

**AGREEMENT FOR PERMANENT WATER QUALITY BASINS**

THIS AGREEMENT is made April 29, 2004, by and between the CITY OF ROCHESTER HILLS, Oakland County, Michigan, of 1000 Rochester Hills Drive, Rochester Hills, Michigan (the "City"), and JENSAM, LLC, a Michigan limited liability company, of 2301 West Big Beaver Road, Suite 900, Troy, Michigan 48084 (the "Developer").

WITNESSETH:

WHEREAS, Developer is the owner of certain real property located in the City of Rochester Hills, Oakland County, Michigan, which real property is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, and

WHEREAS, the Developer wishes to develop the above described property, known as Butler Ridge Subdivision Development No. 2, a single family residential development (hereafter known as the "Subdivision"), and

WHEREAS, the Developer wishes at this time to obtain approval of the final plat of the Subdivision, and

WHEREAS it is necessary for the Developer to construct a storm sewer system including a permanent water quality basin area, more particularly described in Exhibit "B" attached hereto, and storm sewer lines within the Subdivision (collectively referred to herein as the "Water Quality System") for the protection of adjacent and downstream properties, watercourses and wetlands, which Water Quality System is delineated on the proposed plat of the Subdivision, and

WHEREAS, the Developer desires to make available and grant to each of the future lot owners in the Subdivision the right to utilize the Water Quality System and provide for its maintenance by the Butler Ridge Homeowner's Association ("Association") responsible for administration of the Subdivision, and

WHEREAS, it is desirable that the Developer and the City enter into a binding contract relative to the details of development of the Water Quality System and the use, repair and maintenance thereof.

NOW, THEREFORE, in consideration of the approval by the City of the final plat of the Subdivision, and of the mutual promises contained herein, the parties hereto agree as follows:

1. From the date of recording of the plat for the Subdivision, and until such time as Developer's rights and obligations under this Agreement are assigned as provided for in Paragraph 4 below, Developer shall have the responsibility and be obligated to the City to maintain and keep in good order the Water Quality System. Maintenance of the Water Quality System shall include stabilization of the banks and slopes, removal of trash, refuse, and accumulated sediment on a reasonable periodic basis, keeping the bottom of the water quality basins free from silt and debris, removing harmful algae, maintaining a steel grating across the control structure, cleaning of stone filter systems, replacement of filter fabrics, repair or replacement of the storm lines, erosion control, repair of the over-flow structure, and such other maintenance as may be reasonable and necessary to foster the intended functioning of the Water Quality System. Inspection of the sedimentation and water quality will be performed by City Engineering and the Developer or his designee on a regular basis as deemed necessary, but no more than twice per year. The costs of inspection shall be paid by the Developer in accordance with Chapter 4-01.13 Subdivision Control, Fees.

2. In order to obtain an approval and release of the plat by the City, Developer shall file with the City Clerk security, as provided for in Chapter 4-01, Subdivision Control, of the Code of Ordinances, in such amounts as determined reasonable and necessary by City's engineer to guarantee ongoing maintenance and repair to the Water Quality System. Said security shall terminate after the City engineer determines that ninety percent (90%) of the homes and all landscaping and sodding in the tributary watershed area serving the homes are completed. Accordingly, accumulated sediment and debris is to be removed, final storm sewer connections made, the water quality basins backfilled with compacted engineered fill, and the area restored and vegetated. This work will be solely the responsibility of the Developer prior to conveyance of the Water Quality System to the Association.

3. Following Developer's conveyance of title to the Water Quality System pursuant to Paragraph 4 below, control and jurisdiction over the Water Quality System shall be vested in

the Association. The Association shall be organized as a non-profit corporation for a perpetual term under the laws of the State of Michigan. Membership in the Association shall be mandatory for all lot owners in the Subdivision. The Association shall be responsible, at its sole expense, for the proper maintenance of the Water Quality System, and for compliance with the terms of this Agreement. The By-Laws of the Association shall provide for a Board of Directors of no less than three (3) members and no more than seven (7). The Association shall be incorporated prior to the sale of any of the lots in the Subdivision to any person other than a builder or developer, or within ninety (90) days following the recording of the plat, whichever occurs first.

Each Association member shall be entitled to vote according to the number of lots in which he has an ownership interest, with the following restrictions:

A. There shall be a total of one (1) vote allowed with respect to each lot of the plat.

B. When two (2) or more members hold an ownership interest in a particular lot as Co-Owners, whether as Tenants In Common, Joint Tenants, or otherwise, the vote attributable to such lot shall be exercised as such Co-Owners shall among themselves determine, but shall not require all Co-Owners' signatures to be valid.

The Association shall have the authority to make and enforce regulations pertaining to the use and maintenance of the Water Quality System, which regulations shall be binding upon all members.

4. The Developer agrees, on or before the date of conveyance of the last lot in the Subdivision, to convey title to the Water Quality System to the Association, and the Association shall accept such conveyance and hold title to the Water Quality System for the benefit of all members of the Association, but free of all encumbrances reflecting obligations to pay money (other than liens for taxes and assessments not then due and payable). Following such conveyance, the Association shall be responsible for maintaining and keeping the Water Quality System in good order in the manner described in Paragraph 1, above. In no event shall the Association be liable for payment of any debts or liabilities incurred by Developer. Any debts or obligations incurred by the Association shall constitute a personal obligation of its members, and shall be considered an obligation appurtenant to the members' property which shall pass with the title to such property, whether or not specifically set forth in the deeds thereto.

5. In the event that the Developer, its successors, assigns or the Association (after acquiring title to the Water Quality System from Developer), shall at any time fail to maintain the Water Quality System and related facilities in reasonable order and condition, the City may serve written notice upon the Developer, its successors, assigns or the Association setting forth the manner in which the Developer, its successors, assigns or the Association, has failed to maintain the Water Quality System in a reasonable condition, and said notice shall include a demand that deficiencies of maintenance be cured within thirty (30) days thereof, and further, shall state the date and place of a hearing thereof before the City Council or other such board, body, or official to whom the City Council shall delegate such responsibility, which shall be held at least fourteen (14) days after the notice is served. At such hearing, the City may modify the terms of the original notice as to the deficiencies, and may give an extension of time within which they shall be cured. If notice, or in any modification thereof, shall not be cured within thirty (30) days or any extension thereof, the City may enter upon said Water Quality System and maintain the same. Said maintenance by the City shall not constitute a taking of the Water Quality System nor vest in the public any right to use the same. In the event that the City determines the existence of any emergency upon, causes by or relating to the Water Quality System which threatens the public health, safety or general public welfare, the City shall have the right to immediately and without notice take appropriate corrective action. The cost of any maintenance or any action by the City, plus the prevailing administrative fee, shall be assessed against the Developer, its successors, assigns or the Association, and deducted from the security that is then on file with the City. If the security has been terminated or is insufficient to reimburse the City for the maintenance necessary to cure, the cost of maintenance (or any deficiency after applying any security held by the City) by the City shall be assessed against the Developer, its successors, assigns or the Association and added to the tax rolls, and shall be collected and enforced in a like manner as general City taxes are collected and enforced. The City shall be, at its option, subrogated to the right of the Association against its members to the extent of that cost, if the City, by an official resolution, gives thirty (30) days written notice to each member of the Association of the City's election to be so subrogated. The Association members shall bear their pro-rata share of the total cost of maintaining the Water Quality System (including, without limitation, any real or personal property taxes assessed against the Water Quality System), which shall constitute a lien against the member's lot or parcel, and the City

shall be paid and have the right to charge and collect the costs for such corrective action, as provided herein. Each member's prorated share of the cost shall equal the total cost multiplied by the ratio of the number of lots owned by the member divided by the total number of lots in the Subdivision.

6. Notwithstanding any other provisions of the Agreement and so long as Developer holds title to the Water Quality System area, Developer reserves the right to grant easements (in addition to those contained in the plat) within the Water Quality System area for the installation, repair and maintenance of water mains, sewers, drainage courses and other public utilities, subject to obtaining the consent of the City, provided that such utilities shall be installed in such manner as to minimize damage to the natural features of the area. After conveyance of title for the Water Quality System to the Association, the Association shall retain the foregoing right to grant easements.

7. The Developer has submitted to the City a certain Declaration of Building and Use Restrictions which has been approved by the City and which is recorded in Liber \_\_\_\_, Page \_\_\_\_, Oakland County Records (the "Building and Use Restrictions"). The Building and Use Restrictions, together with this Agreement, shall constitute restrictions running with the land described in Exhibit "A", hereto.

8. The Water Quality System described in the proposed plat of the Subdivision shall be used for no purpose other than its proposed use until such time as the City may determine and signify by written notice to the Association or its successors that there is no further need for the facilities, or the parties hereto mutually agree to an additional or alternate use. In no event shall the water quality basin area be utilized for any purpose other than detention of surface water without the prior written consent of the Association.

9. The City may enforce the obligations contained herein in a court of competent jurisdiction. Any attorney's fees or costs incurred by the City in enforcement of this Agreement in court shall be paid for by the Developer.

10. The obligations of Developer contained herein shall not be delegable by Developer except as herein provided, unless approved by a Resolution of the City Council.

11. This Agreement shall constitute restrictions and covenants running with the land described in Exhibit "A" hereto. The parties hereto make this Agreement on behalf of

themselves and their respective successors and assigns, and hereby warrant that they have the authority and capacity to make this contract.

IN WITNESS WHEREOF, the parties hereto have set their hands on the date first above written.

WITNESSES:

JENSAM, LLC, a Michigan limited liability company

By: BUTLER RIDGE, LLC, a Michigan limited liability company, its sole

Member

Sandra R. Fischung  
Printed name: SANDRA R. FISCHUNG

By: Stanley Frankel  
Stanley Frankel, Member

Mark Greenstone  
Print name: Mark Greenstone

CITY OF ROCHESTER HILLS,  
a Michigan municipal corporation

\_\_\_\_\_  
Print name:

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

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
Print name:

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

\_\_\_\_\_  
Print name:

State of Michigan )  
 )  
County of Oakland )

The foregoing instrument was acknowledged before me this 28<sup>TH</sup> day of APRIL, 2004, by Stanley Frankel, as sole Member of Butler Ridge, LLC, the sole Member of Jensam, LLC, on behalf of the company.

SANDRA R. PISCHING  
NOTARY PUBLIC - MICHIGAN  
MACOMB COUNTY  
MY COMMISSION EXPIRES SEPT. 19, 2007

My commission expires: 9-19-07

Sandra R. Pisching  
SANDRA R. PISCHING, Notary Public  
MACOMB County, Michigan  
ACTING IN OAKLAND COUNTY

State of Michigan )  
 )  
County of Oakland )

The foregoing instrument was acknowledged before me \_\_\_\_\_, 2004, by \_\_\_\_\_ and \_\_\_\_\_, who are the \_\_\_\_\_ and \_\_\_\_\_ respectively, of the City of Rochester Hills, on behalf of the City.

My commission expires:

\_\_\_\_\_, Notary Public  
\_\_\_\_\_ County, Michigan

Drafted by:

Richard D. Rattner  
Williams, Williams, Ruby & Plunkett, P.C.  
380 N. Old Woodward, Suite 300  
Birmingham, MI 48009

After recording, return to:

Richard D. Rattner  
Williams, Williams, Ruby & Plunkett, P.C.  
380 N. Old Woodward, Suite 300  
Birmingham, MI 48009

**EXHIBIT A**  
**Agreement for Permanent Water Quality Basins**

**Butler Ridge Subdivision Development No. 2 Legal Description**

PART OF THE SOUTHWEST QUARTER OF SECTION 19, T. 3 N., R. 11 E., CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS COMMENCING AT THE WEST QUARTER CORNER OF SECTION 19; THENCE ALONG THE WEST SECTION LINE S. 00° 28' 40" E., 625.22 FEET TO THE POINT OF BEGINNING, THENCE FROM SAID POINT OF BEGINNING N. 66° 28' 41" E., 986.52 FEET ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF BUTLER RIDGE ROAD (120 FEET WIDE); THENCE S. 23° 31' 19" E., 191.00 FEET; THENCE S. 18° 17' 17" E., 60.25 FEET; THENCE S. 23° 31' 19" E., 136.14 FEET; THENCE S. 19° 50' 03" E., 152.06 FEET; THENCE S. 25° 37' 47" E., 235.00 FEET; THENCE N. 69° 29' 57" E., 97.41 FEET; THENCE N. 79° 45' 21" E., 97.49 FEET; THENCE N. 88° 48' 08" E., 103.76 FEET; THENCE N. 90° 00' 00" E., 172.97 FEET; THENCE N. 49° 37' 02" E., 61.74 FEET; THENCE N. 90° 00' 00" E., 139.65 FEET; THENCE 12.76 FEET ALONG AN ARC OF A CURVE CONCAVE WESTERLY, SAID CURVE HAVING A RADIUS OF 220.00 FEET, A CENTRAL ANGLE OF 03° 19' 28", AND A CHORD BEARING S. 04° 52' 51" W., 12.76 FEET; THENCE S. 83° 27' 25" E., 181.81 FEET; THENCE S. 51° 04' 28" E., 46.69 FEET; THENCE S. 00° 04' 00" W., 323.88 FEET; THENCE N. 76° 52' 26" E., 38.72 FEET; THENCE S. 19° 10' 00" E., 206.37 FEET; THENCE N. 70° 50' 00" E., 6.45 FEET; THENCE S. 19° 10' 00" E., 132.16 FEET; THENCE S. 37° 21' 13" W., 93.15 FEET; THENCE S. 58° 47' 27" W., 64.49 FEET; THENCE S. 84° 30' 00" W., 323.40 FEET; THENCE N. 87° 40' 41" W., 123.59 FEET; THENCE N. 71° 37' 29" W., 103.72 FEET; THENCE S. 62° 10' 00" W., 131.75 FEET; THENCE N. 27° 50' 00" W., 147.37 FEET; THENCE N. 27° 34' 33" W., 60.00 FEET; THENCE 3.51 FEET ALONG AN ARC OF A CURVE CONCAVE SOUTHEASTERLY, SAID CURVE HAVING A RADIUS OF 780.00 FEET, A CENTRAL ANGLE OF 00° 15' 27", AND A CHORD BEARING S. 62° 17' 44" W., 3.51 FEET; THENCE S. 62° 10' 00" W., 84.38 FEET; THENCE 82.05 FEET ALONG AN ARC OF A CURVE CONCAVE NORTHWESTERLY, SAID CURVE HAVING A RADIUS OF 270.00 FEET, A CENTRAL ANGLE OF 17° 24' 40", AND A CHORD BEARING S. 70° 52' 20" W., 81.73 FEET; THENCE S. 10° 25' 20" E., 424.09 FEET; THENCE S. 89° 37' 02" W., 1269.83 FEET; THENCE N. 00° 28' 40" W., 1392.41 FEET ALONG THE WEST SECTION LINE TO THE POINT OF BEGINNING CONTAINING 59.24 ACRES MORE OR LESS.



**EXHIBIT B**  
**Agreement for Permanent Water Quality Basins**  
**Sedimentation Basin Easement Legal Description**

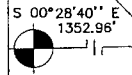
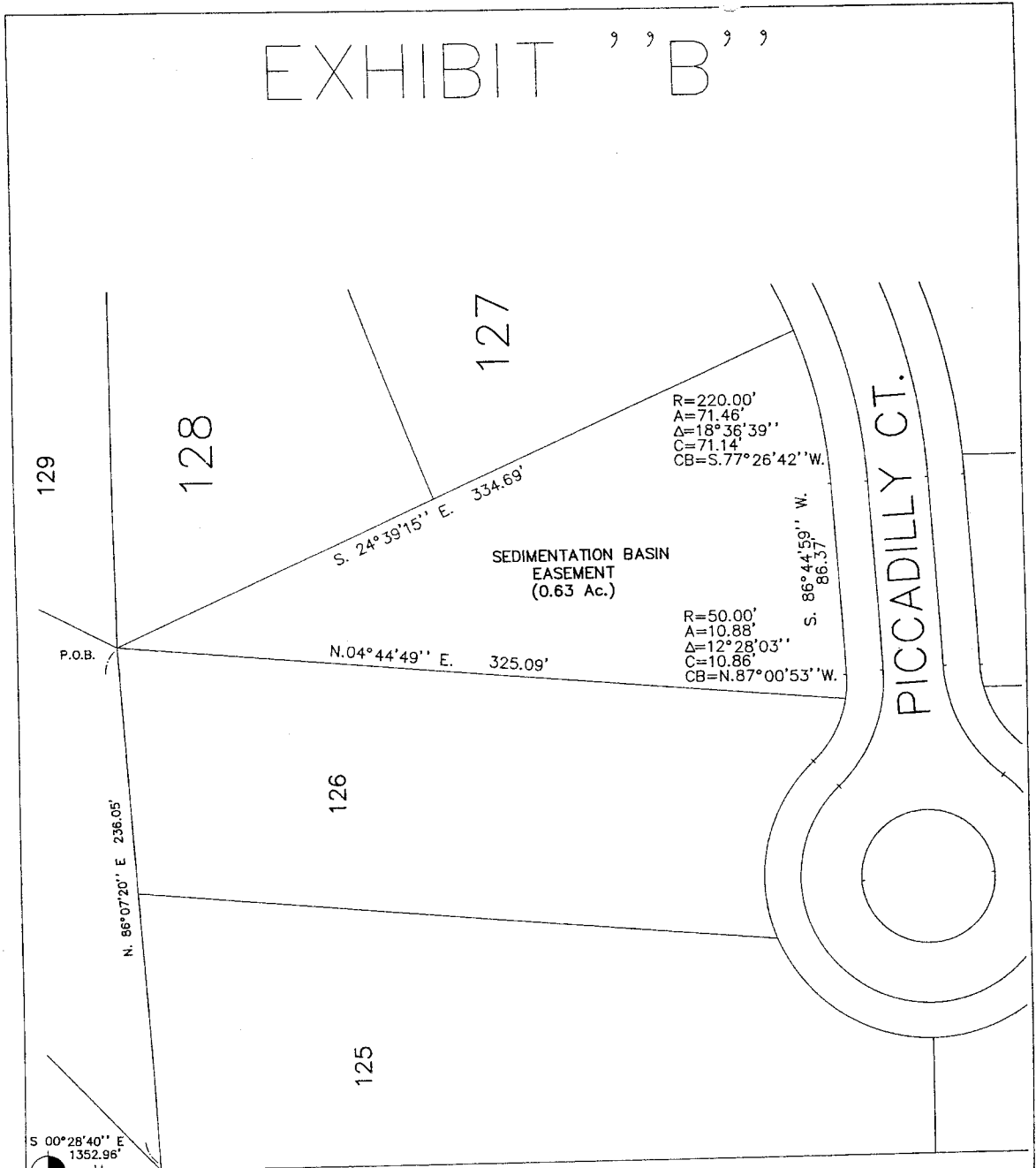
**SEDIMENTATION BASIN EASEMENT**  
**BUTLER RIDGE NO. 2**

PART OF THE SOUTHWEST QUARTER OF SECTION 19, T. 3 N., R. 11 E., CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS COMMENCING AT THE WEST QUARTER CORNER OF SECTION 19; THENCE ALONG THE WEST SECTION LINE S. 00°28'40" E. 1,352.96 FEET AND N. 86°07'20" E. 236.05 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING S. 24°39'15" E. 334.69 FEET; THENCE 71.46 FEET ALONG AN ARC OF A CURVE CONCAVE NORTH WESTERLY SAID CURVE HAVING A RADIUS OF 220.00 FEET, A CENTRAL ANGLE OF 18°36'39", AND A CHORD BEARING S. 77°26'42" W. 71.14 FEET; THENCE S. 86°44'59" W. 86.37 FEET; THENCE 10.88 FEET ALONG AN ARC OF A CURVE CONCAVE NORTHERLY SAID CURVE HAVING A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 12°28'03" AND A CHORD BEARING N. 87°00'53" W. 10.86 FEET; THENCE N. 04°44'49" E. 325.09 FEET TO THE POINT OF BEGINNING CONTAINING 0.63 ACRES MORE OR LESS.

I.H.

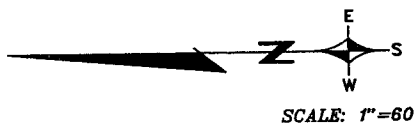
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# EXHIBIT 'B'



WEST QUARTER CORNER  
SECTION 19, T. 3N., R. 11E.

*approved by J. Stefan 5-3-04*



APPROVED DESC  
*M. Curt*  
ROCHESTER HILLS  
ENGINEERING DEPT.  
05-19-2004

REVISIONS			BUTLER RIDGE	
ITEM	DATE	BY	ROCHESTER HILLS	MICHIGAN
DRAWN BY	DESIGNED BY	DATE	SEDIMENTATION BASIN EASEMENT <b>ZEMMET WOZNIAK</b> & ASSOCIATES CIVIL ENGINEERS & LAND SURVEYORS 28450 FRANKLIN ROAD SOUTHFIELD, MICHIGAN 48034 (248) 352-8950	

SCALE  
HOR: 1" =  
VER: 1" =  
FIELD BOOK NO.  
JOB NO.  
**92179**  
SHEET NO.