

ORDINANCE #65243
Board Bill No. 103

An ordinance recommended by the Airport Commission, the Board of Public Service, and the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City the "Agreement and Contract of Sale", a copy of which is attached hereto as **ATTACHMENT "I"** and is incorporated herein, between the City and McDonnell Douglas Corporation, a Maryland corporation (the "Seller" or "MDC"), for the purchase by the City of certain property located in St. Louis County and commonly known as the "Northern Tract" that is more fully described in Section 1 of the Agreement and Contract of Sale, for the development and improvement of Lambert–St. Louis International Airport (the "Airport"); authorizing and directing the Director of Airports and the Comptroller of the City to enter into and execute on behalf of the City a certain lease agreement between the City and MDC (the "Northern Tract Lease Agreement"), a copy of which is attached hereto as **EXHIBIT "B"** to the Agreement and Contract of Sale, granting to MDC, subject to the provisions of the Northern Tract Lease Agreement the right and privilege to maintain possession of the premises described therein for a term of three years commencing on the day of the "Closing" on the Northern Tract (as defined and provided for in the Agreement and Contract of Sale); conditioning the execution and delivery by the City of the agreements, documents, and instruments contemplated in this Ordinance on the Federal Aviation Administration's prior approval of the "7460" Airspace Determination and the revised Airport Layout Plan; authorizing the Mayor, the Comptroller, the Register, the City Counselor, and other appropriate officers, agents, and employees of the City with the advice of the Director of Airports to enter into and execute on behalf of the City and in the City's best interest any attendant or related documents, agreements, or instruments deemed necessary to effectuate the terms set forth in the Agreement and Contract of Sale or the Northern Tract Lease Agreement, and/or deemed necessary to preserve and protect the City's interest and to take such actions as are necessary or appropriate in connection with the acquisition of the Northern Tract or the consummation of the transactions contemplated herein; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the agreements, documents, and instruments approved and/or authorized by this Ordinance, and containing a severability clause, and an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Director of Airports and the Comptroller of the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the "Agreement and Contract of Sale", a copy of which is attached hereto as **ATTACHMENT "I"** and is incorporated herein, between the City and McDonnell Douglas Corporation, a Maryland corporation (the "Seller" or "MDC"), for the purchase by the City of certain property located in St. Louis County and commonly known as the "Northern Tract" that is more fully described in Section 1 of the Agreement and Contract of Sale, for the development and improvement of Lambert–St. Louis International Airport (the "Airport").

SECTION TWO. The Director of Airports and the Comptroller of the City are hereby authorized and directed to enter into and execute on behalf of the City a certain lease agreement between the City and MDC (the "Northern Tract Lease Agreement") a copy of which is attached hereto as **EXHIBIT "B"** to the Agreement and Contract of Sale, granting to MDC, subject to the provisions of the Northern Tract Lease Agreement the right and privilege to maintain possession of the premises described therein for a term of three years commencing on the day of the "Closing" on the Northern Tract (as defined and provided for in the Agreement and Contract of Sale).

SECTION THREE. The execution and delivery by the City of the agreements, documents, and instruments contemplated in this Ordinance are hereby expressly conditioned on the Federal Aviation Administration's prior approval of the "7460" Airspace Determination and the revised Airport Layout Plan.

SECTION FOUR: The Mayor, the Comptroller, the Register, the City Counselor, and other appropriate officers, agents, and employees of the City with the advice of the Director of Airports are hereby authorized to enter into and execute on behalf of the City and in the City's best interest any attendant or related documents, agreements, or instruments deemed necessary to effectuate the terms set forth in the Agreement and Contract of Sale or the Northern Tract Lease Agreement, and/or deemed necessary to preserve and protect the City's interest, and to take such actions as are necessary or appropriate in connection with the acquisition of the Northern Tract or the consummation of the transactions contemplated herein.

SECTION FIVE. The terms, covenants, and conditions set forth in this Ordinance shall be applicable exclusively to the agreements, documents, and instruments approved or authorized by this Ordinance and shall not be applicable to any other existing or future agreements, documents, or instruments unless specifically authorized by an ordinance enacted after the effective date of this Ordinance. All provisions of other ordinances of the City which are in conflict with this Ordinance shall be of no force or effect as to the agreements, documents, and instruments approved and/or authorized by this Ordinance.

SECTION SIX. The sections, conditions, or provisions of this ordinance or portions thereof shall be severable. If any section, condition, or provision of this Ordinance or portion thereof contained herein is held invalid by the court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions or provisions of this Ordinance.

SECTION SEVEN. This being an Ordinance providing for public peace, health, or safety, it is hereby declared to be an emergency measure as defined in Article IV, Section 20 of the City’s Charter and shall become effective immediately upon its approval by the Mayor of the City.

**CITY OF ST. LOUIS
LAMBERT - ST. LOUIS INTERNATIONAL AIRPORT
AGREEMENT AND CONTRACT OF SALE**

SELLER: MCDONNELL DOUGLAS CORPORATION

BUYER: CITY OF ST. LOUIS, MISSOURI

CONTRACT NO: # _____

AUTHORIZED BY ORDINANCE NOS. 64279 & _____

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**CITY OF ST. LOUIS
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT**

AGREEMENT AND CONTRACT OF SALE

Parcel No. (s) _____

THIS AGREEMENT AND CONTRACT OF SALE is made by and between the City of St. Louis, Missouri, a municipal corporation, as buyer (the “City”) and McDonnell Douglas Corporation, a corporation organized and existing under the laws of the State of Maryland, as the seller (“MDC”) (the “Agreement”).

WITNESSETH THAT:

WHEREAS, the City is the owner and operator of Lambert-St. Louis International Airport (the “Airport”) which is located in St. Louis County, Missouri;

WHEREAS, this Agreement is entered into by the City under authority of City Ordinance No. 64279 approved March 9, 1998, as amended, which authorized and established a multi-year public work and improvement program at the Airport providing for the development, improvement, construction, rehabilitation, reconfiguration, and expansion of the Airport including, without limitation, the acquisition of real estate (the “W-1W Expansion Program”) and City Ordinance No. _____, approved _____, 2001; and

WHEREAS, MDC desires to sell to the City and the City desires to purchase and acquire from MDC certain real estate owned by MDC and commonly known as the Northern Tract, which is more fully described below.

NOW THEREFORE, in consideration of the terms, covenants, warranties, and conditions herein, to be faithfully kept and performed by City and MDC, it is agreed as follows:

1. PURCHASE OF PROPERTY: City hereby agrees to purchase and MDC hereby offers and agrees to sell all of MDC's rights, title, and interest in and to certain real estate situated in the County of St. Louis, State of Missouri commonly known as the "Northern Tract," less the parcel on which the MDC Facilities (as defined herein) are located consisting of approximately 5.11 acres, more particularly described in **EXHIBIT "A"** entitled "PROPERTY DESCRIPTION," which is attached hereto and incorporated herein, together with all improvements and fixtures thereon (excluding the Fuel Hydrant System, as defined in Section 30.J herein, and any other underground or above ground storage tanks, as well as any connected piping, tubing, or other related equipment located on the Property), the appurtenances thereto, collectively hereinafter referred to as the "Property", reviewed and approved by the City and adjustments based on title investigation or surveys identified and mutually agreed to by the parties, as provided for herein.

2. PURCHASE PRICE: The total "Purchase Price" for the Property is Fifty Million Dollars (\$50,000,000). At the Closing (defined in Section 3 below) and upon the delivery of the Special Warranty Deed as hereinafter provided, City shall pay to MDC, by wire-transfer of good, current, immediately available funds, the Purchase Price subject to the closing costs, pro-rations and adjustments as provided in Section 6 below (the "Closing Payment").

3. CLOSING DATE: The consummation of the sale transaction contemplated herein (the "Closing") shall occur at Investors Title Company, Scott Gilbert - Closer, 219 South Central, Clayton, MO 63105, Phone: 314-862-0303, the City's title company, closing agent and escrow agent (the "Title Company"), or at such other place as may be reasonably designated by the City in writing, thirty (30) days after the "Effective Date" of this Agreement (as defined below), or at such earlier time as mutually agreed upon by the City and MDC in writing; provided that all of the conditions precedent to the Closing and other contingencies set forth herein, including the delivery of all documents contemplated herein, have been satisfied or waived by the respective parties.

A. **Title Company Authorization.** City and MDC shall each deposit an original executed counterpart of this Agreement with the Title Company. The date on which the Title Company receives the last executed counterpart shall be the effective date of this Agreement (the "Effective Date"), and the Effective Date for this Agreement shall be written by the Title Company below:

Effective Date: _____.

The Title Company is hereby authorized and instructed to deliver the documents and moneys to be deposited with it pursuant to the terms, covenants and conditions contained herein. MDC and City shall, on or before Closing, execute any and all documents and perform any and all acts in "good faith" reasonably necessary or appropriate to close the purchase and sale of the Property pursuant to the terms, covenants, and conditions of this Agreement.

4. TITLE TRANSFER: The sale and purchase of the Property shall be effective upon Closing and title shall transfer at the Closing.

5. TRANSFER OF POSSESSION: MDC's right to continue to maintain possession of the Property shall begin on the Closing date and shall end at the expiration, termination or cancellation of the Northern Tract Lease (as defined below), at which time possession of the Property shall transfer to the City free of all leases or tenancies of any kind whatsoever affecting the Property. MDC's right of possession or occupancy of the Property shall be subject to the terms, covenants, and conditions of that certain lease agreement between the City and MDC, which is to be executed by the City and MDC (nine originals) at or prior to the Closing (the "Northern Tract Lease"), an unexecuted copy of which is attached hereto as **EXHIBIT "B"** and is incorporated herein. MDC does hereby covenant, represent, WARRANT, and agree that the Property shall be vacated at the time specified in the Northern Tract Lease for the City to take possession of the Property and that the City shall take possession of the Property free of all leases or tenancies of any kind whatsoever affecting the Property. The Property shall be delivered to the City in the condition set out in the Northern Tract Lease, ordinary wear and tear excepted.

6. CLOSING COSTS, PRORATIONS & SECURITY DEPOSITS:

A. **Closing Costs.** City shall pay all closing costs or settlement costs associated with the Property and expenses, irrespective of local custom, except those costs or expenses required for curing liens, title

encumbrances, or other title corrective measures, which shall be the responsibility and the obligation of MDC.

B. Pro-rations and Adjustments.

i. Taxes. Current real property taxes and general and special assessments (public or private), if any, shall be pro-rated between the parties as of the day of the Closing, the City to have the day of the Closing. The calculation shall be based on the latest available assessment and rate and if both are not available, the previous year. The City and MDC shall bear their pro-rated shares of the cost of all taxes related to the Property.

ii. Revenue/Expenses. Irrespective of local custom, all revenue or income and all expenses or costs associated with the Property including, without limitation, rental income, operating revenue, sewer and water and other utility charges, repair and maintenance costs, and other operating or administrative expenses shall not be apportioned or prorated and shall remain the right, obligation, and/or responsibility of MDC as is provided for in the Northern Tract Lease.

iii. Closing Statements. Prior to the Closing, MDC and City with the assistance of the Title Company, shall each prepare a preliminary Closing Statement and shall deliver its preliminary Closing Statement to the other party for review and approval. The final Closing Statement shall be prepared by the Title Company and the City and MDC shall each sign their respective Closing Statement at or prior to the Closing.

7. **LEASES:** MDC hereby covenants, represents, WARRANTS, and agrees that the Property is not subject to any leases or tenancies. MDC hereby covenants, represents, WARRANTS and agrees that, after the Effective Date of this Agreement, it will not enter into, renew or amend any lease which would extend beyond the term of the Northern Tract Lease, without the prior written approval of the Director of Airports which shall not be unreasonably withheld. Said leases and amendments shall require at a minimum strict compliance with all applicable provisions of the Northern Tract Lease. The right and ability of MDC to assign the Northern Tract Lease or to sublease any portion of the Property shall be governed solely by the terms of the Northern Tract Lease.

8. INSPECTIONS OF PROPERTY:

A. Access To Property. During the period commencing on the Effective Date and ending on the earlier of (i) the Closing or (ii) thirty (30) days after the Effective Date (the "Inspection Period"), City and City's employees, consultants, agents, representatives, inspectors, and contractors may enter the Property during regular business hours as reasonably necessary to make such inspections, testing, reports, surveys, environmental inspections (including sampling), studies and assessments as City in its sole discretion may determine to make, and to inspect and copy, on the Property, non-privileged reports, documents or records pertaining solely to the Property, including but not limited to: all plans and specifications, blueprints, soil reports, geological, environmental and engineering reports, environmental compliance and waste management plans and other governmental reports that MDC has in its possession or under MDC's control relating to MDC's ownership or the condition of the Property (the "Inspection Work"), after MDC has obtained confidentiality agreements executed on behalf of the City and its representatives entering the Premises in accordance with MDC's customary practices regarding confidentiality. City shall give MDC, or MDC's manager or agent designated by MDC for this purpose, at least twenty-four (24) hours' notice in advance of any intended inspection or entry. City shall comply with all laws and governmental regulations in connection with all such entries onto the Property or the performance of the Inspection Work. City shall not remove flooring, make excavations or test borings, disturb any plants, trees or shrubs, or engage in any other activities destructive of the Property without MDC's consent, which consent shall not be unreasonably withheld or delayed. Any damage to the Property made by the City or any person acting for or on behalf of the City, shall be repaired promptly, replacing or restoring any vegetation that is damaged and generally placing the Property and all points of entry by such inspectors in the same condition as before the inspection or entry to the extent reasonably practical. All Inspection Work, and all repairs to the Property arising therefrom, shall be at the City's expense. City shall use its best efforts to minimize damage to the Property and to minimize any interference with the tenants and the operations of MDC when conducting the Inspection Work. The City's review and approval of all such reports, inspections and assessments by the City within the Inspection Period is a condition precedent to Closing. If City objects to MDC in writing within the Inspection Period, City may terminate Closing at its sole option and discretion. If City fails to object within the Inspection Period, City waives its right to terminate Closing pursuant to this Section 8. Such failure to object shall in no way be deemed

to be a waiver of City's right to require remediation of the Property in accordance with the terms and conditions of the Northern Tract Lease.

i. Documents/Reports. City acknowledges and agrees that the information and documents obtained in accordance with this Section 8 are for informational purposes only, and although believed to be reliable, shall not be relied upon by the City, and in the event any such information or documents are incorrect, MDC shall not be liable to the City for such inaccuracies because MDC makes no warranty or representation that the information or documents are true, complete, or accurate.

ii. Indemnification. City, to the extent permitted by law, shall protect, defend and hold, indemnify, and save harmless MDC and its directors, officers, employees, representatives, and agents from and against any and all liabilities, losses, suits, claims or causes of action, judgments, fines or demands (including but not limited to reasonable attorney fees, court costs, and expert fees), arising out of the negligent acts or negligent omissions of the City and its officers, employees, representatives, consultants, contractors, and agents while performing or resulting from the Inspection Work and such indemnity shall survive the Closing or the consummation or termination of this Agreement.

B. Building Code Compliance. MDC represents, WARRANTS, and agrees that as of the Effective Date, MDC has no knowledge of the receipt of any written or other notice ("Code Notice") from any governmental authority, quasi-governmental authority, insurance company, or insurance rating service of any building code violations, repairs, replacements or alterations to the Property that have not as of the date hereof been remedied by MDC in a good and workmanlike manner. MDC shall immediately advise the City of any Code Notices received by MDC prior to the Closing, all of which shall be remedied or resolved to the City's complete satisfaction as a condition to the Closing.

C. Notwithstanding anything to the contrary in this Section 8, the City retains any and all rights granted under the Northern Tract Lease regarding inspections, reports, testing and access to the Property during the term of the Northern Tract Lease.

9. DOCUMENTS TO BE DEPOSITED WITH TITLE COMPANY BY MDC: On or before the Closing, MDC shall deliver to Title Company for delivery to City upon Closing the following:

A. A recordable and fully executed **SPECIAL WARRANTY DEED**, in a form acceptable to the City, conveying to the City title to the Property free from all easements, liens and encumbrances as described and provided for in Section 15 entitled "FORM OF CONVEYANCE AND TITLE INSURANCE." A copy of a **SPECIAL WARRANTY DEED** in a form acceptable to the City and MDC is attached hereto as **EXHIBIT "C"** and incorporated herein. If requested in writing by the City on or prior to Closing, MDC shall also deliver a recordable and fully executed Quit Claim Deed to provide for any discrepancies between the legal description to the Property set out in **EXHIBIT "A"** and the legal description generated by the City's surveyor. City acknowledges that MDC's execution and delivery of said Quit Claim Deed is an accommodation for the City, and will be executed at the specific request of the City, and that MDC makes no representations or warranties with respect to the legal description set forth therein.

B. The Northern Tract Lease (nine originals) executed by the City and MDC in the form attached hereto as **EXHIBIT "B"** along with the MDC's payment of the full rental amount of Fifteen Million Dollars (\$15,000,000) payable and due the City at the Closing as provided for in the Northern Tract Lease.

C. A fully executed certificate of an Assistant Secretary evidencing the authority of MDC to consummate the sale contemplated herein, in a form reasonably acceptable to Title Company and City.

D. A duly prepared final Closing Statement (see Section 6B(iii)).

E. Information for the reporting requirements required by the Internal Revenue Code of 1986 as amended, (the "Code").

F. Such other and further reports, documents, records, instruments, affidavits as may be reasonably necessary to complete the sale contemplated herein.

10. DOCUMENTS TO BE DEPOSITED WITH TITLE COMPANY BY CITY: On or before the Closing, City shall deliver to Title Company for delivery to MDC upon Closing the following:

- A. The Closing Payment as provided for in Section 2 of this Agreement;
- B. The Northern Tract Lease (nine originals) executed by the City and MDC in the form attached hereto as **EXHIBIT "B"**; and
- C. Such other and further documents or instruments as may be reasonably necessary to complete the sale contemplated herein.

11. CONDITIONS PRECEDENT TO CITY'S AND MDC'S OBLIGATIONS:

A. Conditions Precedent to City's Obligations. City's obligations to close hereunder shall be conditioned upon the occurrence of each of the conditions precedent to the Closing and other conditions and contingencies set forth herein, including the subdivision of the Northern Tract to exclude the MDC Property, delivery of all deeds, instruments, and documents contemplated herein and the payment by MDC of the full rental amount of Fifteen Million Dollars (\$15,000,000) payable and due the City at the Closing as provided for in the Northern Tract Lease. If said conditions or contingencies are not satisfied, as required herein, then the City may elect to terminate this Agreement without any liability whatsoever to the City.

B. Conditions Precedent to MDC's Obligations. MDC's obligations to close hereunder shall be conditioned on occurrence of each of the conditions precedent to the Closing and other contingencies set forth herein, including the delivery of all documents contemplated herein and the payment of the Closing Payment as provided for in Section 2 of this Agreement. If said conditions or contingencies are not satisfied, as required herein, then MDC may elect to terminate this Agreement without any liability whatsoever to MDC.

12. PERMITS: MDC, within fifteen (15) days after Effective Date of this Agreement, shall deliver to the City a copy of all licenses, permits, authorizations, and certificates of occupancy in MDC's possession or control issued by any governmental entity relating or pertaining to the Property.

13. ENVIRONMENTAL CONDITIONS:

- A. Notice. In lieu of providing any covenants, representations, or warranties with respect to the Property, MDC agrees to make available to City all material, non-privileged documents in MDC's possession or control, which, to the best of MDC's knowledge and belief, pertain to the environmental condition of the Property, or the presence of any hazardous or toxic substance, materials, gases, oil, petroleum products or derivatives, chemicals, pollutants, or waste in, on, or under the Property or any underground storage repository.
- B. Permits. MDC shall retain all rights, titles, interests, and obligations with respect to any existing or future permits, licenses, or approvals issued or given to MDC by any governmental agency or authority in connection with the emission or discharge from the Property of pollutants, chemicals, or substances to the atmosphere or environment (collectively, "Permits"). To the extent that any Permits are transferred to City, by operation of law or agency action, or City becomes a party to any Permits, MDC shall have the sole right, at its option, to terminate such Permits upon expiration or earlier termination of the Northern Tract Lease and City shall fully cooperate with MDC, as directed by MDC, to effectuate this provision. Upon termination of any air Permits, MDC shall acquire or retain, as the case may be, for its sole benefit, all rights, titles, and interests in and to any resulting offset or emission reduction credits allowable under 10 CSR 10-6.060 or other comparable provision of law or regulation.
- C. Surrender of Possession. Upon expiration or earlier termination of the Northern Tract Lease, MDC shall surrender possession of the Property in accordance with MDC's covenants and obligations under the Northern Tract Lease, including, but not limited to, its covenants in Sections 304 and Section 706.
- D. Continuing Access. Following termination of the Northern Tract Lease Agreement, and consistent with Sections 304 and 706 of the Northern Tract Lease, City agrees to grant MDC and/or its employees, consultants, agents, or contractors reasonable access to the Property, if necessary and subject to and in accordance with the terms and

conditions to be set forth in a Real Estate Access Agreement (which Agreement may take the form of an easement or license) to be negotiated in good faith by the parties no later than ninety (90) days prior to the expiration or earlier termination of the Northern Tract Lease. Consistent with Sections 304 and 706 of the Northern Tract Lease, City agrees that it will cooperate with MDC in facilitating prompt and reasonable access to the Property for MDC and contractor employees and personnel. All direct costs of providing such access are to be borne by MDC. MDC's access or remediation work shall not unreasonably interfere with the City's, or City's tenants', operations, enjoyment, or future use of the Property for purposes of manufacturing, maintenance or office use related thereto.

14. RISK OF LOSS AND INSURANCE:

A. Risk of Loss. MDC assumes all risk and loss to the Property by any cause whatsoever (including but not limited to: fire, flood, earthquake, tornado, and vandalism) until and including the day of Closing when title is transferred to the City; provided however, that for the period after the closing and, thereafter, until the Property is vacated by MDC the provisions of the Northern Tract Lease shall govern the risk of loss as to the Property. Until and including the day of the Closing, if the Property covered by this Agreement shall be damaged or destroyed, MDC shall immediately notify the City in writing of the damage or destruction, and the amount of insurance proceeds payable, if any. In the event that a material portion of the improvements on the Property be damaged or destroyed, MDC, after consulting with the Airport Director, shall at its option (i) restore, rehabilitate, or replace the damaged or destroyed Property or (ii) elect to assign any insurance proceeds relating to the destruction or damage to the City, in which case MDC shall have no further liability under this Section 14. City shall have the right to terminate this Agreement without any liability of any kind if said insurance proceed to be assigned to the City are deemed by the City in good faith to be insufficient to restore, rehabilitate, or replace the damaged or destroyed Property. All insurance proceeds received by MDC for damage to personal property or for business interruption shall belong to MDC.

B. Insurance. MDC represents, WARRANTS, and agrees to maintain its current level of insurance coverage in force (i.e., comprehensive general liability and property insurance) in regard to the Property, if any, until and including the day of the Closing; and, thereafter, as required and provided for in the Northern Tract Lease.

15. FORM OF CONVEYANCE AND TITLE INSURANCE:

A. Deed. Title shall be **MARKETABLE IN FACT** and MDC shall convey marketable title to the Property in a form acceptable to the City by **SPECIAL WARRANTY DEED** free from all easements, liens or encumbrances created or suffered by MDC, unless agreed to by the City in writing or waived by the City as provided for in Sections 15B & 15C. MDC shall deliver to the Title Company for delivery to the City at the Closing said duly executed **SPECIAL WARRANTY DEED** for the conveyance of the Property. After the Closing, the Title Company shall immediately record in the office of St. Louis County Recorder of Deeds the executed **SPECIAL WARRANTY DEED** for the conveyance of the Property. A copy of the **SPECIAL WARRANTY DEED** in a form acceptable to the City and MDC is attached hereto as **EXHIBIT "C."** If requested in writing by the City, MDC shall also deliver to the Title Company for delivery to the City at the Closing a duly executed **QUIT CLAIM DEED** in a form acceptable to the City and MDC to provide for any discrepancies between the legal description to the Property set out in **EXHIBIT "A"** and the legal description generated by the City's surveyor, which shall also be recorded immediately after the Closing by the Title Company.

B. Title Insurance. City shall obtain the Title Company's commitment ("Title Commitment") to issue an ALTA Owner's Title Insurance Policy to the City in the full amount of the Purchase Price, effective as of the Closing, insuring that fee simple title to the Property is vested in the City (the "Title Policy"). If the matters listed as exceptions to the Title Commitment are not satisfactory to City, City shall provide MDC with written notice of such objections (the "Title Objections") within the earlier of (i) ten (10) days of the Effective Date or (ii) the Closing, and all other objections not included in the timely notice of Title Objections shall be deemed waived by City. Thereafter, MDC shall have fifteen (15) days to cure the Title Objections raised by the City, and upon the expiration of such period, City may (i) terminate this Agreement or (ii) waive such Title Objections which MDC is not able to cure through the exercise of reasonable efforts and proceed to Closing; provided, however, that MDC shall cure and discharge of record, at its cost and at or prior to Closing, any monetary liens

or security interests included among the Title Objections. City shall pay the cost of the Title Policy.

C. Survey. City, at City's expense, may obtain a current "AS-BUILT" survey of the Property (the "Survey") to ALTA and ASCM standards showing matters which are customarily disclosed on a survey. The Survey shall be acceptable to City in all respects as to form and content in City's sole and absolute discretion. If the Survey discloses matters that are unacceptable to the City ("City's Survey Objections"), City shall notify MDC of such matters within ten (10) days of the Effective Date. In the event City does not notify MDC of City's Survey Objections within the earlier of (i) ten (10) days of the Effective Date or (ii) Closing, it shall be deemed that the Survey is acceptable to City and all matters and contingencies which an accurate survey would show shall be deemed waived by the City. City shall pay the cost of the Survey.

D. City's Objections to Title or Survey. MDC represents, WARRANTS, and agrees to work in good faith with the City and/or Title Company and use its best efforts to cause the Title Objections to be removed or corrected within the time periods provided in Section 15B. MDC WARRANTS, represents, and agrees to execute and deliver such customary affidavits, documents, instruments, releases, and records as may be reasonably required by the City or Title Company to consummate the purchase or limit any exception in the Title Policy. Nothing in this Agreement is to be construed to require the City to accept title that is not **MARKETABLE IN FACT** unless the City, in writing, expressly waives such right and thereby accepts title, which is not **MARKETABLE IN FACT**.

16. GENERAL CONDITION OF PROPERTY: City acknowledges that it will have conducted or had the opportunity to conduct its own inspections and investigations of the Property, and except as otherwise stated or provided for in this Agreement (i.e., see Section 5 "Transfer of Possession", Section 13 "Environmental Conditions of the Property" and **EXHIBIT "C"**, titled "Northern Tract Lease Agreement") is acquiring the Property on an "**AS-IS**" basis with no warranties of any kind, express or implied, either oral or written, made by MDC or any of its agents or representatives with respect to the physical or structural conditions of the Property or otherwise.

17. LIENS: MDC covenants, represents, WARRANTS, and agrees that, except as allowed by the Northern Tract Lease:

A. MDC shall not allow any liens, attachments, or other encumbrances of any kind whatsoever to be filed against or on the Property between the Effective Date and the Closing;

B. As of the Closing there shall be no recorded or unrecorded contracts and/or options to which MDC is a party affecting title to the Property, or any part thereof;

C. There are presently no mechanic liens placed against or on the Property, and there has been no work done on the Property which will result in the placement of a mechanic's lien on the Property after the Closing; and

D. There shall be no service, supply, maintenance or management contracts or agreements, which will be binding on the City after the Closing.

18. UTILITY FACILITIES: MDC hereby acknowledges that it is the owner of approximately 5.11 acres bordering the Property (the "MDC Property"), on which are located an electrical substation (the "Substation"), separate facilities for the generation of steam and compressed air (the "Steam Facilities"), and facilities for the treatment of industrial wastewater (the "Treatment Facilities"); together with the Substation and the Steam Facilities, the "MDC Facilities").

A. Easements. In order to make provision for the continued use of the utility services provided by the MDC Facilities to the current and future owners of the Property, the MDC Property and neighboring landowners, the **SPECIAL WARRANTY DEED** shall provide for the creation of easements over, through and across the Property for the use, maintenance and replacement of (1) the pipes and conduits for steam, compressed air and condensate return, (2) the electrical service and supply lines, (3) pipes, conduits and equipment for the fire protection water supply and potable water supply and (4) the pipes, conduits, culverts and equipment for the industrial waste sewer, storm sewer and sanitary sewer (the "Utility Easements").

B. Substation. MDC acknowledges its intent to pursue an agreement with a third party classified as a Public Service Utility (the "Electric Utility"), regarding MDC's conveyance of the Substation and that portion of the MDC Property upon which the Substation is located to the Electric Utility in order that the Electric Utility use the Substation to provide electrical service to, among others, the Property and the MDC Property. MDC makes no covenant, representation, warranty, or agreement with respect to the continued availability of electrical services from the Electric Utility, nor does MDC make any covenant, representation, warranty, or agreement with respect to the terms and conditions of any agreement for services which may be available from the Electric Utility.

In the event that MDC conveys the Substation and the related property to an Electric Utility prior to or at the expiration or early termination of the Northern Tract Lease, MDC shall have no obligation to relocate or remove any of the electrical power distribution lines on the Property prior to or at the expiration or early termination of the Northern Tract Lease. In the event that MDC has not conveyed the Substation to an Electric Utility by the expiration or early termination of the Northern Tract Lease, MDC hereby covenants, represents, WARRANTS, and agrees that MDC, at its cost, will cut, cap and abandon in place all of the electrical power distribution lines leading from the Substation to the Property prior to or at the expiration or early termination of the Northern Tract Lease.

C. Steam Facilities. At the option and discretion of MDC, MDC shall convey, at the expiration or early termination of the Northern Tract Lease, to the City the Steam Facilities and that portion of the MDC Property upon which the Steam Facilities are located, upon terms and conditions to be mutually agreed by MDC and the City on or before the date which is six (6) months prior to the expiration of the Northern Tract Lease.

In the event that MDC conveys the Steam Facilities and the related property to the City as described above, MDC hereby covenants, represents, WARRANTS, and agrees that MDC, at its cost, will cut, cap and abandon in place all of the steam and compressed air distribution lines, piping and related equipment which lead from Property to adjacent properties (excluding the MDC Property) or which lead from adjacent properties (excluding the MDC Property) to the Property prior to or at the expiration or early termination of the Northern Tract Lease; provided that the distribution lines will not be cut and capped in such a manner which would impair services from the Steam Facilities to the Property. In the event that MDC does not convey the Steam Facilities and related property to the City as described above, MDC hereby covenants, represents, WARRANTS, and agrees that MDC, at its cost, will cut, cap and abandon in place all of the steam and compressed air distribution lines, piping and related equipment leading from the Steam Facilities to the Property prior to or at the expiration or early termination of the Northern Tract Lease.

MDC shall protect, defend and hold, indemnify, and save harmless City, its lessees, its licensees, its invitees and subsequent owners of the Property from and against any and all liabilities, losses, suits, claims or causes of action, judgments, fines or demands for property damage or bodily injury to or death of any person (including but not limited to reasonable attorney fees, court costs, and expert fees), relating to the Steam Facilities and the steam and compressed air distribution lines, piping and related equipment on the Property and the negligent acts or omissions concerning the maintenance thereof, except that such indemnity shall not include indemnity for consequential damages or other special or indirect damages. This indemnity shall survive the Closing, but shall terminate upon the expiration or early termination of the Northern Tract Lease.

19. TIME IS OF THE ESSENCE: Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Agreement.

20. REMEDIES UPON DEFAULT:

A. City's Remedies. In the event of MDC's unexcused breach of any of the terms, covenants, conditions, warranties, provisions, or obligations (hereinafter the "Provisions") of this Agreement, City shall provide MDC with written notice of such breach and MDC shall have 30 days in which to cure such breach. In the event that the breach remains uncured at the expiration of such 30 day period, City shall be entitled to pursue any remedies at law and in equity as may be available to the City. City and MDC recognize that City's remedy at law may be inadequate, and City shall, therefore, be entitled to compel MDC's specific performance hereunder in equity, in addition to such other remedies at law and in equity as may be available to the City. In addition, MDC and the City agree that in the event of MDC's breach of this Agreement resulting from MDC's failure or refusal to convey the Property in accordance the Provisions of this Agreement, the City

may, in lieu of or in addition to the above remedies, rescind or terminate this Agreement, and thereby release the City from any and all liability or obligations hereunder, by giving ten (10) days' written notice of its election to MDC or MDC's agent.

B. **MDC's Remedies.** Unless otherwise expressly provided for herein, in the event of the City's unexcused breach of any Provisions of this Agreement or default hereunder, MDC shall provide City with notice of such breach and City shall have 30 days in which to cure such breach. In the event that the breach remains uncured at the expiration of such 30 day period, MDC shall be entitled to pursue any remedies available at law or in equity including but not limited to specific performance, unless otherwise expressly provided for herein.

C. **Attorney Fees.** In the event of litigation between the parties regarding this Agreement the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs, and litigation expenses.

21. **ASSIGNMENT:** This Agreement shall not be assigned in whole or part by MDC; provided however, that MDC shall have the right to assign this Agreement to an affiliate or subsidiary of MDC, including The Boeing Company and any of its subsidiaries, subject to the prior written consent of the City, which shall not be unreasonably denied.

22. **ACKNOWLEDGMENT OF TERMS AND CONDITIONS OF SALE:** The parties affirm each has full knowledge of the Provisions contained in this Agreement. Each party acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Agreement. As such, the Provisions of this Agreement shall be fairly construed and the usual rule of construction, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments, modifications or exhibits hereto.

23. **ENTIRE AGREEMENT:** The Provisions of this Agreement are intended by the parties as a final expression of their agreement with respect to the Provisions as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement constitutes the entire agreement between the parties hereto. This Agreement may be amended from time to time by written agreement, duly authorized and executed by all the signatories to this Agreement. MDC acknowledges that any such amendment to the Agreement must be approved by the City's Board of Estimate and Apportionment and the City's Board of Aldermen. However, the Airport Director, on behalf of the City and in its best interest, may agree to amend the exhibits referred to herein provided that such amendments do not increase the Purchase Price.

24. **WAIVER:** No waiver of any breach of any Provision shall be deemed, or shall constitute a waiver of any preceding or succeeding breach thereof of any Provision contained herein. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act. No waiver shall be binding unless executed in writing by the party granting the waiver.

25. **REQUIRED APPROVALS:** When the consent, approval, waiver, or certification ("Approval") of either party is required under the terms of this Agreement, such Approval must be in writing and signed by the party making the Approval. Whenever the Approval of the City or the Director of Airports is required, the Approval must be from the Director of Airports or his/her authorized or designated representative. Whenever the Approval of MDC is required, the Approval must be from Jerry Olsen, Director - General Services & Facilities, Military Aircraft & Missile Systems or his authorized or designated representative. MDC acknowledges that extensions of time of performance may be made by the written mutual consent of the Director of Airports and MDC. However, it is expressly understood and agreed that there can be no increase in the Purchase Price without an amendment to the Agreement executed by all of the signatories of this Agreement and such amendment must be approved by the City's Board of Estimate and Apportionment and its Board of Aldermen.

26. **SEVERABILITY:** If for any reason one or more of the Provisions in this Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other Provision of this Agreement and shall be construed as if such invalid, illegal or unenforceable Provision never had been included in this Agreement, provided the invalidity of such Provision does not materially prejudice either the City or MDC in its respective rights and obligations contained in the valid Provisions of this Agreement.

27. **NOTICES:** Any notice, request, or other communication to be given hereunder shall be in writing and shall be delivered personally, or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, or shall be sent by telex, telegram, telecopy or other similar form of rapid transmission confirmed by the mailing (by first class or express mail, postage prepaid) written confirmation at substantially the same time as such rapid transmission; and, shall be addressed to the

parties at the respective addresses set forth below. A party may change its address for receipt of notice by service of notice of such change in accordance herewith.

If to City: Director of Airports
Lambert-St. Louis International Airport
P.O. Box 10212, Lambert Station
St. Louis, MO 63145

Airport Properties Manager
Lambert-St. Louis International Airport
P.O. Box 10212, Lambert Station
St. Louis, MO 63145

with a copy to: Airport Legal Department
Lambert-St. Louis International Airport
P.O. Box 10212, Lambert Station
St. Louis, MO 63145

If to MDC: Jerry Olsen
Director - General Services & Facilities
Military Aircraft & Missile Systems
P. O. Box 516, Mailcode S001-3200
St. Louis, MO 63166-0516.
Fax 314-234-8693

with a copy to: Boeing Realty Corporation
P. O. Box 516, Mailcode S100-1380
St. Louis, MO 63166-0516

and: Bryan Cave LLP
211 N. Broadway, Suite 3600
St. Louis, MO 63102
Fax 314-259-2020
Attn: Linda M. Martinez, Esq.

If to Title Company: Investors Title Company
Scott Gilbert, Closer
4248 Forest Park Blvd.
St. Louis, MO 63108
314-535-1600
314-535-9555 Fax
314-862-0303 (Clayton Office, 219 South Central)

Notice shall be deemed received at the earlier of actual receipt or three (3) calendar days after being sent in the manner provided for above.

28. GOVERNING LAW: This Agreement shall be deemed to have been made in, and construed in accordance with the laws of the State of Missouri, and is subject to the Charter of the City of St. Louis, except where there is a conflict with applicable Federal regulations, orders, rules, requirements, and statutes in which case the federal law shall apply.

29. RELOCATION ASSISTANCE: MDC and the City acknowledge, stipulate, and affirm that this transaction for the sale of the Property to the City is a voluntary transaction and that MDC voluntarily approached the City with an offer to sell the Property to the City. Therefore, as part of the consideration to be faithfully kept and performed by MDC hereunder, MDC does hereby release, waive, and dispose of any and all rights MDC and its successors or assigns may have to obtaining relocation assistance or benefits under local, state, or federal law, including, without limitation: a) the City's Relocation Assistance Program; b) the Uniform Relocation Assistance And Real Property Acquisition Acts as amended, 42 U.S.C.A. Sections 4601, et seq.; and c) the Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally Assisted Programs, 49 C.F.R. Section

24, as amended, arising out of or related to this Agreement or the City's acquisition of the Property.

30. MISCELLANEOUS PROVISIONS:

- A. Exhibits. All exhibits described herein are fully incorporated into this Agreement by this reference as if fully set out herein. City and MDC shall reasonably and in good faith finalize and attach all such exhibits to the Agreement, which may not have been in final form as of the date of the Agreement.
- B. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope of the paragraphs hereof.
- C. Dates and Non-business Days. Whenever a number of days is referred to in this Agreement, days shall mean calendar days unless otherwise expressly provided. If the last day for giving of notice or for performance of any obligation or condition hereunder is a Saturday, Sunday or federal, state, or City holiday, then such last day shall be extended to the next succeeding business day thereafter. Whenever it is provided in this Agreement that days shall be counted, the first day to be counted shall be the day following the date on which the event causing the period to commence occurs.
- D. Other Documents. Each party, at the request of the other, shall execute, acknowledge (if appropriate), and deliver whatever additional documents, instruments, affidavits, certifications, and records, and perform such other acts in good faith, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.
- E. Binding Contract. This Agreement shall become effective and binding only upon the execution by the City and MDC and delivery of the executed counterparts of the City and MDC to the Title Company. MDC acknowledges and agrees that this Agreement is subject to the City's Charter and is contingent upon the approval of the City's Board of Estimate and Apportionment and its Board of Aldermen. This Agreement shall inure to the benefit of and bind MDC and the City and their respective representatives, successors, and permitted assigns.
- F. Force Majeure. Neither City nor MDC shall be deemed in violation of this Agreement if it is prevented from performing any obligation hereunder by reason of strike, boycott, labor disputes, embargoes, shortage of materials, acts of God, acts of a public enemy, acts of a superior governmental authority, weather conditions, riots, rebellions, or sabotage or any other circumstances for which it is not responsible and which is not within its control.
- G. Gender and Number. Whenever the sense of this Agreement so requires, the use of (i) the singular shall be deemed to include the plural, (ii) the masculine gender shall be deemed to include the feminine or neuter gender, and (iii) the neuter gender shall be deemed to include the masculine or feminine gender.
- H. Counterparts: This Agreement and any companion documents or instruments referred to herein, may be executed in any number of counterparts, each of which shall be original, but all of which together shall constitute one document or instrument.
- I. No Personal Liability: No alderman, commissioner, director, officer, board member, employee, or other agent of the City or MDC shall be personally liable under or in connection with this Agreement.
- J. Fuel Hydrant System: City and MDC acknowledge that there exists on the Property an underground fuel hydrant system, consisting of a number of large underground storage tanks, connected piping and tubing, and related equipment (the "Fuel Hydrant System"). MDC hereby covenants, represents, WARRANTS, and agrees that MDC will discharge its obligations with respect to the Fuel Hydrant System and any other underground or above ground storage tanks, as well as, any connected piping, tubing, or other related equipment located on the Property, as provided in the Northern Tract Lease.

31. BROKERAGE COMMISSION: The parties represent and WARRANT, each to the other, that neither has engaged the services of any broker with respect to this transaction. If any claims for brokerage commissions or finder fees or like payment arise out of or in connection with the transaction provided for herein, and in the event any claim is made, all such claims shall be handled and paid by the party whose actions or alleged commitment form the basis of such claims. Each party whose actions

BY: _____
Register Date
City of St. Louis

MDC SALE CONTRACT FINAL DRAFT 6-6-01 ATTACHMENT 1, MAP

TABLE OF EXHIBITS

EXHIBIT A – PROPERTY DESCRIPTION

EXHIBIT B – NORTHERN TRACT LEASE AGREEMENT

EXHIBIT C - SPECIAL WARRANT DEED

Lambert-St. Louis International Airport
MDC Track to the City

EXHIBIT “A”

PROPERTY DESCRIPTION

A TRACT OF LAND BEING PART IN U. S. SURVEYS 7, 1249, 8, 4, 1251, 1247 AND 3096, TOWNSHIP 46 NORTH, RANGE 6 EAST IN ST. LOUIS COUNTY, MISSOURI; SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE EAST LINE OF THE RIGHT-OF-WAY OF LINDBERGH BOULEVARD, 150.00 FEET WIDE AT ITS INTERSECTION WITH THE SOUTH LINE OF THE WABASH RAILROAD RIGHT-OF-WAY, 100.00 FEET WIDE, THENCE ALONG SAID SOUTH LINE OF THE WABASH RAILROAD RIGHT-OF-WAY ALSO BEING THE NORTH LINE OF A PRIVATE ROAD 40.00 FEET WIDE (ALSO KNOWN AS BANSHEE ROAD), WHICH IS PARALLEL WITH SAID WABASH RAILROAD RIGHT-OF-WAY, SOUTH 86 DEGREES 36 MINUTES 45 SECONDS EAST, A DISTANCE OF 388.37 FEET; THENCE ACROSS SAID BANSHEE ROAD, SOUTH 03 DEGREES 23 MINUTES 15 SECONDS WEST, A DISTANCE OF 40.00 FEET TO A POINT IN THE SOUTH LINE OF SAID BANSHEE ROAD ALSO BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE ALONG THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 86 DEGREES 36 MINUTES 45 SECONDS EAST, A DISTANCE OF 2939.05 FEET TO A POINT; THENCE LEAVING THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 03 DEGREES 23 MINUTES 57 SECONDS WEST, A DISTANCE OF 312.60 FEET TO A POINT; THENCE SOUTH 86 DEGREES 36 MINUTES 03 SECONDS EAST, A DISTANCE OF 438.00 FEET TO A POINT; THENCE NORTH 03 DEGREES 15 MINUTES 54 SECONDS EAST, A DISTANCE OF 312.54 FEET TO A POINT ON THE SAID SOUTH LINE OF BANSHEE ROAD; THENCE ALONG THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 86 DEGREES 31 MINUTES 06 SECONDS EAST, A DISTANCE OF 245.53 FEET TO A POINT; THENCE LEAVING THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 03 DEGREES 33 MINUTES 48 SECONDS WEST, A DISTANCE OF 196.62 FEET TO A POINT; THENCE NORTH 86 DEGREES 26 MINUTES 12 SECONDS WEST, A DISTANCE OF 26.10 FEET TO A POINT; THENCE SOUTH 03 DEGREES 33 MINUTES 48 SECONDS WEST, A DISTANCE OF 68.50 FEET TO A POINT; THENCE SOUTH 86 DEGREES 26 MINUTES 12 SECONDS EAST, A DISTANCE OF 72.20 FEET TO A POINT; THENCE NORTH 03 DEGREES 33 MINUTES 48 SECONDS EAST, A DISTANCE OF 68.50 FEET TO A POINT; THENCE NORTH 86 DEGREES 26 MINUTES 12 SECONDS WEST, A DISTANCE OF 26.10 FEET TO A POINT; THENCE NORTH 03 DEGREES 33 MINUTES 48 SECONDS EAST, A DISTANCE OF 196.65 FEET TO A POINT ON THE SAID SOUTH LINE OF BANSHEE ROAD; THENCE ALONG THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 86 DEGREES 31 MINUTES 06 SECONDS EAST, A DISTANCE OF 178.81 FEET TO A POINT; THENCE LEAVING THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 03 DEGREES 07 MINUTES 33 SECONDS EAST, A DISTANCE OF 251.25 FEET TO A POINT; THENCE SOUTH 86 DEGREES 42 MINUTES 02 SECONDS EAST, A DISTANCE OF 202.34 FEET TO A POINT; THENCE SOUTH 62 DEGREES 49 MINUTES 30 SECONDS WEST, A DISTANCE OF 1129.20 FEET TO A POINT; THENCE SOUTH 81 DEGREES 08 MINUTES 00 SECONDS WEST, A DISTANCE OF 866.89 FEET TO A POINT; THENCE NORTH 86 DEGREES 36 MINUTES 45 SECONDS WEST, A DISTANCE OF 2074.62 FEET TO A POINT; THENCE NORTH 18 DEGREES 21 MINUTES 45 SECONDS WEST, A DISTANCE OF 350.99 FEET TO A POINT; THENCE NORTH 03 DEGREES 23 MINUTES 15 SECONDS EAST, A DISTANCE OF 683.98 FEET TO THE POINT OF BEGINNING AND CONTAINING 3,310,076 SQUARE FEET OR 75.99 ACRES MORE OR LESS.

RESERVING TO MCDONNELL DOUGLAS CORPORATION AND ITS SUCCESSORS AND ASSINGS IN OWNERSHIP A NON-EXCLUSIVE PERMANENT 20 FOOT WIDE UTILITY EASEMENT OVER, THROUGH, AND ACROSS THE ABOVE

DESCRIBED TRACT OF LAND AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE EAST LINE OF THE RIGHT-OF-WAY OF LINDBERGH BOULEVARD, 150.00 FEET WIDE AT ITS INTERSECTION WITH THE SOUTH LINE OF THE WABASH RAILROAD RIGHT-OF-WAY, 100.00 FEET WIDE, THENCE ALONG SAID SOUTH LINE OF THE WABASH RAILROAD RIGHT-OF-WAY ALSO BEING THE NORTH LINE OF A PRIVATE ROAD 40.00 FEET WIDE (ALSO KNOWN AS BANSHEE ROAD), WHICH IS PARALLEL WITH SAID WABASH RAILROAD RIGHT-OF-WAY, SOUTH 86 DEGREES 36 MINUTES 45 SECONDS EAST, A DISTANCE OF 388.37 FEET TO A POINT; THENCE ACROSS SAID BANSHEE ROAD, SOUTH 03 DEGREES 23 MINUTES 15 SECONDS WEST, A DISTANCE OF 40.00 FEET TO A POINT IN THE SOUTH LINE OF SAID BANSHEE ROAD; THENCE ALONG THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 86 DEGREES 36 MINUTES 45 SECONDS EAST, A DISTANCE OF 2939.05 FEET TO A POINT; THENCE SOUTH 03 DEGREES 23 MINUTES 57 SECONDS WEST, A DISTANCE OF 312.60 FEET TO A POINT; THENCE SOUTH 86 DEGREES 36 MINUTES 03 SECONDS EAST, A DISTANCE OF 438.00 FEET TO A POINT; THENCE NORTH 03 DEGREES 15 MINUTES 54 SECONDS EAST, A DISTANCE OF 46.64 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED EASEMENT; THENCE NORTH 03 DEGREES 15 MINUTES 54 SECONDS EAST, A DISTANCE OF 20.00 FEET TO A POINT; THENCE SOUTH 86 DEGREES 44 MINUTES 06 SECONDS EAST, A DISTANCE OF 218.15 FEET TO A POINT; THENCE SOUTH 03 DEGREES 33 MINUTES 48 SECONDS WEST, A DISTANCE OF 20.00 FEET TO A POINT; THENCE NORTH 86 DEGREES 44 MINUTES 06 SECONDS WEST, A DISTANCE OF 218.04 FEET TO THE POINT OF BEGINNING.

THE CITY OF ST. LOUIS
LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT

McDONNELL DOUGLAS CORPORATION

NORTHERN TRACT LEASE AGREEMENT

AL- _____



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AIRPORT NUMBER AL-

LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT
NORTHERN TRACT LEASE AGREEMENT

THIS NORTHERN TRACT LEASE AGREEMENT, made and entered into as of the ___ day of ___, 2001 ("Agreement"), by and between THE CITY OF ST. LOUIS, a municipal corporation of the State of Missouri, as lessor (the "City"), and the MCDONNELL DOUGLAS CORPORATION, a corporation organized and existing under the laws of the State of Maryland (the "Lessee" or "MDC").

WITNESSETH, THAT:

WHEREAS, City now owns, operates and maintains an international airport known as "Lambert-St. Louis International Airport," located in the County of St. Louis, Missouri ("Airport");

WHEREAS, the City and Lessee entered into and executed an Agreement and Contract of Sale dated ___, 2001 (the "Sales Agreement") which is incorporated herein by reference, providing for the acquisition by the City of certain real property (the "Property" more fully described therein), know as the Northern Tract;

WHEREAS, the City, under and subject to the provisions of the Sales Agreement, granted to the Lessee the right to maintain possession of the Property from the Closing date (defined in the Sales Agreement) until the expiration, termination, or cancellation of this Agreement; and

WHEREAS, the City and the Lessee, under and subject to the provisions of the Sales Agreement, mutually agreed to enter into and executed this Agreement at the Closing on the Property and do hereby acknowledge and agree that the provisions contained in this Agreement shall be consistent with the applicable terms, covenants, conditions, and warranties of the Sales Agreement. However, in the event of a conflict in terms between this Agreement and the Sales Agreement, this Agreement shall control.

NOW, THEREFORE, for and in consideration of the premises, promises, and of the mutual covenants and agreements herein contained, and other valuable considerations, City and Lessee agree as follows:

ARTICLE I
DEFINITIONS

Section 101. Definitions. The following words and phrases shall have the following meanings:

"Agreement" shall mean this document and any subsequent amendments thereto, duly approved by City and Lessee.

"Airport" shall mean as stated in the preamble hereof.

"Airport Properties Department" shall mean that department of the St. Louis Airport Authority that has as its primary responsibility the administration of all tenant, permittee, concessionaire and other space at the Airport, and shall be Lessee's point of contact with the Airport on all issues related to this Agreement.

"City" shall mean as stated in the preamble hereof.

"Director" shall mean the Director of Airports of the City of St. Louis or his/her authorized or designated representatives.

"Discharge" shall have the meaning ascribed to such term by 1001(7) of the Oil Pollution Act of 1990, 33 USC 2701(7).

"Extremely Hazardous Substance" shall mean any substance designated or considered to be an extremely hazardous substance pursuant to 302(a) of the Emergency Planning and Community Right-to-Know Act of 1986, 42 USC 11002(a).

“Hazardous Substance” shall mean any substance designated or considered to be a hazard pursuant to 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601(14).

“Hazardous Waste” shall mean any substance designated or considered to be a hazardous waste pursuant to either 1004(5) of the Resource Conservation and Recovery Act, 42 USC 6903(5) or 260.360(10) R.S.Mo.

“Improvements” shall mean without limitation existing buildings, structures, facilities, fixtures or any appurtenances thereto on the Premises, including but not limited to concrete aircraft ramp, parking lot, and any other structures or facilities which are existing or may be hereafter added, built or erected by Lessee or City upon the Premises.

“Infectious Waste” shall mean any substance designated or considered to be an infectious waste pursuant to 260.360(13) R.S.Mo.

“Lessee” or “MDC” shall mean as stated in the preamble hereof.

“Oil” shall mean any substance designated or considered to be an oil pursuant to 1001(23) of the Oil Pollution Act of 1990, 33 USC 2701(23).

“Pollutant” shall mean any substance designated or considered to be a pollutant pursuant to 502(6) of the Federal Water Pollution Act, 33 USC 1362(6).

“Premises” shall mean a location or locations described in Section 201 that has or have been designated by City for the occupancy and use by Lessee together with all “Improvements” thereon for its conduct of business and for other uses herein specifically provided for.

“Release” shall have the meaning ascribed to such term by 101(22) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601. (22).

“Reportable Quantity” (“RQ”) shall mean as designated by 10 CSR 24-2.010.

“Special Waste” shall mean any substance as designated by 10 CSR 80-2.010.

“Solid Waste” shall mean any substance designated or considered as a solid waste pursuant to 260.200(25) R.S.Mo.

“Sublessee” shall mean a third party conducting business on the Premises which is incidental, necessary or customary to the proper use of the Premises and under agreement with Lessee.

“Toxic Pollutant” shall mean any substance designated or considered to be a toxic pollutant pursuant to 502(13) of the Federal Water Pollution Control Act, 33 USC 1362(13).

ARTICLE II PREMISES

Section 201. Premises. City hereby leases and demises to Lessee and Lessee takes from City, a tract of land containing approximately 75.99 acres situated in the County of St. Louis, State of Missouri, as shown on **EXHIBIT “A”** titled “PREMISE DESCRIPTION,” which is attached hereto and is incorporated herein, together with all Improvements thereon, including without limitation the buildings identified on **EXHIBIT “A,”** hereinafter collectively referred to as the “Premises,” subject to the reservations set forth in Section 202 hereof. The parties hereto acknowledge and agree that the land and improvements referred to and defined in the Sales Agreement as the Steam/Treatment Facilities containing approximately 5.11 acres is not part of the Premises covered by this Agreement. The Director of Airports with the written consent of the Lessee may revise or amend **EXHIBIT “A.”** City and Lessee shall reasonably and in good faith finalize and attach all such revised or amended exhibits to this Agreement.

Lessee acknowledges that it accepts and receives the Premises in an “**AS IS**” condition with no warranties or representations of any kind, expressed or implied, either oral or written, made by City or any of its agents or representatives with respect to the physical, environmental or structural conditions of the Premises or any portion thereof or otherwise including but not limited to, soil conditions of the land and structural conditions of the buildings or facilities or the presence or absence of any hazardous or toxic substances, materials, gases, oil, petroleum products or derivatives, chemicals, pollutants, or waste in, on or under the Premises or any underground or above ground storage repositories, including but not limited to asbestos and asbestos-related materials, water, sewage

or utilities serving the Premises or any other matter or thing affecting or relating to the Premises, except as expressly set forth in this Agreement. City and Lessee agree that the existence and definition of hazardous or toxic substances, materials, gases, oil, petroleum products or derivatives, chemicals, pollutants, or waste, shall be construed herein in accordance with all applicable federal, state or local laws, statutes or regulations relating to the protection of human health or the environment. City without limitation expressly disclaims and negates, as to the Premises: a) any implied or express warranty of merchantability, b) any implied or express warranty of fitness for a particular purpose, and c) any implied warranty with respect to the condition of the Premises, its compliance with any zoning or other rules, regulations, laws or statutes applicable to the Premises including but not limited to the Americans with Disabilities Act, the uses permitted on the Premises, or any other matter or thing relating to the Premises or any portion thereof.

Section 202. Reservations. The grant of lease hereunder is subject to the following reservations and conditions.

- A. City reserves the right (but shall not be obligated to Lessee) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard.
- B. City reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as City in its sole and absolute discretion sees fit, regardless of the desires or views of Lessee, and without interference or hindrance of any kind.
- C. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the Airport which in the sole and absolute opinion of City would limit the usefulness of the Airport or constitute a hazard to aircraft.
- D. During the time of war or national emergency City shall have the right to enter into an agreement with the government of the United States of America (the "U.S. Government") for use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport including the Premises and the rights granted herein. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the U.S. Government, shall be suspended immediately upon receipt of written notice from City.
- E. It is understood and agreed that the rights granted by this Agreement to Lessee will not be exercised by Lessee in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport.
- F. There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Premises herein conveyed, together with the right to cause or allow in said airspace such noise, vibration, fumes, dust, fuel particles, illuminations, interference with television, radio or any other type of transmission and other effects as may be caused in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.
- G. This Agreement shall become subordinate to provisions of any existing or future agreement between City and the United States of America or any agency thereof relative to the operation, expansion, improvement, development, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the operation, improvement, development, expansion or maintenance of the Airport.
- H. City reserves all gas, oil and mineral rights in and under the soil; provided, however, that City, in the exercise of such rights, shall not interfere with the surface of the soil or with Lessee's use of the Improvements thereon.
- I. City reserves the right to grant utility and maintenance rights-of-way to itself and others over, under, through, across or on the Premises provided that such use will not interfere with Lessee's use of the Premises, and provided further that such reservation or grant of rights shall not directly result in cost or expense to Lessee.

Section 203. Access. Subject to the terms, covenants, warranties and conditions of this Agreement, Lessee has the right of free access, ingress to and egress from the Premises, for Lessee's employees, agents, guests, patrons and invitees. Subject to the terms, covenants, warranties, and conditions of this Agreement, City reserves and shall have the right to access, ingress to and egress from the Premises without charge therefor, for its employees, contractors, agents, guests, patrons and invitees, its or their suppliers of materials and furnishers of service, and its or their equipment, vehicles, machinery and other property, provided that such right

will not unreasonably and materially interfere with Lessee’s use of the Premises and upon compliance with Lessee’s security and confidentiality procedures. If Lessee is not present to permit entry and entry is necessary, City may, in case of emergency, forcibly enter the Premises without rendering City liable therefor, except for any damage caused to Lessee’s property as a result of such entry or any costs, damages or liabilities arising from City’s negligence or willful misconduct. Nothing contained herein shall be construed to impose upon City any duty of inspection or repair of the Premises except as expressly and specifically provided for herein.

Lessee hereby acknowledges that City is required by Federal Aviation Regulations (“FAR”), Part 107 as amended, to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to the Aircraft Operating Area (“AOA”). Lessee understands that City has met said requirements by developing an Airport Security Program (“ASP”) for the Airport, and Lessee warrants, covenants and agrees to be fully bound by and immediately responsive to the requirements of the ASP in connection with Lessee’s exercise of the privileges granted to Lessee hereunder for the full term hereof. Lessee further warrants, covenants and agrees, throughout the term of this Agreement, at its own cost, to prepare facilities and procedures, satisfactory to City, designed to prevent and deter persons and vehicles from unauthorized access to the AOA from and through any Premises controlled or used by Lessee in accordance with the provisions of the aforesaid FAR Part 107, and ASP for the Airport.

Lessee hereby acknowledges that it understands that its security procedures and facilities on the Premises, to meet the requirements of the aforesaid FAR Part 107, shall include but not be limited to:

- A. fencing and locked gates;
- B. Airport-approved badging, badge display, escort and challenge procedures applicable to persons authorized to enter the AOA;
- C. an electronic entry control system or a manned guard system where gates or doorways cannot reasonably be controlled by locks; and
- D. other facilities and procedures as may be required to establish positive control for preventing the entrance of unauthorized persons and vehicles onto the AOA.

ARTICLE III
AGREEMENT TERM

Section 301. Term.

- A. The term of this Agreement shall commence on the day of the Closing, as defined and provided for in the Sales Agreement and shall end three (3) years thereafter (including the day of the Closing) (the “Expiration Date”), unless sooner terminated in accordance with other provisions of this Agreement. The City at the Closing shall write the commencement date and the expiration date in the space below.

Commencement Date: _____

Expiration Date: _____

- B. Lessee and City may enter into a license agreement to allow City the exclusive right to occupy certain office space on the Premises in Building 3, as more fully described in **EXHIBIT “B”** attached hereto, which may be vacated by Lessee prior to the Expiration Date (the “Office License”). Such license shall be for a nominal consideration and according to terms and conditions acceptable to City and Lessee.

Section 302. Termination by Lessee Without Cause. Lessee may terminate this Agreement without cause, providing the Lessee is not in default of any of the terms, covenants, conditions or obligations of this Agreement, by giving 180 days written notice to the City. Such termination without cause shall be deemed a no fault cancellation, whereupon Lessee shall have no further liability for any rent or other operational costs relating to the Premises, including without limitation taxes, insurance, utilities or maintenance. The Lessee does hereby covenant, represent, warrant, and agree that the Premises shall be vacated at said earlier termination date specified by the Lessee in its written notice for vacating the Premises and that the City shall take possession of the Premises free of all leases or tenancies of any kind whatsoever affecting the Premises. The Premises shall be delivered to the City in the condition

as further set out in this Agreement, ordinary wear and tear excepted.

Section 303. Surrender of Possession. No notice to quit possession at the expiration date of the term of this Agreement, or at the earlier termination hereof shall be necessary. Lessee warrants, covenants, and agrees that at the expiration date of the term of this Agreement, or at the earlier termination hereof, it will peaceably surrender possession of the Premises in as good condition, reasonable wear and tear, acts of God, and other casualties excepted, and City shall have the right to take possession of the Premises. In the event Lessee does not vacate the Premises during the prescribed time period, Lessee does hereby agree that City may use any remedy at law or in equity including but not limited to a writ of possession to carry out the transfer of possession.

Lessee and City acknowledge (i) the age and general condition of the Premises at the commencement of this Agreement, (ii) that Lessee is required to maintain the Premises during the term of this Agreement and (iii) that neither City nor Lessee anticipate that Lessee will make or be required to make extensive capital improvements to the Premises during the term of this Agreement or prior to City's acceptance of the Premises at the end of the term of this Agreement, except as may be required to comply with federal, state, or local regulatory requirements. In light of these acknowledgements, City and Lessee, before acceptance by the City of the Premises and Improvements, shall perform a joint inspection of the Premises and Improvements being surrendered to City. Upon surrender of the Premises, Lessee shall perform any reasonable maintenance work requested by City to restore the Premises and Improvements to materially the same condition as at the commencement of the term of this Agreement, reasonable wear and tear excepted. Said inspection shall be conducted thirty (30) days prior to the expiration date of the term of this Agreement, or at the earlier termination as provided for in Section 302 titled "Termination by Lessee Without Cause" or in Article IX, titled "TERMINATION OF AGREEMENT IN ENTIRETY BY REASON OF DEFAULT." Lessee further agrees to give to the City all building plans (i.e., "As-Built" drawings) and mechanical specification manuals on all systems in the surrendered facilities in its possession.

Any and all obligations or rights of Lessee with respect to the relocation, removal, and/or abandonment of the steam and compressed air and waste treatment distribution lines, piping, and related equipment and the electrical power distribution lines in or on the Property shall be governed by the provisions in the Sales Agreement relating thereto, unless otherwise agreed to in writing by the Airport Director and the Lessee.

Notwithstanding any other provisions of this Section 303 to the contrary, during the term of this Agreement, Lessee shall have the right, subject to the prior written approval of the Director, but not the obligation, to remove Building 51, Building 52, Building 54, Building 55 and/or Building 56 identified as comprising the Chem Mill Facility on **EXHIBIT "A"** by demolishing to grade level the buildings, structures and other improvements connected therewith.

Section 304. Environmental Covenants and Releases.

EXCEPT AS SPECIFICALLY PROVIDED FOR IN THIS SECTION 304 AND SECTION 706.B., THE CITY, ITS BOARD OF ALDERMEN, AND THE AIRPORT COMMISSION **WAIVE, RELEASE, AND DISCHARGE** ANY CLAIMS, RIGHTS, SUITS, LIABILITIES, DEMANDS, OR ACTIONS, WHETHER ARISING BY STATUTE, REGULATION, CONTRACT, COMMON LAW OR OTHERWISE, THAT THEY MAY HAVE, INDIVIDUALLY OR COLLECTIVELY, NOW OR IN THE FUTURE, AGAINST THE LESSEE, ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES, ARISING FROM, CONNECTED WITH, OR RELATING TO THE PAST, PRESENT, OR FUTURE ENVIRONMENTAL CONDITION OF THE PREMISES, INCLUDING WITHOUT LIMITATION, THE PRESENCE ON, IN, UNDER, AROUND OR FROM THE PREMISES OF ANY HAZARDOUS SUBSTANCES, EXTREMELY HAZARDOUS SUBSTANCES, HAZARDOUS WASTES, SPECIAL WASTES, SOLID WASTES, OIL, PETROLEUM PRODUCT OR DERIVATIVE, POLLUTANTS, TOXIC POLLUTANTS, TOXIC SUBSTANCES, OR OTHER CHEMICAL SUBSTANCES OR MATERIALS SUBJECT TO FEDERAL, STATE, OR LOCAL REGULATION.

Except as otherwise provided for in Section 305, Lessee covenants and agrees that at the expiration date of the term of this Agreement, or as soon as practicable after earlier termination hereof, unless otherwise agreed to in writing by the City, Lessee shall (i) remove all products or wastes contained in underground and aboveground storage tanks located on the Premises, and (ii) pull or remove all underground and above ground storage tanks, and any connected piping, tubing, or other related equipment, located on the Premises.

Lessee covenants and agrees that within the first year of the term of this Agreement, unless otherwise agreed to in writing by City, it shall complete an investigation of the environmental condition of the Premises to determine the presence in soil, groundwater, or surface water of any Hazardous Substances, Extremely Hazardous Substances, Hazardous Wastes, Special Wastes, Solid Wastes, Oil, petroleum product or derivative, Pollutants, Toxic Pollutants, toxic substances, or other chemical substances or materials subject to federal, state, or local regulation (collectively, "Hazardous Materials"). In conducting its investigation, Lessee shall select and use a qualified environmental consultant who is reasonably acceptable to the Director, and Lessee's consultant shall prepare a scope

of work for the investigation, which scope of work shall be consistent with generally accepted environmental professional practice and standards and as otherwise may be required by the State of Missouri or the United States Environmental Protection Agency. Upon finalization, the scope of work shall be promptly submitted to the Director for his approval, which approval shall not be unreasonably withheld or delayed. Lessee shall document the findings of its environmental investigation in a written report (hereinafter, the "Environmental Investigation Report") to be prepared by Lessee's consultant and, upon finalization, shall be promptly provided to the Director for his review and approval, which approval shall not be unreasonably withheld or delayed.

D. Subject to and consistent with Section 304.G, to the extent that the Environmental Investigation Report identifies levels of Hazardous Materials in soil, groundwater, or surface water on, in, or under the Premises, or migrating from the Premises, above background levels for properties in the immediate vicinity of the Premises (it being understood that background levels reflect natural conditions of the land unaffected by human activities), Lessee covenants and agrees that it shall, at its sole cost and expense, remove, remediate, decontaminate, and/or restore any soil, groundwater, or surface water on, in, or under, or around (if Hazardous Materials are migrating from the Premises) the Premises affected by such identified Hazardous Materials to the extent necessary to attain such removal, remediation, decontamination and/or restoration standards or criteria (hereafter, "Cleanup Standards") as may then apply to properties used for aircraft manufacturing, maintenance, or operations and office uses related thereto, or if required at the time that the Environmental Investigation Report is completed, to attain such other Cleanup Standards as the State of Missouri or United States of America may otherwise specifically direct Lessee to attain. Lessee shall expeditiously complete any required removal, remediation, decontamination, and/or restoration of affected soil, surface water, or groundwater; provided, however, that Lessee shall use all reasonable efforts to complete any required soil removal or soil remediation on the Premises within the remaining two years of the term of this Agreement, or as soon as practicable after the termination or earlier expiration of this Agreement, subject to City's reasonable cooperation. Lessee shall not be precluded by the City from attaining the applicable Cleanup Standard through the use of institutional controls, risk based analyses and remediation objectives, or such other methods as may then be permitted under applicable laws, rules, and regulations; provided, however, that neither the ongoing remediation, including any testing or monitoring, nor the use of institutional controls, shall neither unreasonably nor materially impair or interfere with City and/or its tenants' use and enjoyment of the property for purposes of aircraft manufacturing, maintenance or operations and office uses related thereto. In conducting any removal, remediation, decontamination and/or restoration, Lessee shall select and use qualified environmental consultants and contractors who are reasonably acceptable to the Director.

Upon completion of any removal, remediation, decontamination, and/or restoration required by Section 304.D., Lessee shall deliver to the Director a written report, including any applicable governmental concurrence, determination, or regulatory action, prepared by Lessee's environmental consultant documenting that the Cleanup Standard required by Section 304.D. has been attained (hereafter, the "Remediation Report"). Within forty-five (45) days of the Director's receipt of a Remediation Report, the Director shall either (1) deliver to Lessee its written concurrence that the Cleanup Standard has been attained with respect to such removal, remediation, decontamination, and/or restoration, or (2) deliver to Lessee written objections setting forth specific and reasonable grounds why the respective Cleanup Standard has not been satisfied; provided, however, that any applicable governmental concurrence, determination, or regulatory action evidencing that the Cleanup Standard has been attained or that further investigation, removal, remediation, decontamination, and/or restoration is not required shall be deemed conclusive notwithstanding that such concurrence, determination, or regulatory action is subject to future reopening or reconsideration upon discovery of new or additional information or facts or upon change in applicable law, regulation, or regulatory guidance. Lessee shall provide the Director with written notice if the Director fails to timely deliver his written concurrence or objections in accordance with this Section 304.E. If the Director fails to respond to such written notice within thirty (30) days of receipt, Lessee shall be conclusively deemed to have satisfied its covenants and agreements pursuant to this Section 304.E., and shall have no further liability or obligation in accordance with Section 304.F. In the event that the Director makes timely written objections to a Remediation Report, within ten (10) business days of receipt of such objections, Lessee and City shall meet and confer in good faith regarding what additional removal, remediation, decontamination, and/or restoration is reasonably required (if any) to satisfy the applicable Cleanup Standard. If Lessee and City cannot agree on additional removal, remediation, decontamination, and/or restoration, and the appropriate regulatory authorities are unable or unwilling to provide, in due course, direction on attainment of the applicable Cleanup Standard, City and Lessee shall jointly select an independent, qualified environmental consultant (the cost of which shall be shared equally by City and Lessee) who shall make a determination regarding the attainment of the applicable Cleanup Standard and/or the extent of further removal, remediation, decontamination and/or restoration required to attain the applicable Cleanup Standard, and such determination shall be conclusive and binding upon City and Lessee. If Lessee and City agree on additional removal, remediation, decontamination, and/or restoration (including without limitation by reason of the independent consultant's binding determination as described above), Lessee shall undertake same (at Lessee's sole cost) and shall deliver to the Director a subsequent Remediation Report for his review and action in accordance with this Section 304.E.

UPON LESSEE'S SATISFACTION OF ITS COVENANTS AND AGREEMENTS IN SECTION 304.E., LESSEE SHALL HAVE NO FURTHER LIABILITY OR OBLIGATION TO CITY, ITS BOARD OF ALDERMEN, OR THE AIRPORT COMMISSION TO

REMOVE, RESTORE, DECONTAMINATE, AND/OR RESTORE SOIL, GROUNDWATER, OR SURFACE WATER, AND THE INDEMNIFICATION PROVISIONS OF SECTION 706.B SHALL THEREAFTER BE NULL AND VOID.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 304, LESSEE SHALL HAVE NO LIABILITY FOR AND NO RESPONSIBILITY OR OBLIGATION TO CITY, ITS BOARD OF ALDERMEN, OR THE AIRPORT COMMISSION TO REMOVE, REMEDIATE, DECONTAMINATE, AND/OR RESTORE ANY SOIL, GROUNDWATER, OR SURFACE WATER AFFECTED BY ANY HAZARDOUS MATERIALS WHICH LESSEE CAN DEMONSTRATE (I) ARE OR WERE RELEASED, DISCHARGED, DISPOSED, AND/OR SPILLED ON, UNDER, ABOUT, OR FROM THE PREMISES BY CITY, ITS OFFICERS, AGENTS, EMPLOYEES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INDEPENDENT CONTRACTORS, GUESTS, PATRONS, TENANTS (EXCLUDING LESSEE), AND INVITEES; OR (II) MIGRATE OR MOVE OR MIGRATED OR MOVED ONTO, INTO, OR UNDER, OR FROM THE PREMISES FROM PROPERTY OWNED OR OPERATED BY CITY OR ANY OF ITS TENANTS (EXCLUDING LESSEE), OR ANOTHER THIRD-PARTY NOT AFFILIATED WITH LESSEE.

Section 305. Fuel Hydrant System. City and Lessee acknowledge that there exists on the Premises an underground fuel hydrant system, consisting of a number of large underground storage tanks, connected piping, and related equipment (hereafter, the "Fuel Hydrant System"). City shall notify Lessee in writing within the first two years of the term of this Agreement whether the Fuel Hydrant System can remain in place after the expiration or earlier termination of this Agreement. If City notifies Lessee that the Fuel Hydrant System can remain in place after the expiration or termination of this Agreement, title to the Fuel Hydrant System shall transfer to City at the expiration or termination of this Agreement, City shall thereafter become the owner of the Fuel Hydrant System, and Lessee shall have no further responsibility for its operation and maintenance, including its compliance with applicable laws and regulations. If City notifies Lessee that the Fuel Hydrant System cannot remain in place after expiration or termination of this Agreement, Lessee shall remove the Fuel Hydrant System in compliance with Section 304, except that Lessee shall be required only to remove the storage tanks that form part of the Fuel Hydrant System and shall be permitted to abandon in place any piping and related structures or equipment which form part of the Fuel Hydrant System. Lessee shall provide the Director with written notice if the Director fails to notify Lessee of his election pursuant to this Section 305 within the first two years of the term of this Agreement, and if the Director fails to respond to such written notice within thirty (30) days of receipt, the Director shall be conclusively deemed to have elected to require Lessee to remove the Fuel Hydrant System in accordance with the terms and conditions of this Section 305.

ARTICLE IV RENT AND FEES

Section 401. General. Lessee, for and in consideration of the rights and privileges granted herein, agrees to promptly and timely pay the rent and fees set forth in this Agreement, without demand during the term of this Agreement.

Section 402. Rent Payment. Lessee will pay to City, at the Closing on the Property by MDC check, money order, certified cashier's or other bank check drawn on a local bank or by wire transfer, a rental amount of Fifteen Million Dollars (\$15,000,000.00) (the "Rent") due the City for the three year term, without any discount or offset of any kind for termination of this Agreement prior to the Expiration Date, for the City's exercise or failure to exercise the Office License, or any other reason. Lessee hereby acknowledges and agrees that if Lessee shall elect to terminate this Agreement with or without cause as provided for herein, the Rent shall not be adjusted or prorated or any portion refunded due to the termination or cancellation of the Agreement by either party.

Section 403. Unpaid Fees. All unpaid fee payments due City hereunder shall bear a service charge of one and one-half percent (1½%) per month if same is not paid and received by City on or before the date said payments are due, and Lessee agrees that it shall pay and discharge all costs and expenses including attorneys' fees, court costs and expenses incurred or expended by City in collection of said delinquent amounts due including service charges.

Section 404. Notice, Place and Manner of Payments for Fees. Payments for fees shall be made at the Office of Director at the address as set forth in Section 1001 below, or at such other place or by whatever payment method the City may determine as City may hereafter notify Lessee and shall be made in legal tender of the United States.

Section 405. Additional Fees and Charges. Lessee shall pay additional fees and charges under the following conditions:

- A. If City has paid any sum or sums or has incurred any obligation or expense for which Lessee has agreed to pay or reimburse City; or

- B. If City is required or elects to pay any sum or sums or incurs any obligations or expense because of the failure, neglect or refusal of Lessee to perform or fulfill any of the terms, covenants or conditions of this Agreement and City has provided Lessee with thirty (30) days written notification of such failure, neglect or refusal.

Such payments shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of fees and charges thereafter due hereunder. Each and every part of such payment shall be recoverable by City in the same manner and with like remedies as if it were originally a part of the basic fees and charges, as set forth herein.

For all purposes under this paragraph, and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum or sums by City for any work done or material furnished at the Premises shall be prima facie evidence against Lessee that the amount of such payment was necessary and reasonable.

Section 406. Prompt Payment of Taxes and Fees. Lessee warrants, covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and acquire and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport or the Premises.

ARTICLE V USE OF PREMISES

Section 501. Use. City hereby grants to Lessee, subject to all the terms, covenants, and conditions of this Agreement, permission to occupy and use the Premises and Improvements relating to Lessee's aerospace operations or other lawful uses as are incidental, necessary or customary to the proper use of the Premises.

Section 502. Compliance with Laws and Regulations. Lessee shall comply with all statutes, laws, ordinances, orders, judgments, decrees and regulations of all federal, state, local and other governmental authorities, including without limitation the "Airport Certification Manual" on file at the Director's Office, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

Lessee further agrees to abide by all federal, state, and local laws, regulations, and ordinances related to: (1) the transportation, storage, use, manufacture, generation, disposal, Discharge, spilling, or Release of Hazardous Substances and/or Extremely Hazardous Substances; (2) the transportation, storage, use, manufacture, generation, treatment, disposal, Discharge, Release, or spilling of Hazardous Wastes; (3) the transportation, storage, use, recovery, disposal, Discharge, Release or spilling of Oil or other petroleum products or derivatives; (4) the Discharge of effluents, Pollutants and/or Toxic Pollutants to publicly owned treatment works, stormwater systems, or to waters of the United States or tributaries thereof; (5) the emission of any regulated substance into the air; (6) the transportation, storage, treatment, disposal, Discharge, Release, or spilling of Infectious Waste; (7) the transportation, storage, treatment, recycling, reclamation, disposal, Discharge, Release or spilling of Solid Wastes; (8) the transportation, storage, treatment, recycling, or disposal of waste tires, waste Oil, used Oil, and/or used lead-acid batteries; and (9) the operation, use, storage, removal, transportation, disposal, remediation, and compliance issues regarding any and all above or underground storage tanks as the owner and operator of said storage tanks, until said storage tanks are removed by the Lessee (unless otherwise agreed to by the City in writing or except as provided for in Section 305). In addition, Lessee shall be responsible for securing all operating permits for the Premises to the extent such permits are required for the Premises by local, state, or federal officials or laws including, without limitation, air, water and waste disposal permits.

Lessee shall notify the Director, or his or her designee, of any violation of a law or regulation for the protection of the environment if such violation creates a significant risk to public health or the environment.

Lessee shall make available to City upon request all permits, approvals, reports, plans, correspondence, and other non-privileged records related to the Premises that are required or maintained in connection with any environmental laws, rules, or regulations. During the term of this Agreement, City and/or its agents or employees shall have the right to periodically inspect the Premises at reasonable times, upon reasonable notice and upon compliance with Lessee's security and confidentiality procedures to evaluate to its satisfaction Lessee's compliance with applicable environmental laws, rules, and regulations and with the terms of this Lease with respect to such matters.

Lessee's failure to comply with any provision of this section shall be considered a material breach of this Agreement if such failure

to comply creates a significant risk to public health or the environment. If such a material breach occurs, City, at its sole option, may terminate this Agreement, and seek other remedies at law or in equity subject to the terms of Article IX below.

Section 503. Repairs and Maintenance. Lessee shall, throughout the term of this Agreement, at its own cost, and without any expense to City, perform all reasonable maintenance in order to preserve the Premises and Improvements in materially the same condition as at the commencement of the term of this Agreement, reasonable wear and tear excepted. In the event that a material portion of the Improvements are destroyed or damaged by fire, casualty or any other cause whatsoever, Lessee, after consulting with the Director, shall, at its option (i) restore, rehabilitate, or replace all such Improvements or (ii) elect to declare a no fault cancellation of this Agreement (see Section 302 herein), whereupon Lessee shall have no further liability for any rent or other operational costs relating to the Premises, including without limitation taxes, insurance, utilities or maintenance, and shall assign the insurance proceeds for the full replacement value of such damaged or destroyed Improvements to the City. Any loss adjustment relating to the destruction or damage to Improvements shall require the written consent of both Lessee and the City (see ARTICLE VII titled "INSURANCE AND INDEMNIFICATION"). City shall not be obligated to perform any maintenance or make any repairs or replacements of any kind, nature or description, to the Premises or Improvements.

Lessee shall, at its sole cost and expense, take such measures as may be necessary to keep the Premises policed, secure, and in good repair. City shall have no obligation or responsibility to keep the Premises policed, secure, or in good repair.

Lessee warrants, covenants and agrees, without cost or expense to City during the term hereof, to perform the following:

- A. Good Condition. Keep all Improvements in good and safe order and condition.
- B. Obstruction Lights. Provide and maintain obstruction lights and all similar equipment or devices now or at any time required by any applicable law or ordinance, or any municipal, state or federal regulation.
- C. Housekeeping of Premises. Provide for complete, proper and adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its operations.
- D. Maintenance of Buildings and Structures. Maintain all buildings and structures on the Premises to prevent exterior or interior damage from water or other elements. This requirement includes immediate replacement of broken windows, doors and locks with like materials.
- E. Care of Premises and Streets. Keep all papers and debris picked up from the Premises and sweep the pavements thereon as often as necessary to keep clean, and keep all grass mowed, and shrubbery and other plantings pruned, trimmed and maintained to high standards. Provide for essential street, walkway and pavement maintenance within the Premises and, in addition, provide for snow and ice removal within the Premises to allow, at a minimum, emergency or fire protection access.
- F. Drainage Facilities. Comply with the Airport's Stormwater Detention Design Criteria and Guidelines dated December 1986 as revised from time to time, as well as any and all applicable federal, state, and municipal regulations. Lessee shall establish a system of periodic inspection, cleaning and maintenance to keep watercourses, catch basins and other drainage structures on the Premises functioning at full design capacity. Inspection, cleaning and maintenance intervals shall be established by Director with reports to be submitted within thirty (30) days of completion of each inspection, cleaning and maintenance. Lessee shall see that special care is taken to pile removed snow in a location that will permit the water generated by the melting of such snow piles to flow into the drainage system of the Premises.
- G. Environmental Responsibilities. Lessee shall have the sole obligation to make such reports or notifications to governmental authorities as may be required by law, rule, or regulation in the event of a Release or Discharge of a Hazardous Substance, Extremely Hazardous Substance, or Oil Product from the Premises, in the event of which Lessee shall also timely inform the Director of such Release or Discharge.

Upon discovery by Lessee's environmental compliance personnel, Lessee shall immediately notify the Director of any non-permitted Release or Discharge of Oil, including but not limited to any jet fuel, if there is a reasonable possibility that the Release or Discharge would move off-site or affect Coldwater Creek or other navigable waters of the State of Missouri or the United States of America.

Lessee shall be solely responsible for any follow-up reports, notifications, corrective action, or remediation required as a

result of any spill, Release, or Discharge described above; provided that Lessee does not hereby waive or relinquish any claims, demands, or remedies that lessee may have at law or in equity arising from or relating to any such spill, Release, or Discharge. Lessee shall promptly provide copies of any reports, notifications, correspondence, or cleanup verification to the Director upon written request.

Section 504. Right to Enter and Inspect. City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances, with as little interruption of Lessee's operations as is reasonably practicable and upon compliance with Lessee's security and confidentiality procedures) to enter upon and in the Premises for the following purposes:

- A. To inspect such Premises during normal business hours upon not less than forty-eight (48) hours prior notice (except during any construction being performed thereon or in the event of an emergency, and then at any time) to determine whether Lessee has complied and is complying with the terms, covenants and conditions of this Agreement.
- B. To make inspections, testings, reports, surveys, environmental inspections, studies and assessments during normal business hours upon not less than forty-eight (48) hours prior notice. City shall make any inspections, testings, reports, surveys, environmental inspections, studies and assessments in a reasonable manner so as to minimize the interference with the conduct of Lessee's business at the Premises.

Section 505. Utilities. Lessee shall provide for and pay for all utilities used on the Premises.

Section 506. Interference to Air Navigation. Lessee agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of FAR Part 77 or subsequent and additional regulations of the FAA, will be constructed or permitted to remain on the Premises. Lessee will remove any obstructions at its expense. Lessee agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. Lessee further agrees not to install any structures, objects, machinery or equipment that would interfere with the operations of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE VI CONSTRUCTION OR ALTERATION OF IMPROVEMENTS

Section 601. Construction or Modification by Lessee.

- A. Lessee takes the Premises "AS IS" and may, at its sole cost and expense, construct, refurbish or make improvements on the Premises in accordance with plans and specifications prepared by Lessee. However, any plans to refurbish the exterior or the interior of the building or facilities or make improvements to the Premises that exceed Two Hundred Thousand Dollars (\$200,000) must be prepared by the Lessee and submitted to the Director for Approval as provided for in Section 601B through 601H. Upon termination of this Agreement, Lessee shall not be required to remove any improvements to the Premises for which the Director has given his/her Approval under this Section 601.
- B. Lessee agrees that all such work that requires the Director's approval, shall be completed according to the Tenant Design Standards, which are filed of record in the Office of the Director.
 - Lessee shall submit a signed Tenant Construction or Alteration Application ("TCA") including complete construction drawings and specifications, as required by Section 601C below, to the Airport Properties Department.
 - Lessee shall submit to the Airport Properties Department a building permit number from any and all municipalities, political jurisdictions and regulatory agencies not more than thirty (30) days following submission of the TCA. (A building permit number is required prior to the start of any construction or modification by Lessee.)
 - Lessee shall submit the contractor's liability insurance certificates and payment bonds, required by Sections 601F and 601G below, to the Airport Properties Department not more than forty-five (45) days following the TCA approval by the Airport Properties Department and prior to beginning of work.

Lessee shall submit to the Airport Properties Department a copy of an occupancy permit from any and all municipalities, political jurisdictions and regulatory agencies, as required by Section 601H below, prior to occupancy.

If an Environmental Impact Statement is created by Lessee with respect to a TCA, Lessee shall submit to the Airport Properties Department a copy of the Environmental Impact Statement not more than thirty (30) days following submission of the TCA.

- C. Preparations of Plans and Specifications. Lessee shall submit detailed drawings, plans and specifications for improving the Premises. Lessee will begin work on proposed improvements only after it has received the written approval of its plans and specifications from the Director or his/her designee.
- D. Federal Aviation Administration Review. Prior to commencement of working, all preliminary plans, drawings and specifications shall be submitted to the FAA for review and approval, as may be required, with a copy to the Airport Properties Department. The preliminary plans shall show plot plans, the location and elevations of buildings and other improvements, and shall indicate proposed exterior materials and finishes for all structures. It shall be the responsibility of Lessee to file all necessary alteration and construction forms with the FAA for review and approval, as may be required, with a copy to the Airport Properties Department.
- E. Landscaping and Screening. Lessee shall provide and install appropriate landscaping and screening, including lawn, shrubbery, trees, bushes, vines and other plantings and screenings on the Premises as a part of any new construction. All proposed landscaping plans and screening designs shall be submitted to Director for review and approval. Lessee further agrees to provide any further necessary landscaping and fencing that may be required, during the term hereof, by Director, for the purposes of screening the Premises.
- F. Contractor's Liability Insurance. In any construction contract appertaining to the Premises, Lessee shall require the contractor to cause City, its Board of Aldermen, Airport Commission and their respective officers, agents, and employees, to be insured against the risk of claims and demands, just and unjust, by third parties, with bodily injury limits of not less than \$1,000,000 as to any one person and \$10,000,000 as to any one occurrence, and with property damage limits of not less than \$10,000,000 as to any one occurrence to the extent such claims and liabilities arise out of the negligence of the contractor. Said insurance shall be in a form agreeable to City, and Certificates showing proof of coverage shall be delivered to the Director.
- G. Payment Bonds. In order to insure the payment of all laborers and material suppliers of projects requiring the City's Approval, Lessee shall require each of its contractors and suppliers of construction materials to furnish payment bonds in the amount of the contract in a form acceptable to the City. The bonds shall comply with the coverage requirements and condition of Section 107.170 R.S.Mo. (2000 as amended). Copies of the bonds shall be given to the City for approval before work begins. Any sum or sums derived from said payment bonds should be used for the payment of laborers and material suppliers.
- H. Certificates of Completion. Upon the completion of the improvements hereunder, Lessee shall submit to Director a copy of its acceptance letter certifying completion, and a copy of any certificate or permit which may be required by any federal, state or local government or agency in connection with the completion or occupancy thereof by Lessee. Lessee at its cost shall deliver to City duplicate copies of "as constructed" plans and specifications of the new facilities on the Premises within sixty (60) days after the date on which Lessee has certified completion thereof.

Section 602. Signs. Lessee agrees that no new signs or advertising display shall be painted on or erected in any manner upon the Premises without the prior written approval of Director, and that such new signs shall conform to reasonable standards established by Director with respect to wording, type, size, design, color and location.

Section 603. Title to Improvements. Title to the Premises and all Improvements constructed or placed in or on the Premises by Lessee including all alterations, modifications and enlargements thereof shall become part of the Premises with title vesting in City upon expiration or earlier termination of this Agreement; provided, however, that this Section 603 shall not apply to Lessee's trade fixtures, the title to which shall remain in Lessee both during and after the term of this Agreement and which Lessee shall be entitled to remove from the Premises upon the termination, expiration or cancellation of this Agreement. Lessee's obligations to operate, repair, maintain, and insure the Improvements, as well as Lessee's right of possession, use and occupancy during the term in accordance with this Agreement shall not be affected by this Agreement.

Section 604. Mechanics' and Materialmen's Liens. Lessee agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the Improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

ARTICLE VII
INSURANCE AND INDEMNIFICATION

Section. 701 Liability Insurance. Lessee shall obtain, at its sole expense and maintain at all times during the term of this Agreement, liability insurance, on an occurrence basis, against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities of Lessee, its officers, agents, employees, consultants, contractors, licensees, independent contractors and invitees pursuant to this Agreement under the following types of coverage:

Comprehensive General Liability - \$10,000,000 Combined Single Limit;

Comprehensive Automobile Liability (any vehicles, including hired and non-owned vehicles)-\$10,000,000 Combined Single Limit.

The above referenced insurance must provide, and be so stated on the evidence of insurance, for any claims that may arise from Lessee's operation of an automobile within the aircraft operating area (including but not limited to runways, taxiways, and all ramp areas).

The minimum limits of coverage for the above classes of insurance shall equal a combined single limit as shown above or be comprised of such primary and excess policies of insurance as Lessee finds it feasible to purchase during the term of this Agreement.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, City and its Board of Aldermen, Airport Commission, officers, agents and employees shall be named as "Additional Insured" excluding claims to the extent resulting from the negligence or willful misconduct of the City. Such liability insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Lessee, its officers, agents, employees, consultants, contractors, licensees, independent contractors, and invitees. In addition, such insurance shall include contractual liability insurance sufficient to cover Lessee's indemnity obligation hereunder. City, its officers, employees and agents shall have no liability for any premiums charged for such coverage, and the inclusion of City, and its Board of Alderman, Airport Commission, officers, employees and agents as Additional Insured is not intended to, and shall not, make City, its officers, employees and agents a partner or joint venture partner with Lessee in its operations hereunder.

Section 702. Property Insurance. Lessee shall, at all times during the Initial and any Renewal Terms of this Agreement, and at Lessee's sole expense, keep all Improvements (exclusive of Lessee's trade fixtures and equipment) which are existing or may be hereafter erected on the Premises insured against loss, damage or destruction by fire, lightning, extended coverage or other casualty and vandalism hazards except perils of earthquake and flood for one hundred percent (100%) of the full replacement value of such Improvements, with loss payable to Lessee and to City as their interests may appear. Any loss adjustment shall require the written consent of both Lessee and City. City shall be included as a loss payee as City's interest may appear under any form of commercial property insurance.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, City and its Board of Aldermen, Airport Commission, officers, agents and employees shall be named as "Additional Insured" excluding claims to the extent resulting from the negligence or willful misconduct of the City. Such property insurance coverage shall also extend to damage, destruction and injury to City owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Lessee, its officers, agents, employees, consultants, contractors, licensees, independent contractors, and invitees and contractual liability. City, its officers, employees and agents shall have no liability for any premiums charged for such coverage, and the inclusion of City, and its Board of Alderman, Airport Commission, officers, employees and agents as Additional Insured is not intended to, and shall not, make City, its officers, employees and agents a partner or joint venture partner with Lessee in its operations hereunder.

Section 703. Workers' Compensation. Lessee shall obtain, at its sole expense and at all times during the term of this Agreement for its employees working on Airport Premises Workers' Compensation insurance coverage at least at the statutory limits applicable to Lessee's operations in the State of Missouri.

Section 704. Waiver of Subrogation.

- A. Lessee, on behalf of itself and its insurers, hereby waives any claim or right of recovery from City, its Board of Aldermen, Airport Commission, officers, employees and agents for loss or damage to Lessee or its property or the property of others under Lessee's control, to the extent that such loss is covered by valid insurance policies or could be covered by an "all risk" physical damage property insurance policy. Lessee shall provide notice of this waiver of subrogation to its insurers.
- B. City, on behalf of itself and its insurers, hereby waives any claim or right of recovery from Lessee, its Board of Directors, officers, employees and agents for loss or damage to City or its property or the property of others under City's control, to the extent that such loss is covered by valid insurance policies or could be covered by an "all risk" physical damage property insurance policy. City shall provide notice of this waiver of subrogation to its insurers.

Section 705. Evidence of Insurance. Certificates, or other evidence of insurance coverage and special endorsements required of Lessee in this Article VII, shall be delivered to Director not less than fifteen (15) days prior to the commencement of the Term hereof or the date when Lessee shall enter into possession, whichever occurs later.

At least fifteen (15) days prior to the expiration of any such policy, Lessee shall submit to Director a certificate showing that such insurance coverage has been renewed. If such coverage is canceled or reduced, Lessee shall within fifteen (15) days after the date of such written notice from the insurer of such cancellation or reduction in coverage, file with Director a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

Each policy of insurance shall provide that the policy may not be materially changed, altered (in a manner that would adversely affect the coverage available to the City or other additional insurers hereunder) or canceled by the insurer during its term without first giving thirty (30) days written notice to Director. Each such insurance policy shall also provide primary coverage to City when any policy issued to City provides duplicate or similar coverage and in such circumstances, City's policy will be excess over Lessee's policy.

Lessee and City understand and agree that the minimum limits of the liability insurance herein required may become inadequate, and Lessee agrees that it will increase such minimum limits upon receipt of notice in writing from Director. Such notices to change shall, be issued with no more frequent than once every other year of this Agreement's term; however, said change in liability coverage required shall be reasonable in light of insurance requirements for similar tenants in similar premises at United States airports. City shall provide Lessee with such written notice and Lessee shall comply within sixty (60) days without any adjustment to the rent payment and fees set forth in this Agreement.

Section 706. Indemnification.

- A. Subject to and consistent with Sections 304 and 706.B. of this Agreement, Lessee shall protect, defend, and hold the City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises and the negligent acts or omissions of Lessee's officers, agents, employees, contractors, subcontractors, licensees, independent contractors or invitees regardless of where the injury, death, or damage may occur. City and Lessee each mutually agree that each will be responsible for their own negligent acts and/or negligent omissions and that the foregoing indemnity therefore does not apply to claims to the extent they arise from the negligence or willful misconduct of any of the indemnified parties. Director or his/her designee shall give to Lessee reasonable notice of any such claims or actions. Lessee shall also use counsel reasonably acceptable to the City Counselor of City or his/her designee, after consultation with Director or his/her designee in carrying out its obligations hereunder.
- B. Environmental Indemnity. Lessee shall protect, indemnify, defend, and hold harmless the City and its board of Aldermen, the Airport Commission and its officers, agents, and employees against any lawsuits, administrative proceedings, claims, or administrative or judicial orders for any liability, cost, expenditure, injury, damage, penalty, or fine arising from or relating to Lessee's material breach of any of its covenants in Sections 304, 305, 502, 503F and 503G. This indemnification of City by Lessee includes, without limitation, all reasonable and necessary costs and expenses related to the sampling, testing, investigation, clean up, removal, remediation, decontamination, or restoration of the Premises and other affected areas, including, but not limited to, air, land, soil, or underground or surface water, to the extent and in a manner consistent with the standards set forth in Section 304, whether prompted by governmental action or private action,

and also includes the reasonable and necessary costs of legal representation in connection with such sampling, testing, investigation, cleanup, removal, remediation, decontamination, or restoration of the Premises and other affected areas. Director or his/her designee shall give to Lessee reasonable notice of any such claims or actions within sixty (60) days after City receives notice of the claim or action or an occurrence that is likely to give rise to a claim or action. Lessee shall also use counsel reasonably acceptable to the City Counselor of City or his/her designee, after consultation with Director or his/her designee in carrying out its obligations hereunder. City shall cooperate fully with Lessee in any defense or settlement against any such claim, action, or liability.

- C. AOA Indemnity. Lessee agrees that if a prohibited incursion into the AOA occurs; or if the safety or security of the AOA, the Field and Runway Area, or other sterile area safety or security is breached by or due to the negligence or willful act or omission of any of Lessee's employees, agents, contractors, subcontractors, consultants, licensees, independent contractors, invitees, visitors, guests, patrons or permittees and such incursion or breach results in a civil penalty action being brought against City by the U.S. Government, Lessee will reimburse City for all expenses, including attorneys' fees and litigation expenses, incurred by City in defending against the civil penalty action and for any civil penalty or settlement amount paid by City as result of such action or inaction, incursion or breach. City shall notify Lessee of any allegation, investigation, or proposed or actual civil penalty sought by the U.S. Government related to action or inaction of Lessee. Civil penalties and settlements and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAR Part 107, Airport Security, FAR Part 108, Airplane Operator Security, or FAR Part 139, Certification and Operations: Land Airports Serving Certain Air Carriers.

ARTICLE VIII ASSIGNMENT AND SUBLETTING

Section 801. Assignment and Subletting. Lessee shall not assign this Agreement without first obtaining the written approval of City as required by City Ordinance 63687, which approval shall not be unreasonably withheld. At least one hundred twenty (120) days prior to any contemplated assignment of this Agreement, Lessee shall submit a written request to the Director. No assignment shall be made or shall be effective unless Lessee shall not be in default on any of the terms, covenants and conditions herein contained. The party to whom such assignment is made shall expressly assume in writing the terms, covenants, and conditions contained in this Agreement and such assignment shall not release Lessee from any of the terms, covenants, conditions or obligation of this Agreement. Any such assignment without the consent of City as provided for above shall constitute a default on the part of Lessee under this Agreement; provided, however, that Lessee shall have the right to assign this Agreement to an affiliate of Lessee having a net worth equal to or greater than that of Lessee at the time of such assignment, including The Boeing Company, without the consent of the City as provided in this Section 801, provided that such assignment shall not release Lessee from any of the terms, covenants, conditions or obligations of this Agreement. No action or failure to act on the part of any officer, agent, or employee of City shall constitute a waiver by City of this provision of this Agreement.

Lessee may sublet the Premises with the prior written approval of the Director. At least thirty (30) days prior to any contemplated sublease of all or any part of the Premises, Lessee must submit in writing a request to the Director. This request must include a copy of the proposed sublease. Any sublease for space or granting of rights acquired hereunder shall be subject to the review and prior written approval of Director, which shall not be unreasonably withheld. Such a sublease must require at a minimum: (1) strict compliance with all provisions of this Agreement and (2) a provision that the Sublessee will use the facilities solely for the purposes identified in this Agreement and (3) a provision that the term of the sublease shall expire immediately at the expiration or early termination of this Agreement. Lessee shall be responsible for the performance of its Sublessees and shall initiate and take all corrective action should a Sublessee fail to comply with its contract with Lessee or any provision of this Agreement.

ARTICLE IX TERMINATION OF AGREEMENT IN ENTIRETY BY REASON OF DEFAULT

Section 901. City's Right to Terminate. City, acting by and through its Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 903 hereof, upon the happening of any one or more of the following events:

- A. If the fees, charges, or other money payments which Lessee herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.
- B. If, during the term of this Agreement, Lessee shall:
1. Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its

assets;

2. File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
3. Make a general assignment for the benefit of creditors;
4. File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
5. File an answer admitting the material allegations of a petition filed against any said assignee or Sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Lessee a bankrupt or insolvent, or approving a petition seeking a reorganization of Lessee, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.

- C. If Lessee shall have materially failed in the performance of any term, covenant or condition herein required to be performed by Lessee.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Lessee shall expire, except as otherwise provided in Section 903 hereof.

Failure of City to take any authorized action upon default by Lessee of any of the terms, covenants or conditions required to be performed, kept and observed by Lessee shall not be construed to be or act as a waiver of default or in any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Lessee. The acceptance of monies by City from Lessee for any period or periods after a default by Lessee of any of the terms, covenants and conditions herein required to be performed, kept and observed by Lessee shall not be deemed a waiver or release of any right on the part of City to terminate this Agreement for failure by Lessee to so perform, keep or observe any of said terms, covenants or conditions.

Section 902. Lessee's Right to Terminate. Lessee, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 903 hereof for the following causes:

- A. If a court of competent jurisdiction issues an injunction or restraining order against City preventing or restraining the use of the Airport for Airport purposes in its entirety or substantial entirety.
- B. If City shall have abandoned the Airport for a period of at least ninety (90) days and shall have failed to operate and maintain the Airport in such manner as to permit landings and takeoffs of airplanes.
- C. In the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that any agency or instrumentality of the U.S. Government or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action, of normal civilian traffic at the Airport or of the use of motor vehicles or airplanes by the general public, and any of said events shall result in material interference with Lessee's normal business operations or substantial diminution of Lessee's gross revenue from the operation at the Airport, continuing for a period in excess of one hundred and eighty days (180) days.
- D. If City shall have materially failed in the performance of any term, covenant or condition within the control of City and herein required to be performed by City.

Section 903. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than ninety (90) days have elapsed after notice by either party to the other specifying the date upon which such termination shall take effect, and the cause for which this Agreement is being terminated and no such termination shall be effective if such cause of default is cured within said ninety (90) day period, or if by its nature cannot be cured within such ninety (90) day period, and if the party at default commences to correct such default within said ninety (90) days and corrects the same as promptly as is reasonably practicable. In the event that suit shall be instituted by City upon the default of payment of charges and fees as provided herein, then Lessee agrees also to pay a reasonable attorney's fee, court costs and expenses.

Section 904. Rights Cumulative. It is understood and agreed that the rights and remedies of City and Lessee specified in this

used for the purposes contemplated by this Agreement. In the event of a Partial Taking, City shall refund to Lessee that portion of the Rent equal to the Rent (i) multiplied by a fraction, the numerator of which equals the number of days from the date of the Total Taking until the Expiration Date and the denominator of which equals 1095 and (ii) multiplied by a fraction, the numerator of which equals the square footage of the Premises subject to such partial taking and the denominator of which equals the square footage of the Premises as of the Commencement Date.

- C. Possession by Lessee - Notwithstanding any termination of this Agreement in whole or in part under Paragraphs A and B of this Section, Lessee may remain in possession of each portion of the Premises as shall be so taken at the rent herein provided, until the condemning authority shall require Lessee to surrender such possession. Any rent or charge in the nature of rent which Lessee is required to pay to the condemning authority in consideration of such remaining in possession shall be paid by Lessee and shall reduce pro tanto the obligation of Lessee to payment hereunder.
- D. Whether all or a portion of the Premises should be taken in a condemnation proceeding, Lessee shall be entitled to receive from the City that portion of the condemnation award allocable to the value of Lessee's improvements on the Premises as well as the value of Lessee's leasehold interest in the Premises.

Section 1004. Non-Discrimination and Affirmative Action Program.

- A. Lessee hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport will not, on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Lessee hereby agrees that its Premises shall be posted to such effect as required by such regulation.
- B. Lessee agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Lessee will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. Lessee will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Lessee state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer." Lessee shall not make inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Lessee agrees that should it be determined by Lessee or City that he will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, Lessee will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within ten (10) days of such determination, as to the steps to be taken by Lessee to achieve the provisions of its program.
- E. Lessee will permit reasonable access by City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.
- F. Lessee further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Lessee in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- G. Whenever Lessee is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through F) of these provisions relating to fair employment practices, Lessee shall notify the City Counselor in writing of such suit or threatened suit within ten (10) business days.
- H. In event of Lessee's noncompliance with nondiscrimination clauses of this Agreement, or to furnish information or permit

his books, records and account to be inspected within twenty (20) days from date requested, this Agreement may be canceled, terminated or suspended, in whole or in part subject to Article X above, and Lessee may be declared ineligible for further City contracts for a period of one year by option of City, provided, further, if this Agreement is canceled, terminated or suspended for failure to comply with fair employment practices, Lessee shall have no claims for any damages or loss of any kind whatsoever against City.

- I. Lessee will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and City reserves the right to take such action as the City of St. Louis and the U.S. Government may direct to enforce the above covenants.
- J. Lessee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered suborganizations provide assurances to the Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 1005. No Personal Liability. No Alderman, Commissioner, Director, officer, board member, employee or other agent of either party shall be personally liable under or in connection with this Agreement.

Section 1006. Force Majeure. Neither City nor Lessee shall be deemed in violation of this Agreement, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellions, or sabotage, or any other circumstances for which it is not responsible and which is not within its control.

Section 1007. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and permitted assigns of the respective parties hereto.

Section 1008. Quiet Enjoyment. Subject to the terms, covenants and conditions of this Agreement, City covenants that Lessee on paying the rent and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

Section 1009. Operation and Maintenance of Airport. City shall at all times operate the Airport properly and in a sound and economical manner; and City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1010. Title to Site. The Premises from the date hereof until the expiration or early termination of this Agreement shall be owned in fee simple title by City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by City as herein provided for the full term provided in this Agreement.

Section 1011. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any agreements heretofore made between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Development Act as it has been amended from time to time.

Section 1012. Modifications to Maintain Federal Compliance. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement, development, or expansion of the Airport, modifications or changes to this Agreement or determines this Agreement to be inconsistent with City's grant assurances, current or future, Lessee agrees to consent to such reasonable amendments, modifications, or changes to this Agreement as may be reasonably required to enable the City to obtain said funds or to comply with the City's grant assurances.

Section 1013. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri and is subject to the City's Charter.

Section 1014. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1015. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by all the signatories to this Agreement.

Section 1016. Previous Agreements. It is expressly understood by the parties that the terms and provisions of this Agreement shall in no way affect or impair the terms, covenants, conditions, or obligations of any existing or prior agreement between the Lessee and the City.

Section 1017. Withholding Required Approvals. Whenever the approval of City, or Director, or of Lessee is required herein, no such approval shall be unreasonably requested or withheld.

Section 1018. Waivers. No waiver of default by either party of any of the terms, covenants or conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. No waiver shall be binding unless executed in writing by the party granting the waiver.

Section 1019. Invalid Provisions. In the event any term, covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained, provided the invalidity of any such term, covenant, condition or provision does not materially prejudice either City or Lessee in its respective rights and obligations contained in the valid terms, covenants, conditions and provisions of this Agreement.

Section 1020. Americans with Disabilities Act ("ADA"). Lessee shall be responsible for compliance with the Federal ADA, plus any State laws and City Ordinances pertaining to the disabled individual having access to the Premises.

Section 1021. Advertising. Lessee shall have no right to use the trademarks, symbols, trade names or name of the Airport, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of Director.

Section 1022. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Agreement.

Section 1023. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. Each party acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule, of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

Section 1024. Entire Agreement. The terms, covenants, warranties, conditions, and provisions of this Agreement are intended by the parties as a final expression of their agreement with respect to said provisions as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto and all other representations or statements heretofore made, verbal or written are merged herein and this Agreement may be amended by written agreement duly authorized and executed by all the signatories to this Agreement. Lessee acknowledges that any such amendment to this Agreement must be approved by the City's Board of Estimate and Apportionment and its Board of Aldermen. However the Airport Director, on behalf of the City and in its best interest, may agree to amend the exhibits referred to herein.

Section 1025. Required Approvals. When the consent, approval, waiver, or certification of other party is required under the terms of this Agreement, excepting an amendment of this Agreement pursuant to Section 1014 (an "Approval"), the Approval must be in writing and signed by the party making the Approving. Whenever the Approval of City or the Director is required, the Approval must be from the Director or his/her authorized or designated representative. Whenever the Approval of Lessee is required, the

Approval must be from Jerry Olsen, Director - General Services & Facilities, Military Aircraft & Missile Systems or his authorized or designated representative. City and Lessee agree that extensions of time for performance may be made by the written mutual consent of the Director and Lessee.

Section 1026. Binding Contract; Counterparts. This Agreement shall become effective and binding only upon the execution and delivery hereof by the City and MDC. MDC acknowledges and agrees that this Agreement is contingent upon the approval of the City's Board of Estimate and Apportionment and its Board of Aldermen, and payment of the Rent at the Closing (see Section 402 herein). This Agreement and any companion documents or instruments referred to herein, may be executed in any number of counterparts, each of which shall be original, but all of which together shall constitute one document or instrument.

Section 1027. Exhibits. All exhibits described herein are fully incorporated into this Agreement by this reference as if fully set out herein. City and Lessee shall reasonably and in good faith finalize and attach all such exhibits to this Agreement, which may not have been in final form as of the Effective Date of the Agreement. This Agreement shall become effective and binding only upon the execution and delivery hereof by the City and MDC.

IN WITNESS WHEREOF, the parties hereto for themselves, their successors and assigns, have executed this Agreement the day and year first above written (the "Effective Date").

THE CITY OF ST. LOUIS, MISSOURI, OPERATING LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT:

Pursuant to City of St. Louis Ordinance _____, approved _____, 2001.

The foregoing Agreement was approved in substance by the Airport Commission at its meeting on the _____ day of _____, 2001.

By: _____

Commission Chairman Date
and Director of Airports

The foregoing Agreement was approved in substance by the Board of Estimate and Apportionment at its meeting on _____, 2001.

Secretary Date
Board of Estimate & Apportionment

APPROVED AS TO FORM:

COUNTERSIGNED:

City Counselor Date
City of St. Louis

Comptroller Date
City of St. Louis

ATTEST:

Register Date
City of St. Louis

McDONNELL DOUGLAS CORPORATION:

BY: _____
Date

TITLE: _____

EXHIBIT A**PREMISES DESCRIPTION**

LEGAL DESCRIPTION OF THE PREMISES:

A TRACT OF LAND BEING PART IN U. S. SURVEYS 7, 1249, 8, 4, 1251, 1247 AND 3096, TOWNSHIP 46 NORTH, RANGE 6 EAST IN ST. LOUIS COUNTY, MISSOURI; SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE EAST LINE OF THE RIGHT-OF-WAY OF LINDBERGH BOULEVARD, 150.00 FEET WIDE AT ITS INTERSECTION WITH THE SOUTH LINE OF THE WABASH RAILROAD RIGHT-OF-WAY, 100.00 FEET WIDE, THENCE ALONG SAID SOUTH LINE OF THE WABASH RAILROAD RIGHT-OF-WAY ALSO BEING THE NORTH LINE OF A PRIVATE ROAD 40.00 FEET WIDE (ALSO KNOWN AS BANSHEE ROAD), WHICH IS PARALLEL WITH SAID WABASH RAILROAD RIGHT-OF-WAY, SOUTH 86 DEGREES 36 MINUTES 45 SECONDS EAST, A DISTANCE OF 388.37 FEET; THENCE ACROSS SAID BANSHEE ROAD, SOUTH 03 DEGREES 23 MINUTES 15 SECONDS WEST, A DISTANCE OF 40.00 FEET TO A POINT IN THE SOUTH LINE OF SAID BANSHEE ROAD ALSO BEING THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT; THENCE ALONG THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 86 DEGREES 36 MINUTES 45 SECONDS EAST, A DISTANCE OF 2939.05 FEET TO A POINT; THENCE LEAVING THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 03 DEGREES 23 MINUTES 57 SECONDS WEST, A DISTANCE OF 312.60 FEET TO A POINT; THENCE SOUTH 86 DEGREES 36 MINUTES 03 SECONDS EAST, A DISTANCE OF 438.00 FEET TO A POINT; THENCE NORTH 03 DEGREES 15 MINUTES 54 SECONDS EAST, A DISTANCE OF 312.54 FEET TO A POINT ON THE SAID SOUTH LINE OF BANSHEE ROAD; THENCE ALONG THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 86 DEGREES 31 MINUTES 06 SECONDS EAST, A DISTANCE OF 245.53 FEET TO A POINT; THENCE LEAVING THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 03 DEGREES 33 MINUTES 48 SECONDS WEST, A DISTANCE OF 196.62 FEET TO A POINT; THENCE NORTH 86 DEGREES 26 MINUTES 12 SECONDS WEST, A DISTANCE OF 26.10 FEET TO A POINT; THENCE SOUTH 03 DEGREES 33 MINUTES 48 SECONDS WEST, A DISTANCE OF 68.50 FEET TO A POINT; THENCE SOUTH 86 DEGREES 26 MINUTES 12 SECONDS EAST, A DISTANCE OF 72.20 FEET TO A POINT; THENCE NORTH 03 DEGREES 33 MINUTES 48 SECONDS EAST, A DISTANCE OF 68.50 FEET TO A POINT; THENCE NORTH 86 DEGREES 26 MINUTES 12 SECONDS WEST, A DISTANCE OF 26.10 FEET TO A POINT; THENCE NORTH 03 DEGREES 33 MINUTES 48 SECONDS EAST, A DISTANCE OF 196.65 FEET TO A POINT ON THE SAID SOUTH LINE OF BANSHEE ROAD; THENCE ALONG THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 86 DEGREES 31 MINUTES 06 SECONDS EAST, A DISTANCE OF 178.81 FEET TO A POINT; THENCE LEAVING THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 03 DEGREES 07 MINUTES 33 SECONDS EAST, A DISTANCE OF 251.25 FEET TO A POINT; THENCE SOUTH 86 DEGREES 42 MINUTES 02 SECONDS EAST, A DISTANCE OF 202.34 FEET TO A POINT; THENCE SOUTH 62 DEGREES 49 MINUTES 30 SECONDS WEST, A DISTANCE OF 1129.20 FEET TO A POINT; THENCE SOUTH 81 DEGREES 08 MINUTES 00 SECONDS WEST, A DISTANCE OF 866.89 FEET TO A POINT; THENCE NORTH 86 DEGREES 36 MINUTES 45 SECONDS WEST, A DISTANCE OF 2074.62 FEET TO A POINT; THENCE NORTH 18 DEGREES 21 MINUTES 45 SECONDS WEST, A DISTANCE OF 350.99 FEET TO A POINT; THENCE NORTH 03 DEGREES 23 MINUTES 15 SECONDS EAST, A DISTANCE OF 683.98 FEET TO THE POINT OF BEGINNING AND CONTAINING 3,310,076 SQUARE FEET OR 75.99 ACRES MORE OR LESS.

RESERVING TO MCDONNELL DOUGLAS CORPORATION AND ITS SUCCESSORS AND ASSINGS IN OWNERSHIP A NON-EXCLUSIVE PERMANENT 20 FOOT WIDE UTILITY EASEMENT OVER, THROUGH, AND ACROSS THE ABOVE DESCRIBED TRACT OF LAND AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A POINT IN THE EAST LINE OF THE RIGHT-OF-WAY OF LINDBERGH BOULEVARD, 150.00 FEET WIDE AT ITS INTERSECTION WITH THE SOUTH LINE OF THE WABASH RAILROAD RIGHT-OF-WAY, 100.00 FEET WIDE, THENCE ALONG SAID SOUTH LINE OF THE WABASH RAILROAD RIGHT-OF-WAY ALSO BEING THE NORTH LINE OF A PRIVATE ROAD 40.00 FEET WIDE (ALSO KNOWN AS BANSHEE ROAD), WHICH IS PARALLEL WITH SAID WABASH RAILROAD RIGHT-OF-WAY, SOUTH 86 DEGREES 36 MINUTES 45 SECONDS EAST, A DISTANCE OF 388.37 FEET TO A POINT; THENCE ACROSS SAID BANSHEE ROAD, SOUTH 03 DEGREES 23 MINUTES 15 SECONDS WEST, A DISTANCE OF 40.00 FEET TO A POINT IN THE SOUTH LINE OF SAID BANSHEE ROAD; THENCE ALONG THE SAID SOUTH LINE OF BANSHEE ROAD SOUTH 86 DEGREES 36 MINUTES 45 SECONDS EAST, A DISTANCE OF 2939.05 FEET TO A POINT; THENCE SOUTH 03 DEGREES 23 MINUTES 57 SECONDS WEST, A DISTANCE OF 312.60 FEET TO A POINT; THENCE SOUTH 86 DEGREES 36 MINUTES 03 SECONDS EAST, A DISTANCE OF 438.00 FEET TO A POINT; THENCE NORTH 03 DEGREES 15 MINUTES 54 SECONDS EAST, A DISTANCE OF 46.64 FEET TO THE POINT OF

BEGINNING OF THE HEREIN DESCRIBED EASEMENT; THENCE NORTH 03 DEGREES 15 MINUTES 54 SECONDS EAST, A DISTANCE OF 20.00 FEET TO A POINT; THENCE SOUTH 86 DEGREES 44 MINUTES 06 SECONDS EAST, A DISTANCE OF 218.15 FEET TO A POINT; THENCE SOUTH 03 DEGREES 33 MINUTES 48 SECONDS WEST, A DISTANCE OF 20.00 FEET TO A POINT; THENCE NORTH 86 DEGREES 44 MINUTES 06 SECONDS WEST, A DISTANCE OF 218.04 FEET TO THE POINT OF BEGINNING.

| BUILDINGS IN TRACT I SOUTH | |
|--|---------------------------|
| Boeing Building Number | Description |
| 1 | Office Building |
| 2 | Manufacturing Building |
| 3 | Office Building |
| 4 | Medical Treatment Center |
| 7 | Gatehouse |
| 10 | Storage Building |
| 11 | Gun Range Laboratory |
| 11A | Gun Range Office |
| 12 | Gun Range Laboratory |
| 13 | Gun Butts |
| 16 | Gun Range Laboratory |
| 40 | Ramp Service Building |
| 41 | Chemical Storage Building |
| 42 | Production Hangar |
| 43 | Ramp Utilities Building |
| 44 | Pump House |
| 44A | Pump Storage Tank |
| 45 | Production Hangar |
| 45C | Hush House |
| 45D | Hush House |
| 45E | Hush House |
| 45J | Hangar Service Building |
| 45K | Fuel System Facility |
| 45L | Hush House |
| 46 | Fuel Filter Building |
| 48 | Paint Facility |
| 49 | Water Check Facility |
| 49A | Water Check Facility |
| CHEM MILL FACILITY IN TRACT I SOUTH | |
| 51 | Manufacturing Building |
| 52 | Manufacturing Building |
| 54 | Service Building |
| 55 | Service Building |

| | |
|----|--------------|
| 56 | Boiler House |
|----|--------------|

EXHIBIT B
OFFICE LICENSE PREMISES DESCRIPTION
(MDC TO PROVIDE)

See attached **EXHIBIT B - (BOEING-ST. LOUIS LEVEL 1, page 2 of 3)** and **EXHIBIT B - (BOEING-ST. LOUIS LEVEL 2, page 3 of 3)**

EXHIBIT “C”
SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made and entered into this ____ day of _____, 2001, by and between MCDONNELL DOUGLAS CORPORATION, a corporation organized and existing under the laws of the State of Maryland, Party of the First Part (the “Grantor”), and THE CITY OF ST. LOUIS, a Municipal Corporation of the State of Missouri, whose address is City Hall, Room 200, 1200 Market Street, St. Louis, Missouri 63103, Party of the Second Part (the “City”).

WITNESSETH: that Grantor, for and in consideration of that certain monetary consideration paid by the City and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does by these presents **BARGAIN, SELL, CONVEY AND CONFIRM** unto the City, its successors and assigns, the following real estate, situated in the County of St. Louis, and State of Missouri, commonly known as the Northern Tract and more particularly described in **EXHIBIT “1”**, entitled “LEGAL DESCRIPTION OF THE PROPERTY”, which is attached hereto and incorporated herein (the “Property”).

SUBJECT TO the liens, encumbrances and other exceptions listed in **EXHIBIT “4”**, entitled “EXCEPTIONS” which is attached hereto and incorporated herein (the “Exceptions”) and **SUBJECT TO** the covenants and conditions below stated:

1. **TO HAVE AND TO HOLD** the Property, together with all rights, titles, interest, privileges, improvements, and appurtenances and immunities thereto belonging or in any way appertaining, unto the City and unto its successors and assigns forever. The Grantor hereby covenanting that the Property is free and clear from any lien or encumbrance done or suffered by it, other than the Exceptions and the covenants and conditions stated herein, and that the Grantor and its successors and assigns, shall and will **WARRANT AND DEFEND** the title to the Property unto the City, and to its successors and assigns forever, against any such other lawful claims of persons claiming by, through, or under the Grantor but none other.
2. Grantor hereby reserves and declares an easement over, through and across the Property as a strip of land twenty (20) feet wide, located upon those portions of the Property through which pipes and conduits for steam, compressed air and condensate return are presently situated (the “Steam Easement”), for the use, enjoyment, operation, maintenance, repair, replacement and removal of such pipes and conduits. Such pipes and conduits for steam, compressed air and condensate return connect to facilities for the generation of steam and compressed air (the “Steam Facilities”) located on the land adjacent to the Property and described more fully in **EXHIBIT “2”** (the “MDC Property”). The Steam Easement shall be an appurtenant easement running with the land for the benefit of the owners of the land identified in **EXHIBIT “3”** attached hereto and made a part hereof (the “Northern Property”) and the owners of the MDC Property, their successors and assigns, and the employees, agents, lessees, contractors and operators claiming through them (the “Steam Easement Beneficiaries”). The Steam Easement, along with all other rights and obligations created under this Section 2, shall terminate as of the termination date of that certain Northern Tract Lease of even date herewith, by and between Grantor and the City (the “Lease Termination Date”).
3. Grantor hereby reserves and declares an easement over, through and across the Property as a strip of land twenty (20) feet wide, located upon those portions of the Property through which the electrical service lines leading to the electrical substations located on the MDC Property (the “Substations”) and connecting the Substations with the Northern Property and any other buildings, structures or facilities located on the MDC Property, as those electrical service lines are presently situated on the Property (the “Electrical Easement”) for the use, enjoyment, operation, maintenance, repair, replacement and removal of the electrical service and supply lines. The Electrical Easement shall be an appurtenant easement running with the land for the benefit of the owners of the land identified herein as the Northern Property and the MDC Property, their successors and assigns, and the employees, agents, lessees, contractors and operators claiming through them (the “Electrical Easement Beneficiaries”). The Electrical Easement, along with all other rights and obligations under this Section 3 shall terminate as of the Lease Termination Date.
4. Grantor hereby reserves and declares an easement over, through and across the Property as a strip of land twenty (20) feet

wide, located upon those portions of the Property through which pipes, conduits and equipment for the fire protection water supply are currently located (the "Fire Protection Easement") for the use, enjoyment, operation, maintenance, repair, replacement and removal of such pipes, conduits and equipment. The Fire Protection Easement shall be an appurtenant easement running with the land for the benefit of the owners of the land identified herein as the Northern Property and the MDC Property, their successors and assigns, and the employees, agents, lessees, contractors and operators claiming through them ("Fire Protection Easement Beneficiaries"). The Fire Protection Easement, along with all other rights and obligations under this Section 4 shall terminate as of the Lease Termination Date.

5. Grantor hereby reserves and declares an easement over, through and across the Property as a strip of land twenty (20) feet wide, located upon those portions of the Property through which pipes, conduits and equipment for the potable water supply are currently located (the "Water Easement") for the use, enjoyment, operation, maintenance, repair, replacement and removal of such pipes, conduits and equipment. The Water Easement shall be an appurtenant easement running with the land for the benefit of the owners of the land identified herein as the MDC Property, their successors and assigns, and the employees, agents, lessees, contractors and operators claiming through them ("Water Easement Beneficiaries"). The Water Easement, along with all other rights and obligations under this Section 5 shall terminate as of the Lease Termination Date.

6. Grantor hereby reserves and declares a permanent easement over, through and across the Property as a strip of land twenty (20) feet wide, located upon those portions of the Property through which pipes, conduits, culverts and equipment for the industrial waste sewers, storm sewers and sanitary sewers are currently located (the "Sewer Easement") for the use, enjoyment, operation, maintenance, repair, replacement and removal of such pipes, conduits, culverts and equipment. The Sewer Easement shall be an appurtenant easement running with the land in perpetuity for the benefit of the owners of the land identified herein as the Northern Property and the MDC Property, their successors and assigns, and the employees, agents, lessees, contractors and operators claiming through them ("Sewer Easement Beneficiaries").

In the event that the City, its successors or assigns, desires to redevelop the Property in a manner which would interfere with or encroach upon the Sewer Easement, the City, its successors and assigns shall have the sole right to require the Sewer Easement Beneficiaries to relocate at their costs such utility systems for which the Sewer Easement has been reserved, as provided for below:

(A) Within one hundred and eighty (180) calendar days of the City's request (excepting delays for force majeure or conditions or circumstance beyond the reasonable control of the Sewer Easement Beneficiaries), the Sewer Easement Beneficiaries shall relocate or abandon in place said utility systems for which the Sewer Easement has been reserved and shall within said proscribed 180 days timely vacate the Sewer Easement created by this Special Warranty Deed.

7. The Steam Easement, the Electrical Easement, the Fire Protection Easement, the Water Easement and the Sewer Easement (collectively, the "Easements") shall each be a non-exclusive easement, except that no other person or entity, including the City, shall use or encroach upon any part of the Easements in a way that would unreasonably impair or impinge upon the use of the Easements by the respective Steam Easement Beneficiaries, Electrical Easement Beneficiaries, Fire Protection Easement Beneficiaries, Water Easement Beneficiaries and Sewer Easement Beneficiaries (collectively, the "Beneficiaries") for the purposes contemplated herein. The Beneficiaries shall not exercise rights under the Easements in a manner which would unreasonably interfere with or diminish the City's or the City's successors or assigns, and their employees, lessees, tenants, invitees, licensees, contractors, operators, and agents claiming through them use and enjoyment of the Property. The Beneficiaries shall have right of free access to and form their respective Easements together with the right to use additional space adjacent to their respective Easements and the right to bring necessary equipment upon the City's Property as may be reasonably required during the period of any construction, repairs, or maintenance in connection with the exercise of the rights under their respective Easements, all of which is subject to any applicable federal, state and local laws, rules, regulations or requirements including, without limitation, Lambert-St. Louis International Airport's ("Airport") security requirements that may restrict or limit access to the Easements. In no event shall the Beneficiaries interfere with the safe and efficient operation or administration of the Airport. Beneficiaries shall give the City reasonable notice of its need to enter the Easements for non-emergency purposes.

8. Provided, however, that the Easements reserved herein shall be subject to the following conditions, which shall apply to and be binding upon the Beneficiaries, that the City and its successors and assigns, for the use and benefit of the public, shall have a free and unobstructed passage of aircraft in, through, and across all of the navigational air space above the Easements, together with the continuing right to cause and allow in all the air space above the surface of the Easements such noise, vibration, fumes, dust, fuel particles, illumination, interference with television, radio or any other type of transmission and other effects as may be caused by or result from the operation of aircraft or the landing at or taking off from or from the operation of aircraft on or at the Airport, also together with the rights to mark and light obstructions to air navigation any and all buildings, structures or other improvements and trees or other objects which extend into this aviation easement or right-of-way. The term "aircraft" is defined for the purpose of this

Exhibit “3”

LEGAL DESCRIPTION OF THE “NORTHERN PROPERTY”, [See attached page(s)] is on file in the Register’s Office.

Exhibit “4”

THE “EXCEPTIONS”

1. The lien of general state and county taxes for the current tax year as of the date of this Special Warranty Deed and special assessments becoming a lien or payable after date of this Special Warranty Deed.
2. Any state of facts or exception which an accurate survey or an inspection of the Property would show.
3. Any covenants, conditions, limitations, restrictions, rights-of-way, liens, encumbrances, encroachments, defects, reservations, easements, agreements and other matters reserved in or established by the provisions of, or permitted under or contemplated by this Special Warranty Deed.
4. Rights of eminent domain, governmental rights of police power and other governmental or quasi-governmental rights.
5. Covenants, conditions, limitations, restrictions, rights, rights-of-way, liens, encumbrances, encroachments, defects, reservations, easements, agreements and other matters of record.
6. Use restrictions, density requirements, height limitations, location restrictions, setback lines and other zoning, building and land use laws, ordinances, restrictions, resolutions, orders and regulations of all federal, state, county, municipal or other governments, agencies, boards, bureaus, commissions, authorities and bodies having or acquiring jurisdiction.
7. Lack of access and/or rights to curb cuts to any streets surrounding the Property.
8. Rights of the public to use any part or parts of the Property falling within public roadways.
9. Rights or claims of parties in possession.

See attached EXHIBIT A - (PROPERTY EXHIBIT OPTION “A”, page 3 of 3), EXHIBIT B - (BOEING-ST. LOUIS LEVEL 1, page 2 of 3), EXHIBIT B - (BOEING-ST. LOUIS LEVEL 2, page 3 of 3)

Approved: July 18, 2001

ORDINANCE 65243 - EXHIBIT A - (PROPERTY EXHIBIT OPTION "A", page 3 of 3)

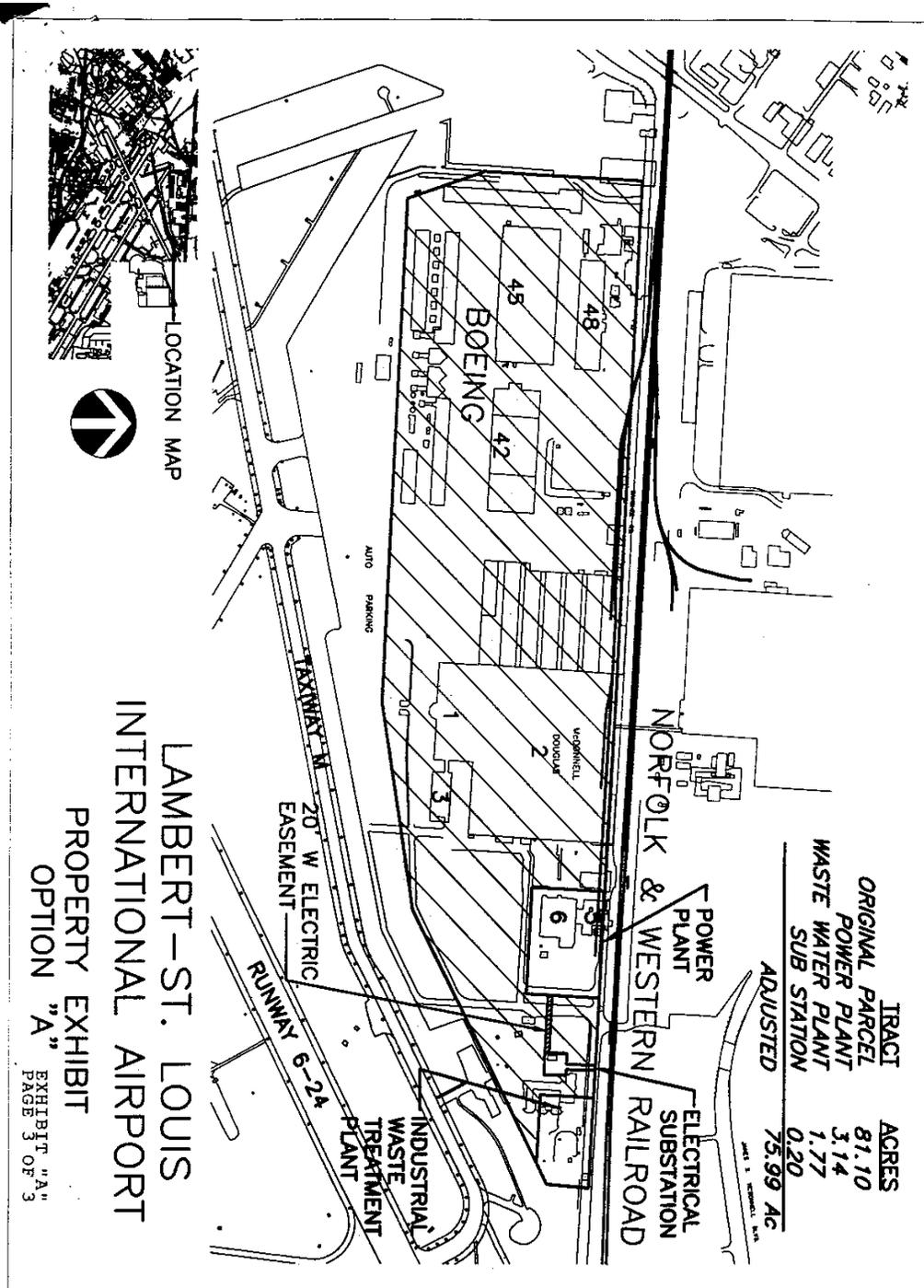


EXHIBIT B - (BOEING-ST. LOUIS LEVEL 1, page 2 of 3),

