

**AGREEMENT FOR MAINTENANCE OF
STORM WATER DETENTION SYSTEM**

THIS AGREEMENT is made on _____, 2007, by P.E.M. LLC, whose address is 300 Park Street, Suite 470, Birmingham, Michigan 48009, and the CITY OF ROCHESTER HILLS, (the "City"), whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309.

RECITALS:

WHEREAS, P.E.M. LLC owns the property described in attached Exhibit A; and Lowe's Home Centers, Inc. occupies the property pursuant to a ground lease; and

WHEREAS, Lowe's Home Centers, Inc. has designed and the City has approved, a storm water drainage and detention system (the "System"), which includes a detention basin, for the property as described and depicted in Exhibit B; and

WHEREAS, the parties will benefit from the proper use and maintenance of the System and desire to enter into this agreement to provide for the same.

THEREFORE, the parties agree:

1. **Use of the System:** Components of the System, including the detention basin, shall be used solely for the purpose of detaining storm and surface water on the property until such time as: (i) The City may determine and advise P.E.M. LLC and Lowe's Home Centers, Inc., or their successors, grantees or assigns, in writing that it is no longer necessary to use the detention basin to detain storm or surface water; and (ii) An adequate alternative for draining storm and surface water has been provided which is acceptable to the City and which includes the granting of such easements to the City or third parties for the alternative drainage system as may be necessary.

2. **Maintenance:**

A. P.E.M. LLC shall be responsible for the proper maintenance, repair and replacement of the System and any part thereof, including the detention basin.

B. Proper maintenance of the System shall include, but not limited to: (i) Keeping the bottom of the detention basin free from silt and debris; (ii) Removing harmful algae; (iii) Maintaining steel grating across the basin's inlets; (iv) Controlling the effects of erosion; and (v) Any other maintenance that is reasonable and necessary in order to facilitate or accomplish the intended function and purpose of the System.

*OK - d
per J. Strawn
4-16-07*

3. **Action by City:** In the event P.E.M. LLC or its successors, grantees, or assigns, neglects or fails at any time to properly maintain the System or any part thereof, the City may notify P.E.M. LLC and Lowe's Home Centers, Inc. or their successors, grantees or assigns, in writing, and the notice shall include a listing and description of maintenance deficiencies and a demand that they must be corrected within thirty (30) days. The notice shall further specify the date, time and place for a hearing to be held at least fourteen (14) days after the date of the notice before the City Council, or such other board or official to whom the City Council may delegate responsibility. At the hearing, the City Council (or other board or official) may endorse or modify the listing and description of deficiencies to be corrected and, for good cause, may extend the time within which the deficiencies must be corrected.

Thereafter, if the maintenance deficiencies are not corrected within the time allowed, the City may undertake and make the necessary corrections, and may maintain the System for a period not to exceed one (1) year. Such maintenance of the System by the City shall not be deemed a taking of the property, nor shall the City's actions be deemed to vest in the public any right to use the property. If the City determines maintenance of the system by the City should continue beyond one year, the City shall hold, and provide advance written notice of, a further hearing at which P.E.M. LLC or its successors, grantees or assigns, may appear to refute the City's claim that it will not or cannot properly maintain the System, and if it is found that P.E.M. LLC or its successors, grantees or assigns will not or cannot properly maintain the System, then the City may continue to maintain the System for another year, and subject to a similar hearing and determination, in subsequent years.

In the event the City determines an emergency condition caused by or relating to the System threatens the public health, safety or general welfare, the City shall have the right to immediately and without notice enter the property and undertake appropriate corrective action.

P.E.M. LLC grants to the City a non-exclusive perpetual easement for vehicular and pedestrian ingress and egress over and across that area of the property labeled as "Storm Basin Access Drive" on Exhibit B to access the property and the System for all purposes permitted under this Agreement, including inspection and maintenance of the System.

4. **Charges:** The City shall charge to the current owner of the property the cost of maintenance or other corrective action undertaken by the City in accordance with this agreement, plus a ten percent (10%) administrative fee. If not paid within thirty (30) days of a billing to the current owner of the property, which billing shall be broken down in reasonable detail, the City may assess the charges on the City's tax roll, which charges shall be a lien on the real property and shall be collectable and enforceable in the same manner general property taxes are collected and enforced.

5. **Notice:** Any notices required under this agreement shall be sent by certified mail to the address for each party set forth below, or to such other addresses as such party may notify the other parties in writing:

To P.E.M. LLC
300 Park Street, Suite 470
Birmingham, Michigan 48009

And To Lowe's Home Centers, Inc.
1605 Curtis Bridge Road (LGS6)
Wilkesboro, North Carolina 28697
Attention: Property Management Dept.

To the City: Clerk
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309

6. **Successors and Assigns:** This agreement shall bind and inure to the benefit of the parties and their respective successors, grantees and assigns. The rights, obligations and responsibilities hereunder shall run with the land and shall bind all current and future owners of the property.

7. **Recording of Agreement:** This agreement shall be recorded at the Oakland County Register of Deeds.

[Signatures Follow on Next Page]

IN WITNESS WHEREOF, the parties have executed this agreement on the date set forth above.

P.E.M. LLC

By: Patrick E. Moran
Patrick E. Moran
Its: Manager

CITY OF ROCHESTER HILLS

By: _____
Bryan Barnett, Mayor

By: _____
Jane Leslie, Clerk

**Michael J. Hoornart, Notary Public
State of Michigan, County of Oakland
My Commission Expires 8/31/2012
Acting in the County of OAKLAND**

STATE OF MICHIGAN)
) SS:
COUNTY OF OAKLAND)

This agreement was acknowledged before me on March 12th, 2007, by Patrick E. Moran, Manager of P.E.M. LLC on behalf of the Company.

Michael J. Hoornart
OAKLAND Notary Public,
County, Michigan
My Commission Expires: 8-31-2012
(Acting in Oakland County)

STATE OF MICHIGAN)
) SS:
COUNTY OF OAKLAND)

This agreement was acknowledged before me on _____, 2007, by Bryan Barnett, Mayor, and Jane Leslie, Clerk, of the City of Rochester Hills, on behalf of the City.

Notary Public,
County, Michigan
My Commission Expires: _____
(Acting in Oakland County)

When Recorded, Return to:

Clerk
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309

**JOINDER BY LOWE'S HOME CENTERS, INC.
IN
AGREEMENT FOR MAINTENANCE OF
STORM WATER DETENTION SYSTEM**

Notwithstanding anything in the Agreement for Maintenance of Storm Water Detention System ("Agreement") to the contrary, Lowe's Home Centers, Inc. agrees and acknowledges that until the expiration or earlier termination of that certain Amended and Restated Ground Lease dated January 17, 2007, between P.E.M. LLC as Landlord, and Lowe's Home Centers, Inc., as Tenant ("Lease"), all obligations of P.E.M. LLC under the Agreement shall be the obligations of Lowe's Home Centers, Inc. (at its sole cost and expense) and not P.E.M. LLC, and Lowe's Home Centers, Inc. shall indemnify, defend and hold P.E.M. LLC harmless from and against any and all losses, costs, damages, claims and expenses (including reasonable attorneys' fees and costs) incurred by P.E.M. LLC under the Agreement during the term of the Lease.

LOWE'S HOME CENTERS, INC.,
a North Carolina corporation

Name

By: *Gary E. Wyatt*
Its: Gary E. Wyatt
Senior Vice President

TE
RP

Name

STATE OF NORTH CAROLINA)
COUNTY OF Wilkes) SS:

This agreement was acknowledged before me on March 23, 2007, by Gary E. Wyatt, Senior Vice President of Lowe's Home Centers, Inc., on behalf of the Corporation.

Sheila H. Vannoy
Notary Public,
Wilkes County, North Carolina.
My Commission Expires: 10-6-08
(Acting in _____ County)

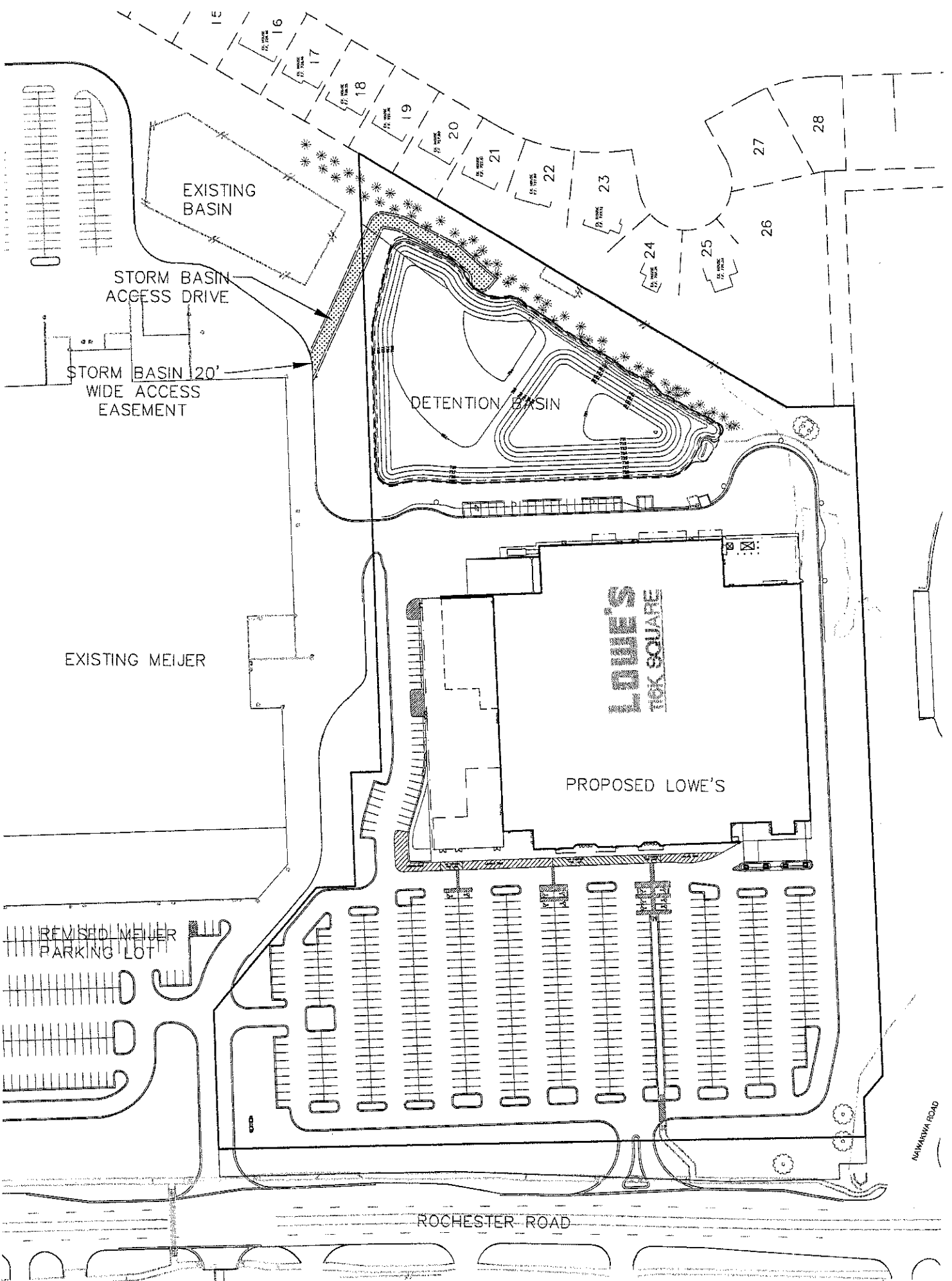
SHEILA H. VANNOY
Notary Public
North Carolina - Wilkes County
My Commission Expires 10-6-08

EXHIBIT A

Legal Description of Property

A parcel of land located in the Northwest 1/4 of Section 35, Town 3 North, Range 11 East, City of Rochester Hills, Oakland County Michigan, described as: Commencing at the Northwest corner of said Section 35; thence S02°00'59"E (recorded as S00°11'30"W) 896.88 feet along the West line of said Section 35; thence N87°45'48"E 123.00 feet to the Easterly right of way line of Rochester Road (variable width) for a PLACE OF BEGINNING; thence N87°45'48"E 175.98 feet; thence S50°46'36"E 206.76 feet; thence S02°12'28"E 49.54 feet; thence N87°47'32"E 145.23 feet (recorded as N87°45'48"E); thence S02°04'09"E 38.36 feet; thence N87°48'01"E 785.96 feet to the Westerly line of Wildflower Subdivision, as recorded in Liber 200, Page 10 through 15, Oakland County Records; thence S30°02'05"W 632.83 feet (recorded as S34°57'33"W) along said Westerly line; thence S02°06'55"E 85.36 feet (recorded as S02°00'59"E); thence S87°24'08"W 852.94 feet (recorded as N87°44'12"W); thence N49°58'20"W 36.88 feet (recorded as N45°06'40"W 36.92 feet); thence S87°22'45"W 49.89 feet (recorded as S87°23'56"W) to the Easterly right of way line of Rochester Road; thence N01°48'29"W 826.74 feet along said Easterly right of way line of Rochester Road to the Place of Beginning.

OK DEYC
M. [Signature]
4-16-07



CLIENT
LOWE'S HOMECENTERS, INC.

DETENTION BASIN
EXHIBIT B

SECTION 35 TOWN 3 NORTH, RANGE 11 EAST
CITY OF ROCHESTER HILLS
OAKLAND COUNTY

SCALE:
NOT TO SCALE

ATWELL-HICKS
Engineering • Surveying • Planning
Environmental • Water/Wastewater
866 850 4200
www.atwell-hicks.com
MICHIGAN ILLINOIS OHIO FLORIDA

AH

JOB: 05000184.20	CAD 05000184EX-A
DR. JTL	CH. GT
BOOK MA102-99	PG. 1-1
SHEET 01 OF 01	DATE: 1-29-2007
FILE NO.	