

Tricia Thigpen

From: Samantha Abell <sabell@gautier-ms.gov>
Sent: Wednesday, July 09, 2014 11:32 AM
To: tthigpen@gautier-ms.gov
Cc: Joshua W. Danos Esq.; cnicholson@gautier-ms.gov
Subject: FW: Gautier Easement Agreement
Attachments: Redline - 32732154-v1-Lowes Easement - Gautier and 32732154-v2-Lowes Easement - Gautier.DOCX

Tricia,
Add the revised Lowes easement to agenda as a consent item. Attach as both a strike-thru/underline version and also the "clean copy" for comparison. The Council has previously approved. However, after conferring with Lowes and the city attorney, I determined it to be prudent to require a covenant to ensure Lowes will properly maintain their stormwater SWPPP agreements, and provide an agreement for communication and maintenance responsibility on the part of Lowes, since they will continue to utilize the stormwater ponds. This reduces potential liability and maintenance for Gautier.

Samantha

From: Adams, Alfred [<mailto:AAdams@wcsr.com>]
Sent: Wednesday, July 09, 2014 10:49 AM
To: 'Samantha Abell'; 'cnicholson@gautier-ms.gov'; 'Josh Danos (JDanos@dwwattorneys.com)'
Cc: 'Pratt, Richard - Richard G'; 'Bryan, Ken - Kenneth E' (Ken.E.Bryan@lowes.com); 'Reynolds, Michael - Michael W'; 'Richardson, Melissa - Melissa W'
Subject: Gautier Easement Agreement

Samantha, Pursuant to our conversation last evening, I was able to make changes to the draft Easement Agreement and I am submitting for your use with your City Council meeting. Conceptually I have run the covenant regarding proper disposition of storm and surface water by the Lowe's team, but they have not seen the actual language until now. I need to reserve the right to receive direction from my client on the revisions. I am comfortable conceptually with the items addressed in the redline and I think that you can submit to Council. If there are tweaks requested from my client, we can deal with them. Let's get this one across the line asap. For purposes of planning, I am going to be out of the office traveling next Monday, Tuesday, and Friday, but in on Wednesday and Thursday. Best regards, Alfred

Alfred G. Adams, Esq.

Womble Carlyle Sandridge & Rice, LLP
Partner
Real Estate Development
(336) 721-3642 Work
(336) 721-3600 Work
AAdams@wcsr.com
One West Fourth Street
Winston-Salem, NC 27101
www.wcsr.com

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Grantor, prepared by and return to:

City of Gautier

Attn: Director of Economic Dev. & Planning

3330 Hwy. 90

Gautier, Mississippi 39553

Phone: 228-497-1878

Grantee Address:

Lowe's Home Centers, LLC

Attn: Property Management Dept. (RES6)

1605 Curtis Bridge Road

Wilkesboro, North Carolina 28697

Phone: 336-658-4200

EASEMENT AGREEMENT

INDEXING INSTRUCTIONS:

Grantor' Indexing Instructions:

[Tracts "D" and "E" Plat Book 24, at pages 40 through 42]

Grantee's Indexing Instructions:

[Tracts "A", "B" and "C" Plat Book 24, at pages 40 through 42 and Lot 1 and Lot 2 Plat Book 23, at Page 83]

STATE OF MISSISSIPPI §

§

COUNTY OF JACKSON §

KNOW ALL MEN BY THESE PRESENTS:

For and in consideration of the mutual benefits accruing to both parties the receipt and sufficiency of which is hereby acknowledged, the CITY OF GAUTIER, MISSISSIPPI, a political subdivision of the State of Mississippi ("Grantor"), has GRANTED AND CONVEYED, and by these presents does GRANT and CONVEY unto LOWE'S HOME CENTERS, LLC, a North Carolina limited liability company ("Grantee"), its successors and assigns, a permanent non-exclusive stormwater drainage and maintenance easement ("Stormwater Easement") and an easement for access to and from William Payne Adams Boulevard, a publicly dedicated and publicly maintained roadway ("Access Easement"), subject to

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000
WCSR 32732154v2

the terms and conditions herein described. The Stormwater Easement is for ingress and egress to and use of the stormwater retention ponds, the drainage pipe through which stormwater is delivered to the stormwater retention ponds, outfall drainage pipes and related drainage structures (collectively, the “Stormwater Management Facilities”) in the area shown as “Stormwater Management Facilities” on Tract “D” and Tract “E”, Lowe’s Town Center, as per official map or plat thereof on file and of record in the office of the Chancery Clerk of Jackson County, Mississippi in Plat Book 24, at pages 40 through 42 thereof, reference to which is hereby made in aid of and as part of this description (the “Plat”) and further described on Exhibit “A” attached hereto and incorporated herein by reference. The Access Easement is to provide unfettered non-exclusive access for the Grantee’s Land as hereinafter described over the Servient Land for connection and access to William Payne Adams Boulevard, a publicly dedicated and publicly maintained roadway. Collectively the Stormwater Easement and the Access Easement may be referred to and referenced herein as “Easement”. Contemporaneously with this Easement Agreement, Grantee is donating Tract “D” and Tract “E”, Lowe’s Town Center, as per the Plat as further described on Exhibit “B” attached hereto (the “Servient Land”) to Grantor which includes the appurtenant easement rights granted to Grantor to utilize the “Stormwater Easement Area between Lowe’s Home Centers, LLC & City of Gautier, MS” as shown on the Plat.

It is expressly understood and agreed that the Easement is granted and accepted subject to the following conditions, limitations and stipulations, to which Grantor and Grantee agree to be bound:

1. Grantee owns property adjacent to the Servient Land where Grantee operates a Lowe’s Home Improvement Warehouse which includes all site related improvements necessary to so utilize the property including, but not limited to, a building, parking lot, signage, landscaping, and lighting as well as outparcels all of which are more particularly described on Exhibit “C” attached hereto and incorporated herein by reference (all inclusive the “Grantee’s Land”). This Easement, which is deemed to be an easement appurtenant to the Grantee’s Land, is for stormwater drainage and maintenance and may be used by Grantee in perpetuity to convey, discharge, and transmit stormwater drainage from those owning all or any portion of the Grantee’s Land under, through and across the Servient Land and into the Stormwater Management Facilities now located on the Servient Land and for non-exclusive access across the Servient Land to and from the Grantee Land and William Payne Adams Boulevard, a publicly dedicated and publicly maintained roadway.
2. Grantor represents and warrants that Grantee’s use of Grantee’s Land as a retail home improvement store is in conformance with Grantor’s legal requirements, and Grantee will not be required to meet any city code or regulatory requirement resulting from Grantee’s donation of the Servient Land to Grantor. Grantor accepts any changes or modifications to open space, setback, buffer and signage within Grantee’s Land created by the aforementioned donation of the Servient Land and this Easement Agreement. With regard to the Access Easement, the Grantor shall not relocate, alter, block, limit, impede or obstruct the existing access which the owners of the Grantee Land, and their grantees, successors and assigns utilize for access to William Payne Adams Boulevard without the prior written consent of Grantee which consent shall be subject to the sole and absolute discretion of Grantee.
3. Grantor, at its sole cost and expense, shall operate and maintain the Stormwater Management Facilities and the Servient Land in order to provide the necessary water quality volume and water quantity attenuation volume necessary to accommodate stormwater runoff

Initial _____, _____

Lowe’s Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

at the present and future rates and volumes which flow from the operations and ownership of properties comprising all or a portion of the Grantee's Land. Grantor, at its sole cost and expense, shall further construct, maintain, operate and replace, as needed, the existing drainage pipe located on the Servient Land through which the stormwater generated on the Grantee's Land is conveyed upon or under the Servient Land to the stormwater retention ponds which are a component of the Stormwater Management Facilities. Grantor, at its sole cost and expense, shall maintain the Stormwater Management Facilities in good condition and repair and in compliance with applicable laws, ordinances, rules and regulations of any governmental entity with jurisdiction over the Servient Land. In addition Grantor, at its sole cost and expense, shall be responsible for any reporting and permitting, including, but not limited to, Grantee's compliance with any and all Stormwater Pollution Prevention Plans ("SWPPP"), required of Grantee in connection with Grantee's use of the Easement.

4. The Easement is non-exclusive and Grantor reserves to itself, its successors and assigns, the right to utilize the Easement and Servient Land for any purpose which does not unreasonably and materially interfere with the use of the Servient Land by Grantee for the purposes set forth herein. Each party, and their grantees, successors and assigns, shall use the rights granted and reserved by the Easement with due regard for the express rights of the other party as set forth below to use and enjoy the Servient Land.

5. Grantee shall have no responsibility or liability, financial or otherwise, attributable to the Stormwater Management Facilities or the Servient Land. In the event Grantor fails to maintain the Stormwater Management Facilities or the Servient Land in good condition and repair or in compliance with applicable laws, ordinances, rules and regulations of any governmental entity with jurisdiction over the Servient Land, Grantee may, at its sole discretion, provide thirty (30) days written notice to Grantor of Grantee's intent to enter upon the Servient Land to perform such work as Grantee deems necessary to accommodate Grantee's drainage and access requirements ("Remedial Work") and to enter upon the Servient Land to perform such Remedial Work. Should the events causing the Remedial Work be such that the operations of the Grantee upon the Grantee's Land are adversely and immediately impacted, then Grantee, after such notice to the Grantor as is reasonable under the circumstances, shall have the right, but not the obligation, to declare that an emergency situation exists and undertake the Remedial Work and to enter upon the Servient Land to perform such Remedial Work. Grantee shall be entitled to reimbursement from Grantor of costs incurred for such work within thirty (30) days after Grantee's delivery of a written invoice for such costs to Grantor.

6. The Grantor and the Grantee will not permit any trash, dirt, oil or gas or other hazardous or toxic materials or pollutants, or anything else other than storm water, to enter into the Stormwater Management Facilities and the Grantee covenants and agrees to follow all governmental rules and regulations for the handling of surface and storm water originating on the property of the Grantee.

7. Without the express, prior written consent of Grantee, which consent shall be subject to the sole and absolute discretion of Grantee, Grantor shall not relocate, alter, block, limit, impede or obstruct the use of the Servient Land by Grantee and its grantees, successors and assigns for the utilization of the Stormwater Management Facilities.

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

8. So long as Grantor obtains all necessary modifications to the existing permit as may be required by State and Local governmental authorities and Grantee is provided copies of such permit modifications, Grantor may, at its sole cost and expense, expand, modify or enlarge the Stormwater Management Facilities for the purpose of accommodating stormwater related to Grantor's future projects. In the event Grantor utilizes the Servient Land for its future drainage, Grantor shall continue to comply with the terms of this Agreement, including but not limited to, accepting and accommodating the present and the future stormwater drainage needs of the properties comprising the Grantee's Lands.

9. Subject to the provisions of this paragraph, the Easement shall run with the title to Grantee's Land and shall be binding upon and inure to the benefit of Grantee and Grantor, together with their legal representatives, invitees, guests, employees, agents, licensees, lessees, grantees, successors and assigns.

10. Grantee agrees to defend, indemnify and save harmless Grantor, its successors and assigns, from and against all causes of action, litigation, cost, loss, liability, damage and expense (including reasonable attorneys' fees) for injury or death to persons, whomsoever, and damage to or loss of property to whomsoever belonging, including the respective contractors, agents, employees and representatives of Grantor, arising out of and to the extent of Grantee's negligent acts or Grantee's default under the terms of this Easement Agreement.

11. Any notice required or permitted to be given hereunder shall be in writing, addressed to Grantee or the Grantor as necessary and shall be delivered personally (with written receipt or acknowledgement) or by a nationally recognized overnight courier (signature release required). The initial addresses for Grantee and Grantor are as follows:

Grantee: Lowe's Home Centers, LLC
 1605 Curtis Bridge Road
 Wilkesboro, North Carolina 28697
 Attention: Property Management (RES6)
 Telephone: (336) 658-4200

With copy to: Lowe's Home Centers, LLC
 1000 Lowe's Boulevard
 Mooresville, NC 28117
 Attention: Legal Dept. (NB6LG)
 Tel. No.: (704)758-1000

Grantor: City of Gautier
 3330 Highway 30
 Gautier, MS 39553
 Attention: Chandra Nicholson
 Tel. No.: (228)497-1878

12. All matters related to the construction, validity and enforcement of the Easement and this Agreement shall be governed by and construed in accordance with the

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

laws of the State of Mississippi in all respects and this Easement Agreement constitutes the entire and final expression of agreement between Grantee and Grantor with regard to the subject matter hereof.

TO HAVE AND TO HOLD the aforesaid rights, privileges, and easement unto Grantee, its successors and assigns, forever, subject to the conditions, limitations and restrictions contained herein.

IN WITNESS WHEREOF, Grantor and Grantee have signed and sealed this Grant of Easement to be effective as of the _____ day of _____, 2014.

GRANTOR:

CITY OF GAUTIER, MISSISSIPPI, a political subdivision of the State of Mississippi

By: _____

Name: _____

Title: _____

(CORPORATE SEAL)

STATE OF MISSISSIPPI)

COUNTY OF _____)

This ___ day of _____, 2014, personally came before me _____, who being by me duly sworn, says that he is _____ of _____ and that the seal affixed to the foregoing instrument in writing is the corporate seal of said Corporation and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given and acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official seal this ___ day of _____, 2013.

Notary Public

My commission expires:

[Notary Seal]

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed, the ___ day of _____, 2014.

GRANTEE:

LOWE’S HOME CENTERS, LLC,
a North Carolina limited liability company

By: _____
Name: Gary E. Wyatt
Title: Senior Vice President

STATE OF NORTH CAROLINA)

COUNTY OF _____)

This ___ day of _____, 2014, personally came before me Gary E. Wyatt, who being by me duly sworn, says that he is Senior Vice President of Lowe’s Home Centers, LLC and that said writing was signed and sealed by him in behalf of said limited liability company by its authority duly given and acknowledged the said writing to be the act and deed of said limited liability company.

Witness my hand and official seal this ___ day of _____, 2014.

Notary Public

My commission expires:

[Notary Seal]

Initial _____, _____

Lowe’s Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

Exhibit "A"
[Stormwater Management Facilities]

The area outlined or delineated as "Stormwater Management Facilities" on that certain plat entitled "Lowe's Town Center" as per official map or plat thereof on file and of record in the office of the Chancery Clerk of Jackson County, Mississippi in Plat Book 24, at pages 40 through 42 thereof, reference to which is hereby made in aid of and as part of this description.

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

Exhibit "B"

[Servient Land]

Tract "D" and Tract "E", Lowe's Town Center, as per official map or plat thereof on file and of record in the office of the Chancery Clerk of Jackson County, Mississippi in Plat Book 24, at pages 40 through 42 thereof, reference to which is hereby made in aid of and as part of this description.

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

Exhibit "C"

[Grantee's Land]

Tract "A", Tract "B", and Tract "C", Lowe's Town Center, as per official map or plat thereof on file and of record in the office of the Chancery Clerk of Jackson County, Mississippi in Plat Book 24, at pages 40 through 42 thereof, reference to which is hereby made in aid of and as part of this description and Lot 1 and Lot 2, Lowe's Shopping Center, as per official map or plat thereof on file and of record in the office of the Chancery Clerk of Jackson County, Mississippi in Plat Book 23, at page 83 thereof, reference to which is hereby made in aid of and as part of this description.

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

Grantor, prepared by and return to:

City of Gautier

Attn: Director of Economic Dev. & Planning

3330 Hwy. 90

Gautier, Mississippi 39553

Phone: 228-497-1878

Grantee Address:

Lowe's Home Centers, LLC

Attn: Property Management Dept. [\(RES6\)](#)

1605 Curtis Bridge Road

Wilkesboro, North Carolina 28697

Phone: 336-658-4200

EASEMENT AGREEMENT

INDEXING INSTRUCTIONS:

Grantor' Indexing Instructions:

[Tracts "[A](#)", "[BD](#)" and "[CE](#)" Plat Book 24, at pages 40 through 42]

Grantee's Indexing Instructions:

[Tracts "[DA](#)", "[B](#)" and "[EC](#)" Plat Book 24, at pages 40 through 42] [and Lot 1 and Lot 2 Plat Book 23, at Page 83\]](#)

STATE OF MISSISSIPPI §

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COUNTY OF JACKSON §

KNOW ALL MEN BY THESE PRESENTS:

For and in consideration of the mutual benefits accruing to both parties the receipt and sufficiency of which is hereby acknowledged, the CITY OF GAUTIER, MISSISSIPPI, a political subdivision of the State of Mississippi ("Grantor"), has GRANTED AND CONVEYED, and by these presents does GRANT and CONVEY unto LOWE'S HOME CENTERS, LLC, a North Carolina limited liability company ("Grantee"), its successors and assigns, a permanent non-exclusive stormwater drainage and maintenance easement ("Stormwater Easement") and an easement for access to and from William Payne Adams Boulevard, a publicly dedicated and publicly maintained roadway ("Access Easement"), subject to

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000
WCSR 32732154v+2

the terms and conditions herein described. The Stormwater Easement is for ingress and egress to and use of the stormwater retention ponds, the drainage pipe through which stormwater is delivered to the stormwater retention ponds, outfall drainage pipes and related drainage structures (collectively, the “Stormwater Management Facilities”) in the area shown as “Stormwater Management Facilities” on Tract “D” and Tract “E”, Lowe’s Town Center, as per official map or plat thereof on file and of record in the office of the Chancery Clerk of Jackson County, Mississippi in Plat Book 24, at pages 40 through 42 thereof, reference to which is hereby made in aid of and as part of this description (the “Plat”) and further described on Exhibit “A” attached hereto and incorporated herein by reference. The Access Easement is to provide unfettered non-exclusive access for the Grantee’s Land as hereinafter described over the Servient Land for connection and access to William Payne Adams Boulevard, a publicly dedicated and publicly maintained roadway. Collectively the Stormwater Easement and the Access Easement may be referred to and referenced herein as “Easement”. Contemporaneously with this Easement Agreement, Grantee is donating Tract “D” and Tract “E”, Lowe’s Town Center, as per the Plat as further described on Exhibit “B” attached hereto (the “Servient Land”) to Grantor which includes the appurtenant easement rights granted to Grantor to utilize the “Stormwater Easement Area between Lowe’s Home Centers, LLC & City of Gautier, MS” as shown on the Plat.

It is expressly understood and agreed that the Easement is granted and accepted subject to the following conditions, limitations and stipulations, to which Grantor and Grantee agree to be bound:

1. Grantee owns ~~Tract “A” as shown on~~ property adjacent to the ~~Plat~~ Servient Land where Grantee operates a Lowe’s Home Improvement Warehouse which includes all site related improvements necessary to so utilize the property including, but not limited to, a building, parking lot, signage, ~~stormwater retention and management facilities including ponds,~~ landscaping, and lighting as well as outparcels (~~“Tract “B” and Tract “C” shown on the Plat) for all of~~ which ~~it has currently retains title and an outparcel previously conveyed and being operated as a Murphy USA (all inclusive the “Grantee’s Land”)~~ ~~as~~ are more particularly described on Exhibit “C” attached hereto and incorporated herein by reference (~~all inclusive the “Grantee’s Land”~~). This Easement, which is deemed to be an easement appurtenant to the Grantee’s Land, is for stormwater drainage and maintenance and may be used by Grantee in perpetuity to convey, discharge, and transmit stormwater drainage from those owning all or any portion of the Grantee’s Land under, through and across the Servient Land and into the Stormwater Management Facilities now located on the Servient Land and for non-exclusive access across the Servient Land to and from the Grantee Land and William Payne Adams Boulevard, a publicly dedicated and publicly maintained roadway.

2. Grantor represents and warrants that Grantee’s use of Grantee’s Land as a retail home improvement store is in conformance with Grantor’s legal requirements, and Grantee will not be required to meet any city code or regulatory requirement resulting from Grantee’s donation of the Servient Land to Grantor. Grantor accepts any changes or modifications to open space, setback, buffer and signage within Grantee’s Land created by the aforementioned donation of the Servient Land and this Easement Agreement. With regard to the Access Easement, the Grantor shall not relocate, alter, block, limit, impede or obstruct the existing access which the owners of the Grantee Land, and their grantees, successors and assigns utilize for access to William Payne Adams Boulevard without the prior written consent of Grantee which consent shall be subject to the sole and absolute discretion of Grantee.

Initial _____, _____

Lowe’s Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

3. Grantor, at its sole cost and expense, shall operate and maintain the Stormwater Management Facilities and the Servient Land in order to provide the necessary water quality volume and water quantity attenuation volume necessary to accommodate stormwater runoff at the present and future rates and volumes which flow from the operations and ownership of properties comprising all or a portion of the Grantee's Land. Grantor, at its sole cost and expense, shall further construct, maintain, operate and replace, as needed, the existing drainage pipe located on the Servient Land through which the stormwater generated on the Grantee's Land is conveyed upon or under the Servient Land to the stormwater retention ponds which are a component of the Stormwater Management Facilities. Grantor, at its sole cost and expense, shall maintain the Stormwater Management Facilities in good condition and repair and in compliance with applicable laws, ordinances, rules and regulations of any governmental entity with jurisdiction over the Servient Land. In addition Grantor, at its sole cost and expense, shall be responsible for any reporting and permitting, including, but not limited to, Grantee's compliance with any and all Stormwater Pollution Prevention Plans ("SWPPP"), required of Grantee in connection with Grantee's use of the Easement.

4. The Easement is non-exclusive and Grantor reserves to itself, its successors and assigns, the right to utilize the Easement and Servient Land for any purpose which does not unreasonably and materially interfere with the use of the Servient Land by Grantee for the purposes set forth herein. Each party, and their grantees, successors and assigns, shall use the rights granted and reserved by the Easement with due regard for the express rights of the other party as set forth below to use and enjoy the Servient Land.

5. Grantee shall have no responsibility or liability, financial or otherwise, attributable to the Stormwater Management Facilities or the Servient Land. In the event Grantor fails to maintain the Stormwater Management Facilities or the Servient Land in good condition and repair or in compliance with applicable laws, ordinances, rules and regulations of any governmental entity with jurisdiction over the Servient Land, Grantee may, at its sole discretion, provide thirty (30) days written notice to Grantor of Grantee's intent to enter upon the Servient Land to perform such work as Grantee deems necessary to accommodate Grantee's drainage and access requirements; ("Remedial Work") and to enter upon the Servient Land to perform such Remedial Work as ~~Should the events causing the Remedial Work be such that the operations of the Grantee deems necessary to accommodate upon the Grantee's drainage Land are adversely and access requirements immediately impacted, then Grantee, after such notice to the Grantor as is reasonable under the circumstances, shall have the right, but not the obligation, to declare that an emergency situation exists and undertake the Remedial Work and to enter upon the Servient Land to perform such Remedial Work.~~ Grantee shall be entitled to reimbursement from Grantor of costs incurred for such work within thirty (30) days after Grantee's delivery of a written invoice for such costs to Grantor.

6. The Grantor and the Grantee will not permit any trash, dirt, oil or gas or other hazardous or toxic materials or pollutants, or anything else other than storm water, to enter into the Stormwater Management Facilities and the Grantee covenants and agrees to follow all governmental rules and regulations for the handling of surface and storm water originating on the property of the Grantee.

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

67. Without the express, prior written consent of Grantee, which consent shall be subject to the sole and absolute discretion of Grantee, Grantor shall not relocate, alter, block, limit, impede or obstruct the use of the Servient Land by Grantee and its grantees, successors and assigns for the utilization of the Stormwater Management Facilities.

78. So long as Grantor obtains all necessary modifications to the existing permit as may be required by State and Local governmental authorities and Grantee is provided copies of such permit modifications, Grantor may, at its sole cost and expense, expand, modify or enlarge the Stormwater Management Facilities for the purpose of accommodating stormwater related to Grantor's future projects. In the event Grantor utilizes the Servient Land for its future drainage, Grantor shall continue to comply with the terms of this Agreement, including but not limited to, accepting and accommodating the present and the future stormwater drainage needs of the properties comprising the Grantee's Lands.

89. Subject to the provisions of this paragraph, the Easement shall run with the title to Grantee's Land and shall be binding upon and inure to the benefit of Grantee and Grantor, together with their legal representatives, invitees, guests, employees, agents, licensees, lessees, grantees, successors and assigns.

910. Grantee agrees to defend, indemnify and save harmless Grantor, its successors and assigns, from and against all causes of action, litigation, cost, loss, liability, damage and expense (including reasonable attorneys' fees) for injury or death to persons, whomsoever, and damage to or loss of property to whomsoever belonging, including the respective contractors, agents, employees and representatives of Grantor, arising out of and to the extent of Grantee's negligent acts or Grantee's default under the terms of this Easement Agreement. -

~~10. Grantor agrees to defend, indemnify and save harmless Grantee, its successors and assigns, from and against all causes of action, litigation, cost, loss, liability, damage and expense (including reasonable attorneys' fees) for injury or death to persons, whomsoever, and damage to or loss of property to whomsoever belonging, including the respective contractors, agents, employees and representatives of Grantee, arising out of and to the extent of Grantor's negligent acts or Grantor's default under the terms of this Easement Agreement.~~

11. Any notice required or permitted to be given hereunder shall be in writing, addressed to Grantee or the Grantor as necessary and shall be delivered personally (with written receipt or acknowledgement) or by a nationally recognized overnight courier (signature release required). The initial addresses for Grantee and Grantor are as follows:

Grantee: Lowe's Home Centers, ~~Inc.~~LLC
1605 Curtis Bridge Road
Wilkesboro, ~~NC~~North Carolina 28697
Attention: Property Management ~~Dept.~~(RES6)
~~Tel. No.~~Telephone: ~~(336.658)~~ 658-4200

With copy to: Lowe's Home Centers, ~~Inc.~~LLC
1000 Lowe's Boulevard

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

Mooresville, NC 28117
Attention: Legal Dept. (NB~~LG~~6LG)
Tel. No.: (704-~~758~~)758-1000

Grantor: City of Gautier
3330 Highway 30
Gautier, MS 39553
Attention: Chandra Nicholson
Tel. No.: (228-~~497~~)497-1878

12. All matters related to the construction, validity and enforcement of the Easement and this Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi in all respects and this Easement Agreement constitutes the entire and final expression of agreement between Grantee and Grantor with regard to the subject matter hereof.

TO HAVE AND TO HOLD the aforesaid rights, privileges, and easement unto Grantee, its successors and assigns, forever, subject to the conditions, limitations and restrictions contained herein.

IN WITNESS WHEREOF, Grantor and Grantee have signed and sealed this Grant of Easement to be effective as of the _____ day of _____, 2014.

GRANTOR:

CITY OF GAUTIER, MISSISSIPPI, a political subdivision of the State of Mississippi

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

STATE OF MISSISSIPPI)

COUNTY OF _____)

This ___ day of _____, 2014, personally came before me _____, who being by me duly sworn, says that he is _____ of _____ and that the seal affixed to the foregoing instrument in writing is the corporate seal of said Corporation and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given and acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official seal this ___ day of _____, 2013.

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

Notary Public

My commission expires:

[Notary Seal]

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed, the ___ day of _____, 2014.

GRANTEE:

LOWE'S HOME CENTERS, LLC,
a North Carolina limited liability company

By: _____
Name: Gary E. Wyatt
Title: Senior Vice President

(CORPORATE SEAL)

STATE OF NORTH CAROLINA)

COUNTY OF _____)

This ___ day of _____, 2014, personally came before me _____ Gary E. Wyatt, who being by me duly sworn, says that he is _____ Senior Vice President of _____ Lowe's Home Centers, LLC and that said writing was signed and sealed by him in behalf of said limited liability company by its authority duly given and acknowledged the said writing to be the act and deed of said limited liability company.

Witness my hand and official seal this ___ day of _____, 2014.

Notary Public

My commission expires:

[Notary Seal]

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

Exhibit "A"
[Stormwater Management Facilities]

The area outlined or delineated as "Stormwater Management Facilities" on that certain plat entitled "Lowe's Town Center" as per official map or plat thereof on file and of record in the office of the Chancery Clerk of Jackson County, Mississippi in Plat Book 24, at pages 40 through 42 thereof, reference to which is hereby made in aid of and as part of this description.

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

Exhibit "B"

[Servient Land]

Tract "D" and Tract "E", Lowe's Town Center, as per official map or plat thereof on file and of record in the office of the Chancery Clerk of Jackson County, Mississippi in Plat Book 24, at pages 40 through 42 thereof, reference to which is hereby made in aid of and as part of this description.

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

Exhibit "C"

[Grantee's Land]

Tract "A", Tract "B", and Tract "C", Lowe's Town Center, as per official map or plat thereof on file and of record in the office of the Chancery Clerk of Jackson County, Mississippi in Plat Book 24, at pages 40 through 42 thereof, reference to which is hereby made in aid of and as part of this description and Lot 1 and Lot 2, Lowe's Shopping Center, as per official map or plat thereof on file and of record in the office of the Chancery Clerk of Jackson County, Mississippi in Plat Book 23, at page 83 thereof, reference to which is hereby made in aid of and as part of this description.

Initial _____, _____

Lowe's Home Centers, LLC - Easement
STP-0494-00(008)LPA/106378-701000

Summary Report:	
Litéra® Change-Pro TDC 7.0.0.365 Document Comparison done on 7/9/2014 11:45:43 AM	
Style Name: Default Style	
Original DMS: iw://WORKSITEDMS/Womble/32732154/1	
Modified DMS: iw://WORKSITEDMS/Womble/32732154/2	
Changes:	
Add	47
Delete	38
Move From	1
Move To	1
Table Insert	0
Table Delete	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	87