

RECORDED

1998 SEP 24 P 4:26

NANCY HAVILAND  
REGISTER OF DEEDS  
LIVINGSTON COUNTY, MI.  
48843

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**AGREEMENT FOR THE ESTABLISHMENT OF A COUNTY  
DRAIN AND COUNTY DRAINAGE DISTRICT FOR "THE FOREST",  
A SINGLE FAMILY RESIDENTIAL PLANNED UNIT DEVELOPMENT,  
PURSUANT TO SECTION 433 OF ACT NO. 40 OF  
THE PUBLIC ACTS OF 1956, AS AMENDED**

**THIS AGREEMENT**, made and entered into this 4<sup>th</sup> day of September 1998, by and between BRIAN JONCKHEERE, LIVINGSTON COUNTY DRAIN COMMISSIONER, hereinafter referred to as "Drain Commissioner" on behalf of the proposed Forest Drain Drainage District; and OLYMPIA DEVELOPMENT COMPANY, a Michigan Limited Liability Corporation, 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 Forest Drain and that the land to be drained will be known and constituted as the Forest 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/100 (\$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 "The Forest 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 Forest Drain Maintenance Fund is agreed and understood as being for the sole benefit of the Forest Drain and use thereof may be made by the Forest 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 Forest 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.

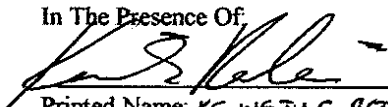
7. Modification, amendments or waivers of any provisions of the Agreement may be made only by the written mutual consent of the parties.

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.

**THE FOREST DRAIN  
DRAINAGE DISTRICT**

In The Presence Of:

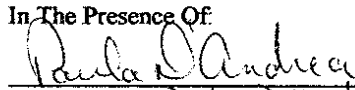
  
Printed Name: KENNETH E. REKER


  
Brian Jonckheere  
Livingston County Drain Commissioner

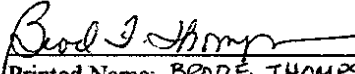
  
Printed Name: DOUGLAS MEYERS

**OLYMPIA DEVELOPMENT CO., LLC.**

In The Presence Of:

  
Printed Name: PAULA D'ANDREA

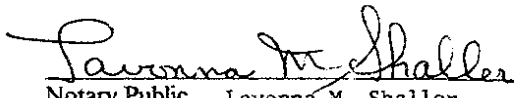
  
Frank M. Soave Jr., Partner

  
Printed Name: BRADF. THOMPSON

STATE OF MICHIGAN            )  
  )  
COUNTY OF LIVINGSTON    )

ss.

On this 4th day of September, 1998, 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   Lavonna M. Shaller  
Livingston County, Michigan  
My Commission Expires: 9/30/99

STATE OF MICHIGAN )  
 )  
COUNTY OF LIVINGSTON ) ss.

On this 10<sup>th</sup> day of September 1998, before me, a Notary Public in and for said County, personally appeared Frank M. Soave Jr. of Olympia Development Co., L.L.C., 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.

*Paula D'Andrea*  
Notary Public *Called at acting in*  
Livingston County, Michigan  
My Commission Expires: 9.29.99.

Instrument Drafted By:  
Geoffrey H. Scidlein (P32401)  
Stacy L. Hissong (P55922)  
HUBBARD, FOX, THOMAS,  
WHITE & BENGTON, P.C.  
Attorneys for Drain Commissioner  
5801 West Michigan  
P.O. Box 80857  
Lansing, MI 48908-0857  
517/886-7176

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

WHEN RECORDED RETURN TO:  
BRIAN JONCKHEERE  
LIVINGSTON COUNTY DRAIN COMMISSIONER  
2300 E. GRAND RIVER, SUITE 105  
HOWELL, MI 48843

c:\drain

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF "THE FOREST", A SINGLE FAMILY RESIDENTIAL  
PLANNED UNIT DEVELOPMENT:**

A part of the N.E. 1/4, Section 12, T.2N., R.4E., Marion Township, Livingston County, Michigan more particularly described as **BEGINNING** at the North 1/4 corner of said Section 12; thence N. 85 deg 02 min 59 E. sec along the North line of said Section 12 and the centerline of Francis Road (100 ft. wide right-of-way) 1301.02 ft. (recorded as 1301.13 ft.); thence S. 00 deg 56 min 55 sec E. 2006.24 ft. (recorded as S. 00 deg 57 min 18 sec E. 2006.42 ft.); thence S. 85 deg 58 min 59 sec W. 1273.79 ft. (recorded as S. 85 deg 58 min 57 sec W. 1274.05 ft.) to the North-South 1/4 line of said Section 12; thence N. 01 deg 41 min 46 sec W. 1983.80 ft. (recorded as N. 01 deg 41 min 54 sec W. 1984.00 ft.) along said North-South 1/4 line, to the **POINT OF BEGINNING**, containing 58.869 acres subject to the rights of the public or any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes, also subject to easements and restrictions of record, if any.

**EXHIBIT "B"**

I, Brad F. Thompson, a Registered Professional Engineer, do hereby certify that the Forest Drainage District in Section 12, to the following:

1. The lands to be developed naturally drain into the area served by the existing drains and that the existing drains are the only reasonably available outlet for the drainage from the lands to be developed.
2. To my knowledge, there is existing capacity in the existing drains to serve the lands to be developed without detriment or diminution of the storm drainage service provided or to be provided in the foreseeable future to the area in the existing district. This statement is made with reliance upon consultation with the office of the Livingston County Drain Commissioner and upon review and approval of the construction plans by that office.

  
Brad F. Thompson, P.E., P.S., #23828

9-1-98  
Date