Appendix A:
Section 433 Agreement Package

AGREEMENT FOR THE ESTABLISHMENT OF A COUNTY DRAIN AND COUNTY DRAINAGE DISTRICT FOR THE (*INSERT DEVELOPMENT NAME AND TYPE*) PURSUANT TO SECTION 433 OF ACT NO. 40 OF THE PUBLIC ACTS OF 1956, AS AMENDED

THIS AGREEMENT, made and entered into this_____ day of _____, 20_, by and between BRIAN JONCKHEERE, LIVINGSTON COUNTY DRAIN COMMISSIONER, 2300 East Grand River, Suite 105, Howell, Michigan, hereinafter referred to as "Drain Commissioner" on behalf of the proposed **(insert drain name, use development name)** Drain Drainage District; and **(insert corporation name)** _____, a Michigan **(insert corporation type)**, **(insert address)** as owner(s) of land described in Exhibit A attached hereto, hereinafter referred to as "Landowner".

WITNESSETH:

WHEREAS, Section 433 of Act No. 40 of the Public Acts of 1956, as amended, authorizes the Drain Commissioner to enter into an Agreement with the Landowner and developer, if any, to establish a drain which was constructed by the Landowner or developer to service an area of its own land as a County Drain; and,

WHEREAS, Landowner, pursuant to Section 433 of Act No. 40 of 1956, as amended, wishes to provide drainage service to its own lands and has requested same to be established and dedicated as a County Drain under the jurisdiction of the Livingston County Drain Commissioner; and,

WHEREAS, Landowner has been advised and understands and agrees to assume the total cost of the construction of the drain to include engineering, inspection, easement acquisition, legal and administrative expenses and costs attendant to this Agreement; and,

WHEREAS, Landowner further understands that the Drain constructed, or to be constructed, pursuant to this Agreement, when finally accepted by the Drain Commissioner, will be known as the (insert drain name), Drain and that the land to be drained will be known and constituted as the (insert drain name) Drain Drainage District and will be subject to assessments, for costs of future operation, inspection, maintenance and improvement; and,

WHEREAS, Landowner has agreed to assume and pay all costs as set forth herein, and,

WHEREAS, Landowner has obtained, at its own expense, a certificate from a registered professional engineer satisfactory to the Drain Commissioner to the effect that the Drain has sufficient capacity to provide adequate drainage service without detriment to or diminution of the drainage service which the outlet currently provides. A copy of said certificate being attached hereto as Exhibit B.

NOW, THEREFORE, in consideration of the premises and covenants of each, the parties hereto agree as follows:

1. Landowner agrees to construct and/or has constructed, at its expense, the Drain in accordance with plans and specifications approved by the Drain Commissioner.

2. The Landowner agrees to pay the costs of construction of said Drain and drainage facilities, including the acquisition of the necessary rights of way or easements, engineering, surveying, inspection, legal and administration costs. In addition, the Landowner has deposited with the Drain Commissioner an amount of money equivalent to five (5%) percent of the costs of construction of the Drain, not to exceed Two Thousand Five Hundred and No/l00 ($2,500.00) Dollars, which monies are to be deposited in a special drain fund to be used for future maintenance of the Drain, hereinafter referred to as "**(insert drain name)** Drain Maintenance Fund."

3. That the Landowner shall secure, at its own expense, all easements or rights of way necessary for the construction of the Drain over and across the properties owned by Landowner and across such other lands as necessary for the construction of the Drain from the point of beginning at the outlet to the point of ending. Said easements or rights of way shall be secured in writing and in a form acceptable to the Drain Commissioner. The Landowner shall be responsible for all costs for the recording of said easements, as directed by the Drain Commissioner.

4. Landowner shall secure all necessary permits or authorizations as may be required by local, state or federal law and provide copies to the Drain Commissioner. The Drain Commissioner shall be provided copies of all correspondence and reports involving any governmental agency with respect to the Drain.

5. The **(insert drain name)** Drain Maintenance Fund is agreed and understood as being for the sole benefit of the **(insert drain name)** Drain and use thereof may be made by the **(insert drain name)** Drain Drainage District at large, or part thereof, and that such payment shall not relieve the subject property from any future assessments levied pursuant to the Drain Code of 1956, as amended.

6. Landowner agrees to indemnify and hold harmless the Drain Commissioner and the **(insert drain name)** Drain Drainage District for any and all claims, damages, lawsuits, costs and expenses, arising out of or incurred as a result of the Drain Commissioner assuming responsibility for the drain under federal, state and/or local environmental laws and regulations, including all future amendments to such laws or regulations and the administrative and judicial interpretation thereof, except for liability arising out of the gross negligence or intentional wrongful conduct of the Drain Commissioner or its agents.

7. Modification, amendments or waivers of any provisions of the Agreement may be made only by the written mutual consent of the parties.

DRAFT

This Agreement shall become effective upon its execution by the Landowner and the Drain Commissioner and shall be binding upon the successors and assigns of each party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the duly authorized officers as of the day and year first above written.

(INSERT DRAIN NAME) DRAIN DRAINAGE DISTRICT

_____
By: Brian Jonckheere
Livingston County Drain Commissioner

(INSERT COMPANY NAME)

_____
By:_____
Its:_____

[IF A CONDOMINIUM ASSOCIATION HAS BEEN FORMED, PROVIDE THIRD SIGNATORY & ADDITIONAL NOTARY LOCATION FOR AN AUTHORIZED REPRESENTATIVE OF A CONDOMINIUM ASSOCIATION TO SIGN]

STATE OF MICHIGAN)
) ss.
COUNTY OF LIVINGSTON)

On this_____day of_____, 200_, before me, a Notary Public in and for said County, personally appeared BRIAN JONCKHEERE, LIVINGSTON COUNTY DRAIN COMMISSIONER, to me known to be the person described in and who executed the foregoing instrument and acknowledged the same to be her free act and deed.

_____
Notary Public
Livingston County, Michigan
My Commission Expires: _____

DRAFT

STATE OF MICHIGAN)
) ss.
COUNTY OF LIVINGSTON)

On this_____day of_____, 200_, before me, a Notary Public in and for said County, personally appeared **(INSERT SIGNATORY NAME)**, to me known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his/her free act and deed.

_____
Notary Public
Livingston County, Michigan
My Commission Expires: _____

Instrument Drafted By:
(INSERT DRAFTEE NAME)

When Recorded Return To:
Brian Jonckheere
Livingston County Drain Commissioner
2300 East Grand River, Suite 105
Howell, MI 48843

DRAFT

433 STORM WATER DRAINAGE DISTRICT CHECK LIST

SUBDIVISION OR CONDOMINIUM (circle one)
DEVELOPMENT NAME:
TOWNSHIP: SECTION:
ENGINEER: PHONE: FAX:
CONSULTING ENGINEER DRAINAGE REVIEW APPROVAL BY:_____, DATE:
DRAIN COMMISSIONER DRAINAGE REVIEW APPROVAL DATE: _____

CHECK LIST FOR ITEMS SUBMITTED				
ITEM REQUIRED	(footnote, see pg. 2)	DATE REC'D	REVIEWED BY:	DATE
A. STORM DRAIN CONSTRUCTION ESTIMATE	(1)			
B. $2,500.00 APP FEE AND ADMINISTRATIVE FEE	(2)			
C. TENTATIVE 433 AGREEMENT TO ESTABLISH DISTRICT				
D. RECORDED 433 AGREEMENT TO ESTABLISH DISTRICT LIBER:_____PAGE(S):_____	(3)			
E. TENTATIVE RELEASE OF RIGHT OF WAY (ROW) FORM(S)				
F. RECORDED RELEASE OF ROW: LIBER:_____PAGE(S):_____	(4)			
G. DRAIN COMMISSIONER SIGNS FINAL PLAT	(5)			
H. EROSION CONTROL PERMIT IN GOOD STANDING	(6)			
I. PROPRIETOR'S ENGINEER DAILY INSPECTION RPTS.	(7)			
J. PROPRIETOR'S ENGINEERS ACCEPTANCE REPORT				
K. FINAL INSPECTION (Jointly with Road Commission)				
L. AS BUILT AND FINAL PLAT MYLARS				
M. APPROVAL OF PROPLED DEED RESTRICTIONS	(8)			

DRAFT

N. PREPARATION & APPROVAL OF ASSESSMENT ROLL (9)			
O. ACCEPTANCE OF ROADS BY LCRC			
P. COMPLETION OF MAINTENANCE BOND (10)			
R. DETERMINATION OF PRACTICABILITY & FINAL ACCEPTANCE BY LCDC (11)			
SITE CONDOMINIUM SPECIFIC REQUIREMENTS:	DATE REC'D	REVIEWED BY:	DATE
TENTATIVE MASTER DEED (9)			
MASTER DEED ACCEPTANCE (9)			
COPY OF RECORDED MASTER DEED			

FOOTNOTES:

(1) Prior to issuance of a grading permit Developer's Professional Engineer shall submit for LCDC approval a cost estimate for construction of all drainage structures located outside proposed public road right of ways.

(2) $2,500.00 Fee is intended as the drain account balance reserved for future maintenance at final acceptance. Additional fees shall be submitted for administrative expenses of establishing a district according to the Drain Commissioners fee schedule, including legal review of documents, any recording fees incurred by the district, final inspection costs, and publication of the drainage district. The $2,500.00 fee is based on a stormwater system consisting solely of gravity components. Systems with non-gravity components are subject to fees above and beyond $2,500.00. pursuant to Section 196 of the Michigan Drain Code, Act 40 of the Public Acts of 1956, as amended.

(3) 433 Agreement to Establish District shall be signed by an authorized representative of the Owner and Drain Commissioner and be submitted for recording at the Livingston County Register of Deeds prior to approval of construction plans, and the sale of any lots in a plat, or units in a site condominium. If property is sold on a land contract, both land contract vendor and vendee must sign the agreement. If more than one individual, corporation, partnership, or limited liability company has interest in the property, duly authorized representatives of each shall sign the 433 Agreement. Developer shall obtain on the 433 Agreement the signatures of all Landowners or Unit Owners to whom lots are sold, if any.

(4) Where the preliminary plat, the construction plans, or the Exhibit B documents approved by the LCDC show drainage easements, a legal description of all easements shall be included on a Release of Right-of-Way Form, which shall be in a LCDC-approved format, signed by an authorized representative of the landowner/developer, and recorded prior to the sale of any lots which are to be encumbered by easements. If lots are sold prior to the Developer releasing an easement to the District, the Developer shall obtain all necessary easements on said lots for completion of the project. Any lots sold on land contract must have the signature of both land contract vendor and vendee on the easement.

(5) The Drain Commissioner shall be in receipt of a signed 433 Agreement, all necessary cash deposits, and approved deed restrictions prior to construction plan approval and/or signing of the final plat.

(6) Landowner/Developer shall not be in violation of permit conditions and all fees to date shall be fully paid.

DRAFT

(7) The proprietor shall retain a qualified inspector, supervised by a registered professional engineer, to perform infrastructure construction inspection & assure construction according to LCDC approved plans. Inspection activities shall be documented by written daily reports acceptable to the LCDC. Daily inspection reports shall be bound & submitted to the LCDC for review prior to final acceptance.

(8) Deed Restrictions & Master Deeds shall be submitted and approved by the LCDC prior to construction plan approval. The Landowner shall include standard language provided by the LCDC for Deed Restrictions & Master Deeds, & remove or modify any language objectionable to the LCDC prior to recording.

(9) Effective March 1, 1999, Developer's Engineer shall develop & submit a proposed assessment roll, on paper and in electronic format, for future drain maintenance in the development. The roll shall include benefit factors for each lot in the development that is not common-owned property (e.g. parks or open space). Benefit factors shall be based on use of roads, lot size, topography, etc. The sum of the benefit factors for each parcel shall equal 1.0, and benefit factors for each parcel shall be carried to five decimal places.

(10) Prior to Final Acceptance of the Drainage Infrastructure the Developer shall complete a 2-year maintenance bond for the development, which shall guarantee the performance of the developer in the event that defective work is found after final acceptance of the drain.

(11) If upon completion of the final inspection all punch list items are addressed & the LCDC determines the proposed drain practical, the LCDC may issue a letter granting final acceptance, & shall subsequently release the balance of any cash bond and to the developer. If the LCDC determines the proposed drain impractical, pursuant to Section 52 of the Michigan Drain Code the LCDC shall notify the developer in writing, provide the reasons for determining the proposed drain impractical, and refund the balance of any funds remaining from deposits by the developer.

This document is subject to future revision by the LCDC and in no way limits the authority of the LCDC to impose requirements beyond those listed above.

OTHER NOTES:_____

DRAFT

EXHIBIT B

I, **[INSERT ENGINEER NAME]**, a Registered Professional Engineer in the State of Michigan, do hereby certify to the following for the **[INSERT DRAIN NAME, USE DEVELOPMENT NAME]**, Drain Drainage District in Section [**INSERT SECTION NUMBER] of [INSERT TOWNSHIP NAME]**:

1. The above-mentioned lands to be developed naturally drain into the area served by the existing drains and that the existing drains are the only reasonable available outlet for the drainage from the lands to be developed.

2. To my knowledge, there is

   a. Existing capacity in the existing drains to serve the lands to be developed without detriment to or diminution of the sanitary sewer or storm drainage service provided or to be provided in the foreseeable future in the existing district.

   b. No foreseeable adverse impact on downstream proprietors created by the storm water flow from the ***[INSERT DRAIN NAME, USE DEVELOPMENT NAME]*** Drain Drainage District.

_____

[TYPE ENGINEER NAME & NUMBER]

Date:_____

DRAFT

DRAINAGE EASEMENT

For and in consideration of prospective benefits to be derived by reason of the construction, operating and maintaining of a certain Drain under the supervision of the Livingston County Drain Commissioner, 2300 East Grand River Avenue, Howell, Michigan, as hereinafter described,

[insert tax I.D.# of land, if applicable]

[insert name(s) and address of owner(s)]

does hereby convey and release to the **(insert drain name)** Drain Drainage District, the Right of Way for a certain Drain, hereinafter more particularly designated and described, over and across the following lands owned by me, and situated in the Township of **(insert township name)**, County and State aforesaid, which owned are described as:

[enter legal description of land here or refer to attached exhibit]

The Right of Way or Easement conveyed is described as:

[enter easement description here or refer to attached exhibit]

The route and course of said Drain is described as follows, to-wit:

[enter the route and course of drain here or refer to attached exhibit]

This conveyance is based upon the above described line of route and shall be deemed to include the extreme width of said Drain as shown in the survey thereof, to which survey reference is hereby made for a more particular description, and includes a release of all claims to damages in any way arising from or incident to the opening and maintaining of said Drain across said premises; and also the feet of ground on either side of the center line of said Drain, for the construction thereof; and shall be deemed a sufficient conveyance to vest in the Drainage District an easement in said lands for the uses and purposes of drainage together with such rights of entry upon, passage over, deposit of excavated earth and storage of material and equipment on such lands, as may be necessary or useful for the construction, maintenance, cleaning out and repair of such drain.

Witness, (my, our) hand and seal, dated_____, 20__.

[INSERT CORPORATION NAME IF ON BEHALF OF A CORPORATION]

_____

Printed Name:_____

[PRINT JOB TITLE IF ON BEHALF OF A CORPORATION]

DRAFT

[PROVIDE SECOND SIGNATURE IF HUSBAND AND WIFE OR OTHER SECOND OWNER]

DRAFT

STATE OF MICHIGAN)
) SS
COUNTY OF LIVINGSTON)

On_____, 20___, before me, a Notary Public in and for said County, personally appeared____to me known to be the person described in and who executed the foregoing instrument, and does acknowledge that they executed same as their free act and deed.

_____
Notary Public
Livingston County, Michigan
My Commission Expires:_____

[PROVIDE SECOND NOTARY WITNESS IF MORE THAN ONE SIGNATURE]

Instrument Prepared by:
[INSERT DRAFTEE NAME & ADDRESS]

When Recorded Return to:
Brian Jonckheere
Livingston County Drain Commissioner
2300 East Grand River, Suite 105
Howell, Michigan 48843

DRAFT