Passed: 8-1 (R. Young)

ORDINANCE 97-55

TO MODIFY AND EXTEND THE 1987 AGREEMENT IN LIEU OF ANNEXATION BETWEEN THE CITY OF BLOOMINGTON AND CERTAIN INDUSTRIES

WHEREAS, in 1979 the City of Bloomington and five local industries entered into an agreement wherein payments were made to the City by the industrial parties in lieu of annexation of their real property; and

WHEREAS, in 1987 the City of Bloomington and several local industries entered into a revised agreement for payments by the industries in lieu of annexation of their real property, said Agreement shall expire in August 2002; and

WHEREAS, the City of Bloomington desires to encourage industrial development and retention of industries on the Westside via the Agreement, yet also desires to undertake reasonable and rational growth through annexations of commercial and residential real estate in the vicinity of the industries; and

WHEREAS, the owner-initiated annexation of commercial property near the industries by Ordinance 97-41, commonly known as Whitehall Crossing, has created an opportunity for the City and the industries to negotiate a mutually satisfactory modification and extension of the 1987 Agreement.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

Section 1. The Agreement to Modify and Extend 1987 Agreement in Lieu of Annexation, attached hereto and incorporated herein, is hereby approved by the Common Council of the City of Bloomington.

Section 2. The monies received by the City pursuant to this Agreement shall be deposited in the Special Non-Reverting Improvement Fund created by Ordinance 79-74, as amended, and in the Road and Traffic Improvement Account created by Ordinance 87-31, as amended.

Section 3. Severability. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 4. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 17th day of December, 1997.

Anthony Pizzo

ANTHONY PIZZO, President
Bloomington Common Council

ATTEST:

Patricia Williams

PATRICIA WILLIAMS, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 17th day of December, 1997.

Patricia Williams

PATRICIA WILLIAMS, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 17 day of December, 1997.

JOHN FERNANDEZ, Mayor
City of Bloomington

SYNOPSIS

This ordinance approves an extension and modification of the 1987 Agreement between the City of Bloomington and several local industries regarding payments in lieu of annexation. The new Agreement will take effect in January 1998 after approval by the parties, and shall extend through December, 2012. The industrial parties shall make payments of $2,950,000.00 during the term of the Agreement. This ordinance specifies that revenues received under the Agreement shall be deposited into the Special Non-Reverting Fund created in 1979.

Signed copies to:
legal - 2
Mayor
Controller

FOR PUBLIC INSPECTION
(PLEASE RETURN TO COUNCIL OFFICE)

MEMORANDUM

TO: **Members of the Common Council**

FROM: **Linda Runkle, Corporation Counsel** LR

RE: **Agreement to Modify and Extend 1987 Agreement**

DATE: **November 25, 1997**

Our current In Lieu of Annexation Agreement with twelve (12) westside industrial parties was executed in August of 1987 as a settlement of litigation filed in 1986 involving the annexation of property located on West Third Street west of the 37 Bypass. Under the terms of the Agreement, the potential for reasonable growth through annexation west of the 37 Bypass is severely restricted by language which is intended to protect the industries from annexation by the City but effectively prohibits most commercial and residential property from annexation until August of 2002.

In response to the property owner initiated request of Jerry Gates to consider the annexation of the new Whitehall Crossing, the City Administration contacted the westside industries to provide information regarding our plan to annex the commercial component of Whitehall Crossing and establish a Tax Increment Financing District (TIF) in 1998 in order to leverage tax dollars to provide infrastructure improvements to the project itself and to the area. Although the annexation of this property could be viewed as a breach of our existing agreement with the industries, it was the intent of the City to work with the industrial parties to forge a mutually satisfactory agreement which would allow Ordinance 97-41 to take effect without remonstrance or legal challenge by the industries.

The proposed Agreement to Modify and Extend the 1987 Agreement provides for a ten (10) year extension of our current covenant not to annex the industrially zoned real estate of the parties until December of 2012. In exchange, the City will receive two key commitments:

1. The semi-annual payments from the industrial parties shall remain at Seventy-Five Thousand Dollars ($75,000) through 2002, then shall increase to One Hundred Thousand Dollars ($100,000) from November of 2002 through May of 2009, then shall increase to One Hundred Twenty-Five Thousand Dollars ($125,000) semi-annually until the contract expires in December of 2012. The total amount of revenues received in lieu of taxes will be almost three million dollars, or $2,950,000. While it is indisputable that the industrial parties would be paying in excess of one million dollars ($1,000,000) per year if annexed into the City, we are currently unable to annex the industries until after November of 2002. Anticipated revenues from the proposed TIF of the Whitehall Crossing project should reach eight hundred thousand dollars ($800,000) after full build out. Thus, over the long term, the TIF revenues combined with the payments received under the Agreement to Modify and Extend the 1987 Agreement will be financially comparable to annexation of the industries, yet will provide the industries with the economic development impacts of both predictability and reduced "tax" obligations.

2. Equally as important as the financial contribution of the industries under the proposed Agreement is the new language contained in paragraph nine (9) which clarifies that the industries shall not challenge the City's annexation efforts to the west, and specifically recites that sound and rational growth policies will require that the City annex commercial, industrial, and residential property in the vicinity of the industrial parties during the term of the Agreement. The protection against annexation afforded by the Agreement applies to the "industrially zoned real property of the signatories to this Agreement."

The vast majority of the rest of the language contained in the proposed Agreement remains substantively unchanged from the existing agreement for the convenience of the industrial parties in order to obtain their corporate approvals in a timely manner such that the new Agreement may take effect in January of 1998.

Other modifications are as follows:

1. Paragraph five (5) provides that additional industrial parties may join during the term of the Agreement and provides a phased in percentage of taxes payment to the City. At each point of time where the semi-annual industrial payment increases (November of 2002 and November of 2009), the "new" industrial parties will then share in the pro rata increased payment from the industrial parties.

2. Paragraphs sixteen (16) and seventeen (17) provide for the new Agreement to take effect on January 1, 1998, but allows an additional fifteen (15) days for the industrial parties to obtain their corporate signatures.

As always, please feel free to contact me at 349-3426 with any questions or comments you might have regarding Ordinance 97-55 or the Agreement to Modify and Extend the 1987 Agreement.

AGREEMENT TO MODIFY AND EXTEND 1987 AGREEMENT

THIS AGREEMENT, made and entered into as of the _____ day of January, 1998, between the City of Bloomington, Indiana, hereinafter referred to as the "City", and the undersigned industries and businesses located in Richland and Van Buren Townships and that part of Bloomington Township located West of the Four-Lane #37 By-Pass and South of State Road #46, in Monroe County, Indiana, referred to as the "Industries."

WITNESSETH:

WHEREAS, the City of Bloomington and the Industries located in the vicinity of, but beyond the corporate limits of the City, recognize mutual interests and benefits in relationship to each other; and the Industries desire to share some of the financial support of the City; and the City desires to create a favorable environment for employment and capital expansion for the Industries; and

WHEREAS, the City is empowered by Ind. Code §36-4-3-21 to enter into agreements to receive payments or contributions from parties owning or leasing land outside the corporate boundaries; and

WHEREAS, the City recognizes that the potential for impending inclusion of the Industries into the corporate limits of the City creates industrial planning concerns in terms of expansion, and that the encouragement of industrial expansion by these Industries via an agreement in lieu of annexation with a specified term is in the mutual best interests of the City and the Industries; it is with such understanding that this agreement is entered into.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS OF THE PARTIES, IT IS AGREED AND STIPULATED AS FOLLOWS:

1. The term of this Agreement shall be fifteen (15) years, commencing on the 1st day of January, 1998, and ending fifteen (15) years thereafter on the 31st day of December, 2012.

2. This Agreement applies to a geographic area located in Richland and Van Buren Townships and that part of Bloomington Township located West of the Four-Lane #37 By-Pass and South of State Road #46, in Monroe County, Indiana. The purpose of this agreement is to provide for protection against annexation for the industrially zoned property of the signatories to

this agreement. For reference purposes only, a map and list of tax parcel numbers indicating the industrially zoned property subject to this agreement at the effective date are attached to this document as Exhibits A and B respectively.

3. The parties hereto agree and declare as follows:

A. The Industries are a distinct asset to the Bloomington community;

B. The Industries, and each of them, benefit both directly and indirectly by the fact of their residence in the Bloomington community;

C. It is to the mutual interests of the parties hereto and to the community in general that the Industries receive services of the City and share the financial support of the City;

D. Such mutual interests can best be served by the Industries making the payments herein stipulated to the City on a contractual basis, rather than by annexation of the Industries' properties to the City.

4. The Industries will make semi-annual payments in lieu of taxes to the City according to the Schedule of Payments set forth in Exhibit C, attached and incorporated by reference; the percentages each Industry shall pay toward the total scheduled amount are set forth in Exhibit D, attached and incorporated by reference. The City agrees that the Industries may agree to reapportion the percentages among themselves as they deem necessary or desirable, provided they inform the City of such reapportionment in writing.

The payment in lieu of annexation for each participating industry shall be due and payable on or before May 1 and November 1 of each year. Payments shall be mailed to the City Controller, P. O. Box 100, Bloomington, Indiana 47402.

5. Upon approval by the City, additional parties owning or acquiring industrially zoned property in the geographic area described in paragraph #2 above may become parties to this Agreement. Qualifying real property of additional parties shall be subject to semi-annual payments in lieu of taxes according to the following formula:

A. Additional parties that become parties to this Agreement prior to November 1, 2002 shall make semi-annual payments of one-half of 11% of the City tax that would have been owed on the subject real property, based on assessed valuation. Such payments shall continue until November 1, 2002, at which time the additional parties shall be responsible, along with all current signatories, for the amounts due according to the Schedule of Payments listed in Exhibit C. The apportionment of said payments among the parties shall be determined by the parties, and they shall inform the City in writing of the apportionment.

B. Additional parties that become parties to this Agreement between November 1, 2002 and April 30, 2009 inclusive, shall make semi-annual payments of one-half of 14% of City tax that would have been owed on the subject real property, based on assessed valuation. Such payments shall continue until May 1, 2009, at which time the additional parties shall be responsible, along with all signatories as of November 1, 2002, for the amounts due according to the Schedule of Payments listed in Exhibit C. The apportionment of said payments among the parties shall be determined by the parties, and they shall inform the City in writing of the apportionment.

C. Additional parties that become parties to this Agreement between May 2, 2009, and November 30, 2012 inclusive, shall make semi-annual payments of one-half of 17% of the City tax that would have been owed on the real property, based on assessed valuation.

All payments shall be pro-ratable.

6. Following the receipt of all monies due at each semi-annual payment period, the City shall place any monies in excess of the payment amounts due listed in Exhibit C into the Road and Traffic Improvement Account established by Ordinance 87-31. The City may include amounts as recommended by Paragraph 7(C) of this Agreement in the Road and Traffic Improvement Account. The Joint Committee described in Paragraph 7 shall make recommendations toward the expenditure of said monies.

7. The "Joint Committee" created under the terms of the August 1, 1987 agreement shall continue in effect and shall be comprised of the following appointments: two representatives of the Industries, to be selected jointly by the industries which are parties to this Agreement; two representatives of the City Administration, to be appointed by the Mayor; one representative of the Common Council; one representative of Monroe County, to be appointed by County Commissioners; and the Director of the Bloomington Economic Development Corporation. Terms of appointment shall be for a period of two (2) years. The Committee shall have the following responsibilities:

A. To encourage the addition of new parties into the terms and conditions of this Agreement pursuant to Paragraph 5;

B. To formulate priorities and assist in plans for utilization of the monies dedicated to road and traffic improvements and the Whitehall Crossing TIF account in the vicinity of the Industries;

C. To develop a system for the recognition of the contribution of industrial expansion and new jobs to the community, whereby a specific formula shall be calculated and recommended to the City to dedicate additional monies into the road and traffic improvement fund based upon increased payroll and capital improvements of the industries.

8. The parties hereby agree in principle to donate right-of-way necessary for road and traffic improvements, and to assist in the application procedures for state and federal monies for such improvements for the mutual benefit of the City, County, and Industries.

9. The Industries which are parties to this Agreement agree not to file any lawsuits that challenge annexation efforts of the City unless those efforts purport to annex the industrially zoned property covered by this Agreement. The Industries agree that they will not exercise their statutory right provided by Ind. Code §36-4-3-15.5, or any relevant successor; nor participate in a declaratory judgment action nor taxpayer lawsuit against the City in regard to annexation procedures.

The City and the Industries recognize that sound and rational growth policies will require that the City annex commercial, industrial, and residential property in the vicinity of the Industries during the term of this Agreement. The parties recognize that the purpose of this Agreement is to provide, in accordance with Ind. Code §36-4-3-21(e), that the industrially zoned real property of

the signatories to this Agreement shall not be subject to annexation by the City during the term of this Agreement.

10. In consideration of the covenants and monetary contributions of the Industries, the City agrees that the industrially zoned real property in the geographic area covered by this Agreement, and owned by current and/or additional parties to this Agreement, shall not be subject to annexation by the City prior to December 31, 2012.

11. Except as limited by the provisions in Paragraph 6 of this Agreement, all funds herein provided for to be paid by the Industries to the City may be used for any legal public purpose.

12. The City agrees that it will continue to furnish to the Industries municipal services, both governmental and proprietary, of the same nature and the same level as it is providing the Industries at the time of the signing of this Agreement. The City shall not be obligated to provide other services than those being provided at the time of the signing of this Agreement or to provide said services to another location.

13. It is expressly understood and agreed that this Agreement is the individual contract of each of the Industries with the City, and that the obligations herein provided for are several and not joint as to the Industries; and that the payment obligations assumed herein by each of the Industries is limited to its payments as specified in Paragraph 4 and/or 5 and do not extend to the payments of any other Industry.

In the event that any party to this Agreement fails to timely perform any of the obligations specified in this Agreement, then the party desiring performance shall notify all parties by certified mail of said failure, specifying the date of said failure, and specifying the date and manner by

which such failure should be cured. If the failure to perform is not remedied or cured within sixty (60) days after said Notice, the party desiring performance, at its option, may declare this Agreement null and void either with respect to the breaching party or with respect to all parties.

If failure to perform consists of default by one of the Industries in its payment obligations, one or all of the remaining Industries have the right to cure that default within the sixty (60) day period following notice. To this end, the Industries may, at their own election, choose individually or in any combination, to cure the breach of any Industry by making that Industry's payments. Any Industry or Industries that cure the breach of any other Industry or Industries may seek any remedy at law or equity against the breaching Industry or Industries, including the recovery of reasonable attorney's fees and court costs. Any party aggrieved by a breach of this Agreement may, not less than 60 days from the date of the notice required above, proceed to institute any action it is legally authorized to initiate, including but not limited to annexation of property owned or leased by the defaulting party, or obtaining an injunction or restraining order prohibiting annexation.

The failure of a party to pursue its remedies for breach by any party or parties shall not be deemed a waiver of the right to proceed against the same party or any other party hereto at a future time.

14. The Industries agree to be bound by their obligations contained herein for the full term of this Agreement even in the event that they cease operation or remove their plant or operations to a new location.

15. The parties agree to commence negotiations for a new contract to begin at the end of the term of this contract, or for an extension of this contract, at such time as it may be desirable for any of the parties, but in any event, no later than February 1, 2010.

16. This Agreement must be approved and executed by all parties on or before January 15, 1998. Upon approval and execution of this Agreement by all parties, this Agreement shall supersede the Agreement entered into August 1, 1987. This Agreement contains the terms of all conditions, covenants, rights, responsibilities, and understandings between the parties hereto.

17. The parties agree that the provisions of the 1987 Agreement shall govern over any disputes that arise between the parties between January 1, 1998 and January 15, 1998; provided however, that the Annexation Ordinance 97-41, regarding the annexation of the proposed commercial development known as Whitehall Crossing, shall not be considered a breach of the 1987 Agreement.

IN WITNESS WHEREOF, this Agreement is executed for and on behalf of the City of Bloomington, Indiana, by the Mayor, and attested by the City Clerk and the seal of the City affixed, and the Industries have caused this Agreement to be executed by their respective duly authorized officers and their corporate seals affixed, all as of the _____ day of _____ _____, 1997. This Agreement shall be in full force and effect when executed by the parties heretofore set forth and approved by the Common Council of the City of Bloomington, Indiana.

CITY OF BLOOMINGTON, INDIANA:

_____

John Fernandez, Mayor

ATTEST:

_____

Patricia Williams, City Clerk

INDUSTRIES:

GENERAL ELECTRIC CO.

By:_____

_____

Typed Name

_____

Title

_____

Date

OTIS ELEVATOR CO.

By:_____

_____

Typed Name

_____

Title

_____

Date

ABB

By:_____

_____
Typed Name

_____
Title

_____
Date

PYA MONARCH

By:_____

_____
Typed Name

_____
Title

_____
Date

COOK, INC.

By:_____

_____
Typed Name

_____
Title

_____
Date

PUBLIC INVESTMENT CORPORATION

By:_____

_____
Typed Name

_____
Title

_____
Date

DUNN, FERGUSON, RAGLE

By:_____

_____
Typed Name

_____
Title

_____
Date

EXMIN CORPORATION

By:_____

_____
Typed Name

_____
Title

_____
Date

SABIN CORPORATION

By:_____

_____
Typed Name

_____
Title

_____
Date

ATR COIL COMPANY, INC.

By:_____

_____
Typed Name

_____
Title

_____
Date

D & F

By:_____

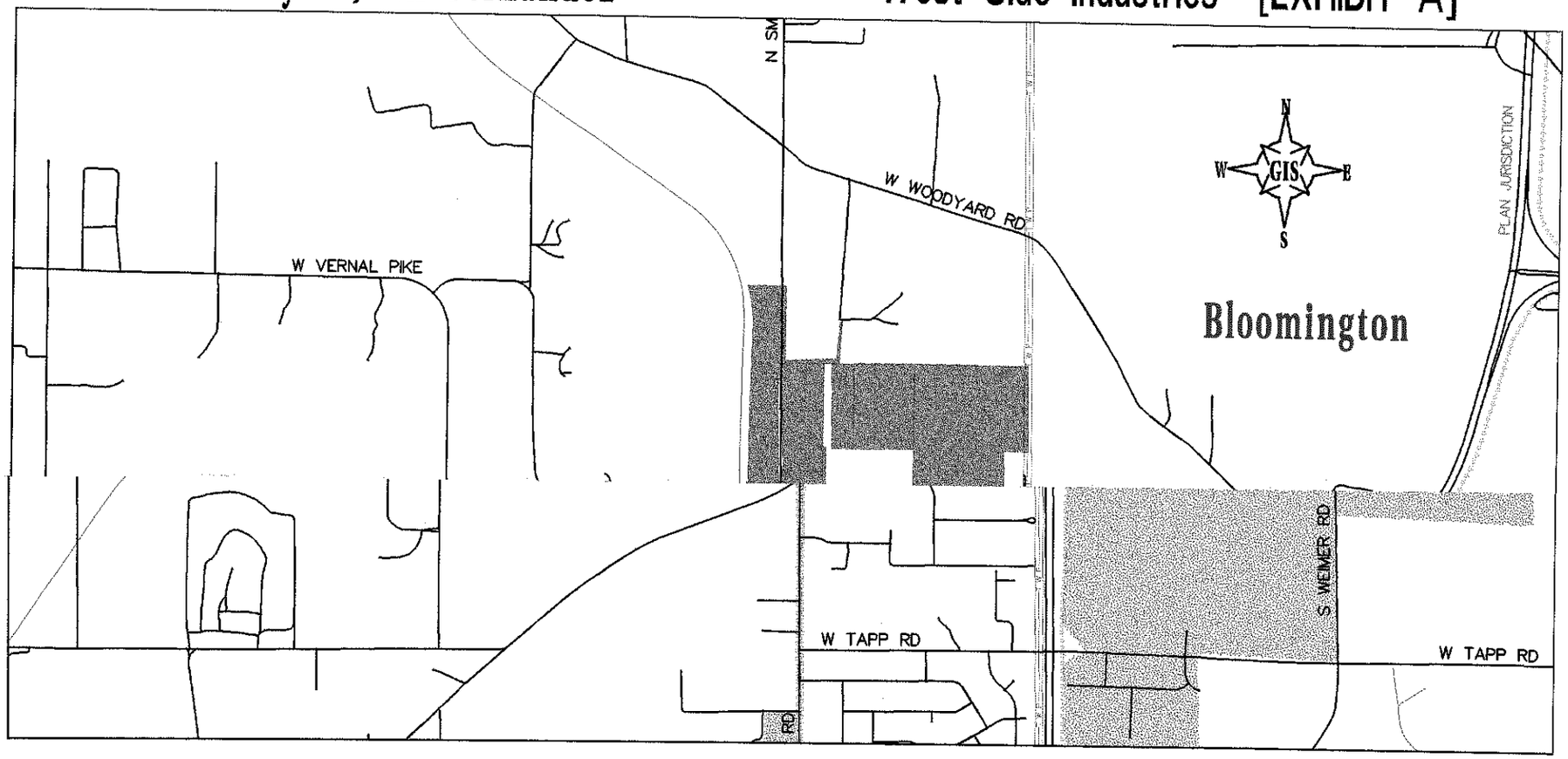
_____
Typed Name

_____
Title

_____
Date

City of Bloomington, Indiana
Mayor John Fernandez

In Lieu of Annexation Agreement
West Side Industries [EXHIBIT A]



December 17, 1997

This map was produced by the City of Bloomington GIS, for use by the City and general Public as map information. The topographic and planimetric information is based on aerial photography taken in March 1981 and March 1992 and later updated by GIS technicians. The accuracy of information contained in this document is based on National Mapping Standards, however it is NOT warranted.

The Corporation boundary reflects annexations effective January 1, 1998

Geographic Information Committee
1 January 1998

ABB
ATR Coil
Cook Inc.
Dunn & Ferguson
Exmin Corp.
General Electric
Otis Elevator
PYA/Monarch

WEST SIDE INDUSTRIES
Public Investment Corp.
Sabin Corp.
Schulte Corp.

Corporation Boundary
Planning Juristiction
Parcel Boundary
Township Boundary

Scale: 1" = 2000'

2000 0 2000 4000 6000

Bloomington Geographic Information System

Jan 2, 1998 TwsiparcBP

EXHIBIT B WSI AGREEMENT

INDUSTRY	PARCEL NUMBER
ABB	007-30030-00
COOK, INC.	016-03820-01
	016-05860-00
	016-05870-00
	016-05880-00
	016-18240-00
	016-05210-15
	016-18240-01
	016-03820-00
	007-19480-04
	007-19480-05
	007-19480-06
	016-01880-00
	016-23780-00
	016-05210-08
	016-05210-07
GE	007-15610-00
OTIS ELEVATOR	016-19540-00
	016-19550-00
	016-19555-00
PYA MONARCH	007-30110-00
	007-30110-01
ATR COIL	007-27110-05
DUNN & FERGUSON	007-17860-02
	007-17880-00
	007-17880-01
	007-17880-02
	007-20690-00
	007-17870-00
	007-20710-00
	007-13570-03
	007-13570-01
	007-25240-00
	007-17860-00
	007-13570-02
	007-18120-00
	007-17860-03
EXMIN	012-08650-05
	012-08650-12
	012-08650-13
	012-08650-14
	012-08650-15
	012-08650-00
PIC	016-01200-00
	016-06520-00
	016-20770-00
	016-20790-00
	016-23580-00
	016-20795-00
SABIN	016-24290-01
	016-24290-00
SCHULTE	016-29990-01

12/17/97

[Replaced 11/25/97 LSF]

EXHIBIT C

Schedule of Payments

Due and Payable on or Before	Total Due for Parcels Shown in Exhibits A & B
May 1, 1998	$75,000
November 1, 1998	$75,000
May 1, 1999	$75,000
November 1, 1999	$75,000
May 1, 2000	$75,000
November 1, 2000	$75,000
May 1, 2001	$75,000
November 1, 2001	$75,000
May 1, 2002	$75,000
November 1, 2002	$100,000
May 1, 2003	$100,000
November 1, 2003	$100,000
May 1, 2004	$100,000
November 1, 2004	$100,000
May 1, 2005	$100,000
November 1, 2005	$100,000
May 1, 2006	$100,000
November 1, 2006	$100,000
May 1, 2007	$100,000

November 1, 2007	$100,000
May 1, 2008	$100,000
November 1, 2008	$100,000
May 1, 2009	$100,000
November 1, 2009	$125,000
May 1, 2010	$125,000
November 1, 2010	$125,000
May 1, 2011	$125,000
November 1, 2011	$125,000
May 1, 2012	$125,000
November 1, 2012	$125,000

EXHIBIT D

PERCENTAGES OF AMOUNTS LISTED IN EXHIBIT C TO BE PAID BY THE INDIVIDUAL INDUSTRIES

ABB	14.87%
COOK INC.	4.59%
GENERAL ELECTRIC	26.54%
OTIS ELEVATOR	28.73%
PYA MONARCH	11.35%
ATR COIL	0.78%
DUNN & FERGUSON	3.17%
EXMIN	0.96%
PUBLIC INV. CORP.	1.76%
SABIN	3.03%
SCHULTE	1.02%
D & F	3.21%

NOTE: Per Section 4 of the Agreement, the City agrees that the Industries may agree to reapportion these percentages among themselves as they deem necessary or desirable, provided they inform the City of such reapportionment in writing.

j:\2west.drf