

ORDINANCE #65245
Board Bill No. 105

An ordinance recommended by the Airport Commission and the Board of Estimate and Apportionment authorizing and directing the Director of Airports and the Comptroller of the City of St. Louis (the "City") to enter into and execute on behalf of the City the "Restated and Amended Lease Agreement" to the Lambert-St. Louis International Airport Lease Agreement (AL-154) between the City and McDonnell Douglas Corporation, a Maryland corporation, dated January 1, 1985 and authorized by Ordinance No. 59733 approved February 26, 1986 and as amended by the "First Amendment" dated April 7, 1992 as authorized by Ordinance 62604 approved March 31, 1992 (the "Airport Lease Agreement"); the Restated and Amended Lease Agreement, which is attached hereto as **ATTACHMENT "1"** and made a part hereof, is a complete restatement of the Airport Lease Agreement and its terms are more fully described in Section One of this Ordinance; conditioning the execution and delivery of the agreements, documents, and instruments approved or authorized by this Ordinance on the Federal Aviation Administration's prior approval of the "7460" Airspace Determination and the revised Airport Layout Plan; authorizing the Mayor, the Comptroller, the Register, the City Counselor, and other appropriate officers, and agents, and employees of the City with the advice of the Director of Airports to enter into and execute on behalf of the City and in the City's best interest any attendant or related documents, agreements, or instruments deemed necessary to effectuate the terms set forth in the Restated and Amended Lease Agreement and/or deemed necessary to preserve and protect the City's interest and to take such actions as are necessary or appropriate in connection with Restated and Amended Lease Agreement or the consummation of the transactions contemplated herein; providing that the provisions set forth in this Ordinance shall be applicable exclusively to the Restated and Amended Lease Agreement and the agreements, documents, and instruments approved and/or authorized by this Ordinance; and containing a severability clause and an emergency clause.

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

SECTION ONE. The Director of Airports and the Comptroller of the City of St. Louis (the "City") are hereby authorized and directed to enter into and execute on behalf of the City the "Restated and Amended Lease Agreement" to the Lambert-St. Louis International Airport Lease Agreement (AL-154) between the City and McDonnell Douglas Corporation, a Maryland corporation, dated January 1, 1985 and authorized by Ordinance No. 59733 approved February 26, 1986 and as amended by the "First Amendment" dated April 7, 1992 as authorized by Ordinance 62604 approved March 31, 1992 (the "Airport Lease Agreement"); the Restated and Amended Lease Agreement is a complete restatement of the Airport Lease Agreement and is to read in words and figures as set out in **ATTACHMENT "1"** and is attached hereto and made a part hereof.

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

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

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

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

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

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



McDONNELL DOUGLAS CORPORATION
RESTATED AND AMENDED
LEASE AGREEMENT
NO. AL-154

TABLE OF CONTENTS

INTRODUCTION Page 3

ARTICLE I: DEFINITIONS Page 4

ARTICLE II: PREMISES Page 6

ARTICLE III: AGREEMENT TERM Page 11

ARTICLE IV: RENT AND FEES Page 15

ARTICLE V: INCREASE IN LEASE PREMISES Page 19

ARTICLE VI: USE OF PREMISES Page 21

ARTICLE VII: CONSTRUCTION OR ALTERATION
OF IMPROVEMENTS Page 25

ARTICLE VIII: INSURANCE AND INDEMNIFICATION Page 28

ARTICLE IX: ASSIGNMENT AND SUBLETTING Page 32

ARTICLE X: TERMINATION OF AGREEMENT IN ENTIRETY
BY REASON OF DEFAULT Page 33

ARTICLE XI: MISCELLANEOUS PROVISIONS Page 35

ARTICLE XII: ENVIRONMENTAL REPRESENTATION Page 42

TABLE OF EXHIBITS Page 45

AIRPORT NUMBER AL-154

**LAMBERT-ST. LOUIS INTERNATIONAL AIRPORT
RESTATED AND AMENDED LEASE AGREEMENT**

THIS RESTATED AND SECOND AMENDMENT, made and entered into as of the _____ day of _____, 2001 (“Agreement”), by and between The City of St. Louis, a municipal corporation of the State of Missouri, as lessor (the “City”), the McDonnell Douglas Corporation, a corporation organized and existing under the laws of the State of Maryland (the “Lessee” or “MDC”).

WITNESSETH, THAT:

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

WHEREAS, this Agreement is a complete restatement of the St. Louis Airport Lease Agreement made the 1st day of January, 1985, by and between City and MDC, as authorized by City Ordinance No. 59733 approved February 26, 1986 and as amended by the First Amendment dated April 7, 1992 as authorized by City Ordinance No. 62604 approved March 31, 1992, a letter agreement deleting 1.42 acres from the Premises effective March 1, 1996 and a letter agreement dated May 7, 1996 concerning square footage of the Premises (collectively referred to herein as the “Airport Lease Agreement”);

WHEREAS, it is the intent of both parties hereto that upon the “Effective Date” of this Agreement as set forth above, the terms, covenants, and conditions of the Airport Lease Agreement will no longer be in effect;

WHEREAS, Lessee and its predecessors have occupied certain premises described in the Airport Lease Agreement since January 1, 1985 and operated as an aerospace manufacturer;

WHEREAS, Lessee desires to continue to lease the premises with the right to add additional premises and build improvements on the additional premises of approximately Eighty to Ninety Million Dollars for its aerospace manufacturing operations;

WHEREAS, City is willing to lease the premises to Lessee; and

WHEREAS, this Agreement is necessary to reflect current Airport and City business practices and ensure the City’s and the Airport’s compliance with Federal Aviation Administration orders and grant assurances.

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

**ARTICLE I
DEFINITIONS**

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

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

“Airport” shall mean as stated in the preamble hereof.

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

“City” shall mean as stated in the preamble hereof.

“Contract Year” shall mean a consecutive twelve (12) month period commencing on the first day of the term of this Agreement.

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

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

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

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

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

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

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

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

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

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

“Premises” shall mean a location or locations described in Section 201 that has or have been designated by City for the occupancy and use by Lessee together with all “Improvements” thereon for its conduct of business and for other uses herein specifically provided for, and shall also include locations which may be added to the Premises as provided for in ARTICLE V, “INCREASE IN LEASE PREMISES.”

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

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

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

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

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

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

ARTICLE II PREMISES

Section 201. Premises. City hereby leases and demises to Lessee and Lessee takes from City, the property situated in the County of St. Louis, State of Missouri, and containing approximately 71.102 acres or 3,097,203 square feet (*36.292 acres previously leased by MDC under the Airport Lease Agreement, referred to herein as the “Former Leased Premises” plus 34.81 acres commonly referred to as the “MDC Expansion Site”*) together with all Improvements thereon, hereinafter referred to as the “Premises” and more fully described on **EXHIBIT “A”** which is attached hereto and made a part hereof, subject to the reservations set forth in Section 203 hereof. The City and Lessee hereby agree to revise or amend **EXHIBIT “A”** upon completion of a land survey to determine the exact area to be defined as the Premises. City and Lessee shall reasonably and in good faith finalize and attach all such revised or amended exhibits to this Agreement.

Lessee hereby acknowledges and agrees to construct an expansion of its current facilities within the Premises. Lessee agrees that such Improvements will operate as an expansion of and in conjunction with the current facilities owned and/or operated by Lessee on the Premises. Lessee warrants, represents, and agrees that it will enter into a design-build contract to cause the construction of the Lessee's expansion facilities and other improvements of approximately Ninety Million Dollars (\$90,000,000) but not less than Eighty Million Dollars (\$80,000,000).

Except as set forth in Article XII, Lessee hereby acknowledges that it accepts and receives the Premises and any of the additional real estate or land added under ARTICLE V titled "INCREASE IN LEASE PREMISES," whether or not previously owned, occupied, or used by Lessee, in an "AS IS" condition with no warranties or representations of any kind, expressed or implied, either oral or written, made by City or any of its agents or representatives with respect to the physical, environmental or structural conditions of the Premises or any portion thereof or otherwise including but not limited to, soil conditions of the land and structural conditions of the buildings or facilities or the presence or absence of any hazardous or toxic substances, materials, gases, oil, petroleum products or derivatives, chemicals, pollutants, or waste in, on or under the Premises, or any underground or aboveground storage tanks or repositories and related equipment, asbestos and asbestos-related materials, water, sewage or utilities serving the Premises or any other matter or thing affecting or relating to the Premises, except as expressly set forth in this Agreement. City and Lessee agree that the existence and definition of hazardous or toxic substances, materials, gases, oil, petroleum products or derivatives, chemicals, pollutants, or waste, shall be construed herein in accordance with all applicable federal, state or local laws, statutes or regulations relating to the protection of human health or the environment. City without limitation expressly disclaims and negates, as to the Premises: a) any implied or express warranty of merchantability; b) any implied or express warranty of fitness for a particular purpose; and c) any implied warranty with respect to the condition of the Premises, its compliance with any zoning or other rules, regulations, laws or statutes applicable to the Premises including but not limited to the Americans with Disabilities Act, the uses permitted on the Premises, or any other matter or thing relating to the Premises or any portion thereof.

Section 202. Remediation Activities.

A. During the term of this Agreement, Lessee may, at its option, investigate and characterize the environmental condition of the Premises, which investigation and characterization may include, but is not limited to, physical sampling and testing of soils, groundwater, and surface waters on, under, and around the Premises

B. If within one year of the Effective Date of this Lease (or within one year of the effective date of the addition to the Premises pursuant to Article V of this Lease of Tract II-D, Tract II-H, or the Brownleigh Tract, as the case may be), Lessee determines and notifies the Director in writing that Hazardous Substances, Extremely Hazardous Substances, Hazardous Waste, Special Waste, Solid Waste, Oil, petroleum product or derivative, Pollutant, Toxic Pollutant, toxic substance, or other chemical substance or material subject to federal, state, or local regulation (collectively, "Hazardous Materials") are present in any soil, groundwater, or surface water on, in, or under the Premises, or migrating from the Premises, above background levels for properties in the immediate vicinity of the Premises (it being understood that background levels reflect natural conditions of the land unaffected by human activities), City covenants and agrees that it shall, at its sole cost and expense, as soon as practical remove, remediate, decontaminate, and/or restore any soil, groundwater, or surface water on, in, or under, or around (if Hazardous Materials are migrating from the Premises) the Premises affected by such Hazardous Materials to the extent necessary to attain such removal, remediation, decontamination and/or restoration standards or criteria (hereafter, "Cleanup Standards") as may then apply to properties used for aircraft manufacturing or maintenance, and office uses related thereto, or attain such other Cleanup Standards as the State of Missouri or the United States of America may otherwise specifically direct City or Lessee to attain. City shall not be precluded from attaining the applicable Cleanup Standard through the use of institutional controls, risk based analyses and remediation objectives, or such other methods as may be permitted under applicable laws, rules, and regulations; provided, however, that neither the ongoing remediation, including any testing or monitoring, nor the use of institutional controls, shall neither unreasonably nor materially impair or interfere with Lessee's use and enjoyment of the property as contemplated by this Lease. In performing any activities required by this Section 202.B., City shall consult with and coordinate its activities with Lessee to minimize disruption to Lessee operations and shall provide Lessee with such information as it may reasonably require to monitor the progress of the City's undertaking pursuant to this section. City shall promptly prepare a scope of work for such remediation activities and shall be submitted to Lessee for the Lessee's review and approval, which shall not be unreasonably withheld or delayed. In conducting any removal, remediation, decontamination, and/or restoration activities, City shall select and use qualified environmental consultants and contractors who are reasonably acceptable to Lessee. Upon completion of any removal, remediation, decontamination, and/or restoration, City shall deliver to Lessee, for Lessee's review and approval (which shall not be unreasonably withheld or delayed), a written report including any applicable governmental concurrence, determination, or regulatory action, prepared by City's environmental consultant, documenting that the Cleanup Standard has been attained. Any applicable governmental concurrence, determination, or regulatory action evidencing that the Cleanup Standard has been attained, or that further investigation, removal, remediation, decontamination, and/or restoration is not required, shall be deemed conclusive notwithstanding that such concurrence, determination, or regulatory

action is subject to future reopening or reconsideration upon discovery of new or additional information or facts or upon change in applicable law, regulation, or regulatory guidance. In the event that Lessee objects to the Remediation Report or the attainment of the applicable Cleanup Standard, Lessee and City shall meet and confer in good faith regarding what additional removal, remediation, decontamination, and/or restoration is reasonably required (if any) to satisfy the applicable Cleanup Standard. If Lessee and City cannot agree on additional removal, remediation, decontamination, and/or restoration, and the appropriate regulatory authorities are unable or unwilling to provide, in due course, direction on attainment of the applicable Cleanup Standard, City and Lessee shall jointly select an independent, qualified environmental consultant (the cost of which shall be shared equally by the City and Lessee) who shall make a determination regarding the attainment of the applicable cleanup Standard and/or the extent of further removal, remediation, decontamination and/or restoration required to attain the applicable Cleanup Standard, and such determination shall be conclusive and binding upon the City and Lessee. If Lessee and City agree on additional removal, remediation, decontamination, and/or restoration (including without limitation by reason of the independent consultant's binding determination as describe above), City shall undertake same (at the City's sole cost) and shall deliver to Lessee a subsequent Remediation Report for its review and approval in accordance with this Section 202.B. In no event shall the City be responsible or liable to Lessee for any contamination caused by Lessee, or Lessee's employees or agents.

C. To facilitate the foregoing provisions of this Section 202, commencing with the execution of this Agreement, and subject to the confidentiality agreement entered into by the City and Lessee, City agrees to permit Lessee and Lessee's employees, consultants, agents, representatives, inspectors, and contractors to inspect and/or copy non-privileged reports, documents or records pertaining to the Premises (including the Brownleigh Tract, Tract II-D, and Tract II-H), including but not limited to: all plans and specifications, blueprints, soil reports, geological, environmental and engineering reports, environmental compliance and waste management plans and other governmental reports that City has in its possession or under its control, relating to the environmental condition of the Premises. Lessee acknowledges and agrees that the information and documents obtained in accordance with this Section are for informational purposes only, and although believed to be reliable, shall not be relied upon by Lessee, and in the event any such information or documents are incorrect, City shall not be liable to Lessee for such inaccuracies because City makes no warranty or representation that the information or documents are true, complete, or accurate.

D. The provisions of this Section 202 shall be in addition to and not in lieu of and without prejudice to any claims, rights, or remedies that City or Lessee may have, now or in the future, at law or in equity, with respect to the presence or existence of Hazardous Materials on, under, or around the Premises, whether arising under contract, statute, regulation, common law or otherwise.

Section 203. Reservations. The grant of lease hereunder is subject to the following reservations and conditions.

- A. City reserves the right (but shall not be obligated to Lessee) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard.
- B. City reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as City in its sole and absolute discretion sees fit, regardless of the desires or views of Lessee, and without interference or hindrance of any kind.
- C. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the Airport which in the sole and absolute opinion of City would limit the usefulness of the Airport or constitute a hazard to aircraft.
- D. During the time of war or national emergency City shall have the right to enter into an agreement with the Government of the United States of America (the "U.S. Government") for use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport including the Premises and the rights granted herein. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the agreement with the U.S. Government, shall be suspended immediately upon receipt of written notice from City.
- E. It is understood and agreed that the rights granted by this Agreement to Lessee will not be exercised by Lessee in such a way as to interfere with or adversely affect the use, operation, maintenance, expansion or development of the Airport.
- F. There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the Premises herein conveyed, together with

the right to cause or allow in said airspace such noise, vibration, fumes, dust, fuel particles, illuminations, interference with television, radio or any other type of transmission and other effects as may be caused in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the Airport.

- G. This Agreement shall become subordinate to provisions of any existing or future agreement between City and the United States of America or any agency thereof relative to the operation, expansion, improvement, development, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the operation, improvement, development, expansion or maintenance of the Airport.
- H. City reserves all gas, oil and mineral rights in and under the soil; provided, however, that City, in the exercise of such rights, shall not interfere with the surface of the soil or with Lessee's use of the Improvements thereon.
- I. City reserves the right to grant utility and maintenance rights-of-way to itself and others over, under, through, across or on the Premises provided that such use will not interfere with Lessee's use of the Premises, and provided further that such reservation or grant of rights shall not directly result in cost or expense to Lessee.

Section 204. Access. Subject to the terms, covenants, warranties and conditions of this Agreement, Lessee has the right of free access, ingress to and egress from the Premises, for Lessee's employees, agents, guests, patrons and invitees. Subject to the terms, covenants, warranties and conditions of this Agreement, City reserves and shall have the right to access, ingress to and egress from the Premises without charge therefor, for its employees, contractors, agents, guests, patrons and invitees, its or their suppliers of materials and furnishers of service, and its or their equipment, vehicles, machinery and other property, provided that such right will not unreasonably and materially interfere with Lessee's use of the Premises and upon compliance with Lessee's reasonable security and confidentiality procedures. If Lessee is not present to permit entry and entry is necessary, City may, in case of emergency, forcibly enter the Premises without rendering City liable therefor, except for any damage caused to Lessee's property as a result of such entry or any costs, damages or liabilities arising from City's negligence or willful misconduct. Nothing contained herein shall be construed to impose upon City any duty of inspection or repair of the Premises except as expressly and specifically provided for herein.

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

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

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

ARTICLE III AGREEMENT TERM

Section 301. Term. The term of this Agreement shall commence on the first day of the month following the date City and

Lessee fully execute this Agreement and shall end on December 31, 2034, unless sooner terminated in accordance with other provisions of this Agreement. The commencement date of this Agreement may be changed by the mutual agreement of the Lessee and the Director of Airports in writing. The City shall write the mutually agreed to "Commencement Date" in the space below.

Commencement Date _____

Upon the Commencement Date, the terms of this Agreement shall govern and simultaneously the Airport Lease Agreement shall be deemed terminated.

Section 302. Renewal Agreement Terms. Provided Lessee is in compliance with all the terms, covenants, and conditions of this Agreement and continues to maintain substantial operations at the leased Premises, Lessee may renew this Agreement upon all the same terms, covenants and conditions, for two (2) additional eight (8) year terms. The "Renewal Agreement Terms" shall be exercised by written notice to City not later than two (2) years prior to the last day of the initial term or subsequent renewal term.

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

City and Lessee, before acceptance by the City of any of the facilities and Improvements, shall perform a joint inspection of the facilities and Improvements being surrendered to the City. Lessee shall perform any reasonable maintenance work requested by the City so that all mechanical systems are fully functional and the facilities are protected from the weather. Said inspection shall be conducted thirty (30) days prior to the expiration date of the term of this Agreement, or at the earlier termination thereof as provided for in ARTICLE X, entitled "TERMINATION OF AGREEMENT IN ENTIRETY BY REASON OF DEFAULT." Lessee further agrees to give to the City all building plans (i.e., "As-Built" drawings) and mechanical specification manuals on all systems in the surrendered facilities.

Section 304. Environmental Covenants and Releases.

- A. Lessee covenants and agrees that at the expiration date of the term of this Agreement, or as soon as practicable after earlier termination hereof, unless otherwise agreed to in writing by the City, Lessee shall (i) remove all products or wastes contained in underground and aboveground storage tanks located on the Premises, and (ii) pull or remove all underground and aboveground storage tanks, and any connecting piping, tubing, or other related equipment, located on the Premises.
- B. Lessee covenants and agrees that no less than two years prior to the expiration date of the term of this Agreement, or as soon as practicable following the earlier termination hereof, unless otherwise agreed to in writing by City, Lessee shall complete an investigation of the environmental condition of the Premises to determine the presence in soil, groundwater, or surface water of any Hazardous Materials. In conducting its investigation, Lessee shall select and use a qualified environmental consultant who is reasonably acceptable to the Director, and Lessee's consultant shall prepare a scope of work for the investigation, which scope of work shall be consistent with generally accepted environmental professional practice and standards, and as otherwise may be required by the State of Missouri or the United States Environmental Protection Agency. Upon finalization, the scope of work shall be promptly submitted to the Director for his approval, which approval shall not be unreasonably withheld or delayed. Lessee shall document the findings of its environmental investigation in a written report (hereinafter, the "Environmental Investigation Report") to be prepared by Lessee's consultant and upon finalization, provided to the Director for his review and approval, which approval shall not be unreasonably withheld or delayed.
- C. Subject to and consistent with Section 304.F, to the extent that the Environmental Investigation Report identifies levels of Hazardous Materials in soil, groundwater, or surface water on, in, or under the Premises, or migrating from the Premises, above background levels for properties in the immediate vicinity of the Premises (it being understood that background levels reflect natural conditions of the land unaffected by human activities), Lessee covenants and agrees that it shall, at its sole cost and expense, remove, remediate, decontaminate, and/or restore any soil, groundwater, or surface water on, in, or under, or around (if Hazardous Materials are migrating from the Premises) the Premises affected by such identified Hazardous Materials to the extent necessary to attain such removal, remediation, decontamination and/or restoration standards or criteria (hereafter, "Cleanup Standards") as may then apply to properties used for aircraft manufacturing or

maintenance, and office uses related thereto, or if required at the time that the Environmental Investigation Report is completed, to attain such other Cleanup Standards as the State of Missouri or United States of America may otherwise specifically direct Lessee to attain. Lessee shall use all reasonable efforts to complete any required soil removal or remediation on the Premises prior to the expiration of this Agreement, or as soon as practical after the termination or earlier expiration of this Agreement, subject to City's reasonable cooperation. Lessee shall not be precluded by the City from attaining the applicable Cleanup Standard through the use of institutional controls, risk based analyses and remediation objectives, or such other methods as may then be permitted under applicable laws, rules, and regulations; provided, however, that neither the ongoing remediation, including any testing or monitoring, nor the use of institutional controls, shall neither unreasonably nor materially impair or interfere with City and/or its tenants' use and enjoyment of the Premises for purposes of aircraft manufacturing or maintenance, and office uses related thereto. In conducting any removal, remediation, decontamination and/or restoration, Lessee shall select and use qualified environmental consultants and contractors who are reasonably acceptable to the Director.

- D. Upon completion of any removal, remediation, decontamination, and/or restoration required by Section 304.C, Lessee shall deliver to the Director a written report, including any applicable governmental concurrence, determination, or regulatory action, prepared by Lessee's environmental consultant documenting that the Cleanup Standard required by Section 304.C has been attained (hereafter, the "Remediation Report"). Within forty-five (45) days of the Director's receipt of a Remediation Report, the Director shall either (1) deliver to Lessee its written concurrence that the Cleanup Standard has been attained with respect to such removal, remediation, decontamination, and/or restoration, or (2) deliver to Lessee written objections setting forth specific and reasonable grounds why the respective Cleanup Standard has not been satisfied; provided, however, that any applicable governmental concurrence, determination, or regulatory action evidencing that the Cleanup Standard has been attained or that further investigation, removal, remediation, decontamination, and/or restoration is not required shall be deemed conclusive notwithstanding that such concurrence, determination, or regulatory action is subject to future reopening or reconsideration upon discovery of new or additional information or facts or upon change in applicable law, regulation, or regulatory guidance. Lessee shall provide the Director with written notice if the Director fails to timely deliver his written concurrence or objections in accordance with this Section 304.D. If the Director fails to respond to such written notice within thirty (30) days of receipt, Lessee shall be conclusively deemed to have satisfied its covenants and agreements pursuant to this Section 304.D, and shall have no further liability or obligation in accordance with Section 304.E. In the event that the Director makes timely written objections to a Remediation Report, within ten (10) business days of receipt of such objections, Lessee and City shall meet and confer in good faith regarding what additional removal, remediation, decontamination, and/or restoration is reasonably required (if any) to satisfy the applicable Cleanup Standard. If Lessee and City cannot agree on additional removal, remediation, decontamination, and/or restoration, and the appropriate regulatory authorities are unable or unwilling to provide, in due course, direction on attainment of the applicable Cleanup Standard, City and Lessee shall jointly select an independent, qualified environmental consultant (the cost of which shall be shared equally by City and Lessee) who shall make a determination regarding the attainment of the applicable Cleanup Standard and/or the extent of further removal, remediation, decontamination and/or restoration required to attain the applicable Cleanup Standard, and such determination shall be conclusive and binding upon City and Lessee. If Lessee and City agree on additional removal, remediation, decontamination, and/or restoration (including without limitation by reason of the independent consultant's binding determination as described above), Lessee shall undertake same (at Lessee's sole cost) and shall deliver to the Director a subsequent Remediation Report for his review and action in accordance with this Section 304.D.
- E. UPON LESSEE'S SATISFACTION OF ITS COVENANTS AND OBLIGATIONS IN SECTION 304.D, LESSEE SHALL HAVE NO FURTHER LIABILITY OR OBLIGATION TO CITY, ITS BOARD OF ALDERMEN, OR THE AIRPORT COMMISSION TO REMOVE, REMEDIATE, DECONTAMINATE, AND/OR RESTORE SUCH SOIL, GROUNDWATER, OR SURFACE WATER, AND THE INDEMNIFICATION PROVISIONS OF SECTION 806.B SHALL THEREAFTER BE NULL AND VOID.
- F. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 304, LESSEE SHALL HAVE NO LIABILITY FOR AND NO RESPONSIBILITY OR OBLIGATION TO CITY, ITS BOARD OF ALDERMEN, OR THE AIRPORT COMMISSION TO REMOVE, REMEDIATE, DECONTAMINATE, AND/OR RESTORE ANY SOIL, GROUNDWATER, OR SURFACE WATER AFFECTED BY ANY HAZARDOUS MATERIALS WHICH LESSEE CAN DEMONSTRATE (I) ARE OR WERE RELEASED, DISCHARGED, DISPOSED, AND/OR SPILLED ON, IN, UNDER, ABOUT, OR FROM THE PREMISES BY CITY, ITS OFFICERS, AGENTS, EMPLOYEES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INDEPENDENT CONTRACTORS, GUESTS, PATRONS, TENANTS (EXCLUDING LESSEE), AND INVITEES; OR (II) MIGRATE OR MOVE OR MIGRATED OR MOVED ONTO, INTO, UNDER, OR FROM THE PREMISES FROM PROPERTY OWNED OR OPERATED BY CITY OR

ANY OF ITS TENANTS (EXCLUDING LESSEE), OR ANOTHER THIRD-PARTY NOT AFFILIATED WITH LESSEE; OR (III) WERE PRESENT ON, IN, UNDER, ABOUT, OR FROM THE PREMISES PRIOR TO THE TERM OF THIS AGREEMENT (EXCEPT AND TO THE EXTENT THAT THE PRESENCE OF SUCH HAZARDOUS MATERIALS WAS CAUSED BY THE ACT OR OMISSION OF LESSEE, OR LESSEE'S EMPLOYEES OR AGENTS).

Section 305. Partial Surrender. At the later of any time after the tenth (10) anniversary of this Agreement or five (5) years after the addition of Tract II-D, Tract II-H or the Brownleigh Tract to the Premises, the City may require the Lessee to surrender to City any part or all of any of the Premises but only if Lessee has not constructed Improvements on the Premises or parts thereof that the City requires Lessee to surrender. For determining the improved area, Lessee's fence line shall be controlling. After the surrender of a portion of the Premises according to this Section 305, (i) the rent for the Premises shall be adjusted by multiplying the remaining square footage of the Premises by the per square foot rental rate(s) then in effect under this Agreement and (ii) Lessee may retain such easements and rights in the surrendered area as is necessary to maintain then existing utilities and services to the Premises which are derived from the surrendered premises. In the case of a Partial Surrender under this Section 305, Lessee shall remain subject to its covenants in Section 304 and 806.B. with respect to the surrendered premises.

ARTICLE IV RENT AND FEES

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

Section 402. Rent Payment. Lessee will pay to City a square foot rental rate of Twenty-Three Cents (\$0.23) (the "Initial Rent") for an annual rent of Seven Hundred Twelve Thousand Three Hundred Fifty Six Dollars (\$712,356.00). This rent will be paid in equal monthly amounts of Fifty Nine Thousand Three Hundred Sixty Three Dollars (\$59,363.00), in advance, on or before the first day of each month of the term of this Agreement; provided however that Lessee may elect to pay the annual rent in one advance payment before January 1 of each lease year, and in such event the Lessee shall be entitled to a ten percent (10%) rent reduction for such year, but only during the initial term of the lease (i.e. through December 31, 1934) and only in regard to the Former Leased Premises. The Initial Annual Rent due and payable under this Agreement is subject to adjustment pursuant to Section 201 "Premises," Section 305 "Partial Surrender," Section 403 "Rent Escalation," Section 501, "Right of First Refusal," Section 502 "Brownleigh Option" and Section 1103.B "Partial Take." It is understood that the addition of real estate or property pursuant to Article V will create one or more square foot rental rates. In the event the Federal Aviation Administration ("FAA") determines the payment terms under this Agreement for Tract II-D, Tract II-H or the Brownleigh Tract to be unreasonably low or otherwise not in compliance with federal requirements, the rental amount will be modified, retroactive to the Effective Date of the addition of the Tract(s) to the Premises, to an amount that the FAA agrees is in compliance with federal requirements.

If required, City and Lessee hereby agree to adjust the annual rental for the initially leased Premises once the survey pursuant to Section 201 is completed and the exact amount of square feet being initially leased is known. If such a change or adjustment is required to the annual rental for the initial leased Premises due to a change in the square footage as determined by the survey, such revised annual rental shall begin on the first day of the month following notice to Lessee by the City of the change in the square footage. Any resulting change in the initial rental payments that may result from this adjustment in square feet shall be made on the first day of the month following the City's notice to the Lessee of the survey results. Rental payments made by Lessee from the Commencement Date to the effective date of the revised rental amount shall be adjusted if an over or under payment results. Any such under payment shall be due and payable by Lessee when the first revised rental payment is due. If the adjustment indicates that the Lessee has overpaid, the City will give or issue Lessee a credit in the amount of the overpayment which shall be applied against the first revised rental payment due.

Section 403. Rent Escalation. As used in this Section 403:

- A. "Index" shall mean the "Consumer Price Index for all Urban Consumers" (CPI-U) relating to "U.S. City Average" and issued by the Bureau of Labor Statistics of the United States Department of Labor. In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the Percentage Increase (defined below) shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or failing such publication, by any other nationally recognized publisher of similar statistical information as reasonably selected by the Director. In the event the Index shall cease to be published, then for the purposes of this Section, City and Lessee shall agree upon the new index to be used, and if they are unable to agree within ninety days after the Index ceases to be published, such matter shall be reasonably

decided by the Director.

- B. "Base Index" shall mean the Index in effect in December of the calendar year in which the new date of this Agreement falls and shall also mean the Index in effect in December of the calendar year in which any additional real estate or property is added to the Premises pursuant to Article V.
- C. "Anniversary Month" shall mean December of the fifth year from the year Lessee's obligation to pay rent commences under this Agreement and December of every fifth year thereafter during the initial term of this Agreement and any extensions in the term of the Agreement, as provided for in Section 302 "Renewal Agreement Terms."
- D. "Percentage Increase" shall mean the percentage equal to the fraction, the numerator of which shall be the Index in the Anniversary Month less the Base Index, and the denominator of which shall be the Base Index; provided, however that the Percentage Increase for the five year period between each Anniversary Month shall not exceed twenty percent (20%).
- E. "Base Annual Rental Rate" shall be the Initial Rent with any modifications as determined and provided for in Article V, "Increase in Lease Premises."
- F. If the Index in an Anniversary Month shall exceed the Base Index, then the Base Annual Rental Rate payable for the ensuing five (5) calendar years, and thereafter until a new index comparative statement is sent to Lessee, shall be increased by the Percentage Increase. On or before April 1st of the said ensuing five (5) calendar years to which the increase in the Base Annual Rental Rate applies, City shall send Lessee an "Index Comparative Statement" setting forth the following:
 1. The Index in the Anniversary Month preceding the date of the statement,
 2. The Base Index(s),
 3. The Percentage Increase of each, and
 4. The increase in each Base Annual Rental Rate.

On the first day of the calendar month ("current month") following the month in which the Index Comparative Statement was sent, Lessee shall pay to City a sum equal to 1/12th of said increase in Base Annual Rental Rate multiplied by the number of calendar months of the lease term then elapsed since said January 1st, and thereafter, commencing with the current month and continuing monthly thereafter until a different Index Comparative Statement is sent to Lessee, the monthly installments of rent shall be increased by an amount equal to 1/12th of said increase. In the event the last mentioned increased monthly installments of rent shall continue beyond the end of the five year period for which such payments were payable, any necessary adjustment will be made when the next succeeding Index Comparative Statement is sent to Lessee.

Section 404. Unpaid Rent and Fees. All unpaid rent and fee payments due City hereunder shall bear a service charge of one and one-half percent (1½%) per month if same is not paid and received by City on or before the 30th of the month in which said payments are due, and Lessee agrees that it shall pay and discharge all costs and expenses including attorneys' fees, court costs and expenses incurred or expended by City in collection of said delinquent amounts due including service charges.

Section 405. Notice, Place and Manner of Payments. Payments shall be made at the Office of Director at the address as set forth in Section 1101 below, or at such other place or by whatever payment method the City may determine as City may hereafter notify Lessee and shall be made in legal tender of the United States.

Section 406. Additional Fees, Charges and Rents. Lessee shall pay additional fees, charges and rents under the following conditions:

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

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

as set forth herein.

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

Section 407. Prompt Payment of Taxes and Fees. Lessee warrants, covenants and agrees to pay promptly all lawful general taxes, special assessments, excises, license fees, permit fees, and utility service charges of whatever nature, applicable to its operation at the Airport, and acquire and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon the Airport.

Section 408. NAVAIDS- Relocation Costs. Lessee hereby agrees to reimburse the City for costs charged by the FAA to the City, if applicable, for work associated with the relocation or modification of existing FAA NAVAIDS and related facilities impacted by the Lessee's expansion program (the "Reimbursable Costs"), so as to enable the FAA to relocate, reconfigure, modify, replace, and/or remove and reinstall existing NAVAIDS and related facilities in a manner as to not impact the progress of the City's W-1W Program or the operations of the Airport, the FAA's schedule, or the Lessee's expansion program. The Lessee shall promptly reimburse the City for Reimbursable Costs for each progress payment within thirty (30) calendar days after receipt of the City's request for reimbursement. The City shall provide Lessee with proof of payment documentation for the Reimbursable Costs as requested by Lessee. The work or projects contemplated herein include without limitation the following:

ASDE; VOR/DME AND THE IMPACTED FAA CABLE LOOPS

ARTICLE V
INCREASE IN LEASE PREMISES

Section 501. Right of First Refusal. Lessee is hereby granted certain rights of first refusal (the "Rights of First Refusal") to add Tract II-D and/or Tract II-H, as more fully described and shown on **EXHIBIT "A,"** to the Premises according to the terms and conditions of this Section 501. Tract II-D and Tract II-H, as of the Effective Date, are subject to the lease(s) described in **EXHIBIT "B"** (the "Current Tract II Leases"). During the term of this Agreement or any extension or renewal thereof, the City shall promptly give Lessee written notice of the termination, cancellation or expiration of any of the Current Tract II Leases. Lessee's Right of First Refusal for adding Tract II-D and/or Tract II-H, as the case may be, to the Premises shall be exercised by Lessee providing City with written notice within thirty (30) days after receipt of the City's notice. City shall be allowed to renew or extend the terms of the Current Tract II Leases with respect to the current lessee(s) without triggering Lessee's Right of First Refusal. If Tract II-D and/or Tract II-H is added to the Premises, all of the terms, covenants, conditions, and provisions of this Agreement shall apply to Tract II-D and/or Tract II-H, including the provisions of Section 202, 304, and 806.B, except as provided below:

- (a) The Initial Rent for the Premises shall be increased by (i) a sum computed by multiplying the square-foot area of Tract II-D and/or Tract II-H added to the Premises by the then current per square foot ground rental rate for the Premises in effect when Lessee takes possession of said tracts pursuant to this section and (ii) a to be agreed upon adjustment to said ground rental rate for the condition of the then existing improvements. Alternatively, Lessee shall have the option to make a one-time payment for the condition of the then existing improvements on Tract II-D and/or Tract II-H in an amount agreed to by the City, rather than having the Initial Rent for the Premises increased as provided in clause (ii) in the preceding sentence.
- (b) If Tract II-D and/or Tract II-H shall be added to the leased Premises, except at the beginning of a lease year hereunder, and sums payable by Lessee solely as a result of an election by Lessee under this paragraph, shall be apportioned in accordance with the length of the terms or terms covering said tracts.

In addition, on the effective date of the addition of Tract II-D and/or Tract II-H to the Premises, the representations and warranties in Article XII shall be deemed remade as of such date with respect to each addition to the Premises.

Section 502. Brownleigh Option. Lessee is hereby granted the right to lease an additional thirty-four (34) acres, more or less (plus or minus one acre) as more fully described on **EXHIBIT "C,"** which is attached hereto and incorporated herein (the "Brownleigh Tract"), in the event that on or prior to January 1, 2005, the U.S. Government selects The Boeing Company to produce all or a part of the Joint Strike Fighter. Lessee shall have one (1) year from notice of the Boeing Company's selection to elect to add the Brownleigh Tract to the leased Premises. If this option is not exercised by Lessee in the manner and within the time period

prescribed above, this option shall become null and void. If this option is exercised, Lessee warrants, represents, and agrees to produce all or a part of the Joint Strike Fighter in facilities constructed on the Brownleigh Tract. If the Brownleigh Tract is added to the Premises, all of the terms, covenants, conditions, and provisions of this Agreement shall apply to the Brownleigh Tract, including the provisions of Sections 202, 304, and 806.B, except as provided below:

- (a) The Initial Annual Rent shall be increased by a sum computed by multiplying the area of Brownleigh Tract in square feet by a market square foot rate as established by the City and agreed to by Lessee (see Section 503 titled "Market Rate Determination").
- (b) If the Brownleigh Tract shall be added to the leased Premises, except at the beginning of a lease year hereunder, and sums payable by Lessee solely as a result of an election by Lessee under this paragraph, shall be apportioned in accordance with the length of the terms covering the Brownleigh Tract.

In addition, on the effective date of the addition of the Brownleigh Tract to the Premises, the representations and warranties in Article XII shall be deemed made as of such date with respect to the Brownleigh Tract.

Section 503. Market Rate Determination. When Lessee presents to the City the notice as required in Section 502, City shall set the rental rate based on similar market rates for similar type property. If the City and Lessee are unable to agree on this market rate, then each will hire a qualified licensed appraiser who must: a) hold a current license to work in the state of Missouri, b) be generally recognized as a commercial and industrial appraiser and be a current member of the "Appraisal Institute," c) be experienced with commercial and industrial appraisals within the greater St. Louis metropolitan area. Both the City and Lessee shall each pay the fees and expenses of their respective appraisers. Both the City and Lessee shall direct their licensed appraiser to appraise the Brownleigh Tract to determine a market rental rate on a market value basis. Both appraisals must comply with the "Uniform Standards of Profession Appraisal Practice" as promulgated by the "Appraisal Foundation." If the difference in the market rental rates determined by the qualified and licensed appraisers is less than or equal to fifteen percent (15%), then the market rate for the Brownleigh Tract shall be determined by adding the market rental rates arrived by the two qualified and licensed appraisers and dividing that total by two. However, if said difference in market rental rates is greater than fifteen percent (15%), the City and Lessee shall promptly and timely agree on a review appraiser who shall determine the appropriate market rental rate for the Brownleigh Tract. The review appraiser must also be licensed and qualified as provided for herein. City and Lessee shall equally share the fees and cost of the review appraisal.

ARTICLE VI USE OF PREMISES

Section 601. Use. City hereby grants to Lessee, subject to all the terms, covenants, and conditions of this Agreement, permission to occupy and use the Premises and Improvements, and to construct additional Improvements, relating to Lessee's aerospace manufacturing operations or other lawful uses as are incidental, necessary or customary to the proper use of the Premises.

Section 602. Compliance with Laws and Regulations. Lessee shall comply with all statutes, laws, ordinances, orders, judgments, decrees and regulations of all federal, state, local and other governmental authorities, including without limitation the "Airport Certification Manual" on file at the Director's Office, now or hereafter applicable to the Premises or to any adjoining public ways, as to the manner of use or the condition of the Premises or of adjoining public ways.

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

permits.

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

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

Lessee's failure to comply with any provision of this section shall be considered a material breach of this Agreement if such failure to comply creates a significant risk to public health or the environment. If such a material breach occurs, City, at its sole option, may terminate this Agreement, and seek other remedies at law or in equity subject to the terms of Article X below.

Section 603. Repairs and Maintenance. Lessee shall, throughout the term of this Agreement and any extension thereof, at its own cost, and without any expense to City, keep, repair and maintain the interior and exterior, structural and non-structural portions of the Premises including all Improvements and without limitation the plumbing, heating, lighting, air conditioning, and other systems in connection therewith, in good and safe condition, sanitary and neat order, and will make all necessary repairs and maintenance thereto, ordinary and extraordinary, foreseen and unforeseen, and will make all necessary replacements thereto of like quality when beyond repair, including but not limited to offices, hangars, aircraft ramp, parking lots and fuel facility. Lessee shall restore, rehabilitate, or replace all Improvements that may be destroyed or damaged by fire, casualty or any other cause whatsoever. City shall not be obligated to perform any maintenance or make any repairs or replacements of any kind, nature or description, to the Premises or Improvements.

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

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

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

- G. Environmental Responsibilities. Lessee shall have the sole obligation to make such reports or notifications to governmental authorities as may be required by law, rule, or regulation in the event of a Release or Discharge of a Hazardous Substance, Extremely Hazardous Substance, or Oil Product from the Premises, in the event of which Lessee shall also timely inform the Director of such Release or Discharge.

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

Lessee shall be solely responsible for any follow-up reports, notifications, corrective action, or remediation required as a result of any spill, Release, or Discharge described above; provided that Lessee does not hereby waive or relinquish any claims, demands, or remedies the Lessee may have at law or in equity arising from or related to any such spill, Release, or Discharge. Lessee shall promptly provide copies of any reports, notifications, correspondence, or cleanup verification to the Director upon written request.

Section 604. Right to Enter and Inspect. City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances, with as little interruption of Lessee's operations as is reasonably practicable and upon compliance with Lessee's security and confidentiality procedures) to enter upon and in the Premises for the following purposes:

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

Section 605. Utilities. Lessee shall provide for and pay for all utilities used on the Premises.

Section 606. Interference to Air Navigation. Lessee agrees that no obstruction to air navigation, as such are defined from time to time by application of the criteria of FAR Part 77 or subsequent and additional regulations of the FAA, will be constructed or permitted to remain on the Premises. Lessee will remove any obstructions at its expense. Lessee agrees not to increase the height of any structure or objects or permit the growth of plantings of any kind or nature whatsoever that would interfere with the line of sight of the control tower and its operations. Lessee further agrees not to install any structures, objects, machinery or equipment that would interfere with operation of navigation aides or that would interfere with the safe and efficient operations of the Airport, or interfere with the operations of other tenants and users of the Airport.

ARTICLE VII CONSTRUCTION OR ALTERATION OF IMPROVEMENTS

Section 701. Construction or Modification By Lessee.

- A. Except as provided for in Article XII, Lessee takes the Premises "**AS IS**" and may, at its sole cost and expense, construct, refurbish or make Improvements on the Premises in accordance with plans and specifications prepared by Lessee. However, any plans to refurbish the exterior or the interior of the building or facilities or make Improvements to the Premises that exceed Two Hundred Thousand Dollars (\$200,000) must be prepared by the Lessee and submitted to the Director for approval as provided for in Section 701.B through 701.H. Upon termination of this Agreement, Lessee shall not be required to remove any Improvements to the Premises for which the Director has given his/her Approval under this Section 701, unless otherwise expressly provided for herein.
- B. Lessee agrees that all such work that requires the Director's approval shall be completed according to the Tenant Design Standards, which are filed of record in the office of the Director.
- Lessee shall submit a signed Tenant Construction or Alteration Application ("TCA") including complete construction drawings and specifications, as required by Section 701.C below, to the Airport Properties Department.

- Lessee shall submit to the Airport Properties Department a building permit number from any and all municipalities, political jurisdictions and regulatory agencies not more than thirty (30) days following submission of the TCA. (A building permit number is required prior to the start of any construction or modification by Lessee.)
- Lessee shall submit the contractor's liability insurance certificates and payment bonds, required by Sections 701.F and 701.G below, to the Airport Properties Department not more than forty-five (45) days following the TCA approval by the Airport Properties Department and prior to beginning of work.
Lessee shall submit to the Airport Properties Department a copy of an occupancy permit from any and all municipalities, political jurisdictions and regulatory agencies, as required by Section 701.H below, prior to occupancy.

If an Environmental Impact Statement is created by Lessee with respect to a TCA, Lessee shall submit to the Airport Properties Department a copy of the Environmental Impact Statement from any and all municipalities, political jurisdictions and regulatory agencies not more than thirty (30) days following submission of the TCA.

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

Section 702. Signs. Lessee agrees that no new signs or advertising display shall be painted on or erected in any manner upon the Premises without the prior written approval of Director, and that such new signs shall conform to reasonable standards established

by Director with respect to wording, type, size, design, color and location.

Section 703. Title to Improvements. Title to the Premises and all Improvements constructed or placed in or on the Premises by Lessee including all alterations, modifications and enlargements thereof (unless otherwise expressly provided for herein) shall become part of the Premises with title vesting in City upon expiration or earlier termination of this Agreement; provided, however, that this Section 703 shall not apply to Lessee's trade fixtures, the title to which shall remain in Lessee both during and after the term of this Agreement and which Lessee shall be entitled to remove from the Premises upon the termination, expiration or cancellation of this Agreement. Lessee's obligations to operate, repair, maintain and insure the Improvements, as well as Lessee's right of possession, use and occupancy during the term in accordance with this Agreement shall not be affected by this Agreement.

Section 704. Mechanics' and Materialmen's Liens. Lessee agrees not to permit any mechanics' or materialmen's or any other lien to be foreclosed upon the Premises or any part or parcel thereof, or the Improvements thereon, by reason of any work or labor performed or materials furnished by any mechanic or materialman or for any other reason.

ARTICLE VIII INSURANCE AND INDEMNIFICATION

Section. 801 Liability Insurance. Lessee shall obtain, at its sole expense and maintain at all times during the term of this Agreement, liability insurance, on an occurrence basis, against the risk of all claims and demands by third persons for bodily injury (including wrongful death) and property damage arising or alleged to arise out of the activities of Lessee, its officers, agents, employees, consultants, contractors, licensees, independent contractors and invitees pursuant to this Agreement under the following types of coverage:

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

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

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

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

Section 802. Property Insurance. Lessee shall, at all times during the Initial and any Renewal Terms of this Agreement, and at Lessee's sole expense, keep all Improvements (exclusive of Lessee's trade fixtures and equipment) which are existing or may be hereafter erected on the Premises insured against loss, damage or destruction by fire, lightning, extended coverage or other casualty and vandalism hazards except perils of earthquake and flood for one hundred percent (100%) of the full replacement value of such Improvements, with loss payable to Lessee and to City as their interests may appear. Any loss adjustment shall require the written consent of both Lessee and City. City shall be included as a loss payee as City's interest may appear under any form of commercial property insurance.

Insofar as said insurance provides protection against liability for damages to a third party for bodily injury, death and property damage, City and its Board of Aldermen, Airport Commission, officers, agents and employees shall be named as "Additional Insured" excluding claims to the extent resulting from the negligence or willful misconduct of the City. Such property insurance coverage

shall also extend to damage, destruction and injury to City-owned or leased property and City personnel, and caused by or resulting from work, acts, operations, or omissions of Lessee, its officers, agents, employees, consultants, contractors, licensees, independent contractors, and invitees and contractual liability. City, its officers, employees and agents shall have no liability for any premiums charged for such coverage, and the inclusion of City, and its Board of Alderman, Airport Commission, officers, employees and agents as Additional Insured is not intended to, and shall not, make City, its officers, employees and agents a partner or joint venture partner with Lessee in its operations hereunder.

Section 803. Workers' Compensation. Lessee shall obtain, at its sole expense and at all times during the term of this Agreement for its employees working on Airport Premises Workers' Compensation insurance coverage at least at the statutory limits applicable to Lessee's operations in the State of Missouri.

Section 804. Waiver of Subrogation.

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

Section 805. Evidence of Insurance. Certificates, or other evidence of insurance coverage and special endorsements required of Lessee in this Article VIII, shall be delivered to Director not less than fifteen (15) days prior to the commencement of the Term hereof or the date when Lessee shall enter into possession, whichever occurs later.

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

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

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

Section 806. Indemnification.

- A. Subject to and consistent with Sections 202, 304 and 806B of this Agreement, Lessee shall protect, defend, and hold the City, its Board of Aldermen, Airport Commission, officers, agents and employees completely harmless from and against all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Premises and the negligent acts or omissions of Lessee's officers, agents, employees, contractors, subcontractors, licensees, independent contractors or invitees regardless of where the injury, death, or damage may occur. City and Lessee each mutually agree that each will be responsible for their own negligent acts and/or negligent omissions and that the foregoing indemnity therefore does not apply to claims to the extent they arise from the negligence or willful misconduct of any of the indemnified parties. Director or his/her designee shall give to Lessee reasonable notice of any such claims or actions. Lessee shall also use counsel reasonably acceptable to the City Counselor of City or his/her

designee, after consultation with Director or his/her designee in carrying out its obligations hereunder.

- B. Environmental Indemnity. Lessee shall protect, indemnify, defend, and hold harmless the City and its board of Aldermen, the Airport Commission and its officers, agents, and employees against any lawsuits, administrative proceedings, claims, or administrative or judicial orders for any liability, cost, expenditure, injury, damage, penalty, or fine arising from or relating to Lessee's material breach of its covenants in Sections 304, 602, 603.F, and 603.G. This indemnification of City by Lessee includes, without limitation, all reasonable and necessary costs and expenses related to the sampling, testing, investigation, clean up, removal, remediation, decontamination, or restoration of the Premises and other affected areas, including, but not limited to, air, land, soil, or underground or surface water, to the extent and in a manner consistent with the standards set forth in Section 304, whether prompted by governmental action or private action, and also includes the reasonable and necessary costs of legal representation in connection with such sampling, testing, investigation, clean up, removal, remediation, decontamination, or restoration of the Premises and other affected areas. Director or his/her designee shall give to Lessee reasonable notice of any such claims or actions within sixty (60) days after City receives notice of the claim or action or an occurrence that is likely to give rise to a claim or action. Lessee shall also use counsel reasonably acceptable to the City Counselor of City or his/her designee, after consultation with Director or his/her designee in carrying out its obligations hereunder. City shall cooperate fully with Lessee in any defense or settlement against any such claim, action, or liability.
- C. AOA Indemnity. Lessee agrees that if a prohibited incursion into the AOA occurs; or if the safety or security of the AOA, the Field and Runway Area, or other sterile area safety or security is breached by or due to the negligence or willful act or omission of any of Lessee's employees, agents, contractors, subcontractors, consultants, licensees, independent contractors, invitees, visitors, guests, patrons or permittees and such incursion or breach results in a civil penalty action being brought against City by the U.S. Government, Lessee will reimburse City for all expenses, including attorneys' fees and litigation expenses, incurred by City in defending against the civil penalty action and for any civil penalty or settlement amount paid by City as result of such action or inaction, incursion or breach. City shall notify Lessee of any allegation, investigation, or proposed or actual civil penalty sought by the U.S. Government related to action or inaction of Lessee. Civil penalties and settlements and associated expenses reimbursable under this paragraph include but are not limited to those paid or incurred as a result of violation of FAR Part 107, Airport Security, FAR Part 108, Airplane Operator Security, or FAR Part 139, Certification and Operations: Land Airports Serving Certain Air Carriers.

ARTICLE IX ASSIGNMENT AND SUBLETTING

Section 901. Assignment and Subletting. Lessee shall not assign this Agreement without first obtaining the written approval of City (as required by City Ordinance 63687), which approval shall not be unreasonably withheld. At least one hundred twenty (120) days prior to any contemplated assignment of this Agreement, Lessee shall submit a written request to the Director. No assignment shall be made or shall be effective unless Lessee shall not be in default on any of the terms, covenants and conditions herein contained. The party to whom such assignment is made shall expressly assume in writing the terms, covenants, and conditions contained in this Agreement and such assignment shall not release Lessee from any of the terms, covenants, conditions, or obligations of this Agreement. Any such assignment without the consent of City as provided for above shall constitute a default on the part of Lessee under this Agreement; provided, however, that Lessee shall have the right to assign this Agreement to an affiliate of Lessee having a net worth equal to or greater than that of Lessee at the time of such assignment, including The Boeing Company, without the consent of the City as provided in this Section 901, provided that such assignment shall not release Lessee from any of the terms, covenants, conditions or obligations of this Agreement. No action or failure to act on the part of any officer, agent, or employee of City shall constitute a waiver by City of this provision of this Agreement.

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

ARTICLE X
TERMINATION OF AGREEMENT IN ENTIRETY BY REASON OF DEFAULT

Section 1001. City's Right to Terminate. City, acting by and through its Director, may declare this Agreement terminated in its entirety, in the manner provided in Section 1003 hereof, upon the happening of any one or more of the following events:

- A. If the fees, charges, or other money payments which Lessee herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due.
- B. If, during the term of this Agreement, Lessee shall:
 - 1. Apply for, or consent to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets;
 - 2. File a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due;
 - 3. Make a general assignment for the benefit of creditors;
 - 4. File a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law;
 - 5. File an answer admitting the material allegations of a petition filed against any said assignee, lessee, or sublessee in any bankruptcy, reorganization or insolvency proceedings; or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, or the application of a creditor, adjudicating Lessee a bankrupt or insolvent, or approving a petition seeking a reorganization of Lessee, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days.
- C. If Lessee shall have materially failed in the performance of any term, covenant or condition herein required to be performed by Lessee.

On the date set forth in the notice of termination, the term of this Agreement and all right, title and interest of Lessee shall expire, except as otherwise provided in Section 1003 hereof.

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

Section 1002. Lessee's Right to Terminate. Lessee, at its option, may declare this Agreement terminated in its entirety, in the manner provided in Section 1003 hereof for the following causes:

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

D. If City shall have materially failed in the performance of any term, covenant or condition within the control of City and herein required to be performed by City.

Section 1003. Procedures for Termination. No termination declared by either party shall be effective unless and until not less than ninety (90) days have elapsed after notice by either party to the other specifying the date upon which such termination shall take effect, and the cause for which this Agreement is being terminated and no such termination shall be effective if such cause of default is cured within said ninety (90) day period, or if by its nature cannot be cured within such ninety (90) day period, and if the party at default commences to correct such default within said ninety (90) days and corrects the same as promptly as is reasonably practicable. In the event that suit shall be instituted by City upon the default of payment of charges and fees as provided herein, then Lessee agrees also to pay a reasonable attorney’s fee, court costs and expenses.

Section 1004. Rights Cumulative. It is understood and agreed that the rights and remedies of City and Lessee specified in this Article are not intended to be, and shall not be exclusive of one another or exclusive of any common law right of either of the parties hereto.

ARTICLE XI
MISCELLANEOUS PROVISIONS

Section 1101. Notice. Except as herein otherwise expressly provided, all notices required to be given to City hereunder shall be in writing and shall be delivered personally, or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, or shall be sent by telex, telegram, telecopy, fax or other similar form of rapid transmission confirmed by the mailing (by first class or express mail, postage prepaid) written confirmation at substantially the same time as such rapid transmission; and, shall be addressed to the parties at the respective addresses set forth below. A party may change its address for receipt of notice by service of notice of such change in accordance herewith. Notice shall be deemed received at the earlier of actual receipt or three (3) calendar days after being sent in the manner provided for above.

If to the City:

Director of Airports,
Lambert-St. Louis International Airport
P.O. Box 10212, Lambert Station
10701 Lambert International Blvd.
St. Louis, MO 63145

with a copy to the Airport Properties Manager at the same address.

If to the Lessee:

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

with a copy to:

Boeing Realty Corporation
P. O. Box 516, Mailcode S100-1380
St. Louis, MO 63166-0516

and

Bryan Cave LLP
211 N. Broadway, Suite 3600
St. Louis, MO 63102
Attn: Linda M. Martinez, Esq.

Section 1102. Environmental Notice. Lessee shall promptly notify the Director or his/her designee of (1) any change in the nature of Lessee’s operation on the Premises that will materially change Lessee’s or City’s potential obligations or liabilities under the environmental laws; or (2) the commencement by any governmental entity of a formal administrative proceeding before an administrative law judge or a civil or criminal action before a judicial tribunal alleging a violation of environmental law in connection

with Lessee's operations on the Premises.

Section 1103. Condemnation.

- A. Total Take - If the whole of the Premises or Lessee's improvements should be taken by the exercise of the power of eminent domain by any public entity including City, then in such case this Agreement shall terminate as of the date of vesting of title in the condemning authority.
- B. Partial Take - If less than the whole of the Premises or Lessee's improvements should be taken by the exercise of the power of eminent domain by any public entity including City, then this Agreement shall terminate only as to that portion of the Premises so taken as of the date of the vesting in the condemning authority of title to such portion, but this Agreement shall remain in full force and effect with respect to that portion of the Premises not so taken, provided that the Director and the Lessee, after good faith discussions, determine that the remainder of the Premises may be feasibly used for the purposes contemplated by this Agreement. After a partial condemnation of the Premises, the rent for the Premises shall be adjusted by multiplying the remaining square footage of the Premises by the per square foot rental rate(s) then in effect under this Agreement.
- C. Possession by Lessee - Notwithstanding any termination of this Agreement in whole or in part under Paragraphs A and B of this Section, Lessee may remain in possession of each portion of the Premises as shall be so taken at the rent herein provided, until the condemning authority shall require Lessee to surrender such possession. Any rent or charge in the nature of rent which Lessee is required to pay to the condemning authority in consideration of such remaining in possession shall be paid by Lessee and shall reduce pro tanto the obligation of Lessee to payment hereunder.
- D. Whether all or a portion of the Premises should be taken in a condemnation proceeding, Lessee shall be entitled to receive from the City that portion of the condemnation award allocable to the value of Lessee's Improvements on the Premises as well as the value of Lessee's leasehold interest in the Premises.

Section 1104. Non-Discrimination and Affirmative Action Program.

- A. Lessee hereto understands and agrees that City in operation and use of Lambert-St. Louis International Airport will not on the grounds of race, creed, color, religion, sex, national origin or ancestry, discriminate or permit discrimination against any person or group of persons in a manner prohibited by Part 21 of the Federal Aviation Regulations of the Office of the Secretary of Transportation. Lessee hereby agrees that its Premises shall be posted to such effect as required by such regulation.
- B. Lessee agrees that in performing under this Agreement, neither he nor anyone under his control will permit discrimination against any employee, worker or applicant for employment because of race, creed, color, religion, sex, national origin or ancestry. Lessee will take affirmative action to insure that applicants are employed and that employees are treated fairly without regard to race, creed, color, religion, sex, national origin or ancestry. Such action must include, but shall not be limited to action to bar, employ, upgrade or recruit; expel, discharge, demote or transfer; layoff, terminate or create intolerable working conditions, rates of pay or other forms of compensation and selection for training including apprenticeship.
- C. Lessee will in all printed or circulated solicitations or other advertisement or publication for employees placed by or on behalf of Lessee state that all qualified applicants shall receive meaningful consideration for employment without regard to race, creed, color, religion, sex, national origin or ancestry. All advertisements or solicitations for applicants for employment must contain the phrase "An Equal Opportunity Employer." Lessee shall not make inquiry in connection with prospective employment, which expresses directly or indirectly any limitation, specification or discrimination because of race, creed, color, religion, sex, national origin or ancestry.
- D. Lessee agrees that should it be determined by Lessee or City that he will be unable to conform to its approved positive employment program submitted to determine eligibility under the fair employment practices provisions of the City Code, Lessee will notify the Fair Employment Practices Division of the Civil Rights Enforcement Agency (CREA) within ten (10) days of such determination, as to the steps to be taken by Lessee to achieve the provisions of its program.
- E. Lessee will permit reasonable access by City to such persons, reports and records as are necessary for the purpose of ascertaining compliance with fair employment practices.

- F. Lessee further agrees that these clauses (B through E) covering discrimination and equal opportunity practices in all matters of employment and training for employment will be incorporated by Lessee in all contracts or agreements he enters into with suppliers of materials or services, contractors and subcontractors, and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or service in connection with this Agreement.
- G. Whenever Lessee is sued by a subcontractor, vendor, individual, group or association as a result of compliance with the clauses (A through F) of these provisions relating to fair employment practices, Lessee shall notify the City Counselor in writing of such suit or threatened suit within ten (10) business days.
- H. In event of Lessee's noncompliance with nondiscrimination clauses of this Agreement, or to furnish information or permit his books, records and account to be inspected within twenty (20) days from date requested, this Agreement may be canceled, terminated or suspended, in whole or in part subject to Article X above, and Lessee may be declared ineligible for further City contracts for a period of one year by option of City, provided, further, if this Agreement is canceled, terminated or suspended for failure to comply with fair employment practices, Lessee shall have no claims for any damages or loss of any kind whatsoever against City.
- I. Lessee will establish and maintain for the term of this Agreement an affirmative action program according to the Mayor's Executive Order on Equal Opportunity in Employment and City reserves the right to take such action as the City of St. Louis and the U.S. Government may direct to enforce the above covenants.
- J. Lessee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered sub-organizations provide assurances to the Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 1105. No Personal Liability. No Alderman, Commissioner, Director, officer, board member, employee or other agent of either party shall be personally liable under or in connection with this Agreement.

Section 1106. Force Majeure. Neither City nor Lessee shall be deemed in violation of this Agreement, if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellions, or sabotage, or any other circumstances for which it is not responsible and which is not within its control.

Section 1107. Successors and Assigns. All of the terms, provisions, covenants, stipulations, conditions and considerations of this Agreement shall extend to and bind the legal representatives, successors, sublessees and permitted assigns of the respective parties hereto.

Section 1108. Quiet Enjoyment. Subject to the terms, covenants and conditions of this Agreement, City covenants that Lessee on paying the rents and otherwise performing its covenants and other obligations hereunder, shall have quiet and peaceable possession of the Premises.

Section 1109. Operation and Maintenance of Airport. City shall at all times operate the Airport properly and in a sound and economical manner; and City shall use reasonable effort to maintain, preserve and keep the same or cause the same to be maintained, preserved and kept, with the appurtenances in good repair, working order and condition, and shall from time to time use reasonable effort to make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the Airport may be properly and advantageously conducted in conformity with standards customarily followed by municipalities operating airports of like size and character.

Section 1110. Title to Site. The Premises from the date hereof until the expiration or early termination of this Agreement shall be owned in fee simple title by City or in such lesser estate as in the opinion of the City Counselor is sufficient to permit the letting thereof by City as herein provided for the full term provided in this Agreement.

Section 1111. Agreements with the United States. This Agreement is subject and subordinate to the provisions of any

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

Section 1112. Modifications to Maintain Federal Compliance. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement, development, or expansion of the Airport, modifications or changes to this Agreement or determines this Agreement to be inconsistent with City's grant assurances, current or future, Lessee agrees to consent to such reasonable amendments, modifications, or changes to this Agreement as may be reasonably required to enable the City to obtain said funds or comply with the City's grant assurances.

Section 1113. Governing Law. This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri and is subject to the City's Charter.

Section 1114. Headings. The headings of the Articles and Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

Section 1115. Amendments. This Agreement may be amended from time to time by written agreement, duly authorized and executed by all the signatories to this Agreement.

Section 1116. Previous Agreements. It is expressly understood that the terms, covenants, and conditions of this Agreement shall supersede the terms, covenants, and condition of the Airport Lease Agreement dated January 1, 1985 as previously amended. It is expressly understood by the Parties that the provisions of this Agreement shall in no way affect or impair the terms, covenants, conditions, or obligations of any other existing or prior agreement between the Lessee and the City.

Section 1117. Withholding Required Approvals. Whenever the approval of City, or Director, or of Lessee is required herein, no such approval shall be unreasonably requested or withheld.

Section 1118. Waivers. No waiver of default by either party of any of the terms, covenants or conditions hereto to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party. No waiver shall be binding unless executed in writing by the party granting the waiver.

Section 1119. Invalid Provisions. In the event any term, covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained, provided the invalidity of any such term, covenant, condition or provision does not materially prejudice either City or Lessee in its respective rights and obligations contained in the valid terms, covenants, conditions and provisions of this Agreement.

Section 1120. Americans with Disabilities Act ("ADA"). Lessee shall be responsible for compliance with the Federal ADA, plus any State laws and City Ordinances pertaining to the disabled individual having access to the Premises.

Section 1121. Advertising. Lessee shall have no right to use the trademarks, symbols, trade names or name of the Airport, either directly or indirectly, in connection with any production, promotion service or publication without the prior written consent of Director.

Section 1122. Time is of the Essence. Time is of the essence in this Agreement. The parties agree that time shall be of the essence in the performance of each and every obligation and understanding of this Agreement.

Section 1123. Acknowledgment of Terms and Conditions. The parties affirm each has full knowledge of the terms, covenants, conditions and requirements contained in this Agreement. Each party acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Agreement. As such, the terms of this Agreement shall be fairly construed and the usual rule, of construction, if applicable, to the effect that any ambiguities herein should be resolved against the drafting party, shall not be employed, in the interpretation of this Agreement or any amendments, modifications or exhibits thereto.

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

Secretary Date
Board of Estimate & Apportionment

APPROVED AS TO FORM:

COUNTERSIGNED:

City Counselor Date
City of St. Louis

Comptroller Date
City of St. Louis

ATTEST:

Register Date
City of St. Louis

McDONNELL DOUGLAS CORPORATION:

BY: _____

TITLE: _____

DATE: _____

MDC LEASE AL-154 FINAL DRAFT 6-6-01,MAP

TABLE OF EXHIBITS

- EXHIBIT "A" PREMISES DESCRIPTION**
- EXHIBIT "B" CURRENT TRACT II LEASES**
- EXHIBIT "C" BROWNLEIGH TRACT DESCRIPTION**

EXHIBIT "A"
DESCRIPTION OF THE PREMISES

The Premises consist of certain tracts of land containing approximately 71.102 (36.292 + 34.81) acres or 3,097,203 square feet more particularly described as follow:

- A. 36.292 acres consisting of Tract II-A, Tract II-B, PT Tract II-B, and Tract II-C as shown on Page 2 of **EXHIBIT "A"**; and
- B. 34.81 acres commonly known as the "MDC Expansion Tract" and more fully described on Pages 3 through 7 of **EXHIBIT "A"**.

MDC, AL-154, EXHIBIT A, REVISED 5-30-01, MAP

EXHIBIT "B"
CURRENT TRACT II LEASES

TRACT II-D

LESSEE: Trans States Airlines, Inc., d/b/a Trans World Express
TERM: April 1, 2000 to May 31, 2003

TRACT II-H

LESSEE: FlightSafety International Inc.
TERM: January 1, 1977 to December 31, 2006

See Exhibit "A" Legal Description (The Boeing Company Tract 2 West New Ramp Facility) and Exhibit "C" (BROWLEIGH TRACT) on file in the Register's office.

See attached Exhibits - Lease Exhibit - (Parcel A - 1A), Lease Exhibit - (Parcel A-1B) & Exhibit C (Browleigh Tract)

Approved: July 18, 2001

ORDINANCE NO. 65245 - EXHIBITS (Lease Exhibit - Parcel A-1B), (Lease Exhibit - Parcel A-1B) & EXHIBIT C (Browleigh Tract)

