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OF COUNSEL:
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May 27, 1999

Via Fax 734-994-2459 & US Mail

Ms. Janis A. Bobrin
Washtenaw County Drain Commissioner
Courthouse Annex Bldg.
P.O. Box 8645
Ann Arbor, MI 48107-8645

Dear Ms. Bobrin:

You have asked our opinion as to what a Drainage District should require under a 433 Agreement to **protect the Drainage District from liability due to sheet flow from a development's drainage district.**

As a general rule an upland owner has the right to **natural drainage flow over and across the adjacent lower properties.** Any instance where the natural surface flow of water is increased or concentrated, and a neighboring property receives more surface water resulting from the change, the increase in flow **constitutes a trespass.** **If there is an increase in water on neighboring lands, the Drainage District could be liable for damages under the cause of action of trespass nuisance.** Therefore, to protect the Drainage District from future liability, flooding easements should be required for adjacent properties of a development when the development's drainage "sheet flows" onto neighboring properties.

In circumstances involving the outlet of the development's drainage system into a watercourse, a different set of **standards apply.** **When water flows into a watercourse with defined banks and bottom, riparian rights apply.** This means that the development has the right to utilize the watercourse as long as the use is reasonable and does not unduly burden the other riparian owners. **Depending on the circumstances, the Drain Commissioner's office may require easements downstream if there is a probability of flooding.** Again, requiring downstream easements protects the Drainage District from future liability should flooding occur. These easements should be granted to the Drainage District, and may or may not be considered part of the route and course of the drain.

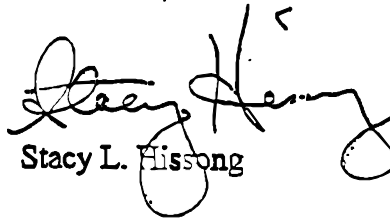
Ms. Janis A. Bobrin
May 27, 1999
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Please note that Section 433 of the Drain Code envisions the requirement of securing an adequate outlet. Subsection (7) of Section 433 states that a registered engineer must certify that the outlet for the existing drain is the only reasonable available outlet for the drain and that there is sufficient capacity in the existing outlet for the proposed drain to serve as an adequate outlet without detriment or diminution of the drainage service which the outlet presently provides.

Should you have any questions relative to these issues, please do not hesitate to contact Geoff Seidlein or myself.

Sincerely,

HUBBARD, FOX, THOMAS,
WHITE & BENGTSÖN, P.C.



Stacy L. Hissong

SLH/kmo

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EASEMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2000 for and in consideration of \$ _____ and prospective benefits to be derived by reason of the construction, operating and maintaining of a certain Drain under the supervision of the Washtenaw County Drain Commissioner and the County of Washtenaw and the State of Michigan, as hereinafter described, INSERT NAME, MARITAL STATUS AND ADDRESS OF LANDOWNER (the "Landowners") do hereby convey and release to Janis A. Bobrin, Washtenaw County Drain Commissioner on behalf of the INSERT NAME OF DRAINAGE DISTRICT, (the "Drainage District") of Courthouse Annex Building, P.O. Box 8645, Ann Arbor, Michigan 48107-8645, an Easement for the INSERT NAME OF DRAIN Drain situated in the Township of INSERT TOWNSHIP, County and State aforesaid. Landowners do hereby convey and release to Drainage District a Drainage Easement with an elevation of approximately _____ feet above mean sea level, USGS datum, for drainage purposes and flood control.

WHEREAS, Landowners are the owner of lands in the aforesaid County described as:

INSERT LEGAL DESCRIPTIONS OF ENTIRE PROPERTY HERE

WHEREAS, the Drainage District wishes to obtain an easement from Landowners in the event that there is an increase in the velocity or quantity of water flowing onto Landowners' property as a result of the construction of the Drain.

NOW THEREFORE, the parties hereto agree as follows:

- 1. Landowners hereby grant, convey and release unto Drainage District an Easement over and upon their lands for the purpose of allowing for increases in velocity or quantity of water flow onto Landowners' property.

~ Said Easement is described separately as follows:

Insert LEGAL DESCRIPTION OF EASEMENT

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~ Landowners, their heirs, executors, administrators, successors and assigns reserve its rights and privileges to the area encompassed by the Easement as may be used and enjoyed to include the planting and harvesting of agricultural crops so long as the use(s) do not interfere with or abridge the rights granted to and easement hereby acquired by the Drainage District;

~ Landowners, their heirs, executors, administrators, successors and assigns hold Drainage District harmless to all claims to damages in any way arising from or incident to the drainage and any increased flow onto premises by reason of the drain and maintenance or improvement thereof during the time of maintenance and improvement of said drain, or at any time in the future, such release for damages releases the Drainage District, its successors and assigns from any damages whatsoever arising out of the flooding of said lands within the easement right of way to any depth at any time in the future by reason of the construction of such drainage improvements and the flooding caused by such construction or their use during the time of construction or at any time in the future;

~ This Easement may be terminated in whole or in part by written agreement of all of the parties;

~ This conveyance shall be deemed sufficient to vest in Drainage District an Easement in said lands for the uses and purposes of any increased flow onto Landowners' property.

In witness whereof, the parties hereto have executed this Agreement the day and year first above written.

WITNESSES:

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LANDOWNERS:

~

(TYPE NAME OF LANDOWNER)

(TYPE NAME OF LANDOWNER)

WITNESSES:

DRAFT

INSERT NAME OF DRAIN
DRAINAGE DISTRICT

~

Janis A. Bobrin
Washtenaw County Drain Commissioner

~
~

)ss.

COUNTY OF

The foregoing instrument was acknowledged before me __, ~ day of
2000, by

Notary
County, Michigan

My commission expires:

STATE OF MICHIGAN

)ss.

COUNTY OF

The foregoing instrument was acknowledged before me __, day of
2000, by
~

, Notary
County, Michigan

My commission expires:

STATE OF MICHIGAN

)ss.

COUNTY OF

The foregoing instrument was acknowledged before me this day of
1999, by Janis A- Bobrin, Washtenaw County Drain Commissioner on behalf of the _____
DRAINAGE DISTRICT

, Notary
County, Michigan

My commission expires:

When Recorded Return To:
Janis A. Bobrin
Washtenaw County Drain Commissioner
Courthouse Annex Building
P.O. Box 8645
Ann Arbor, Michigan 48107-86455
(734) 994-2525

Drafted By:
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...Stacy L. Hissong (P5-5922)
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