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Cook County Recorder 102.00

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**STORMWATER MANAGEMENT AGREEMENT**

This STORMWATER MANAGEMENT AGREEMENT ("Stormwater Management Agreement") is dated as of this 27th day of December 2002 ("Effective Date"), by and between the Village of Lincolnwood, Illinois, a municipal corporation (the "Village"), and Lowe's Home Centers, Inc., a North Carolina corporation, ("Lowe's") (individually, a "Party", and, collectively, the "Parties").

The following recitals of fact are a material part of this Stormwater Management Agreement:

**RECITALS**

A. The Village, in accordance with Article VII Section 6(a) of the Constitution of the State of Illinois of 1970, entered into an unrecorded Redevelopment Agreement dated as of the Effective Date (the "Redevelopment Agreement") with Lowe's pursuant to the Village's authority as a home rule unit and its powers pursuant to the "Tax Increment Allocation Redevelopment Act", Chapter 65 ILCS 5/11-74.4-1 *et seq.* (hereinafter referred to as the "TIF Act") and the Village's authority under the "Economic Incentive Agreement Act", Chapter 65 of

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the Illinois Compiled Statutes, Section 5/8-11-20 (65 ILCS 5/8-11-20) (the “**Economic Incentive Agreement Act**”).

B. The Village and Lowe's entered into the Redevelopment Agreement for the purpose of redeveloping certain property within the Village pursuant to the TIF Act and the Economic Incentive Agreement Act.

C. Lowe's is the owner of the following four (4) parcels of land, all located in Cook County, Lincolnwood, Illinois:

i. a parcel of land (“**Lot 1**”) located adjacent to southeast corner of Northeast Parkway (formerly known as Lawndale Avenue) and Touhy Avenue and legally described in **Exhibit “1**” attached hereto and incorporated herein by this reference; and

ii. a rectangular piece of land (“**Lot 2**”) located along the eastern border of Lot 1, bordered on the north by Touhy Avenue and bordered on the south by Lot 3 (as hereinafter defined) and legally described in **Exhibit “2**” attached hereto and incorporated herein by this reference; and

iii. a rectangular parcel of land (“**Lot 3**”) contiguous to and immediately south of Lot 2 and legally described in **Exhibit “3**” attached hereto and incorporated herein by this reference; and

iv. a parcel of land (“**Lot 4**”) surrounded on its north, west and east boundaries by Lot 1 with its southern boundary adjacent to a portion of Lot 5 (as hereinafter defined) and legally described in **Exhibit “4**” attached hereto and incorporated herein by this reference.

D. Lot 1, Lot 2, Lot 3 and Lot 4 are identified on the Plat of Subdivision (as hereinafter defined) and collectively referred to here in as the “**Lowe's Parcel**.”

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E. The Village is the owner of the following three (3) parcels of land located in Cook County, Lincolnwood, Illinois:

i. a parcel of land ("Lot 5") adjacent to (a) the western boundary of Lot 1, (b) a portion of the southern boundary of Lot 1, and (c) the southern boundary of Lot 4, which parcel is legally described in **Exhibit "5"** attached hereto and incorporated herein by this reference and upon which an extension of Northeast Parkway shall be constructed as a publicly-dedicated roadway; and

ii. a parcel of land ("Lot 6") adjacent to a portion of the southern boundary of Lot 5 and legally described in **Exhibit "6"** attached hereto and incorporated herein by this reference; and

iii. a parcel of land ("Lot 7") adjacent to (x) the western boundary of Lot 6, and (y) a portion of the southern boundary of Lot 5, which parcel is legally described in **Exhibit "7"** attached hereto and incorporated herein by this reference.

F. Lot 5, Lot 6 and Lot 7 are identified on the Plat of Subdivision and collectively referred to herein as the "**Dedication Parcels**".

G. Prior to the Effective Date, Lowe's acquired the Lowe's Parcel and the Dedication Parcels in anticipation of Lowe's developing, constructing, opening and operating a Lowe's home improvement center retail sales facility ("**HIC**") on the Lowe's Parcel.

H. Subsequent to its acquisition of the Lowe's Parcel and the Dedication Parcels, Lowe's executed a plat of subdivision entitled "Final Plat of Lowe's Subdivision" creating the Lowe's Parcel and the Dedication Parcels (the "**Plat of Subdivision**").

I. The Plat of Subdivision was recorded with the Cook County Recorder of Deeds prior to the recordation of this Stormwater Management Agreement.

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J. The Plat of Subdivision also created certain easements for stormwater management (collectively, the “**Stormwater Management Easements**”) designated by “S.M.E.” on the Plat of Subdivision.

K. Subsequent to the recordation of the Plat of Subdivision and prior to the execution of this Stormwater Management Agreement, Lowe’s conveyed the Dedication Parcels to the Village subject to, among other things, the Stormwater Management Easements.

L. In connection with the ownership and operation of the HIC, Lowe's is required to detain stormwater from the Lowe's Parcel in accordance with the Village's stormwater management ordinance.

M. Lowe's has determined that it will not detain stormwater from the Lowe’s Parcel on the surface of the parking lot areas located on the Lowe's Parcel.

N. In light of Lowe's determination, Lowe's and the Village have determined that to further the redevelopment of the Lowe's Parcel and to satisfy the Village’s requirements for stormwater detention for the Lowe's Parcel, it is necessary to construct underground stormwater detention facilities to consist of an integrated system (the “**Stormwater Detention System**”) of underground stormwater detention structures on Lots 4 and 7 which shall include the two underground pipes constructed under Lot 5 that are hereinafter described (collectively, the “**Connection Facilities**”):

- i. One pipe shall be constructed within the eastern 20-foot wide Stormwater Management Easement area under Lot 5 depicted on the Plat of Subdivision connecting the Dedication Parcels Water Detention Facility (as hereinafter defined) and the Lowe’s Parcel Water Detention Facility (as hereinafter defined); and

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ii. One pipe shall be constructed within the western 20-foot wide Stormwater Management Easement area under Lot 5 depicted on the Plat of Subdivision to provide drainage of stormwater from portions of Lot 1 and Lot 4 that contain surface parking areas to the Dedication Parcels Water Detention Facility.

O. The stormwater detention structure to be constructed on Lot 7 is referred to herein as the "**Dedication Parcels Water Detention Facility**", the stormwater detention structure to be constructed on Lot 4 is referred to herein as the "**Lowe's Parcel Water Detention Facility**", and the Dedication Parcels Water Detention Facility and the Lowe's Parcel Water Detention Facility are sometimes individually referred to herein as a "**Detention Facility**" and collectively referred to herein as the "**Detention Facilities**".

P. The Stormwater Detention System is described in detail on the plans listed in **Exhibit "8"** attached hereto and incorporated herein by this reference (the "**Stormwater Engineering Plans**").

Q. The Stormwater Detention System has been primarily designed to collect and detain stormwater from the Lowe's Parcel and the Dedication Parcels.

R. The Stormwater Management Easements were created to facilitate the construction, operation, inspection, maintenance, repair, reconstruction and replacement of the Stormwater Detention System.

S. The Village and Lowe's have determined that it is in their respective best interests to enter into this Stormwater Management Agreement in order to provide the terms and conditions relating to the Stormwater Management Easements and the construction, operation, inspection, maintenance, repair, reconstruction and replacement of the Stormwater Detention System.

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IN CONSIDERATION OF the mutual covenants and agreements set forth herein and pursuant to the Village's home rule powers, the Parties agree as follows:

**ARTICLE 1. RECITALS.** The Parties incorporate the foregoing Recitals into this Stormwater Management Agreement as if fully set forth in this Article 1.

**ARTICLE 2. INITIAL CONSTRUCTION/OWNERSHIP OF STORMWATER DETENTION SYSTEM.** The initial construction of the Stormwater Detention System shall occur at the times and in the manner described in the Redevelopment Agreement and in accordance with the terms and provisions of **Exhibit "9"** attached hereto and incorporated herein by this reference. Lowe's shall retain ownership of the Lowe's Parcel Water Detention Facility and any appurtenances thereto located on Lot 4. From and after the date of the Village's acceptance of the Public Improvements Bill of Sale (as defined in the Redevelopment Agreement) from Lowe's conveying the Dedication Parcels Water Detention Facility, the Connection Facilities and any appurtenances thereto located on Lot 5 and Lot 7 to the Village, the Village shall own the Dedication Parcels Water Detention Facility, the Connection Facilities and such appurtenances.

**ARTICLE 3. SCOPE OF EASEMENTS.** The Stormwater Management Easements consist of the following easements:

A. *Lowe's Stormwater Detention Easement Respecting Lot 5 and Lot 7.* A non-exclusive, perpetual easement in, at, over, along, across, through, upon, and under those portions of Lot 5 and Lot 7 that are delineated on the Plat of Subdivision as "S.M.E" ("**Village Easement Premises**") in favor of Lowe's, as owner of the Lowe's Parcel, and its successors and assigns and successor grantees, to allow for the detention, exchange and discharge of stormwater from

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the Lowe's Parcel and the Lowe's Parcel Water Detention Facility through and to the Connection Facilities and the Dedication Parcels Water Detention Facility.

B. *Lowe's Construction and Maintenance Easement Respecting Lot 5 and Lot 7.* A non-exclusive, perpetual easement in, at, over, along, across, through, upon, and under the Village Easement Premises in favor of Lowe's, as owner of the Lowe's Parcel, and its successors and assigns and successor grantees, for purposes of constructing, maintaining, inspecting, repairing, reconstructing and replacing the Dedication Parcels Water Detention Facility and the Connection Facilities, together with rights of ingress to and egress from Lot 5 and Lot 7 to the extent reasonably necessary for Lowe's to exercise its rights and perform its obligations under this Stormwater Management Agreement and the Redevelopment Agreement. Lowe's shall use good faith commercially reasonable efforts to accomplish any work on, in or under the Village Easement Premises requiring excavation and all necessary restoration of the Village Easement Premises in a manner so as not to unreasonably disrupt public access to the public right-of-way roadway to be constructed by the Village on Lot 5. The Village shall have final approval as to the scheduling of any work occurring in the public right-of-way located on Lot 5, such approval not to be unreasonably withheld, conditioned or delayed. Lowe's shall provide written notice to the Village as set forth in applicable Village ordinances governing same or, if no notice is required under Village ordinances, in the manner set forth in Article 18 of this Stormwater Management Agreement prior to any work on Lot 5; provided, however, that in the case of emergency work, Lowe's shall act as provided in Article 8 hereof. All construction shall be performed in accordance with Village ordinances setting forth standards for construction in a public right-of-way and in accordance with the terms and provisions set forth in attached **Exhibit "9"**.

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C. *Village's Stormwater Detention Easement Respecting Lot 4.* A non-exclusive, perpetual easement in, at, over, along, across, through, upon, and under those portions of Lot 4 that are delineated on the Plat of Subdivision as "S.M.E." in favor of the Village, as owner of Lots 5 and 7, and its successors and assigns and successor grantees, to allow for the detention, exchange and discharge of stormwater from the Connection Facilities and the Dedication Parcels Water Detention Facility through and to the Lowe's Parcel Water Detention Facility.

D. *Village Construction and Maintenance Easement Respecting Lot 4.* A non-exclusive, perpetual easement in, at, over, along, across, through, upon, and under Lot 4 in favor of the Village, as the owner of the Dedication Parcels, and its successors and assigns and successor grantees, for the purpose of constructing, maintaining, inspecting, repairing, reconstructing and replacing the Lowe's Parcel Water Detention Facility, together with rights of ingress to and egress from Lot 4 to the extent reasonably necessary for the Village to exercise its rights and perform its obligations under this Stormwater Management Agreement and the Redevelopment Agreement.

**ARTICLE 4. INITIAL CONSTRUCTION; "AS-BUILT" CONSTRUCTION PLANS.** The Party that completes the initial construction of the Stormwater Detention System shall submit a set of "As-Built" construction drawings or plans to the other Party within ninety (90) days after the completion of the initial construction of the Stormwater Detention System. The cost to prepare such "As-Built" construction drawings or plans shall be borne by Lowe's. The "As-Built" construction drawings or plans shall specifically identify the locations of the various components of the Stormwater Detention System to the extent such locations deviate from the locations denoted in the permit issued by the Village for construction of same.

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ARTICLE 5. INSPECTION, MAINTENANCE AND REPAIR BY THE VILLAGE.

A. *Annual Inspection.* Throughout the term of this Stormwater Management Agreement, the Village shall perform an annual inspection ("**Annual Inspection**") of the Stormwater Detention System on or about November 15 of each year and shall provide a written report of the results of said inspection to Lowe's within thirty (30) days after the Annual Inspection. The Annual Inspection shall be conducted by an engineer employed by the Village or by a licensed professional engineer provided that, in either case, the engineer performing such the Village Inspection is qualified to inspect and evaluate underground water detention structures and systems. The Village shall notify Lowe's at least ten (10) days prior to any such inspection of the date and time of the inspection. The inspection shall include, but not be limited to, a report on the volume, capacity and the structural integrity of the Stormwater Detention System.

B. *Maintenance and Repair.* The Village shall perform, or cause to be performed, routine maintenance and repair of the Stormwater Detention System to enable the Stormwater Detention System to perform at maximum capacity in accordance with its design. Such obligations shall be performed in accordance with generally accepted maintenance standards and practices for detention facilities located adjacent to retail properties similar to the HIC in the Chicago metropolitan area.

C. *Lowe's to Pay Costs for Inspection Maintenance and Repair.* Lowe's shall reimburse the Village for all costs and expenses incurred by the Village in performing the inspections, maintenance and repair described in Sections 5.A. and 5.B. herein. Such costs and expenses shall be paid in the manner provided in Article 7 hereof.

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D. *Self-Help.* If the Village fails to inspect, maintain or repair the Stormwater Detention System as required by this Stormwater Management Agreement, Lowe's may then coordinate and perform the Village's obligations at Lowe's own cost and expense.

#### ARTICLE 6. RECONSTRUCTION AND REPLACEMENT.

A. *Reconstruction.* Lowe's shall reconstruct and/or replace the Stormwater Detention System, at its sole expense, when the Stormwater Detention System is not structurally sound and requires reconstruction or replacement in whole or in part to restore structural soundness to the Stormwater Detention System (a "**Replacement Event**"). The method for determination of whether a Replacement Event has occurred is set forth in Section 6.B. herein. Such reconstruction and replacement shall be: (a) performed in accordance with generally accepted construction standards and practices for detention facilities located adjacent to retail properties similar to the HIC in the Chicago metropolitan area; (b) consistent with or exceed the design specifications for the construction of the original Stormwater Detention System; and (c) located in the same areas of the Parties' properties as the original Stormwater Detention System, subject to such minor relocation as shall be required to construct the new Stormwater Detention System pursuant to the standards set forth herein. Lowe's plans for reconstruction and replacement of the Stormwater Detention System shall be reviewed by the Village Engineer and are subject to his or her approval as contemplated under applicable Village ordinance.

B. *Determination of Occurrence of a Replacement Event.* If the Village Engineer believes that a Replacement Event has occurred, the Village shall provide written notice (a "**Replacement Event Notice**") to Lowe's of such belief. In response to a Replacement Event Notice, Lowe's shall be permitted to perform such inspections and tests as it shall deem necessary to determine if a Replacement Event has occurred. Within thirty (30) days after

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receipt of a Replacement Event Notice, Lowe's shall provide written notice (a "Reply Notice") to the Village providing either (i) that Lowe's agrees that the Replacement Event set forth in the Replacement Event Notice has occurred (a "Replacement Event Confirmation"), or (ii) that Lowe's does not agree that the Replacement Event set forth in the Replacement Event Notice has occurred (a "Replacement Event Denial"). If the Reply Notice contains a Replacement Event Confirmation, then Lowe's shall perform the reconstruction or replacement set forth in the Replacement Event Notice in accordance with Section 6.A. hereof. If the Reply Notice contains a Replacement Event Denial, then the Parties shall, in good faith, attempt to resolve their disagreement during the thirty (30) day period subsequent to the delivery of the Reply Notice (the "Negotiation Period"). If, prior to the expiration of the Negotiation Period, the Parties agree on the work to be undertaken, then Lowe's or the Village, as applicable, shall perform such work in accordance with Section 6.A. or Section 5.B., respectively. If, prior to the expiration of the Negotiation Period, the Parties are unable to agree on the work to be performed, then:

- i. Lowe's shall select a licensed engineer ("Lowe's Engineer") within thirty (30) days of the expiration of the Negotiation Period and notify the Village of the name of the Lowe's Engineer;
- ii. During the thirty (30) day period after selection of the Lowe's Engineer (the "Engineer Negotiation Period"), the Village Engineer and the Lowe's Engineer shall attempt to reach agreement on the work required to be performed on the Stormwater Detention System;
- iii. If, prior to the expiration of the Engineer Negotiation Period, the Village Engineer and the Lowe's engineer reach agreement on the work to be performed, then Lowe's or the Village, as applicable, shall perform such

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work in accordance with Section 6.A. or Section 5.A., respectively. If, prior to the expiration of the Engineer Negotiation Period, the Village Engineer and the Lowe's Engineer fail to reach agreement on the work to be performed, then the Village Engineer and the Lowe's Engineer shall jointly select a third engineer (the "**Neutral Engineer**") to determine the work required. The decision of the Neutral Engineer shall be binding upon Lowe's and the Village. Upon issuance of the Neutral Engineer's decision, then Lowe's or the Village, as applicable, shall perform such work in accordance with Section 6.A. or Section 5.A., respectively; and

- iv. The Village shall be obligated to pay all of the costs associated with the Village Engineer and one-half of the costs associated with the Neutral Engineer. Lowe's shall be obligated to pay all of the costs associated with the Lowe's Engineer and one-half of the costs associated with the Neutral Engineer.

C. *Time Frame.* All work required to be performed under this Article 6 shall be done as specified in the Replacement Event Notice, as specified jointly by the Village Engineer and the Lowe's Engineer or as specified by the Neutral Engineer, as applicable.

D. *Village Self-Help.* If Lowe's fails to perform its reconstruction or replacement obligations under Section 6.A. and the Village desires to perform such reconstruction or replacement, the Village shall provide Lowe's with written notice of its intent to so perform such reconstruction or replacement at least thirty (30) days prior to the date the Village proposes to undertake such reconstruction or replacement. Such notice shall specify in reasonable detail the matters that Lowe's has failed to perform and the work that the Village proposes to undertake. If

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Lowe's shall fail to commence the reconstruction or replacement prior to the date that the Village proposes to undertake such performance as set forth in the notice from the Village to Lowe's, then the Village may perform such reconstruction or replacement and, upon completion, demand payment from Lowe's as provided in Article 7 below.

**ARTICLE 7. BILLING STATEMENTS.** If the Village incurs, from time to time, costs and expenses under any provisions of this Stormwater Management Agreement that Lowe's is obligated to pay hereunder, the Village shall provide a written invoice (a "**Billing Statement**") to Lowe's for the costs and expenses incurred. Lowe's shall then have thirty (30) days after receiving the Billing Statement to remit payment to the Village, in full, of the amounts set forth in the Billing Statement.

**ARTICLE 8. EMERGENCIES.** Notwithstanding any of the provisions of Article 5 or Article 6 to the contrary, if a condition shall exist that requires emergency-type action to repair, replace or reconstruct, then either Party, acting in good faith, shall have the right to enter the property of the other Party and perform such repair, reconstruction or replacement upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as reasonably possible thereafter. In any instance in which either Party exercises the right granted under this Article 8, it shall exercise such right with due care and diligence, so as to (i) complete the required repair, reconstruction or replacement in an expeditious and workmanlike manner, and (ii) not unreasonably interfere with the use and operation of the other Party's property.

**ARTICLE 9. INDEMNIFICATION.**

A. *Indemnification of the Village by Lowe's.* Lowe's agrees to defend, indemnify and hold the Village harmless from and against all claims, causes of action, suits, liabilities,

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damages, costs, expenses (including attorney's fees) or demands that the Village suffers or incurs as a result of actions or willful omissions by Lowe's arising out of, in connection with, or as a result of: (a) the exercise of the Stormwater Management Easements granted to Lowe's and its rights or privileges under this Stormwater Management Agreement; (b) the breach by Lowe's of any of its obligations under this Stormwater Management Agreement; or (c) the violation by Lowe's of any requirements or restrictions imposed upon it under this Stormwater Management Agreement.

B. *Indemnification of Lowe's by the Village.* The Village agrees to defend, indemnify and hold Lowe's harmless from and against all claims, causes of action, suits, liabilities, damages, costs, expenses (including attorney's fees) or demands that Lowe's suffers or incurs as a result of actions or willful omissions by the Village arising out of, in connection with, or as a result of: (a) the exercise of the Stormwater Management Easements granted to the Village and its rights or privileges under this Stormwater Management Agreement; or (b) the breach by the Village of any of its obligations under this Stormwater Management Agreement; or (c) the violation by the Village of any requirements or restrictions imposed upon it under this Stormwater Management Agreement or pursuant to the Plat of Subdivision.

**ARTICLE 10. RESERVED RIGHT.**

A. *Village Reserved Rights.* The Village retains the right to use the Dedication Parcels in any manner that will not materially interfere in any way with the Stormwater Management Easements granted to Lowe's or with the rights granted to Lowe's in this Stormwater Management Agreement.

B. *Lowe's Reserved Rights.* Lowe's retains the right to use the Lowe's Parcel in any manner that will not materially interfere in any way with the Stormwater Management

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Easements granted to the Village or with the rights granted to the Village in this Stormwater Management Agreement.

**ARTICLE 11. ADDITIONAL EASEMENTS.** The Village shall have the right to grant other nonexclusive easements over, along, across, under or upon the Dedication Parcels, provided, however, that any such other easements shall not materially interfere with, and shall be subject to, the Stormwater Management Easements and the rights contained herein.

Lowe's shall have the right to grant other nonexclusive easements over, along, across, under or upon the Lowe's Parcel, provided, however, that any such other easements shall not materially interfere with, and shall be subject to, the Stormwater Management Easements.

**ARTICLE 12. RESTORATION.** Upon completion of any work on the Dedication Parcels and/or the Lowe's Parcel, requiring excavation, related to the repair, maintenance, reconstruction or replacement of, the Stormwater Detention System, the Party performing the work shall (a) restore any and all structures, fences, roads, pavement and pavement markings, asphalt, landscape plantings, and improvements that are damaged or removed as a direct result of the work to the substantially same condition as existed immediately preceding said work; and (b) replace any and all sod and grass removed with sod of like quality.

**ARTICLE 13. COVENANTS RUNNING WITH THE LAND, SUCCESSORS AND ASSIGNS.** The Stormwater Management Easements and the terms, conditions and rights set forth in this Stormwater Management Agreement, the restrictions imposed by this Stormwater Management Agreement, and the agreements and covenants contained in this Stormwater Management Agreement, shall be easements, rights, restrictions, agreements, and covenants running with the land, shall be recorded against the Lowe's Parcel and the Dedication Parcels and shall be binding upon and inure to the benefit of Lowe's and the Village, as the owners,

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respectively, of the Lowe's Parcel and the Dedication Parcels, and their respective heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives including, without limitation, all subsequent owners of the Dedication Parcels and the Lowe's Parcel, or any portion thereof, and all persons claiming under them. In the event of any conveyance or divestiture of title to any portion of or interest in either of the Lowe's Parcel or the Dedication Parcels: (1) the owner who is divested of title shall be entirely freed and relieved of all liability hereunder accruing after the date of such conveyance or divestiture; and (2) the grantee or person or persons or other entity or entities who succeed to title shall be deemed to have assumed all of the covenants and obligations of the owner of such portion or interest which accrue after the date of such conveyance or divestiture. If any of the Stormwater Management Easements or rights, restrictions, agreements, or covenants created by this Stormwater Management Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such easements, rights, restrictions, agreements, or covenants shall continue only until 21 years after the death of the last to die of the current President of the United States, George W. Bush, his wife and all of their descendants living on the date of the Effective Date.

**ARTICLE 14. INSURANCE.**

A. *Construction.* In connection with any reconstruction or inspections of the Stormwater Detention System by Lowe's under this Stormwater Management Agreement, Lowe's shall obtain, or cause to be obtained by its contractor(s), the following minimum insurance coverage:

- i. Workers' Compensation with statutory limits of liability;

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- ii. Employers' Liability in the amount of \$1,000,000
- iii. Commercial General Liability and Business Auto Liability as follows:
  - (1) Bodily Injury - \$5,000,000 per occurrence
  - (2) Property Damage - \$5,000,000 per occurrence
  - (3) Independent Contractors Liability; same coverage as set forth in subsection (1) and (2) above;
  - (4) Products / Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
  - (5) "XCU" Hazard Endorsement, if applicable;
  - (6) "Broad Form" Property Damage Endorsement;
  - (7) "Personal Injury" Endorsements; and
  - (8) "Blanket Contractual Liability" Endorsement.

At all times during the term of this Agreement, Lowe's shall carry the insurance set forth in Sections 14.A.(iii)(1) and (2).

B. *Additional Insured; Certificates of Insurance* The Village shall be an additional insured under such insurance carried respecting Lowe's activities on the Dedication Parcels and such insurance shall provide that the same shall not be canceled, or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days prior written notice to the Village. If such insurance is canceled or expires then the constructing Party shall immediately stop all work on or use of the Dedication Parcels until either the required insurance is reinstated or replacement insurance is obtained. The insurance required above shall include the following provisions:

- i. the insurance shall provide for severability of interests; and

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- ii. the insurance shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other named insureds.

C. *Insurer Ratings; Self-Insurance.* All insurance required by this Article 14 shall be procured from companies licensed in the State of Illinois and shall be rated by Best's Insurance Reports at not less than A/IX. All insurance may be provided under (i) an individual policy covering the Lowe's Parcel, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party (provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$10,000,000.00, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$10,000,000.00), (iii) a plan of self-insurance, provided that Lowe's notifies the Village of its intent to self-insure and agrees that upon request it shall deliver to the Village each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that Lowe's and its parent corporation have, collectively, \$200,000,000.00 or more of net current assets, or (iv) a combination of any of the foregoing insurance programs. To the extent of any deductible carried by Lowe's, Lowe's shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$250,000 unless (a) Lowe's complies with the requirements regarding self-insurance pursuant to (iii) above or (b) Lowe's and its parent corporation collectively maintain net current assets in excess of \$200,000,000.00. Lowe's shall furnish to the Village, upon written request from the Village, a certificate(s) of insurance evidencing that the insurance required to be carried by Lowe's hereunder is in full force and effect.

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D. *Effect of Insurance and Self-Insurance on Liability of Lowe's.* The legal liability of Lowe's to the Village and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this Article 14 shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.

**ARTICLE 15. COMPLIANCE WITH APPLICABLE LAWS.** Each Party shall comply with all applicable laws, regulations and rules promulgated by any Federal, State, County, Village and/or other governmental unit or regulatory body now in effect or which may be in effect in connection with each Party's exercise of its Stormwater Management Easements and its performance of its obligations set forth in this Stormwater Management Agreement.

**ARTICLE 16. FORCE MAJEURE.** No Party (the "**First Party**") shall be deemed to be in default of its obligations under this Stormwater Management Agreement, or liable for damages to the other Party (the "**Second Party**") arising out of the delay or failure to perform any obligation under this Stormwater Management Agreement as and when required, if such delay or failure results directly or indirectly from any matter or circumstance that is beyond the reasonable control of the First Party and not the fault or negligence of the First Party (a "**Force Majeure Event**"). The term Force Majeure Event shall include, but not be limited to, the default of the First Party or the failure to obtain required governmental permits or approvals ("**Governmental Approvals**"), acts of God, acts of war, acts of terrorism, riots, strikes, inability to secure required material or material or labor shortages, lockouts, or floods, inclement weather conditions or other natural catastrophes. A failure to obtain a Governmental Approval or required material or labor shall not constitute a Force Majeure Event if the Party asserting the existence of such Force Majeure Event could have obtained such Governmental Approval or such material or labor if it acted in good faith in a diligent manner to obtain same. For purposes

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of this Stormwater Management Agreement, "lack of funds" or "failure to appropriate funds" are not Force Majeure Events.

**ARTICLE 17. AMENDMENT.** This Stormwater Management Agreement may be modified, amended, or annulled only by the written agreement of the Village and Lowe's.

**ARTICLE 18. NOTICES.** Any notice, request, demand or other communication made in connection with this Stormwater Management Agreement shall be in writing and shall be deemed to have been duly given on the date of delivery, if delivered to the persons identified below in person, by courier service or by facsimile copy (with original copy mailed the same day in accordance with the provisions of this Article 18), or two (2) business days after mailing if mailed by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Village:

Village of Lincolnwood  
6900 Lincoln Avenue  
Lincolnwood, Illinois 60712  
Attn: Peter T. Moy  
Village President  
FAX NO.: (847) 673-9382

with copies to:

Village of Lincolnwood  
6900 Lincoln Avenue  
Lincolnwood, Illinois 60712  
Attn: Robert S. Bocwinski  
Village Administrator  
FAX NO.: (847) 673-9382

and:

Joan S. Cherry, Esq.  
Johnson and Colmar  
300 S. Wacker Drive, Suite 1000  
Chicago, Illinois 60606  
FAX NO.: (312) 922-9283

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If to Lowe's:

Lowe's Home Centers, Inc.  
Box 1111  
North Wilkesboro, North Carolina 28656-0001  
Highway 268 East – East Dock  
North Wilkesboro, North Carolina 26859  
Attn: Property Management (REO)  
FAX NO.: (336) 658-3643

with copies to:

Lowe's Home Centers, Inc.  
Box 1111  
North Wilkesboro, North Carolina 28656-0001  
Highway 268 East – East Dock  
North Wilkesboro, North Carolina 26859  
Attn: Law Department (REO)  
FAX NO.: (336) 658-3230

and:

Harold Francke, Esq.  
Piper Rudnick  
203 N. LaSalle, Suite 1800  
Chicago, Illinois 60601-1293  
FAX NO.: (312) 236-7516

By notices complying with the foregoing requirements of this Article 18, each Party shall have the right to change the address or addressee or both for all future notices and communications to such Party, but no notice of a change of address shall be effective until actually received.

**ARTICLE 19. DEFAULT.**

A. *Incidences of Default.* The occurrence of any one or more of the following events shall constitute a material default and breach of this Stormwater Management Agreement by the nonperforming Party (“Defaulting Party”): (i) the failure to make any payment required to be

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made hereunder on the date due, or (ii) the failure to observe or perform any of the covenants, conditions or obligations of this Stormwater Management Agreement, other than as described in subclause (i) above, within thirty (30) days after the issuance of a notice by the non-defaulting Party (the "**Non-Defaulting Party**"), specifying the nature of the default claimed, or, as to matters that cannot be cured within thirty (30) days, the failure to commence cure within such thirty (30) day period and to thereafter diligently pursue same to completion.

*P. Right to Cure.* With respect to any default described in subclause (ii) in Section 19.A. above, the Non-Defaulting Party shall have the right, but not the obligation, to cure such default pursuant to the self-help procedures set forth in Sections 5.D. and 6.D. above.

*C. Remedies Not Limited.* In addition to the self-help remedies set forth in Sections 5.D. and 6.D. above, the Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto and to recover damages for any such violation or default, such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants or conditions of this Stormwater Management Agreement, to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this Stormwater Management Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

**ARTICLE 20. GOVERNING LAW AND VENUE.** This Stormwater Management Agreement shall be governed in accordance with the laws of the State of Illinois (excluding its

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conflicts of law rules) and any dispute arising as to the interpretation of this Agreement shall be heard in a court of competent jurisdiction sitting in Cook County, Illinois, and in no other court.

**ARTICLE 21. EXHIBITS.** All Exhibits referenced in and/or attached to this Stormwater Management Agreement are incorporated herein by this reference.

**ARTICLE 22. HEADINGS.** The headings of articles, sections and paragraphs in this Stormwater Management Agreement are included for convenience only and shall not be considered by either Party in construing the meaning of this Stormwater Management Agreement.

**ARTICLE 23. SEVERABILITY.** If any provision, condition, covenant or other clause, sentence or phrase of this Stormwater Management Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein.

**ARTICLE 24. EXECUTION; EXECUTION IN COUNTERPARTS.** This Stormwater Management Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, together, shall constitute and be taken as one and the same instrument.

**ARTICLE 25. REDEVELOPMENT AGREEMENT.** The Parties' performance of their respective obligations under the Redevelopment Agreement respecting the initial construction of the Stormwater Detention System shall be subject to the terms and provisions hereof. The Parties' rights and obligations under the Redevelopment Agreement shall not affect, in any manner, the terms, provisions, rights or obligations set forth herein. The Redevelopment Agreement is referenced herein solely to explain the circumstances under which the Stormwater

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Detention System is to be initially constructed. Reference herein to the Redevelopment Agreement shall not be cause for any title insurer to raise any exception to title respecting the Redevelopment Agreement or any rights or obligations thereunder, as the Parties acknowledge and agree that the rights and obligations of the Parties under the Redevelopment Agreement are personal obligations of the Parties (or their successors and assigns to the extent permitted by the Redevelopment Agreement) and that the Redevelopment Agreement does not bind, encumber or run with any of the real property described herein or any other real property. It shall be a condition precedent to the granting of all rights herein, and the imposition of all obligations hereunder, that the initial construction of the Stormwater Detention System commence. A failure of the initial construction of the Stormwater Detention System to commence, continue or be completed shall not, however, constitute a default or breach of any Party hereto.

**ARTICLE 26. EXERCISE OF EASEMENT RIGHTS NOT TO INTERFERE.** At no time (except for emergencies of the type describe in Article 8 hereof) shall a Party utilize the easement areas upon which it is granted easement rights in a manner that unreasonably impedes the normal flow of pedestrian or vehicular traffic over and across such easement areas or the improvements constructed therein or thereon or otherwise unreasonably interferes with the ownership or operation of such easement areas or the improvements constructed therein or thereon.

**ARTICLE 27. ENTRY ON LOWE'S PARCEL BY VILLAGE TO OCCUR VIA ENTRANCE AT SOUTHEAST CORNER OF LOWE'S PARCEL.** At all times that access to the Lowe's Property is available via the southeast entrance to the Lowe's Parcel (the "Southeast Entrance"), all entry onto the Lowe's Parcel by the Village to exercise the

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Stormwater Management Easements and pursuant to this Stormwater Management Agreement shall be via the Southeast Entrance and not via the main entrance to the Lowe's Parcel.

**ARTICLE 28. LIMITATIONS ON WEIGHT OF VEHICLES LOCATED OVER DETENTION FACILITIES AND RELATED OBLIGATIONS DURING CONSTRUCTION OF HIC AND UPON COMPLETION OF HIC.** Exhibit "9" attached hereto contains certain additional terms and conditions with respect to, among other matters, limitations on the weight of vehicles located over the Detention Facilities and related obligations during the initial construction of the HIC and upon completion of the HIC.

**ARTICLE 29. ESTOPPEL CERTIFICATES.** At the written request of either Party hereto, the other Party will execute and deliver estoppel certificates addressed to any mortgagee, assignee, transferee or tenant of the requesting Party, certifying as to the information reasonably required by such mortgagee, assignee, transferee or tenant, including, but not limited to, that the Stormwater Management Easements and this Stormwater Management Agreement are in full force and effect and have not been modified or amended (or, if modified or amended, listing such modification and/or amendments and confirming that the Stormwater Management Easements and this Agreement are in full force and effect, as so modified and/or amended) and that, to the knowledge of the certifying Party, there are no uncured defaults respecting the Stormwater Management Easements or under this Stormwater Management Agreement on behalf of the other Party (or if any defaults exist, specifying same), and agreeing to such notice provisions as any mortgagee may reasonably require in connection with such Party's mortgage financing. If either Party fails to respond within twenty (20) days of receipt by the other Party of a written request by the requesting Party as herein provided, the other Party shall be deemed to have given such estoppel certificate as provided above without modification and shall be deemed to have

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admitted the accuracy of any information supplied by the requesting Party to any such mortgagee, assignee, transferee or tenant. Any such estoppel certificate shall be in form reasonably satisfactory to the certifying Party.

**ARTICLE 30. TIME IS OF THE ESSENCE.** Time is of the essence of this Stormwater Management Agreement.

**ARTICLE 31. INTEGRATED AGREEMENT.** This Stormwater Management Agreement and the provisions of the Plat of Subdivision that relate to the Stormwater Management Easements set forth all the promises, inducements, agreements, conditions and understandings between Lowe's and the Village relative to the subject matter hereof and thereof, and there are no other promises, agreements, conditions or understandings, either oral or written, express or implied, between them.

**ARTICLE 32. CONFLICTS WITH LAWS.** In the event that any Village ordinance or regulation existing as of the date of this Stormwater Management Agreement or adopted by the Village subsequent to the date of this Stormwater Management Agreement provides for more restrictive rights or obligations of Lowe's, then the less restrictive of such ordinance, regulation or this Stormwater Management Agreement shall control.

*[the remainder of this page is intentionally blank]*

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[signature page attached to Stormwater Management Agreement]

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed on the date first above written.

VILLAGE OF LINCOLNWOOD

LOWE'S HOME CENTERS, INC.

By: Peter T. Moy  
Peter T. Moy  
Village President

By: David E. Shelton 

Name: David E. Shelton  
Senior Vice President

By: Robert S. Bocwinski  
Robert S. Bocwinski  
Village Administrator

Its: \_\_\_\_\_

DMB

ATTEST:

Carol Krikorian  
Carol Krikorian  
Village Clerk

Office of Cook County Clerk's Office

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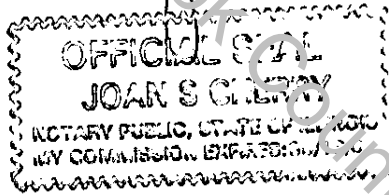
STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

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I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Peter T. Moy, Robert S. Bocwinski and Carol Krikorian, personally known to me to be the Village President, Village Administrator and Village Clerk, respectively, of the VILLAGE OF LINCOLNWOOD, and personally known to me to be the same persons whose names are subscribed to the foregoing Stormwater Management Agreement, appeared before me this day in person and severally acknowledged that as such Village President, Village Administrator and Village Clerk, they signed and delivered said Stormwater Management Agreement as such Village President, Village Administrator and Village Clerk, and caused the corporate seal of said Village to be affixed thereto, pursuant to authority given by the Board of Trustees of said Village, as their free and voluntary act and as the free and voluntary act and deed of said Village, for the purposes therein set forth.

Given under my hand and official seal, this 5th day of December, 2002.

Joan S Cherry



Community Clerk's Office

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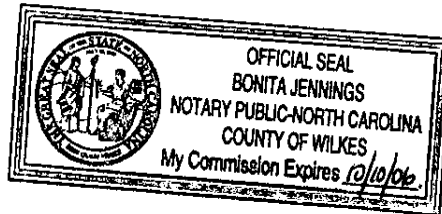
STATE OF NORTH CAROLINA )  
  )SS.  
COUNTY OF Wilkes )

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I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that David E. Shelton, who is personally known to me to be the Senior Vice President of said LOWE'S HOME CENTERS, INC., appeared before me this day in person and acknowledged that he signed and delivered the foregoing Stormwater Management Agreement as his/her own free and voluntary act and as the free and voluntary act of said corporation for the purposes therein set forth.

Given under my hand and official seal this 3<sup>rd</sup> day of December, 2002.

Bonita Jennings  
Notary Public



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## LIST OF EXHIBITS

- Exhibit "1" Legal Description of Lot 1
- Exhibit "2" Legal Description of Lot 2
- Exhibit "3" Legal Description of Lot 3
- Exhibit "4" Legal Description of Lot 4
- Exhibit "5" Legal Description of Lot 5
- Exhibit "6" Legal Description of Lot 6
- Exhibit "7" Legal Description of Lot 7
- Exhibit "8" Stormwater Engineering Plans
- Exhibit "9" Limitation on Weight of Vehicles located over Detention Facilities and Related Obligations During Construction of HIC and Upon Completion of HIC

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PIN 1035 107016  
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Vacant property S of  
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Lawrence Ave,  
Lincolnwood Ill

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## Exhibit 1

### Legal Description of Lot 1

Lot 1 of Lowe's Final Plat of Subdivision of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 35, Township 41 North, Range 13 East of the Third Principal Meridian in Niles Township, Village of Lincolnwood.

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## Exhibit 2

### Legal Description of Lot 2

Lot 2 of Lowe's Final Plat of Subdivision of the Northeast ¼ of the Northwest ¼ of Section 35, Township 41 North, Range 13 East of the Third Principal Meridian in Niles Township, Village of Lincolnwood.

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## Exhibit 3

### Legal Description of Lot 3

Lot 3 of Lowe's Final Plat of Subdivision of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 35, Township 41 North, Range 13 East of the Third Principal Meridian in Niles Township, Village of Lincolnwood.

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## Exhibit 4

### Legal Description of Lot 4

Lot 4 of Lowe's Final Plat of Subdivision of the Northeast ¼ of the Northwest ¼ of Section 35, Township 41 North, Range 13 East of the Third Principal Meridian in Niles Township, Village of Lincolnwood.

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## Exhibit 5

### Legal Description of Lot 5

Lot 5 of Lowe's Final Plat of Subdivision of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 35, Township 41 North, Range 13 East of the Third Principal Meridian in Niles Township, Village of Lincolnwood.

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## Exhibit 6

### Legal Description of Lot 6

Lot 6 of Lowe's Final Plat of Subdivision of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 35, Township 41 North, Range 13 East of the Third Principal Meridian in Niles Township, Village of Lincolnwood.

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Exhibit 7

Legal Description of Lot 7

Lot 7 of Lowe's Final Plat of Subdivision of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 35, Township 41 North, Range 13 East of the Third Principal Meridian in Niles Township, Village of Lincolnwood.

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## EXHIBIT 8 Stormwater Detention System Plans

The final structural engineering plans for the Detention Facilities prepared by Smith Engineering Consultants, Inc., dated December 5, 2002 and consisting of eight pages, and sheets 9 through 12, inclusive, of the final engineering plans for the Properties prepared by Smith Engineering Consultants Inc., dated September 22, 2000 and bearing a most recent revision date of December 5, 2002, and consisting of 28 pages.

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## Exhibit 9

### **Limitation on Weight of Vehicles located over Detention Facilities and Related Obligations During Construction of HIC and Upon Completion of HIC**

At all times from and after the completion of the initial construction of the Detention Facilities, the terms and provisions of this **Exhibit "9"** shall apply.

1. **Limitation on Weight of Vehicles Located Over Detention Facilities.** Except as permitted in Section 1.C. hereof, the Parties shall not park, locate, store or drive, nor shall the Parties permit any of their respective employees, contractors, agents, representatives, invitees or customers to park, locate, store or drive, any Oversized Vehicles (as hereinafter defined) over any portion of the Detention Facilities. If any portion of the Detention Facilities shall be damaged or destroyed as a result of the breach by a Party of its obligations set forth in this **Exhibit "9"**, then the breaching Party shall, at its own cost and expense, repair or reconstruct the portion(s) of the Detention Facilities damaged or destroyed as a result of such breach. Such repair and reconstruction shall occur in accordance with the terms and provisions of this Stormwater Management Agreement governing repair and reconstruction of the Stormwater Detention System. As used herein, "**Oversized Vehicles**" shall mean a vehicle weighing in excess of 10,000 pounds.

A. **Preventive Actions During Construction of the HIC.** During the initial construction of the HIC, Lowe's shall prevent the parking, location, storage or driving of Oversized Vehicles over the Detention Facilities. Steps taken by Lowe's to prevent such actions may include (but shall not require) the erection of temporary fences or other temporary barriers on the portions of the Lowe's Parcel and the Dedication Parcels that border the Detention Facilities.

B. **Preventive Actions Upon Completion of the HIC.** Upon completion of the construction of the HIC and in order to prevent any individual or entity from parking, locating, storing or driving Oversized Vehicles over the Detention Facilities, Lowe's shall erect restrictive height barriers over the Detention Facilities (the "**Height Barriers**") and erect appropriate signage (the "**Signage**") over or adjacent to the Detention Facilities setting forth the 10,000 pound weight limit required hereunder. Subject to the provisions of Section 1.B.(i) below: (y) the Height Barriers shall limit the height of vehicles entering over the Detention Facilities to nine feet or such lesser height as shall be reasonably determined by the Chief of the Village's Fire Department (the "**Fire Chief**"), and (z) the location, design and composition of the Height Barriers shall be subject to the reasonable approval of the Fire Chief.

(i) Notwithstanding anything herein to the contrary, the Height Barriers shall not prohibit or unreasonably interfere with the parking, location, storage or driving of vehicles of less than 10,000 pounds over the Detention Facilities.

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(ii) Lowe's, at its own cost and expense, shall initially acquire and construct the Height Barriers and the Signage located on both the Lowe's Parcel and the Dedication Parcels. Thereafter: (x) Lowe's, at its cost and expense, shall maintain, repair and replace the Height Barriers and Signage located on the Lowe's Parcel, (y) the Village shall maintain, repair and replace the Height Barriers and the Signage located on the Dedication Parcels, and (z) Lowe's shall reimburse the Village for any costs or expenses incurred by the Village in complying with the Village's obligations under subclause (y) of this sentence in accordance with the provisions of Article 7 of this Stormwater Management Agreement.

C. **Emergency Vehicles.** The Village's Fire Department or Police Department shall be permitted to enter onto and park Oversized Vehicles over the Detention Facilities to respond to an emergency situation. Such entry and parking shall only be permitted for such time as reasonably necessary to respond to the emergency situation. Lowe's, at its own cost and expense, shall repair or reconstruct any portion of the Detention Facilities damaged or destroyed as a result of the exercise of the rights by the Village set forth in this Section 1.C. Such repair and reconstruction shall occur in accordance with the terms and provisions of this Stormwater Management Agreement governing repair and reconstruction of the Stormwater Detention System.

2. **Agreement on Stormwater Engineering Plans Not a Representation or Warranty.** Neither the execution of this Stormwater Management Agreement by the Parties, the performance by the Parties of their respective obligations hereunder, the exercise by the Parties of their respective rights hereunder, the agreement of the Parties herein that the Stormwater Detention System shall be constructed in accordance with the Stormwater Engineering Plans, nor any other term or provision of the Stormwater Management Agreement, the Redevelopment Agreement or the Plat of Subdivision, shall constitute a representation or warranty by either Party hereto that the Stormwater Detention System shall operate as contemplated herein and in the Stormwater Engineering Plans or that the Stormwater Detention System shall support vehicles or other items of a particular weight or dimension.

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