

ORDINANCE #65733
Board Bill No. 269
Floor Substitute

An Ordinance authorizing the Mayor and the Comptroller to enter into an agreement on behalf of the City of St. Louis to exchange and transfer real estate commonly known as Columbia Bottoms located in St. Louis County by way of a Quit Claim Deed with the Conservation Commission of the State of Missouri with certain exhibits (which exhibits and Quit Claim Deed are attached hereto and incorporated by reference as if fully set out), and containing an emergency clause.

SECTION ONE. The Mayor and the Comptroller are hereby authorized to enter into an agreement, on behalf of the City of St. Louis, with the Conservation Commission of the State of Missouri to exchange and transfer City owned real estate commonly known as Columbia Bottoms located in St. Louis County by way of a Quit Claim Deed with certain exhibits. Such exhibits and Quit Claim Deed are attached hereto and incorporated by reference as if fully set out.

SECTION TWO. Emergency Clause. This being an ordinance for the preservation of public peace, health and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore this ordinance shall become effective immediately upon its passage and approval by the Mayor.

AGREEMENT TO EXCHANGE AND TRANSFER REAL ESTATE

This Agreement, entered into this _____ day of _____, 2002, by and between the **Conservation Commission of the State of Missouri**, a body politic within the State of Missouri, having its principal offices located at 2910 West Truman Boulevard, P. O. Box 180, Jefferson City, Missouri, 65102-0180, hereinafter, "Commission", and the **City of St. Louis**, a municipal corporation in the State of Missouri, with principal offices located at 1200 North Market Street, City Hall, St. Louis, Missouri, 63101, hereinafter "City", to wit;

Whereas, the Conservation Commission of the State of Missouri, has agreed at its meeting of _____, 2002, to enter into this Agreement to Exchange and Transfer Real Estate as more fully described in **Exhibit A**, attached hereto; and

Whereas, by Ordinance Number _____, the City of St. Louis agrees, and is hereby authorized, to enter into this Agreement to Exchange and Transfer Real Estate as more fully described in **Exhibits B and B.1**, attached hereto;

Now therefore, the parties agree as follows:

I AGREEMENT

1. *Agreement to Convey.* Conservation Commission of the State of Missouri [hereinafter referred to as "Commission", on occasion "Transferor" or "Transferee", as applicable] agrees to convey Property One, as herein described, to the City of St. Louis, and the City of St. Louis [hereinafter referred to as "City", on occasion "Transferor" or "Transferee" as applicable] agrees to convey Property Two to the Commission, under terms and conditions as set forth in this Agreement.

2. *Attachments.* The following exhibits, attachments and addenda are part of this Agreement:

- | | |
|--------------------|---|
| Exhibit A | Legal description of Property One - 117.845 Acre Tract;
<i>[Transfer of Land from State to City]</i> |
| Exhibit B | Legal description of Property Two - 110.653 Acre Tract;
<i>[Transfer of Land from City to State
w/retained rights]</i> |
| Exhibit B.1 | Legal description of Property Two - 7.192 Acre Tract;
<i>[Transfer of Land from City to State
w/retained rights]</i> |
| Exhibit C | Revenue Sharing Agreement 1:
<i>[Wetlands Mitigation Agreement]</i> |

- Exhibit D** Revenue Sharing Agreement 2;
[Non-Traditional Revenue Sharing Agreement]
- Exhibit E** Water Access Agreement
[Terms and Limitations]
- Exhibit F** Water Easement, Easement Rights / Descriptions
[Including Water Access Rights]

II DEFINED TERMS FOR PROPERTY ONE

1. *Transfer of Ownership:* City will take title to Property One as fee simple owner.
2. *Description:* Property One is described in **Exhibit A** as attached hereto and included herein.
3. *Inclusions/Exclusions for Property One:*
 - A) Commission agrees to transfer to City the following items:
 - (i) *Trade Fixtures.* If attached to the land or built as an improvement thereto, including, but not limited to all sewer lines, trenches, irrigation wells, pumps, irrigation piping or plumbing, canals, and any other such item or fixture.
 - (ii) *Improvements.* Any improvement built upon Property One, including, but not limited to, water towers, reservoirs, buildings of any kind, all keys and combinations for locks thereto, supply shelters, fences, gates, and all related keys or combinations to locks thereto.
4. *Instruments of Transfer for Property One:*

Inclusions of Property One are to be conveyed at the final closing of this transaction free and clear of all taxes, liens and encumbrances, except as outlined in Section IV, Paragraph 1 of this Agreement.
5. *Value:* The value of Property One [plus Inclusions] as stated:

\$347,600.00 or \$2,950.00 per acre
6. *Ancillary Costs:* Cost(s) of any appraisal, title report, commitment or inspection for Property One that may be obtained after the date of final execution of this Agreement under this section shall be paid by City.

III DEFINED TERMS FOR PROPERTY TWO

1. *Transfer of Ownership:* Commission will take title to Property Two as fee simple owner.
2. *Description:* Property Two is described in **Exhibits B and B.1**. Such two parcels, included together, constitute the full extent of Property Two as attached hereto and included herein. Under no condition are they to be considered separately during any course of this transaction.
3. *Inclusions/Exclusions for Property Two:*
 - A) City agrees to transfer to Commission the following items:
 - (i) *Trade Fixtures.* If attached to the land or built as an improvement thereto, including, but not limited to all sewer lines, trenches, irrigation wells, pumps, irrigation piping or plumbing, canals, and any other such item or fixture.
 - (ii) *Improvements.* Any improvement built upon Property Two, including, but not limited to,

water towers, reservoirs, buildings of any kind, all keys and combinations for locks thereto, supply shelters, fences, gates, and all related keys or combinations to locks thereto.

4. *Instruments of Transfer for Property Two:*

Inclusions of Property Two are to be conveyed at closing free and clear of all taxes, liens and encumbrances, except as outlined in Section IV, Paragraph 1 of this Agreement.

5. *Exclusions/Retained Rights For Property Two*

A) *Revenue Sharing Agreements:* As additional consideration for Transferee to enter into this Agreement to Exchange and Transfer Real Estate, Commission agrees to provide City, in perpetuity, certain moneys derived from and/or relating to Commission's ownership of Property Two and/or operations of, on, or relating to Property Two. Payment of said moneys shall be commemorated via Revenue Sharing Agreement 1 ["Wetlands Mitigation Agreement"] and Revenue Sharing Agreement 2 ["Non-Traditional Revenue Sharing Agreement"], attached hereto as **Exhibits C** and **D**, respectively. City shall present said agreements to Commission pursuant to the terms of this section.

Revenue Sharing Agreements shall encompass the following general terms:

a) *Term of Agreements:* Perpetual [from date of execution]

b) *Revenue Sharing Percentages:*

(i) *"Mitigation Banking" and/or "Banking Credits" Derived Revenue:* City shall receive from Commission fifty percent (50%) of all net revenues and/or proceeds realized by Buyer relating to operations of, on, or relating to Property Two, and pertaining to "Mitigation Banking" and/or wetland mitigation, in the event such a program is initiated on Property Two. Said agreement is attached hereto as **Exhibit C** ["Wetlands Mitigation Banking Agreement"] and is incorporated herein by this reference as if fully set out.

(ii) *Other Revenues:* City to receive from Commission ten percent (10%) of net income and/or revenue from non-traditional sources received by the Commission from any enterprise activities of, on, or relating to Property Two. For the purposes of this transaction, "non-traditional sources" include, but are not limited to, private industry partnering, the operation of concessions [including, but not limited to food, beverage, and/or retail concessions]. "Net income and/or revenue" shall be that income or revenue which remains after deduction [from those sources defined for the purposes of this transaction as "non-traditional" sources] of all variable and fixed costs related to Property Two operations and maintenance, and capital expenditures amortized yearly in accordance with generally accepted accounting practices (GAAP). **NOTE:** Normal Commission fees, agricultural income, permits, etc. are considered traditional income sources. Said agreement is attached hereto as **Exhibit D** ("Non-Traditional Revenues Agreement") and is incorporated herein by this reference as if fully set out.

(iii) *Recreational User Fees:* City shall receive no percentage (0%) of any/all revenues derived from user fees assessed by Commission upon recreational users of Property Two and/or any additional "traditional income sources."

c) *Payment:* Payment shall be tendered by Commission to City on an annual basis, the date of which payment shall be mutually agreed upon by Commission and City.

d) *Annual Reports:* Commission shall provide City an annual report that reflects all gross and net revenues and expenses relative to the referenced Revenue Sharing Agreements in form [in accordance with GAAP].

e) *Audit:* City shall be afforded reasonable access to any and all documents and/or records of Commission and/or its agents as deemed necessary or desirable by City in conjunction with the

undertaking of compliance audits as conducted by City and/or its agents. In the event City determines that Commission has failed to make payment of all moneys owed City pursuant to referenced Revenue Sharing Agreements, City may pursue any and all remedies available to City under law or equity.

B) *Water Rights:* As an additional consideration for City to enter into this Agreement to Exchange and Transfer Real Estate, Commission has agreed that City shall retain:

a) All rights associated with, and attendant to, groundwater well field operations and transmissions on Property Two relating to the development, establishment, maintenance and operation of municipal water operations and pumping. This shall include pipelines to the Chain of Rocks water plant and/or other pipelines, as well as use of all acreage needed for access, construction, siting, utility operations, maintenance, and/or other operations. Said agreement is attached hereto as **Exhibit E** ("Ground Water Well Field Operations Agreement) and shall be incorporated herein by this reference upon final execution, which agreement is contemplated to be in "Quitclaim" form; and

b) All other and/or additional water development rights for the underground water resources of the entire area and property currently commonly known as Columbia Bottoms, including necessary easements, access and development agreements on all property (including that portion of Columbia Bottoms which would otherwise fall within the definition of "Property Two "). All rights relating to and interests necessarily preserved by City in furtherance of conducting "Water Rights" operations which may have been omitted from inclusion within the definition of the term "Property Two", as adopted herein. All rights hereby further acknowledged by the parties to be expressly retained by City, whether said rights and/or interests manifest themselves in the form of surface easements, retention of subsurface property and/or water rights, and/or other licenses, easements, covenants, or other interests in real property. Commission covenants not to utilize Property Two in any manner whereby City's rights or abilities to pursue said "Water Rights" operations are limited, hampered, or lessened in scope, pursuant to the terms and limitations of the aforementioned **Exhibit E**.

C) *Easements:* As additional consideration for City to enter into this Agreement, Commission has agreed to grant and/or allow City to retain rights to all easements attendant, necessary, and/or related to the agreements set forth in this Agreement to Exchange and Transfer Real Estate. Said rights include, but are not limited to, those easements that pertain to existing and/or contemplated "Water Rights" operations, access and egress opportunities related to Property Two, and "Retained Farming Rights" agreement(s). Said easement rights are commemorated and attached hereto as **Exhibit F** ["Water Easement Rights/Descriptions"] and are incorporated herein by this reference as if fully set out.

D) *Retained Farming Rights:* As additional consideration for City to enter into this Agreement, Commission has agreed to grant and/or allow City the opportunity to manage and execute lease agreements pertaining to farming of Columbia Bottoms, (including Property Two). City will receive and collect all proceeds derived therefrom without interference by Commission or its agents, and with no remuneration to Commission from either City or those tenant farmers leasing said properties for a period of time through the end and completion of all growing seasons, through, and inclusive of, subsequent harvesting. This consideration shall take effect upon the execution of this Agreement, but shall, in no event, continue beyond January 31, 2003.

6. *Value:* The value of Property Two and Inclusions as stated:

\$347,600.00 or \$2,950.00 per acre

7. *Ancillary Costs:* Cost(s) of any appraisal, title report, commitment or inspection for Property Two that may be obtained after the date of execution of this Agreement under this section shall be paid by Commission.

IV MUTUAL EVIDENCE OF TITLES AND SURVEYS

1. *Title and Exceptions:* Each Transferor shall transfer title to Transferee at closing via "Quit Claim Deed", subject to the following:

A) Zoning Regulations, if any;

- B) Leases and occupancy or possessory interests of tenants and/or other parties in existence as of the date of execution of this Agreement by Transferee, and as disclosed to Transferee in writing prior to final execution of this Agreement;
- C) Rights and Access granted under license to any licensee in existence as of the date of execution of this Agreement by Transferee, and as disclosed to Transferee in writing prior to final execution of Agreement;
- D) Any easement heretofore accepted and acknowledged by Transferee in writing;
- E) Land use and/or other restrictions, right(s) of way and utility easements, all of record, which do not adversely affect the use of Property Two as it exists for commercial or agricultural purposes at the time of final execution of Agreement.

2. *Title Exam:* Transferee may, at its sole discretion and expense, order a title examination and Commitment for Insurance to issue an owner's policy of title insurance in the latest ALTA form, including Mechanic's Lien coverage, from a title company of its choosing.

A) *Title Information and Related Documents:* Title information and related documents shall be obtained by Transferee not less than ten (10) calendar days prior to the closing of this transaction. Such Commitment for Insurance shall commit to delete or insure over those standard exceptions with relation to:

- (i) parties in possession;
- (ii) unrecorded easements;
- (iii) survey matters;
- (iv) unrecorded Mechanics Liens; or
- (v) gap period.

B) *Defects:* Should any defects be discovered as a result of a Title Examination, Title Commitment or Survey, and should Transferee choose to act upon this contingency, Transferee shall furnish a copy of any document(s) evidencing said defect(s) to Transferor in writing not later than five (5) calendar days prior to the final closing of this transaction. The term "defect" shall stand in relation to any conditions evidenced through due diligence as those:

- (i) unacceptable to Transferee;
- (ii) not listed in this Agreement;
- (iii) which present adverse effect(s) on the use of the property, as it exists for commercial or agricultural purposes, at the time of the final execution of this Agreement.

C) *Ancillary Expense:* Any additional premium expense to obtain additional coverage(s) shall be paid by Transferee within the timeframe up to and including the hour of final closing of this transaction.

D) *Waiver of Objection:* Should Transferee fail to effectively transmit any notice of defects as outlined in Section IV, Paragraph 2(B) of this Agreement to Transferor not later than five (5) calendar days prior to the final closing of this transaction, said action shall constitute a waiver by Transferee of any objection to title, *so long as* Transferee is able to obtain at final closing an Owner's Title Insurance Policy in the latest ALTA Form, including Mechanic's Lien coverage.

3. *Survey:* Transferee may, at its sole option and expense, order a Boundary Survey and Improvement Location ("Missouri Minimum Boundary Survey") to determine the existence and location of any defects, encroachments, overlaps, boundary line or acreage discrepancies, and/or other matters that would be disclosed on a survey.

A) *Survey Information:* Survey information and related documents shall be obtained by Transferee not less than ten (10) days before the final closing of this transaction.

B) *Defects*: Should any defects be discovered as a result of a Boundary Survey and Improvement Location [“Missouri Minimum Boundary Survey”], and should Transferee choose to act upon this contingency, Transferee shall furnish a copy of any document(s) evidencing said defect(s) to Transferor in writing not later than five (5) calendar days prior to the final closing of this transaction. The term “defect” shall stand in relation to any conditions evidenced through due diligence as those:

- (i) unacceptable to Transferee;
- (ii) not listed in this Agreement;
- (iii) which present adverse effect(s) on the use of the property, as it exists for commercial or agricultural purposes, at the time of the final execution of this Agreement.

C) *Ancillary Expense*: Any additional premium expense to obtain additional coverage(s) shall be paid by Transferee within the timeframe up to and including the hour of final closing of this transaction.

D) *Waiver of Objection*: Should Transferee fail to effectively transmit any notice of defects as outlined in Section IV, Paragraph 2(B) of this Agreement to Transferor not later than five (5) calendar days prior to the final closing of this transaction, said action shall constitute a waiver by Transferee of any objection to title, *so long as* Transferee is able to obtain at final closing an Owner's Title Insurance Policy in the latest ALTA Form, including Mechanic's Lien coverage.

4. *Objections, Remedies*: Should Transferee object to any title or survey defects within the timeframe(s) specified in Section IV, Paragraph 2(B) and Section IV, Paragraph 3(B) of this Agreement, Transferor shall agree to remedy such defects, and shall provide written notice of intent to remedy to Transferee not later than forty-eight (48) hours before noon of the date of final closing of this transaction. In the event Transferor does not so agree, and unless Transferee does, by noon of the day of final closing of this transaction, and in writing, agree to accept title and survey "as is", this Agreement shall be considered terminated. In the event this Agreement is terminated under the provisions of this clause, each party shall remain liable for such title and survey costs as incurred by that party as of the effective date of termination. Transferor shall remain liable for the remedy of any defects as disclosed by title or survey which arise between the date of the final execution of this Agreement and the final closing of this transaction.

5. *Closing Location*: Both Transferee and Transferor reserve the right to close this transaction either through in-house counsel or through the title company issuing such commitments as may be ordered by each Transferee. Each party shall inform the other party no later than five (5) days prior to the final closing as to the time, date and location of the final closing.

V PROPERTY DISCLOSURE AND INSPECTION

Transferor agrees to provide Transferee with a written disclosure of any/all adverse matters regarding the respective property, including known environmental conditions, completed by such Transferor to the best of the Transferor's current, actual knowledge, not later than ten (10) calendar days prior to final closing of this transaction,

1. *Inspection Objection Deadline*: Each Transferee shall have the right to have inspections of the physical conditions of the property, including environmental conditions and inclusions, at the Transferee's expense.

A) *Unsatisfactory Conditions*: Should the physical condition of the property and/or inclusions be deemed unsatisfactory in Transferee's subjective discretion, Transferee shall provide Transferor with a written description of any unsatisfactory physical condition(s) which the Transferee requires the Transferor to correct [“Notice to Correct”], or send notification of the Intent to Terminate the Agreement no later than ten (10) calendar days prior to final closing of this transaction:

B) *Waiver of Objection*: Should Transferee fail to effectively transmit any notice of unsatisfactory physical condition(s) to Transferor not later than ten (10) calendar days prior to the final closing of this transaction, the physical condition of the property and/or inclusions shall be considered to be satisfactory to Transferee.

2. *Deadline for Resolution*: Should the physical condition of the property and/or inclusions be deemed unsatisfactory by Transferee, and a Notice to Correct be received by Transferor within the timeframe specified in Section V, Paragraph 1(A), and both parties have not agreed, in writing, to any settlement arrangement as of a timeframe not later than forty-eight (48) hours prior to the final closing of this transaction, this Agreement shall be considered terminated. Such termination may only be reversed in the

event Transferor receives from Transferee a written withdrawal of the Notice to Correct.

3. *Damage, Liens:*

A) *Payment, Damage:* Transferee is responsible for the payment of all inspections, surveys, engineering reports, environmental inspections and/or any such services so requested, and for any/all work performed at the request of Transferee. Transferee shall likewise be responsible to pay for any damage(s) that might occur to Property and/or its inclusions as a result of such activities.

B) *Liens:* Transferee shall not permit claims of liens of any kind against said Property for such inspections, surveys, engineering reports and/or for any other work performed on the Property per the request of Transferee.

VI TRANSFER OF TITLE

1. *Delivery:* Delivery of title by each Transferor to each Transferee via Quit Claim Deed shall be on the date and hour of the final closing of this transaction. Closing shall be on or before December 31, 2002, or by mutual agreement, in writing, at an earlier date.

2. *Deed Form:* Subject to the compliance by each acquiring party within the terms and conditions of this Agreement, each Transferor shall execute and deliver to the Transferee a good and sufficient Missouri Quit Claim Deed at final closing, thereby conveying the respective Property free and clear of all taxes, liens, easements and other encumbrances except those set forth under Section IV, Paragraph 1 of this Agreement, or as agreed to by Transferee in writing by deadline(s), as applicable.

3. *Releases:* Any/All encumbrance(s) to title required to be paid shall be paid by the respective Transferor at or prior to the final closing of this transaction, with full releases in recordable form provided therefor.

VII POSSESSION

Possession of the respective properties shall be delivered to the Transferees on the date of final closing subject to the following listed leases or tenancies:

Property One (to City):

Property Two (to Commission):

VIII NOT ASSIGNABLE:

This Agreement is not assignable by either party without the prior, written consent of both parties.

IX TERMINATION

In the event this Agreement is terminated for any reason other than default, parties agree to pay their respective expenses as incurred up to and including the effective date of termination and for any related cost(s) or expense(s) arising thereafter.

X ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties relating to the subject thereof. Any prior agreements pertaining thereto, whether oral or written, are hereby merged and/or integrated into this written Agreement. No subsequent modification(s) of any term of this Agreement shall be valid, binding or enforceable upon the parties unless made in writing and signed by both parties. and attached as an Amendment hereto.

XI NOTICE

Any notices, consents, requests and demands required or permitted under the terms of this Agreement shall be in writing and shall be deemed to have been duly served, given or made when personally delivered or delivered by registered or certified mail, return receipt requested or by facsimile, and addressed as follows:

If to the City of St. Louis:

Darlene Green, Comptroller
1200 North Market Street, Room 311
St. Louis, Missouri, 63103
Phone: (314) 622-3588 Facsimile: (314) 622-4354

With Copy to:

Patricia Hageman, City Counselor
1200 North Market Street, Room 314
St. Louis, Missouri, 63103
Phone: (314)-622-3361 Facsimile: (314)-622-4956

If to the Missouri Conservation Commission:

Ann Holland
2901 West Truman Boulevard,
P.O. Box 180
Jefferson City, Missouri, 65102-0180
Phone: (573) 751-4115 Ext. 3190 Facsimile: (573) 526-3976

With Copy to:

Tom Leifield
Missouri Department of Conservation
2360 Highway D.
St. Charles, Missouri 63304
Phone: (636) 441-4554 Facsimile: (636) 926-9125

XIII GOVERNING LAW

This Agreement shall be governed by the laws of the State of Missouri.

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In Witness Whereof, the parties hereto have set their hands the day and date as first set forth above:

The City of St. Louis

Francis G. Slay, Mayor

Green, Comptroller

Register

Darlene

APPROVED

(SEAL)

My Commission Expires:

STATE OF MISSOURI)
) ss.
CITY OF ST. LOUIS)

On this ___ day of ___, 2002, before me personally appeared ___ to me personally known, who, being by me duly sworn, did say that he is the Director of the CONSERVATION COMMISSION OF THE STATE OF MISSOURI, and said ___ acknowledged said instrument to be the free act and deed of said MISSOURI CONSERVATION COMMISSION.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the ___ and State aforesaid, the day and the year first above written.

Notary Public

(SEAL)

My Commission Expires:

EXHIBIT "A"

TITLE DESCRIPTION - PARCEL ONE
CONSERVATION COMMISSION TO CITY OF ST. LOUIS
[For use with Agreement to Exchange and Transfer Real Estate]

A TRACT OF LAND CONTAINING 117.845 ACRES adjoining the North line of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East and Township 47 North, Range 8 East of the 5th Principal Meridian, more particularly described as follows:

- Beginning at Berntsen Aluminum Monument in the Northeast corner of said 350 acres exception parcel;
Thence along said North line of the 350 acres exception parcel North 82 degrees 17 minutes 46 seconds West 1,832.11 feet to a Berntsen Aluminum Monument;
Thence continuing along said North line of the 350 acres exception parcel North 83 degrees 23 minutes 08 seconds West 2,196.61 feet to an iron pipe;
Thence leaving said North line of the 350 acres exception parcel North 02 degrees 13 minutes 01 seconds West 109.71 feet;
Thence North 05 degrees 21 minutes 08 seconds West 428.36 feet;
Thence North 27 degrees 38 minutes 43 seconds West 956.48 feet to a Berntsen Aluminum Monument;
Thence South 84 degrees 10 minutes 18 seconds East 375.80 feet;
Thence South 82 degrees 28 minutes 06 seconds East 1,474.41 feet;
Thence South 81 degrees 52 minutes 36 seconds East 1,712.51 feet;
Thence South 01 degrees 18 minutes 27 seconds East 745.03 feet;
Thence South 82 degrees 27 minutes 17 seconds East 1,502.49 feet;

Thence South 12 degrees 25 minutes 32 seconds West 901.40 feet;

Thence North 81 degrees 55 minutes 40 seconds West 438.21 feet;

Thence North 12 degrees 10 minutes 56 seconds East 360.37 feet to the point of beginning and containing 117.845 acres, more or less, according to a survey the City of St. Louis in March, 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

EXHIBIT "B"

TITLE DESCRIPTION - PARCEL TWO

*CITY OF ST. LOUIS TO THE CONSERVATION COMMISSION
[For use with Agreement to Exchange and Transfer Real Estate]*

A TRACT OF LAND CONTAINING 110.653 ACRES situated in the Southeast corner of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East and Township 47 North, Range 8 East, of the 5th Principal Meridian, more particularly described as follows:

Commencing at the point of intersection of the South line of the property formerly owned by Adolph Trampe, et al. [Deed Book 2430, pages 194-195 of St. Louis County Records] and the East line of Riverview Drive [60 feet wide], formerly known as Columbia Bottom Road [formerly 40 feet wide];

Thence along said South line of the Trampe tract the following courses and distances;

Thence South 83 degrees 05 minutes 54 seconds East 812.48 feet to an old stone;

Thence South 78 degrees 31 minutes 35 seconds East 1,506.32 feet to a Berntsen Aluminum Monument;

Thence South 83 degrees 05 minutes 21 seconds East 493.53 feet to the true point of beginning of the tract of land herein described;

Thence continuing along said South line of the Trampe tract South 83 degrees 05 minutes 21 seconds East 2606.46 feet to a Berntsen Aluminum Monument in the Southeast corner of said 350 acres exception parcel;

Thence leaving said South line of the Trampe tract North 12 degrees 10 minutes 56 seconds East 2,462.11 feet to an iron pipe [said pipe bearing South 12 degrees 10 minutes 56 seconds West 360.37 feet from a Berntsen Aluminum Monument in the Northeast corner of said 350 acres exception parcel];

Thence North 81 degrees 55 minutes 40 seconds West 656.31 feet;

Thence South 65 degrees 45 minutes 19 seconds West 191.22 feet;

Thence South 79 degrees 25 minutes 37 seconds West 426.29 feet;

Thence South 08 degrees 56 minutes 21 seconds West 620.84 feet;

Thence South 70 degrees 42 minutes 00 seconds West 190.66 feet;

Thence South 89 degrees 23 minutes 30 seconds West 443.00 feet;

Thence South 72 degrees 34 minutes 30 seconds West 653.50 feet;

Thence North 82 degrees 09 minutes 58 seconds West 253.83 feet;

Thence South 12 degrees 47 minutes 57 seconds West 1,216.58 feet to the point of beginning and containing 110.653 acres, more or less, according to a survey by the City of St. Louis in March, 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD**EXHIBIT "B.1"**

TITLE DESCRIPTION - PARCEL TWO
CITY OF ST. LOUIS TO THE CONSERVATION COMMISSION
[For use with Agreement to Exchange and Transfer Real Estate]

A TRACT OF LAND CONTAINING 7.192 ACRES situated in the Northwest corner of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East, of the 5th Principal Meridian, St. Louis County, Missouri, being more particularly described as follows:

Beginning at the point of intersection of the East line of Columbia Bottom Road [40 feet wide] with the North line of said 350 acres exception parcel retained by the City of St. Louis;

Thence leaving said East line of Columbia Bottom Road and along said North line of the 350 acres exception parcel South 83 degrees 23 minutes 08 seconds East 1676.16 feet to an iron pipe, said iron pipe being North 83 degrees 23 minutes 08 seconds West 2196.61 feet from a Berntsen Aluminum Monument at an angle point in said North line of the 350 acres exception parcel;

Thence leaving said North line of the 350 acres exception parcel South 02 degrees 12 minutes 38 seconds east 204.17 feet to an iron pipe;

Thence North 82 degrees 23 minutes 58 seconds East 1673.35 feet to an iron pipe in said East line of Columbia Bottom Road;

Thence along said East line of Columbia Bottom Road North 04 degrees 37 minutes 40 seconds West 176.34 feet to the point of beginning, and containing 7.192 acres, more or less, according to a survey by the City of St. Louis in March 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD**EXHIBIT "C"****WETLANDS MITIGATION BANKING AGREEMENT**

THIS WETLANDS MITIGATION BANKING AGREEMENT ("Agreement") made and entered into as of _____ by and between the CITY OF ST. LOUIS, MISSOURI, a municipal corporation, having an address of City Hall, St. Louis, Missouri 63103, hereinafter "City", and the CONSERVATION COMMISSION OF THE STATE OF MISSOURI, having an address of 2901 W. Truman Blvd., P.O. Box 180, Jefferson City, Missouri 65102-0180, hereinafter "Commission".

W I T N E S S E T H:

WHEREAS, the City and the Commission are parties to a certain Agreement to Exchange and Transfer Real Estate between the City of St. Louis and the Conservation Commission of the State of Missouri, dated as of _____, 2002 (the "Exchange Agreement"), whereby the Commission has agreed to transfer to the City that certain portion of property referred to herein as "Property One", being more fully described and attached hereto as **Exhibit A**, and in exchange, the City has agreed to transfer that certain property referred to herein as "Property Two" being more fully described and attached hereto as **Exhibits B and B.1**. The City has reserved and excepted from such conveyance certain rights [including Water Rights] as defined in the Exchange Agreement. Be it known, the City is now the present owner of Property One, and the Commission is now the present owner of Property Two, pursuant to the full and final execution of a good and sufficient Missouri Quit Claim Deed, to be delivered one party to the other as applicable, upon the date of final closing of this transaction;

WHEREAS, the Commission has the authority, pursuant to Article IV, Section 41 of the Missouri Constitution, to "acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient to its purposes"; and

WHEREAS, by Ordinance Number _____ the City has the authority to "acquire by purchase, gift, eminent domain, or

otherwise, all property necessary, useful or convenient to its purposes;" and

WHEREAS, the U.S. Army Corps of Engineers has issued regulations, effective as of February 4, 1997, which provide that "to the extent appropriate, permittees should consider mitigation banking and other forms of mitigation, including contributions to ... state... natural resource management agencies... where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands" [61 Fed. Reg. 65,922 (December 13, 1996)]; and

WHEREAS, Pursuant to the Exchange Agreement, the parties agree to share in the proceeds of the sale of any acreage-based wetlands credits accruing to Property Two ("Credits").

NOW THEREFORE, in consideration of Ten Dollars American (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. *Wetlands Credits Fund* - The Commission shall establish a Wetlands Credits Fund for the receipt of all proceeds from the sales of Credits. The Commission shall maintain the Wetlands Credits Fund separately from any other fund(s) managed or controlled by the Commission which contain appropriated funds.

2. *Sharing Payments* - Upon receipt from a buyer of any and all payments for Credits, the Commission shall, in perpetuity, pay to the City a "sharing payment," which shall be equal to an amount that reflects fifty percent (50%) of the net revenues from the sale, assignment, grant or other transfer of Credits.

The Commission shall make such sharing payment in cash or other immediately available funds to the City from the Wetlands Credits Fund within thirty (30) days of receipt of such payments from the buyer of the Credits.

3. *Covenants and Agreements of the Commission*

A) *Thirty-Day Notice*. In the event of the execution of a contract for the sale, assignment, grant or other transfer of Credits, the Commission shall be obligated to provide written notice to the City at least thirty (30) days prior to the final execution of the transaction ("Thirty Day Notice"). Each Thirty Day Notice shall specify the following:

- a) name of the potential buyer of Credits;
- b) price per Credit
- c) any/all other relevant terms relative to sale or potential sale; and
- d) **copy of any written agreement(s) with the potential buyer [either fully executed or in draft form].**

B) *City's Right of Approval*. The Commission shall not sell, assign, grant or otherwise transfer Credits without the express written approval of the City. The City shall reserve the right to review any proposed transfer of Credits. The City shall reserve the right to object to any proposed transfer of Credits, and shall notify the Commission of any such objections in writing at any time during the timeframe specified by the Thirty-Day Notice under review. It is hereby acknowledged and agreed by the Commission that the City may reasonably withhold its approval from the proposed transfer of Credits if such sale, assignment, grant or other proposed instrument of transfer does not conform to the terms of this Agreement.

C) *Credit Price and Terms of Sale* - Both the Commission and the City agree that the price per Credit shall be not less than Fifteen Thousand Dollars (\$15,000.00) per acre, which amount shall be increased each year by that amount as prescribed by the Consumer Price Index [All Urban Consumers (CPI U) - U.S. City Average - All Items (1982-84 = 100)]. Both the Commission and the City agree terms of sale for Credits shall be for cash or other immediately available funds. Amounts reflecting this increase from 1997 through 2002 are as follows:

1997 - \$15,000.00	(year of purchase)
1998 - \$15,233.64	
1999 - \$15,331.29	

2000 - \$15,504.20

2001 - \$15,426.83

2002 - \$15,816.34

D) *Reporting Requirements* - Each year, the Commission shall provide the City status reports on or before the fifteenth day (15th) of July .

These reports shall include:

- a) number of inquiries received by the Commission as to the availability of Credits;
- b) number of actual transfers of Credits, type of instrument executed [sale, grant, assignment, other],
- c) balance sheet and cash flow information which reflects the marketing and sale of Credits for the current year; and
- d) comparison of the sale price of Credits to:
 - (i) sale price of other wetlands credits by the Commission,
 - (ii) sale price of other wetlands credits by other entities in the state of Missouri; and [to the extent reasonably available],
 - (iii) sale price of wetlands credits by agencies in other states.

E) *Audits* - The City and its agents shall have the right to annually inspect the books, records and financial statements of the Commission which relate to the marketing and sale of Credits. The Commission shall make such books, records and financial statements available to the City during normal business hours and in such manner as presents the least possible disruption to the Commission's business. The City shall give at least fourteen (14) days written notice to the Commission prior to conducting such inspection.

4. *General*

A) *Amendment* - This Agreement may be amended or modified in whole or in part only by addendum. No subsequent modification(s) of any term of this Agreement shall be valid, binding or enforceable upon the parties unless made in writing and signed by both parties, and attached as an Amendment hereto.

B) *Binding on Successors and Assigns* - This Agreement shall exist in perpetuity. It shall be considered binding upon, and inure to the benefit of, and be enforceable by and against the parties hereto and their respective successors, assigns, and [where appropriate] administrators, executors, personal representatives and/or heirs.

Any successor entity to the City shall automatically be entitled to all rights and benefits herein without further action or objection on the part of any party hereto.

C) *Form* - Unless context otherwise requires, when used in the Agreement, the singular includes the plural and vice versa, and the masculine includes the feminine and neuter, and vice versa. A person is deemed to include an individual or any entity. The words "include", "includes", and "including" shall be deemed to be followed by the phrase "without limitation".

D) *Counterparts* - This Agreement may be executed in one or more counterparts, and the signature pages combined to form a fully executed Agreement. The fact that this Agreement may have been executed at different times by different parties shall in no wise affect its validity.

E) *Entire Agreement* - This Agreement constitutes the entire agreement between the parties relating to the subject thereof. Any prior agreements pertaining thereto, whether oral or written, are superseded by this Agreement. There are no representations, warranties, understandings or agreements other than those expressly set forth herein or in

addenda. As per Section 4, Paragraph A) of this Agreement, no subsequent modification(s) of any term of this Agreement shall be valid, binding or enforceable upon the parties unless made in writing and signed by both parties, and attached as an Amendment hereto.

F) *Exhibits* - Any and all exhibits referred to within the body of this Agreement are attached hereto and incorporated herein by reference.

G) *Governing Law* - This Agreement shall be governed by and construed under the laws of the State of Missouri.

H) *Headings* - Headings in sections of this Agreement are inserted for convenience only and in no way alter, amend, modify, limit or restrict the contractual obligations of the parties.

I) *Inability to Perform* - Either party shall be excused from performing any term of this Agreement, if, and for so long as, such performance is prevented, delayed, or hindered by war, acts of terrorism, or any governmental requirements now or hereafter in force; strike or riot; or by any other cause beyond the control of either party hereto.

J) *Joint Preparation* - This Agreement is deemed to have been jointly prepared by both parties hereto. Any uncertainties or ambiguities existing herein, if any, shall not be interpreted against either party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements.

K) *Waiver of Covenant* - The failure or delay on the part of either party hereto in requiring strict performance by the other party of any covenant of this Agreement shall not constitute a waiver of the covenant in question or of the right to require strict performance thereof.

L) *Notices* - Either party may effect a valid notice pursuant to this Agreement only by giving such notice in writing and delivering it either in person, by certified mail, or by overnight express delivery, to the parties, addressed as set forth next to their respective signatures as reflected on the Exchange Agreement, or such substituted address as may be designated [by notice] to the other parties. Such notice will be deemed effective two (2) days after it has been deposited in the mail, postage prepaid, or one (1) day after it is consigned to an overnight delivery service, or upon receipt of personal delivery.

M) *Relationship of the Parties* - This Agreement shall not be construed as creating any partnership or joint venture between any of the parties hereto.

[This portion of page intentionally left blank]

In Witness Whereof, the parties hereto have set their hands the day and date as first set forth above:

The City of St. Louis

Francis G. Slay, Mayor

Darlene Green, Comptroller

Register

*APPROVED
AS TO FORM*

Patricia A. Hageman
City Counselor

who, being by me duly sworn, did say that he is the Director of the CONSERVATION COMMISSION OF THE STATE OF MISSOURI, and said _____ acknowledged said instrument to be the free act and deed of said MISSOURI CONSERVATION COMMISSION.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the _____ and State aforesaid, the day and the year first above written.

Notary Public

(SEAL)

My Commission Expires:

EXHIBIT "A"

TITLE DESCRIPTION - PARCEL ONE

CONSERVATION COMMISSION TO CITY OF ST. LOUIS

[For use with Wetlands Mitigation Banking Agreement]

A TRACT OF LAND CONTAINING 117.845 ACRES adjoining the North line of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East and Township 47 North, Range 8 East of the 5th Principal Meridian, more particularly described as follows:

Beginning at Berntsen Aluminum Monument in the Northeast corner of said 350 acres exception parcel;

Thence along said North line of the 350 acres exception parcel North 82 degrees 17 minutes 46 seconds West 1,832.11 feet to a Berntsen Aluminum Monument;

Thence continuing along said North line of the 350 acres exception parcel North 83 degrees 23 minutes 08 seconds West 2,196.61 feet to an iron pipe;

Thence leaving said North line of the 350 acres exception parcel North 02 degrees 13 minutes 01 seconds West 109.71 feet;

Thence North 05 degrees 21 minutes 08 seconds West 428.36 feet;

Thence North 27 degrees 38 minutes 43 seconds West 956.48 feet to a Berntsen Aluminum Monument;

Thence South 84 degrees 10 minutes 18 seconds East 375.80 feet;

Thence South 82 degrees 28 minutes 06 seconds East 1,474.41 feet;

Thence South 81 degrees 52 minutes 36 seconds East 1,712.51 feet;

Thence South 01 degrees 18 minutes 27 seconds East 745.03 feet;

Thence South 82 degrees 27 minutes 17 seconds East 1,502.49 feet;

Thence South 12 degrees 25 minutes 32 seconds West 901.40 feet;

Thence North 81 degrees 55 minutes 40 seconds West 438.21 feet;

Thence North 12 degrees 10 minutes 56 seconds East 360.37 feet to the point of beginning and containing 117.845 acres, more or less, according to a survey the City of St. Louis in March, 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

EXHIBIT "B"**TITLE DESCRIPTION - PARCEL TWO**
CITY OF ST. LOUIS TO THE CONSERVATION COMMISSION
[For use with Wetlands Mitigation Banking Agreement]

A TRACT OF LAND CONTAINING 110.653 ACRES situated in the Southeast corner of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East and Township 47 North, Range 8 East, of the 5th Principal Meridian, more particularly described as follows:

Commencing at the point of intersection of the South line of the property formerly owned by Adolph Trampe, et al. [Deed Book 2430, pages 194-195 of St. Louis County Records] and the East line of Riverview Drive [60 feet wide], formerly known as Columbia Bottom Road [formerly 40 feet wide];

Thence along said South line of the Trampe tract the following courses and distances;

Thence South 83 degrees 05 minutes 54 seconds East 812.48 feet to an old stone;

Thence South 78 degrees 31 minutes 35 seconds East 1,506.32 feet to a Berntsen Aluminum Monument;

Thence South 83 degrees 05 minutes 21 seconds East 493.53 feet to the true point of beginning of the tract of land herein described;

Thence continuing along said South line of the Trampe tract South 83 degrees 05 minutes 21 seconds East 2606.46 feet to a Berntsen Aluminum Monument in the Southeast corner of said 350 acres exception parcel;

Thence leaving said South line of the Trampe tract North 12 degrees 10 minutes 56 seconds East 2,462.11 feet to an iron pipe [said pipe bearing South 12 degrees 10 minutes 56 seconds West 360.37 feet from a Berntsen Aluminum Monument in the Northeast corner of said 350 acres exception parcel];

Thence North 81 degrees 55 minutes 40 seconds West 656.31 feet;

Thence South 65 degrees 45 minutes 19 seconds West 191.22 feet;

Thence South 79 degrees 25 minutes 37 seconds West 426.29 feet;

Thence South 08 degrees 56 minutes 21 seconds West 620.84 feet;

Thence South 70 degrees 42 minutes 00 seconds West 190.66 feet;

Thence South 89 degrees 23 minutes 30 seconds West 443.00 feet;

Thence South 72 degrees 34 minutes 30 seconds West 653.50 feet;

Thence North 82 degrees 09 minutes 58 seconds West 253.83 feet;

Thence South 12 degrees 47 minutes 57 seconds West 1,216.58 feet to the point of beginning and containing 110.653 acres, more or less, according to a survey by the City of St. Louis in March, 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD**EXHIBIT "B.1"****TITLE DESCRIPTION - PARCEL TWO**
CITY OF ST. LOUIS TO THE CONSERVATION COMMISSION
[For use with Wetlands Mitigation Banking Agreement]

A TRACT OF LAND CONTAINING 7.192 ACRES situated in the Northwest corner of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East, of the 5th Principal Meridian, St. Louis County, Missouri, being more particularly described as follows:

Beginning at the point of intersection of the East line of Columbia Bottom Road [40 feet wide] with the North line of said 350 acres exception parcel retained by the City of St. Louis;

Thence leaving said East line of Columbia Bottom Road and along said North line of the 350 acres exception parcel South 83 degrees 23 minutes 08 seconds East 1676.16 feet to an iron pipe, said iron pipe being North 83 degrees 23 minutes 08 seconds West 2196.61 feet from a Berntsen Aluminum Monument at an angle point in said North line of the 350 acres exception parcel;

Thence leaving said North line of the 350 acres exception parcel South 02 degrees 12 minutes 38 seconds east 204.17 feet to an iron pipe;

Thence North 82 degrees 23 minutes 58 seconds East 1673.35 feet to an iron pipe in said East line of Columbia Bottom Road;

Thence along said East line of Columbia Bottom Road North 04 degrees 37 minutes 40 seconds West 176.34 feet to the point of beginning, and containing 7.192 acres, more or less, according to a survey by the City of St. Louis in March 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

EXHIBIT "D"

NON-TRADITIONAL REVENUES AGREEMENT

THIS NON-TRADITIONAL REVENUES AGREEMENT ("Agreement") made and entered into as of _____ by and between the CITY OF ST. LOUIS, MISSOURI, a municipal corporation, having an address of City Hall, St. Louis, Missouri 63103, hereinafter "City", and the CONSERVATION COMMISSION OF THE STATE OF MISSOURI, having an address of 2901 W. Truman Blvd., P.O. Box 180, Jefferson City, Missouri 65102-0180, hereinafter "Commission".

W I T N E S S E T H:

WHEREAS, the City and the Commission are parties to a certain Agreement to Exchange and Transfer Real Estate between the City of St. Louis and the Conservation Commission of the State of Missouri, dated as of _____, 2002 (the "Exchange Agreement"), whereby the Commission has agreed to transfer to the City that certain portion of property referred to herein as "Property One", being more fully described and attached hereto as **Exhibit A**, and in exchange, the City has agreed to transfer that certain property referred to herein as "Property Two" being more fully described and attached hereto as **Exhibits B and B.1**. The City has reserved and excepted from such conveyance certain rights [including Water Rights] as defined in the Exchange Agreement. Be it known, the City is now the present owner of Property One, and the Commission is now the present owner of Property Two, pursuant to the full and final execution of a good and sufficient Missouri Quit Claim Deed, to be delivered one party to the other as applicable, upon the date of final closing of this transaction;

WHEREAS, the Commission has the authority, pursuant to Article IV, Section 41 of the Missouri Constitution, to "acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient to its purposes;" and

WHEREAS, by Ordinance Number _____ the City has the authority to "acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient to its purposes;" and

WHEREAS, Pursuant to the Exchange Agreement, both parties have agreed to share in the proceeds of certain net "non-traditional" and/or enterprise revenues as relative to the ownership and/or operations of Property Two by the Commission.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

- 1. *Non-Traditional Revenues Fund.* The Commission shall establish a "Non-Traditional" Revenues Fund for the

receipt of all proceeds from any revenue source and/or income from non-traditional sources received by the Commission from any enterprise activities of, on, or relating to Property Two. For the purposes of this transaction, "non-traditional sources" include, but are not limited to, private industry partnering and the operation of concessions [including, but not limited to food, beverage, and/or retail concessions].

2. *Sharing Payments.* Upon receipt from a buyer of any and all payments for Credits, the Commission shall, in perpetuity, pay to the City a "sharing payment," which shall be equal to an amount that reflects fifty percent (50%) of the net revenues from the sale, assignment, grant or other transfer of Credits.

"Net income and/or revenue" shall be that income or revenue which remains after deduction [from those sources defined for the purposes of this transaction as "non-traditional" sources] of all variable and fixed costs related to Property Two operations and maintenance, and capital expenditures amortized yearly in accordance with generally accepted accounting practices (GAAP). **NOTE:** Normal Commission fees, agricultural income, permits, etc. are considered traditional income sources.

The Commission shall make such sharing payment in cash or other immediately available funds to the City from the Wetlands Credits Fund within thirty (30) days of receipt of such payments from the buyer of the Credits.

3. *Covenants and Agreements of the Commission.*

A) *Reporting Requirements* - Each year, the Commission shall provide the City status reports which reflect an accounting of revenue and expenses relative to any/all non-traditional income sources and/or proceeds therefrom on or before the fifteenth day (15th) of July .

B) *Audits* - The City and its agents shall have the right to annually inspect the books, records and financial statements of the Commission which relate to the marketing and sale of Credits. The Commission shall make such books, records and financial statements available to the City during normal business hours and in such manner as presents the least possible disruption to the Commission's business. The City shall give at least fourteen (14) days written notice to the Commission prior to conducting such inspection.

4. *General*

A) *Amendment* - This Agreement may be amended or modified in whole or in part only by addendum. No subsequent modification(s) of any term of this Agreement shall be valid, binding or enforceable upon the parties unless made in writing and signed by both parties, and attached as an Amendment hereto.

B) *Binding on Successors and Assigns* - This Agreement shall exist in perpetuity. It shall be considered binding upon, and inure to the benefit of, and be enforceable by and against the parties hereto and their respective successors, assigns, and [where appropriate] administrators, executors, personal representatives and/or heirs. Any successor entity to the City shall automatically be entitled to all rights and benefits herein without further action or objection on the part of any party hereto.

C) *Form* - Unless context otherwise requires, when used in the Agreement, the singular includes the plural and vice versa, and the masculine includes the feminine and neuter, and vice versa. A person is deemed to include an individual or any entity. The words "include", "includes", and "including" shall be deemed to be followed by the phrase "without limitation".

D) *Counterparts* - This Agreement may be executed in one or more counterparts, and the signature pages combined to form a fully executed Agreement. The fact that this Agreement may have been executed at different times by different parties shall in no wise affect its validity.

E) *Entire Agreement* - This Agreement constitutes the entire agreement between the parties relating to the subject thereof. Any prior agreements pertaining thereto, whether oral or written, are superseded by this Agreement. There are no representations, warranties, understandings or agreements other than those expressly set forth herein or in addenda. As per Section 4, Paragraph A) of this Agreement, no subsequent modification(s) of any term of this Agreement shall be valid, binding or enforceable upon the parties unless made in writing and signed by both parties, and attached as an Amendment hereto.

F) *Exhibits* - Any and all exhibits referred to within the body of this Agreement are attached hereto and incorporated herein by reference.

G) *Governing Law* - This Agreement shall be governed by and construed under the laws of the State of Missouri.

H) *Headings* - Headings in sections of this Agreement are inserted for convenience only and in no way alter, amend, modify, limit or restrict the contractual obligations of the parties.

I) *Inability to Perform* - Either party shall be excused from performing any term of this Agreement, if, and for so long as, such performance is prevented, delayed, or hindered by war, acts of terrorism, or any governmental requirements now or hereafter in force; strike or riot; or by any other cause beyond the control of either party hereto.

J) *Joint Preparation* - This Agreement is deemed to have been jointly prepared by both parties hereto. Any uncertainties or ambiguities existing herein, if any, shall not be interpreted against either party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements.

K) *Waiver of Covenant* - The failure or delay on the part of either party hereto in requiring strict performance by the other party of any covenant of this Agreement shall not constitute a waiver of the covenant in question or of the right to require strict performance thereof.

L) *Notices* - Either party may effect a valid notice pursuant to this Agreement only by giving such notice in writing and delivering it either in person, by certified mail, or by overnight express delivery, to the parties, addressed as set forth next to their respective signatures as reflected on the Exchange Agreement, or such substituted address as may be designated [by notice] to the other parties. Such notice will be deemed effective two (2) days after it has been deposited in the mail, postage prepaid, or one (1) day after it is consigned to an overnight delivery service, or upon receipt of personal delivery.

M) *Relationship of the Parties* - This Agreement shall not be construed as creating any partnership or joint venture between any of the parties hereto.

[This portion of page intentionally left blank]

In Witness Whereof, the parties hereto have set their hands the day and date as first set forth above:

The City of St. Louis

Francis G. Slay, Mayor

Darlene Green, Comptroller

Register

*APPROVED
AS TO FORM*

Patricia A. Hageman
City Counselor

Date: _____

The Conservation Commission
of the State of Missouri

By: _____

Approved by Legal Counsel

Date: _____

[There are Exhibits Attached to this Document]

STATE OF MISSOURI)
) ss.
CITY OF ST. LOUIS)

On this ____ day of _____, 2002, before me personally appeared _____ to me personally known, who, being by me duly sworn, did say that he is the _____ of the CITY OF ST. LOUIS, MISSOURI, a municipal corporation of Missouri, and that said instrument was signed by _____ on behalf of said CITY OF ST. LOUIS, MISSOURI; and said _____ acknowledged said instrument to be the free act and deed of said CITY OF ST. LOUIS, MISSOURI.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the _____ and State aforesaid, the day and the year first above written.

Notary Public

(SEAL)

My Commission Expires:

STATE OF MISSOURI)
) ss.
CITY OF ST. LOUIS)

On this ____ day of _____, 2002, before me personally appeared _____ to me personally known, who, being by me duly sworn, did say that she is the _____ of the CITY OF ST. LOUIS, MISSOURI, a municipal corporation of Missouri, and that said instrument was signed by _____ on behalf of said CITY OF ST. LOUIS, MISSOURI; and said _____ acknowledged said instrument to be the free act and deed of said CITY OF ST. LOUIS, MISSOURI.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the _____ and State aforesaid, the day and the year first above written.

Notary Public

(SEAL)

My Commission Expires:

STATE OF MISSOURI)
) ss.
CITY OF ST. LOUIS)

On this ____ day of _____, 2002, before me personally appeared _____ to me personally known, who, being by me duly sworn, did say that he is the Director of the CONSERVATION COMMISSION OF THE STATE OF MISSOURI, and said _____ acknowledged said instrument to be the free act and deed of said MISSOURI CONSERVATION COMMISSION.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the _____ and State aforesaid, the day and the year first above written.

Notary Public

(SEAL)

My Commission Expires:

EXHIBIT "A"

TITLE DESCRIPTION - PARCEL ONE
CONSERVATION COMMISSION TO CITY OF ST. LOUIS
[For use with Non-Traditional Revenues Agreement]

A TRACT OF LAND CONTAINING 117.845 ACRES adjoining the North line of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East and Township 47 North, Range 8 East of the 5th Principal Meridian, more particularly described as follows:

- Beginning at Berntsen Aluminum Monument in the Northeast corner of said 350 acres exception parcel;
- Thence along said North line of the 350 acres exception parcel North 82 degrees 17 minutes 46 seconds West 1,832.11 feet to a Berntsen Aluminum Monument;
- Thence continuing along said North line of the 350 acres exception parcel North 83 degrees 23 minutes 08 seconds West 2,196.61 feet to an iron pipe;
- Thence leaving said North line of the 350 acres exception parcel North 02 degrees 13 minutes 01 seconds West 109.71 feet;
- Thence North 05 degrees 21 minutes 08 seconds West 428.36 feet;
- Thence North 27 degrees 38 minutes 43 seconds West 956.48 feet to a Berntsen Aluminum Monument;
- Thence South 84 degrees 10 minutes 18 seconds East 375.80 feet;
- Thence South 82 degrees 28 minutes 06 seconds East 1,474.41 feet;
- Thence South 81 degrees 52 minutes 36 seconds East 1,712.51 feet;
- Thence South 01 degrees 18 minutes 27 seconds East 745.03 feet;
- Thence South 82 degrees 27 minutes 17 seconds East 1,502.49 feet;
- Thence South 12 degrees 25 minutes 32 seconds West 901.40 feet;
- Thence North 81 degrees 55 minutes 40 seconds West 438.21 feet;
- Thence North 12 degrees 10 minutes 56 seconds East 360.37 feet to the point of beginning and containing 117.845 acres, more or less, according to a survey the City of St. Louis in March, 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD**EXHIBIT "B"****TITLE DESCRIPTION - PARCEL TWO**
CITY OF ST. LOUIS TO THE CONSERVATION COMMISSION
[For use with Non-Traditional Revenues Agreement]

A TRACT OF LAND CONTAINING 110.653 ACRES situated in the Southeast corner of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East and Township 47 North, Range 8 East, of the 5th Principal Meridian, more particularly described as follows:

Commencing at the point of intersection of the South line of the property formerly owned by Adolph Trampe, et al. [Deed Book 2430, pages 194-195 of St. Louis County Records] and the East line of Riverview Drive [60 feet wide], formerly known as Columbia Bottom Road [formerly 40 feet wide];

Thence along said South line of the Trampe tract the following courses and distances;

Thence South 83 degrees 05 minutes 54 seconds East 812.48 feet to an old stone;

Thence South 78 degrees 31 minutes 35 seconds East 1,506.32 feet to a Berntsen Aluminum Monument;

Thence South 83 degrees 05 minutes 21 seconds East 493.53 feet to the true point of beginning of the tract of land herein described;

Thence continuing along said South line of the Trampe tract South 83 degrees 05 minutes 21 seconds East 2606.46 feet to a Berntsen Aluminum Monument in the Southeast corner of said 350 acres exception parcel;

Thence leaving said South line of the Trampe tract North 12 degrees 10 minutes 56 seconds East 2,462.11 feet to an iron pipe [said pipe bearing South 12 degrees 10 minutes 56 seconds West 360.37 feet from a Berntsen Aluminum Monument in the Northeast corner of said 350 acres exception parcel];

Thence North 81 degrees 55 minutes 40 seconds West 656.31 feet;

Thence South 65 degrees 45 minutes 19 seconds West 191.22 feet;

Thence South 79 degrees 25 minutes 37 seconds West 426.29 feet;

Thence South 08 degrees 56 minutes 21 seconds West 620.84 feet;

Thence South 70 degrees 42 minutes 00 seconds West 190.66 feet;

Thence South 89 degrees 23 minutes 30 seconds West 443.00 feet;

Thence South 72 degrees 34 minutes 30 seconds West 653.50 feet;

Thence North 82 degrees 09 minutes 58 seconds West 253.83 feet;

Thence South 12 degrees 47 minutes 57 seconds West 1,216.58 feet to the point of beginning and containing 110.653 acres, more or less, according to a survey by the City of St. Louis in March, 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD**EXHIBIT "B.1"****TITLE DESCRIPTION - PARCEL TWO**
CITY OF ST. LOUIS TO THE CONSERVATION COMMISSION

[For use with Non-Traditional Revenues Agreement]

A TRACT OF LAND CONTAINING 7.192 ACRES situated in the Northwest corner of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East, of the 5th Principal Meridian, St. Louis County, Missouri, being more particularly described as follows:

Beginning at the point of intersection of the East line of Columbia Bottom Road [40 feet wide] with the North line of said 350 acres exception parcel retained by the City of St. Louis;

Thence leaving said East line of Columbia Bottom Road and along said North line of the 350 acres exception parcel South 83 degrees 23 minutes 08 seconds East 1676.16 feet to an iron pipe, said iron pipe being North 83 degrees 23 minutes 08 seconds West 2196.61 feet from a Berntsen Aluminum Monument at an angle point in said North line of the 350 acres exception parcel;

Thence leaving said North line of the 350 acres exception parcel South 02 degrees 12 minutes 38 seconds east 204.17 feet to an iron pipe;

Thence North 82 degrees 23 minutes 58 seconds East 1673.35 feet to an iron pipe in said East line of Columbia Bottom Road;

Thence along said East line of Columbia Bottom Road North 04 degrees 37 minutes 40 seconds West 176.34 feet to the point of beginning, and containing 7.192 acres, more or less, according to a survey by the City of St. Louis in March 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

EXHIBIT "E"

GROUNDWATER WELL FIELD OPERATIONS AGREEMENT

THIS GROUNDWATER WELL FIELD OPERATIONS AGREEMENT ("Agreement") made and entered into as of _____ by and between the CITY OF ST. LOUIS, MISSOURI, a municipal corporation, having an address of City Hall, St. Louis, Missouri 63103, hereinafter "City", and the CONSERVATION COMMISSION OF THE STATE OF MISSOURI, having an address of 2901 W. Truman Blvd., P.O. Box 180, Jefferson City, Missouri 65102-0180, hereinafter "Commission".

W I T N E S S E T H:

WHEREAS, the City and the Commission are parties to a certain Agreement to Exchange and Transfer Real Estate between the City of St. Louis and the Conservation Commission of the State of Missouri, dated as of _____, 2002 (the "Exchange Agreement"), whereby the Commission has agreed to transfer to the City that certain portion of property referred to herein as "Property One", being more fully described and attached hereto as **Exhibit A**, and in exchange, the City has agreed to transfer that certain property referred to herein as "Property Two" being more fully described and attached hereto as **Exhibits B and B.1**. The City has reserved and excepted from such conveyance certain rights [including Water Rights] as defined in the Exchange Agreement. Be it known, the City is now the present owner of Property One, and the Commission is now the present owner of Property Two, pursuant to the full and final execution of a good and sufficient Missouri Quitclaim Deed, to be delivered one party to the other as applicable, upon the date of final closing of this transaction;

WHEREAS, the Commission has the authority, pursuant to Article IV, Section 41 of the Missouri Constitution, to "acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient to its purposes"; and

WHEREAS, by Ordinance Number _____ the City has the authority to "acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient to its purposes;" and

WHEREAS, Transfer by City of Property Two is expressly subject to the reservation of Water Rights [as defined per Quitclaim Deed] which allows City to fully, and without qualification, use those underground water reserves as extend beneath the Property Two, pursuant to the terms of the Quitclaim Deed and the Water Access Easement [dated the date hereof by and between the parties hereto] (the "Water Access Easement"); and

WHEREAS, Pursuant to agreement by both parties, City shall allow Commission to withdraw certain groundwater in accordance with those terms and conditions as outlined in this Agreement.

NOW THEREFORE, in consideration of Ten Dollars American (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, both parties hereby agree as follows:

1. *Covenant of Commission.* Commission hereby agrees and covenants to in no wise interfere with, impair or negatively impact on those rights heretofore granted to City under the Water Access Easement or existing Water Rights.

2. *Groundwater Access.* City hereby agrees to allow Commission to use for wildlife preservation, recreational and educational purposes [and no other] certain groundwaters, subject to the terms hereof.

A) Practical Use - Commission shall notify City, in writing, of any plans or proposals which shall require the use of groundwater(s) (“Notice”) not less than sixty (60) days prior to the intended date of commencement of the actual access, withdrawal, or other use.

Notice shall specify:

- a) **method of withdrawal of groundwater;**
- b) **rate of flow and/or use of groundwater;**
- c) **any other information as reasonably requested by City in order that City might evaluate the (possible) effect(s) of such proposed use by Commission on water rights as they exist under the terms of the Quitclaim Deed and Water Access Easement.**

B) City's Right of Approval. City shall reserve the right to review any plans or proposals which require the use of groundwater(s). City shall reserve the right to object to any proposed use, and shall notify Commission of any such objection(s) in writing at any time during the timeframe which constitutes thirty (30) days from City's receipt of Notice [and any additional information requested by City], as specified in Section 1, Paragraph A) of this Agreement. It is hereby acknowledged and agreed by Commission that City may reasonably withhold its approval from the proposed use of groundwater resources, should City determine that such withdrawal, access or other use may interfere with, impair, or negatively impact the City's rights under the Water Access Easement, the City's Water Rights or the operation of any City water facilities.

C) Subject to Notice - Should City agree to any plan or proposal presented by Commission, Commission shall access, withdraw and/or use such groundwater(s) only in accordance with those written plans or proposals as have been mutually agreed upon by both parties. Any change(s) in plan or method of access, withdrawal, rate of flow, or use of groundwater shall be subject to Notice and agreement by the City as stipulated by Section 1, Paragraph B) herein.

D) Termination/Right to Cure - In the event Commission shall breach any term(s), condition(s) or covenant(s) of this Agreement (“Default”), City reserves the right to terminate this Agreement. City shall serve written notice thirty (30) days prior to the intended effective date of termination. In the event of Default, Commission reserves the right to cure such default within that same thirty (30) day period.

E) Waiver of Rights - Failure of City to exercise its rights under the terms of this Agreement shall not constitute a waiver of such rights with respect to any past, present or future breach by Commission.

3. *General*

A) Amendment - This Agreement may be amended or modified in whole or in part only by addendum. No subsequent modification(s) of any term of this Agreement shall be valid, binding or enforceable upon the parties unless made in writing, signed by both parties, and attached as an Amendment hereto.

B) Binding on Successors and Assigns - This Agreement shall exist in perpetuity. It shall be considered binding upon, and inure to the benefit of, and be enforceable by and against the parties hereto and their respective successors, assigns, and [where appropriate] administrators, executors, personal representatives and/or heirs. Any successor

entity to the City shall automatically be entitled to all rights and benefits herein without further action or objection on the part of any party hereto.

C) *Form* - Unless context otherwise requires, when used in the Agreement, the singular includes the plural and vice versa, and the masculine includes the feminine and neuter, and vice versa. A person is deemed to include an individual or any entity. The words "include", "includes", and "including" shall be deemed to be followed by the phrase "without limitation".

D) *Counterparts* - This Agreement may be executed in one or more counterparts, and the signature pages combined to form a fully executed Agreement. The fact that this Agreement may have been executed at different times by different parties shall in no wise affect its validity.

E) *Entire Agreement* - This Agreement constitutes the entire agreement between the parties relating to the subject thereof. Any prior agreements pertaining thereto, whether oral or written, are superseded by this Agreement. There are no representations, warranties, understandings or agreements other than those expressly set forth herein or in addenda. As per Section 3, Paragraph A) of this Agreement, no subsequent modification(s) of any term of this Agreement shall be valid, binding or enforceable upon the parties unless made in writing and signed by both parties, and attached as an Amendment hereto.

F) *Equitable Relief* - Commission expressly acknowledges and agrees that, due to the nature of this Agreement and the obligation of City to perform vital water utility services for the benefit of the public, in the event Commission should Default this Agreement, City shall be entitled to specific performance and/or other equitable relief.

G) *Exhibits* - Any and all exhibits referred to within the body of this Agreement are attached hereto and incorporated herein by reference.

H) *Governing Law* - This Agreement shall be governed by and construed under the laws of the State of Missouri.

I) *Headings* - Headings in sections of this Agreement are inserted for convenience only and in no way alter, amend, modify, limit or restrict the contractual obligations of the parties.

J) *Inability to Perform* - Either party shall be excused from performing any term of this Agreement, if, and for so long as, such performance is prevented, delayed, or hindered by war, acts of terrorism, or any governmental requirements now or hereafter in force; strike or riot; or by any other cause beyond the control of either party hereto.

K) *Joint Preparation* - This Agreement is deemed to have been jointly prepared by both parties hereto. Any uncertainties or ambiguities existing herein, if any, shall not be interpreted against either party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements.

L) *Waiver of Covenant* - The failure or delay on the part of either party hereto in requiring strict performance by the other party of any covenant of this Agreement shall not constitute a waiver of the covenant in question or of the right to require strict performance thereof.

M) *Notices* - Either party may effect a valid notice pursuant to this Agreement only by giving such notice in writing and delivering it either in person, by certified mail, or by overnight express delivery, to the parties, addressed as set forth next to their respective signatures as reflected on the Exchange Agreement, or such substituted address as may be designated [by notice] to the other parties. Such notice will be deemed effective two (2) days after it has been deposited in the mail, postage prepaid, or one (1) day after it is consigned to an overnight delivery service, or upon receipt of personal delivery.

N) *Relationship of the Parties* - This Agreement shall not be construed as creating any partnership or joint venture between any of the parties hereto.

[This portion of page intentionally left blank]

In Witness Whereof, the parties hereto have set their hands the day and date as first set forth above:

Thence North 27 degrees 38 minutes 43 seconds West 956.48 feet to a Berntsen Aluminum Monument;

Thence South 84 degrees 10 minutes 18 seconds East 375.80 feet;

Thence South 82 degrees 28 minutes 06 seconds East 1,474.41 feet;

Thence South 81 degrees 52 minutes 36 seconds East 1,712.51 feet;

Thence South 01 degrees 18 minutes 27 seconds East 745.03 feet;

Thence South 82 degrees 27 minutes 17 seconds East 1,502.49 feet;

Thence South 12 degrees 25 minutes 32 seconds West 901.40 feet;

Thence North 81 degrees 55 minutes 40 seconds West 438.21 feet;

Thence North 12 degrees 10 minutes 56 seconds East 360.37 feet to the point of beginning and containing 117.845 acres, more or less, according to a survey the City of St. Louis in March, 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

EXHIBIT "B"

TITLE DESCRIPTION - PARCEL TWO

*CITY OF ST. LOUIS TO THE CONSERVATION COMMISSION
[For use with Groundwater Well Field Operations Agreement]*

A TRACT OF LAND CONTAINING 110.653 ACRES situated in the Southeast corner of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East and Township 47 North, Range 8 East, of the 5th Principal Meridian, more particularly described as follows:

Commencing at the point of intersection of the South line of the property formerly owned by Adolph Trampe, et al. [Deed Book 2430, pages 194-195 of St. Louis County Records] and the East line of Riverview Drive [60 feet wide], formerly known as Columbia Bottom Road [formerly 40 feet wide];

Thence along said South line of the Trampe tract the following courses and distances;

Thence South 83 degrees 05 minutes 54 seconds East 812.48 feet to an old stone;

Thence South 78 degrees 31 minutes 35 seconds East 1,506.32 feet to a Berntsen Aluminum Monument;

Thence South 83 degrees 05 minutes 21 seconds East 493.53 feet to the true point of beginning of the tract of land herein described;

Thence continuing along said South line of the Trampe tract South 83 degrees 05 minutes 21 seconds East 2606.46 feet to a Berntsen Aluminum Monument in the Southeast corner of said 350 acres exception parcel;

Thence leaving said South line of the Trampe tract North 12 degrees 10 minutes 56 seconds East 2,462.11 feet to an iron pipe [said pipe bearing South 12 degrees 10 minutes 56 seconds West 360.37 feet from a Berntsen Aluminum Monument in the Northeast corner of said 350 acres exception parcel];

Thence North 81 degrees 55 minutes 40 seconds West 656.31 feet;

Thence South 65 degrees 45 minutes 19 seconds West 191.22 feet;

Thence South 79 degrees 25 minutes 37 seconds West 426.29 feet;

Thence South 08 degrees 56 minutes 21 seconds West 620.84 feet;

Thence South 70 degrees 42 minutes 00 seconds West 190.66 feet;

Thence South 89 degrees 23 minutes 30 seconds West 443.00 feet;

Thence South 72 degrees 34 minutes 30 seconds West 653.50 feet;

Thence North 82 degrees 09 minutes 58 seconds West 253.83 feet;

Thence South 12 degrees 47 minutes 57 seconds West 1,216.58 feet to the point of beginning and containing 110.653 acres, more or less, according to a survey by the City of St. Louis in March, 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

EXHIBIT "B.1"

TITLE DESCRIPTION - PARCEL TWO

CITY OF ST. LOUIS TO THE CONSERVATION COMMISSION

[For use with Groundwater Well Field Operations Agreement]

A TRACT OF LAND CONTAINING 7.192 ACRES situated in the Northwest corner of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East, of the 5th Principal Meridian, St. Louis County, Missouri, being more particularly described as follows:

Beginning at the point of intersection of the East line of Columbia Bottom Road [40 feet wide] with the North line of said 350 acres exception parcel retained by the City of St. Louis;

Thence leaving said East line of Columbia Bottom Road and along said North line of the 350 acres exception parcel South 83 degrees 23 minutes 08 seconds East 1676.16 feet to an iron pipe, said iron pipe being North 83 degrees 23 minutes 08 seconds West 2196.61 feet from a Berntsen Aluminum Monument at an angle point in said North line of the 350 acres exception parcel;

Thence leaving said North line of the 350 acres exception parcel South 02 degrees 12 minutes 38 seconds east 204.17 feet to an iron pipe;

Thence North 82 degrees 23 minutes 58 seconds East 1673.35 feet to an iron pipe in said East line of Columbia Bottom Road;

Thence along said East line of Columbia Bottom Road North 04 degrees 37 minutes 40 seconds West 176.34 feet to the point of beginning, and containing 7.192 acres, more or less, according to a survey by the City of St. Louis in March 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

EXHIBIT "F"

WATER ACCESS EASEMENT

THIS WATER ACCESS EASEMENT ("Easement") made and entered into as of _____ by and between the CITY OF ST. LOUIS, MISSOURI, a municipal corporation, having an address of City Hall, St. Louis, Missouri 63103, hereinafter "City", and the CONSERVATION COMMISSION OF THE STATE OF MISSOURI, having an address of 2901 W. Truman Blvd., P.O. Box 180, Jefferson City, Missouri 65102-0180, hereinafter "Commission".

W I T N E S S E T H:

WHEREAS, the City and the Commission are parties to a certain Agreement to Exchange and Transfer Real Estate between the City of St. Louis and the Conservation Commission of the State of Missouri, dated as of _____, 2002 (the

"Exchange Agreement"), whereby the Commission has agreed to transfer to the City that certain portion of property referred to herein as "Property One", being more fully described and attached hereto as **Exhibit A**, and in exchange, the City has agreed to transfer that certain property referred to herein as "Property Two" being more fully described and attached hereto as **Exhibits B and B.1**. The City has reserved and excepted from such conveyance certain rights [including Water Rights] as defined in the Exchange Agreement. Be it known, the City is now the present owner of Property One, and the Commission is now the present owner of Property Two, pursuant to the full and final execution of a good and sufficient Missouri Quitclaim Deed, to be delivered one party to the other as applicable, upon the date of final closing of this transaction;

WHEREAS, the Commission has the authority, pursuant to Article IV, Section 41 of the Missouri Constitution, to "acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient to its purposes"; and

WHEREAS, by Ordinance Number _____ the City has the authority to "acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient to its purposes;" and

WHEREAS, Transfer by City of Property Two is expressly subject to the reservation of Water Rights [as defined per Quitclaim Deed] which allows City to fully, and without qualification, use those underground water reserves as extend beneath the Property, pursuant to the terms of the Quitclaim Deed and the Water Access Easement [dated the date hereof by and between the parties hereto] (the "Water Access Easement"); and

WHEREAS, inadequate information exists as of the date hereof to allow City to commit to the placement of Water Facilities (as defined below) in certain locations or areas; and

WHEREAS, Commission desires City to minimize the impact of any Water Facilities; and

WHEREAS, pursuant to the Agreement to Exchange and Transfer Real Estate (the "Exchange Agreement") and the reservation of Water Rights, Commission agrees to grant an easement in Property Two to City [to the extent such easement has not been reserved or excepted in the conveyance] for the purpose of City to exercise its Water Rights.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of Easement. Commission hereby grants to City, its successor(s) and/or assigns, the exclusive right and easement, in perpetuity, in gross, to lay, erect, install, construct, reconstruct, use, operate, repair, replace, maintain, add to the number of, relocate and patrol;

- a) one or more water wells or pumping stations [or both] ("Water Wells),
- b) equipment for such water wells or pumping stations [or both], including but not limited to pumping equipment ("Well Equipment"),
- c) one [or more] water operations, pipelines or water mains, and attendant equipment, ("Pipelines"),
- d) one [or more] well housings or other structures incidental to the foregoing ("Well Housings").

[NOTE: Items a) through d) are hereinafter referred to as "Water Equipment"]

e) one or more access roads, and rights of way, and rights of ingress and egress to access the Water Equipment (collectively, "Access Roadways"),and

f) utility facilities [including, but not limited to, electric and phone lines] to service the Water Equipment (collectively, "Utilities")

[NOTE: Items a) through f) are hereinafter referred to as "Water Facilities"]

on, over, across, under and/or through such portions of Property Two; together with the following rights on the part of City and/or its successor(s) and assigns:

A) **Right to Permit** - City hereby holds the right to license, permit or otherwise agree to the use and/or occupancy of said Water Facilities by any contractor(s) or sub-contractor(s) as may be employed by the City;

B) **Right to Remove Facilities** - City hereby holds the right to remove, at any time, any or all Water Facilities and those appurtenances thereto;

C) **Right of Construction** - City hereby holds the right to cut and clear trees, brush, undergrowth and/or debris; to dredge, drill and/or tunnel; to fill and grade; in order to lay, erect, install, construct, reconstruct, use, operate, repair, replace, maintain, add to the number of, relocate and patrol (collectively, "construct and maintain" on occasion "construction and maintenance" as applicable) Water Facilities;

D) **Right of Additional Facilities** - Should the City have installed, constructed or maintained [or both] one or more such Water Facilities, the City hereby holds the right to lay, erect, install, construct, reconstruct, use, operate, repair, replace, maintain, add to the number of, relocate and patrol additional Water Facilities and appurtenances thereto on the same or on other parts of Property Two.

2. *Water Facilities.*

A) **Restriction of Access** - City shall not be restricted in any manner with regard to access of Water Rights, or the construction and maintenance of Water Facilities, or the investigation of its Water Rights, as City may determine, in its sole discretion [as defined in Section 2, Paragraph J) of this Easement] within two thousand feet (2,000') of the land side of the center line of the 1997 location of the levee and within five hundred feet (500') of the river side of the center line of the 1997 location of the levee [as shown on **Exhibit C**, as attached hereto and incorporated herein]. Such zone [two thousand five hundred feet (2,500') wide extending the length of the 1997 levee location] is hereinafter referred to as the "Primary Zone".

B) **Water Facilities Outside Primary Zone** - *If, after careful consideration of the following factors:*

- a) cost of construction and maintenance of Water Facilities within the Primary Zone;
- b) hydrologic characteristics of locations inside the Primary Zone; and;
- c) availability of alternate locations within the Primary Zone.

it is determined to be not reasonably practical for City to access its Water Rights by locating Water Facilities within the Primary Zone, City shall reserve the right to construct and maintain Water Facilities in reasonable locations outside the *Primary Zone*; *that action taken with due consideration having been given those factors as outlined above and including:*

- d) *impact on Commission's use and operation of the location(s) and any area(s) reasonably proximate to those location(s) which have been designated wildlife conservation areas, and/or dedicated to recreation and education.*

C) **Notice of Intent to Construct Outside Primary Zone** - *Prior to the construction of any Water Facilities outside the Primary Zone, City shall give Commission notice, in writing, which shall set forth those proposals and/or plans for the construction of Water Facilities outside the Primary Zone,*

All Proposals and/or Plans shall include:

- (i) *location(s) of Water Facilities outside the Primary Zone; and*
- (ii) *start date for construction of proposed Water Facilities; and*
- (iii) *reason for such location(s) and starting date(s) ("City Notice").*

D) **Commission Proposal** - *If, after careful consideration, and within sixty (60) days of receipt of the City Notice as submitted to Commission for the construction of any Water Facilities outside the Primary Zone, Commission finds there to be some objection as concerns (i) the location(s) of the proposed Water Facilities outside the Primary Zone,*

or (ii) the starting date(s) for construction of such Water Facilities, [or both], or on the Commission's use of such location(s) and area reasonably proximate to such location(s), Commission may submit comments, in writing, to City outlining those specific objections. Commission shall then propose the following:

- a) alternate location(s) for the proposed Water Facilities outside the Primary Zone, which alternate location(s) are reasonably proximate to the location(s) of the Water Facilities specified in the City Notice; or
- b) alternate start date(s) for construction of such Water Facilities, which start date(s) shall be within a reasonable timeframe of the start date(s) proposed in the City Notice [and in no event later than six (6) months from the start date(s) proposed in the City Notice], or both ("Commission Proposal").

E) **City Response** - *City shall submit a written response to the Commission within sixty (60) days of receipt of the Commission Proposal, that shall directly address those objections outlined within the body of the Commission Proposal ("City Response").*

F) **Right of Arbitration** - *If, upon receipt of City Response, Commission still holds certain issues in dispute, Commission may submit issue(s) to non-binding alternative dispute resolution within thirty (30) days of receipt of the City Response. Unless otherwise agreed upon by both parties, such arbitration shall be conducted in accordance with the mediation rules of the American Arbitration Association, in which such mediators [or other adjudicating person(s)] shall be independent of the parties hereto and neutral.*

Those issue(s) subject to arbitration shall be issues regarding those considerations as outlined in Section 2, Paragraphs B) and C) of this Easement.

G) **Right of Remedy** - *In the event any issues under dispute have not been resolved to the satisfaction of both parties within one hundred eighty (180) days after the receipt by Commission of the City Response, either party shall then have the right to resolution through litigation in a court of competent jurisdiction.*

H) **Waiver of Objection** - *Should Commission:*

- a) *fail to effectively transmit a Commission Proposal within the sixty (60) day period following receipt of City Notice; and [therefore]/or*
- b) *request no arbitration within said thirty (30) day period as outlined in Section 2, Paragraph F) of this Easement; then said action or inaction shall constitute a waiver by Commission of any objection to the proposal and/or plan as outlined in said City Notice, and Commission shall be deemed to have approved the Water Facilities as outlined in the City Notice. City may thereby have right to proceed with construction of those Water Facilities outside the Primary Zone at the location(s) and on, or reasonably after, the start date(s), as set forth in the City Notice.*

I) **Limitation on Number of Facilities** - *City shall have the right to construct Water Facilities on Property Two provided the location(s) and start date(s) for construction of such Water Facilities are acceptable as outlined in Section 2 of this Easement. Provided construction of such Water Facilities are deemed acceptable, nothing in this Easement shall limit City's ability or capacity to construct and maintain those Water Facilities located outside the Primary Zone.*

J) **Right to Investigate** - *City reserves the right to investigate, survey, explore, access, prospect for, drill for, and/or withdraw by means of test well, water anywhere on Property Two ("Investigate", or on occasion "Investigating", as applicable), outside the Primary Zone.*

- a) **City Investigation Notice** - *Prior to the Investigation, the City shall give the Commission at least forty-five (45) days' written notice ("City Investigation Notice") which shall set forth:*
 - i) location(s) of Property Two to be Investigated;

- ii) start date(s) of such Investigation(s);
 - iii) length of time necessary to properly conduct such Investigation(s); and
 - iv) reason for such Investigation(s).
- b) **Commission Investigation Proposal - Within fifteen (15) days of receipt of the City Investigation Notice, Commission may either consent to such City Investigation Notice, or propose alternate start date(s) which are acceptable to Commission and which shall be within a reasonable timeframe of the start date(s) proposed by the City Investigation Notice ("Commission Investigation Proposal"). In no event shall alternate start date reflect a date later than one (1) year from that start date(s) as proposed by the City Investigation Notice.**
- c) **Right of Arbitration - If, within fifteen (15) days of receipt of the Commission Investigation Proposal, City still holds certain issues in dispute, City may submit the issue of starting date of the Investigation to non-binding alternative dispute resolution as outlined in Section 2, Paragraph F of this Easement.**

K) *Pipelines and Utilities* - Notwithstanding anything to the contrary, City shall reserve the right to construct and maintain Pipelines and Utilities within one hundred feet (100') of the 1997 location(s) of Columbia Bottom Road, Madison Ferry Road and the southernmost boundary of Property Two (all as shown on **Exhibit B and B.1** as attached hereto and incorporated herein). City shall construct such Pipelines and Utilities underground as is reasonably practicable.

3. *Covenants of the Commission.*

A) *Additional and Subsequent Water Facilities* - Pursuant to the terms hereof, Commission understands and agrees that City intends to, and is granted the right to, construct and maintain Water Facilities on, over, across, under and through Property Two from time to time; and likewise to construct and maintain additional Water Facilities on, over, across, under and through the same or other parts or areas of Property Two as deemed appropriate. Commission hereby expressly acknowledges and agrees that City's exercise of the Easement granted hereunder to construct and maintain any Water Facilities *shall not* operate to convert this blanket Easement into a specific easement. City retains all rights under this Easement to construct and maintain additional Water Facilities on the same or other parts or areas of Property Two. Commission hereby expressly agrees that the placement and operation of Water Facilities on any part or area of Property Two, pursuant to this Easement, is a reasonable exercise of the City's Water Rights and has been reasonably calculated to allow the City of St. Louis to perform its water utility obligations. Commission further agrees that the use or extraction of water by the City, in the City's sole discretion, pursuant to the Water Rights reserved herein, is a reasonable use of the Water Rights. The Commission further agrees to execute such additional instruments, documents and agreements as may be reasonably requested by City in order to exercise its rights to the Water Rights and under this Easement.

B) *Consultation* - At the reasonable request of City, Commission shall, from time to time, consult with City with regard to construction of any Water Facilities. Commission shall endeavor to share with City results of such studies, technical data, proposals and plans as may be available to Commission and as may be reasonably requested by City.

4. *Covenants of the City.*

A) *Impact Mitigation* - Prior to construction of any Water Facilities within the Primary Zone, City shall enter into discussions with Commission with regard to possible means and methods of minimizing the impact of Water Facilities on the Commission's use and operation of Property Two as a wildlife conservation, recreation and educational area for the benefit of the public.

City agrees to make reasonable efforts to:

- a) restore to its original condition any/all Property Two area that may be disrupted or damaged by construction of Water Facilities;

- b) minimize the visual impact of any Water Facilities by selecting and utilizing those materials for permanent above-ground Water Equipment as blending into the surrounding natural area, then screening and reasonable plantings in order to appropriately conceal such permanent above-ground Water Equipment from public view;
- c) utilize as Access Roadways those footpaths, improved and/or unimproved roads as already exist within the area of Property Two;
- d) utilize buried plant when necessary; and

B) *Consultation* - At the reasonable request of Commission, City shall, from time to time, consult with Commission with regard to construction of any Water Facilities. City shall endeavor to share with Commission results of such studies, technical data, proposals and plans as may be available to City and as may be reasonably requested by Commission.

5. *General*

A) *Amendment* - This Easement may be amended or modified in whole or in part only by addendum. No subsequent modification(s) of any term of this Easement shall be valid, binding or enforceable upon the parties unless made in writing, signed by both parties, and attached as an Amendment hereto.

B) *Binding on Successors and Assigns* - This Easement shall exist in perpetuity. It shall be considered binding upon, and inure to the benefit of, and be enforceable by and against the parties hereto and their respective successors, assigns, and [where appropriate] administrators, executors, personal representatives and/or heirs. Any successor entity to the City shall automatically be entitled to all rights and benefits herein without further action or objection on the part of any party hereto.

C) *Form* - Unless context otherwise requires, when used in the Easement, the singular includes the plural and vice versa, and the masculine includes the feminine and neuter, and vice versa. A person is deemed to include an individual or any entity. The words "include", "includes", and "including" shall be deemed to be followed by the phrase "without limitation".

D) *Counterparts* - This Easement may be executed in one or more counterparts, and the signature pages combined to form the fully executed Easement. The fact that this Easement may have been executed at different times by different parties shall in no wise affect its validity.

E) *Equitable Relief* - Commission expressly acknowledges and agrees that, due to the nature of this Easement and the obligation of City to perform vital water utility services for the benefit of the public, in the event Commission should default this Easement, City shall be entitled to specific performance and/or other equitable relief.

F) *Exhibits* - Any and all exhibits referred to within the body of this Easement are attached hereto and incorporated herein by reference.

G) *Governing Law* - This Easement shall be governed by and construed under the laws of the State of Missouri.

H) *Headings* - Headings in sections of this Easement are inserted for convenience only and in no way alter, amend, modify, limit or restrict the contractual obligations of the parties.

I) *Inability to Perform* - Either party shall be excused from performing any term of this Easement, if, and for so long as, such performance is prevented, delayed, or hindered by war, acts of terrorism, or any governmental requirements now or hereafter in force; strike or riot; or by any other cause beyond the control of either party hereto.

J) *Joint Preparation* - This Easement is deemed to have been jointly prepared by both parties hereto. Any uncertainties or ambiguities existing herein, if any, shall not be interpreted against either party, but shall be interpreted according to the application of the rules of interpretation for arm's length agreements.

K) *Waiver of Covenant* - The failure or delay on the part of either party hereto in requiring strict performance by the other party of any covenant of this Easement shall not constitute a waiver of the covenant in question or of the right to require strict performance thereof.

L) *Notices* - Either party may effect a valid notice pursuant to this Easement only by giving such notice in writing and delivering it either in person, by certified mail, or by overnight express delivery, to the parties, addressed as set forth next to their respective signatures as reflected on the Exchange Agreement, or such substituted address as may be designated [by notice] to the other parties. Such notice will be deemed effective two (2) days after it has been deposited in the mail, postage prepaid, or one (1) day after it is consigned to an overnight delivery service, or upon receipt of personal delivery.

M) *Relationship of the Parties* - This Easement shall not be construed as creating any partnership or joint venture between any of the parties hereto.

N) *Recordation* - The parties shall record, or cause to be recorded, this Easement immediately subsequent to the recordation of the Quitclaims Deed, pursuant to the Exchange Agreement.

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In Witness Whereof, the parties hereto have set their hands the day and date as first set forth above:

The City of St. Louis

Francis G. Slay, Mayor

Darlene Green, Comptroller

Register

APPROVED
AS TO FORM

Patricia A. Hageman
City Counselor

Date: _____

**The Conservation Commission
of the State of Missouri**

By: _____

Approved by Legal Counsel

Date: _____

[There are Exhibits Attached to this Document]

STATE OF MISSOURI)
) ss.
CITY OF ST. LOUIS)

CONSERVATION COMMISSION TO CITY OF ST. LOUIS
[For use with Water Access Easement]

A TRACT OF LAND CONTAINING 117.845 ACRES adjoining the North line of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East and Township 47 North, Range 8 East of the 5th Principal Meridian, more particularly described as follows:

Beginning at Berntsen Aluminum Monument in the Northeast corner of said 350 acres exception parcel;

Thence along said North line of the 350 acres exception parcel North 82 degrees 17 minutes 46 seconds West 1,832.11 feet to a Berntsen Aluminum Monument;

Thence continuing along said North line of the 350 acres exception parcel North 83 degrees 23 minutes 08 seconds West 2,196.61 feet to an iron pipe;

Thence leaving said North line of the 350 acres exception parcel North 02 degrees 13 minutes 01 seconds West 109.71 feet;

Thence North 05 degrees 21 minutes 08 seconds West 428.36 feet;

Thence North 27 degrees 38 minutes 43 seconds West 956.48 feet to a Berntsen Aluminum Monument;

Thence South 84 degrees 10 minutes 18 seconds East 375.80 feet;

Thence South 82 degrees 28 minutes 06 seconds East 1,474.41 feet;

Thence South 81 degrees 52 minutes 36 seconds East 1,712.51 feet;

Thence South 01 degrees 18 minutes 27 seconds East 745.03 feet;

Thence South 82 degrees 27 minutes 17 seconds East 1,502.49 feet;

Thence South 12 degrees 25 minutes 32 seconds West 901.40 feet;

Thence North 81 degrees 55 minutes 40 seconds West 438.21 feet;

Thence North 12 degrees 10 minutes 56 seconds East 360.37 feet to the point of beginning and containing 117.845 acres, more or less, according to a survey the City of St. Louis in March, 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

EXHIBIT "B"

TITLE DESCRIPTION - PARCEL TWO
CITY OF ST. LOUIS TO THE CONSERVATION COMMISSION
[For use with Water Access Easement]

A TRACT OF LAND CONTAINING 110.653 ACRES situated in the Southeast corner of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East and Township 47 North, Range 8 East, of the 5th Principal Meridian, more particularly described as follows:

Commencing at the point of intersection of the South line of the property formerly owned by Adolph Trampe, et al. [Deed Book 2430, pages 194-195 of St. Louis County Records] and the East line of Riverview Drive [60 feet wide], formerly known as Columbia Bottom Road [formerly 40 feet wide];

Thence along said South line of the Trampe tract the following courses and distances;

Thence South 83 degrees 05 minutes 54 seconds East 812.48 feet to an old stone;

Thence South 78 degrees 31 minutes 35 seconds East 1,506.32 feet to a Berntsen Aluminum Monument;

Thence South 83 degrees 05 minutes 21 seconds East 493.53 feet to the true point of beginning of the tract of land herein described;

Thence continuing along said South line of the Trampe tract South 83 degrees 05 minutes 21 seconds East 2606.46 feet to a Berntsen Aluminum Monument in the Southeast corner of said 350 acres exception parcel;

Thence leaving said South line of the Trampe tract North 12 degrees 10 minutes 56 seconds East 2,462.11 feet to an iron pipe [said pipe bearing South 12 degrees 10 minutes 56 seconds West 360.37 feet from a Berntsen Aluminum Monument in the Northeast corner of said 350 acres exception parcel];

Thence North 81 degrees 55 minutes 40 seconds West 656.31 feet;

Thence South 65 degrees 45 minutes 19 seconds West 191.22 feet;

Thence South 79 degrees 25 minutes 37 seconds West 426.29 feet;

Thence South 08 degrees 56 minutes 21 seconds West 620.84 feet;

Thence South 70 degrees 42 minutes 00 seconds West 190.66 feet;

Thence South 89 degrees 23 minutes 30 seconds West 443.00 feet;

Thence South 72 degrees 34 minutes 30 seconds West 653.50 feet;

Thence North 82 degrees 09 minutes 58 seconds West 253.83 feet;

Thence South 12 degrees 47 minutes 57 seconds West 1,216.58 feet to the point of beginning and containing 110.653 acres, more or less, according to a survey by the City of St. Louis in March, 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

EXHIBIT "B.1"

TITLE DESCRIPTION - PARCEL TWO
CITY OF ST. LOUIS TO THE CONSERVATION COMMISSION
[For use with Water Access Easement]

A TRACT OF LAND CONTAINING 7.192 ACRES situated in the Northwest corner of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East, of the 5th Principal Meridian, St. Louis County, Missouri, being more particularly described as follows:

Beginning at the point of intersection of the East line of Columbia Bottom Road [40 feet wide] with the North line of said 350 acres exception parcel retained by the City of St. Louis;

Thence leaving said East line of Columbia Bottom Road and along said North line of the 350 acres exception parcel South 83 degrees 23 minutes 08 seconds East 1676.16 feet to an iron pipe, said iron pipe being North 83 degrees 23 minutes 08 seconds West 2196.61 feet from a Berntsen Aluminum Monument at an angle point in said North line of the 350 acres exception parcel;

Thence leaving said North line of the 350 acres exception parcel South 02 degrees 12 minutes 38 seconds east 204.17 feet to an iron pipe;

Thence North 82 degrees 23 minutes 58 seconds East 1673.35 feet to an iron pipe in said East line of Columbia Bottom Road;

Thence along said East line of Columbia Bottom Road North 04 degrees 37 minutes 40 seconds West 176.34 feet to the point of beginning, and containing 7.192 acres, more or less, according to a survey by the City of St. Louis in March 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

EXHIBIT C

Current Location of the Levee on Property Two
[For use with Water Access Easement]

State of Missouri)
) ss.
County of St. Louis)

QUITCLAIM DEED

This Quitclaim Deed made and entered into as of this _____ day of _____, 2002, by and between the CITY OF ST. LOUIS, a municipal corporation, having an address of City Hall, St. Louis, Missouri 63103 ("City"), and the CONSERVATION COMMISSION OF THE STATE OF MISSOURI, having an address of 2901 W. Truman Blvd., P.O. Box 180, Jefferson City, Missouri 65102-0180 ("Commission").

The City, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by the Commission, the receipt of which is hereby acknowledged, does by these presents REMISE, RELEASE AND FOREVER QUIT CLAIM unto the Commission the real estate located in the County of St. Louis, Missouri, more particularly described as follows:

See Exhibit A attached hereto and incorporated into this deed,

RESERVING AND EXCEPTING unto the City and its successors and assigns, the Water Rights as defined herein. "Water Rights" shall mean (i) all rights and privileges to water from time to time in and under the Property, including but not limited to groundwaters, underground waters, subterranean waters, subsurface waters, subjacent waters, or any of them, waters in underground or subterranean aquifers, and all water from time to time flowing in, under or through the Property, and all water from time to time percolating in, under and through the Property, and the use of all water from time to time in and under the Property, (ii) all water from time to time in and under the Property, including but not limited to groundwaters, underground waters, subterranean waters, subsurface waters, subjacent waters, or any of them, waters in underground or subterranean aquifers, and all water from time to time flowing in or under the Property, and all water from time to time percolating in, under and through the Property, and the use of all water from time to time in or under the Property, (iii) without limiting in any fashion the rights and privileges in clauses (i) and (ii) herein, all riparian rights, which may now or hereafter inure to the Property, but only as such rights relate to groundwaters, underground waters, subterranean waters, subsurface waters, subjacent waters, or any of them, waters in underground or subterranean aquifers, and all water from time to time flowing in, under or through the Property, and all water from time to time percolating in, under and through the Property, and without limiting any such rights, all claims and causes of action which may accrue to the owner of such riparian rights but only as such rights relate to groundwaters, underground waters, subterranean waters, subsurface waters, subjacent waters, or any of them, waters in underground or subterranean aquifers, and all water from time to time flowing in, under or through the Property, and all water from time to time percolating in, under and through the Property, and (iv) without limiting in any fashion the rights and privileges in clauses (i) and (ii) herein, all rights and privileges by any process or means to investigate, survey, explore for, access, prospect, drill for, extract, remove, withdraw, use, consume or transport on, about, in, through and away from the Property, such water; provided, however, that this reservation and exception does not include surface waters occurring from time to time on, over, on top of and above the surface of the Property, including only such lakes, streams, ponds or impoundments occurring from time to time on, over, on top of and above the surface of the Property; and provided further that the means and methods to access, prospect, drill for, or transport water pursuant to the Water Rights reserved and excepted herein is limited by the Water Access Easement (as defined below).

(The real estate described on **Exhibit A** less the Water Rights is herein referred to as the "Property".)

TO HAVE AND TO HOLD THE SAME, unto the Commission, and to its successors and assigns forever so that neither the City, nor its successors and assigns, nor any other person for it or in its behalf, will hereafter claim any right or title to the real estate except as provided herein, but every one of them will be excluded and forever barred.

PROVIDED, HOWEVER, that the grant contained herein is expressly conditioned upon the Commission executing and the City recording, immediately subsequent to the recordation of this deed, the Water Access Easement between the City and the Commission dated the date hereof and incorporated into this deed as if fully set forth herein (the "Water Access Easement").

PROVIDED FURTHER, that the Commission covenants and agrees (i) not to do or suffer any act or omission on or to the Property which would regulate, control, obstruct, impede, block, hinder, delay, confine, impound, detain, slow, accelerate, interfere with, or divert water from time to time in, under, on, adjacent to, adjoining or abutting the Property, including but not limited to waters in natural or artificial watercourses or both, surface waters, lakes, groundwaters, underground waters, subterranean waters, subsurface waters, subjacent waters, or any of them, waters in underground or subterranean aquifers, and all water from time to time flowing in, under, on, through or adjacent to the Property, and all water from time to time percolating in, under and through the Property so as to interfere with or negatively affect the City's Water Rights or the operation of any City water facilities as may exist from time to time; and (ii) not to unreasonably interfere with in any manner the City's Water Rights; and (iii) not to do or suffer any act or omission on or to the Property which would unreasonably interfere with the operation of any City water facilities as the same may exist from time to time; and (iv) not to do or suffer any act or omission on or to the Property which would contaminate the Water Rights. The Property and the waters on, in, through, abutting, adjoining or adjacent to the Property shall never be used for purposes of gambling, gaming, casino, bingo, lottery, or riverboat gambling or gaming, or any similar or related purposes or for the purposes of a hotel, motel, inn which is related to any facility for gambling, gaming, casino, bingo, lottery, or riverboat gambling or gaming, or any similar or related purposes. The Commission covenants and agrees to use the Property in conformance with the constitutional mandates of the Commission. The Commission waives any and all rights in and to the Water Rights and releases any claims it may now or at any future time have with respect to such Water Rights. The Commission covenants and agrees to execute and deliver such documents and instruments as the City may reasonably request to use the Water Rights reserved and excepted herein. The Commission covenants and agrees that any use of the Property which would violate the covenants or agreements contained herein is and constitutes an unreasonable use of the Property. The Commission further agrees that the City's use, consumption, withdrawal, and transportation on, about, in, through and away from the Property, in the City's sole discretion, of water pursuant to the Water Rights reserved herein is a reasonable use of the Water Rights; and that the transportation on, about, in, through and away from the Property of water pursuant to the Water Rights herein, as is limited by the Water Access Agreement, is a reasonable use of the Water Rights. The restrictions and covenants contained in this paragraph are hereby declared to be covenants running with the land and shall be fully binding upon all persons acquiring the Property or any portion thereof whether by descent, devise, grant, deed, purchase or otherwise, and any person by the acceptance of title to the Property or any portion thereof shall thereby agree and covenant to abide by and fully perform the foregoing restrictions and covenants. The Commission may only convey or transfer the Property to a grantee subject to the City's rights and privileges herein and only upon the grantee's express assumption of the Commission's agreements, covenants and obligations hereunder, and any conveyance or transfer of the Property without such express assumption is null and void. The right to enforce these restrictions and covenants shall inure to and be enforceable by the City and its successors and assigns. If the Commission shall violate or attempt to violate any of the covenants herein, and the City shall have the right to pursue any legal or equitable remedy allowable under applicable law, the City may prosecute any proceedings against the then-owner of the Property and any other person or entity violating or attempting to violate such covenant. The failure by the City to enforce any restriction, conditions, covenants or agreements contained herein shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto. If any provision of this instrument is declared invalid or unenforceable, such decision shall not affect the validity or enforceability of any remaining portion of this instrument, and such remaining portions shall remain in full force and effect. The Commission expressly acknowledges and covenants and agrees that, because of the nature of the grant and reservation herein, and the City's obligation to perform vital water utility services for the benefit of the public, the City will be entitled to specific performance (and such other legal or equitable relief as may be available under applicable law) in the event that the Commission breaches any terms of this instrument. This instrument will be binding upon, inure to the benefit of and be enforceable by and against the parties hereto and their respective successors, assigns and, where appropriate, administrators, executors, personal representatives and heirs. Wherever this instrument refers to the City or the Commission, such reference shall include the City's successors and assigns, or the Commission's successors and assigns, respectively. Any successor entity to the City shall automatically be entitled to the rights and benefits herein, and shall be bound by the obligations herein, without further action on the part of the parties hereto; and any successor entity to the Commission shall automatically be entitled to the rights and benefits herein, and shall be bound by the obligations herein, without further action on the part of the parties hereto.

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In Witness Whereof, the parties hereto have set their hands the day and date as first set forth above:

The City of St. Louis

Francis G. Slay, Mayor

Darlene Green, Comptroller

Register

APPROVED
AS TO FORM

Patricia A. Hageman
City Counselor

Date: _____

The Conservation Commission
of the State of Missouri

By: _____

Approved by Legal Counsel

Date: _____

[There are Exhibits Attached to this Document]

STATE OF MISSOURI)
) ss.
CITY OF ST. LOUIS)

On this ____ day of _____, 2002, before me personally appeared _____ to me personally known, who, being by me duly sworn, did say that he is the _____ of the City OF ST. LOUIS, a municipal corporation of Missouri, and that said instrument was signed by _____ and _____ on behalf of said CITY OF ST. LOUIS; and said _____ acknowledged said instrument to be the free act and deed of said CITY OF ST. LOUIS.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the _____ and State aforesaid, the day and the year first above written.

Notary Public

(SEAL)

My Commission Expires:

STATE OF MISSOURI)
) ss.
CITY OF ST. LOUIS)

On this ____ day of _____, 2002, before me personally appeared _____ to me personally known, who, being by me duly sworn, did say that she is the _____ of the City OF ST. LOUIS, a municipal corporation

pipe bearing South 12 degrees 10 minutes 56 seconds West 360.37 feet from a Berntsen Aluminum Monument in the Northeast corner of said 350 acres exception parcel];

Thence North 81 degrees 55 minutes 40 seconds West 656.31 feet;

Thence South 65 degrees 45 minutes 19 seconds West 191.22 feet;

Thence South 79 degrees 25 minutes 37 seconds West 426.29 feet;

Thence South 08 degrees 56 minutes 21 seconds West 620.84 feet;

Thence South 70 degrees 42 minutes 00 seconds West 190.66 feet;

Thence South 89 degrees 23 minutes 30 seconds West 443.00 feet;

Thence South 72 degrees 34 minutes 30 seconds West 653.50 feet;

Thence North 82 degrees 09 minutes 58 seconds West 253.83 feet;

Thence South 12 degrees 47 minutes 57 seconds West 1,216.58 feet to the point of beginning and containing 110.653 acres, more or less, according to a survey by the City of St. Louis in March, 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

TITLE DESCRIPTION - PARCEL TWO - PART TWO
CITY OF ST. LOUIS TO THE CONSERVATION COMMISSION
[For use with Quitclaim Deed]

A TRACT OF LAND CONTAINING 7.192 ACRES situated in the Northwest corner of the 350 acres exception parcel [retained by the City of St. Louis by Ordinance #64052, City of St. Louis Records and recorded in Deed Book 11292; pages 2478-2490, St. Louis County Records] in Township 47 North, Range 7 East, of the 5th Principal Meridian, St. Louis County, Missouri, being more particularly described as follows:

Beginning at the point of intersection of the East line of Columbia Bottom Road [40 feet wide] with the North line of said 350 acres exception parcel retained by the City of St. Louis;

Thence leaving said East line of Columbia Bottom Road and along said North line of the 350 acres exception parcel South 83 degrees 23 minutes 08 seconds East 1676.16 feet to an iron pipe, said iron pipe being North 83 degrees 23 minutes 08 seconds West 2196.61 feet from a Berntsen Aluminum Monument at an angle point in said North line of the 350 acres exception parcel;

Thence leaving said North line of the 350 acres exception parcel South 02 degrees 12 minutes 38 seconds east 204.17 feet to an iron pipe;

Thence North 82 degrees 23 minutes 58 seconds East 1673.35 feet to an iron pipe in said East line of Columbia Bottom Road;

Thence along said East line of Columbia Bottom Road North 04 degrees 37 minutes 40 seconds West 176.34 feet to the point of beginning, and containing 7.192 acres, more or less, according to a survey by the City of St. Louis in March 2001.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD

Approved: December 24, 2002