

AGREEMENT

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THIS AGREEMENT, made and entered into this 18th day of April, 1989, by and between the VILLAGE OF LINCOLNWOOD, an Illinois municipal corporation (hereinafter referred to as the "Village"), and LINCOLNWOOD ASSOCIATES, an Illinois general partnership, (hereinafter referred to as the "Developer").

WHEREAS, Developer is the owner of a parcel of real property including approximately seventy (70) acres located at the southwest corner of McCormick Boulevard and Touhy Avenue in the Village of Lincolnwood (hereinafter referred to as the "Property"); and

WHEREAS, Developer intends to develop the Property with a mixed-use commercial/residential development; and

WHEREAS, in order to minimize the impact of said development on the storm water control system of the Village, Developer has agreed to drain the Property directly to the North Shore Channel, adjacent to the east, owned and operated by the Metropolitan Sanitary District of Greater Chicago (hereinafter referred to as the "MSD") rather than into the Village's existing combined sanitary/storm sewer system; and

WHEREAS, in order to accommodate the outflow from the Property, a storm sewer from the Property to the North Shore Channel must be constructed and maintained across property owned by the MSD; and

WHEREAS, the policy of the MSD is to enter into easement agreements with respect to its property only with other governmental agencies; and

WHEREAS, the Board of Commissioners of the MSD, on August 4, 1988, approved an Easement Agreement, a copy of which is attached hereto and made a part hereof as Exhibit A granting to the Village an easement to construct and maintain a fifty-four inch (54") storm sewer and outfall to accommodate the storm water drainage needs of the Property (hereinafter referred to as the "Easement Agreement"); and

WHEREAS, the Easement Agreement grants certain rights to and imposes certain obligations on the Village; and

WHEREAS, said fifty-four inch (54") storm sewer will serve only the Property and will be maintained by the Developer.

NOW, THEREFORE, for and in consideration of the representations, covenants, conditions, undertakings and agreements herein made, the Developer and the Village hereby agree as follows:

1. Premises. The foregoing recitals are incorporated herein as though fully set forth.

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2. Assignment of Village's Rights. The Village hereby assigns to Developer all of the Village's rights pursuant to the Easement Agreement and agrees to take all actions necessary to enable the Developer to fully enjoy said rights. The Village shall be under no obligation pursuant to this Agreement unless and until the Developer has satisfied all of its obligations set forth herein. Subject to the terms and conditions of this Agreement, Developer shall enjoy all rights granted to the Village by the MSD by virtue of the Easement Agreement.

3. Reimbursement of Costs. Developer agrees to reimburse the Village for all reasonable costs incurred by it, including but not limited to payment of the easement fee provided for in the Easement Agreement, in preserving and maintaining its rights, and fulfilling its obligations, pursuant to the Easement Agreement. Developer shall reimburse the Village for such reasonable costs within fourteen (14) days of receipt of proof of payment of such costs by the Village.

4. Maintenance of Improvements. Developer agrees to maintain, at no cost to the Village, all improvements constructed pursuant to the Easement Agreement.

5. Indemnification of Village. The Developer agrees to be solely responsible for and defend, indemnify, keep and save harmless the Village, its agents, officials and employees against all losses, damages, claims, liens, suits, liabilities, judgments, costs or expenses which may in any way accrue, directly or indirectly, against the Village, its officials, agents, or employees as a result of its undertaking to execute and accept the benefits and obligations of the Easement Agreement, and its assignment of those rights to the Developer, or which may in any way result therefrom or from any work done thereunder, whether or not it shall be alleged or determined that the act was caused through the negligence or omission of the Developer or Developer's employees, contractors, subcontractors or other employees, if any, and the Developer shall, at Developer's sole expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and if any judgment is rendered against the Village, its agents, officials or employees in any such action, the Developer shall, at Developer's sole expense, satisfy and discharge the same, provided that the Developer shall first have been given prior notice of the suit in which judgment has been or shall be rendered, Developer shall have been given an opportunity to defend the same and the Village shall have given the Developer its full cooperation.

6. Insurance. Developer shall provide such insurance to, or on behalf of, the Village so as to enable the Village to satisfy the requirements of Section 4.03 of the Easement Agreement.

7. Notice. Any notice required pursuant to the provisions of the Agreement shall be in writing and sent by Certified Mail to the following addresses (until notice of change of address is given) and shall be deemed received on the date of receipt.

If to the Village:

Village Clerk
Village of Lincolnwood
6948 North Keeler Street
Lincolnwood, Illinois 60646

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If to the Developer:

Lincolnwood Associates,
c/o MS Management Associates, Inc.
Post Office Box 7033
Indianapolis, Indiana 46207

8. **Remedies.** This Agreement shall be enforceable in any court of competent jurisdiction by either the Village or the Developer, or by any successor or successors in title or interest or by the assigns of either the Village or the Developer. Enforcement may be sought by an appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions and obligations contained herein. In the event of a breach of this Agreement, the parties agree that the Village and the Developer shall have thirty (30) days after notice of said breach to correct the same prior to the non-breaching party seeking of any remedy provided for herein. If either of the parties shall fail to perform any of its obligations hereunder, and the party affected by such default shall have given written notice of such default to the defaulting party, and such defaulting party shall fail to cure such default within thirty (30) days of such default notice, then, in addition to any and all other remedies that may be available, either at law or in equity, the party affected by such default shall have the right, but not the obligation, to take such action as in its reasonable discretion and judgment shall be deemed necessary to cure such default. In such event, the defaulting party hereby agrees to pay and reimburse the party affected by such default for all reasonable costs and expenses incurred by it in connection with the action taken to cure such default.

9. **Integration and Amendment.** This Agreement set forth all promises, inducements, agreements, conditions and understandings between the Developer and the Village relative to the subject matter hereof and thereof, and there are no promises, agreements, conditions or understandings, either oral or written, expressed or implied, between them, other than are herein and therein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to the Agreement shall be binding upon the parties unless reduced to writing and signed by them or their successors in interest or their assigns.

10. **Severability.** If any provision of this Agreement is held not valid, such provision shall be deemed to be excised therefrom, and the invalidity thereof shall not affect any other provision contained herein.

11. **Binding Effect.** This Agreement shall be binding on the Developer, the Village and their respective successors and assigns.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

ATTEST:

By: [Signature]
Village Clerk

VILLAGE OF LINCOLNWOOD

By: [Signature]
Village President

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LINCOLNWOOD ASSOCIATES

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COOK COUNTY RECORDER

By: Simon Lincolnwood Developers Limited Partnership, an Indiana limited partnership, general partner

By: Simon-Lincolnwood, Inc., an Indiana corporation, and a general partner of Simon Lincolnwood Developers Limited Partnership

By: [Signature]
Name: Herbert Simon
Title: President

ATTEST:

[Signature]
Name: Janet Podak
Title: _____

By: J.S.B. Corp., an Illinois corporation, general partner

By: [Signature]
Name: James S. Podak
Title: Secretary

ATTEST:

[Signature]
Name: Janet B. Podak
Title: Secretary

By: Hawthorn Lincolnwood Limited Partnership, an Illinois limited partnership, general partner

By: J.S.B. Corp., an Illinois corporation and a general partner of Hawthorn Lincolnwood Limited Partnership

By: [Signature]
Name: James S. Podak
Title: President

ATTEST:

[Signature]
Name: Janet B. Podak
Title: Secretary

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