

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

STATE OF MISSOURI *ex rel.* )  
Attorney General Chris Koster and )  
Missouri Department of )  
Natural Resources, )

Plaintiff, )

v. )

NIANGUA VISTA CONDOMINIUM )  
OWNER'S ASSOCIATION, INC. )

and )

NIANGUA VISTA MASTER )  
ASSOCIATION, INC. , )

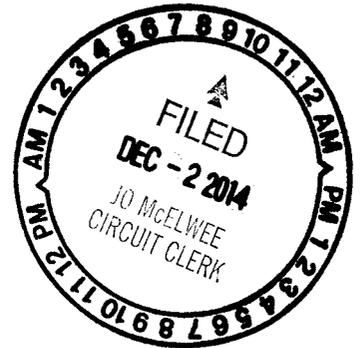
Defendants. )

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NOV 14 2014

WATER PROTECTION PROGRAM

Case No. 10CM-CC00104



CONSENT JUDGMENT

The State of Missouri and Defendant Niangua Vista Condominium Owner's Association, Inc. consent to the entry of this judgment upon the condition that the Court approves the Consent Judgment in its entirety.

The Court has read the State's Petition for Injunctive Relief and Civil Penalties, in which the State alleges that Defendants violated the Missouri Clean Water Law. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues raised by the Petition – as they apply to Defendant Niangua Vista Condominium Owner's Association, Inc. – and that the parties want to terminate this controversy and consent to the

entry of this judgment without trial. The Court retains jurisdiction over the matter in order to enforce every term of this Consent Judgment.

The parties hereto, having consented to the entry of this Consent Judgment for settlement purposes only, now therefore, before the taking of any testimony and upon the pleadings, agree as follows.

### **I. Objectives of the Parties**

1. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to resolve allegations contained in Plaintiff's Petition.

### **II. Definitions**

2. Terms used herein shall have the same meaning as provided in Chapter 644, RSMo<sup>1</sup>, and the regulations adopted thereunder. In addition, the following terms are specifically defined:

a. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment;

b. "Defendant" means Niangua Vista Condominium Owner's Association, Inc.;

c. "Department" means the Missouri Department of Natural

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<sup>1</sup> All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

Resources;

d. "Facility" means the Wastewater Treatment Facility operated by Defendant and located at 134 Heavenly Days Circle in Camdenton, Missouri;

### **III. Jurisdiction and Venue**

3. This Court has jurisdiction over the subject matter and the parties. Venue is proper in this court pursuant to § 644.076.1, RSMo, because the events giving rise to this action took place in Camden County.

### **IV. Parties Bound**

4. The provisions of this Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, assigns. They also bind all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of the parties to this action or their agents, servants, employees, heirs, successors, and assigns. Defendant shall provide a copy of this order to all persons or entities retained to perform work required by this order.

### **V. Satisfaction and Reservation of Rights**

5. Upon the completion of all terms of this Consent Judgment, including the completion of all schedules of compliance and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendant is relieved of liability for the violations alleged in the petition.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Clean Water Law or its implementing regulations, or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition.

c. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of the Missouri Clean Water Law or regulations promulgated under its authority.

d. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's facility, acts or omissions, whether related to the violations addressed in this Consent Judgment or

otherwise.

11. This Consent Judgment shall not be construed to limit the rights of Defendant to pursue record ownership of the wastewater treatment facility at issue in this action or to seek damages from the owner, Defendant Niangua Vista Master Association, Inc.

## **VI. Injunctive Relief**

12. Defendant is ordered to comply with all State of Missouri environmental statutes, specifically Chapter 644, RSMo, and all implementing regulations for any and all future activities in the State of Missouri.

13. Beginning immediately following entry of this Judgment, Defendant shall comply with the terms and conditions of Missouri State Operating Permit number MO-0126993; specifically, operating and maintaining the facility at all times so as to prevent solids from building up in the clarifier and weir, and producing effluent that complies with effluent limitations contained in Part "A" of the permit. All units or components of the facility shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment and the repair of the facility.

14. The State, through its authorized representatives, shall have the right of entry into any facility covered by this Consent Judgment, at all

reasonable times, upon presentation of credentials, to:

- a. Monitor the progress of activities required under this Consent Judgment;
- b. Verify any data or information submitted to the State in accordance with the terms of this Consent Judgment;
- c. Obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. Obtain documentary evidence, including photographs and similar data; and
- e. Assess Defendant's compliance with this Consent Judgment.

15. Upon request, Defendant shall provide the State splits of any samples taken by Defendant.

16. Until five years after the termination of this Consent Judgment, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Judgment. This information-retention requirement shall apply

regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the State, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

17. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the State at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the State, Defendant shall deliver any such documents, records, or other information to the State.

18. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

## **VII. Stipulated Penalties**

19. In the event that Defendant fails to comply with the requirements set forth in this Consent Judgment, Defendant shall be liable for stipulated penalties in accordance with the following schedule:

- a. \$75.00 per day for each day of each violation up to thirty

days;

b. \$150.00 per day for each day of each violation, from thirty-one days to sixty days;

c. \$250.00 per day for each day of each violation, beyond sixty days;

20. Stipulated penalties shall be due and payable within ten days of demand by the Attorney General's Office. Defendant shall pay stipulated penalties by check made payable to the "*State of Missouri (Camden County)*" and mailed, along with a copy of the State's stipulated penalty demand letter, to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. That check will be deposited and processed in accordance with the Consent Judgment and Missouri law.

21. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State's ability to pursue other penalties for the same acts: where a violation of this Consent Judgment also constitutes a violation of a statute, stipulated penalties may be collected in addition to statutory penalties imposed for those violations.

22. Defendant may raise as a defense to the assessment of stipulated penalties for any period of time that a violation occurred as a result of causes beyond the control of Defendant, of any entity controlled by

Defendant, or of Defendant's contractors. In any proceeding to enforce the terms of this Consent Judgment, Defendant shall have the burden of demonstrating by a preponderance of the evidence that any delay or anticipated delay in compliance has been or will be the result of causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that the duration of the delay was or will be warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Judgment identified to the State and the Court.

### **VIII. Modification**

23. Except as otherwise specified, this Consent Judgment may be modified or amended only upon written agreement by and among the parties, their successors and assigns and with the approval of the Court. All modifications shall be in writing and filed with the Court.

The parties hereby consent to this Consent Judgment through their duly authorized representatives as indicated below.

NIANGUA VISTA CONDOMINIUM OWNER'S ASSOCIATION, INC.

By: Terry A. Walter

Printed Name: TERRY A. WALTER

Title: VICE PRESIDENT NIVCOA INC.

Date: 11/10/2014

MISSOURI ATTORNEY GENERAL'S OFFICE

By: Laura E. Elsbury  
Laura E. Elsbury  
Assistant Attorney General

Date: 11-12-14

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: John Madras

John Madras, Director  
Water Protection Program

Date: 11/20/14

SO ORDERED.

Kenneth M. Hayden  
Honorable Kenneth M. Hayden

Date: 12/1/14