

BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES

In the Matter of:)
)
 Bent Tree Harbor)
 Home Owner’s Association, Inc.) **Order No. 2023-WPCB-1553**
)
 Proceeding under the)
 Missouri Clean Water Law)

ABATEMENT ORDER ON CONSENT

The issuing of this Abatement Order on Consent (AOC) No. 2023-WPCB-1553, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because the Bent Tree Harbor Home Owner’s Association, Inc. (Respondent) violated the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 644.056 and 644.079, Revised Statutes of Missouri (RSMo). Failure to comply with this AOC is, by itself, a violation of Section 644.076.1, RSMo. Litigation may occur without further notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Respondent of liability for, or preclude the department from, initiating an administrative or judicial enforcement action to recover civil or administrative penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

FINDINGS OF FACT

1. The Respondent is a domestic not for profit corporation registered and in good standing with the Missouri Secretary of State.

2. The Respondent is the Home Owner's Association for an approximate 2,800 lot recreational development known as Bent Tree Harbor (Development) located in Warsaw, Benton County. The Development does not have a centralized wastewater collection system to serve each lot. The Respondent owns and operates a mechanical wastewater treatment plant (WWTP) that serves a small minority of the lots within the Development. The WWTP consists of a holding tank, treatment plant, effluent filter, recirculation tank, two Orenco AdvanTex AX 100 textile filter units, chlorination/dechlorination disinfection, and sludge disposed of by contract hauler. The WWTP is located at the intersection of East Bent Tree Drive and Edgewater Drive in Warsaw. The WWTP has a design population equivalent of 35, a design flow of 3,468 gallons per day, and an actual flow of 2,225 gallons per day. Treated effluent discharges through Outfall No. 001 of the WWTP to an unclassified tributary to the Harry S. Truman Lake, subject to the conditions and requirements of Missouri State Operating Permit No. MO-0112411 (Permit). The Development also includes an unknown but likely significant number of wastewater holding tanks, earthen pits/basins, and onsite wastewater treatment systems used to serve the wastewater handling needs of the lots within the Development not connected to the WWTP. No holding tanks or any earthen pits/basins are connected to the WWTP.

3. The Harry S. Truman Lake, and its tributaries, are waters of the State as the term is defined by Section 644.016(27), RSMo.

4. Domestic wastewater is a water contaminant as the term is defined by Section 644.016(24), RSMo.

5. The Permit requires the Respondent to collect representative samples of the effluent discharged from Outfall No. 001 and analyze the sample for the contaminants listed in Part "A" every month. The Permit requires the effluent to comply with the limitations contained

in Part “A” of the Permit and requires the Respondent to submit the results of the analysis to the department on monthly Discharge Monitoring Reports (DMRs) by the 28th day of the month following the reporting period.

6. The Permit sets final Biochemical Oxygen Demand (BOD) effluent limitations as a Weekly Average of 30 milligram per liter (mg/L) and a Monthly Average of 20 mg/L year round. The Permit sets final Total Suspended Solids (TSS) effluent limitations as a Weekly Average of 30 mg/L and a Monthly Average of 20 mg/L year round. The Permit sets final *E. coli* effluent limitations as a Daily Maximum of 630 #/100 milliliters (mL) and a Monthly Average of 126 #/100 mL from April 1 through October 31 of the calendar year. The Permit sets final Ammonia as Nitrogen effluent limitations as a Daily Maximum of 12.1 mg/L and a Monthly Average of 12.1 mg/L year round.

7. Effluent discharged from Outfall No. 001 of the WWTP failed to comply with the effluent limitations listed in Paragraph 6, and contained in the Permit, more than 67 percent of the time during a period of at least three consecutive months.

8. The Development was originally established by National Development Company, Inc., the original developer. The Development was originally platted for 3,200 lots on approximately 297 acres in Benton County, Missouri. The lots in the Development were originally platted with two separate designated uses: multi-purpose or camping use only. Larger lots were designated as multi-purpose, residential lots designed for restricted living or commercial use. Smaller lots were designated as camper lots designated for seasonal, recreational use only.

9. On June 9, 1982, National Development Company, Inc., executed a Trust Indenture and Restrictive Covenants and Conditions pertaining to the Development with the first

Trustee of the Development. The execution of the Trust Indenture effectively transferred the Development to the Respondent and therefore the Respondent became the “developer” of the Development as defined by 10 CSR 20-6.030(1)(A)3 from that date forward for any subsequent lots that it offered for sale or lease.

10. The Trust Indenture and Restrictive Covenants included stipulations specific to the handling and disposal of wastewater within the Development and compliance with the MCWL. These stipulations included, but were not limited to, the requirement for individual, sealed, vault-type holding tanks with a capacity of no less than 1,000 gallons for temporary [seasonal] residents (individuals occupying the lot 140 days or less per year), and no less than 1,500 gallons for permanent residents (individuals occupying the lot more than 140 days per year) for single-family [residential] lots. The Trust Indenture and Restrictive Covenants also stipulated that camper lots were to utilize the Development’s community dump stations for wastewater disposal and no permanent structures shall be permitted in the part or parts of the Development designated as “camper” or campers only. The Trust Indenture and Restrictive Covenants required the holding tanks be of approved design and construction, permitted for installation, and pumped regularly to comply with the MCWL. The Trust Indenture and Restrictive Covenants specified that septic tanks shall not be permitted.

11. Along with the Trust Indenture and Restrictive Covenants and Conditions for the Development, an Intrastate Exemption Statement was also developed for use during all lot sales in the Development. The Intrastate Exemption Statement also stipulated requirements specific to wastewater handling in the Development, the requirements of each purchasing lot owner, and the requirement to comply with the MCWL.

12. On June 14, 1982, the department issued National Development Company, Inc. an approval for the method of wastewater handling to be used in the Development. The approval was issued on the condition that the terms for wastewater handling and compliance with the MCWL stipulated in the Intrastate Exemption Statement, the Trust Indenture, and Restrictive Covenants being implemented and maintained in the Development.

13. On June 29, July 12, and September 7, 1982; April 22, June 20, August 4, and October 25, 1983; March 23, July 2, August 13, September 24, and October 1, 1984; January 2, and May 20, 1985; April 3, September 11, and December 8, 1986; and August 23, 1989, National Development Company filed Plat Nos. 1 through 24 with the Benton County Recorder of Deeds. Each Plat file had designated use restrictions for the blocks and lots listed on each Plat map.

- a. Plat 1 designated all lots within blocks 1 through 8 as camping use only.
- b. Plat 2 designated lots 3 through 33 of block 9 as residential lots, and lots 1, 2, 34, and 35 of block 9 as camping use only; all lots within block 10 designated as camping use only; all lots within block 11 designated as camping use only; all lots within block 12 as residential lots; all lots within block 13 designated as camping use only; all lots within block 14 designated as camping use only; lots 1 through 12 of block 15 as residential lots and lots 13 through 21 of block 15 as camping use only; and all lots within block 16, 17, and 18 designated as residential lots.
- c. Plat 3 designated all lots within blocks 19 through 25 as residential lots.
- d. Plat 4 designated all lots within blocks 26 through 37 as camping use only.

- e. Plat 5 designated all lots within blocks 38 through 46 as camping use only, and all lots within block 47 as residential lots.
- f. Plat 6 designated all lots within block 48 as residential lots.
- g. Plat 7 designated all lots within blocks 49 and 50 as residential lots.
- h. Plat 8 designated all lots within blocks 51 and 52 as camping use only, and lots within blocks 53 through 56 as residential lots.
- i. Plat 9 designated lots 1 through 19 within block 57 as residential lots, and lots 21 through 39 of block 57 as camping use only; all lots within blocks 58 and 59 as camping use only; lots 1 through 12 within block 60 as residential lots, and lots 13 through 31 as camping use only; and all lots within blocks 61 through 67 as camping use only.
- j. Plat 10 designated all lots within block 70 as residential lots.
- k. Plat 11 designated all lots within blocks 71 and 72 as residential lots.
- l. Plat 12 designated all lots within blocks 68 and 69 as residential lots.
- m. Plat 13 did not include a lot designation description; however, consistent with the pattern from other Plats' lot and use designations, Plat 13 likely would have designated all lots within blocks 73 through 79 as camping use only, and all lots within block 80 as residential lots.
- n. Plat 14 designated lots 1 through 21 within block 81 as residential lots and specified that lots 1 through 3 are restricted to constructed homes only of not less than 1,000 square feet (sq. ft.) of floor space, and lots 4 through 21 may be constructed homes of not less than 1,000 sq. ft. of floor space or mobile homes of not less than 820 sq. ft. of floor space. All lots within block 82 are

restricted to constructed homes only of not less than 1,000 sq. ft. of floor space. Lots 1 through 7 within block 83 may be constructed homes of not less than 1,000 sq. ft. of floor space or mobile homes of not less than 820 sq. ft. of floor space, and lots 8 through 65 are restricted to camping use only. All lots within block 84 are restricted to camping use only.

- o. Plat 15 designated lots 1 and 2 of block 86 as residential lots restricted to constructed homes only of not less than 1,000 sq. ft. of floor space. Lots 3 through 10 of block 86 as residential or commercial use restricted to constructed homes only of not less than 1,000 sq. ft. of floor space if used as residential. Lots 11 through 13 of block 86 as residential lots restricted to constructed homes only of not less than 1,000 sq. ft. of floor space, and lots 4 through 21 may be constructed homes of not less than 1,000 sq. ft. of floor space or mobile homes of not less than 720 sq. ft. of floor space.
- p. Plat 16 designated all lots within blocks 87 and 91 as residential lots, and all lots within blocks 88, 89, and 90 as camping use only.
- q. Plat 17 designated all lots within blocks 92 through 97, 99, and 100 as camping use only, and all lots within blocks 91 and 98 as residential lots.
- r. Plat 18 did not include a lot designation description; however, consistent with the pattern from other Plats' lot and use designations, Plat 18 likely would have designated lots 1 through 9 of block 107 as residential lots, and lots 10 through 150 of block 107 as camping use only, and all lots within blocks 108 through 111 as camping use only.
- s. Plat 19 designated all lots within blocks 101 and 102 as residential lots.

- t. Plat 20 is missing from Benton County Recorder of Deeds records. The absence of Plat 20 is likely the result of a scrivener's error in the creation of Plat 21.
- u. Plat 21 designated all lots within blocks 103 through 105 as residential lots with lots 7 through 12 of block 105 restricted to constructed homes only of not less than 1,000 sq. ft. of floor space. Lots 1 and 2 of block 106 designated as multi-purpose with lot one designated for commercial use, and lots 3 through 6 designated as residential lots.
- v. Plat 22 designated all lots within blocks 112 through 114 as residential lots restricted to constructed homes of not less than 840 sq. ft. of floor space or mobile homes of not less than 720 sq. ft. of floor space.
- w. Plat 23 designated all lots within blocks 115 and 116 as residential lots restricted to constructed homes of not less than 840 sq. ft. of floor space or mobile homes of not less than 720 sq. ft. of floor space.
- x. Plat 24 designated all lots within blocks 117 through 121 as camping use only.

14. On July 25, 1991, the department issued Construction Permit No. 26-1540 to the Respondent for the construction of the WWTP and on June 8, 1992, the department received a Certificate of Work Completed form attesting that the construction of the WWTP was completed per the department-approved plans and specifications and the Permit was issued for the WWTP.

15. On September 1, 2016, department staff conducted an inspection of the WWTP and was accompanied by the Respondent. At the time of the inspection, the WWTP already had a history of significant non-compliance with existing permitted effluent limitations and had a Schedule of Compliance (SOC) in the Permit for future permitted effluent limitations. During the

inspection, department staff were told by the Respondent that the holding tanks are infrequently pumped. Department staff advised the Respondent that pumping should occur more frequently as necessary to prevent septic wastewater from negatively impacting the WWTP and recommended pumping the holding tanks at least at the end of every recreational season. Department staff and the Respondent also discussed environmental concerns reported to the department for overflowing holding tanks within the Development. Department staff collected effluent samples during the inspection. The sample results demonstrated the WWTP was still in non-compliance with permitted effluent limitations, and no significant efforts had been made by the Respondent to comply with the SOC contained in the Permit to achieve compliance with the permitted effluent limitations.

16. On March 31, 2017, the department issued Referral Notice of Violation (RNOV) No. KC160345 to the Respondent based on the observations made during the September 1, 2016, inspection. The RNOV cited violations for failure to comply with permitted effluent limitations for BOD, TSS, and Ammonia as Nitrogen in DMR records reviewed over the previous two year period and Ammonia as Nitrogen (sample result 94.7 mg/L) during the inspection; failure to submit an Engineering Report as required by the SOC contained in the Permit; and causing pollution to waters of the State. The RNOV included an enclosed copy of the September 1, 2016, inspection report and notified the Respondent that the WWTP had been referred to the department's Compliance and Enforcement Section. The RNOV also included an offer to meet and required the Respondent to submit a written statement to the department's Kansas City Regional Office by May 3, 2017, proposing a schedule to achieve compliance. The department did not receive a response to the RNOV from the Respondent.

17. On August 19, 2019, department staff conducted an inspection of the WWTP accompanied by the WWTP operator. During the inspection, department staff noted the infrequent pumping of the holding tanks does not provide a consistent flow to the WWTP and is contributing to the number of effluent violations. The WWTP was not discharging at the time of the inspection, so effluent samples were not collected; however, DMRs reviewed by department staff in preparation for the inspection demonstrated an ongoing history of chronic significant non-compliance with permitted effluent limitations.

18. On September 6, 2019, the department sent a Letter of Warning (LOW) to the Respondent based on the observations made during the August 19, 2019, inspection. The LOW cited failure to comply with permitted effluent limitations for BOD, TSS, Ammonia as Nitrogen, and *E. coli* in DMR records reviewed over the previous two years. The LOW included an enclosed copy of the August 19, 2019, inspection report, included an offer to meet, and required the Respondent submit a written statement to the department's Compliance and Enforcement Section by October 9, 2019, explaining what actions have been taken to correct the effluent exceedance violations and prevent future reoccurrences. The department did not receive a response to the LOW from the Respondent.

19. On September 18, 2019, department staff conducted an investigation in response to an environmental concern reported to the department of improper sewage disposal within the Development. Department staff documented several unapproved wastewater containment vessels or pits in use on various lots and above ground pipes discharging sewage from dwellings directly to the ground within the Development.

20. On October 26, 2022, department staff conducted an inspection of the WWTP accompanied by the WWTP operator. In preparation for the inspection, department staff

reviewed the WWTP's DMR history and found that the WWTP was still in chronic significant non-compliance with permitted effluent limitations. During the inspection, department staff observed the same or similar violations as documented in the previous inspections. Department staff reiterated to the Respondent during the inspection exit interview the importance of pumping the holding tanks in the Development more frequently to support the proper function of the WWTP and prevent holding tank overflows or discharges. Department staff collected effluent samples during the inspection. The sample results demonstrated the WWTP's continued violations of permitted effluent limitations despite recent operational improvements made to the WWTP by the newly hired WWTP operator.

21. On February 8, 2023, the department issued Notice of Violation (NOV) No. KC23WP004 to the Respondent based on the observations made during the October 26, 2022, inspection. The NOV cited violations for failure to comply with permitted effluent limitations for BOD, TSS, Ammonia as Nitrogen, and *E. coli* in DMR records reviewed over the previous two years, and BOD (sample result of 67.6 mg/L), Ammonia as Nitrogen (sample result of 34.3 mg/L), and Total Residual Chlorine (sample result of 0.68 mg/L) during the inspection; failure to operate and maintain the facilities to comply with the MCWL and regulations and applicable Permit conditions; and causing pollution to waters of the State. The NOV included an enclosed copy of the October 26, 2022, inspection report, an offer to meet, and required actions for the Respondent to complete including coordination with the department's Compliance and Enforcement Section. The NOV also required the Respondent to submit a written response by March 15, 2023. The department did not receive a response to the RNOV from the Respondent; however, the Respondent met with department staff on February 10, 2023, to discuss the

Development's non-compliance and the necessary steps to achieve compliance to resolve the enforcement action.

22. On March 15, 2023, the department received information from the Benton County Health Department regarding observations made while overseeing a holding tank replacement on a lot within the Development. Benton County Health Department staff observed several irregular holes punched in the body of the holding tank. When Benton County Health Department staff asked the lot owner about the holes, the lot owner and a bystander confirmed that they'd heard it was common practice for lot owners in the Development to punch holes in their holding tanks at the time of installation to reduce the pumping frequency of the tank, but the lot owners did not know who started this practice, how long it has been occurring, or if anyone in particular directed lot owners to intentionally punch holes in their holding tanks.

23. Since at least June 30, 2020, the department has issued the Respondent nine NOVs and three LOWs for permitted effluent limit violations and has provided compliance assistance on operational improvements to the Respondent or the WWTP operator in person, via email, telephone, and written correspondence in an effort to encourage voluntary compliance.

24. As of the date of this AOC, the Respondent has failed to: comply with effluent limitations contained in the Permit; implement sufficient operational and maintenance practices to prevent wastewater discharges from holding tanks, onsite treatment systems, and other pits, basins, or similar vessels used to contain wastewater in the Development; and ensure the proper function of the WWTP and management of the holding tanks, onsite treatment systems, and other pits, basins, or similar vessels used to contain wastewater in the Development.

25. Since at least September 1, 2016, department staff have offered the Respondent several opportunities to meet, in addition to sending several written correspondences to the

Respondent explaining the violations documented by the department, and the steps necessary to correct the violations and achieve compliance with the MCWL and its implementing regulations. As of the date of this AOC, the Respondent has failed to take the necessary steps required to bring the WWTP serving the Development into compliance with the MCWL and its implementing regulations.

26. As of April 17, 2023, the Respondent has a new Board of Trustees. The new Board President has begun significant steps toward achieving compliance with the MCWL and its implementing regulations.

27. The administrative penalty described below is assessed according to 10 CSR 20-3.010. The violations referenced herein had a minor potential for harm based on the potential risk to human health, safety, and the environment, and were a moderate deviation from the MCWL and its implementing regulations. Using the gravity-based matrix, the base penalty was \$2,000. Since the department documented three violations of the MCWL, an administrative penalty in the amount of \$6,000 was assessed.

STATEMENT OF VIOLATIONS

The Respondent has violated the MCWL and its implementing regulations as follows:

28. Failed to comply with the effluent limits for BOD, TSS, *E. coli*, and Ammonia as Nitrogen contained in Part “A” of the Permit, in violation of MCWL Sections 644.051.1(3) and 644.076.1, RSMo. See Exhibit 1 attached hereto and incorporated into this AOC by reference;

29. Caused pollution of a tributary to Harry S. Truman Lake, waters of the State, or placed or caused or permitted to be placed a water contaminant, domestic wastewater, in a location where it is reasonably certain to cause pollution of waters of the State, in violation of Sections 644.051.1(1) and 644.076.1, RSMo; and

30. Failed to comply with the department approved method of wastewater handling, in violation of Section 644.076.1, RSMo, and 10 CSR 20-6.030.

AGREEMENT

31. The department and the Respondent desire to amicably resolve all claims that may be brought against the Respondent for violations alleged above in Statement of Violations.

32. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of the Respondent under this AOC.

33. Sections 644.076.1 and 644.079, RSMo, authorize the imposition of penalties for violations of the MCWL and establish monetary penalties of up to \$10,000 per day per violation. The penalty contained in this AOC was calculated using the Penalty Assessment Protocol described in 10 CSR 20-3.010.

34. The Respondent, in compromise and satisfaction of the department's claims relating to the above-referenced violations, is ordered and agrees, without admitting liability or fault, to pay an administrative penalty in the amount of \$6,000. The department and the Respondent further agree that full amount of \$6,000 shall be suspended as described below.

35. The suspended penalty described in the paragraph above in the amount of \$6,000 shall be suspended for a period of two years from the execution of this AOC upon the condition that the Respondent does not violate the terms of this AOC. Upon determination by the department that the Respondent has failed to meet the terms of this AOC to the department's

satisfaction, including the requirements in Paragraphs 36 through 47, the department may send a written demand for the suspended penalty to the Respondent. The Respondent shall have 30 days from receipt of the written demand to submit the suspended penalty. The payment shall be in the form of a check made payable to “Benton County Treasurer, as custodian of the Benton County School Fund” and shall be delivered with a signed copy of the AOC to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

36. In the period of time from the effective date of this AOC until the new or upgraded WWTP is completed, the Respondent is ordered and agrees to operate and maintain the existing WWTP at all times in compliance with the conditions and requirements of the Permit. All units or components of the existing WWTP shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the WWTP. The Respondent is also ordered and agrees to ensure all holding tanks or similar wastewater basins, pits, or containment vessels within the Development are maintained to prevent wastewater discharges to the environment, even if this means daily pumping and hauling of holding tanks or replacement of the tank and or elimination of the vessel.

37. The Respondent and the department agree that the legal description included in Plats 1 through 24, less Plat 20, for the Development filed with the Benton County Recorder is the legal description that shall apply for purposes of this AOC. The legal description is set forth in Exhibit A attached hereto and incorporated into this AOC by reference. Furthermore, the Respondent is ordered and agrees to utilize the legal description included in Plats 1 through 24, less Plat 20, for the Development filed with the Benton County Recorder when making the

necessary revisions to the adopted bylaws and/or declarations to implement the requirements of this AOC.

38. Upon the effective date of this AOC, deviations to lots identified to the department in writing by the Respondent as being sold prior to the effective date of this AOC may be considered for a conditional allowance as described in this paragraph. Deviations made to these identified lots that were sold prior to the effective date of this AOC that do not conform with the original plats filed with the Benton County Recorder of Deeds in 1982 through 1986 and 1989 may be allowed to remain in place through this conditional allowance, as long as the deviations to the lot(s) do not cause violations to this AOC, the MCWL, or its implementing regulations, or risk to human health or the environment. This conditional allowance does not include grey water pits. Further deviation to these identified lots (i.e. installation of additional holding tank(s), installation of on-site septic system(s), clustering of camping only lots, etc.) after the effective date of this AOC is not approved or allowable under the terms of this AOC. This conditional allowance for lots sold prior to the effective date of this AOC does not apply to any lots sold after the effective date of this AOC not previously identified by the Respondent as an exempt lot, or any lots that were previously conditionally allowed to remain as-is by this paragraph until they cause a violation of this AOC, the MCWL, or its implementing regulations, or risk to human health or the environment. Lots sold after the effective date of this AOC not previously identified by the Respondent as an allowed lot must adhere to the original plats filed with the Benton County Recorder of Deeds in 1982 through 1986 and 1989.

39. The Respondent is ordered and agrees to implement the following steps for those lots the Respondent has identified to the department as eligible to be conditionally allowed to remain as-is, in accordance with Paragraph 38 of this AOC:

- a. Immediately upon the effective date of this AOC, the Respondent is ordered and agrees to take steps through revision of the Development's bylaws and restrictive covenants to clearly identify that these identified lots are under different requirements from the remainder of the lots within the Development, prohibit further deviations of the 1982 through 1986 and 1989 original plats from occurring on the lots identified by the Respondent as conditionally allowed, and establish the Respondent's enforcement authority to take enforcement action, as necessary, to the fullest extent of the Respondent's enforcement powers on these identified lots.
- b. Within 30 days of the effective date of this AOC, the Respondent shall establish a permanent tracking method for the identified lots to ensure continuity of knowledge of the identified conditionally allowed lots and the specific deviations to these lots. This tracking method and any related documentation shall be retained by the Respondent and made available for coordination with the department, Benton County, and present and future lot owners to ensure allowed deviations to the identified lots are clear, understood, and the lot use restrictions for these identified lots are adhered to at all times upon the effective date of this AOC;
- c. Within 60 days of the effective date of this AOC, the Respondent shall submit to the department in writing, a list of all lots identified as subject to this conditional allowance. The list shall include the existing deviations to the lots covered under this conditional allowance;

- d. Within 90 days of the effective date of this AOC, the Respondent shall submit to the department in writing, the steps the Respondent has taken to comply with Paragraph 39. a.

40. Immediately upon the effective date of this AOC, the Respondent is ordered and agrees to implement pumping and hauling of wastewater from all holding tanks or similar vessels within the Development, as necessary, to prevent any overflows or discharges of wastewater. The Respondent shall maintain a pumping log showing the day, lot number, gallons pumped, and the name of the permitted wastewater treatment facility accepting the wastewater for treatment and disposal. The Respondent shall submit quarterly copies of the pumping log to the department, as indicated in Paragraph 50 of this AOC, by the 28th day following each quarter with the first pumping log being submitted by the 28th day following the first quarter after the effective date of this AOC. The requirement to submit pumping logs shall continue until the department sends the Respondent a determination in writing that the Respondent may cease submission of the pumping logs to the department; however, the Respondent shall continue to maintain current, accurate pumping logs on file while this AOC is in effect and keep the logs readily available to produce upon request.

41. In the event a wastewater overflow or discharge occurs from a holding tank or similar vessel within the Development, the Respondent is ordered and agrees to report the overflow or discharge event to the department within 24 hours of event discovery. Events shall first be reported orally to the department's Kansas City Regional Office at 816-251-0700 Monday through Friday between 8 a.m. and 5 p.m., or the 24 hour Spill Line at 573-634-2436 after hours, weekends, and holidays. After orally reporting, events shall also be submitted into the department's Sanitary Sewer Overflow (SSO) and Bypass Reporting System online through

the Missouri Gateway for Environmental Management (MoGEM) login portal. If the Respondent needs to report an SSO, the Respondent shall create a MoGEM user account to access the SSO Bypass Reporting System at <https://dnr.mo.gov/data-e-services/missouri-gateway-environmental-management-mogem>.

42. Within 120 days of the effective date of this AOC, the Respondent is ordered and agrees to retain a professional engineer licensed in the State of Missouri to evaluate the WWTP's ability to meet permitted effluent limitations. The engineer's evaluation shall also include consideration of the wastewater flow contribution from the holding tanks and onsite treatment systems utilized throughout the Development and the elimination of all unapproved wastewater pits or basins utilized within the Development. The engineer shall develop a Facility Plan in accordance with 10 CSR 20-8.110 that recommends improvements necessary to enable the WWTP to comply with the MCWL and the conditions and requirements of the Permit. The Facility Plan shall include a comprehensive improvements schedule for the recommended improvements.

43. The Respondent is also ordered and agrees that the engineer shall develop a Holding Tank Management Plan for the Development to address the long-term handling and treatment of wastewater generated within the Development. The Holding Tank Management Plan shall adhere to the June 14, 1982, department approval or any subsequent department approvals, if available, for the method of wastewater handling in the Development and the June 9, 1982, Trust Indenture and Restrictive Covenants, and Intrastate Exemption Agreement pertaining to sewage and wastewater handling and disposal. The Holding Tank Management Plan shall also adhere to the original plat maps filed with Benton County Recorder of Deeds offices in 1982 through 1986, and 1989, unless lot configurations are otherwise officially

re-platted with the appropriate county to reflect permanent changes to the original lot configurations filed in 1982 through 1986, and 1989, or the lot has been identified as conditionally subject to the specific allowance established in Paragraph 38 of this AOC.

Re-platted lot configurations which result in a qualifying lot for a holding tank shall comply with the Development's restrictive covenants and all the following requirements: (1) the re-platted lot shall be the result of the combination of contiguous lots with a minimum land area of 15,000 square feet; (2) the re-plat shall be prepared by a Missouri licensed land surveyor; (3) the re-plat drawing shall comply with all applicable state and local laws; (4) the re-plat shall be reviewed and approved by the Respondent's Board of Trustees; and (6) the re-plat shall be filed of record with the Benton County Recorder of Deeds. The Holding Tank Management Plan shall include, but is not limited to:

- a. an ongoing inventory of all holding tanks within the Development, including, at minimum, the tank's location (lot and block numbers), type of lot (camping or multi-purpose/residential), name and contact information of lot owner, type of tank (holding or onsite septic system), date of installation, installation permit number, tank material, tank capacity, and if tank has high water alarm and telemetry equipped;
- b. a holding tank and onsite treatment system assessment and replacement schedule to evaluate the structural integrity of each existing installed holding tank and onsite treatment system to determine if the holding tank or onsite treatment system is compromised in any way which may lead to leaking or otherwise failure of the holding tank or onsite treatment system. The schedule should prioritize and include a set deadline for the replacement of any holding

tanks or onsite treatment systems found to be compromised or structurally unsound or otherwise not meeting the minimum standards of the Benton County Health Department for holding tanks and onsite treatment systems;

- c. a holding tank and onsite treatment system routine pumping schedule, established by the engineer, for each holding tank and onsite treatment system in the Development to ensure frequent enough pumping intervals to support the proper operation and treatment at the WWTP;
- d. established and implemented controls enforceable by the Respondent through the Development's bylaws and restrictive covenants to ensure proper routine holding tank and onsite treatment system maintenance, such as routine inspections, limits on tank loading, tank size minimums based on use per year, and standard operating procedures for tank installation approvals.

44. Within 90 days of retaining an engineer, the Respondent is ordered and agrees to submit to the department for review and approval the Facility Plan and the Holding Tank Management Plan. If the Respondent elects to pursue the department's approval to modify the 1982 approval for the method of wastewater handling within the Development to include the installation of on-site septic systems, the Respondent shall also submit along with the Facility Plan and Holding Tank Management Plan, a proposal for the modification of the method of wastewater handling within the Development to allow the use of on-site septic systems on lots totaling five acres of land or greater. If the Respondent's proposal is approved by the department, the Respondent shall permanently identify these lots in the Development's bylaws and restrictive covenants.

45. Upon the department's approval of the Holding Tank Management Plan, the Respondent is ordered and agrees to immediately begin the implementation of the Holding Tank Management Plan and management schedule(s) contained therein, which shall be incorporated herein as an enforceable condition of this AOC.

46. Upon the department's approval of the Holding Tank Management Plan, the Respondent is ordered and agrees to immediately take all necessary steps, including the revision and or updating of the Development's bylaws and restrictive covenants, to ensure continuity and compliance with the Holding Tank Management Plan, and prevent deviation from the Holding Tank Management Plan. These steps shall include, but are not limited to, revision to the Development's restrictive covenants establishing lot type and use designations in adherence to the original plat maps filed with the Benton County Recorder of Deeds office in 1982 through 1986, and 1989, unless lot configurations are otherwise officially re-platted with Benton County to reflect permanent changes to the original lot configurations filed in 1982 through 1986, and 1989, or the lot has been identified as conditionally subject to the specific allowance established in Paragraph 38 of this AOC. This includes the re-platting of Plat 20 missing from the Benton County Recorder of Deeds records. These steps shall also include stipulations written into the Development's bylaws and restrictive covenants that will conditionally waive deviations from the June 14, 1982, department approval that occurred within the Development from June 14, 1982, through the effective date of this AOC on lots identified as conditionally subject to the specific allowance established in Paragraph 38 of this AOC, unless otherwise officially re-platted with the Benton County Recorder of Deeds. Re-platted lot configurations which result in a qualifying lot for a holding tank shall comply with the Development's restrictive covenants and all the following requirements: (1) the re-platted lot shall be the result of the combination of

contiguous lots with a minimum land area of 15,000 square feet; (2) the re-plat shall be prepared by a Missouri licensed land surveyor; (3) the re-plat drawing shall comply with all applicable state and local laws; (4) the re-plat shall be reviewed and approved by the Respondent's Board of Trustees; and (6) the re-plat shall be filed of record with the Benton County Recorder of Deeds.

47. Upon the department's approval of the Facility Plan, the Respondent is ordered and agrees to implement the Facility Plan's improvements schedule, which shall be incorporated herein as an enforceable condition of this AOC.

48. Upon the department's approval of the Facility Plan, the Respondent is ordered and agrees to consult with the department's Engineering Section staff and comply with all applicable application, permit, and permit fee requirements as set forth in 10 CSR 20-6 Permits and 10 CSR 20-8 Minimum Design Standards.

49. Within 60 days of completing construction of the improvements specified in the improvements schedule, the Respondent is ordered and agrees to submit to the department a Statement of Work Completed Form, signed, sealed, and dated by a professional engineer licensed in the State of Missouri certifying that the project is complete and operable in accordance with department-approved plans and specifications.

50. Within 90 days of completing construction, the Respondent is ordered and agrees to achieve compliance with the WWTP's permitted effluent limitations. If the Respondent cannot achieve compliance with the WWTP's permitted effluent limitations within 90 days of completing construction, the Respondent is ordered and agrees to consult the engineer and submit in writing to the department a proposal for the department's consideration on additional improvements to achieve compliance with the WWTP's permitted effluent limitations.

51. The Respondent is ordered and agrees to comply with the MCWL, Chapter 644, RSMo, and its implementing regulations at all times in the future.

52. Exhibit B is incorporated into this AOC by reference. The Respondent is ordered and agrees to adhere to the schedule provided in Exhibit B to the best of the Respondent's ability barring any unforeseeable delays outside of the Respondent's control.

53. This AOC will be considered satisfied and shall terminate upon the department's determination that the Respondent has achieved consistent compliance with the WWTP's permitted effluent limitations, the terms and conditions of the Permit, the Holding Tank Management Plan, and the MCWL and regulations.

SUBMISSIONS

54. All other documentation submitted to the department for compliance with this AOC shall be submitted within the timeframes specified to cwenf@dnr.mo.gov or:

Erin Heidolph
Department of Natural Resources
Water Protection Program
Compliance and Enforcement Section
P.O. Box 176
Jefferson City, MO 65102-0176

OTHER PROVISIONS

55. Immediately upon becoming aware that a deadline or milestone as set forth in this AOC will not be completed by the required deadline, the Respondent shall notify the department by telephone or electronic mail: i) identifying the deadline that will not be completed; ii) identifying the reason for failing to meet the deadline; and iii) proposing an extension to the deadline. Within five days of notifying the department, the Respondent shall submit to the department, for review and approval, a written request containing the same basic provisions of i, ii, and iii listed above. The department may grant an extension if it deems appropriate. Failure

to submit a written notice to the department may constitute a waiver of the Respondent’s right to request an extension and may be grounds for the department to deny the Respondent an extension.

56. Should the Respondent fail to meet the terms of this AOC, including the deadlines set out in Paragraphs 36 through 47, the Respondent shall be subject to pay stipulated penalties in the following amount:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$100 per day
31 to 90 days	\$250 per day
91 days and above	\$500 per day

Stipulated penalties will be paid in the form of a check made payable to “Benton County Treasurer, as custodian of the Benton County School Fund.” Any such stipulated penalty shall be paid within ten days of demand by the department and shall be delivered to:

Accounting Program
Department of Natural Resources
P.O. Box 477
Jefferson City, MO 65102-0477

57. Penalty payments under this AOC, including any stipulated penalties, are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i). For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2)(iii)(A), certain costs incurred by performance of this AOC may qualify as restitution, remediation, or costs required to come into compliance with the law. The Respondent is solely responsible for providing to the department complete, accurate, and necessary information by the close of any applicable tax year to complete a Form 1098-F. Further, the department shall not be responsible for any incomplete or inaccurate information nor

the results of any tax audit. No portion of any penalties paid pursuant to this AOC may be used to reduce any federal or state tax obligations, except as authorized by the Internal Revenue Service.

58. Compliance with this AOC resolves only the specific violations described herein, and this AOC shall not be construed as a waiver or modification for any other requirements of the MCWL and regulations, or any other source of law. Nor does this AOC resolve any future violations of this AOC or any law or regulation. Consistent with 10 CSR 20-3.010(5), this AOC shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

59. Nothing in this AOC forgives the Respondent from future non-compliance with the laws of the State of Missouri, nor requires the department or State of Missouri to forego pursuing by any legal means for any non-compliance with the laws of the State of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

60. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.

61. The effective date of the AOC shall be the date the department signs the AOC. The department shall send a fully executed copy of this AOC to the Respondent for their records.

NOTICE OF APPEAL RIGHTS

62. By signing this AOC, the Respondent consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC, pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

SIGNATORY AUTHORITY

Agreed to on this ____ day of _____, 2023

Bent Tree Harbor Home Owner’s Association, Inc.
Kevin Sterrett, President

Agreed to and Ordered on this ____ day of _____, 2023

DEPARTMENT OF NATURAL RESOURCES
John Hoke, Director
Water Protection Program

c: Karen Rouse, Director, Kansas City Regional Office
Operating Permits Section
General Counsel’s Office

Exhibit 1. Recent Permitted Effluent Limitation Violations

Reporting Date	Effluent Parameter	Daily			Weekly			Monthly		
		Effluent Limit	Reported Value	Percent over/under limit	Effluent Limit	Reported Value	Percent over limit	Effluent limit	Reported value	Percent over limit
04/30/21	BOD (mg/L)	--	--	--	30	28.0	N/A	20	28.0	40
05/31/21	BOD (mg/L)	--	--	--	30	31.0	3.3	20	31.0	55
06/30/21	BOD (mg/L)	--	--	--	30	22.0	N/A	20	22.0	10
07/31/21	BOD (mg/L)	--	--	--	30	21.0	N/A	20	21.0	5
08/31/21	BOD (mg/L)	--	--	--	30	45.0	50	20	45.0	125
09/30/21	BOD (mg/L)	--	--	--	30	37.0	23.3	20	37.0	85
10/31/21	BOD (mg/L)	--	--	--	30	28.0	N/A	20	28.0	40
11/30/21	BOD (mg/L)	--	--	--	30	27.0	N/A	20	27.0	35
12/31/21	BOD (mg/L)	--	--	--	30	41.0	36.6	20	41.0	105
02/28/22	BOD (mg/L)	--	--	--	30	39.0	30	20	39.0	95
03/31/22	BOD (mg/L)	--	--	--	30	58	93.3	20	58	190
04/30/22	BOD (mg/L)	--	--	--	30	110.0	266.6	20	99.5	397.5
05/31/22	BOD (mg/L)	--	--	--	30	120	300	20	120	500
06/30/22	BOD (mg/L)	--	--	--	30	33	10	20	33	65
01/31/23	BOD (mg/L)	--	--	--	30	27.85	N/A	20	27.85	39.25

02/28/23	BOD (mg/L)	--	--	--	30	31.31	4.36	20	31.31	56.55
03/31/23	BOD (mg/L)	--	--	--	30	37.92	26.4	20	37.92	89.6
04/30/23	BOD (mg/L)	--	--	--	30	27.85	N/A	20	27.85	39.25
08/31/23	BOD (mg/L)	--	--	--	30	79	163.3	20	79	295
05/31/21	TSS (mg/L)	--	--	--	30	26.4	N/A	20	26.4	32
06/30/21	TSS (mg/L)	--	--	--	30	39.3	31	20	39.3	96.5
07/31/21	TSS (mg/L)	--	--	--	30	57.0	90	20	57.0	185
08/31/21	TSS (mg/L)	--	--	--	30	63.5	111.6	20	63.5	217.5
09/30/21	TSS (mg/L)	--	--	--	30	159.0	430	20	159.0	695
12/31/21	TSS (mg/L)	--	--	--	30	56.0	86.6	20	56.0	180
02/28/22	TSS (mg/L)	--	--	--	30	30.0	N/A	20	30.0	50
03/31/22	TSS (mg/L)	--	--	--	30	59	96.6	20	59	195
04/30/22	TSS (mg/L)	--	--	--	30	159.0	430	20	123.5	517.5
05/31/22	TSS (mg/L)	--	--	--	30	740	2366.6	20	740	3600
06/30/22	TSS (mg/L)	--	--	--	30	90	200	20	90	350
01/31/23	TSS (mg/L)	--	--	--	30	43.0	43.3	20	43.0	115
02/28/23	TSS (mg/L)	--	--	--	30	28.0	N/A	20	28.0	40
03/31/23	TSS (mg/L)	--	--	--	30	38.0	26.6	20	38.0	90

07/31/23	TSS (mg/L)	--	--	--	30	31	3.3	20	31	55
04/30/21	<i>E. coli</i> (#/100mL)	630	2419.6	284.0	--	--	--	126	2419.6	1820.3
05/31/21	<i>E. coli</i> (#/100mL)	630	2419.6	284.0	--	--	--	126	2419.6	1820.3
06/30/21	<i>E. coli</i> (#/100mL)	630	2419.6	284.0	--	--	--	126	2419.6	1820.3
07/31/21	<i>E. coli</i> (#/100mL)	630	2419.6	284.0	--	--	--	126	2419.6	1820.3
09/30/21	<i>E. coli</i> (#/100mL)	630	2419.6	284.0	--	--	--	126	2419.6	1820.3
04/30/22	<i>E. coli</i> (#/100mL)	630	2419.6	284.0	--	--	--	126	2419.6	1820.3
05/31/22	<i>E. coli</i> (#/100mL)	630	2419.6	284.0	--	--	--	126	2419.6	1820.3
05/31/23	<i>E. coli</i> (#/100mL)	630	1011.2	60.5	--	--	--	126	31.8	N/A
07/31/23	<i>E. coli</i> (#/100mL)	630	2420	284.1	--	--	--	126	2420	1820.6
09/30/23	<i>E. coli</i> (#/100mL)	630	411	N/A	--	--	--	126	411	226.2
04/30/21	Ammonia as N (mg/L)	5.1	133.0	2507.8	--	--	--	1.3	133.0	10130.7
05/31/21	Ammonia as N (mg/L)	5.1	111.0	2076.4	--	--	--	1.3	111.0	8438.4
06/30/21	Ammonia as N (mg/L)	5.1	173.0	3292.1	--	--	--	1.3	173.0	13207.6
07/31/21	Ammonia as N (mg/L)	5.1	51.0	900	--	--	--	1.3	51.0	3823.0
08/31/21	Ammonia as N (mg/L)	5.1	67.3	1219.6	--	--	--	1.3	67.3	5076.9
09/30/21	Ammonia as N (mg/L)	5.1	50.0	880.3	--	--	--	1.3	50.0	3746.1
10/31/21	Ammonia as N (mg/L)	9.8	61.5	527.5	--	--	--	2.8	61.0	2078.5

11/30/21	Ammonia as N (mg/L)	9.8	47.4	383.6	--	--	--	2.8	47.4	1592.8
12/31/21	Ammonia as N (mg/L)	9.8	153.0	1461.2	--	--	--	2.8	153.0	5364.2
02/28/22	Ammonia as N (mg/L)	12.1	168.0	1288.4	--	--	--	12.1	168.0	1288.4
03/31/22	Ammonia as N (mg/L)	12.1	91	652.0	--	--	--	12.1	91	652.0
04/30/22	Ammonia as N (mg/L)	12.1	161	1230.5	--	--	--	12.1	147	1114.8
05/31/22	Ammonia as N (mg/L)	12.1	87.3	621.4	--	--	--	12.1	87.3	621.4
06/30/22	Ammonia as N (mg/L)	12.1	65.1	438.0	--	--	--	12.1	65.1	438.0
08/31/22	Ammonia as N (mg/L)	12.1	62.58	417.1	--	--	--	12.1	62.58	417.1
09/30/22	Ammonia as N (mg/L)	12.1	72.98	503.1	--	--	--	12.1	72.98	503.1
10/31/22	Ammonia as N (mg/L)	12.1	16.37	35.2	--	--	--	12.1	16.37	35.2
11/30/22	Ammonia as N (mg/L)	12.1	65.52	441.4	--	--	--	12.1	65.52	441.4
12/31/22	Ammonia as N (mg/L)	12.1	99.36	721.1	--	--	--	12.1	99.36	721.1
02/28/23	Ammonia as N (mg/L)	12.1	77.28	538.6	--	--	--	12.1	77.28	538.6
03/31/23	Ammonia as N (mg/L)	12.1	45.12	272.8	--	--	--	12.1	45.12	272.8
04/30/23	Ammonia as N (mg/L)	12.1	50.66	318.6	--	--	--	12.1	50.66	318.6
05/31/23	Ammonia as N (mg/L)	12.1	79.04	553.2	--	--	--	12.1	79.04	553.2
06/30/23	Ammonia as N (mg/L)	12.1	50.34	316.0	--	--	--	12.1	50.34	316.0
7/31/23	Ammonia as N (mg/L)	12.1	70.1	479.3	--	--	--	12.1	70.1	479.3
8/31/23	Ammonia as N (mg/L)	12.1	30.9	155.3	--	--	--	12.1	30.9	155.3

Exhibit A

Legal Description That Shall Apply for Purposes of this AOC

Filed Plats of National Development Company, Nos. 1 through 24, less No. 20, with the Benton County Recorder of Deeds as they are described in the Recorder of Deeds Plat/Survey List

Bent Tree Harbor, Plat 01, Blk 1-8, Benton County, Missouri

Bent Tree Harbor, Plat 02, Blk 9-18, Benton County, Missouri

Bent Tree Harbor, Plat 03, Blk 19-25, Benton County, Missouri

Bent Tree Harbor, Plat 04, Blk 26-37, Benton County, Missouri

Bent Tree Harbor, Plat 05, Blk 38-47, Benton County, Missouri

Bent Tree Harbor, Plat 06, Blk 48, Benton County, Missouri

Bent Tree Harbor, Plat 07, Blk 49-50, Benton County, Missouri

Bent Tree Harbor, Plat 08, Blk 51-56, Benton County, Missouri

Bent Tree Harbor, Plat 09, Blk 57-67, Benton County, Missouri

Bent Tree Harbor, Plat 10, Blk 70, Benton County, Missouri

Bent Tree Harbor, Plat 11, Blk 71-72, Benton County, Missouri

Bent Tree Harbor, Plat 12, Blk 68-69, Benton County, Missouri

Bent Tree Harbor, Plat 13, Blk 73-80, Benton County, Missouri

Bent Tree Harbor, Plat 14, Blk 81-84, Benton County, Missouri

Bent Tree Harbor, Plat 15, Blk 85-86, Benton County, Missouri

Bent Tree Harbor, Plat 16, Blk 87-91, Benton County, Missouri

Bent Tree Harbor, Plat 17, Blk 92-100, Benton County, Missouri

Bent Tree Harbor, Pat 18, Blk 107-111, Benton County, Missouri

Bent Tree Harbor, Plat 19, Blk 101-102, Benton County, Missouri

Bent Tree Harbor, Plat 21, Blk 103-106, Benton County, Missouri

Bent Tree Harbor, Plat 22, Blk 112-114, Benton County, Missouri

Bent Tree Harbor, Plat 23, Blk 115-116, Benton County, Missouri

Bent Tree Harbor, Plat 24, Blk 117-121, Benton County, Missouri