY OF CITY'S AGENTS; CITY MAKES NO WARRANTY OR REPRESENTATIONS REGARDING THE LEASED PREMISES OR ITS SUITABILITY FOR A HYDROELECTRIC POWERHOUSE. LESSEE TAKES AND ACCEPTS THE LEASED PREMISES "AS IS."** Lessee, from and after execution of this Lease Agreement and until the Leased Premises are vacated by Lessee, shall assume sole responsibility for the condition of the Leased Premises as well as any buildings and other improvements, including the canoe portal, Lessee may construct or place on the premises during the term of this Agreement, and any extensions thereof.

9. **SOILS AND OTHER ENGINEERING TESTS; APPROVAL OF EXCAVATION BY CITY AND U.S. ARMY CORPS OF ENGINEERS.** Lessee agrees that neither Lessee nor any of its agents, contractors, subcontractors, engineers, or employees shall perform any drilling, digging or perforating the ground within the levee right-of-way without first obtaining Lessor's prior consent. It shall be Lessee's obligation to

demonstrate that Lessee's proposed subsurface testing, digging, or drilling within the Leased Premises or the levee right-of-way shall not compromise the levee. All such work shall be performed under the supervision of licensed engineers and it shall be Lessee's obligation to restore any ground disturbed to its condition prior to such work. Lessee acknowledges pursuant to K.S.A. 19-3309 that any excavation within one thousand (1000) feet landward or riverward of the center line of the Kansas River and Mud Creek Levee requires a permit and that such permits shall be issued pursuant to K.S.A. 19-3309. Lessee further understands and acknowledges that the U.S. Army Corps of Engineers has approval authority over any excavation within a "Critical Area" of the levee, which is defined as five hundred (500) feet landward and three hundred (300) feet riverward of the centerline of the levee. Lessee agrees to comply with any and all laws, ordinances or regulations concerning the Levee whether such laws, regulations and/or ordinances now exist or shall be enacted or issued during the term or any extension of this Lease.

10. **EROSION CONTROL.** Lessee shall take all necessary precautions to prevent sloughing, erosion or failure of the levee on the Leased Premises. If such sloughing, erosion or failure occurs, including any displacement of the land mass as a result of Lessee's construction, operations, on-going maintenance or by overloading the ground or river bed, then Lessee shall promptly restore the premises, the affected bank or river bed to the satisfaction of the City, subject, however, to the prior granting or appropriate federal permits; and Lessee agrees to hold harmless and indemnify the City from and against demands and actions arising from or growing out of such sloughing, erosion or failure as previously stated, including all expenses and attorneys' fees incurred in connection with any of these claims, actions or demands.

11. **CONSTRUCTION OF IMPROVEMENTS.** Lessee shall construct or cause to be constructed on the Leased Premises a hydroelectric powerhouse in conformance with the approved Special Use Permit (SUP-3-4-10), including all conditions attached thereto. As used in this Lease, the term "Improvements" means the foregoing hydroelectric powerhouse, together with turbines, generators, and all other improvements, fixtures, machinery, and equipment used in connection with the hydroelectric powerhouse and the foregoing Special Use Permit. Lessee agrees to construct the Improvements in such a manner as to present a high quality, clean, neat, and attractive appearance at all times. Lessee shall be responsible for properly securing the construction area, including any staging area or other area in which construction and related equipment or supplies are stored, at all times during construction. The Improvements constructed on the Leased Premises by Lessee shall be owned by Lessee during the term of this Lease; provided, however, that title to the Improvements may be vested in the City for purposes of financing the Improvements pursuant to K.S.A. 12-1740 *et seq.*, if such financing transaction is subsequently considered and approved by the City. Lessee may, during the term or any extension hereof, at its own expense, make alterations or improvements to the interior or the exterior of the Leased Premises; provided, however, any such alterations or improvements shall comply with applicable ordinances, rules, and regulations of City, as further provided in Section 16, and shall be consistent with the provisions of this Lease.

Any alterations and/or improvements, including the construction of the hydroelectric powerhouse, shall be constructed in accordance with all laws, applicable building and zoning codes, ordinances and public regulations and in accordance with the building code of the City of Lawrence, then in force and applicable thereto. Lessee shall ensure its engineers, contractors, subcontractors, and agents do not unreasonably interfere with the public's or the City's use or maintenance of the Levee, the recreation path, or any other public facilities in the vicinity of the leased premises during construction, reconstruction, alteration or maintenance of the hydroelectric powerhouse or during the term of this Lease. Lessee agrees it shall be responsible for restoring the levee, the recreation path, or any other City facilities disturbed, damaged or in need of cleaning or restoration as a result of Lessee's construction, reconstruction or maintenance projects. Lessee shall take all necessary actions to ensure during the term of this Lease and any extension thereof that the City's recreation path adjacent to and on the Leased Premises is open at all times and available for full use by the City and the public for its intended recreation purposes.

12. REPAIRS, MAINTENANCE AND ALTERATIONS. Lessee agrees that it will, during the term of this Lease, keep and maintain the Leased Premises and all Improvements thereon and the appurtenances thereto belonging in good condition and repair and that it will keep the same free from filth, nuisance or danger of fire and in all respects and at all times use and maintain the Leased Premises so as to fully meet and comply with regulations, ordinances and all other laws now in force or which may hereafter be enacted.

13. PERMITS AND APPROVALS. Lessee shall be responsible for obtaining all necessary permits, licenses, approvals, and inspections for the Improvements and their operations required by any governmental or quasi-governmental agency of the local, state or federal governments. Lessee understands this includes but is not limited to, applicable rezoning, platting, preliminary development plans, final development plans, site plans, excavation and building permits, excavation and building permits within a Critical Area of the levee; access permits, sign permits, and utility extension permits.

14. INSPECTION. In order for the City to carry out the obligations imposed upon it by law, this Lease or otherwise and to ascertain whether or not Lessee's covenants are being observed, Lessee agrees that the City shall have the right at all reasonable times and upon reasonable notice to Lessee and while accompanied by a representative of Lessee, to enter upon and inspect the Leased Premises.

15. RISK AND EXPENSES. Lessee shall pay all costs and assume all risks in doing work, or carrying on its operations, now or hereafter permitted or required under the terms and conditions of this Lease, except as may be otherwise specifically designated in this Lease; and Lessee shall pay all costs, reasonable attorneys' fees and other expenses incurred by City in enforcing the covenants of this Lease, should Lessee be found by a court of competent jurisdiction in violation of this Lease.

16. **LAWS, RULES AND REGULATIONS.** Lessee shall not at any time during the term of this Lease use or allow the use of the Premises for any purpose or use in violation of this Lease, or the laws, regulations and/or ordinances of the United States, the State of Kansas, or the City of Lawrence whether such laws, regulations and/or ordinances now exist or shall be enacted or issued during the term of this Lease and otherwise applicable to the Leased Premises, the Improvements or Lessee's use thereof. Lessee agrees to observe all laws and ordinances applicable to the installation, maintenance and removal of any Improvements on the Leased Premises, or for access to them, and to take appropriate safeguards to prevent loss, damage or injury to the Leased Premises or to any adjacent facilities. Lessee agrees to require adherence to the above-mentioned laws, ordinances, rules and regulations both with reference to employees of Lessee and with respect to all other persons entering the Premises who derive their right to be there from Lessee.

17. **LESSEE DEFAULT.** If at any time during the term of this Lease, (i) Lessee fails to obtain financing and a building permit with 18 months of the execution date of this Lease, as required by Section 3; (ii) Lessee shall voluntarily abandon or desert the Leased Premises, (iii) Lessee ceases to use the Leased Premises as a hydroelectric plant and powerhouse, as required by Section 7, without City's consent; (iv) Lessee allows any third party to occupy any portion of the Leased Premises without complying with the applicable provisions of this Lease; (v) Lessee breaches any material term, covenant or condition set forth herein, or (vi) Lessee violates the material terms of the Special Use Permit (SUP-3-4-10) approved by the governing body of the City in Ordinance No. 8529, as the City may subsequently amend it, then the occurrence of any such event shall be deemed to be a "Lessee Default" and City may, at the sole discretion of the City, proceed in accordance with Section 27 of this Lease.

18. **INDEMNITY BY LESSEE.** Lessee shall save and hold harmless, protect and indemnify City, its elected officials, employees and agents, from and against any and all liabilities, obligations, damages, penalties, claims of any kind, causes of action, costs, charges and expenses, including attorney's fees and expenses of agents reasonably incurred, which may be imposed upon or incurred or served against City, its elected officials, employees or agents by reason of any occurrence or accident arising out of Lessee's use and occupancy of the Leased Premises; provided, however, that Lessee shall have no obligation to indemnify City, its elected officials, employees or agents from any such claim that results from their own negligence or wrongdoing. In the case of any asserted claim or with respect to any action or proceeding brought against the City by reason of any such occurrence, the Lessee, upon written notice from the City, shall at Lessee's own cost and expense, promptly resist and defend such claim or action. Lessee agrees, upon written request, to provide City with status reports and reasonable information about the pendency, disposition and/or handling of any such claim, action or proceeding.

19. **RELATIONSHIP OF THE PARTIES.** Nothing in this agreement shall be construed to create or constitute a partnership, joint venture or agency relationship

between the City and Lessee, the existence of any such relationship being expressly denied.

20. **UTILITIES.** Lessee shall pay for its own light, heat, power, water, sanitary sewer, stormwater utility, trash service, and all other utilities, connection costs, assessments or utility services used by it in, on or about the Leased Premises and shall contract for the same in its own name. City agrees to reasonably cooperate in allowing the Lessee to locate electrical, telephone, water, gas, and other similar utility lines which solely serve the Leased Premises and Improvements permitted thereon (the "Utility Lines") on adjacent property of the City which is designated by the City from time to time; provided that all such Utility Lines shall be installed and maintained solely at the expense of the Lessee and the Lessee shall relocate such Utility Lines solely at the expense of the Lessee if, from time to time, the City notifies the Lessee that the City wants them relocated to public streets or rights of way or to other property of the City. The provisions of this paragraph only create a license which is revocable and do not create an easement in favor of the Lessee on any property of the City.

21. **PARKING AND PRIVATE SECURITY.** Lessee obligates itself to provide and to supervise, at its expense, vehicular parking and delivery areas within the Leased Premises as necessary or required for the conduct of all operations on the Leased Premises. Lessee shall furnish all private security services which it may desire, at Lessee's own risk and expense.

22. **INSURANCE.** Lessee acknowledges that City will not provide any insurance for the Leased Premises. During the term of this Lease, Lessee shall, at its own cost and expense, provide and keep in force the following:

A. Comprehensive commercial general liability insurance against claims for bodily injury, death, or property damage occurring in or about the Premises and the Improvements (including, without limitation, bodily injury, death or property damage), for a combined single limit in an amount of not less than the then applicable Kansas Tort Claims Act limits (currently \$500,000) for injury to or death of one or more than one persons in any one accident or occurrence.

B. Insurance covering the Improvements against loss or damage by fire, vandalism and malicious mischief and such risks as are customarily included in property insurance on a special causes of loss form (formerly known as "All Risk"), for not less than the full insurable value thereof, with debris removal coverage.

C. Workmen's compensation insurance in statutory amounts.

D. During any period of material construction, reconstruction or renovation on the Premises, "builders risk" insurance covering the Improvements and all materials for the construction or renovation against loss or damage in their full insurable value.

E. Such other insurance and in such amounts as may from time to time be reasonably required by any Permitted Mortgage.

23. **ASSIGNMENT AND SUBLETTING.** Lessee may not sell, transfer, assign or sublet in whole or in part the Leased Premises or the Improvements during the term of this Lease without making such sale, transfer, assignment, or sublease subject to the terms, conditions and covenants of this Lease. City may assign its rights under this Lease subject to the terms, conditions, and covenants of this Lease, and such successive successors and assigns shall have the rights available to City under this Lease.

24. **LEASEHOLD MORTGAGE.**

A. Permitted Mortgage. "Permitted Mortgage(s)" means collectively (a) any deed(s) of trust, mortgages, financing leases or other collateral security instruments (including, without limitation, financing statements, security agreements and other documentation required pursuant to the Kansas Uniform Commercial Code, and any absolute or conditional assignments of rents and subleases) given to a Bona Fide Mortgagee (as defined below) and serving as security for one or more construction loans, permanent loans, mezzanine loans and/or other subordinate debt (otherwise permitted to be incurred hereunder) which Lessee may grant that encumbers Lessee's Estate (as defined in Section 24(B) or Lessee's fixtures, together with any modification, substitution, amendment, extension, increase, refinancing, replacement or recasting otherwise permitted to be incurred hereunder) thereof and (b) any instruments required in connection with an assignment-subleaseback transaction involving Lessee's Estate; provided, however, in no event shall any such Permitted Mortgage encumber City's fee simple title to the Leased Premises. "Bona Fide Mortgagee" shall be any governmental entity, bank, insurance company, pension fund or other individual, corporation, partnership or other entity which is making a bona fide loan, or acting as a trustee in connection with any such bona fide loan, take back purchase money mortgage, or an assignment sub-leaseback transaction but shall not include a mortgage or other encumbrance given solely with the intention of implementing a foreclosure to avoid any assignment restrictions contained in this Lease. "Mortgagee" means any one or more holders of the beneficial interest and secured position under any Permitted Mortgage.

B. Encumbrance of Lessee's Estate. Lessee shall have the right to encumber Lessee's interest in the Improvements, this Lease or any permitted sublease of this Lease ("Lessee's Estate") pursuant to one or more Permitted Mortgages. Lessee shall, following its receipt of any notice of default or other notice of the acceleration of the maturity of a Permitted Mortgage from a Mortgagee, promptly deliver a true and correct copy thereof to City.

C. Mortgagee Protections. Provided that any Mortgagee provides City with a conformed copy of each Permitted Mortgage which contains the name and address of such Mortgagee, and provided such Permitted Mortgage was executed in compliance

with the terms hereof, City hereby covenants and agrees to faithfully perform and comply with the following provisions with respect to such Permitted Mortgage:

(i) No Modification. Except as provided herein, no action by Lessee or City to materially modify the terms of this Lease or the provisions of this Section shall be binding upon a Mortgagee without its prior written consent.

(ii) Notices. If City shall give any notice, demand, election or other communication which may adversely affect the security for a Permitted Mortgage, including without limitation a notice of a Lessee Default hereunder (hereinafter collectively "Notice(s)"), to Lessee hereunder, City shall simultaneously give a copy of each such Notice to the Mortgagee at the address theretofore designated by it. Such copies of Notices shall be sent by City as provided in this Lease. No Notice given by City to Lessee shall be binding upon or affect said Mortgagee unless a copy of said Notice shall be given to Mortgagee pursuant to this Section 24. In the case of an assignment of such Permitted Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to City, may change the address to which such copies of Notices are to be sent. City shall not be bound to recognize any assignment of such Permitted Mortgage unless and until City shall be given written notice thereof that contains the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Mortgagee hereunder with respect to the Permitted Mortgage being assigned. If such Permitted Mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring City to give Notices or copies thereof to said Mortgagee shall be binding upon City unless and until all of said holders shall designate in writing one of their number to receive all such Notices and copies thereof.

(iii) Performance of Covenants. The Mortgagee shall have the right to perform any term, covenant or condition and to remedy any default by Lessee hereunder within the time periods specified herein, and City shall accept such performance with the same force and effect as if furnished by Lessee; provided, however, that said Mortgagee shall not thereby or hereby be subrogated to the rights of City.

(iv) Delegation to Mortgagee. Lessee may delegate irrevocably to the Mortgagee the non-exclusive authority to exercise any or all of Lessee's rights hereunder, but no such delegation shall be binding upon City unless and until either Lessee or the Mortgagee shall give to City a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case service upon City of an executed counterpart or conformed copy of said Permitted Mortgage in accordance with this Section 24, together with written notice specifying the provisions therein which delegate such authority to said Mortgagee, shall be sufficient to give City notice of such delegation.

(v) Lessee Default. In the event of a Lessee Default in the payment of any monetary obligation hereunder, City agrees not to terminate this Lease unless and until City provides written notice of such Lessee Default to any Mortgagee and such Mortgagee shall have failed to cure such Lessee Default in the payment of any monetary obligation within 30 days following delivery of such notice. In the event of a Lessee Default in the performance or observance of any non-monetary term, covenant, or condition to be performed by it hereunder, City agrees not to terminate this Lease unless and until City provides written notice of such Lessee Default to any Mortgagee and such Mortgagee shall have failed to cure such Lessee Default within 60 days following the delivery of such notice; provided, however, if such Lessee Default cannot practicably be cured by the Mortgagee without taking possession of the Leased Premises, or if such Lessee Default is not susceptible of being cured by the Mortgagee, then City shall not terminate this Lease if and as long as:

(a) In the case of a Lessee Default which cannot practicably be cured by the Mortgagee without taking possession of the Leased Premises (it being understood that non payment of Rent can be cured without taking possession), the Mortgagee has delivered to City within 60 days following the delivery of City's notice, a written undertaking wherein the Mortgagee agrees that it will cure such Lessee Default upon obtaining possession;

(b) In the case of a Lessee Default which cannot practicably be cured by the Mortgagee without taking possession of the Leased Premises, said Mortgagee shall proceed diligently to obtain possession of the Leased Premises as Mortgagee (including possession by receiver), and, upon obtaining such possession (directly or through a receiver), shall proceed diligently to cure such Lessee Default in accordance with the undertaking delivered pursuant to Section 24(C)(v)(a) above but in no event later than 30 days after obtaining possession; and

(c) In the case of a Lessee Default which is not susceptible to being cured by the Mortgagee (for example, the insolvency of Lessee), the Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Lessee's Estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure) and, upon such completion of foreclosure or acquisition, unless the Lessee Default has been cured by such completion of foreclosure or acquisition, the Mortgagee commences to cure such Lessee Default within 30 days and prosecutes such cure to completion with diligence. The Mortgagee shall not be required to obtain possession or to continue in possession as Mortgagee of the Leased Premises pursuant to Section 24(C)(v)(b) above, or to continue to prosecute foreclosure proceedings pursuant to this Section 24(C)(v)(c), if and when such Lessee Default shall be cured. Nothing herein shall

preclude City from exercising any of its rights or remedies with respect to any other Lessee Default during any period of such forbearance, but in such event the Mortgagee shall have all of its rights provided for herein. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale, shall acquire title to Lessee's Estate hereunder and shall cure all Lessee Defaults which are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior Lessee Defaults which are not susceptible to being cured by the Mortgagee or by said purchaser shall no longer be deemed Lessee Defaults hereunder.

(vi) Foreclosure. Foreclosure of any Permitted Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any legally authorized power contained in the Permitted Mortgage, or any conveyance of Lessee's Estate hereunder from Lessee to any Mortgagee, its designee, any purchaser of Mortgagee's interest through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance City shall recognize the Mortgagee, such designee or any purchaser of Mortgagee's interest as Lessee hereunder. If any Mortgagee, its designee, purchaser of Mortgagee's interest or other third party shall acquire Lessee's Estate as a result of a judicial or non-judicial foreclosure under any Permitted Mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such Mortgagee, its designee, purchaser of Mortgagee's interest or such other third party purchaser shall thereafter have the right to further assign or transfer Lessee's Estate to an assignee without obtaining City's consent with respect thereto, subject to all of the other provisions of this Section 24. Upon such acquisition of Lessee's Estate as described in the preceding sentence by Mortgagee, its designee or purchaser of Mortgagee's interest, City shall immediately execute and deliver a new ground lease of the Leased Premises to such Mortgagee, designee or purchaser of Mortgagee's interest, upon the written request therefor by such party given not later than 120 days after such party's acquisition of Lessee's Estate. Such new ground lease shall be substantially similar in form and content to the provisions of this Lease, except with respect to the parties thereto, the term thereof (which shall be co-extensive with the remaining Term hereof), an indemnity and hold harmless obligation by the new tenant for any loss, cost or expense, including reasonable attorneys' fees, respecting claims by Lessee of any remaining rights asserted by such Lessee against City for providing such new ground lease, and the elimination of any requirements which have been fulfilled by City or Lessee prior thereto, and such new ground lease shall have priority equal to the priority of this Lease.

(vii) Mortgagee Loss Payable. City agrees that the names of each Mortgagee shall be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee under this Lease on condition that the insurance proceeds are to be applied in the manner specified herein.

(viii) New Lease. City agrees that in the event of termination of this Lease by reason of any Lessee Default, or by reason of the disaffirmance hereof by a receiver, liquidator or trustee for Lessee or its property, City will enter into a new lease of the Leased Premises with the most senior Mortgagee requesting a new lease for the remainder of the Term, effective as of the date of such termination, at the Rent, and upon the terms, provisions, covenants and agreements as herein contained and subject to the rights, if any, of any parties then in possession of any part of the Leased Premises, provided:

(a) The senior Mortgagee shall make written request upon City for the new lease within 60 days after the date of termination;

(b) The senior Mortgagee shall pay to City at the time of the execution and delivery of the new lease any and all sums which would, at the time of the execution and delivery thereof, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto any expenses, including reasonable attorneys' fees, to which City shall have been subjected by reason of the Lessee Default;

(c) The senior Mortgagee shall perform and observe all covenants herein contained on Lessee's part to be performed which are susceptible to being performed by the senior Mortgagee, and shall further remedy any other conditions which Lessee under the terminated Lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the senior Mortgagee;

(d) The tenant under the new lease shall have the same right, title and interest in and to all Improvements located on the Leased Premises as Lessee had under the terminated Lease immediately prior to its termination;

(e) The tenant under the new lease shall indemnify and hold harmless City from any loss, cost and expense, including reasonable attorneys' fees, against claims by Lessee of any remaining rights asserted by such Lessee against City for providing such new lease;

(f) Notwithstanding anything to the contrary expressed or implied elsewhere in this Lease, any new lease made pursuant to this Section 24.C(viii), shall be prior to any Permitted Mortgage or other lien, charge or encumbrance on the Leased Premises, to the same extent as the terminated Lease, and shall include the then existing Improvements, subject to the reversion of the Leased Premises in favor of City upon expiration or sooner termination of the new lease. The rights granted any Mortgagee to a new lease shall survive any termination of this Lease; and

(g) Unless and until City has received notice from all Mortgagees that the Mortgagees elect not to demand a new lease as provided in Section 24(C)(viii), or until the period therefor has expired, City shall not cancel or agree to the termination or surrender of any existing subleases or enter into any new subleases hereunder without the prior written consent of the Mortgagee.

(ix) No Obligation to Cure. Nothing herein contained shall require any Mortgagee to enter into a new lease pursuant to Section 24(C)(viii) above, or to cure any Lessee Default referred to above.

(x) Limited Liability. In the event any Mortgagee or its designee becomes the tenant under this Lease or under any new lease obtained pursuant to either Section 24(C)(vi) or Section 24(C)(viii) above, the Mortgagee or its designee shall be personally liable for the obligations of Lessee under this Lease or a new lease only for the period of time that the Mortgagee or its designee remains the actual beneficial holder of the Lessee's Estate, and only to the extent provided in this Lease or such new lease.

(xi) Insurance Proceeds. The proceeds from any insurance policies or arising from a condemnation shall be paid and distributed as provided in this Lease.

(xii) Material Notices. The parties hereto shall give all Mortgagees notice of any arbitration, litigation, or condemnation proceedings, or of any pending adjustment of insurance claims as each may relate to the Leased Premises, and any Mortgagee shall have the right to intervene therein and shall be made a party to such proceedings. The parties hereto do hereby consent to such intervention. In the event that any Mortgagee shall not elect to intervene or become a party to the proceedings, such Mortgagee shall receive notice and a copy of any award or decision made in connection therewith.

(xiii) Separate Agreement. City shall, upon request, execute, acknowledge and deliver to each Mortgagee, an agreement prepared at the sole cost and expense of Lessee, in form reasonably satisfactory to City and each Mortgagee, between City, Lessee and the Mortgagees, agreeing to all of the provisions hereof of this Section 24, so as to provide privity of contract between City and the Mortgagees.

(xiv) Further Amendments. City and Lessee hereby agree to cooperate in including in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed Mortgagee for the purpose of implementing the Mortgagee protection provisions contained in this Lease and allowing such Mortgagee reasonable means to protect or preserve the lien of the Permitted Mortgage. City and Lessee each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to

effectuate any such amendment as well as such other documents containing terms and provisions customarily required by lenders in connection with any such financing; provided, however, that any such amendment shall not in any way affect the Term or Rent under this Lease, nor otherwise in any material respect adversely affect any rights of City under this Lease.

25. ACCESS TO LEASED PREMISES. Lessee shall have a right of ingress and egress to the Leased Premises on such roads or land the City owns and maintains except when access is affected by a flood or significant rain event. Lessee agrees the City shall have no obligation whatsoever to secure or maintain access to the Leased Premises on, under, or across property, easements or right-of-way the City does not own and control; provided, however, that City may, at City's expense, relocate such access roads as long the relocation does not unreasonably interfere with Lessee's access; and, provided, further, that City shall not dispose of any of its property or vacate any easements or rights-of-way in a manner that destroys reasonable ingress and egress, including emergency response vehicles, to and from the Leased Premises and the north end of the Kansas River Dam.

26. MAINTENANCE OF ACCESS ROAD. Lessee shall be responsible for the maintenance and snow removal for that portion of the access road known as "North Powerhouse Road" that is not a public road. The City shall have reasonable access and use of the North Powerhouse Road at all times; provided the foregoing shall not serve as a public dedication of said road for use by the general public and does not unreasonably interfere with Lessee's use and enjoyment of the Leased Premises.

27. DEFAULT BY THE LESSEE.

A. Remedies Upon Default. In the event of a Lessee Default (as defined in Section 17), except non-payment of rent, that continues for 30 days, after written notice thereof from City, City may, at its election and subject to the rights of a Mortgagee to cure the Lessee Default pursuant to Section 24 of this Lease, terminate this Lease by giving Lessee at least 10 days notice of its election so to do, and upon the date set forth in said notice, this Lease shall terminate in the same manner and with the same effect as if said date were fixed herein for expiration of the term of this Lease, all without entry or other act by City. No default of Lessee of a kind not specifically defined in Section 17 as a "Lessee Default" shall constitute grounds for the City's termination of this Lease. Any such other default shall entitle the City to take only such steps (not including termination of this Lease) as may be expressly provided in this Lease or to seek appropriate legal or equitable redress (not including termination of this Lease) with respect to the particular default. Notwithstanding the foregoing, however, if any Lessee Default for which notice has been given, as aforesaid, shall be remedied within a 30 day period, or if it is a default that cannot be cured within 30 days, and if Lessee commences cure within 30 days and diligently pursues cure, then this Lease shall remain in full force and effect the same as though no such Lessee Default had occurred.

B. Cure Period. In the event any Lessee Default for which notice has been given as aforesaid, because of its nature, cannot be completely cured or is not completely cured with the grace period or periods hereinabove granted, such default shall be deemed to have been remedied for the purpose of this Article if the correction thereof shall have been commenced within the prescribed grace period or periods and shall, when commenced, be diligently prosecuted to completion in accordance with reasonable land use, construction or property maintenance and management standards.

C. City Right to Cure. In the event Lessee shall fail or neglect to do any act or thing in this Lease provided to be done or performed by it, and such failure shall continue for any applicable grace period after notice from City specifying the act or thing to be done or performed, City may (but shall not be required to) perform the same and Lessee shall, on demand, reimburse City for the cost thereof, together with interest thereon at the lesser of 12% per annum or the maximum rate permitted by law.

D. Disposition of Lessee. If this Lease is terminated as provided in Section 27(A), the City or its representatives, agents or servants may immediately, or at any time thereafter, re-enter the Leased Premises and Improvements and remove therefrom Lessee, its agents, employees, servants, licensees, and any persons holding or claiming by, through or under Lessee, and all or any of its or their property therefrom, either by forcible detainer or by any suitable action or proceeding at law or by force or otherwise, without being liable to indictment, prosecution, or damages therefore, and repossess and enjoy the Leases Premises and Improvements.

28. SURRENDER OF POSSESSION.

A. Surrender. Lessee shall, upon the expiration or sooner termination of this Lease for any reason whatsoever, surrender to City the Leased Premises, in good order, condition and repair, except for reasonable wear and tear and damage resulting from condemnation or fire or other casualty.

B. Removal of Improvements. Upon the expiration or sooner termination of this Lease, the Improvements may, at Lessee's sole option, be removed promptly and any resultant damage to the Leased Premises shall be repaired promptly, by and at the expense of Lessee.

C. Non-Removal of Improvements. Notwithstanding the provisions of Section 28(B), if this Lease is terminated because of a Lessee Default, the hydroelectric plant shall not be removed from the Leased Premises and shall be surrendered to City in good order, condition and repair, except for ordinary wear and tear and damage resulting from condemnation or fire or other casualty.

29. REMOVAL OF EQUIPMENT. At any time during the term of this Lease and upon the termination of this Lease, Lessee shall have the right to remove from the Lease Premises all equipment, including but not limited to furniture, appurtenances, or

trade fixtures, installed, stored, or placed herein by Lessee provided Lessee makes any repairs to said premises required of such removal.

31. **CONDEMNATION.** In the event that the whole or part of the Leased Premises shall be condemned or taken by any governmental authority in such a manner or amount that makes it impractical for Lessee to profitably operate its hydroelectric plant and powerhouse facilities on the Leased Premises, this Lease shall be deemed to terminate on the date of the taking, unless Lessee and City agree otherwise. Neither the City nor the Lessee shall have any right against the other by reason of such or loss or damage; provided that the net proceeds of the condemnation award made with respect to the Leased Premises and Improvements, as applicable, shall be paid in the following order of priority: (a) There shall be paid to City the amount which represents compensation for the value of the land so taken, in a cleared and leveled condition, considered as vacant and unimproved and not subject to the burden or benefit of this Lease; and (b) the balance shall be paid to Lessee, subject to the rights of any Mortgagee.

32. **NOTICES.** All notices sent under this Lease shall be given in writing and shall be deemed to be properly served if physically delivered or sent, postage prepaid, by certified mail with return receipt requested, to City at City Hall, Attention: City Manager, 6 E. 6th St. or at P.O. Box, 708, Lawrence, Kansas 66044 and to Lessee at the Leased Premises or at P.O. Box 66., Lawrence, KS 66044. Such notices shall be deemed to have been given on the date physically delivered or on the date upon which the same is deposited in the United States mail with postage prepaid, as the case may be. Notices given in any other manner shall be deemed to have been given only upon actual receipt by an officer or senior executive of the other party. Each party may, by written notice to the other, change its address for notice purposes.

33. **WAIVER OF BREACH.** No waiver of the breach of any covenant or condition contained in this Lease shall be deemed a waiver of any subsequent breach of the same or any other covenant or condition.

34. **MEMORANDUM OF LEASE.** All covenants and agreements contained herein shall run with the Leased Premises and shall be binding and inure to the benefits of the parties hereto and their respective heirs, legal representatives, successors and assigns. Each of the parties hereto agrees to execute a memorandum of this Lease which will be recorded with the Register of Deeds of Douglas County.

35. **SEVERABILITY.** If any provision of this Lease shall be determined to be void, unenforceable or illegal for any reason, this Lease shall be ineffective only to the extent of such prohibition and the validity and enforceability of all remaining provisions shall not be affected thereby.

36. **SIGNAGE.** The parties agree that Lessee shall have the right to display signage on hydroelectric plant and powerhouse facility and shall have the rights to name the building. Lessee shall pay for any costs associated with the signage, including sign

permit fees. The City shall review and approve all signs prior to installation, and such approval shall not be unreasonably withheld. All signs on the leased premises shall comply with the City's sign code

37. **AMENDMENTS AND MODIFICATIONS.** The parties agree that this Lease shall not be amended, modified, altered or waived in any manner unless such change is in writing and signed by both parties.

38. **KANSAS LAW SHALL GOVERN.** This Agreement shall be governed by the laws of the State of Kansas.

39. **QUIET ENJOYMENT.** City covenants and agrees that Lessee, upon performing and observing the covenants, conditions and agreements hereof upon the part of Lessee to be performed and observed, shall and may peaceably hold and enjoy the said Leased Premises during the term, without any interruption or disturbance from City or persons claiming through City. This covenant shall be construed as running with the land and against subsequent owners thereof and their successors in interest, and shall be for the benefit of Lessee, its successors and assigns, and the subsequent owners of the leasehold estate created hereby, but such covenant shall expire at the expiration of the term of this Lease.

40. **ESTOPPEL CERTIFICATES.** The City and Lessee each agrees at any time and from time to time, upon not less than 10 days prior written request by the other party or by any Mortgagee, to execute, acknowledge and deliver to the person making such request a statement in writing certifying that (a) this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), (b) stating whether or not to the best knowledge of the signer of such certificate there is any existing default under this Lease on the part of either party thereto and, if so, specifying each such default, (c) stating to the best knowledge of the signer of such certificate whether there is any existing state of facts which, with the passage of time, or the giving of notice, or both, would constitute a default under this Lease, and (d) that there are no offsets or defenses against the rent, additional rent or other charges payable under this Lease. Any such statement delivered pursuant to this Section may be relied upon by the City and any prospective successor to the City's interest under this Lease, or Lessee or any prospective successor to, or assignee of, Lessee's interest under this Lease, or any Mortgagee of any prospective Permitted Mortgage.

41. **NO-MERGER.** There shall be no merger of this Lease, nor of the leasehold estate created by this Lease nor any subleasehold estate, with the fee estate in the Leased Premises by reason of the fact that this Lease or the leasehold estate created by this Lease, any subleasehold estate or any other interest in this Lease or any such leasehold estate may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Leased Premises and all persons (including any Mortgagee under a Permitted Mortgage) having an

interest in this Lease or in the leasehold estate created by this Lease shall join in a written instrument effecting such merger and shall duly record the same.

42. **ENTIRE AGREEMENT.** This Lease contains the entire agreement between the parties with respect to the hydroelectric powerhouse and related facilities on the north side of the Kansas River, and no modification of this Lease shall be binding upon the parties unless otherwise evidenced by an agreement in writing signed by the parties after the date hereof.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease the day and year first above written.

City:

City of Lawrence, Kansas

Lessee:

The Bowersock Mills and Power Company

By: _____

Name: David L. Corliss

Title: City Manager

By: _____

Name: Stephen H. Hill

Title: President

EXHIBIT A
(Legal Description of Leased Premises)

All of Lots 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 90, 92, 94, 96 and 98, and all that part of Lots 95, 97, 99, 101, 103, 105, 107, 100, 102, 104, 106, and 108, all lying in Block 13, North Lawrence, and all that part of the Southwest Quarter of Section 30, Township 12 South, Range 20 East, all lying in Douglas County, Kansas, described as follows:

COMMENCING at the Northeast corner of Lot 117, Block 13, North Lawrence; thence South 88 degrees 14 minutes 39 seconds West along the North line of said Block 13 a distance of 299.04 feet to the Northeast corner of Lot 30 of said Block 13, the POINT OF BEGINNING; thence South 1 degree 46 minutes 12 seconds East along the East line of Lots 30, 28, and 26 of said Block 13 a distance of 76.37 feet to a point; thence North 88 degrees 14 minutes 09 seconds East a distance of 71.14 feet to a point; thence North 88 degrees 15 minutes 35 seconds East a distance of 103.31 feet to a point on the East line of Lot 107 of said Block 13; thence South 1 degree 45 minutes 55 seconds East along the East line of Lots 107 and 108 of said Block 13 a distance of 142.34 feet to a point; thence North 36 degrees 05 minutes 29 seconds West a distance of 44.20 feet to a point on the East line of Lot 106 of said Block 13; thence South 86 degrees 38 minutes 35 seconds West a distance of 50.06 feet to a point on the East line of Lot 102 of said Block 13; thence South 65 degrees 27 minutes 19 seconds West a distance of 54.01 feet to a point on the East line of Lot 98 of said Block 13; thence South 1 degree 49 minutes 13 seconds East along the East line of said Lot 98 and its Southerly prolongation a distance of 182.85 feet to a point; thence South 66 degrees 10 minutes 57 seconds West a distance of 112.39 feet to a point; thence North 74 degrees 37 minutes 47 seconds West a distance of 207.08 feet to a point; thence in a Northwesterly direction along a curve to the right, having a radius of 950.00 feet, through a central angle of 20 degrees 33 minutes 42 seconds, an arc distance of 340.93 feet to a point; thence North 35 degrees 55 minutes 55 seconds East a distance of 119.28 feet to a point; thence North 64 degrees 43 minutes 46 seconds East a distance of 141.50 feet to a point; thence South 39 degrees 55 minutes 36 seconds East a distance of 54.22 feet to a point; thence South 69 degrees 27 minutes 11 seconds East a distance of 69.95 feet to a point; thence South 77 degrees 39 minutes 24 seconds East a distance of 56.65 feet to a point; thence North 70 degrees 43 minutes 18 seconds East a distance of 57.73 feet to the Southwest corner of Lot 22 of said Block 13; thence North 2 degrees 13 minutes 09 seconds West along the West line of Lots 22, 24, 26, 28 and 30 of said Block 13 a distance of 127.29 feet to the Northwest corner of said Lot 30; thence North 88 degrees 14 minutes 39 seconds East along the North line of said Lot 30 a distance of 143.30 feet to the POINT OF BEGINNING;

LESS AND EXCEPT that portion of the foregoing (i) lying within Lots 5, 7, 9, 11, 13, 15, and 17 on Bridge Street, and Lot 17 on Massachusetts Street, in North Lawrence, and other property The Bowersock Mills & Power Company owns pursuant to that certain deed recorded in the Office of the Douglas County Register of Deeds on April 10, 1967 at Book 250, Page 82; (ii) lying within the land that "Bowersock Mills Power Co." (which is one and the same as The Bowersock Mills and Power Company) owns pursuant to that certain deed recorded in the Office of the Douglas County Register of Deeds on September 10, 1924 at Book 110, Page 273; and (iii) lying within the bed of the Kansas River.

EXHIBIT B
Special Use Permit No. SUP 3-4-10
(Ordinance No. 8529)