

 ST. CHARLES <small>SINCE 1834</small>	AGENDA ITEM EXECUTIVE SUMMARY	
	Title:	Recommendation to approve proposed Intergovernmental Agreements with the City of West Chicago regarding Jurisdictional Boundary Lines and Jurisdiction of Kautz Road, and to approve an Easement from the DuPage Airport Authority for Kautz Road.
	Presenter(s):	Russell Colby

Please check appropriate box:

	Government Operations		Government Services
X	Planning & Development (11/10/14)		City Council

Estimated Cost:	N/A	Budgeted:	YES		NO	
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If NO, please explain how item will be funded:

Executive Summary:

The City of St. Charles and City of West Chicago entered into a jurisdictional boundary line agreement in 2001. The current agreement is valid until 2021.

Two proposed intergovernmental agreements with West Chicago were presented to the Planning & Development Committee in August 2013. These agreements address changes to the jurisdictional boundary line between both municipalities and jurisdiction over Kautz Road. The proposed agreements are summarized in the attached Staff Memo. The Committee recommended approval of the agreements with West Chicago, subject to a staff condition regarding resolution of a right-of-way/easement issue with the DuPage Airport Authority regarding Kautz Road. The agreements were last tabled at City Council and no action has been taken.

The Kautz Road issue was recently resolved to the City's satisfaction, with the DuPage Airport Authority granting the City an easement for Kautz Road. As such, staff is proposing the Committee again provide a recommendation on both intergovernmental agreements with West Chicago and additionally provide a recommendation regarding the Kautz Road easement from the DuPage Airport Authority.

The City of West Chicago previously approved the intergovernmental agreements. The DuPage Airport Authority recently approved the Kautz Road easement.

In accordance with state statute, staff has provided notice of the boundary line agreement for formal consideration by the City Council on Nov. 17.

Attachments: *(please list)*

- Staff Memorandum with aerial photos/diagrams illustrating proposed changes
- Proposed Jurisdictional Boundary Line Agreement with West Chicago
- Proposed Intergovernmental Agreement with West Chicago regarding Kautz Road
- Easement from the DuPage Airport Authority for Kautz Road

Recommendation / Suggested Action *(briefly explain):*

Recommendation to approve proposed Intergovernmental Agreements with the City of West Chicago regarding Jurisdictional Boundary Lines and Jurisdiction of Kautz Road, and to approve an Easement from the DuPage Airport Authority for Kautz Road.

<i>For office use only:</i>	<i>Agenda Item Number: 3c</i>
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Community Development Planning Division

Phone: (630) 377-4443

Fax: (630) 377-4062



ST. CHARLES
SINCE 1834

Staff Report

TO: Chairman Daniel P. Stellato
and Members of the Planning & Development Committee

FROM: Russell Colby, Planning Division Manager

RE: Proposed Amendment to Jurisdictional Boundary Line Agreement with the City of West Chicago

DATE: July 22, 2013

The City of St. Charles and City of West Chicago entered into a jurisdictional boundary line agreement in 2001. The agreement is valid until 2021.

A revised agreement is being presented for consideration. Changes from the 2001 existing agreement:

- **Boundary Line for future annexation of property:** The boundary line will be shifted to move three areas of unincorporated parcels from the West Chicago side of the boundary line to the St. Charles side of the boundary line. The specific parcels are shown on the attached map and include:
 1. Area #1 (30 acres): Parcels east of the Oliver-Hoffmann property, south of Cornerstone Lakes Subdivision, north of Smith Rd., shown as Parcels A, B, C, D, E on Exhibit A of the Agreement. Development of these parcels would be subject to the following restrictions:
 - Residential or Office-Research uses (specific list of Office-Research uses attached to the agreement- matches St. Charles Zoning Ordinance for OR district)
 - Restrictions for the area within 300 ft. of the south line of Cornerstone Lakes:
 - Density: 7.5 dwelling units per acre max.
 - Building Height: 35 ft. or 3 stories max.
 - Additional 30 ft. landscape buffer yard to be provided abutting Cornerstone Lakes (planting requirements attached to the agreement).
 - Requirements for stormwater engineering (listed in the agreement).
 - Requirement for St. Charles to notify West Chicago of any annexation agreement, zoning change, development proposal, or Comprehensive Plan amendment for this site.
 2. Area #2 (10 acres): Parcels north of E. Main St., at the north end of Oak Rd.
 3. Area #3 (30 acres): Parcels west of Kautz Rd., south of Countyline Subdivision (Bonnie/Toni St.), east of East Side Sports Complex, north of Division St. extended.

- **Roadway Improvements:**

1. Future extension of Charter One Dr./King Edward Ave. (Smith Rd. to Foxfield Dr.):

- In the event the City constructs the roadway, West Chicago agrees to equally share the cost of the roadway construction.
- West Chicago would then be entitled to half of the amount reimbursed from the developer for construction of the roadway.

2. Kautz Rd. (Division St. extended/township line to E. Main St.):

- A separate agreement regarding Kautz Rd. is proposed.
- St. Charles will assume sole responsibility for future maintenance, repair, and reconstruction of Kautz Rd. from Division St. extended north to E. Main St.
- St. Charles will have sole authority to determine access points to and from Kautz Rd. and sole responsibility for traffic enforcement and control.
- This change specifically affects the southern approximately 2,200 linear ft. of roadway not currently under St. Charles jurisdiction of the total approximately 8,000 linear ft. from Division St. to Main St.

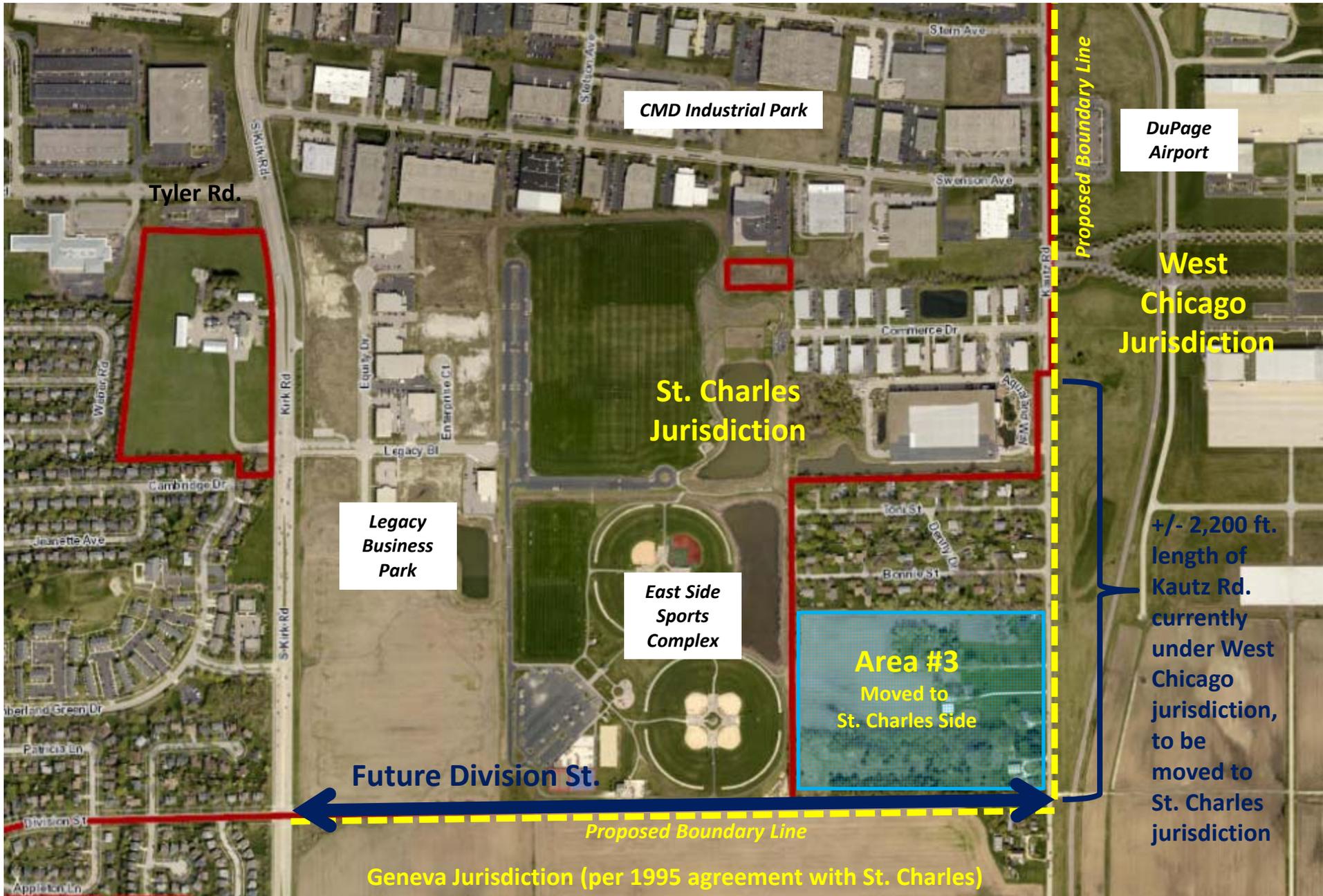
3. Future extension of Division St. (Kirk Rd. to Kautz Rd.):

- West Chicago shall have no responsibility for the extension of Division St., as Area #3 is no longer contemplated to be annexed to West Chicago.
- If Division St. is extended between Kirk Rd. and Kautz Rd., it shall meet St. Charles standards for an industrial collector street.

- **Other provisions carried forward from the 2001 agreement:**

1. Cooperation to provide utility service along the boundary line.
2. Any property on the St. Charles side of the boundary line that is acquired by the DuPage Airport Authority would be annexed to West Chicago.
3. 20 year term for the Jurisdictional Boundary line Agreement. (The Kautz Rd. agreement will not expire.)





CMD Industrial Park

DuPage Airport

Tyler Rd.

West Chicago Jurisdiction

St. Charles Jurisdiction

Legacy Business Park

East Side Sports Complex

Area #3
Moved to St. Charles Side

+/- 2,200 ft. length of Kautz Rd. currently under West Chicago jurisdiction, to be moved to St. Charles jurisdiction

Future Division St.

Proposed Boundary Line

Geneva Jurisdiction (per 1995 agreement with St. Charles)

**AN INTERGOVERNMENTAL AGREEMENT PROVIDING FOR
A JURISDICTIONAL BOUNDARY LINE, SEWER AND WATER
SERVICES AND STREET IMPROVEMENTS**

City of West Chicago and City of St. Charles, Illinois

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”), is made and entered into this ____ day of _____, 2013, by and between the CITY OF WEST CHICAGO, DuPage County, Illinois (“West Chicago”) and the CITY OF ST. CHARLES, DuPage and Kane Counties, Illinois (“St. Charles”),

WITNESSETH:

WHEREAS, West Chicago and St. Charles are “units of local government” as defined by Article VII, Section 1, of the Constitution of the State of Illinois of 1970, and are “home rule units” as defined by Article VII, Section 6, of the Constitution of the State of Illinois of 1970; and,

WHEREAS, units of local government are enabled by Article VII, Section 10, of the Constitution of the State of Illinois of 1970 to enter into agreements among themselves to obtain or share services and to exercise, combine or transfer any power or function in any manner not prohibited by law or ordinance; and,

WHEREAS, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*), authorizes municipalities to exercise jointly with any public agency of the State, including other units of local government, any power, privilege, or authority which may be exercised by a unit of local government individually, and to enter into contracts for the performance of governmental services, activities and undertakings; and,

WHEREAS, 65 ILCS 5/11-12-9 authorizes the corporate authorities of municipalities that have adopted official plans to agree upon boundaries for the exercise of their respective jurisdictions within unincorporated territory that lies within one and one-half miles of the boundaries of such municipalities; and,

WHEREAS, unincorporated territory lies within one and one-half miles of the boundaries of West Chicago and St. Charles; and,

WHEREAS, West Chicago and St. Charles have adopted official plans making recommendations with respect to the development of that unincorporated territory; and,

WHEREAS, West Chicago and St. Charles recognize that the territory lying between their present municipal boundaries is an area in which problems related to land development including open space preservation, flood control, population density, provision of public services and ecological and economic impact and are increasing in number and complexity; and,

WHEREAS, West Chicago and St. Charles and their respective citizens are vitally affected by said problems, and efforts to solve them and provide for the public health, safety, welfare and prosperity of the inhabitants of said municipalities will be enhanced by mutual action and intergovernmental cooperation; and,

WHEREAS, West Chicago and St. Charles recognize the need and desirability to provide for logical future municipal boundaries and areas of municipal authority between their respective corporate limits in order to plan effectively and efficiently for growth management and potential development between their communities; and,

WHEREAS, West Chicago and St. Charles, after due investigation and consideration, have determined to enter into an agreement providing for the establishment of a boundary for

their respective jurisdictions in the unincorporated territory lying between and near their boundaries; and,

WHEREAS, West Chicago and St. Charles have determined that the observance of the boundary line in future annexations by either municipality will serve the best interests of both communities; and,

WHEREAS, in arriving at this Agreement, West Chicago and St. Charles have given consideration to the natural flow of stormwater drainage and, when practical, have included all of a single tract of land having common ownership within the jurisdiction of only one municipality; and,

WHEREAS, public notice of this Agreement has been properly given by West Chicago and St. Charles, as required by law; and

WHEREAS, West Chicago and St. Charles have authorized, by ordinance, the execution of this Agreement as an exercise of their intergovernmental cooperation authority under the Constitution of the State of Illinois, and the Intergovernmental Cooperation Act, and their authority to enter into jurisdictional boundary agreements pursuant to 65 ILCS 5/11-12-9; and

WHEREAS, West Chicago and St. Charles contemplate that developments may be proposed within either municipality's Territory (as hereinafter defined) which may require sewer and water service from the other municipality and/or for which access to such other municipality's street system may be necessary or appropriate; and,

WHEREAS, 65 ILCS 5/11-129-1, *et seq.*, 11-139-2, *et seq.*, 11-141-1, *et seq.*, and 11-149-1, *et seq.* (the "Utility Enabling Statutes"), authorize municipalities to serve the sewer and water utility needs of customers located outside their corporate limits; and,

WHEREAS, West Chicago and St. Charles wish to make provision for each municipality to consider requests from the other to serve such customers, without being obligated to do so; and,

WHEREAS, 65 ILCS 5/11-61-1, *et seq.* and 11-80-1, *et seq.*, and 605 ILCS 5/7-101 and 7-202, *et seq.* (the “Street Enabling Statutes”), authorize municipalities to establish, construct and improve municipal street systems, including extensions thereof beyond their corporate limits; and,

WHEREAS, West Chicago and St. Charles wish to make provision for certain municipal street system improvements which may be necessary or appropriate to serve developments within either municipality’s Territory (as hereinafter defined); and

WHEREAS, West Chicago and St. Charles have previously entered into an Intergovernmental Agreement Providing for a Jurisdiction Boundary Line, Sewer and Water Services and Street Improvements, dated January 8, 2001 (the “Existing Agreement”) which the parties desire to repeal simultaneously with the recording of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter contained, the adequacy and sufficiency of which the parties hereto stipulate, West Chicago and St. Charles agree as follows:

Section 1. Incorporation of Recitals. The recitals set forth hereinabove are incorporated herein by reference as substantive provisions of this Agreement.

Section 2. Jurisdictional Boundary Line. The boundary line between West Chicago and St. Charles for the purpose of establishing their respective jurisdictions for land use planning, official map purposes, zoning, subdivision control and annexation of unincorporated territory, and other municipal purposes, all as hereinafter provided, shall be as depicted upon the

map attached hereto as Exhibit “A” and made a part hereof and as legally described on Exhibit “B” attached hereto and made a part hereof.

That portion of the unincorporated territory lying easterly of said boundary line shall be within the West Chicago jurisdictional area (“West Chicago Jurisdictional Area”) as shown on Exhibit “A”. The West Chicago Jurisdictional Area, together with all territory located within the corporate limits of West Chicago from time to time, shall be within the West Chicago territory (“West Chicago Territory”). That portion of the unincorporated territory lying westerly of said boundary line shall be within the St. Charles jurisdictional area (“St. Charles Jurisdictional Area”) as shown on Exhibit “A”. The St. Charles Jurisdictional Area, together with all territory located within the corporate limits of St. Charles from time to time, shall be within the St. Charles territory (“St. Charles Territory”).

To the extent that there is any conflict between Exhibit “A” (the map) and Exhibit “B” (the legal description), Exhibit “B” shall control.

Section 3. Exercise of Authority. West Chicago agrees that it shall not exercise or attempt to exercise or enforce any comprehensive plan jurisdiction, official map jurisdiction, zoning authority or subdivision control authority within the St. Charles Jurisdictional Area. St. Charles agrees that it shall not exercise or attempt to exercise or enforce any comprehensive plan jurisdiction, official map jurisdiction, zoning authority or subdivision control authority within the West Chicago Jurisdictional Area.

Section 4. Statutory Zoning Objections. This Agreement shall not be construed to limit or adversely affect the right of either municipality to file a statutory objection to proposed rezonings within one and one-half (1½) miles of its corporate limits, or to otherwise contest or oppose such rezonings in accordance with applicable law.

Section 5. Annexation. Both West Chicago and St. Charles acknowledge that it is not in their respective best interests to engage in disputes with respect to the annexation of territory. The boundary line established pursuant to this Agreement was carefully studied and considered with respect to those matters heretofore set out in the recitals to this Agreement. Therefore, each municipality agrees not to annex any territory which is located in the other municipality's Territory.

West Chicago and St. Charles also agree to take all reasonable and appropriate actions to oppose any involuntary or court-controlled annexation proceedings that propose to annex territory within either municipality's Territory in a manner inconsistent with this Agreement. In addition, West Chicago and St. Charles each hereby agree that it waives any right to challenge or otherwise contest the validity of any annexation the other municipality has effected, is effecting, or will effect in the future for territory located within such other municipality's Territory. West Chicago and St. Charles further agree not to solicit or otherwise make any requests, formal or informal, to any third party for that third party to encourage the disconnection from the other municipality of land within the other municipality's Territory or to challenge the validity of the other municipality's past, current, or future annexations within such other municipality's Territory.

That portion of the boundary line depicted on Exhibit "A" that is located on a roadway shall be deemed, except as otherwise provided herein, to be located on the center line of such roadway if the roadway is not located within the corporate limits of either municipality as of the date of this Agreement. For territory that has been annexed by either municipality prior to the date of this Agreement, the roadway shall be deemed to be located within the municipality to which the roadway has been annexed either by ordinance or by operation of state law (65 ILCS

5/7-1-1). For unincorporated territory that is located on either side of the boundary line and that will be annexed to the designated municipality in the future, the roadway shall be deemed to be located within the municipality that first annexes its respective territory adjacent to the roadway. The boundary line set by this Agreement shall then be deemed to have been amended accordingly without further action by either municipality.

Section 6. Utilities. In the event that any territory within West Chicago's Territory lies within St. Charles' Facilities Planning Area ("FPA") established pursuant to the Clean Water Act (33 U.S.C. 1251, *et seq.*) and the Illinois Environmental Protection Act (415 ILCS 5/1, *et seq.*), and West Chicago files a petition with the Illinois Environmental Protection Agency ("EPA") to transfer such territory to West Chicago's FPA, St. Charles agrees that it shall enter its consent to such transfer in connection with such petition. In the event that any territory within St. Charles' Territory lies within West Chicago's FPA, and St. Charles files a petition with the Illinois Environmental Protection Agency to transfer such territory to St. Charles' FPA, West Chicago agrees to enter its consent to such transfer in connection with such petition.

Either municipality may request the other to provide sewer and/or water service to specific parcels of land located within the requesting municipality's Territory. Any such request shall provide a legal description of the property with respect to which the request is being made together with such reasonable additional information as may be necessary or convenient to assist the municipality to which the request is directed in evaluating such request. In addition, the municipality making the request shall identify which of the Utility Enabling Statutes it wishes to utilize in order to implement the request.

Either municipality receiving such a request may, in its sole and exclusive discretion, decide to grant or deny the request or suggest modifications to the request as it might deem

appropriate. Either municipality receiving such a request shall only be obligated to review it. The decision to grant or deny the request, with or without reason, shall be solely and exclusively within the discretion of the municipality that received the request. A refusal to honor any request(s) for utility service made pursuant to this Agreement shall not constitute a breach of this Agreement and shall not thereby excuse the performance of the terms hereof by either municipality or otherwise give rise to any cause of action or other relief in consideration thereof.

The municipality receiving a request for utility service under the provisions of this Section 6 may agree to provide such services on the terms proposed by the requesting municipality or such other terms as the municipality receiving the request may deem acceptable. Without limiting the generality of the foregoing, the receiving municipality may offer to provide the requested services under the authority of a statute other than the one specified in the request.

In each such case where such utility services are to be provided, the municipalities shall enter into an agreement under the authority of either: (a) the specified Utility Enabling Statutes, (b) an alternative statute that provides such authority, or (c) the constitutional and statutory provisions related to intergovernmental cooperation. Each such agreement shall make provision for the design and construction of the requested improvements, the allocation of the costs of construction, connection charges or other such charges and rates to be charged for the services to be provided, the provisions of easements or rights-of-way, maintenance responsibilities and such other matters as are normal, customary or beneficial to such agreements. In the event that such utility services would require an amendment to the serving municipality's FPA, such agreement shall also make provision for the filing and processing of the necessary petition for such amendment. No obligation to provide such services shall be enforceable unless and until a

mutually satisfactory agreement making provision for such service shall first have been duly authorized and executed by both of the municipalities.

Section 7. Roadway Improvements. Pursuant to the Street Enabling Statutes and the constitutional and statutory provisions related to intergovernmental cooperation, West Chicago and St. Charles agree that this Section 7 shall apply to the street improvements detailed herein, irrespective of any other provision of this Agreement.

(a) Division Street: If Division Street is extended east of Kirk Road, unless otherwise agreed by the parties, such extension shall be constructed to meet or exceed the industrial collector street standards set forth in Title 12 and Title 16 of the St. Charles Municipal Code. West Chicago shall have no responsibility, financial or otherwise, for the extension of Division Street.

(b) Kautz Road: Simultaneously with the execution of this Agreement, the parties shall enter into a separate intergovernmental agreement providing that St. Charles shall have sole responsibility for maintenance, repair and reconstruction of that portion of Kautz Road from Division Street (extended) north to Illinois Route 64/East Main Street. St. Charles shall have sole authority to determine access points to and from said portion of Kautz Road, and sole responsibility for traffic enforcement and control in accordance with said intergovernmental agreement.

(c) Connection between Smith Road and Foxfield Drive: The parties acknowledge that an Amended Consent Decree, filed on July 8, 2009 with the Clerk of the Circuit Court, Kane County, Illinois, in regard to Case No. 07 ED 07 (the "Consent Decree"), governs the construction of a roadway (the "Roadway") that will connect Smith Road and Foxfield Drive. The Consent Decree requires the defendant property owner and its successors and assigns (the "Owner") to construct the roadway, but also provides that St. Charles, under certain circumstances, has the right to construct the roadway and obtain reimbursement from the Owner for the costs thereof, including interest.

If St. Charles elects to construct the Roadway, St. Charles shall provide 180 days written notice to West Chicago and St. Charles and West Chicago agree to share equally in the cost of engineering, design, and construction of the Roadway. St. Charles shall be responsible for the preparation of all plans and awarding a construction contract for the project. West Chicago shall reimburse St. Charles for its proportionate share of any and all costs within sixty (60) days of receipt of an invoice(s) therefore, along with such other documentation as shall be reasonably necessary to substantiate the costs. If and when St. Charles receives reimbursement from the Owner for such costs, St. Charles shall pay fifty percent (50%) of such amount over to West Chicago, provided that West Chicago has previously reimbursed St. Charles as required herein.

Section 8. DuPage Airport Authority Property. West Chicago represents and St. Charles acknowledges that all of the property owned by the DuPage Airport Authority (the “Authority”) is located within the corporate limits of West Chicago. There presently exists an Intergovernmental Agreement between the City of West Chicago and the DuPage Airport Authority dated March 22, 2001, plus three (3) subsequent amendments thereto approved by the City of West Chicago on December 17, 2001, August 15, 2005 and October 17, 2011 (collectively, the “Airport Agreement”). The Airport Agreement is attached as Exhibit “C” which is, by this reference, incorporated herein. The Airport Agreement requires, inter alia, the Authority to annex to West Chicago any newly acquired property that is contiguous to the corporate limits of West Chicago.

If the Authority acquires unincorporated land within the St. Charles Jurisdictional Area that is contiguous to West Chicago, upon the request of West Chicago, St. Charles agrees to modify the boundary line established pursuant to this Agreement, so as to transfer the Authority owned property from the St. Charles Jurisdictional Area to the West Chicago Jurisdictional Area. St. Charles further agrees that it will not voluntarily annex and will not cooperate in any judicially sanctioned or owner initiated effort to annex such parcel(s) into its corporate limits.

Section 9. Comprehensive Plan. With respect to West Chicago Territory parcel “F” identified on Exhibit “A”, or any part thereof, West Chicago shall give thirty (30) days written notice to St. Charles prior to approval of any action, including an amendment to the West Chicago Zoning Ordinance, an annexation agreement or amendment thereto and an amendment to the West Chicago official comprehensive plan, which commits West Chicago to a land use which substantially deviates from the West Chicago official Comprehensive Plan, or which

pertains to any parcel for which no land use designation is shown in the West Chicago official Comprehensive Plan.

With respect to St. Charles Territory parcels designated as parcels “A”, “B”, “C”, “D” and “E” identified on Exhibit “A”, or any part thereof, St. Charles shall give thirty (30) days written notice to West Chicago prior to approval of any action, including an amendment to the St. Charles Zoning Ordinance, an annexation agreement or amendment thereto and an amendment to the St. Charles official comprehensive plan, which commits St. Charles to a land use which substantially deviates from the St. Charles official Comprehensive Plan, or which pertains to any parcel for which no land use designation is shown in the St. Charles official Comprehensive Plan.

Failure of either municipality to notify the other as provided for in this section shall not invalidate any action of such municipality regarding planning, annexation, or zoning of land within its Territory, and shall not invalidate the provisions of this Agreement.

Section 10. Development of Certain Parcels. Development of parcels “A”, “B”, “C”, “D” and “E” identified on Exhibit “A” shall be subject to the following provisions:

(a) To the extent permitted by law, St. Charles shall impose the following use and density restrictions:

- (i) Residential uses, subject to the density restrictions set forth herein, and/or office-research uses, which shall mean the uses listed on Exhibit “D” attached hereto and incorporated herein, as such terms are further defined in the St. Charles Zoning Ordinance.
- (ii) For the portion of the parcels located within 300 feet (300’) of the southern border of the Cornerstone Lakes Subdivision, residential density shall not exceed 7.5 units/acre and the maximum building height shall be the lesser of 35 feet (35’) or three (3) stories. An assisted living facility shall not be subject to the density restriction set forth in this subsection.
- (iii) In addition to any setbacks required by the St. Charles Zoning Ordinance, St. Charles will require a thirty foot (30’) landscape buffer along the property line

adjoining the single-family residential homes located on Lehman Drive and Barnhart Street so as to reduce the impact of development on the existing homes. The landscaping requirements within the buffer shall be the same as required by the current St. Charles Zoning Ordinance requirement for landscape buffers, attached hereto and incorporated herein as Exhibit "E". The landscape buffer shall not be combined with a required yard or setback requirement, but, rather, shall be in addition thereto.

(b) To the extent permitted by law, St. Charles shall impose the following stormwater restrictions:

- (i) As part of the development approval process, St. Charles shall require compliance with all applicable stormwater, wetland, floodway and/or floodplain regulations. St. Charles shall utilize either the regulations of DuPage County or Kane County, whichever are the most restrictive at the time of development.
- (ii) Stormwater runoff shall be restricted to a maximum of 0.1 cfs/development acre up to and including the 100-year event.
- (iii) All off-site bypass flow shall be designed to be channeled through any on-site detention or retention basin(s) and discharged at a location that will not adversely impact adjacent properties.
- (iv) West Chicago shall be allowed to review all engineering plans, calculations, specifications and reports for any proposed development prior to the issuance of any permit by St. Charles.

Section 11. General Implementation. The parties hereto agree to cooperate to the fullest extent possible and take all steps reasonably practicable, to achieve any appropriate modification of the postal service boundary, the Chicago Metropolitan Agency for Planning and Illinois EPA Facilities Planning Area, and the Emergency 911 telephone service area, to conform to the boundary defined under this Agreement.

Section 12. Binding Effect. This Agreement shall be binding upon and shall apply only to the legal relationship between West Chicago and St. Charles. Nothing herein shall be used or construed to affect, support, bind or invalidate any claims of either West Chicago and/or St. Charles insofar as such claims shall affect any entity which is not a party to this Agreement.

Section 13. Amendment. Neither West Chicago nor St. Charles shall directly or indirectly seek any modification of this Agreement through court action and this Agreement shall

remain in full force and effect until amended or changed in writing by the mutual agreement of both West Chicago and St. Charles.

Section 14. Partial Invalidity. If any provision of this Agreement shall be declared invalid for any reason, such invalidation shall not affect other provisions of this Agreement which can be given effect without the invalid provisions and to this end, the provisions of this Agreement are deemed to be separable.

Section 15. Notice and Service. Any notice hereunder from either municipality hereto to the other municipality shall be in writing and shall be served by registered or certified mail, postage prepaid, return receipt requested addressed as follows:

To West Chicago: City of West Chicago
 475 Main Street
 West Chicago, IL 60185
 Attn: City Administrator

To St. Charles: City of St. Charles
 2 East Main Street
 St. Charles, IL 60174
 Attn: City Administrator

or to such persons or entities and at such address as either municipality may from time to time designate by notice to the other municipality. Notice shall be deemed received on the third business day following deposit in the U.S. Mail in accordance with this Section.

Section 16. Term. This Agreement shall be in full force and effect for a period of twenty (20) years from and after the date hereof. The term of this Agreement may be extended, renewed or revised at the end of this initial term or any extended term thereof by further agreement of West Chicago and St. Charles.

Section 17. Illinois Law. This Agreement shall be construed in accordance with the laws of the State of Illinois.

Section 18. Execution of Agreement; Recordation. Each municipality shall authorize the execution of this Agreement by an ordinance duly passed and approved. Certified copies of such ordinances and of this Agreement shall be recorded with the Recorder of Deeds for DuPage County and the Recorder of Deeds for Kane County and shall be made available in the office of the City Clerk of each of the municipalities.

Section 19. Repeal of Existing Agreement. Upon the execution of this Agreement by both parties and the recording of this Agreement with the Recorder of Deeds for DuPage County and the Recorder of Deeds for Kane County, the Existing Agreement shall be deemed repealed and shall be of no further force or effect.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date first above written.

CITY OF WEST CHICAGO, an Illinois municipal corporation

By: _____
Mayor

ATTEST:

City Clerk

CITY OF ST. CHARLES, an Illinois municipal corporation

By: _____
Mayor

ATTEST:

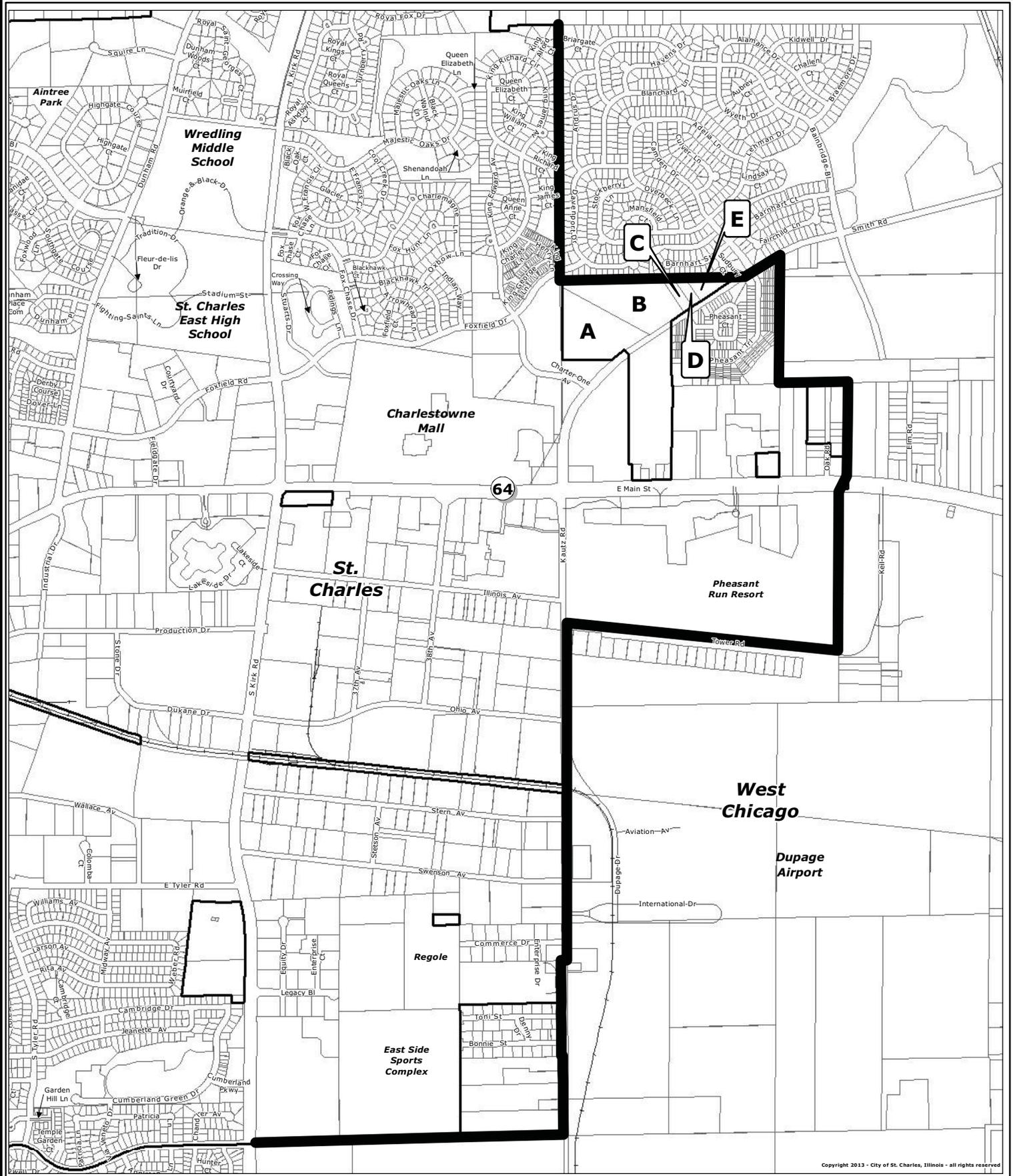
City Clerk

EXHIBIT "A"

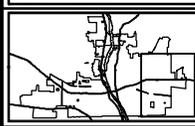
MAP



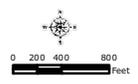
West Chicago Boundary Agreement



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Publication Date: June 25, 2013
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 Projection: Transverse Mercator
 Coordinate System: Illinois State Plane East
 North American Datum 1983
 TH #: 130212214600523



West Chicago Boundary Agreement



St. Charles Municipal Boundary



Parcels

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EXHIBIT "B"

LEGAL DESCRIPTION

EXHIBIT "C"

AIRPORT AGREEMENT

EXHIBIT "D"

USES PERMITTED ON PARCELS "A", "B", "C", "D" and "E"

Assisted Living Facility
Art Gallery/Studio
Cultural Facility
Indoor Recreation & Amusement
Place of Worship
Bank
Day Care Center
Drive-In Facility
Emergency Medical Center
Financial Institution
Hotel/Motel
Medical/Dental Clinic
Motor Vehicle Rental
Office, Business or Professional
Professional Training Center
Veterinary Office/Animal Hospital
College/University
Hospice
Hospital
Nursing Home
Office, Government
School, Specialized Instruction
Research and Development Use
Accessory Uses
Communication Antenna
Communication Tower
Parking Garage/Structure
Parking Lot, Private
Planned Unit Development
Utility, Local
Utility, Community/Regional
Wind Turbine, Structure Mounted
Wind Turbine, Tower Mounted

EXHIBIT "E"

LANDSCAPE BUFFER REQUIREMENTS

17.26.070 Landscape Buffers

- A. The Landscape Plan shall provide for Landscape Buffers to enhance privacy and provide screening between dissimilar uses, wherever the zoning district regulations require a Landscape Buffer Yard. Where Landscape Buffers overlap with other landscape requirements with respect to the same physical area on the lot, the requirement that yields more intensive landscaping shall apply, but the requirements need not be added together.
- B. The Director of Community Development, in the case of Design Review, or the City Council, in the case of a Planned Unit Development, may reduce or waive the requirements of this Section where existing conditions make it impractical to provide the required Landscape Buffer, or where providing the Landscape Buffer would serve no practical purpose. Examples include, but are not limited to, instances where existing topography or structures effectively screen the more intensive use and provide a measure of privacy to the less intensive use.
- C. Within required Landscape Buffers along common property lines, opaque, year-round screening shall be provided by means of berming, landscaping, fencing and/or decorative walls to a height of six feet (6') above the grade of the common property line.
- D. Along right of way lines, where a Landscape Buffer of forty feet or more in width is required, opaque, year-round screening shall be provided by means of berming, landscaping, fencing and/or decorative walls, to a minimum height of six feet (6') above the grade of the right of way line. Such opaque, year-round screening shall be designed so that the first twenty feet (20') of the Landscape Buffer abutting the right of way line is relatively open and consists primarily of landscaping, and the elements of screening that provide opacity are located twenty feet (20') or more from the right of way line. Opaque, year-round screening is not required within Landscape Buffers of less than 40 feet in width along right of way lines.
- E. For each 400 square feet of required Landscape Buffer, there shall be at least one shade tree or two evergreen trees, plus ornamental trees, shrubs, ornamental grasses, or perennials as needed to soften the appearance of solid forms such as fences, walls and berms that may be used to provide a visual screen.
- F. If a new building or outdoor use is added on a lot where other buildings or uses exist, a Landscape Buffer, where required by the district regulations, shall be provided to buffer adjoining lots from the new building or use, but an additional Landscape Buffer beyond that which is required for the new building or use need not be provided to buffer adjoining lots from the existing buildings or uses.

(Ord. 2011-Z-1 § 22.)

**INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF WEST
CHICAGO, DU PAGE COUNTY, ILLINOIS AND THE CITY OF ST. CHARLES,
KANE AND DU PAGE COUNTIES, ILLINOIS RELATING TO THE
MAINTENANCE, REPAIR AND RECONSTRUCTION OF KAUTZ ROAD**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2013, by and between the City of West Chicago, DuPage County, Illinois (“West Chicago”) and the City of St. Charles, DuPage and Kane Counties, Illinois (“St. Charles”);

WITNESSETH:

WHEREAS, West Chicago and St. Charles are “units of local government” as defined by Article VII, Section 1, of the Constitution of the State of Illinois of 1970, and are “home rule units” as defined by Article VII, Section 6, of the Constitution of the State of Illinois of 1970; and,

WHEREAS, units of local government are enabled by Article VII, Section 10 of the Constitution of the State of Illinois of 1970 to enter into agreements among themselves to obtain or share services and to exercise, combine or transfer any power or function in any manner not prohibited by law or ordinance; and,

WHEREAS, the Illinois Intergovernmental Cooperation Act, (5 ILCS 220/1, *et seq.*), authorizes municipalities to exercise jointly with any public agency of the State, including other units of local government, any power, privilege, or authority which may be exercised by a unit of local government individually, and to enter into contracts for the performance of governmental services, activities and undertakings; and,

WHEREAS, 65 ILCS 5/11-61-1, *et seq.* and 11-80-1, *et seq.*, and 605 ILCS 5/7-101 and 7-202, *et seq.*, authorize municipalities to establish, construct and improve municipal street systems, including extensions thereof beyond their corporate limits; and,

WHEREAS, West Chicago and St. Charles have heretofore entered into An Intergovernmental Agreement Providing for a Jurisdictional Boundary Line, Sewer And Water Services And Street Improvements, dated _____, 2013 (hereafter referred to as the “Boundary Agreement”) and recorded with the respective Recorders for Kane and DuPage Counties, Illinois; and

WHEREAS, West Chicago and St. Charles find that it is proper, appropriate and in the respective best interest of each party for St. Charles to maintain, repair, reconstruct and control that portion of the Kautz Road right-of-way and all appurtenances within, excluding any West Chicago-owned water and sanitary sewer utilities that may exist or that may later be constructed within the Kautz Road right-of-way, commencing at Division Street (extended) north to Illinois Route 64/East Main Street, as depicted on Exhibit “A” attached hereto and incorporated herein, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter contained, the adequacy and sufficiency of which the parties hereto stipulate, West Chicago and St. Charles agree as follows:

Section 1. Incorporation of Recitals. The Recitals set forth hereinabove are incorporated herein by reference as substantial provisions of this Agreement.

Section 2. Kautz Road right-of-way maintenance, repair and reconstruction.

(a) General: Upon the Effective Date, St. Charles shall assume responsibility for, as well as jurisdiction of, all maintenance, repair and reconstruction of the Kautz Road right-of-way from its intersection with Division Street (extended) north to Illinois Route 64/East Main Street (the “Kautz Road right-of-way” or “Kautz Road”). The control of the Kautz Road right-of-way also shall include jurisdiction over traffic control and enforcement, applicable motor vehicle laws and regulations, as well as public and quasi-public utilities such as electric, telephone, fiber optics, and stormwater facilities within the Kautz Road right-of-way. However, St. Charles shall not have jurisdiction over West Chicago’s water and sanitary sewer utilities. For purposes of this Agreement, maintenance and repair shall include, but not be limited to the following activities: snow removal, street sweeping, road maintenance, bike path maintenance, repair of street lights and appurtenances, mowing, storm sewer maintenance, ditch drainage swale, and culvert maintenance, and parkway tree care maintenance. Reconstruction responsibility shall include all infrastructure within the Kautz Road right-of-way, including but not limited to the roadway system, storm sewer system, ditch drainage and culvert drainage system, parkway, street lighting system(s), bike path system, parkway trees, and all appurtenances thereto.

St. Charles’ reconstruction, repair and maintenance responsibility shall exclude any West Chicago-owned water and sanitary sewer utilities that may exist or that may later be constructed within the Kautz Road right-of-way. West Chicago shall be responsible for the West Chicago-owned water and sanitary sewer utilities relocation or adjustment that may be required to accommodate a Kautz Road maintenance, repair and reconstruction project. St. Charles shall notify West Chicago, in writing, not less than twelve (12) months prior to any such required relocation or adjustment.

(b) Standards of care: The maintenance, repair and reconstruction of Kautz Road right-of-way, as described in subparagraph (a) above, shall be in accordance with policies and procedures established by St. Charles for other similarly situated roads within the corporate limits of the City of St. Charles or, in the event of the reconstruction (such as resurfacing or total reconstruction) of the Kautz Road right-of-way, in accordance with St. Charles's subdivision regulations under the St. Charles City Code.

(i) *Construction and maintenance indemnification.* Except for the negligence of any of the Indemnitees (hereinafter defined), St. Charles shall require any contractor which is retained to repair or maintain Kautz Road, to protect, defend, indemnify and hold harmless St. Charles and West Chicago and their respective elected and appointed officers, employees and agents (collectively, sometimes called

"Indemnitees"), from and against all loss, claims and expenses, including, but not limited to reasonable attorneys' fees, court costs and expenses of collection which may result from the performance of the work. This indemnification shall include, but not be limited to, loss or destruction of property, including loss of use thereof, bodily injury, personal injury, sickness, disease, or death sustained by any person. Such obligation of the contractor shall not be limited by the availability, limits, or coverage of insurance carried or required herein, or required by law to be carried. The contractor shall indemnify, protect and save harmless St. Charles and West Chicago from and against any and all mechanic's liens or claims for liens arising out of the performance of the work, including any actions brought or judgments rendered thereof, and from and against any and all loss, damage, liability, costs and expenses, including legal fees and disbursements which St. Charles or West Chicago may sustain or incur in connection therewith. Contractor shall include the interest of St. Charles and West Chicago and each municipality's employees, directors, officers and agents all as additional insureds on the contractor's comprehensive general liability insurance policy ("policy"). The policy shall contain coverage of not less than \$2,000,000 and shall not be subject to cancellation without a minimum of thirty (30) days written notice to both St. Charles and West Chicago.

- ii. *General indemnification.* Except for the negligence or willful misconduct of West Chicago, St. Charles shall indemnify and hold harmless West Chicago and its elected and appointed officers, employees and agents from and against all loss, claims and expenses, including, but not limited to reasonable attorney's fees, court cost, and expenses of collection which may result from the performance of the work as herein defined. This indemnification shall include, but not be limited to, loss or destruction of property, including loss of use thereof, bodily injury, personal injury, sickness, disease, or death sustained by any person.

(c) St. Charles shall notify West Chicago, in writing, not less than sixty (60) days prior to the commencement of any necessary resurfacing or reconstruction. Such future reconstruction work or resurfacing work shall be designed, supervised and bid by St. Charles in accordance with the statutory procedures of the Illinois Municipal Code, unless otherwise waived or modified by St. Charles to the extent permitted by law.

(d) The Mayor and City Administrator of West Chicago are hereby authorized to execute any necessary documents to support any state or federal funding and grant applications made by St. Charles for funding of the roadway improvements contemplated herein. Also, St. Charles and West Chicago agree to enter into any tri-party agreements with the Illinois Department of Transportation for any approved State of Illinois Grant Program for the construction of any roadway improvements. St. Charles shall be responsible for all costs and responsibilities associated with grant preparation, and should a grant be received, all costs and responsibilities associated with grant oversight, construction, engineering, and coordination/administration.

Section 3. Access to Kautz Road.

(a) St. Charles shall have the sole authority to review, approve and issue access permits for ingress and egress to Kautz Road and to require the installation of such other roadway and traffic improvements that are necessary and commensurate with good and sound engineering practices.

(b) The parties acknowledge and agree that in the event either St. Charles or West Chicago approve additional developments adjacent to Kautz Road which require curb cut access or other roadway improvements, including but not limited to roadway widening or dedicated turn or de-acceleration lanes, to Kautz Road, said party shall require the developer thereof to install, at no cost to the other party, such roadway improvements, as shall be required to support the development.

(c) The parties hereto agree that it is not in their respective best interests to engage in disputes with respect to roadway access. Therefore, St. Charles agrees not to unreasonably restrict roadway access within the Kautz Road right-of-way pertaining to development within West Chicago. The municipalities shall cooperate to coordinate access locations in accordance with sound traffic engineering principles and practices.

Section 4. West Chicago Utility Installation. The parties hereto agree that it is not in their respective best interests to engage in disputes with respect to installation of future City owned utilities. Therefore, St. Charles agrees not to unreasonably restrict or prohibit West Chicago from installing, as may be determined necessary, water and sanitary sewer utilities within the Kautz Road right-of-way. The municipalities shall cooperate to coordinate utility locations so as to satisfy the requirements of both municipalities.

Section 5. Miscellaneous provisions.

(a) All notices required hereunder shall be made in writing and at the following addresses:

City of St. Charles:

City Administrator
City of St. Charles
2 East Main Street
St. Charles, Illinois 60174

City of West Chicago:

City Administrator
City of West Chicago
475 Main Street
West Chicago, Illinois 60185

(b) Nothing contained in this Agreement shall be construed to create a partnership or

joint venture between the parties, or to authorize either party to act as a general agent for the other party.

(c) Nothing contained in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties hereby and their respective permitted successors and assigns, nor is anything in this Agreement intended to receive or discharge the obligation or liability of any third person to any party to this Agreement nor shall any provision give any third person any right to subrogation or action over or against any party to this Agreement.

(d) This Agreement represents the entire understanding between the parties and may be modified only by a written document signed by both parties.

(e) Neither of the parties may assign its rights and privileges nor its duties and obligations under this Agreement without the written consent of the other party. This Agreement shall inure to the benefit of each party and their respective successors and assigns.

(f) This Agreement and the application of the terms contained herein shall be governed by the laws of the State of Illinois.

(g) The failure or delay of any party anytime to require performance by the other party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice or demand on any party in any case shall, of itself, entitle such party to any other or further notice.

(h) Whenever possible, each provision of this Agreement shall be interpreted in such manners as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of the prohibition or invalidation, but shall not invalidate the remainder of such provision or the remaining provisions to this Agreement.

(i) This Agreement may be executed in multiple, identical counterparts and all said counterparts shall, taken together, constitute this integrated agreement.

(j) St. Charles and West Chicago have authorized, by Resolution or Ordinance, the execution of this Agreement as an exercise of their respective intergovernmental cooperation authority under the Constitution of the State of Illinois.

(k) The Effective Date of this Agreement shall be the date upon which this Agreement and the Boundary Agreement have been adopted and executed by both parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date first above written.

CITY OF WEST CHICAGO, an Illinois municipal corporation

By: _____
Mayor

ATTEST:

City Clerk

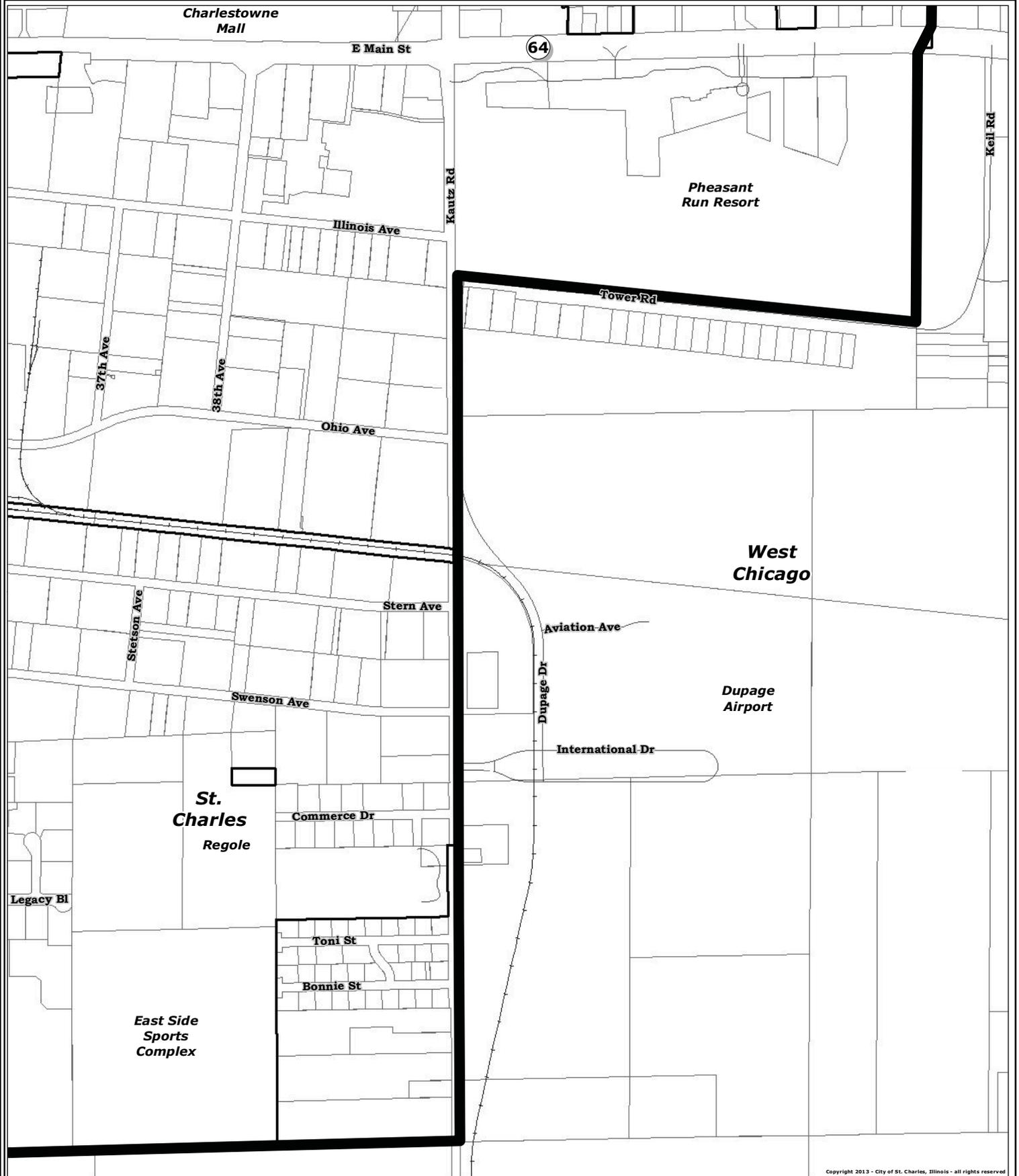
CITY OF ST. CHARLES, an Illinois municipal corporation

By: _____
Mayor

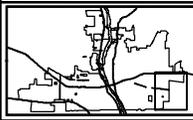
ATTEST:

City Clerk

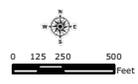
EXHIBIT "A"



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Publication Date:
March 5, 2013
Data Source:
City of St. Charles, Illinois
Projection: Transverse Mercator
Coordinate System: Illinois State Plane East
North American Datum 1983
TH #: 130305192959987



West Chicago Boundary Agreement



St. Charles Municipal Boundary



Parcels

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**Prepared by and
After recording, return to:**
Bruce E. Garner, Esq.
Schriott, Luetkehans & Garner, LLC
105 E. Irving Park Rd.
Itasca, IL 60143
(630) 773-8500

This space reserved for Recorder's use Only.

EASEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of October, 2014, by and between the **DU PAGE AIRPORT AUTHORITY**, an Illinois special district situated in DuPage County, Illinois (hereinafter referred to as "Grantor") and the **CITY OF ST. CHARLES**, an Illinois municipal corporation situated in Kane and DuPage Counties, Illinois (hereinafter referred to as "Grantee" or "City");

WITNESSETH:

WHEREAS, Grantor holds title to the certain real property in the roadway known as Kautz Road legally described on Exhibits "A" and "B" and depicted on Exhibit C, all attached hereto and incorporated herein (the "Easement Parcels"); and

WHEREAS, the Grantor wishes to grant and the Grantee wishes to receive an easement for roadway and roadway maintenance purposes over, upon, across, under and through the Easement Parcels, all as more fully set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, conditions and agreements herein contained, the adequacy and sufficiency of which the parties hereto hereby acknowledge, the parties hereto agree as follows:

Section 1. Preambles. The Recitals set forth hereinabove are incorporated as substantive provisions of this Agreement as if fully set forth herein.

Section 2. Grant of Easement. The Grantor, in consideration of the sum of Ten (\$10.00) Dollars and other good and valuable consideration paid to it by the Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and give to the Grantee, its successors and assigns, a non-exclusive, and perpetual easement in, upon, across, over, under, and through the Easement Parcels for the purpose of installing, constructing, reconstructing, inspecting, operating, replacing, renewing, altering, removing, repairing, cleaning, and

maintaining (i) a public roadway and related improvements for use by the general public and, and (ii) underground sewer, water, and electrical, or other utility lines or appurtenances, sanitary and storm sewers, drainage ways, storm water detention and retention, water mains and any and all manholes, pipes, connections, catch basins, and without limitation, such other underground or at-grade installations as may be required to furnish public utility service to adjacent areas. The Grantor does also hereby grant to the Grantee the right to cut down, trim, or remove any trees, shrubs, or other plants, landscaping, or other materials in the Easement Parcels that interfere with the operation of or access to the Easement Parcels.

Section 3. Avigation Rights. The Grantor hereby reserves all rights and privileges in and through the airspace above the Easement Parcels as described on Exhibit D and E, attached hereto and made a part herein by reference.

Section 4. Maintenance. All work on the Easement Parcels shall be performed by Grantee in a good and workmanlike manner and in compliance with all applicable laws, ordinances and codes. If the Easement Parcels or property of Grantor adjacent thereto is disturbed by Grantee, Grantee shall, at its sole cost and expense, restore such Property to its original condition within a reasonable time after Grantee's work is completed. If Grantee fails to restore the Property, the Grantor, after having given Grantee reasonable written notice requesting that it do such, may perform the restoration and charge Grantee the reasonable costs thereof. Grantee's duties of restoration herein do not include replacing trees, shrubs or other plants or landscaping removed pursuant to Paragraph 2 above.

Section 5. Liens. Grantee shall not permit or suffer any lien to be imposed upon or to accrue against Grantor or the Easement Parcels in favor of Grantee or Grantee's agents. Grantee shall indemnify, defend and hold harmless Grantor and the Easement Parcels from and against any liens and encumbrances arising out of any labor or services performed or materials furnished by or at the direction of Grantee and, in the event that any such lien shall arise or accrue against Grantor or the Easement Parcels, Grantee shall promptly cause such lien to be released of record by payment thereof or posting of a bond with Grantor which is reasonably satisfactory to Grantor.

Section 6. Reservation of Rights. Subject to the terms of this Agreement, Grantor reserves the following rights with respect to the Easement Parcels so long as the exercise by Grantor of such rights does not substantially interfere with Grantee's use of the Easement Parcels for the purposes herein granted:

- (a) The right to use the surface and the sub-surface areas of the Easement Parcels for any reason and in such manner as Grantor shall deem proper, in its sole discretion, other than construction of a building or other permanent obstruction on the Easement Parcels, and provided that said uses do not substantially interfere with Grantee's use of the Easement Parcels. Any building, structure or other improvement located on, under or upon the Easement Parcels at the time of execution of this Agreement by Grantor shall not be deemed an encroachment by Grantor upon the Easement Parcels nor a violation of any of the terms or

conditions of this Agreement, notwithstanding anything contained in this Agreement to the contrary; and

- (b) The right to grant additional access, utility or other easements over, upon and under, and the right to grant others the right to use the Easement Parcels provided said additional grants of easement do not substantially interfere with Grantee's use of the Easement Parcels.

Section 7. Non-Interference by Grantee. Grantee hereby agrees not to materially interfere with the use of any existing easement on, under, above or across the Easement Parcels or the property of which the Easement Parcels is a part. Furthermore, Grantee hereby agrees not to materially interfere with the use of any easement hereafter granted on, under, above or across the Easement Parcels or with any other use of the Easement Parcels so long as such easement, the use thereof or any other use does not materially interfere with Grantee's rights hereunder.

Section 8. Construction of Improvements. Except in an emergency, Grantee shall give Grantor thirty (30) days notice prior to commencing any work in the Easement Parcels. Failure by Grantee to perform any such construction, whether or not notice has been given under this Section, shall not be deemed to be an abandonment of the easement granted herein.

Section 9. Release of Claims; Indemnity; Insurance. Grantor and Grantee acknowledge that Grantee will be inviting the general public onto the Easement Parcels for use as a public roadway. Grantor and Grantee also acknowledge that Grantee shall have complete autonomy as to the design, construction and maintenance of the roadway contained within the Easement Parcels. Accordingly, to the fullest extent permitted by law, Grantee assumes sole and entire responsibility for any and all loss of life, injury to persons or damage to property (wherever such property may be located) that may be sustained directly or indirectly due, in whole or in part, to the activities, operations or use of the Easement Parcels (including, without limitation, any such loss, injury or damage due to the construction, maintenance, restoration, operation, existence, replacement or repair of any roadway improvements, or the failure to do so) by Grantee, its agents, employees and contractors, and for those claiming through any of them (collectively the "Grantee Group") or any invitee or member of the general public using said Easement Parcels. Grantee, for itself and for those claiming through Grantee, hereby releases Grantor, Grantor's beneficiary and all of their respective partners, employees, agents, mortgagees, licensees, contractors, insurers, tenants, guests and invitees (and their respective commissioners, officers, directors, shareholders, insurers, partners, employees, agents, mortgagees, licensees, contractors, guests and invitees, subsidiaries, affiliates, successors, grantees and assigns) (collectively the "Grantor Indemnitees") from any and all liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation costs incurred in connection therewith) and for damage, destruction or theft of property that may arise from operations on, or the use of, the Easement Parcels (including, without limitation, any such liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs and expenses that may arise as a result, in whole or in part, from the construction, maintenance, restoration, operation, existence, replacement or repair of any roadway improvements, or the failure to do so) by the Grantee Group or any member

thereof. To the fullest extent permitted by law, Grantee hereby agrees to indemnify, defend, save and hold harmless the Grantor Indemnitees from and against any and all liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation costs incurred in connection therewith) and for any and all loss of life, injury to persons or damage to property which is directly or indirectly due to the activities, operations or use of the Easement Parcels, the existence of any Grantee improvements therein, or the exercise of Grantee's rights hereunder, by Grantee Group or any member thereof, or the use of the Easement Parcels by any invitee of Grantee as well as any member of the general public. Such defense and indemnification shall include, without limitation, any such loss, injury or damage due, in whole or in part, to any construction, maintenance, restoration, operation, existence, replacement or repair of improvements in the Easement Parcels, or the failure to do so, and any such loss, injury or damage due to any invitee or the general public's use of said Easement Parcels. Grantee will be responsible for all safety measures during any design, construction, maintenance, restoration, operation, existence, replacement or repair of any improvements in the Easement Parcels to prevent injury to person or damage to property. Nothing set forth herein shall be deemed a waiver of any defenses or immunities relating hereto that are, or would be, available by law against someone other than Grantor.

The Grantor shall, to the extent permitted by law, indemnify, defend and hold harmless the Grantee, its officers and employees from and against all claims arising out of or resulting from or in connection with its use of the Easement Parcels, provided that any such claim is caused in whole or in part by any negligent or willful act or omission of the Grantor, its officers, employees and contractors. Nothing set forth herein shall be deemed a waiver of any defenses or immunities relating hereto that are, or would be, available by law against someone other than Grantee.

Grantee covenants and agrees prior to any use or occupancy of the Easement Parcels, and at Grantee's sole cost and expense, to maintain in full force and effect at all times during the term of this Easement Agreement, workmen's compensation insurance with statutory limits of coverage and general liability insurance, including contractual liability, naming Grantor as an additional insured with waiver of subrogation and with limits not less than Two Million (\$2,000,000) for personal injury, including bodily injury and death, and property damage. Grantee shall provide Grantor with a copy of the declaration pages of all such insurance policies. Such insurance policies shall be issued by an insurance company approved by Grantor, in its judgment, and in a form acceptable to Grantor and shall be subject to modification or cancellation only upon written notice delivered by certified mail to Grantor not less than thirty (30) days in advance of any such proposed modification or cancellation. At the request of the Grantor, but no more often than once every five (5) years, Grantee shall increase the amount of the insurance limits as necessary so that such limits are commercially reasonable and comparable to similarly sized municipalities in the Chicagoland area.

Section 10. Exceptions. The easement granted herein shall be subject to all covenants, easements and restrictions of record, building and zoning ordinances, resolutions and regulations, questions of survey, and rights of any parties which would be revealed by a physical inspection of the Easement Parcels.

Section 11. Not transferrable; Reverter. Grantee may not convey, transfer or assign its rights under this Agreement without the express written authorization of the Grantor. Said Easement shall be used only for those purposes listed herein. Upon any unauthorized transfer or assignment, or should the Easement be used for any other purpose than those authorized herein, all right, title and interest in the Easement shall revert to Grantor without the need of any action by Grantor or Grantee.

Section 12. Abandonment. In the event Grantee shall abandon the Easement Parcels herein granted either (a) by removing any improvements without the replacement thereof, or (b) by continuous non-use of the Easement Parcels for a period of one hundred fifty (150) days, then this instrument shall automatically terminate and be of no force and effect and the easements herein granted shall cease and desist. Abandonment under subparagraph (b) above shall only be found if notice is sent by Grantor to Grantee of Grantor's determination of said abandonment and Grantee fails to cure said abandonment within ten (10) days after such notice. In the event of any termination of this instrument as aforesaid, Grantee shall, upon the request of Grantor, execute and deliver to Grantor any such instruments, in recordable form, as may be requested by Grantor to evidence and confirm such termination of this instrument and the release of all Grantee's rights in and to the Easement Parcels.

Section 13. Termination. The Grantee may terminate such easement by recording a Release thereof with the Office of Recorder of Deeds of DuPage County, Illinois, with directions for delivery of the same to the Grantor at its address given pursuant hereto, whereupon all rights, duties and liabilities hereby created shall terminate as to such easement except for liabilities incurred hereunder prior to such termination. For convenience, such Release may run to "the owner or owners and parties interested in the Easement Parcels".

Section 14. Binding on Successors. The covenants, conditions, restrictions, uses, privileges and charges of this Agreement shall run with the Easement Parcels and be binding upon and inure to the benefit of Grantor and Grantee, their respective successors and assigns, with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Easement Parcels or any part thereof. Either party may enforce this Agreement by appropriate action, and, should it prevail in such action, it shall recover as a part of its costs reasonable attorneys' fees and expenses.

Section 15. Notices. All notices or demands required or desired to be furnished pursuant to the terms of this Agreement shall be in writing delivered personally or by certified mail, return receipt requested, with postage prepaid, the combination of which shall constitute proper delivery to the proper addresses:

To Grantee:

City of St. Charles
ATTN: City Administrator
2 E. Main Street
St. Charles, IL 60174

To Grantor:

DuPage Airport Authority
ATTN: Executive Director
2700 International Drive, Suite 200
West Chicago, IL 60185

Any address provided herein may be changed by written notice to the other parties set forth above. All notices given in conformance herewith shall be deemed received and effective on the date of personal delivery or, if given by mail, two (2) days following deposit with the U.S. Mail in conformance with this Section.

Section 16. Miscellaneous.

a. This instrument may not be modified or amended except by a written instrument executed by the parties hereto or their respective successors and assigns.

b. This instrument shall be binding upon Grantor and Grantee, and their respective successors and assigns.

c. The parties acknowledge that the Easement Parcels are the property of the Grantor and are not dedicated to the general public and that nothing herein, express or implied, shall confer upon the general public any rights or remedies under or by reason of this instrument, except as otherwise specifically set forth herein.

d. Grantee's use of the Easement Area is limited to those purposes expressly set forth in this instrument only. All easements granted herein shall be non-exclusive.

Section 17. Law Governing. This Agreement and the application of the terms contained herein shall be governed by the laws of the State of Illinois; however, the rule of strict construction shall not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties is carried out.

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

DU PAGE AIRPORT AUTHORITY, an Illinois special district,



By: David Bird
Its: Executive Director

ATTEST:



By: Mark Doles
Its: Asst. Secretary

DuPage Airport Authority
Board of Commissioners

CITY OF ST. CHARLES, an Illinois municipal corporation

Mayor

ATTEST:

City Clerk

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY that _____, personally known to me to be the Mayor of the City of St. Charles, a municipal corporation, and _____, personally known to me to be the City Clerk of St. Charles, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, respectively appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk of said municipal corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to the authority given by the City Council of the City of St. Charles as their free and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notaries seal this _____ day of _____, 2014.

SEAL

NOTARY PUBLIC

STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY that David Bird, personally known to me to be the Exec. Director of the DuPage Airport Authority, a municipal corporation, and Mark Doles, personally known to me to be the Asst. Sec. of said body, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such David Bird and Mark Doles, respectively appeared before me this day in person and severally acknowledged that as such Exec. Dir. and Asst. Sec./Board of said municipal corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to the authority given by the Exec. Dir. of the DuPage Airport Authority as their free and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notaries seal this 13th day of October, 2014.

Pamela B Miller
NOTARY PUBLIC

SEAL



**EXHIBIT A – LEGAL DESCRIPTION OF EASEMENT NORTH OF RAILROAD
TRACKS (PARCEL A)**

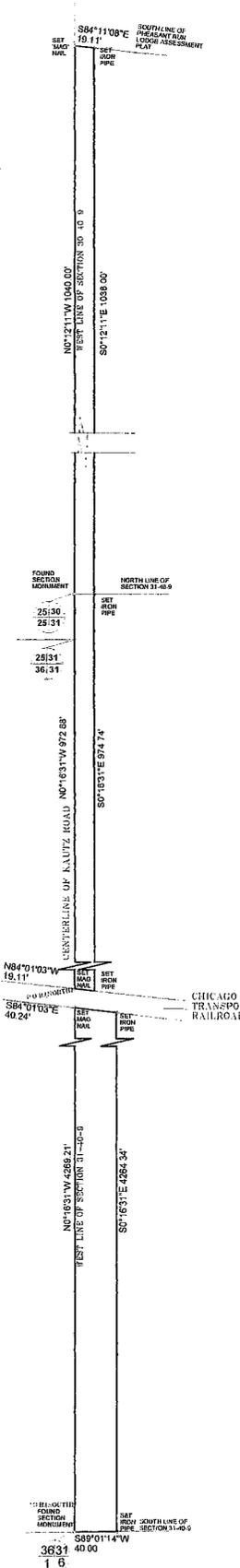
A STRIP OF LAND 19.00 FEET IN WIDTH LOCATED IN SECTIONS 31 AND 30, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SECTION 31 AFORESAID AND THE NORTHERLY LINE OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY RAILROAD; THENCE NORTH 0 DEGREES, 16 MINUTES, 31 SECONDS WEST ALONG THE WEST LINE OF SAID SECTION 31, 972.68 FEET TO THE NORTHWEST CORNER OF SAID SECTION 31; THENCE NORTH 0 DEGREES, 12 MINUTES, 11 SECONDS WEST ALONG THE WEST LINE OF SAID SECTION 30; 1040.00 FEET TO THE SOUTH LINE OF PHEASANT RUN LODGE ASSESSMENT PLAT RECORDED AS DOCUMENT R78-101306; THENCE SOUTH 84 DEGREES, 11 MINUTES, 08 SECONDS EAST ALONG SAID SOUTH LINE 19.11 FEET, TO A LINE 19.00 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 30; THENCE SOUTH 0 DEGREES, 12 MINUTES, 11 SECONDS EAST ALONG SAID PARALLEL LINE, 1038.00 FEET TO THE NORTH LINE OF SAID SECTION 31, AS PER DOCUMENT R98-3252 RECORDED IN DUPAGE COUNTY; THENCE SOUTH 0 DEGREES, 16 MINUTES, 31 SECONDS EAST ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID SECTION 31, 974.74 FEET TO THE NORTHERLY LINE OF SAID CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY RAILROAD; THENCE NORTH 84 DEGREES, 01 MINUTES, 03 SECONDS WEST ALONG SAID NORTHERLY LINE, 19.11 FEET TO THE PLACE OF BEGINNING, ALL IN WAYNE TOWNSHIP, DUPAGE COUNTY, ILLINOIS.

**EXHIBIT B – LEGAL DESCRIPTION OF EASEMENT SOUTH OF RAILROAD
TRACKS (PARCEL B)**

A STRIP OF LAND 40.00 FEET IN WIDTH LOCATED IN SECTION 31, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 31, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID SECTION 36, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTH 0 DEGREES, 16 MINUTES, 31 SECONDS WEST ALONG THE WEST LINE OF SAID SECTION 31 AND THE EAST LINE OF SAID SECTION 36, 4269.21 FEET, TO THE SOUTHERLY LINE OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY RAILROAD; THENCE SOUTH 84 DEGREES, 01 MINUTES, 03 SECONDS EAST ALONG SAID SOUTHERLY LINE 40.24 FEET TO A LINE PARALLEL TO AND 40.00 FEET EAST OF THE WEST LINE OF SAID SECTION 31 AND THE EAST LINE OF SAID SECTION 36; THENCE SOUTH 0 DEGREES, 16 MINUTES, 31 SECONDS EAST ALONG SAID PARALLEL LINE 4264.34 FEET, TO THE SOUTH LINE OF SAID SECTION 31; THENCE SOUTH 89 DEGREES, 01 MINUTES, 14 SECONDS WEST ALONG SAID SOUTH LINE 40.00 FEET TO THE PLACE OF BEGINNING, ALL IN WAYNE TOWNSHIP, DUPAGE COUNTY, ILLINOIS.

EXHIBIT C

PART OF SECTIONS 30 and 31 IN TOWNSHIP 40 NORTH, RANGE 9 EAST, DuPAGE COUNTY, ILLINOIS.



LEGAL DESCRIPTION SOUTH OF TRACKS

A STRIP OF LAND 40.00 FEET IN WIDTH LOCATED IN SECTION 31, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 31, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID SECTION 36, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTH 0 DEGREES, 16 MINUTES, 31 SECONDS WEST ALONG THE WEST LINE OF SAID SECTION 31 AND THE EAST LINE OF SAID SECTION 36, 4269.21 FEET, TO THE SOUTHERLY LINE OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY RAILROAD; THENCE SOUTH 84 DEGREES, 01 MINUTES, 03 SECONDS EAST ALONG SAID SOUTHERLY LINE 40.24 FEET TO A LINE PARALLEL TO AND 40.00 FEET EAST OF THE WEST LINE OF SAID SECTION 31 AND THE EAST LINE OF SAID SECTION 36; THENCE SOUTH 0 DEGREES, 16 MINUTES, 31 SECONDS EAST ALONG SAID PARALLEL LINE 4264.34 FEET, TO THE SOUTH LINE OF SAID SECTION 31; THENCE SOUTH 89 DEGREES, 01 MINUTES, 14 SECONDS WEST ALONG SAID SOUTH LINE 40.00 FEET TO THE PLACE OF BEGINNING, ALL IN WAYNE TOWNSHIP, DUPAGE COUNTY, ILLINOIS.

LEGAL DESCRIPTION NORTH OF TRACKS

A STRIP OF LAND 35.00 FEET IN WIDTH LOCATED IN SECTIONS 31 AND 30, TOWNSHIP 40 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SECTION 31 AFORESAID AND THE NORTHERLY LINE OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY RAILROAD, THENCE NORTH 0 DEGREES, 16 MINUTES, ALONG THE WEST LINE OF SAID SECTION 31, 972.68 FEET TO THE NORTHEAST CORNER OF SAID SECTION 31; THENCE NORTH 0 DEGREES, 12 MINUTES, 11 SECONDS WEST ALONG THE WEST LINE OF SAID SECTION 30; 1040.00 FEET TO THE SOUTH LINE OF PHEASANT RUN LODGE ASSESSMENT PLAT RECORDED AS DOCUMENT R78-101306; THENCE SOUTH 84 DEGREES, 11 MINUTES, 08 SECONDS EAST ALONG SAID SOUTH LINE 35.19 FEET, TO A LINE 35.00 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 30; THENCE SOUTH 0 DEGREES, 12 MINUTES, 11 SECONDS EAST ALONG SAID PARALLEL LINE, 1035.91 FEET TO THE NORTH LINE OF SAID SECTION 31, AS PER DOCUMENT R98-3252 RECORDED IN DUPAGE COUNTY; THENCE SOUTH 0 DEGREES, 16 MINUTES, 31 SECONDS EAST ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID SECTION 31, 976.87 FEET TO THE NORTHERLY LINE OF SAID CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY RAILROAD; THENCE NORTH 84 DEGREES, 01 MINUTES, 23 SECONDS WEST ALONG SAID NORTHERLY LINE, 35.21 FEET TO THE PLACE OF BEGINNING, ALL IN WAYNE TOWNSHIP, DUPAGE COUNTY, ILLINOIS.

DALE FLOYD LAND SURVEYING L.L.C.
2000 KEHLINGER ROAD, SUITE A
GENEVA, ILLINOIS 60134
PH 630-232-7708 FAX 630-232-7728

REVISED 3-17-2011 (SHOWED MODIFICATION) ENLARGED LEGAL
REVISED 5-11-2011 EXHIBIT
REVISED 8-16-2011 PER CITY COMMENTS
REVISED 7-10-2012 PER CITY COMMENTS
REVISED 1-23-2013 ADDED 10' R/W
REVISED 1-15-2013 PER CITY COMMENTS
REVISED 1-17-2013 ADDED 35' ROW S/R/R
REVISED 10-1-2013 PER CITY COMMENTS

SURVEYORS CERTIFICATE
STATE OF ILLINOIS)
JSS
COUNTY OF KANE)

WE, DALE A. FLOYD LAND SURVEYING L.L.C. A PROFESSIONAL DESIGN FIRM, LICENSE NO. 184-004129 DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED PROPERTY HAS BEEN SURVEYED IN THE MANNER REPRESENTED ON THE PLAT HEREON DRAWN

ALL DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMAL PARTS THEREOF

GIVEN UNDER MY HAND AND SEAL THIS 16th DAY OF SEPTEMBER A.D. 2014

DALE A. FLOYD
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 2876
MY LICENSE EXPIRES 11/30/2014

EXHIBIT D

AVIGATION RESERVATION – PARCEL A

A. Grantee shall not construct nor permit to stand on or pass through the Easement Parcels (as hereinabove described), any building, structure, poles, trees, vehicle or any other object, whether natural or otherwise, of an elevation in excess of 770.0 feet. Said elevation is based upon the Kane County Benchmark Designation IL Kane 36-40-8 with an elevation of 779.20 feet, NAVD Datum.

B. Grantee shall file notice consistent with requirements of Federal Aviation Regulation Part 77 (FAA Form 7460-1) prior to constructing any facility, structure or other item on said Easement Parcels.

C. Grantee shall not hereafter use nor permit nor suffer use of said Easement Parcels in such a manner as to create electrical interference with radio communication between the installation upon the DuPage Airport, West Chicago, Illinois (the “**Airport**”) and aircraft or as to make it difficult for fliers to distinguish between Airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.

D. There is hereby reserved to the Grantor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of said Easement Parcels. This public right shall include the right to cause in said airspace any noise inherent in the operation of any aircraft for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport.

E. Grantee shall not hereafter use, nor permit, nor suffer use of said Easement Parcels in such a manner as to create a potential for attracting birds and other wildlife, or any incompatible use as viewed by the United States Federal Aviation Administration, that may pose a hazard to aircraft.

F. The drainage of stormwater onto the Airport shall not increase in volume/rate as a result of the Grantee's use of said Easement Parcels.

G. The aforesaid covenants and agreements shall run with said Easement Parcels for the benefit of the Grantor and its successors and assigns in the ownership and operation of the Airport.

EXHIBIT E

AVIGATION RESERVATION – PARCEL B

A. Grantee shall not construct nor permit to stand on or pass through the Easement Parcels (as hereinabove described), any building, structure, poles, trees, vehicle or any other object, whether natural or otherwise, of an elevation in excess of 825.0 feet. Said elevation is based upon the Kane County Benchmark Designation IL Kane 36-40-8 with an elevation of 779.20 feet, NAVD Datum.

B. Grantee shall file notice consistent with requirements of Federal Aviation Regulation Part 77 (FAA Form 7460-1) prior to constructing any facility, structure or other item on said Easement Parcels.

C. Grantee shall not hereafter use nor permit nor suffer use of said Easement Parcels in such a manner as to create electrical interference with radio communication between the installation upon the DuPage Airport, West Chicago, Illinois (the “**Airport**”) and aircraft or as to make it difficult for fliers to distinguish between Airport lights and others, or as to impair visibility in the vicinity of the Airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.

D. There is hereby reserved to the Grantor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of said Easement Parcels. This public right shall include the right to cause in said airspace any noise inherent in the operation of any aircraft for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport.

E. Grantee shall not hereafter use, nor permit, nor suffer use of said Easement Parcels in such a manner as to create a potential for attracting birds and other wildlife, or any incompatible use as viewed by the United States Federal Aviation Administration, that may pose a hazard to aircraft.

F. The drainage of stormwater onto the Airport shall not increase in volume/rate as a result of the Grantee's use of said Easement Parcels.

G. The aforesaid covenants and agreements shall run with said Easement Parcels for the benefit of the Grantor and its successors and assigns in the ownership and operation of the Airport.