

# Storm Water Management Practice Maintenance Agreement

Document Number

Per the Access and Detention Pond Easement Agreement executed on April 9<sup>th</sup>, 2002 by and between Kohl's Department Stores, Inc., predecessor-in-interest to Kohl's Value Services, Inc. ("Kohl's"), R Equities VI, LLC and Fox Run Associates, Kohl's is the responsible party for the maintenance of the Detention Pond Tract of the Fox Run Shopping Center on behalf of the property owner. Kohl's will therefore act as "Owner" of the maintenance requirements of the stormwater maintenance practice(s) located on the Property described herein below, in accordance with Chapter 32 City of Waukesha Storm Water Management and Erosion Control, agrees to ~~install and~~ maintain storm water management practice(s) on the ~~subject~~ Property in accordance with approved plans and Storm Water Management Plan conditions. The Owner further agrees to the terms stated in this document to ensure that the storm water management practice(s) continues serving the intended functions in perpetuity. This Agreement includes the following exhibits:

**Exhibit A:** Legal Description of the real estate for which this Agreement applies ("Property").

**Exhibit B:** Location Map(s) – shows an accurate location of each storm water management practice affected by this Agreement.

**Exhibit C:** Maintenance Plan – prescribes those activities that must be carried out to maintain compliance with this Agreement.

Note: The storm water management system was constructed in 2002 based on the City of Waukesha approved Storm Water Management Report, which was prepared by National Survey & Engineering for Kohl's Department Store, Inc, dated May 31, 2001. This Storm Water Management Practice Maintenance Agreement is now being recorded as part of a requirement of Kohl's Rightsizing project to demise a portion of their existing store footprint for a subtenant space.

Name and Return Address

City of Waukesha  
130 Delafield Street  
Waukesha, WI 53188

Parcel Identification Number(s) – (PIN)

Through this Agreement, the Owner hereby subjects the Property to the following covenants, conditions and restrictions:

1. The Owner shall be responsible for the routine and extraordinary maintenance and repair of the storm water management practice(s) and drainage easements identified in Exhibit B until Storm Water and Erosion Control Permit termination by the City of Waukesha in accordance with Chapter 32 of the City Code of Ordinances.
2. After Storm Water and Erosion Control Permit termination under Paragraph 1, the current Owner(s) shall be solely responsible for maintenance and repair of the storm water management practices and drainage easements in accordance with the maintenance plan contained in Exhibit C.
3. The Owner(s) shall, at their own cost, complete inspections of the storm water management practice(s) at the time intervals listed in Exhibit C, and conduct the inspections by a qualified professional, file the reports with the City of Waukesha after each inspection and complete any maintenance or repair work recommended in the report. The Owner(s) shall be liable for the failure to undertake any maintenance or repairs. After the work is completed by the Contractor, the qualified professional shall verify that the work was properly completed and submit the follow-up report to the City within 30 days.
4. In addition, and independent of the requirements under Paragraph 3 above, the City of Waukesha, or its designee, is authorized to access the property as necessary to conduct inspections of the storm water management practices or drainage easements to ascertain compliance with the intent of this Agreement and the activities prescribed in Exhibit C. The City of Waukesha may require work to be done which differs from the report described in Paragraph 3 above, if the City of Waukesha reasonably concludes that such work is necessary and consistent with the intent of this agreement. Upon notification by the City of Waukesha of required maintenance or repairs, the Owner(s) shall complete the specified maintenance or repairs within a reasonable time frame. ~~determined by the City of Waukesha.~~

5. If the Owner(s) does not complete an inspection under Paragraph 3 above or required maintenance or repairs under Paragraph 4 above within the specified time period, the City of Waukesha is authorized, but not required, to perform the specified inspections, maintenance or repairs. In the case of an emergency situation, as reasonably determined by the City of Waukesha, no notice shall be required prior to the City of Waukesha performing emergency maintenance or repairs. The City of Waukesha may levy the costs and expenses of such inspections, maintenance or repair related actions as a special charge against the Property and collected as such in accordance with the procedures under s. 66.0627 Wis. Stats. or subch. VII of ch. 66 Wis. Stats.
6. This Agreement shall run with the Property and be binding upon all heirs, successors and assigns. After the Owner records the addendum noted above, the City of Waukesha shall ~~have the sole authority to~~ not amend or have the sole authority to modify this agreement ~~upon a 30-day notice to the current Owner~~ without the written consent of upon a 30-day notice to the current Owner(s); unless such amendments or modifications are required to comply with changes to the local or state ordinances governing maintenance of the storm water management practice(s).

Dated this \_\_\_ day of \_\_\_\_\_, 2018.

**Owner:**  
**Kohl's Value Services, Inc.**

\_\_\_\_\_  
 (Owners Signature)

\_\_\_\_\_  
 (Owners Typed Name)

### Acknowledgements

State of Wisconsin:  
 County of Waukesha

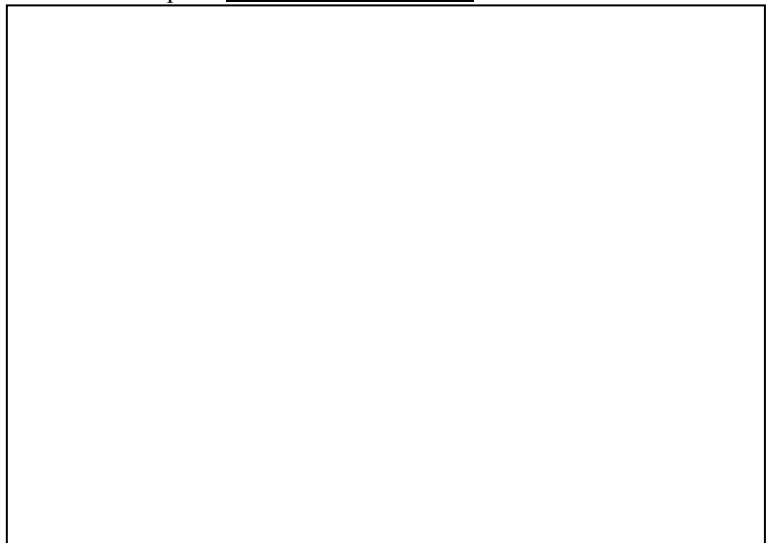
Personally came before me this \_\_\_ day of \_\_\_\_\_, 2018, the above named [Owners name] to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
 [Name]  
 Notary Public, Waukesha County, WI  
 My commission expires: \_\_\_\_\_

**This document was drafted by:**

\_\_\_\_\_  
 \_\_\_\_\_

**[Name and address of drafter]**



City of Waukesha Common Council Approval

Dated this \_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Shawn N. Reilly, Mayor

\_\_\_\_\_  
Gina Kozlik, City Clerk

**Acknowledgements**

State of Wisconsin:  
County of Waukesha

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2018, the above named \_\_\_\_\_ to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
[Name]  
Notary Public, Waukesha County, WI  
My commission expires: \_\_\_\_\_.

# Exhibit A – Legal Description

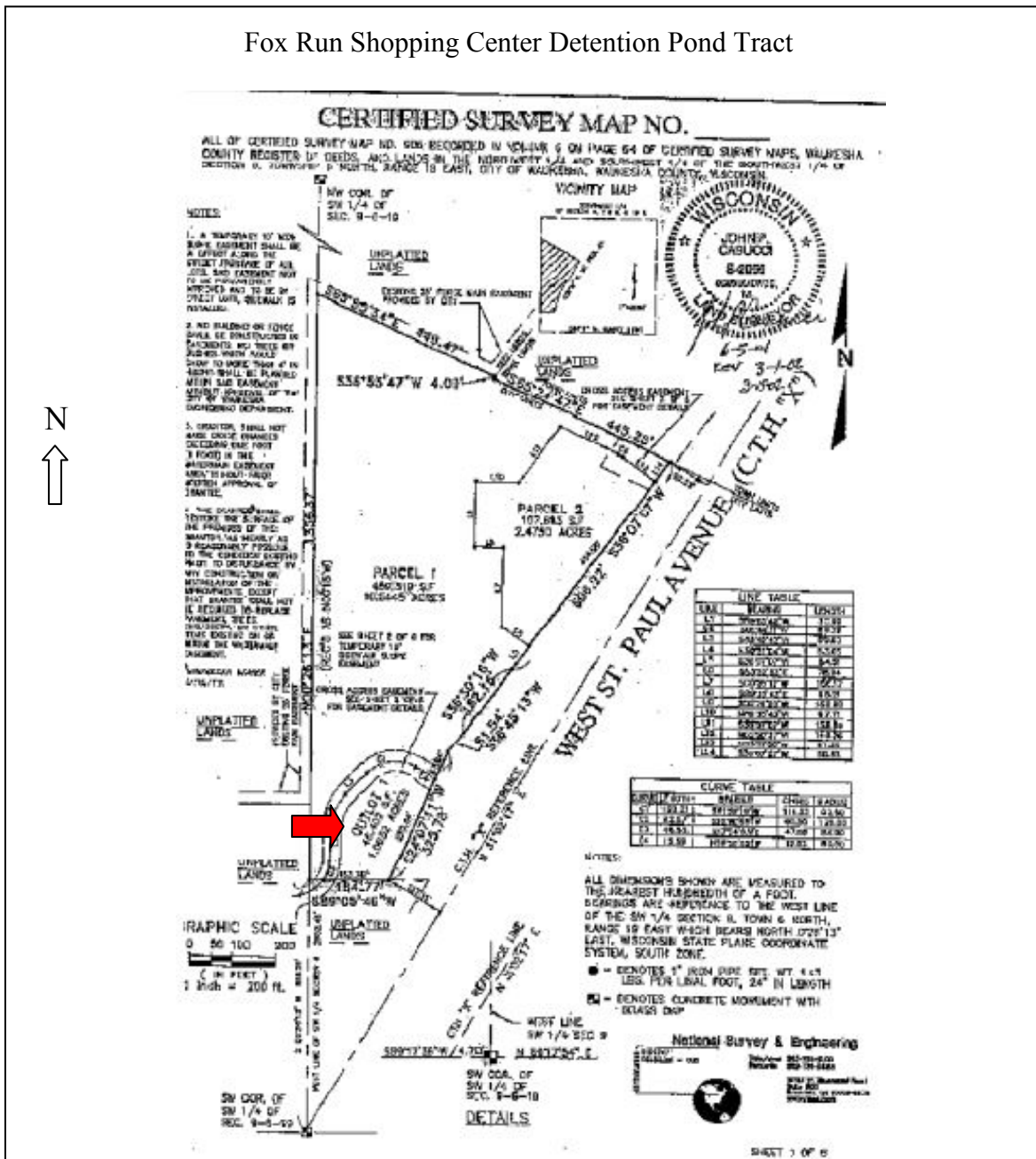
The following description and reduced copy map identifies the land parcel(s) affected by this Agreement. For a larger scale view of the referenced document, contact the Waukesha County Register of Deeds office.

Project Identifier: **Outlot 1 of Fox Run Shopping Center - Detention Pond Tract** Acres: **1.0652**

Date of Recording: **March 19, 2002**

Map Produced By: **Formerly National Survey and Engineering (Now R.A. Smith, Inc.)**

Legal Description: **Outlot 1 of Certified Survey Map No. 9343, recorded March 19, 2002, in Volume 85 of Certified Survey Maps on Pages 36 to 41, as Document No. 2778888, being a division of all of Certified Survey Map No. 905 recorded in Volume 6 on Page 64 of Certified Survey Maps and lands in the Northwest 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 9, Town 6 North, Range 19 East, in the City of Waukesha, County of Waukesha, State of Wisconsin.**



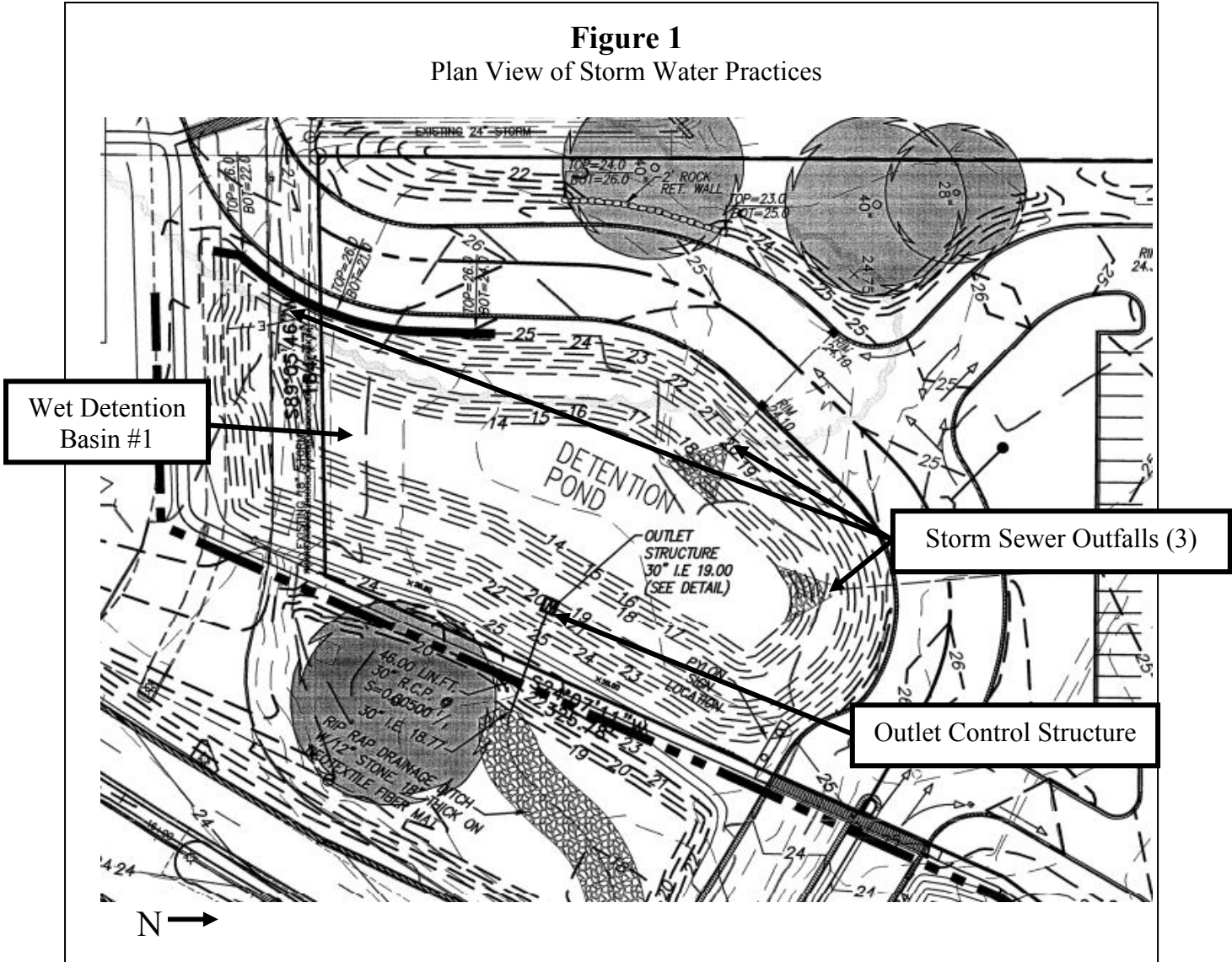
## Exhibit B - Location Map

### Storm Water Management Practices Covered by this Agreement

The storm water management practices covered by this Agreement are depicted in the reduced copy of a portion of the construction plans, as shown below. The practices include one wet detention basin and all associated pipes, earthen berms, rock chutes and other components of these practices. All of the noted storm water management practices are located within a blanket drainage easement of the Fox Run Shopping Center (Access and Detention Pond Easement Agreement).

Subdivision Name:      **Outlet 1 of Fox Run Shopping Center – Detention Pond Tract**  
Storm water Practices:    **Wet Detention Basin #1**  
Location of Practices:    **All of Outlet 1 of Fox Run Shopping Center:**

**Figure 1**  
Plan View of Storm Water Practices



## **Exhibit C**

### **Storm Water Practice Maintenance Plan**

This exhibit explains the basic function of each of the storm water practices listed in Exhibit B and prescribes the minimum maintenance requirements to remain compliant with this Agreement. The maintenance activities listed below are aimed to ensure these practices continue serving their intended functions in perpetuity. The list of activities is not all inclusive, but rather indicates the minimum type of maintenance that can be expected for this particular site. Access to the stormwater practices for maintenance vehicles is shown in Exhibit B. Any failure of a storm water practice that is caused by a lack of maintenance will subject the Owner(s) to enforcement of the provisions listed on page 1 of this Agreement by the City of Waukesha.

#### **System Description:**

The wet detention basin is designed to trap 80% of sediment in runoff and maintain pre-development downstream peak flows for the 2, 10, and 100 year 24-hour duration storm events. The basin has three outfall pipes with flared end sections that outlet onto a rock chute. The basin will trap the suspended sediment. To do this, the pond size, water level and outlet structures must be maintained as specified in this Agreement (see Figures 1, 2 and 3).

The main basin receives runoff from a 24.64 acre drainage area (commercial, residential and grassed areas). During high rainfall or snow melt events, the water level will temporarily rise and slowly drain down to the elevation of the control structure. The water level is controlled by a 2-1/2-inch round opening in the outlet structure box at pond normal water level (see Figure 1 of Exhibit B). This orifice controls the water level and causes the pond to temporarily rise during runoff events. A trash rack is placed in front of the orifice to prevent clogging. High flows may enter the grated weir opening or flow over the rock lined emergency spillway. "As-built" construction drawings of the basin, showing actual dimensions, elevations, outlet structures, etc. are incorporated as addendum(s) to this agreement ~~within 60 days after City of Waukesha accepts verification of construction from the project engineer.~~

#### **Minimum Maintenance Requirements:**

To ensure the proper long-term function of the storm water management practices described above, the following activities must be completed:

1. All outlet pipes must be checked monthly to ensure there is no blockage from floating debris or ice, especially the trash rack in front of the 2-1/2-inch orifice and the 20-inch wide weir opening and the bar grid at the top of the outlet structure of the detention basin. Any blockage must be removed immediately.
2. Grass swales shall be preserved to allow free flowing of surface runoff in accordance with approved grading plans. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may interrupt flows in any way.
3. Grass swales, inlets and outlets must be checked after heavy rains (minimum of annually) for signs of erosion. Any eroding areas must be repaired immediately to prevent premature sediment build-up in the downstream basin. Erosion matting is recommended for repairing grassed areas.
4. NO trees are to be planted or allowed to grow on the earthen berms. Tree root systems can reduce soil compaction and cause berm failure. The berms must be inspected annually and any woody vegetation removed.
5. Invasive plant and animal species shall be managed in compliance with Wisconsin Administrative Code Chapter NR 40. This may require eradication of invasive species in some cases.
6. If the permanent pool falls below the safety shelf, a review shall be performed to determine whether the cause is liner leakage or an insufficient water budget. If the cause is leakage, the liner shall be repaired. Leakage due to muskrat burrows may require removal of the animals. If the permanent pool cannot be sustained at the design elevation, benching of the safety shelf may be necessary.
7. If floating algae or weed growth becomes a nuisance (decay odors, etc.), it must be removed from the basin and deposited where it cannot drain back into the basin. Removal of the vegetation from the water reduces regrowth the following season (by harvesting the nutrients). Wetland vegetation must be maintained along the waters edge for safety and pollutant removal purposes.
8. When sediment in the basin has accumulated to an elevation of three feet below the outlet elevation, it must be removed (see Exhibit D). All removed sediment must be placed in an appropriate upland disposal site and stabilized (grass cover) to prevent sediment from washing back into the basin. Failure to remove sediment from the basin will cause resuspension of previously trapped sediments and increase downstream deposition.

9. No grading or filling of the basin or berm other than for sediment removal is allowed, unless otherwise approved by the City of Waukesha.
10. Periodic mowing of the grass swales will encourage vigorous grass cover and allow better inspections for erosion. Waiting until after August 1 will avoid disturbing nesting wildlife. Mowing around the basin or the forebays may attract nuisance populations of geese to the property and is not necessary or recommended.
11. Any other repair or maintenance needed to ensure the continued function of the storm water practices or as ordered by the City of Waukesha under the provisions listed on page 1 of this Agreement.
12. The titleholder(s) or their designee must document all inspections as specified above. Documentation shall include as a minimum: (a) Inspectors Name, Address and Telephone Number, (b) Date of Inspections, (c) Condition Report of the Storm Water Management Practice, (d) Corrective Actions to be Taken and Time Frame for Completion, (e) Follow-up Documentation after Completion of the Maintenance Activities. All documentation is to be delivered to the attention of the City Engineer at the City of Waukesha Engineering Department on January 10<sup>th</sup> and July 10<sup>th</sup> each year.



Document Number

# Addendum 1 Storm Water Management Practice Maintenance Agreement

Document number

The purpose of this addendum is to record verified “as-built” construction details, supporting design data and permit termination documentation for the storm water management practice(s) located on Outlot 1 of the Fox Run Shopping Center, described as being a division of all of Certified Survey Map No. 905 recorded in Volume 6 on Page 64 of Certified Survey Maps and lands in the Northwest ¼ and Southwest ¼ of the Southwest ¼ of Section 9, Town 6 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin. This document shall serve as an addendum to document # \_\_\_\_\_, herein referred to as the “Maintenance Agreement”. This addendum includes all of the following exhibits:

**Exhibit D:** Design Summary – contains a summary of key engineering calculations and other data used to design the wet detention basin.

**Exhibit E:** As-built Survey – shows detailed “as-built” cross-section and plan view of the wet detention basin.

~~**Exhibit F:** Engineering/Construction Verification – provides verification from the project engineer that the design and construction of the wet detention basin complies with all applicable technical standards and Waukesha County ordinance requirements.~~

~~**Exhibit G:** Storm Water Management & Erosion Control Permit Termination – provides certification by the City of Waukesha that the Storm Water and Erosion Control Permit for the above noted site has been terminated.~~

Dated this \_\_\_ day of \_\_\_\_\_, 2018.

Name and Return Address

Parcel Identification Number(s) – (PIN)

**Owner:**

\_\_\_\_\_  
[Owners Signature – per the Maintenance Agreement]

\_\_\_\_\_  
[Owners Typed Name]

## Acknowledgements

State of Wisconsin County of Waukesha

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2018 the above named \_\_\_\_\_ [Owners name] to me known to be the person who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
[Name]

Notary Public, Waukesha County, WI

My commission expires: \_\_\_\_\_.

**This document was drafted by:**

\_\_\_\_\_  
[Name and address of drafter]

*For Certification Stamp*



## Exhibit D Design Summaries for Wet Detention Basin #1

**Project Identifier:** Fox Run Shopping Center - Detention Pond Tract    **Project Size:** 1.0652 Acres  
**No. of Lots:** N/A  
**Number of Runoff Discharge Points:** 1      **Watershed (ultimate discharge):** Fox River  
**Watershed Area** (including off-site runoff traveling through project area): 24.64 acres

**Watershed Data Summary.** The following table summarizes the watershed data used to determine peak flows and runoff volumes required to design wet detention basin #1.

Summary Data Elements	Subwatershed A (Area #3)		Areas #1 and #2 Bypass the Detention Basin (not included)	
	Pre-develop	Post-develop		
Watershed Areas ( <i>in acres</i> ) ( <i>see attached map</i> )	----	24.64 acres		
Average Watershed Slopes (%)	----	1-5%		
Land Uses ( <i>% of each</i> ) ( <i>see attached map</i> )	----	70% Commercial 20% grass 10% residential		
Runoff Curve Numbers	----	92 x 17.09 ac.= 1572 61 x 4.98 ac.= 304 70 x 2.30 ac = 161 75 x 0.27 ac.= 20 <u>Net 2057/24.64ac</u> RCN = 83 (83.48)		
Conveyance Systems Types	----	100% storm sewer		
Summary of Average Conveyance System Data	---	30" rcp sewer/0.3%		
Time of Concentration ( <i>T<sub>c</sub></i> ) ( <i>see attached map &amp; worksheets</i> )	---	0.1667 hrs.		
25% of 2-yr 24-hr post-dev runoff volume	---	0.62 ac. ft.		
1-year/24 hour Runoff Volume	---	---		
2-yr./24 hour Peak Flow ( <i>see attached hydrographs</i> )	---	7.10 cfs		
10-yr./24 hour Peak Flow	---	22.66 cfs		
100-yr./24 hour Peak Flow	---	61.30 cfs		

## Exhibit D (continued)

**Practice Design Summary.** The following table summarizes the data used to design wet detention basin #1.

Design Element	Design Data
<b>Site assessment data: (see attached maps)</b>	
Contributing drainage area to basin (subwatershed A & B)	24.64 acres
Distance to nearest private well (including off-site wells)	---
Distance to municipal well (including off-site wells)	---
Wellhead protection area involved?	---
Ground slope at site of proposed basin	---
Any buried or overhead utilities in the area?	---
Proposed outfall conveyance system/discharge (w/ distances)	100 ft. to CTH "X" Road ditch 350 ft. to Fox River
Any downstream roads or other structures? (describe)	Yes – 36" cmp road culvert
Floodplain, shoreland or wetlands?	No
<b>Soil investigation data (see attached map &amp; soil logs):</b>	
Number of soil investigations completed	---
Do elevations of test holes extend 3 ft. below proposed bottom?	---
Average soil texture at pond bottom elevation (USDA)	---
Distance from pond bottom to bedrock	---
Distance from pond bottom to seasonal water table	---
<b>General basin design data (see attached detailed drawings):</b>	
Permanent pool surface area	2.05 acres
Design permanent pool water surface elevation	elev. 19
Top of berm elevation (after settling) and width	elev. 25.0 / width varies
Length/width (dimensions/ratio)	300 ft. (L) x 140 ft. (W) = 2.14:1
Safety shelf design (length, grade, max. depth)	10 ft. @ 10% slope/1.0' deepest
Ave. water depth (minus safety shelf/sediment)	5 ft. (in center)
Sediment forebay size & depth	N/A
Sediment storage depth & design maintenance	5 ft. depth for pool

<b>Design Basin Inflow, Outflow &amp; Storage Data</b> (see attached hydrographs and detail drawings)				
Inflow Peak/Volume	Maximum Outflow Rate	Max. Water Elevation	Storage Volume at Max. Elev. (above perm. pool)	Outflow Control Structures*
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## Exhibit D (continued)

**Watershed Map.** The watershed map shown below was used to determine the post-development data contained in this exhibit.



# Exhibit E

## As-built Survey for Wet Detention Basin #1

The wet detention basin depicted in Figure 1 is a reduced copy of the as-built plan.

Project Identifier:           **Outlot 1 of Fox Run Shopping Center - Detention Pond Tract**  
Storm water Practice:   **Wet Detention Basin #1**  
Location of Practice:     **All of Outlot 1 of Fox Run Shopping Center**  
Owners of Outlot 1:       **DSKS Management LLC (Property Owner); Kohl's (Responsible maintenance party)**

