

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

TOLL NORTHEAST V CORP., a Delaware
corporation, as successor in interest to RED
EQUITIES, LLC, a Michigan limited liability
company,

Plaintiff,

v.

LODI TOWNSHIP, a Michigan municipal
corporation,

Defendant.

Case No. 05-001086-NZ

Hon. Tracy Van den Bergh

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SECOND AMENDMENT TO CONSENT JUDGMENT

At a session of said Court held in the Courthouse,
County of Washtenaw and State of Michigan
on: _____, 2025.

PRESENT: Hon. _____
Circuit Court Judge

Plaintiff Toll Northeast V Corp. ("Toll" or "Plaintiff") and Lodi Township ("Defendant" or the "Township") wish to amend the Consent Judgment entered in this action on February 13, 2007 (the "Original Consent Judgment"), as revised by that First Amendment to Consent Judgment entered on October 30, 2023 (the "First Amendment"), to revise certain terms and conditions regarding development of certain of the properties subject to the Original Consent Judgment and First Amendment; the Court having reviewed the agreements in this Second Amendment to

Consent Judgment (the “Second Amendment”) and having specifically found that its terms are fair, just, reasonable, and in the public interest, and that it has been entered into in good faith by the parties:

THE COURT HEREBY FINDS AND IT IS ORDERED AND ADJUDGED as follows:

1. **Background.** The following findings are incorporated within and made a part of this Amended Consent Judgment:

a. The Original Consent Judgment was entered in the above-captioned lawsuit on February 13, 2007 by Washtenaw County Circuit Court Judge David S. Swartz with respect to the use and development of approximately 206 acres of land located in Section 1 of Lodi Township, as more particularly described in **Exhibit A** to the Original Consent Judgment (the “Original Properties”). The Original Consent Judgment was recorded in Liber 4609, Pages 207 *et seq.*, with the Washtenaw County Register of Deeds.

b. Under the Original Consent Judgment, the Township was enjoined from interfering with the use of the Property in a manner consistent with the Township’s R-3 (low-density multiple family residential) zoning designation.

c. Plaintiff Red Equities, LLC had entered into agreements to acquire approximately 106 acres of the Original Properties covered by the Original Consent Judgment, which are described and depicted on **Exhibit B** to the First Amendment (the “Red Equities Parcels”). The Red Equities Parcels consist of two non-contiguous parcels of land containing approximately 46.6 acres and 59.9 acres, located in the southwest corner of Section 1 of the Township.

d. Notwithstanding the R-3 zoning of the Red Equities Parcels, Red Equities agreed to develop the Red Equities Parcels for a maximum of 107 single-family residential units. The parties further agreed that if Red Equities was not able to obtain a governmentally approved individual on-site water well within the boundary of an individual lot or site, that the maximum number of residential units in the Residential Development will be reduced accordingly. The parties entered into the First Amendment in which, among other things, the Township approved the preliminary site plans for the single-family development, subject to the terms and conditions of the First Amendment. The Court entered the First Amendment on October 30, 2023, which was recorded in Liber 5568, Page 166, *et seq.*, with the Washtenaw County Register of Deeds.

e. On or about October 16, 2024, Toll acquired the Red Equities Parcels and has submitted applications for final site plan approvals for the Arbor Preserve–North and Arbor Preserve–South single-family developments, consisting collectively of 107 residential unit as described in the First Amendment (collectively, the “Development”).

f. Certain issues have arisen between the parties in connection with final site planning of the Development that were not fully evaluated or addressed in the First Amendment. As a result, the Township and Toll, as successor to Red Equities with respect to the Red Equities Parcels, wish to further amend the First Amendment in order to reflect the change in ownership interest of the Red Equities Parcels and to address and confirm the resolution of the outstanding issues.

2. **Substitution Of Parties And Amendment Of Caption.** Toll, as the purchaser of the Red Equities Parcels, shall be substituted as the party-plaintiff in place of Red Equities, LLC.

The Clerk shall make the appropriate entries in the Court records to revise the caption of the lawsuit to substitute Toll as the Plaintiff herein.

3. **Tree Replacement.** The Red Equities Parcels are largely covered with trees. A number of trees will be removed to accommodate the Development. The Township's Zoning Ordinance provides for the replacement of certain removed trees on site. The parties agree that there is insufficient space on the Red Equities Parcels to replace all of the trees required to be replaced under the Zoning Ordinance. The Final Site Plans identify the number and location of trees to be removed and the number and location of trees to be planted on site. The Zoning Ordinance, however, does not designate alternatives for on-site replacement where such replacement is not feasible. The Parties agree that in lieu of replacement for the trees that cannot be placed on site as set forth in the Final Site Plans, Toll, prior to the commencement of tree clearing, will contribute the sum of Five Hundred Thousand Dollars (\$500,000) to the Township for use by the Township, at its discretion, for natural resource preservation, future tree planting, park or pathway improvements, acquisition of development rights or any other purpose that relates to the protections and preservation of natural resources and farmland in the Township.

4. **Setback Deviations.** Certain Units as reflected in the Preliminary Site Plans attached to the First Amendment encroach into the wetland setbacks set forth in the Township's Zoning Ordinance. In order to move the houses on those Units outside of the wetland setbacks, the Parties agree to slight deviations from front-yard setbacks for Arbor Preserve-North Unit Nos. 26, 30, 34, 38, 45, and 47, and Arbor Preserve-South Unit Nos. 17, 18, 24, 37, 43, 46 and 47, and the encroachment of Unit 26 into the wetland setback, as reflected in the plan attached hereto as **Exhibit 1.**

5. **Access to Adjacent Property.** Notwithstanding any existing or future ingress/egress easement between Toll and the owner of certain adjacent land identified as Parcel No. M-13-01-300-013 (the "Neighbor Parcel"), Toll agrees to install a stub connection from the cul-de-sac on Gilbert Court located in Arbor Preserve-South, to the Neighbor Parcel, as depicted on Sheet 37 of the Final Site Plan for Arbor Preserve—South attached as **Exhibit 2**, to accommodate police, fire, emergency and other Township access to the Neighbor Parcel to and from Waters Road.

6. **Approval of Final Site Plan and Commencement of Construction.** Unless an earlier commencement date is approved by the Township in the exercise of its discretion and notwithstanding the Township's approval of the Final Site Plans for the Development, no construction shall commence until Toll receives all applicable regulatory approvals for the Project, including without limitation, from the Washtenaw County Road Commission, Washtenaw County Water Resources Commission and the Michigan Department of Environment, Great Lakes and Energy ("EGLE"), and not until obtaining the Township's acknowledgement that the conditions of approval set forth in the resolution approving the Final Site Plans have satisfied, which acknowledgment shall be handled administratively. *been*

7. **No Oral Modification.** This Second Amendment may be modified only by written agreement of Toll, the Township, or their successors in interest, and approval of the Court to the extent required herein.

8. **Successors and Assigns.** All of the provisions of this Second Amendment shall be deemed to run with the land and shall be binding upon and inure to the benefit of Toll and the Township, and each of their respective heirs, successors, assigns, purchasers and transferees, and

reference in this Second Amendment to Toll and/or the Township shall also mean and refer to its rights and obligations under this Second Amendment.

9. **Recording.** A copy of this Second Amendment shall be recorded at Toll's' expense with the Register of Deeds for Washtenaw County.

10. **Public Health, Safety and Welfare.** Toll and the Township acknowledge and represent that the terms and conditions of this Second Amendment are fair and reasonable and that the land uses authorized herein and the locations of same are appropriate and reasonable under all of the circumstances present and that this Second Amendment is consistent with the public health, safety and welfare of the community.

11. **Enforcement.** The Court hereby retains jurisdiction of this matter for the purpose of resolving any disputes that may arise under the terms hereof.

12. **Continuing Validity of Original Consent Judgment and First Amendment.** Except as specifically amended by this Second Amendment regarding the Red Equities Parcels, all of the terms and conditions of the Original Consent Judgment as thereafter interpreted by the Court in an Order Denying Motion for Order to Show Cause dated June 29, 2021, with respect to the remaining Original Properties, and the terms of the First Amendment with respect to the Red Equities Parcels, shall remain in full force and effect.

13. **Authority.** By their execution of this Second Amendment, the parties each represent and warrant that they have the authority to execute this Judgment and bind themselves and/or their respective entities to this Second Amendment.

14. **Final Decision.** This Second Amendment is a final order and closes the case.

Dated: _____

CIRCUIT COURT JUDGE

Approved For Entry As To Form And
Substance:

DYKEMA GOSSETT PLLC

By: _____
Alan M. Greene (P31984)
Attorneys for Plaintiff
39577 Woodward Avenue, Suite 300
Bloomfield Hills, MI 48304

By: _____
Jesse O'Jack (P29548)
Attorneys for Defendant
PO Box 363
Saline, MI 48176

TOLL NORTHEAST V CORP., a Delaware
corporation

By: _____

Its: _____

LODI TOWNSHIP, a Michigan municipal
corporation

By: _____

Its: _____

125831.000007 4896-8881-5718.1

EXHIBIT 1
(Setback Plan)



|

EXHIBIT 2
(Neighbor Parcel Plan)

125831.000007 4896-8881-5718.2



