

EXHIBIT

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J.P. "RICK" CARNEY

DUPAGE COUNTY RECORDER

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INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered into this 22nd day of March, 2001, by and between the CITY OF WEST CHICAGO the ("CITY"), an Illinois municipal corporation situated in DuPage County, Illinois, and the DuPAGE AIRPORT AUTHORITY, an Illinois municipal corporation situated in DuPage County, Illinois, (the "AUTHORITY"); the CITY and the AUTHORITY being sometimes hereinafter individually referred to as "PARTY" and collectively referred to as the "PARTIES";

Above Space for Recorder's Use Only

WHEREAS, the AUTHORITY is organized as a metropolitan airport authority pursuant to the Airport Authorities Act (70 ILCS 5/1 et seq.), exercising the powers conferred upon airport authorities under said Act, as well as other powers conferred under the statutes of the State of Illinois, including the powers conferred upon the AUTHORITY pursuant to the Airport Zoning Act (620 ILCS 25/1 et seq.); and,

WHEREAS, the CITY is a non-home rule unit of local government exercising the powers conferred upon such units of local government

RETURN TO:

Phillip A. Luetkehans
SCHIROTT & LUETKEHANS, P.C.
105 E. Irving Park Rd.
Itasca, IL 60143

pursuant to the Illinois Municipal Code (65 ILCS, Art. 5); and

WHEREAS, the PARTIES, as units of local government, are authorized to contract and otherwise associate amongst themselves and to obtain or share services and to exercise, combine or transfer any power or function that either unit of local government may have in any manner not prohibited by law or ordinance under the authority of Article VII, Section 10 (Intergovernmental Cooperation) of the Constitution of the State of Illinois; and,

WHEREAS, the AUTHORITY owns certain property which is presently within the CITY'S boundaries (the "PROPERTY"), a description of which is attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, the PARTIES agree that a legal description of the PROPERTY will be provided within a reasonable period of time by the AUTHORITY; and

WHEREAS, the PARTIES are "public agencies" within the meaning of the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and are further authorized to enter into this Agreement pursuant to the Intergovernmental Cooperation Act; and

WHEREAS, the PARTIES have determined that it is in their best interests to enter into this Agreement, pursuant to the lawful authority conferred upon the PARTIES as units of local government as specified in the preceding recitals and further pursuant to 65 ILCS 5/11-15.1-3; and

WHEREAS, following all necessary public hearings, the Corporate Authorities of the CITY, by a vote of not less than two-

thirds (2/3) of the Corporate Authorities then holding office, adopted a Resolution authorizing and directing the Mayor to execute, and the CITY Clerk to attest, this Agreement on behalf of the CITY; and

WHEREAS, the AUTHORITY'S Board of Commissioners has authorized the execution of this Agreement by the passage of an ordinance or resolution providing for such execution, passed or adopted upon the affirmative vote of the majority of the Commissioners.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES do hereby agree as follows:

ARTICLE I

INCORPORATION OF RECITALS

The PARTIES hereby confirm the truth and validity of the representations and recitations set forth in the foregoing recitals. Such recitals are hereby incorporated into and made a part of this Agreement as though fully set forth in this Article I.

ARTICLE II

EFFECTIVENESS OF PRIOR ANNEXATION

This Agreement shall supersede all prior annexation agreements, intergovernmental agreements and amendments thereto entered into by the CITY and the AUTHORITY and upon the execution of this Agreement, all such prior agreements shall be deemed terminated by the PARTIES (the "PRIOR DOCUMENTS"). However, all

actions taken under those prior annexation and intergovernmental agreements, including but not limited to the annexation of PROPERTY into the CITY, to the extent not modified herein, are hereby ratified by the PARTIES.

ARTICLE III

GENERAL PROVISIONS

A. **APPLICABILITY OF THIS AGREEMENT:** All construction and development upon the AUTHORITY'S PROPERTY shall be undertaken in conformance with the requirements of this Agreement. Subject to supervening law, the terms of this Agreement supersede any codes, ordinances, resolutions, rules, regulations and standards of the CITY. The codes, ordinances, resolutions, rules, regulations and standards generally in force, from time to time, within the CITY shall regulate those items not covered by this Agreement. The CITY shall not enact any ordinance which contravenes or limits the statutory powers of the AUTHORITY.

B. **PRIVITY OF CONTRACT:** The PARTIES agree that the terms of this Agreement are contractual provisions between the CITY and the AUTHORITY who enjoy privity of contract with respect thereto. The terms of this Agreement are not assignable to any successor in fee simple interest to the PROPERTY. If any portion of the PROPERTY is not owned in fee simple by the AUTHORITY or its successor governmental entity, that portion shall be governed by the codes, ordinances, resolutions, rules and regulations of the CITY then in effect without regard to the terms of this Agreement. Long-term, subordinate or any other leases or easements to third parties shall

not create or be considered a loss of the AUTHORITY'S fee simple interest under this Agreement.

C. PRIOR IMPROVEMENTS: To the extent that prior utility improvements for sewer and water have been constructed, in part or in full ("PRIOR UTILITY IMPROVEMENTS"), the AUTHORITY, within thirty (30) days of the full execution of this Agreement, will pay the CITY the sum of One Million Nine Thousand Dollars (\$1,009,000.00). Said payment will completely discharge any and all amounts owed to the CITY for PRIOR UTILITY IMPROVEMENTS.

D. PRIOR BUILDING FEES: All fees for building permits or inspections owed by either PARTY as of the date of this Agreement are hereby waived.

E. The AUTHORITY has previously provided stormwater management facilities to accommodate existing and future development. The AUTHORITY shall, within one hundred eighty (180) days of execution of this Agreement, provide the CITY with a summary of the total capacity, capacity required for existing development and remaining capacity available for future development of the existing stormwater management facilities.

F. This Agreement shall expire on January 1, 2026. Afterwards, the PARTIES agree that the term will automatically be extended for five (5), twenty-five (25) year intervals unless one (1) PARTY terminates this Agreement in writing to the other PARTY at least one hundred eighty (180) days prior to the end of the term or any extension.

ARTICLE IV

ZONING

A. ZONING GRANT: The CITY will, concurrently with the execution of this Agreement, amend its General Development Plan to designate the PROPERTY as Airport District. The PROPERTY has heretofore been zoned and classified within the CITY'S Code of Ordinances (the "ZONING ORDINANCE"). The PARTIES have agreed that the pertinent provisions of the ZONING ORDINANCE require amendment and modification to make more complete and appropriate provision for the PROPERTY owned by the AUTHORITY. Attached hereto and incorporated herein as Exhibit "B" is a copy of an "An Ordinance Amending the Code of Ordinances of the City of West Chicago -- Appendix A -- Zoning Ordinance, Article X - Section 10.5 Airport District" (the "ZONING TEXT AMENDMENT"). The PARTIES have agreed that the CITY, as applicant, shall proceed as required by law to cause the CITY'S Code to be amended so as to incorporate into the CITY'S ZONING ORDINANCE the provisions of the ZONING TEXT AMENDMENT. Concurrent with the approval of this Agreement, the CITY shall pass and approve the ZONING TEXT AMENDMENT, which subsequent to its adoption may only be amended by an ordinance of the CITY adopted upon application and approval by the AUTHORITY.

All land presently owned or subsequently acquired by the AUTHORITY shall be annexed into the CITY and, upon annexation, shall be zoned by the CITY into the Airport District. The property located within the Airport District shall be designated by the AUTHORITY into one (1) of three (3) parcel designations as follows:

not more than one (1) AIRPORT PARCEL; not more than two (2) GOLF COURSE PARCELS; and as many COMMERCIAL PARCELS as may be designated by the AUTHORITY provided that each such parcel designation shall comply with the terms of this Agreement, including the ZONING TEXT AMENDMENT.

- 1 AIRPORT PARCEL: The AIRPORT PARCEL shall be considered to be a single zoning lot for all purposes under this Agreement and the CITY'S ZONING ORDINANCE, as amended by the ZONING TEXT AMENDMENT. The AIRPORT PARCEL has been and may, in the future, be further developed with a public airport together with all associated accessory uses and amenities, which are used for or useful as an aid to the landing, taking off, navigation, repair, maintenance or storage of aircraft, including but not limited to, air traffic control towers, hangars, terminals, fuel farms, ground maintenance buildings, administrative offices, flight instruction buildings or offices, automobile rentals, food service, aircraft repair or maintenance buildings or offices, roads, parking, runways, taxiways, ramp areas, clear zones, noise impact areas and air space requirement areas (the "AIRPORT FACILITIES").

The AUTHORITY shall exercise exclusive zoning jurisdictional control, in conformance with the terms of this Agreement, over the number, location, height and other typical bulk zoning requirements, including but not limited to height, size, location, landscaping, signage, architecture, parking, lighting and fencing (the "BULK ZONING REQUIREMENTS"), for all AIRPORT FACILITIES presently located, or to be located, upon the AIRPORT PARCEL, as the same may, from time to time, be configured by the AUTHORITY. For as long as the AUTHORITY, or its successor governmental entities, shall own the AIRPORT PARCEL in fee simple, the ZONING TEXT AMENDMENT shall not apply to the AIRPORT PARCEL, except for Section 10.5-3(A). Notwithstanding the foregoing, the zoning jurisdiction of the AUTHORITY over the AIRPORT PARCEL shall be subject to the following specific limitations and conditions:

- (a) The AIRPORT PARCEL, as the same may from time to time be configured, is the only portion of the PROPERTY which may be developed with AIRPORT FACILITIES. The AIRPORT PARCEL shall consist of a single contiguous tract of land which shall not be separated by other PARCELS, except as to the

presently existing heliport located at 320 Kress Road, West Chicago, Illinois. Notwithstanding the above prohibition, navigational aids approved by the Federal Aviation Administration (the "FAA") shall be allowed anywhere on the PROPERTY. To the extent the location and construction of AIRPORT FACILITIES upon the AIRPORT PARCEL are regulated by Federal and State aviation and transportation authorities, including, but not by way of limitation, the FAA, the AUTHORITY shall cause all AIRPORT FACILITIES to be located and constructed in full compliance with the applicable regulations of all such authorities. Further, and specifically, the CITY shall exercise no regulatory control over the AIRPORT FACILITIES, which shall conflict with any lawful authority exercised by the FAA and other appropriate Federal and State agencies.

- (b) The AIRPORT FACILITIES shall be located solely within the AIRPORT PARCEL, except as such uses are allowable within the other PARCELS. The AIRPORT PARCEL, and only the AIRPORT PARCEL, may be improved with the AIRPORT FACILITIES. No other use may be located within the AIRPORT PARCEL.
2. GOLF COURSE PARCELS: The GOLF COURSE PARCELS shall be considered to be single zoning lots for all purposes. The GOLF COURSE PARCELS may in the future be further developed with golf courses and all buildings, structures and improvements which are used or useful in the operation of the golf courses, including but not limited to, maintenance and storage facilities, practice facilities, driving range, clubhouse, food and beverage facilities, swimming pools, tennis courts, other recreational facilities, hotels, cottages and other lodging facilities (not intended for permanent occupancy), facilities for meetings, benefits, banquets and the like held at the golf courses (the "GOLF COURSE FACILITIES").

The CITY and the AUTHORITY agree that, subject to the hereinafter stated conditions, the AUTHORITY shall exercise exclusive zoning jurisdictional control in conformance with the terms of this Agreement and the BULK ZONING REQUIREMENTS for the GOLF COURSE FACILITIES presently located, or to be located, upon the GOLF COURSE PARCELS, as the same may, from time to time, be configured by the AUTHORITY. For as long as the AUTHORITY, or its successor governmental entities, owns the GOLF COURSE PARCELS in fee simple, the ZONING TEXT AMENDMENT shall not apply to the GOLF COURSE PARCELS, except for Section 10.5-3(B).

The GOLF COURSE PARCELS, as the same may from time to time be configured, are the only portions of the PROPERTY which may be developed with such GOLF COURSE FACILITIES as are reasonably accessory thereto, except as such uses may be allowed within the other PARCELS.

3. COMMERCIAL PARCELS: All development upon the COMMERCIAL PARCELS shall be undertaken in conformance with this Agreement, the ZONING TEXT AMENDMENT and the "PROCEDURES" set forth in Exhibit "C", attached hereto and incorporated herein.

There are existing structures which currently do not conform to the ZONING TEXT AMENDMENT. These structures shall be considered legal nonconforming uses and be regulated by the present terms of the CITY'S Code relating to nonconforming uses and structures.

4. SITE PLAN: The SITE PLAN, incorporated herein and attached hereto as Exhibit "D", depicts the AIRPORT PARCEL, the GOLF COURSE PARCELS and the COMMERCIAL PARCELS. An updated SITE PLAN shall be provided to the CITY contemporaneously with any zoning or building permit requests or the expansion or contraction of the PARCEL boundaries.

5. PARCEL ADJUSTMENTS: The AUTHORITY shall have the absolute right, subject to the conditions hereinafter provided, to adjust the boundaries of the respective PARCELS:

- (a) All portions of the PROPERTY to be redesignated from one (1) PARCEL to another must be owned by the AUTHORITY.

- (b) At the time of redesignation, all affected portions of the PROPERTY being redesignated must be vacant and unimproved provided, however, that improved portions of the PROPERTY may be redesignated if, and only if, the improvements located thereon are permitted uses within the PARCEL classification to which the affected portion of the PROPERTY is to be redesignated and comply with the terms of this Agreement, the ZONING TEXT AMENDMENT and the BULK ZONING REQUIREMENTS as the case may be.

- (c) The redesignation of portions of the PROPERTY from one (1) PARCEL to another PARCEL shall be accomplished by filing with the CITY an amended SITE PLAN depicting the addition and deletion to and from the relevant portions of the affected PARCELS, together with revised legal descriptions

of the affected PARCELS and, if appropriate, suitable evidence that all portions of the PROPERTY affected by the proposed redesignation continue to be owned by the AUTHORITY.

6. CONSTRUCTION: All construction upon the PROPERTY shall be undertaken in conformance with this Agreement.

B. AIRPORT HAZARD ZONING RESTRICTIONS: The AUTHORITY'S current airport zoning regulations are encompassed in the AUTHORITY'S Ordinances No. 1988-21 and 1988-23 and the Illinois Department of Transportation DuPage Airport Hazard Zoning Regulations, 92 Ill. Adm. Code 37 (collectively the "AIRPORT HAZARD ZONING REGULATIONS") and are attached hereto and incorporated herein as Exhibit "E".

The AUTHORITY shall promptly provide the CITY with copies of all ordinances of the AUTHORITY which amend the AIRPORT HAZARD ZONING REGULATIONS.

In the interest of public safety, the CITY shall notify the AUTHORITY of any request for a building permit for any structure within the CITY that shall exceed seventy-five (75) feet in height. The CITY shall include in its development guides a general notification to all applicants advising them of the need to consider other aviation related regulations that may affect the applicant's right to build structures within the CITY. The notification shall specifically reference Part 77 of the FAA's regulations and the State of Illinois Airport Hazard Zoning Regulations. The form of the notification shall be subject to the reasonable approval of the AUTHORITY.

C. PROHIBITIONS: The PARTIES expressly agree that no

portion of the PROPERTY shall used for any of the following purposes:

1. a regional or non-regional pollution control facility as those terms are presently or will in the future be defined or discussed in 414 ILCS 5/3.32 or any other statute making provisions for such facilities;
2. storage of radioactive wastes;
3. except as provided hereinafter in Article IV.D, off-premises identification signs as presently defined in the CITY'S ZONING ORDINANCE, including signs otherwise permissible under 225 ILCS 4401, et seq.;
4. Landscape Waste Transfer Stations as presently defined in Section 9-276 of the CITY'S Code; or
5. adult uses.

D. **AUTHORITY SIGNS:** The AUTHORITY presently has two off-premises identification signs on the COMMERCIAL PARCELS which are hereby considered to be legal nonconforming uses. These current signs will be removed or replaced within the original term of this Agreement. The AUTHORITY is granted the ability to replace these signs at any time with two (2) new off-premises identification Ground Signs to direct people to the AIRPORT PARCEL and GOLF COURSE PARCELS. The new signs shall be located in the same general location as the existing signs. The exact location will be agreed to by the PARTIES upon consultation.

ARTICLE V

POLICE POWERS

A. **LIQUOR LICENSE:** The CITY acknowledges that the proposed development of the PROPERTY may include uses that in order to offer the complete services necessary to their economic viability may require a liquor-pouring license and some retail uses will require

a package-liquor sales license. In addition, the CITY acknowledges that, from time to time, the AUTHORITY permits the use of its facilities for special events such as air shows and events organized by charitable organizations. The CITY confirms that it has, as a matter of principle and overall CITY planning, no objection to the issuance of liquor licenses for special events and qualified charitable organizations, and other events and entities requested by the AUTHORITY and to the development of establishments requiring liquor-pouring or package-liquor sales licenses on the PROPERTY. Irrespective of the limitation on the number of licenses available within any class of license provided for in the CITY'S Code, the CITY further agrees to give reasonable and prompt consideration to properly qualified applicants.

F. Except as this Agreement provides, the CITY agrees that it will not enact any ordinance which does any of the following as it affects the AUTHORITY or the PROPERTY:

1. Regulate the operation of the AIRPORT PARCEL.
2. Regulate the movement, use, storage, repair or fueling of aircraft on the AIRPORT PARCEL.
3. Require a license, tax or fee in connection with ownership or use of aircraft on the AIRPORT PARCEL.
4. Require a license, tax or fee to do aviation business on the AIRPORT PARCEL.
5. Impose any tax, charge or requirement not otherwise generally applicable to the entire CITY.
6. Impose a municipal tax, fee or charge in connection with AIRPORT operations, including but not limited to a tax on planes, fuel, cargo, passengers or crews, on the AIRPORT PARCEL.

However, nothing herein shall prevent the CITY from receiving

or retaining its portion of fees, taxes or charges which are imposed by a county, the State of Illinois or the federal government.

C. The CITY may impose a hotel/motel tax which would be applicable to such uses located upon businesses on the PROPERTY. However, one hundred percent (100%) of any such tax collected by the CITY shall be paid over to the AUTHORITY. The AUTHORITY must utilize any such tax proceeds in the manner required by the governing state statutes and further agrees to confer with the CITY as to how the hotel tax funds shall be spent. Any promotional materials paid for by said tax funds shall acknowledge that the AUTHORITY is located in the CITY.

D. No amusement tax pursuant to state statutes may be imposed upon the PROPERTY in an amount which exceeds three percent (3%). However, no amusement tax of any amount shall be assessed upon any activity on the AIRPORT PARCEL that is primarily aviation related, except for those events for which tickets are sold to the general public such as air shows.

E. The CITY and AUTHORITY agree that the AUTHORITY and CITY shall comply with DuPage County Stormwater Regulations, as amended by the CITY'S Ordinance No. 4229.

ARTICLE VI

MUTUAL ASSISTANCE

The PARTIES shall do all things necessary and appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in furthering the intent of the PARTIES as

reflected by the terms of this Agreement including, without limitation, the holding of such public hearings and the enactment by the PARTIES of such resolutions and ordinances, the execution of such permits, applications and agreements and the taking of such other actions as may be necessary to enable the PARTIES to comply with the terms and provisions of this Agreement.

ARTICLE VII

ANNEXATION

Upon acquisition by the AUTHORITY of any additional property which is contiguous to the corporate limits of the CITY, the AUTHORITY will petition the CITY to annex such additional property, and the CITY agrees to annex such additional property. All such additional property shall be deemed to be included in the PROPERTY hereunder and shall be subject to the terms of this Agreement. Upon annexation, the AUTHORITY shall provide a revised SITE PLAN to the CITY showing which PARCEL such additional property is to be included in.

ARTICLE VIII

APPLICABLE MUNICIPAL STANDARDS

A. BUILDING CODES, IMPROVEMENTS, BUILDING AND OCCUPANCY PERMITS AND INSPECTIONS: If any improvements are to be dedicated to the CITY, those improvements shall comply with the CITY'S standards and specifications. However, there is no requirement for any improvements on the AIRPORT PARCEL or the GOLF COURSE PARCELS to be dedicated to the CITY, except to the extent that any sewer and water improvements serve the COMMERCIAL PARCELS or any user off

the PROPERTY, in which case those sewer and water improvements shall be dedicated to the CITY. The following provision shall control the adoption of building codes, the review of plans for the construction of all structures and dedicated improvements, the issuance of building and occupancy permits and the inspection of all structures constructed on the PROPERTY.

1. The construction of structures on the PROPERTY shall only be governed by and subject to compliance with the codes set forth in Exhibit "F" (the "APPLICABLE CODES") and not any other codes or ordinances of the CITY.
2. The PARTIES hereby agree to hire one (1) or more independent third parties (the "DESIGNATED FIRM[S]") to supply the compliance review and inspection services required in this Agreement. If at any time either PARTY wishes to hire a different firm for these services, it shall notify the other in writing. Thereafter, within sixty (60) days, the PARTIES shall solicit proposals from, interview and select one or more firms providing compliance review and inspection services. The PARTIES shall, in all respects, comply with any statutory requirements in the solicitation and selection of the DESIGNATED FIRM[S].
3. The PARTIES, in consultation with the DESIGNATED FIRM[S], have, and in the future shall from time to time develop a mutually agreed upon fee structure, based upon the type and size of the building, sufficient in all cases to pay the full costs of such services together with an additional charge of ten percent (10%) to be added thereto for the purpose of compensating the CITY for its administrative costs in reviewing the work of the mutually DESIGNATED FIRM[S]. All fees related to the compliance review and inspection services shall be paid by the developer at the time the application for building permit is filed. All fees under this paragraph shall be agreed to by the PARTIES and shall be reviewed annually by the PARTIES.
4. Except as hereinafter provided in subparagraph 5 below, the AUTHORITY, or parties seeking to develop a portion of the PROPERTY with the approval of the AUTHORITY, shall submit to the CITY an application for a building permit. To the extent required, said building permit application shall include the following documents:

- (a) building permit application;
- (b) four (4) sets of building plans -- site plan building, plumbing, mechanical, electrical;
- (c) structural calculations;
- (d) soil investigation report;
- (e) four (4) landscape plans (COMMERCIAL PARCELS only);
- (f) four (4) sets of civil engineering plans;
- (g) stormwater permit application;
- (h) four (4) sets of sprinkler system plans;
- (i) four (4) sets of fire alarm plans; and
- (j) four (4) sets of specifications for HVAC and other equipment.

If the applicant is a person or party other than the AUTHORITY, the AUTHORITY'S Executive Director shall advise the CITY in writing that the AUTHORITY has authorized such person or party to make application for a building permit.

The engineering plans shall demonstrate how stormwater management shall be accommodated. If stormwater management facilities are to be provided off-site, the plans shall include details of how stormwater will be conveyed to the regional facility, the capacity of the facility, the amount of capacity already committed to existing or approved development, the capacity required for the proposed development and the remaining capacity available for future development. The DESIGNATED FIRM[S] shall evaluate the engineering plans for compliance with the applicable stormwater management regulations.

Upon receipt by the CITY of a complete building permit application or any revision thereto, the CITY shall within one (1) business day forward the entire building permit application to the DESIGNATED FIRM[S].

The DESIGNATED FIRM[S], if necessary, can request additional information, and then shall determine whether the submitted building permit application, together with any modifications thereto, complies with all APPLICABLE CODES, and the DESIGNATED FIRM[S] shall certify to the AUTHORITY, the CITY and the applicant (if other than the AUTHORITY) whether the building permit application complies with all APPLICABLE CODES and whether a building permit with respect thereto should be issued.

If the DESIGNATED FIRM[S] certify that a building permit should be issued, the CITY shall, within three (3) business days of said certification, either issue a building permit or forward objections thereto and reasons for said objections in writing to the AUTHORITY and the applicant (if other than the AUTHORITY).

The AUTHORITY and the CITY agree that they shall provide each other and shall require all applicants and the DESIGNATED FIRM[S] to provide to the AUTHORITY and the CITY copies of all correspondence relevant to each application, inspection or certification.

5. Notwithstanding the foregoing, the requirement of CITY permitting shall only apply to buildings, not to parking lots, runways, ramp areas, roads, taxiways, or navigational aids, etc. located on or for the benefit of the AIRPORT PARCEL.
6. Should the AUTHORITY believe that any denial of a building permit application fails to properly apply any provision of the APPLICABLE CODES, the AUTHORITY shall notify the CITY, the applicant (if other than the AUTHORITY) and the DESIGNATED FIRM[S] of the specific provision(s) of the APPLICABLE CODES deemed to have been misapplied or violated. The PARTIES shall within three (3) business days meet with the applicant and the appropriate DESIGNATED FIRM[S] to attempt to resolve any questions or concerns; however each PARTY shall retain all rights to litigate the dispute.
7. Within two (2) business days of request for final inspection, the CITY and/or the DESIGNATED FIRM[S] shall inspect the improvement. If the improvement is found to be completed in substantial conformance with the previously approved plans and specifications, the CITY and/or DESIGNATED FIRM[S] shall provide written notice that the buildings are in substantial compliance. Within twenty-four (24) hours therefrom, the CITY shall issue a certificate of occupancy.
8. The PARTIES acknowledge that they shall have the right, but not the obligation, to mutually agree to have the CITY perform code compliance and inspection services in place of the DESIGNATED FIRM[S] from time-to-time, on a case-by-case basis. Any such mutual agreement of the PARTIES shall (i) be in writing and executed by the staffs of both PARTIES, (ii) be limited to the specific development project referenced in such written agreement and (iii) not be deemed a waiver of the requirements of this Article VIII to otherwise have the DESIGNATED FIRM[S] perform code compliance and inspection services on all other projects.
9. The APPLICABLE CODES shall remain in full force and effect and shall only be amended, modified or otherwise altered or terminated upon the mutual written agreement of both PARTIES and passed by ordinance or resolution of each Board. Either PARTY may, at any time, request

consideration of amendments, modifications, alterations or substitution of the APPLICABLE CODES and the PARTIES agree to promptly meet for the purpose of considering such requests.

B. CHANGE OF OCCUPANCY INSPECTIONS: Changes of occupancy due to sale or lease within the COMMERCIAL PARCELS shall comply with the CITY'S Change of Occupancy regulations requiring an inspection and compliance with minimum property maintenance requirements prior to any change in occupancy.

ARTICLE IX

UTILITIES

A. WATER AND SEWER SERVICE.

1. The PARTIES agree that the availability of sewer and water to the COMMERCIAL PARCELS is necessary for the proper development of the COMMERCIAL PARCELS. Under the PRIOR DOCUMENTS, the AUTHORITY had an obligation to pay for certain sewer and water improvements.

In exchange for the provisions of paragraph A.2 below, the AUTHORITY shall pay the CITY for these sewer and water improvements in one (1) of the two (2) following manners:

- (a) Five Million Dollars (\$5,000,000.00) payable over a five (5) year period with five (5) annual payments of One Million Dollars (\$1,000,000.00) each. Said payments are due on August 1 of each year. The first (1st) payment shall be due on August 1, 2002 with the final installment to be paid on or before August 1, 2006; or
- (b) a lump sum payment of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000.00) on or before December 31, 2001.

The decision as to which of the above payment methods shall be used shall be solely within the discretion of the AUTHORITY.

2. In exchange for the payments set forth in paragraph A.1 above, the CITY shall, in good faith, make all reasonable efforts to continue to own and operate sewer and water utilities in a manner intended to provide for all future

water supply and sewer treatment needs of the PROPERTY. Subject to the CITY'S duty to exercise good faith in the performance of the foregoing covenant, non-performance by the CITY shall be excused if said non-performance is occasioned by events generally considered to be in the nature of "force majeure". Without limiting the foregoing, force majeure shall be deemed to include labor disputes, fire, war, events of civil disobedience, unavoidable casualties, natural disasters or other causes deemed to be beyond the reasonable control of the CITY.

3. On the PROPERTY, the AUTHORITY shall be responsible for the design and construction of all sewer and water mains necessary or appropriate to serve the uses developed or to be developed on the PROPERTY. All water distribution system improvements and all waste water collection system improvements to be dedicated to the CITY, including lift stations and appurtenant facilities (the "REQUIRED UTILITY IMPROVEMENTS") shall be laid out and designed by engineering consultants employed by the AUTHORITY in accordance with the reasonable engineering standards of the CITY.
4. All REQUIRED UTILITY IMPROVEMENTS shall be constructed pursuant to design engineering and plans and specifications therefor approved by the CITY'S Engineer. Approval of such engineering shall be based upon its compliance with the CITY'S codes, ordinances, rules and regulations or generally accepted engineering practices and standards as appropriate. Construction of the REQUIRED UTILITY IMPROVEMENTS shall be inspected and approved by the CITY.
5. To the extent possible, the REQUIRED UTILITY IMPROVEMENTS shall be located within publicly dedicated rights-of-way or reasonable easements granted to the CITY, such improvements shall, upon the approval of the CITY, be dedicated to and accepted by the CITY.

The REQUIRED UTILITY IMPROVEMENTS shall, upon dedication to and acceptance by the CITY, become the property of the CITY. The CITY shall thereafter, at its sole cost and expense, repair, replace and maintain its facilities in good working order to the extent that such facilities are located within publicly dedicated rights-of-way or easements granted to the CITY as herein otherwise provided. Sewer and water utilities located outside of publicly dedicated rights-of-way and easements granted to the CITY therefore shall remain the property of the AUTHORITY.

To the extent the REQUIRED UTILITY IMPROVEMENTS are not

located in publicly dedicated rights-of-way, the AUTHORITY shall grant appropriate easements to the extent possible over the PROPERTY for the ownership, operation, maintenance, repair and replacement of the REQUIRED UTILITY IMPROVEMENTS by the CITY. Such easements shall, to the extent practicable, be not less than twenty feet (20 ft.) wide. The PARTIES agree to consider changing the width of the easements if appropriate.

All such easements shall be accompanied by Easement Agreements which shall contain terms and conditions customary to such agreements, including provisions requiring the CITY to restore the PROPERTY of the AUTHORITY disturbed by the CITY'S maintenance, repair or replacement within a reasonable period of time thereafter and shall further authorize the AUTHORITY to effect such restoration and to bill the cost thereof to the CITY should the CITY fail to restore the easement premises after reasonable notice and within a reasonable period of time after the CITY performs any such work within the easement.

The Easement Agreements shall make clear that the AUTHORITY shall retain the right to pave over and plant vegetation on portions of the easements for roads and parking lots as may be necessary. The Easement Agreements shall also permit the AUTHORITY to relocate, at its sole cost and expense, portions of the easements and the CITY'S improvements located therein, when such relocation is reasonably necessary to facilitate the construction of other improvements upon the PROPERTY. The location of the relocated easement and improvements shall be subject to the reasonable agreement of the PARTIES.

The easements to be granted to the CITY for its sewer and water utilities shall be recorded by the CITY, be perpetual and shall run solely to the CITY. Other utilities requesting easements from the AUTHORITY shall be required to separately negotiate such easements from the AUTHORITY. The easements to be granted to the CITY shall be exclusive except that the AUTHORITY may request and the CITY may agree to permit specifically designated utilities to locate their facilities within the CITY'S easements upon such terms as the PARTIES may mutually agree. Nothing within this paragraph shall be deemed to relieve the AUTHORITY of the obligation to provide suitable easements for all other utilities serving development within the PROPERTY as required by the CITY'S Code.

The Easement Agreements shall further make clear that the

easements granted to the CITY that benefit the AUTHORITY shall be without cost to the CITY and, further, that the construction, operation, maintenance, repair and replacement of the utilities authorized to be located therein may be performed by the CITY, its officers, agents, employees and contractors including the employees and contractors of third parties (i.e., developers) who are authorized by the CITY to perform such work on behalf of the CITY, provided proper insurance is provided. The performance of such work by parties other than the CITY shall not relieve the CITY of any of its obligations under the Easement Agreements.

6. Upon the request and with the cooperation of the AUTHORITY, the CITY agrees to exercise its statutory authority under 35 ILCS 200/27-5 *et seq.*, to provide for the reimbursement of the costs of constructing the REQUIRED UTILITY IMPROVEMENTS.
 7. Water provided to the AUTHORITY by the CITY shall be measured through various meters at locations approved by the PARTIES. The AUTHORITY reserves the right to resell such water within an individual building to the tenants of that building. The charge for water and sewer service provided to the AUTHORITY and its lessees by the CITY shall at no time exceed the lowest rate charged by the CITY to any customer of the CITY.
 8. From and after the execution of this Agreement, all structures and uses connected to the CITY'S utilities shall be subject to the CITY'S customary connection charges as the same may, from time to time, be established by ordinance of the CITY.
- F. NON-POTABLE WATER: The AUTHORITY may construct water wells for non-potable purposes such as irrigation and landscape maintenance. The CITY agrees to grant all permits necessary for such installations upon request by the AUTHORITY. Such wells shall remain the property of the AUTHORITY and shall not conflict with potable water systems.
- C. WELL AND SEPTIC: The CITY will permit any facilities located on the AIRPORT PARCEL and GOLF COURSE PARCELS to be served by well and septic or other reasonable on-site system. However, no

building shall be served by well and septic that is in excess of one thousand two hundred square feet (1,200 sq.ft.). Subject to the AUTHORITY'S ability to satisfy all applicable County of DuPage health regulations, the CITY shall issue permits for well and septic improvements to serve the AIRPORT PARCEL and GOLF COURSE PARCELS.

D. COMMERCIAL PARCELS: Notwithstanding any contrary provision of the Agreement, all improvements constructed upon the COMMERCIAL PARCELS shall be connected to the public sewer and water utilities of the CITY. The cost of extending water and sewer service to improvements located upon the COMMERCIAL PARCELS shall be the sole and exclusive expense of the AUTHORITY or, at the discretion of the AUTHORITY, any party developing improvements upon the COMMERCIAL PARCELS.

ARTICLE X

RECAPTURE

To the extent that any provision of this Agreement is subject to 65 ILCS 5/9-5-1 et seq., the CITY agrees to enter into one (1) or more Recapture Agreements with the AUTHORITY subject to the following conditions:

A. The PARTIES shall first agree as to what portion of the actual expenses incurred by the AUTHORITY represents an improvement which may be used for the benefit of property other than the PROPERTY.

B. The PARTIES shall next identify the specific properties

deemed to be benefitted by the construction of the REQUIRED UTILITY IMPROVEMENTS, the cost of which is to be partially recaptured.

C. The PARTIES shall agree on a methodology for spreading that portion of the cost of the REQUIRED UTILITY IMPROVEMENTS that the PARTIES shall agree is eligible for recapture in a manner which shall be fair and equitable to the owners of the properties deemed benefitted.

D. The agreed-upon elements of recapture as identified in subparagraphs A, B and C shall be incorporated in a Recapture Agreement which shall, in all respects, comply with the requirements of 65 ILCS 5/9-5-1 et seq., or any successor statute making provision for recapture, as the same may from time to time be amended.

E. Any Recapture Agreement entered into pursuant to the terms hereof shall contain an undertaking by the CITY to exercise its best efforts to collect agreed upon recapture fees and remit same to the AUTHORITY, its successors or assigns, in accordance with the terms of such Recapture Agreement. Said provisions shall further provide that the AUTHORITY shall hold the CITY harmless for any inadequate failure to collect recapture fees as might be required by the terms of such Recapture Agreement. The PARTIES agree that the sole and exclusive remedy for the AUTHORITY shall be to request the CITY to initiate litigation to collect any recapture fees which the CITY inadvertently failed to collect. The AUTHORITY shall cooperate in any such litigation.

F. The PARTIES acknowledge that the CITY is a party to an

agreement with the Oliver Hoffman Company which may have been assigned, in whole or in part, to Town and Country Builders, their successors and assigns are hereinafter described as the "DEVELOPERS". Pursuant to the terms of the Agreement, the DEVELOPERS constructed a segment of a sewer main identified as Segment 2 on the attached Exhibit "G" (the "SEWER MAIN"). The AUTHORITY acknowledges that it is or may lawfully become, subject to the recapture of a portion of the costs of the construction of the SEWER MAIN. The recapture exists, or may exist, for the benefit of the DEVELOPERS.

The PARTIES agree that the SEWER MAIN has a capacity equal to sixteen thousand six hundred thirty-nine (16,639) population equivalent or PE's. At such time as the DEVELOPERS provide the CITY with acceptable evidence documenting the cost of the SEWER MAIN, the CITY may enter into a recapture agreement with the DEVELOPERS which shall apply, in part, to those portions of the PROPERTY which may thereafter be connected to the SEWER MAIN. The amount of the recapture fee shall be calculated by dividing the cost of the SEWER MAIN by sixteen thousand six hundred thirty-nine (16,639) to determine the amount of recapture due per PE. An additional connection charge shall be collected for each new structure to be connected to the SEWER MAIN after the execution of the recapture agreement. The amount of the additional connection fee shall be calculated by multiplying the per PE cost, as determined above, by the number of PE's attributable to the new structure connected to the SEWER MAIN.

ARTICLE XI

MISCELLANEOUS PROVISIONS

A. COLLATERALIZATION OF REQUIRED IMPROVEMENTS: "Required Improvements" shall include all improvements to be dedicated to the CITY together with improvements located on separate zoning lots that constitute elements of the PROPERTY'S infrastructure. Except as otherwise specifically provided herein, such Required Improvements shall be deemed to include, but not by way of limitation, grading, stormwater detention and management structures, roads, curbs, gutters, street lighting, sewer and water improvements. No letters of credit, bonds or other collateralization shall be required to be posted by the AUTHORITY to the extent that the AUTHORITY constructs such Required Improvements. The AUTHORITY agrees, however, that all such Required Improvements shall be constructed in accordance with the CITY'S requirements and, in the case of improvements to be dedicated to the CITY, will thereafter be maintained, repaired or replaced by the AUTHORITY for the period of twelve (12) months after the date of acceptance by the CITY. Nothing herein shall be deemed to require the CITY to accept any Required Improvements that the CITY believes were not constructed in accordance with the CITY'S Ordinances. All such Required Improvements constructed by any party other than the AUTHORITY shall be constructed, collateralized and maintained in compliance with the requirements of the CITY'S Ordinances.

F. CONTRIBUTATIONS: Any required land or money

contributions or donations for any unit of local government, school district, park district or special tax district shall not be required for structures built on the AIRPORT PARCEL or the GOLF COURSE PARCELS.

C. EXPENSES: The AUTHORITY shall not be liable for reimbursement of any expenses incurred by the CITY for attorney's services in connection with this Agreement or the development of the PROPERTY. However, this subparagraph shall not restrict the CITY'S ability to charge third parties or the AUTHORITY'S lessees for reasonable legal fees incurred on the COMMERCIAL PARCELS.

D. RECORDATION: The PARTIES agree to do all things necessary to cause this Agreement to be recorded in the Office of the Recorder of Deeds, DuPage County, Illinois.

E. NOTICES: All notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

1. CITY at:

CITY OF WEST CHICAGO
c/o City Administrator
475 Main Street
West Chicago, Illinois 60185

with a copy to:

Gerald M. Gorski
GORSKI & GOOD
211 South Wheaton Avenue-Suite 305
Wheaton, Illinois 60187

2. AUTHORITY at:

DU PAGE AIRPORT AUTHORITY
c/o Executive Director
2700 International Drive, Suite 200
West Chicago, Illinois 60185-1658

of any PARTY hereto to seek specific performance of the terms hereof.

I. Upon the execution of this Agreement, the PARTIES shall execute and file a stipulation to dismiss the case with prejudice between the PARTIES entitled *City of West Chicago v. DuPage Airport Authority*, No. 98 CH 1314 in the Eighteenth Judicial Circuit.

J. While this Agreement is in effect, the AUTHORITY waives its right to apply for disconnection of the PROPERTY from the CITY.

IN WITNESS WHEREOF, the PARTIES hereto have hereunto set their hands and seals on the day and year first above written.

CITY OF WEST CHICAGO, an
Illinois municipal corporation,

By: Steven J. Lakics
Mayor, Steven Lakics

ATTEST:

Nancy M. Smith
CITY Clerk

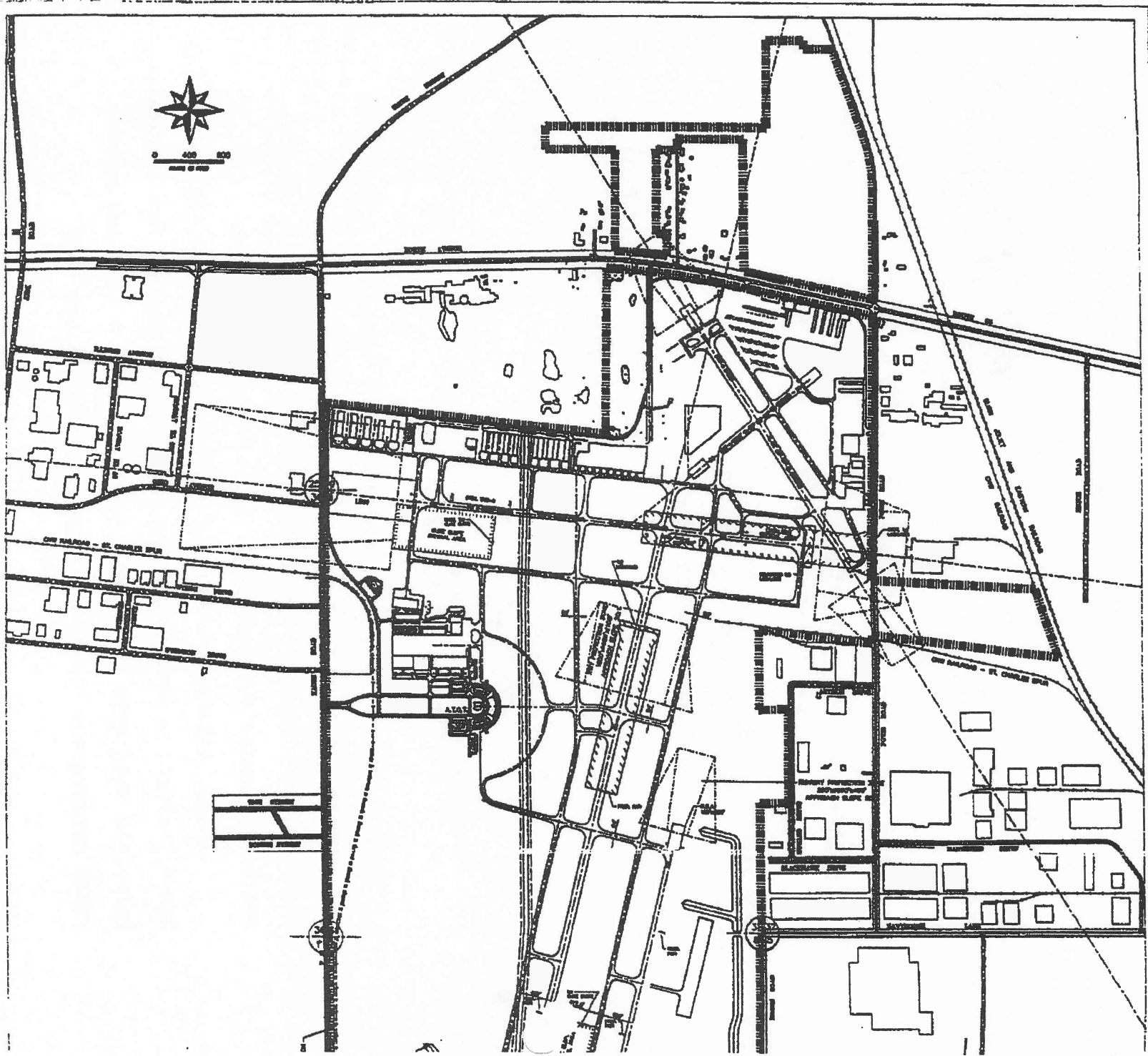
DUPAGE AIRPORT AUTHORITY,
A municipal corporation
Situating in DuPage County,
Illinois,

By: Joseph F. Kindlon
Chairman, Joseph F. Kindlon

ATTEST:

By: Doyle M. Hoke
Title: Secretary

jim/airport/wchicag/agreements/inter2.agr(dos)



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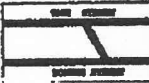
STATION AREA
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ST. CHARLES ST.
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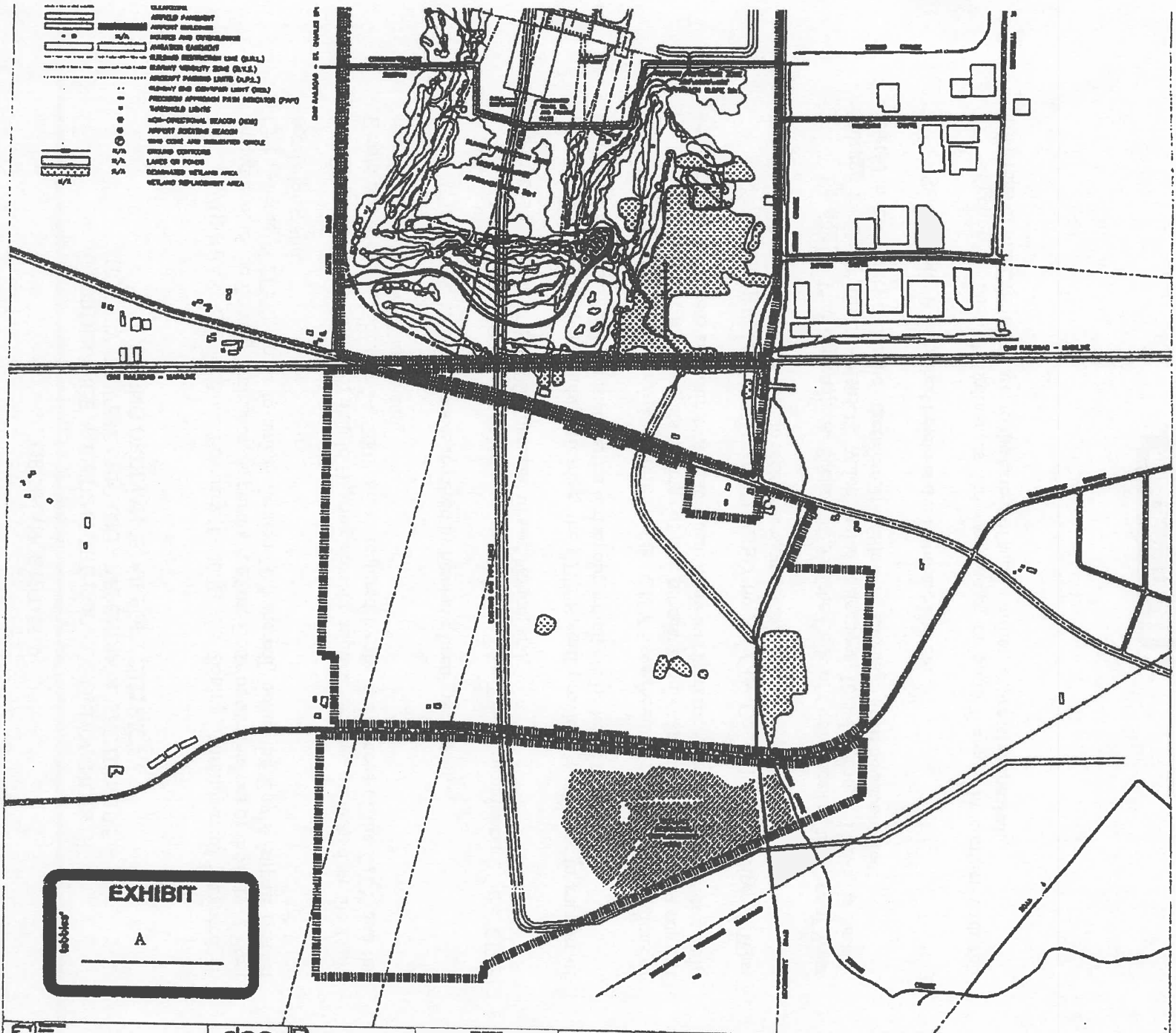
ATLAS

ST. CHARLES ST.

ST. CHARLES ST.



- WETLAND PRESENT
- AIRPORT BUILDING
- RUNWAY AND OBSTRUCTION
- TAXIWAY OBSTRUCTION
- WETLAND PRESENT CONT. (S.W.L.)
- WETLAND PRESENT ZONE (S.W.L.)
- AIRPORT PARKING LOT (S.W.L.)
- PROPERTY AND OBSTRUCTION LIMIT (S.W.L.)
- PROPOSED APPROACH PATH INDICATOR (S.W.L.)
- WETLAND LIMIT
- NON-OBSERVATION BEACH (S.W.L.)
- AIRPORT SECTION BEACH
- WETLAND CONTOUR AND OBSTRUCTION CIRCLE
- OBSTRUCTION CONTOUR
- LAKE OR POND
- DEGRADED WETLAND AREA
- WETLAND REPLACEMENT AREA



EXHIBIT

A

ORDINANCE NO. 4419

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF
THE CITY OF WEST CHICAGO - APPENDIX A, SECTION 10.5 -
ZONING ORDINANCE, AIRPORT DISTRICT,

WHEREAS, on or about February 1, 2001, the Zoning Administrator proposed an amendment to the Zoning Ordinance, Appendix A of the Code of Ordinances of the City of West Chicago (the "CITY"), so as to amend Section 10.5 thereof, being the City's Airport District regulations; and,

WHEREAS, Notice of Public Hearing on said application was published in the Daily Herald on or about February 24, 2001, all as required by the ordinances of the CITY and the statutes of the State of Illinois; and,

WHEREAS, all other notices required by law have been given; and,

WHEREAS, a Public Hearing was conducted by the Plan Commission of the CITY commencing on March 13, 2001, pursuant to said Notice; and,

WHEREAS, at the Public Hearing, the CITY'S staff provided testimony in support of said amendment, and all interested parties had an opportunity to be heard; and,

WHEREAS, the corporate authorities of the CITY have received the recommendations of the Plan Commission, including its findings of fact, pursuant to Recommendation 836, a copy of which is attached hereto as Exhibit "A" and which is, by this reference, incorporated herein; and,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of West Chicago, DuPage County, Illinois, in regular session assembled, as follows:

Section 1. That Appendix A, Section 10.5 of the Code of Ordinances of the City of West Chicago entitled "Airport District", which includes Sections 10.5-1 through 10.5-5, is hereby deleted in its entirety and in lieu therefore, the following language shall be substituted:

See Exhibit "B" attached hereto and incorporated herein

Section 2. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, expressly repealed.



Section 3. That this Ordinance shall be in full force and effect ten (10) days from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED this 19th day of March, 2001.

Alderman M. Fortner	<i>Aye</i>	Alderman N. Kifer Assian	<i>Aye</i>
Alderman R. Volkert	<i>Aye</i>	Alderman W. Woodward	<i>Aye</i>
Alderman D. Sabathne	<i>Aye</i>	Alderman D. Kochniarczyk	<i>Aye</i>
Alderman R. Pineda	<i>Aye</i>	Alderman J. Handel	<i>Aye</i>
Alderman D. Santiago	<i>Aye</i>	Alderman T. Merrion	<i>Aye</i>

APPROVED as to form:

Gerard M. Jurek
City Attorney

APPROVED this 19th day of March, 2001.

Steven J. Lohio
Mayor

ATTEST:

Nancy M. Smith
City Clerk

PUBLISHED:

ORDINANCE NO. 4419
EXHIBIT "A"

RECOMMENDATION #836

TO: The Honorable Mayor and City Council

SUBJECT: PC 01-12
Amendment to Zoning Ordinance with regards to the Airport District

RECOMMENDATION

After review of the proposed amendments to the zoning ordinance with to the Airport District, the Plan Commission recommends approval.

Respectfully submitted,

Susan Stibal
Chairman

VOTE:

<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>
Vince Graal			Robert Winkler
Susan Stibal			Allen Rodriguez
Stephen Jarolin			Sharon Schenk
John Warhiany			Kelly Hardy
Bruce Walz			