

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

This agreement is made on NOVEMBER 3 2004 by JBD Rochester, LLC whose address is 180 High Oak Road, Suite 100, Bloomfield Hills, Michigan 48304 and the CITY OF ROCHESTER HILLS (the City), whose address is 1000 Rochester Hills Drive, Rochester Hills, MI 48309.

RECITALS:

WHEREAS, JBD Rochester, LLC owns and occupies the property described in the attached Exhibit A; and

WHEREAS, JBD Rochester, LLC has established, 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 approved site plan and 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 JBD Rochester, LLC, or its 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. JBD Rochester, 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.

APPROVED AS TO FORM

J. Staran 2/1/05

ROCHESTER HILLS COUNSEL

3. **Action by City:** In the event JBD Rochester, 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 JBD Rochester, LLC or its 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 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 JBD Rochester, LLC or its successors, grantees or assigns, will not or cannot properly maintain the System, 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.

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 timely paid, 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: JBD Rochester, LLC:

JBD Rochester, LLC
180 High Oak Road, Suite 100
Bloomfield Hills, Michigan 48304

To the City:

Clerk
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 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.

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

WITNESSES:

JBD Rochester, LLC

By: _____

J.B. Davies

Its: _____

Manager

CITY OF ROCHESTER HILLS

By: _____

Pat Somerville, Mayor

By: _____

Beverly A. Jasinski, Clerk

STATE OF MICHIGAN
COUNTY OF Oakland

This agreement was acknowledged before me on November 3, 2004 by J.B. Davies of J.B.D Rochester, LLC on behalf of the LLC.

Jenny L. Ruthenford
Jenny L. Ruthenford, notary public
Oakland County, Michigan
My commission expires: 10/3/05

JENNY L. RUTHERFORD
NOTARY PUBLIC OAKLAND CO., MI
MY COMMISSION EXPIRES Oct 3, 2005

STATE OF MICHIGAN
COUNTY OF OAKLAND

This agreement was acknowledged before me on _____, 20____, by Pat Somerville, Mayor, and Beverly A. Jasinski, Clerk, of the City of Rochester Hills, on behalf of the City.

Drafted By:

Alpine Engineering
46892 West Road, Ste 109
Novi, MI 48377

_____, notary public
County, Michigan
My commission expires: _____

When Recorded Return to:
Clerk
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

EXHIBIT A

BEGINNING at the Southwest corner of Section 28, T.3N., R.11E., City of Rochester Hills, Oakland County, Michigan; thence North 832.00 feet along the West line of said Section 28; thence N89°23'24"E 812.00 feet along the South line of Northfield Industrial Park, as recorded in Liber 167, Page 28 of Oakland County Records; thence South 832.082 feet (recorded as 832.06 feet); thence S89°23'45"W 812.00 feet along the South line of said Section 28 to the POINT OF BEGINNING, being part of the Southwest 1/4 of said Section 28, containing 15.51 acres of land, more or less, being subject to the rights of the public to the Westerly and Southerly portion thereof, as occupied by Crooks Road and Auburn Road, and being subject to easements and restrictions of record, if any.

15-28-300-052

APPROVED *DESC*
M. [Signature]
ROCHESTER HILLS
ENGINEERING DEPT.
01-03-04

