

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

STERLING LAND VENTURES, LLC, a Michigan  
limited liability company; Crystal Wood Estate  
Association; and Crystal Wood Condominium Association,  
Successors in Interest to  
MELVIN E. GILLETT, Trustee U/T/A  
April 17, 1991 and SUSAN K. GILLETT,  
Trustee U/T/A April 17, 1991; Crystal Wood Estate Association;  
and Crystal Wood Condominium Association;  
Plaintiffs,

vs.

Case Number 1998-016809-CZ  
Hon. Michael P. Hatty

MARION TOWNSHIP, a municipal corporation; and  
MARGARET DUNLEAVY, Livingston County Clerk;  
Defendants.

Michael J. Kehoe PC  
Michael J. Kehoe (P33839)  
Attorneys for Defendants  
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Crystal Wood Estate Association  
Plaintiff  
273 Crystal Court  
Howell, MI 48843

**ADKISON, NEED & ALLEN, P.L.L.C.**  
**Phillip G. Adkison (P26303)**  
Attorney for Substituted Plaintiff,  
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Crystal Wood Condominium Association  
Plaintiff  
283 Wood Point  
Howell, MI 48843

**FIRST AMENDED AND RESTATED CONSENT JUDGMENT**

At a session of said Court  
Held in the City of Howell, County of Livingston  
State of Michigan on Nov. 25, 2013  
PRESENT: HON. MICHAEL P. HATTY  
CIRCUIT COURT JUDGE

Current Plaintiffs, Sterling Land Ventures, LLC, a Michigan limited liability company, by and through its attorney, Phillip G. Adkison, Crystal Wood Estate Association, and Crystal Wood Condominium Association, all of whom are successors in interest to Melvin E. Gillett, Trustee U/T/A April 17, 1991, and Susan K. Gillett, Trustee U/T/A April 17, 1991, (hereafter the "Original Plaintiffs") and Defendant Marion Township, a Michigan municipal corporation, by and through its attorney, Michael J. Kehoe, stipulate to the entry of this First Amended and Restated Consent Judgment.

### **BACKGROUND**

1. On December 13, 1999, this court entered a Consent Judgment between the Original Plaintiffs and Defendant Marion Township relating to property located in Marion Township, Livingston County Michigan described as:

A part of the Northeast 1/4 of Section 3, Town 2 North, Range 4 East, Marion Township, Livingston County, Michigan, more particularly described as follows: Commencing at the East 1/4 corner of said Section 3; then North 02 degrees 00 minutes 52 seconds West, along the East line of said Section 1584.00 feet to the Point of Beginning of the Parcel to be described; thence South 89 degrees 21 minutes 11 seconds West, 1054.95 feet; thence North 00 degrees 39 minutes 29 seconds West, 246.98 feet; thence South 89 degrees 15 minutes 07 seconds West, 651.91 feet to the centerline of Norton Road (66 feet wide); thence North 32 degrees 39 minutes 56 seconds East, along said centerline 619.46 feet; thence South 60 degrees 24 minutes 54 seconds East, 251.79 feet; thence North 32 degrees 39 minutes 56 seconds East, 173.00 feet; thence North 60 degrees 24 minutes 54 seconds West, 87.95 feet; thence North 32 degrees 39 minutes 56 seconds East, 250.00 feet; thence North 89 degrees 24 minutes 02 seconds East, 968.13 feet; thence South 02 degrees 00 minutes 52 seconds East, 1034.00 feet to the Point of Beginning, containing 30.10 acres, more or less, and subject to the rights of the public over the existing Norton Road. (hereafter "the Property")

2. The December 13, 1999, Consent Judgment arose from a lawsuit filed by the Original Plaintiffs challenging the results of a public referendum which overturned a decision of

the Marion Township Board granting their request to rezone the Property from Suburban Residential (SR) to Urban Residential District (UR).

3. Defendant Marion Township and the Original Plaintiffs stipulated to the following terms and conditions in the December 13, 1999, Consent Judgment:

a. The Original Plaintiffs are permitted to construct no more than 125 site built dwelling units on the Property provided it remains zoned Suburban Residential (SR).

b. Access to the proposed development must be from Norton Road (M-155).

c. All roadways within the development must be constructed in accordance with the standards of the Livingston County Road Commission and Marion Township, including standards related to the type and width of pavement. Right of way requirements need not be followed.

d. All units must comply with the Schedule of Regulations for the Suburban Residential (SR) Zoning District.

e. The Property must be serviced by public sanitary sewer and public water systems to be constructed and installed solely at the Original Plaintiffs' expense.

f. All portions of the Property bordering the existing single family residential dwelling units must have a landscape buffer as described in an exhibit attached to the Consent Judgment.

g. Development of the Property must be consistent and in compliance with a site plan for development prepared by Boss Engineering and dated July 12, 1999, as well

as a revised site plan dated October 19, 1999, also attached to the Consent Judgment and which were deemed to have preliminary approval by Marion Township.

h. All open space areas designated in the site plan and all landscaped areas within the development must be perpetually maintained, repaired and replaced in order to keep plants and vegetation in a healthful manner. These areas must be kept free from debris.

i. The Original Plaintiffs must record and file documentation necessary to insure future maintenance of open space and landscaped areas through the condominium Master Deed and by the Homeowners Association. These documents must commit the Homeowners Association to perpetual maintenance, repair and replacement of open space and landscaped areas and must be approved by Marion Township. The Declaration must be recorded with the Livingston County Register of Deeds and must include the duty of the Homeowners Association to levy appropriate, sufficient, and reasonable assessments, both annual and special, to defray all costs and expenses associated with the maintenance, repair and replacement of open space areas.

j. Required approvals must be obtained from other governmental agencies having jurisdiction over the Property, including, but not limited to, the Livingston County Road Commission, the Livingston County Health Department, and the Michigan Department of Environmental Quality in addition to federal agencies with jurisdiction.

k. Except where specifically exempted by the terms of the Consent Judgment, the project must comply with all ordinances of Marion Township including the

Zoning Ordinance, Building Code, and Code of Ordinances that were in effect at the time the Consent Judgment was entered.

l. Marion Township is permitted to apply newly enacted Township ordinances, rules or regulations not in conflict with those in effect on December 13, 1999, and whose application will not prevent the development of the project as permitted by the terms of the Consent Judgment. Changes in Township laws, regulations, plans or policies specifically mandated by changes in state or federal law are permitted.

m. Marion Township is obligated to review all plans and specifications for development within a reasonable period of time.

n. The Original Plaintiffs agreed to submit final site plans and specifications within 120 days of December 13, 1999, and to commence all construction within twenty-four months of that date. Failure to commence construction and make substantial progress toward completion of development by December 13, 2001, was deemed to be a waiver of the right to develop the Property for multi-family use.

o. The Consent Judgment was binding on the parties, their heirs, successors and assigns and could only be amended by mutual consent. The Consent Judgment was to be construed and enforced according to the laws of the state of Michigan with actions to enforce the judgment brought only in Livingston County Circuit Court. Prevailing parties in any such action were entitled to recover all costs, attorney fees and necessary disbursements incurred in connection with the litigation.

p. The Consent Judgment, as entered, constituted the entire agreement between the parties integrating all terms and conditions set forth therein, superseding all

negotiations or previous agreements between the parties. Waivers of that integration provision are required to be in writing and signed by the appropriate representatives of the Township or property owner. Any and all amendments were required to be given in writing.

q. The Livingston County Circuit Court retained jurisdiction for the purpose of enforcing the Consent Judgment.

r. The parties agreed to waive any and all claims for damages as set forth in the original Complaint which was deemed dismissed with prejudice and without costs to either party.

4. Subsequent to the entry of the December 13, 1999, Consent Judgment, the Original Plaintiffs, or their successors, developed two condominiums: Crystal Wood Estate and Crystal Wood. Crystal Wood Estate Association is the governing body of Crystal Wood Estate and Crystal Wood Condominium Association is the governing body of Crystal Wood.

5. Crystal Wood consists of 104 proposed attached residential units, of which only 28 have been constructed. Plaintiff, Sterling Land Ventures, LLC, (hereafter "Sterling"), has acquired the 76 un-built units in Crystal Wood with the intent to contract Crystal Wood by the removal of these 76 units and to establish a new single-family residential site condominium project on the property withdrawn from Crystal Wood.

6. Representatives of Sterling, Crystal Wood Condominium Association, Crystal Wood Estate Association, and Marion Township have held numerous meetings and have determined that it is in their respective best interest to modify the December 13, 1999, Consent

Judgment as provided herein, each agreeing to be bound by the terms of this First Amended and Restated Consent Judgment.

**REVISED GENERAL TERMS AND CONDITIONS**

7. Subject to Sterling and Crystal Wood Condominium Association lawfully arranging the contraction of Crystal Wood, Sterling shall be entitled to establish a new single family residential site condominium project (hereafter the "Project") on a portion of the Property.

8. The Project shall consist of 50 site condominium units established as depicted in the Site Plan attached as Exhibit A.

9. The Project, as described and depicted on Exhibit A, shall be deemed to have site plan approval as required by the Township zoning ordinance. Sterling may develop and construct the Project and be entitled to pertinent township permits and other approvals without further Township Planning Commission or Township Board approval.

10. In accordance with Michigan Public Act 188 of 1954, as amended, the Township and Sterling agree, consent to, and acknowledge that the Township shall reallocate the special assessments for sewer and water capital charges associated with the 76 Residential Equivalent Units (hereafter "REUs") currently unused, but assigned to the Crystal Wood, against the 50 new site condominium units in the Project on a pro rata basis. There is a current outstanding principal balance of \$130,204.30 as of June 30, 2013 for sewer and \$83,945.00 as of June 30, 2013 for water.

11. The reallocated sewer and water special assessments on each unit shall be paid in full as each unit in the new Project is sold to end users by Sterling. Pending sale of each unit Sterling shall pay the annual installments on the sewer and water special assessments.

12. When all special assessments for the sewer special assessment district and the water special assessment district have been paid in full, Sterling shall be entitled to use the 26 pre-paid water and sewer REUs elsewhere in the Township on projects with which it is affiliated, provided sewers and water mains are available (or can be made available) to such projects without obligation, cost, or liability to the Township. If it is necessary for Sterling to extend water mains or sewers to make use of pre-paid REUs, Sterling shall not be required to extend both water mains and sewers, but may extend either a water main or sewer and connect thereto.

13. The Township has constructed a water main and related appurtenances for which it seeks reimbursement from Sterling. In connection therewith, Sterling shall assume and pay (in the manner provided in this paragraph) the sum of \$66,070.49, reduced by funds held in escrow by the Township for use toward cost of the water main construction less funds applied toward the cost of testing Crystal Crossing Drive and Crystal Court by the Livingston County Road Commission and the testing of storm drains associated with the Property for public acceptance. This obligation shall be allocated by Sterling among the 50 site condominium units in the Project on a pro rata basis. As each unit is sold to an end user, the outstanding balance associated with that unit shall be paid to the Township by Sterling out of the proceeds of sale without interest.

14. Crystal Crossing Drive and Crystal Court are private roads that are a part of Crystal Wood Estate. Crystal Wood has rights to use Crystal Crossing Drive for ingress and egress and it is expected that, in accordance with the documents contracting Crystal Wood and creating the new condominium that the Project will also be permitted to use Crystal Crossing Drive. Subject to the provisions of paragraphs 15 and 16 below, Plaintiffs and Defendant Marion Township shall use their best efforts to obtain the approval of the Livingston County



Road Commission, and of all parties with rights to Crystal Crossing Drive and Crystal Court, to have Crystal Crossing Drive and Crystal Court dedicated as public roads.

15. It is expected that Crystal Crossing Drive and Crystal Court will need certain improvements in order to be accepted as public roads. These improvements may include the removal of the asphalt base coat, grading and compacting of millings, and installation of three inches of asphalt in one or more lifts. Crystal Wood Estate Association shall have sole responsibility for and shall pay all costs and expenses associated with obtaining Livingston County Road Commission acceptance of Crystal Court and that portion of Crystal Crossing Drive lying east of the boundary of the Project as public roads, including payment for all improvements required for acceptance as public roads. Subject to the provisions of Michigan Public Act 188 of 1954, as amended, Public Act 59 of 1978, and the Master Deed and By-Laws of Crystal Wood Estate the cost of improvements necessary to bring Crystal Court into the condition required for acceptance by the Livingston County Road Commission shall be paid by the establishment of a special assessment district that consists of all units in Crystal Wood Estate. Subject to the financial cap described in paragraph 16 below, Sterling shall have sole responsibility for and shall pay all costs and expenses associated with obtaining Livingston County Road Commission acceptance of Crystal Crossing Drive lying west of the easterly boundary of the Project as a public road, including payment of all expenses associated with improvements required for that portion of Crystal Crossing Drive being accepted as a public road.

16. Sterling's obligation to make improvements necessary to bring the described portion of Crystal Crossing Drive into the condition required for its acceptance as a public road

shall be limited to \$44,000. If the cost of required improvements exceed \$44,000, and none of the other parties to this case elect to pay the excess costs, or if excess funds are not available from the drain improvement project as addressed in paragraph 25 hereof, then Sterling shall not be required to seek dedication of the described portion of Crystal Crossing Drive as a public road, but instead shall mill off the existing asphalt, grade and compact millings, and install 3 inches of asphalt in one or more lifts with the described portion of Crystal Crossing Drive remaining a private road. In such event Crystal Wood Estate Association shall modify the Master Deed for Crystal Wood Estate to grant to the owners of property in the Project full rights to use Crystal Crossing Drive and to address the responsibility of those owners for repair, maintenance, and replacement of the road as provided in paragraphs 17 and 18 hereof.

17. Pending dedication of Crystal Crossing Drive as a public road, if ever, Sterling initially and the unit owners after establishment of the new Project, shall assume a 50/99 portion of the repair, maintenance, and replacement, obligations for that portion of Crystal Crossing Drive lying west of the Project's easterly boundary. As a result, allocation of costs associated with repair, maintenance, and replacement for that portion of Crystal Crossing Drive lying west of the Project's easterly boundary shall be as follows:

- a. Crystal Wood Estate: 21/99
- b. Crystal Wood: 28/99
- c. The new Project: 50/99

18. The obligation to pay for snowplowing for Crystal Crossing Drive shall be allocated among Crystal Wood Estate, Crystal Wood, and the new Project as follows:

- a. Crystal Wood Estate: 21/99

- b. Crystal Wood: 28/99
- c. The new Project: 50/99

19. Sterling shall improve the private roads Wood Court, Wood Point, Crystalwood, and Wood Lane by installing one and one-half inches of asphalt. These roads shall remain private and the repair, maintenance (including snowplowing), and replacement shall be the responsibility of property owners within the Project.

20. If the work to be done by Sterling for improvement of Crystal Crossing Drive can be accomplished within the financial limits described in paragraph 16 hereof, the improvement and dedication of that portion of Crystal Crossing Drive lying west of the Project's easterly boundary as a public road and the improvements to Wood Court, Wood Point, Crystalwood, and Wood Lane shall be undertaken as soon as practicable following receipt of Livingston County Road Commission approval of the work. The improvements to Crystal Crossing Drive, Wood Court, Wood Point, Crystalwood, and Wood Lane shall be financed by establishment of a special assessment district for that purpose on all units in the proposed Project.

21. The provisions of the Consent Judgment restated in paragraph 3 above shall apply to all Plaintiffs. However, as it relates to Sterling's obligations and the proposed new Project, paragraphs 3(a), 3(d), 3(f), 3(g), 3(i), 3(n), 3(o), 3(p), 3(q), and 3(r) shall not apply. Except as it relates to road improvements as described herein, and the requirements of paragraph 22 and 23 hereof, Sterling shall have no obligation to complete unfinished work or repair or replace landscaping or other improvements required by the Consent Judgment that are outside of the new Project.

22. As it relates to trees depicted on the currently approved site plan, Sterling shall only be required to plant trees on Units 4 and 5 of the new Project.

23. Sterling shall plant 2½ inch to 3 inch diameter deciduous trees along the rear lot lines of proposed site condominium Units 1, 2, 3, 4, and 37 and along the southerly side lot line of proposed site condominium Unit 29, with two trees to be planted on each of said building sites. Sterling shall plant 20 eight foot concolor fir or Norway spruce trees at locations to be determined by the Township.

24. Sterling shall undertake the work necessary to have the storm drains within the proposed Project accepted as public drains; provided such work can be accomplished for \$12,000 or less. If this condition cannot be met, and if excess funds are not available from the road improvement project as addressed in paragraph 25 hereof, or if the storm drains within the Project are not accepted by the Livingston County Drain Commissioner as public drains, then Sterling shall establish the storm drains to the Township specifications required for private storm drains.

25. Notwithstanding any other provision of this First Amended and Restated Consent Judgment to the contrary, if the work required of Sterling for road improvements that are subject to the \$44,000 limit as described in paragraph 16 hereof or the work required of Sterling for drain improvements that are subject to the \$12,000 limit as described in paragraph 24 hereof, can be accomplished for a total of \$56,000 for both improvements, then Sterling shall be obligated to complete both improvements by utilizing money excess to that allocated for one project for the other project.

26. The parties acknowledge that the matters governed by this First Amended and Restated Consent Judgment are complex and difficult to address in great detail and for that reason each party shall work cooperatively and in good faith with the other parties to implement the rights, privileges, and obligations contained herein.

27. This First Amended and Restated Consent Judgment is binding on the parties, their heirs, successors and assigns and may only be amended by mutual consent. However, consent of parties not directly affected by a proposed amendment shall not be required.

28. This First Amended and Restated Consent Judgment shall be construed and enforced according to the laws of the state of Michigan with enforcement proceedings brought only in Livingston County Circuit Court. Prevailing parties in any such proceeding shall be entitled to recover all costs, attorney fees and necessary disbursements incurred in connection with the litigation.

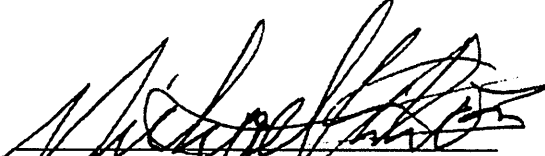
29. This First Amended and Restated Consent Judgment constitutes the entire agreement between the parties integrating all terms and conditions set forth herein and superseding all negotiations or previous agreements between the parties. Waivers of this integration provision shall be in writing and signed by the appropriate representatives of the Parties. Any and all amendments shall be made in writing.

30. This court shall retain jurisdiction of this matter for the purpose of enforcing compliance by the Parties.


Pursuant to MCR 2.602, this Judgment resolves the last pending claim and closes this case.

MICHAEL P. HATTY P-30930  
CIRCUIT COURT JUDGE

Approved as to Form & Substance:

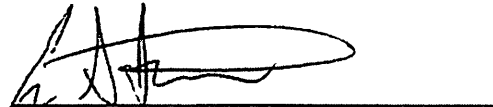
  
\_\_\_\_\_  
Michael J. Kehoe (P36839)  
Attorneys for Defendants

Date: 11-21-13

  
\_\_\_\_\_  
Phillip G. Adkison (P26303)  
Attorney for Plaintiff  
Sterling Land Ventures, LLC

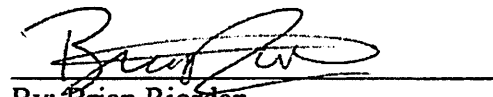
Date: November 15, 2013

Crystal Wood Estate Association

  
\_\_\_\_\_  
By: Eric Stiller  
Its: President

Date: NOVEMBER 18, 2013

Crystal Wood Condominium Association

  
\_\_\_\_\_  
By: Brian Riordan  
Its: President

Date: 11/19/13

LAW OFFICES ADKISON, NEED & ALLEN, P.L.L.C. 46050 WOODWARD, SUITE 300 BLOOMFIELD HILLS, MICHIGAN 48304 (248) 540-7400 FAX (248) 540-7401



**SITE DATA:**

OVERALL SITE AREA (EXCLUDING CRYSTAL CROSSING DRIVE R.O.W.): ±18.9 AC

MULTI-FAMILY & ROAD RIGHT-OF-WAYS AREA: ±8.4 AC  
 SINGLE-FAMILY AREA: ±10.5 AC

PROPOSED SINGLE-FAMILY SETBACKS  
 FRONT: 20' (FROM BACK OF CURB)  
 FRONT: 20' (FROM CRYSTAL CROSSING DR. R.O.W.)  
 SIDE: 5' (10' MIN. BETWEEN BUILDINGS)  
 REAR: 25'

NUMBER OF SINGLE-FAMILY LOTS: 50  
 \* AREAS LISTED BELOW ARE FROM BACK OF CURB TO LOT LINES SHOWN.

**UNIT DATA TABLE:**

NUMBER	AREA (SF)*	WIDTH (FT) AT FRONT SETBACK
1	8,375	62.30
2	7,019	62.30
3	7,458	62.31
4	11,709	72.48
5	12,725	65.01
6	9,703	72.48
7	11,000	71.00
8	11,000	71.00
9	6,617	60.08
10	7,580	73.35
11	8,603	69.71
12	7,818	68.74
13	6,364	52.01
14	6,364	52.01
15	6,364	52.01
16	6,364	52.01
17	6,364	52.01
18	6,364	52.01
19	6,364	52.01
20	6,364	52.01
21	6,364	52.01
22	6,364	52.01
23	6,364	52.01
24	6,364	52.01
25	6,364	52.01
26	6,364	52.01
27	6,364	52.01
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29	6,364	52.01
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42	6,364	52.01
43	6,364	52.01
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46	6,364	52.01
47	6,364	52.01
48	6,364	52.01
49	6,364	52.01
50	6,364	52.01

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 (248) 926-3765 (FAX)  
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CLIENT: **ECHELON HOMES**

**SITE PLAN**

SECTION: 3

CRYSTAL WOOD TOWNSHIP-2N  
 MARION TOWNSHIP  
 LIVINGSTON COUNTY  
 MICHIGAN

RANGE-4E

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REVISED

2012/11/01 PER CLIENT

2012/11/06 ADD UNIT DATA TABLE

2013/10/22 PER EX. UTILITIES

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DATE: 2013-10-22

DRAWN BY: TG/CK

CHECKED BY: TG/CK

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SCALE: HOR 1" = 60 FT.  
 VER 1" = 12-235

1



