

VOLUNTARY SETTLEMENT AGREEMENT

This Voluntary Settlement Agreement is made between the Missouri Department of Natural Resources (“Department”); the Missouri Attorney General’s Office (“Attorney General”); and Lake Forest Condominium Unit Owners’ Association, Inc. (“Association”). This agreement is deemed to be executed on the date this document is signed and dated by the Department.

WHEREAS, the Association operates and manages the Lake Forest Condominium Complex (“Complex”).

WHEREAS, the Complex includes the Redbud condominium consisting of eleven (11) units, a recreation room, rest rooms and a maintenance room; the Dogwood Condominium consisting of ten (10) units and the Magnolia Condominium consisting of twelve (12) units, located on Elmendorf Lane, Linn Creek, Camden County, Missouri.

WHEREAS, the owners, tenants and guests generate domestic wastewater as a normal and on-going result of their occupancy and use of the condominium units, recreation room, restrooms, and other common features of the condominium complex.

WHEREAS, the wastewater generated in the Complex is conveyed via the plumbing and a sewer system to a two-cell wastewater lagoon (“lagoon”) located on otherwise undeveloped land, owned by Mrs. Janet Russell, (“Mrs. Russell”) and formerly Mrs. Janet E. Whitman, in the W ½, SE ¼, Section 29, T39N, R16E, in Camden County, Missouri. The lagoon receives no domestic wastewater other than that generated in the Complex.

WHEREAS, Mrs. Russell and her former husband, the late Glenn L. Whitman, were the original owners and developers of the Complex and lagoon in the early 1970s, and her involvement has now ended with the exception of allowing the use of property that she owns as the site for treatment of wastewater generated in the Complex and her ongoing obligation to close the lagoon withing eighteen (18) months of completion of a new wastewater treatment facility (“WWTF”).

WHEREAS, the lagoon that receives the domestic wastewater from the Complex was constructed by assigns and agents of Mrs. Russell and has never been the subject of a Missouri State Operating Permit (“Operating Permit”) from the Clean Water Commission.

WHEREAS, the lagoon does not provide a sufficient degree of treatment to enable it to adequately and reliably treat the wastewater so that it can be discharged into the immediate watershed of the Lake of the Ozarks

in compliance with current standards, rules and regulations of the Clean Water Commission.

WHEREAS, the Association has agreed to construct a Department-approved collection system and WWTF for the treatment of wastewater generated by the Complex's owners and tenants.

WHEREAS, the Department, the Attorney General, and the Association desire to enter into an agreement, which will result in efficient construction of a compliant WWTF for the Complex.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Department, the Attorney General, and the Association agree as follows:

1. The provisions of this agreement shall apply to and be binding upon the Department, the Attorney General, and the Association, as well as their successors in interest, and their successors in office. Further, each party executing this agreement shall be responsible for ensuring that their agents, subsidiaries, affiliates, lessees, officers, servants, or any person or entity acting pursuant to, through, or for the parties, adhere to the terms of this agreement.

2. The Association agrees to construct and obtain an operating permit for a new WWTF to treat wastewater generated by the Complex. All required reports, plans and specifications shall be prepared and sealed by a professional engineer licensed to practice in the State of Missouri pursuant to the following schedule:

- A. Within one hundred twenty (120) days of the effective date of this agreement, the Association shall submit to the Department for review and comment a complete Antidegradation submittal prepared pursuant to the applicable Antidegradation Rule and Implementation Procedure for the State of Missouri.
- B. Within fifteen (15) days from receipt of the Department's comments on the Antidegradation submittal, the Association shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the Antidegradation submittal.
- C. Within ninety (90) days of Department approval of the Association's Antidegradation Review, the Association shall submit to the Department for review and approval a Facility Plan. The Facility Plan shall be developed pursuant to the requirements contained in 10 CSR 20-8.110(4).

- D. Within fifteen (15) days from receipt of Department's comments on the Association's Facility Plan, the Association shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the Facility Plan.
- E. Within ninety (90) days from the Department's approval of the Facility Plan, the Association shall submit to the Department for review and approval, a complete application for construction permit including plans, specifications and the applicable fee for the new facility. The construction permit application must also include a request to public notice the Antidegradation review and the operating permit.
- F. Within fifteen (15) days from receipt of the Department's comments on the Association's construction permit application. The Association shall respond to and adequately address, to the Department's satisfaction, all of the Department's comments on the construction permit application.
- G. Within one hundred eighty (180) days of the date the Department issues a Construction Permit, the Association shall complete construction of the new WWTF.

H. Within thirty (30) days of completing construction, the Association shall submit to the Department a Substantial Completion and Operable Wastewater Construction Form, signed, sealed and dated by a professional engineer registered in the State of Missouri certifying that the project is substantially complete and operable in accordance with Department approved plans and specifications and a complete application requesting the issuance of the Operating Permit, with applicable fee.

I. Within thirty (30) days of completing construction of the improvements, the Association shall achieve compliance with the final effluent limitations contained in the Operating Permit.

3. Except in the event of a force majeure event as described in paragraph 4, should the Association fail to meet the terms of this agreement, including any of the compliance schedule milestones, the Department may impose stipulated penalties and the Association agrees to pay such stipulated penalties in the following amounts:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$0 per day
31 to 60 days	\$200per day
61 days and above	\$500 per day

Stipulated penalties will be paid in the form of a check made payable to *“State of Missouri (Camden County).”* Any such stipulated penalty shall be paid within ten (10) days of receipt of a written demand by the Attorney General and shall be delivered to: Collections Specialist, Office of the Attorney General, P.O. Box 899, Jefferson City, MO 65102-0899.

4. “Force majeure event,” for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of the Association, of any entity controlled by the Association, or of the Association’s contractors, that delays or prevents the performance of any obligation under this Settlement Agreement despite the Association’s best efforts to fulfill the obligation. The requirement that the Association exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate and prevent any potential force majeure event and best efforts to minimize the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include unanticipated or increased expenses or costs associated with implementation of this Agreement, changed financial circumstances, or other financial or budgetary issues. Failure to apply for a required permit or approval, or to provide in a timely manner all information

required to obtain a permit or approval necessary to meet the requirements of this Settlement Agreement, are not Force Majeure events.

If any event occurs or has occurred that may delay the performance of any obligation under this Consent Judgment, whether or not caused by a force majeure event, the Association shall provide notice orally or by electronic or facsimile transmission to the Department and the Attorney General's Office within 5 business days of when the Association first knew that the event might cause a delay. Within seven days thereafter, the Association shall provide in writing to the Department and the Attorney General's Office, an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Association's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Association, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Association shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Association from asserting any claim of force majeure for that event for the period of time of such failure

to comply, and for any additional delay caused by such failure. The Association shall be deemed to know of any circumstance of which the Association, any entity controlled by the Association, or the Association's contractors knew or should have known.

If the State agrees that a force majeure event has occurred, the State may agree to extend the time for the Association to perform the obligation(s) under this Consent Judgment that are affected by the force majeure event for the time necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, by itself, extend the time for performance of any other obligation. The State will notify the Association in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

If the State does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Association, the State's position shall be binding.

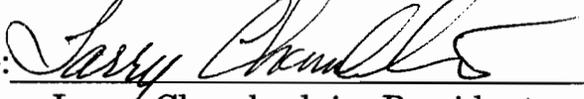
5. The Association agrees to comply with all State of Missouri environmental statutes and their implementing regulations for any and all future activities in the State of Missouri. Nothing herein shall be construed as forgiving future non-compliance with all State of Missouri environmental statutes and their implementing regulations.

6. Each signatory to this agreement avers that he or she has the authority to bind his or her respective party to this agreement as evidenced by their signature on this agreement.

7. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they expressed or implied, oral or written, except those which are expressly set forth herein. The terms of this agreement supersede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This agreement may not be modified orally.

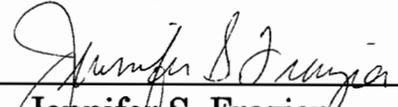
IN WITNESS WHEREOF, the parties hereto have executed this agreement as follows:

LAKE FOREST CONDOMINIUM OWNERS' ASSOCIATION, INC.

By: 
Larry Chamberlain, President

Date: 4/3/12

**CHRIS KOSTER
ATTORNEY GENERAL OF MISSOURI**

By: 
Jennifer S. Frazier
Deputy Chief Counsel
Agriculture & Environment Division

Date: 4/13/12

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: 

Date: 4/19/12

**John Madras, Director
Water Protection Program**