

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RUSSELL KIRK; OTTUMWA  
NORTHSHORE, LLC; and BREAKING  
GATE, LLC,

Defendants.

Civil Action No. 4:18-cv-00371-JEG-HCA

## CONSENT DECREE

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint on October 30, 2018, against Defendants Russell Kirk, Ottumwa Northshore, LLC, and Breaking Gate, LLC (collectively, “Defendants”), alleging that Defendants violated Sections 301(a) and 404 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a), 1344;

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States at two locations at and near the Ottumwa Northshore RV Campground in the town of Ottumwa, Iowa (the “Sites”), as described more fully in the Complaint, without prior authorization by the United States Army Corps of Engineers (the “Corps”);

WHEREAS, the Complaint seeks: (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the damage caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' civil claim under the CWA set forth in the Complaint regarding the Sites;

WHEREAS, the United States and Defendants agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claim in the Complaint under the CWA against Defendants in this case;

WHEREAS, nothing in this Consent Decree shall be deemed an admission by Defendants of any violation of the CWA or other applicable federal law; and

WHEREAS the United States and Defendants (collectively, "Parties") recognize that this Consent Decree has been negotiated by the Parties in good faith and will avoid further litigation among the Parties, and the Court, by entering this Consent Decree, finds that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the Parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

## I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over the claim in the Complaint pursuant to CWA Sections 309(b) and (d), 33 U.S.C. §§ 1319(b) and (d), and 28 U.S.C. §§ 1331, 1345, and 1355.

2. Venue is proper in the Southern District of Iowa pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), 28 U.S.C. §§ 1391(b), and 28 U.S.C. § 1395, because the Defendants reside in the District, conduct business in this District, the subject property is located in this District, and the cause of action alleged in the Complaint arose in this District. For purposes of this Consent Decree, including any action to enforce this Consent Decree, Defendant consents to personal jurisdiction and venue.

3. The Complaint states a claim upon which relief can be granted pursuant to Sections 301, 309, and 404 of the CWA, 33 U.S.C. §§ 1311, 1319, and 1344.

## II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law. Defendants shall provide a copy of this Consent Decree, prepared and approved thereunder, to all officers, directors, employees, and agents who are responsible for compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendants shall condition any contract for performance of the work on conformity with the terms of this Consent Decree. In any action to enforce this Consent Decree against a Defendant, the Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors, or assigns or any person, firm, or corporation acting in concert or

participation with the Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the Sites shall not alter or relieve Defendants of their obligation to comply with all of the terms of this Consent Decree. At least thirty (30) days prior to the transfer of ownership or other interest in the Sites, Defendant making such transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify the United States at the addresses specified in Section X below that such notice has been given. As a condition to any such transfer, the Defendant making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree. Any transfer made without complying with this Paragraph constitutes a violation of this Consent Decree.

### III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against the Defendants under Sections 301(a) and 404 of the CWA, 33 U.S.C. §§ 1311(a), 1344, concerning the Sites.

7. It is the express purpose of the Parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Defendants' obligations under this Consent Decree are joint and several.

9. Except as in accordance with this Consent Decree, Defendants and Defendants' agents, successors, and assigns are enjoined from discharging any pollutant into waters of the United States at the Sites, unless such discharge complies with the provisions of the CWA and its implementing regulations.

10. This Consent Decree is not and shall not be interpreted to be a permit under any federal, state, or local laws or regulations.

11. This Consent Decree in no way affects or relieves Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation, or permit. Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any applicable federal, state, and local laws, regulations, and permits, except as set forth in Paragraph 6 of this Consent Decree. The United States does not warrant that Defendants' compliance with any aspect of this Consent Decree will result in compliance with any provision of federal, state, or local laws, regulations, or permits. Nothing in this Consent Decree shall limit the ability of the United States Army Corps of Engineers to issue, modify, suspend, revoke, or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

12. This Consent Decree in no way affects the rights of the United States as against any person not a Party to this Consent Decree.

13. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law. This Consent Decree shall not be construed to limit the rights of the United States to obtain remedies under the CWA or its

implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 6 of this Consent Decree.

14. Except as set forth in Paragraphs 1, 2, and 3, nothing in this Consent Decree shall constitute an admission of fact or law by any Party.

#### IV. SPECIFIC PROVISIONS

##### CIVIL PENALTIES

15. Defendants shall pay a civil penalty to the United States in the amount of fifteen thousand dollars (\$15,000), within six months after entry of this Consent Decree.

16. Defendants shall make the above referenced payment by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2008V00512, EPA Region 7 and the DOJ case number 90-5-1-1-21241. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of Iowa. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

17. Promptly upon payment, Defendant shall send notice that payment has been made to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States of America v. Russell Kirk, and shall reference Civil Action No. 4:18-cv-00371-JEG-HCA and DOJ case number 90-5-1-1-21241.

18. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Paragraphs 19 through 29, of this Consent Decree is restitution or required to come into compliance with law. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section IX) are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and are not tax deductible expenditures for purposes of federal law.

### INJUNCTIVE RELIEF

#### MITIGATION BANK CREDIT PURCHASES

19. On or before December 30, 2020, Defendants shall purchase 1.58 acres of forested wetland credits from C&W Hunter Mitigation Bank at a cost of \$55,000 per credit plus a \$300 application fee for a total purchase of \$87,200.

20. Defendants shall purchase an additional 2.32 acres of forested wetland credits from C&W Hunter Mitigation Bank through installment payments on or before the deadlines in the table below. Payments shall be made within ten (10) days after the dates specified in the table. If payments are not made within ten (10) days after the specified dates, Defendants forfeit the reserved credits and total amount(s) paid to that date and will be subject to stipulated penalties as provided in Section IX of the Consent Decree.

Payment Due Date	Payment Percentage	Cumulative Percentage	Percent Purchase + 10.5% Reservation Fee	Total Payment
December 30, 2020	10	10	\$12,760 + \$4466	\$17,226
December 30, 2021	25	35	\$31,900 + \$4466	\$36,366
June 30, 2022	65	100	\$82,940 + \$4466	\$87,406
18 Month Reservation Total for 2.32 Acres of Forested Wetland Credits				\$140,998
Application Fee				\$300
Total				\$141,298

21. Within seven (7) days after the first two payments listed in Paragraph 20 for the purchase of any mitigation credits from C&W Hunter Mitigation Bank, Defendants shall submit a notice of payment to EPA to the address provided in Section X of the Consent Decree. Within seven (7) days after the completion of the purchase of any mitigation credits from C&W Hunter Mitigation Bank listed in Paragraph 20, Defendants shall submit a copy of the purchase agreement indicating payment in full to the address provided in Section X of the Consent Decree.

RESTORATION OF SITE WEST OF HARROW'S BRANCH

22. By no later than October 1, 2021, Defendants shall complete the following:
- a. Remove approximately 2,637 cubic yards of fill material from the area west of Harrow's Branch as marked on Appendix A as the "Dump Restoration Site."
  - b. The area shall be graded to match existing adjacent slope and elevation. Prior to fill removal, Defendants shall conduct a pre-grading and post-grading topographic survey to document adequate removal of fill material.
  - c. After removing the fill material, Defendants shall backfill the area with clean topsoil and plant the following: trees larger than five-eighths (5/8) of an inch caliper at the rate of fifty (50) per acre and/or seedlings of less than five-eighths (5/8) of an inch caliper at the rate of four hundred (400) per acre. The species selected shall be representative of the forested wetland species that were removed by Defendants and representative of the forested wetland species that remain in the subject parcel(s).

d. If inspection of the Dump Restoration Site conducted after the plantings of trees by Defendants and prior to the termination of this Consent Decree establishes that the survival rate of the trees planted by Defendants is less than seventy percent (70%), then Defendants shall undertake new plantings necessary to attain a seventy percent (70%) rate of survival. If new plantings are necessary, the newly planted trees will be of the matured size and species mix required in subparagraph 22.c above.

23. Within thirty (30) days after completion of the restoration work at the Dump Restoration Site, Defendants shall submit to EPA a completion report to the address provided in Section X of this Consent Decree. The report shall include a description of all work completed, invoices, contracts, work orders, and/or any documents created in support of the work, and pre- and post-work photographs of the area sufficient to demonstrate completion of the work.

24. Defendants shall preserve the Dump Restoration Site in an environmental covenant as described in Paragraph 27.

RESTORATION OF RIVERBANK ADJACENT TO DEFENDANTS' PROPERTY

25. By no later than October 1, 2021, Defendants shall complete the following:

- a. Remove all unauthorized fill along the Des Moines Riverbank adjacent to Defendant's property as marked on Appendix A as the "Riverbank Restoration Site."
- b. Unauthorized fill includes, but is not limited to, all exposed rebar, asphalt, scrap iron, or other unstable debris.

c. The unauthorized material shall be hauled to an EPA-approved off-site location.

d. Clean soil will be placed where material was removed and seeded with native species to anchor the soil.

26. Within thirty (30) days after completion of the restoration work at the Riverbank Restoration Site, Defendants shall submit to EPA a completion report to the address provided in Section X of the Consent Decree. The report shall include a description of all work completed, invoices, contracts, work orders, and/or any documents created in support of the work, and pre- and post-work photographs of the area sufficient to demonstrate completion of the work.

CONSERVATION OF WETLANDS OWNED BY DEFENDANTS

27. Within sixty (60) days after the Effective Date of the Consent Decree, Defendants shall execute and record with Wapello County an environmental covenant in substantially the same form as in Appendices B and C, which shall protect in perpetuity wetlands owned by Defendants as marked on the map provided in Appendix A as the "Preservation Site."

V. CERTIFICATION IN NOTICES AND OTHER SUBMISSIONS

28. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Defendants shall, by signature of a senior management official, certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment for knowing violations.

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

29. Until termination of this Consent Decree, Defendants shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks described Paragraphs 19 through 27 of this Consent Decree, regardless of any corporate retention policy to the contrary. Until termination of this Consent Decree, Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature, or description relating to the performance of the tasks described Paragraphs 19 through 27 of this Consent Decree.

30. At the conclusion of the document retention period, Defendants shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Defendants shall deliver any such records or documents to EPA. Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. No documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

31. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times, upon advance reasonable notice and upon presentation of credentials, to enter the Defendants' premises to:

- a. Inspect the Sites and monitor the activities required by this Consent Decree;
- b. Verify any data or information submitted to the United States in connection with the Sites or pursuant to this Consent Decree;
- c. Obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;
- d. Obtain documentary evidence, including photographs and similar data;
- e. Assess Defendants' compliance with this Consent Decree; and,
- f. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree.

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

## VII. DISPUTE RESOLUTION

33. This Section shall govern all disputes arising with respect to the meaning or requirements of this Consent Decree. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal

negotiations between the United States and Defendants affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one Party to the other affected Party or Parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and Defendants cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, Defendants file a motion with the Court seeking resolution of the dispute. Any such motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion. In resolving any such dispute, Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

34. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. Defendants shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

35. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendants under this Consent Decree as a result of such filing, except as provided in Paragraph 43 below regarding payment of stipulated penalties.

#### VIII. FORCE MAJEURE

36. Defendants shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendants, including their employees, agents, consultants, and contractors that could not be overcome by due diligence and that delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance; changed economic circumstances; changed labor relations; normal precipitation or climate events; or changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of the Sites; or failure to obtain federal, state, or local permits.

37. If Defendants believe that a Force Majeure event has affected Defendants' ability to perform any action required under this Consent Decree, Defendants shall notify the United States in writing within seven (7) calendar days after the event at the addresses listed in Section X. Such notice shall include a discussion of the following:

- a. what action has been affected;
- b. the specific cause(s) of the delay;
- c. the length or estimated duration of the delay; and

- d. any measures taken or planned by Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendants may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

38. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendants shall coordinate with EPA to determine when to begin or resume the operations that had been affected by any Force Majeure event.

39. If the Parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any Party may seek a resolution of the dispute under the procedures in Section VII of this Consent Decree.

40. Defendants shall bear the burden of proving: (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendants and any entity controlled by Defendants, including their contractors and consultants; (2) that Defendants or any entity controlled by Defendants could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

IX. STIPULATED PENALTIES

41. After entry of this Consent Decree, if Defendants fail to timely fulfill any requirement of the Consent Decree, Defendants shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- a. For Day 1 up to and including  
Day 30 of non-compliance \$1,000.00 per day;
- b. For Day 31 up to and including  
60 of non-compliance \$2,000.00 per day; and
- c. For Day 61 and beyond  
of non-compliance \$3,000.00 per day.

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

42. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the Parties pursuant to the Dispute Resolution provisions in Section VII and/or the Force Majeure provisions in Section VIII shall be resolved upon motion to this Court as provided in Paragraphs 33 through 35.

43. The filing of a motion requesting that the Court resolve a dispute shall stay Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by Defendants as provided in this Section.

44. To the extent Defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 38 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

45. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

46. Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2008V00512, EPA Region 7 and the DOJ case number 90-5-1-1-21241. Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of Iowa. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendants shall provide written notice at the addresses specified in Section X of this Decree.

47. The United States may, in its sole and unreviewable discretion, suspend, mitigate, or waive any stipulated penalty owed under this Section.

#### X. ADDRESSES

48. All notices and communications required under this Consent Decree shall be made to the Parties through each of the following persons and addresses:

a. TO EPA:

Chris Muehlberger  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
[muehlberger.christopher@epa.gov](mailto:muehlberger.christopher@epa.gov)

Jodi Bruno or designate  
United States Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
[bruno.jodi@epa.gov](mailto:bruno.jodi@epa.gov)

b. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Patrick Jacobi, Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Denver Place Building  
999 18th Street  
Suite 370 - South Terrace  
Denver, CO 80202  
[patrick.r.jacobi@usdoj.gov](mailto:patrick.r.jacobi@usdoj.gov)

c. TO DEFENDANTS:

Russell Kirk  
1671 S. Milner Street  
Ottumwa, Iowa 52501  
[russ@thepetxchange.com](mailto:russ@thepetxchange.com)

Ottumwa Northshore, LLC  
John R. Webber III, Registered Agent  
129 West 4th Street  
Ottumwa, Iowa 52501

Breaking Gate, LLC  
John R. Webber III, Registered Agent

129 West 4th Street  
Ottumwa, Iowa 52501

49. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

50. Notices submitted pursuant to this Section shall be deemed submitted upon mailing (via postal, delivery service, or electronic), unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### XI. COSTS OF SUIT

51. Each Party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Defendants subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendants shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendants for noncompliance with or enforcement of this Consent Decree.

#### XII. PUBLIC COMMENT

52. The Parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

XIII. CONTINUING JURISDICTION OF THE COURT

53. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree.

XIV. EFFECTIVE DATE

54. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. MODIFICATION

55. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. EPA may, in its sole discretion, extend in writing the completion deadlines set forth in Paragraphs 19 through 27, provided that Defendants submit a timely written request demonstrating good cause for the requested extension. Any other modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and Defendants and approved by the Court.

XVI. TERMINATION

56. Except for Paragraph 9, this Consent Decree may be terminated by either of the following:

- a. Defendants and the United States may at any time make a joint motion to the Court for termination of this Consent Decree or any portion of it; or
- b. Defendants may make a unilateral motion to the Court to terminate this Consent Decree after each of the following has occurred:

- i. Defendants have obtained and maintained compliance with all provisions of this Consent Decree and the CWA for twelve (12) consecutive months;
- ii. Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;
- iii. Defendants have certified compliance pursuant to subparagraphs 58.b.i and ii above to the Court and all Parties; and
- iv. within forty-five (45) days of receiving such certification from Defendants, EPA has not contested in writing that such compliance has been achieved. If EPA disputes Defendants' full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

IT IS SO ORDERED.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

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United States District Judge

ON BEHALF OF THE UNITED STATES:

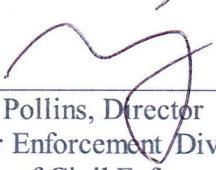
Letitia J. Grishaw  
Chief, Environmental Defense Section  
Environment and Natural Resources Division

A handwritten signature in black ink, appearing to read "Patrick R. Jacobi", is written over a horizontal line.

Dated: December 28, 2020

Patrick Jacobi, Attorney  
Environmental Defense Section  
Environment and Natural Resources Division  
Denver Place Building  
999 18th Street  
Suite 370 - South Terrace  
Denver, CO 80202

ON BEHALF OF EPA:


  

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Mark Pollins, Director  
Water Enforcement Division  
Office of Civil Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 2243A  
Washington, D.C. 20460

Dated: 12-22-2020

ON BEHALF OF DEFENDANTS

  
\_\_\_\_\_  
Russell Kirk  
1671 S. Milner Street  
Ottumwa, Iowa 52501

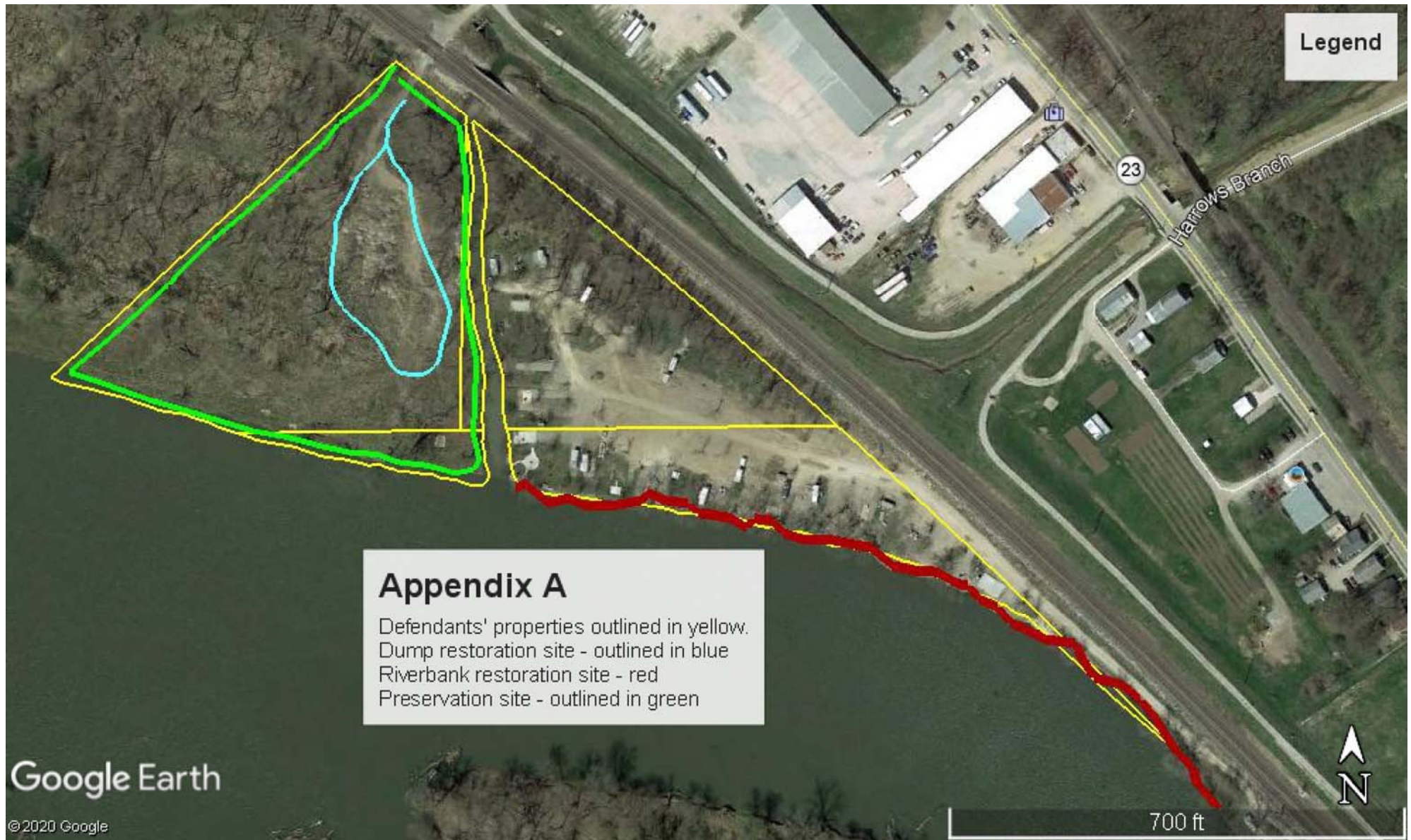
Dated: 12-17-2020

  
\_\_\_\_\_  
Ottumwa Northshore, LLC  
129 West 4th Street  
Ottumwa, Iowa 52501

Dated: 12-17-2020

  
\_\_\_\_\_  
Breaking Gate, LLC  
129 West 4th Street  
Ottumwa, Iowa 52501

Dated: 12-17-2020



**APPENDIX B**

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Space Above for Recorder's Use Only

**TITLE OF DOCUMENT:** Environmental Covenant

**DATE OF DOCUMENT:** \_\_\_\_\_, 202\_

**GRANTOR:** Breaking Gate, LLC  
Russell Kirk, Owner  
1671 S. Milner Street  
Ottumwa, Iowa 52501

**AGENCY:** U.S. Environmental Protection Agency, Region 7  
WWPD/WENF  
11201 Renner Boulevard  
Lenexa, Kansas 66219

**LEGAL DESCRIPTION:**

A portion of land being approximately less than one acre in size located in the south half of the southeast Quarter of Section 14, Township 72 North, Range 14 West in Wapello County, Iowa, being part of the following described property:

The portion of the parcel identified by the Wapello County Assessor's Office as Parcel Number 007414340011030 that is located west of Harrows Branch.

### **ENVIRONMENTAL COVENANT**

This Environmental Covenant (Covenant) is entered into by and between **Breaking Gate, LLC**, an Iowa limited liability company as Grantor/Holder, and the **U.S. Environmental Protection Agency** (EPA) as Agency, pursuant to the Iowa Uniform Environmental Covenants Act, IOWA CODE §§ 455I.1 – 455I.12, for the purpose of subjecting the Property (defined below) to the activity and use limitations set forth herein.

### **RECITALS**

- A. Grantor/Holder, whose mailing address is 1671 South Milner Street, Ottumwa, Iowa, is the owner in fee simple of a recreational vehicle campground and approximately less than one acre of property west of the campground located in Ottumwa, Wapello County, Iowa adjacent to the Des Moines River and legally described as:

A portion of land being approximately less than one acre in size located in the south half of the southeast Quarter of Section 14, Township 72 North, Range 14 West in Wapello County, Iowa, being part of the following described property:

The portion of the parcel identified by the Wapello County Assessor's Office as Parcel Number 007414340011030 that is located west of Harrows Branch.

the "Property."

- B. The Property is the subject of an enforcement action pursuant to Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, for alleged violations of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.
- C. Grantor agrees to grant this Covenant to itself, as Holder, as provided for by the Iowa Uniform Environmental Covenants Act, subjecting the Property to certain activity and use limitations for the purpose of ensuring the protection of human health and the environment by minimizing the future uses of the designated portion of the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the environmental response project implemented at the Property.

### **NOW THEREFORE,**

Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the following terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to paragraph 12 below.

The parties hereto agree as follows:

1. Parties. Breaking Gate, LLC is the Grantor and Holder of this Covenant. The EPA is the Agency.

- a. The term “Owner,” as used in this Environmental Covenant, shall mean, as of any particular date, the then-current owner of any interest in the Property or any portion thereof, including but not limited to owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
- b. The term “Transferee,” as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

2. Activity and Use Limitations. Grantor hereby subjects the designated portions of the Property and agrees to comply with, the activity and use limitations set forth below. Grantor shall not:

- a. Conduct any tilling or planting of agricultural row crops or vegetables;
- b. Deposit or allow the accumulation of trash, ashes, refuse, waste, bio-solids or any other materials on the Property;
- c. Dump or store debris/items such as tires, rocks, yard waste, equipment and vehicles;
- d. Use fertilizers, pesticides, biocides, herbicides or other agricultural chemicals (unless directed and approved by the U.S. Department of Agriculture);
- e. Allow the operation of all-terrain or off-road vehicles except to allow access to adjoining properties or as necessary to maintain the Property consistent with the approved Compensatory Mitigation Plan;
- f. Construct roads for vehicles or other motorized machinery or equipment, unless:
  - Such construction is authorized under the U.S. Army Corps of Engineers’ Nationwide Permit 14; and
  - Grantor submits pre-construction notification to EPA; and
  - Grantor limits any stream channel modification or bank stabilization to the minimum extent necessary to construct or protect the project; and
  - All construction under this provision does not require fill of greater than 0.5 acres of waters of the United States. Any action that would increase the cumulative impact of construction under this provision to greater than 0.5 acres must be approved by EPA as consistent with the purposes of the approved Compensatory Mitigation Plan;
- g. Construct, reconstruct, erect or place any building, billboard or sign, or any other structure or improvement of any kind;
- h. Use the Property for any commercial, industrial, residential, or institutional purpose;
- i. Plant, introduce or disperse any non-native or exotic plant or animal species;
- j. Fill, dump, excavate, drain, dredge, mine, drill, remove or explore for or extract minerals, loam, soil, sand, gravel, rock or other material on or below

the surface of the Property, or grant or authorize surface entry for any of these purposes, subject to any mineral rights held by third parties;

- k. Alter the surface or general topography of the Property, including but not limited to, any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material, unless Grantor obtains EPA's approval of the construction as consistent with the purposes of the approved Compensatory Mitigation Plan;
- l. Harvest vegetation and trees except for activities necessary to maintain an appropriate biological diversity within the area;
- m. Manipulate, impound or alter any natural water course, body of water or water circulation on the Property, and any activities or uses detrimental to water quality, including but not limited to, degradation or pollution of any surface or sub-surface waters;
- n. Engage in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantors, the Property, or the use or activity in question.

3. Running with the Land. This Covenant shall be binding upon Grantor/Holder and its successors and assigns, and all transferees in interest, and shall run with the land, as provided in IOWA CODE § 455I.5.1, subject to amendment or termination as set forth herein.

4. Enforcement. Compliance with this Covenant may be enforced as provided in IOWA CODE § 455I.11. The State of Iowa is also expressly provided authority to enforce this Covenant. Failure to timely enforce compliance with this Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict any person from exercising any authority under any other applicable law.

5. Right of Access. Grantor hereby provides to itself as Holder, and to the EPA and the State of Iowa, and their respective agents, contractors, and employees, the right of access at all reasonable times to the Property for implementation, monitoring or enforcing this Covenant. Nothing herein shall be deemed to limit or otherwise affect the Holder's, the EPA's, or the State's rights of entry and access or their authority to take response actions under applicable law.

6. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Covenant and shall provide the recording reference for this Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN  
ENVIRONMENTAL COVENANT DATED \_\_\_\_\_, 202\_\_,  
RECORDED IN THE OFFICE OF THE COUNTY RECORDER FOR  
WAPELLO COUNTY, IOWA, ON \_\_\_\_\_, 202\_\_, AS  
DOCUMENT \_\_\_\_\_, BOOK\_\_\_\_, PAGE \_\_\_\_.

Grantor/Transferee shall notify Holder and the EPA within ten (10) days following each conveyance of an interest in the Property, or any portion thereof. The notice shall include the name, address, and telephone number of the Transferee, and a copy of the deed or other documentation evidencing the conveyance.

7. Notification Requirement. Grantor/Transferee shall notify Holder, the EPA, and the State of Iowa as soon as possible of conditions that could constitute a breach of the activity and use limitations set forth in this Covenant.

8. Representations and Warranties. Grantor hereby represents and warrants to Holder and EPA as follows:

i. Grantor has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all of Grantor's obligations hereunder;

ii. Grantor is the sole owner of the Property and holds fee simple title to the Property;

iii. Grantor has identified all other parties who hold any interest in the Property and notified such parties of Grantor's intention to enter into this Covenant; and

iv. This Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which Grantor is a party or by which Grantor may be bound or affected.

9. Amendment or Termination. Amendment or termination of this Covenant shall comply with the standards in IOWA CODE § 455I.10. This Covenant may be modified or terminated by written consent of the EPA and the then current fee simple title owner. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Covenant shall be in accordance with IOWA CODE § 455I.9 and such additional terms as specified in this Covenant.

10. Severability. If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11. Governing Law. This Covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

12. Recordation. Within thirty (30) days after the date of the final required signature upon this Covenant, Grantor shall record this Covenant with the Office of the County Recorder of Wapello County, Iowa.

13. Effective Date. The effective date of this Covenant shall be the date upon which the fully executed Covenant was recorded with the Office of the County Recorder of Wapello County, Iowa.

14. Distribution and Notice. Within sixty (60) days of recordation, Grantor shall distribute a file- and date-stamped copy of this Covenant as provided for in IOWA CODE § 455I.7. Any document or other item required by this Covenant to be given to another party hereto shall be sent to:

If to Grantor/Holder:

Breaking Gate, LLC  
Russell Kirk, Owner  
1671 S. Milner Street  
Ottumwa, Iowa 52501

If to EPA:

U.S. Environmental Protection Agency, Region 7  
Enforcement and Compliance Assurance Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219

The undersigned Grantor represents and certifies that it is authorized to execute this Covenant.

IT IS SO AGREED:

**FOR GRANTOR BREAKING GATE, LLC**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

STATE OF \_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 202\_, before me a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of known to me to be the person who executed the within Environmental Covenant on behalf of said owner and acknowledged to me that he/she executed the same for the purposes therein stated.

\_\_\_\_\_  
Notary Public

**FOR HOLDER BREAKING GATE, LLC**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 202\_, before me a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of known to me to be the person who executed the within Environmental Covenant on behalf of said owner and acknowledged to me that he/she executed the same for the purposes therein stated.

\_\_\_\_\_  
Notary Public

**FOR AGENCY U.S. ENVIRONMENTAL PROTECTION AGENCY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Cozad  
Director, Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency  
11201 Renner Boulevard  
Lenexa, Kansas 66219

STATE OF KANSAS )  
 )  
COUNTY OF JOHNSON )

On this \_\_\_\_ day of \_\_\_\_\_, 202\_, before me a Notary Public in and for said state, personally appeared David Cozad, the Director of EPA Region 7's Enforcement and Compliance Assurance Division (or his designee), known to me to be the person who executed the within Environmental Covenant on behalf of said Agency and acknowledged to me that he executed the same for the purposes therein stated.

\_\_\_\_\_  
Notary Public

**APPENDIX C**

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Space Above for Recorder's Use Only

**TITLE OF DOCUMENT:** Environmental Covenant

**DATE OF DOCUMENT:** \_\_\_\_\_, 202\_\_

**GRANTOR:** Ottumwa Northshore, LLC  
Russell Kirk, Owner  
1671 S. Milner Street  
Ottumwa, Iowa 52501

**AGENCY:** U.S. Environmental Protection Agency, Region 7  
WWPD/WENF  
11201 Renner Boulevard  
Lenexa, Kansas 66219

**LEGAL DESCRIPTION:**

A portion of land being approximately 16 acres in size located in the south half of the southeast Quarter of Section 14, Township 72 North, Range 14 West in Wapello County, Iowa, being part of the following described property:

The entire parcels identified by the Wapello County Assessor's Office as Parcel Numbers 007414330025000 and 007414330026000 that are located in their entirety immediately west of Harrows Branch and the northwest portion of Parcel Number 007414330061000 that is located west of Harrows Branch.

**ENVIRONMENTAL COVENANT**

This Environmental Covenant (Covenant) is entered into by and between **Ottumwa Northshore, LLC**, an Iowa limited liability company as Grantor/Holder, and the **U.S. Environmental**

**Protection Agency** (EPA) as Agency, pursuant to the Iowa Uniform Environmental Covenants Act, IOWA CODE §§ 455I.1 – 455I.12, for the purpose of subjecting the Property (defined below) to the activity and use limitations set forth herein.

**RECITALS**

- A. Grantor/Holder, whose mailing address is 1671 S. Milner Street, Ottumwa, Iowa, is the owner in fee simple of a recreational vehicle campground and approximately 16 acres of property west of the campground located in Ottumwa, Wapello County Iowa adjacent to the Des Moines River and legally described as:

A portion of land being approximately 16 acres in size located in the south half of the southeast Quarter of Section 14, Township 72 North, Range 14 West in Wapello County, Iowa, being part of the following described property:

The entirety of the parcels identified by the Wapello County Assessor's Office as Parcel Numbers 007414330025000 and 007414330026000 that are located in their entirety immediately west of Harrows Branch and the northeast portion of Parcel Number 007414330061000 that is located west of Harrows Branch.

the "Property."

- B. The Property is the subject of an enforcement action pursuant to Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, for alleged violations of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.
- C. Grantor agrees to grant this Covenant to itself, as Holder, as provided for by the Iowa Uniform Environmental Covenants Act, subjecting the Property to certain activity and use limitations for the purpose of ensuring the protection of human health and the environment by minimizing the future uses of the designated portion of the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the environmental response project implemented at the Property.

**NOW THEREFORE,**

Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the following terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to paragraph 12 below.

The parties hereto agree as follows:

1. Parties. Ottumwa Northshore, LLC is the Grantor and Holder of this Covenant. The EPA is the Agency.
  - a. The term "Owner," as used in this Environmental Covenant, shall mean, as of any particular date, the then-current owner of any interest in the Property or any

portion thereof, including but not limited to owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

- b. The term “Transferee,” as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

2. Activity and Use Limitations. Grantor hereby subjects the designated portions of the Property and agrees to comply with, the activity and use limitations set forth below. Grantor shall not:

- a. Conduct any tilling or planting of agricultural row crops or vegetables;
- b. Deposit or allow the accumulation of trash, ashes, refuse, waste, bio-solids or any other materials on the Property;
- c. Dump or store debris/items such as tires, rocks, yard waste, equipment and vehicles;
- d. Use fertilizers, pesticides, biocides, herbicides or other agricultural chemicals (unless directed and approved by the U.S. Department of Agriculture);
- e. Allow the operation of all-terrain or off-road vehicles except to allow access to adjoining properties or as necessary to maintain the Property consistent with the approved Compensatory Mitigation Plan;
- f. Construct roads for vehicles or other motorized machinery or equipment, unless:
  - Such construction is authorized under the U.S. Army Corps of Engineers’ Nationwide Permit 14; and
  - Grantor submits pre-construction notification to EPA; and
  - Grantor limits any stream channel modification or bank stabilization to the minimum extent necessary to construct or protect the project; and
  - All construction under this provision does not require fill of greater than 0.5 acres of waters of the United States. Any action that would increase the cumulative impact of construction under this provision to greater than 0.5 acres must be approved by EPA as consistent with the purposes of the approved Compensatory Mitigation Plan;
- g. Construct, reconstruct, erect or place any building, billboard or sign, or any other structure or improvement of any kind;
- h. Use the Property for any commercial, industrial, residential, or institutional purpose;
- i. Plant, introduce or disperse any non-native or exotic plant or animal species;
- j. Fill, dump, excavate, drain, dredge, mine, drill, remove or explore for or extract minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Property, or grant or authorize surface entry for any of these purposes, subject to any mineral rights held by third parties;
- k. Alter the surface or general topography of the Property, including but not limited to, any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other

impervious material, unless Grantor obtains EPA's approval of the construction as consistent with the purposes of the approved Compensatory Mitigation Plan;

- l. Harvest vegetation and trees except for activities necessary to maintain an appropriate biological diversity within the area;
- m. Manipulate, impound or alter any natural water course, body of water or water circulation on the Property, and any activities or uses detrimental to water quality, including but not limited to, degradation or pollution of any surface or sub-surface waters;
- n. Engage in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantors, the Property, or the use or activity in question.

3. Running with the Land. This Covenant shall be binding upon Grantor/Holder and its successors and assigns, and all transferees in interest, and shall run with the land, as provided in IOWA CODE § 455I.5.1, subject to amendment or termination as set forth herein.

4. Enforcement. Compliance with this Covenant may be enforced as provided in IOWA CODE § 455I.11. The State of Iowa is also expressly provided authority to enforce this Covenant. Failure to timely enforce compliance with this Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict any person from exercising any authority under any other applicable law.

5. Right of Access. Grantor hereby provides to itself as Holder, and to the EPA and the State of Iowa, and their respective agents, contractors, and employees, the right of access at all reasonable times to the Property for implementation, monitoring or enforcing this Covenant. Nothing herein shall be deemed to limit or otherwise affect the Holder's, the EPA's, or the State's rights of entry and access or their authority to take response actions under applicable law.

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THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN  
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RECORDED IN THE OFFICE OF THE COUNTY RECORDER FOR  
WAPELLO COUNTY, IOWA, ON \_\_\_\_\_, 202\_, AS  
DOCUMENT \_\_\_\_\_, BOOK\_\_\_\_, PAGE \_\_\_\_.

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7. Notification Requirement. Grantor/Transferee shall notify Holder, the EPA, and the State of Iowa as soon as possible of conditions that could constitute a breach of the activity and use limitations set forth in this Covenant.

8. Representations and Warranties. Grantor hereby represents and warrants to Holder and EPA as follows:

i. Grantor has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all of Grantor's obligations hereunder;

ii. Grantor is the sole owner of the Property and holds fee simple title to the Property;

iii. Grantor has identified all other parties who hold any interest in the Property and notified such parties of Grantor's intention to enter into this Covenant; and

iv. This Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which Grantor is a party or by which Grantor may be bound or affected.

9. Amendment or Termination. Amendment or termination of this Covenant shall comply with the standards in IOWA CODE § 455I.10. This Covenant may be modified or terminated by written consent of the EPA and the then current fee simple title owner. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Covenant shall be in accordance with IOWA CODE § 455I.9 and such additional terms as specified in this Covenant.

10. Severability. If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

11. Governing Law. This Covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

12. Recordation. Within thirty (30) days after the date of the final required signature upon this Covenant, Grantor shall record this Covenant with the Office of the County Recorder of Wapello County, Iowa.

13. Effective Date. The effective date of this Covenant shall be the date upon which the fully executed Covenant was recorded with the Office of the County Recorder of Wapello County, Iowa.

14. Distribution and Notice. Within sixty (60) days of recordation, Grantor shall distribute a file- and date-stamped copy of this Covenant as provided for in IOWA CODE § 455I.7. Any document or other item required by this Covenant to be given to another party hereto shall be sent to:

If to Grantor/Holder:

Ottumwa Northshore, LLC  
Russell Kirk, Owner  
1671 S. Milner Street  
Ottumwa, Iowa 52501

If to EPA:

U.S. Environmental Protection Agency, Region 7  
Enforcement and Compliance Assurance Division  
11201 Renner Boulevard  
Lenexa, Kansas 66219

The undersigned Grantor represents and certifies that it is authorized to execute this Covenant.

IT IS SO AGREED:

**FOR GRANTOR OTTUMWA NORTSHORE, LLC**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

STATE OF \_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_ )

)

On this \_\_\_\_ day of \_\_\_\_\_, 202\_, before me a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of known to me to be the person who executed the within Environmental Covenant on behalf of said owner and acknowledged to me that he/she executed the same for the purposes therein stated.

\_\_\_\_\_  
Notary Public

**FOR HOLDER OTTUMWA NORTHSORE, LLC**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name (print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 202\_, before me a Notary Public in and for said state, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of known to me to be the person who executed the within Environmental Covenant on behalf of said owner and acknowledged to me that she/he executed the same for the purposes therein stated.

\_\_\_\_\_  
Notary Public

**FOR AGENCY U.S. ENVIRONMENTAL PROTECTION AGENCY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Cozad  
Director, Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency  
11201 Renner Boulevard  
Lenexa, Kansas 66219

STATE OF KANSAS )  
 )  
COUNTY OF JOHNSON )

On this \_\_\_\_ day of \_\_\_\_\_, 202\_, before me a Notary Public in and for said state, personally appeared David Cozad, the Director of EPA Region 7's Enforcement and Compliance Assurance Division (or his designee), known to me to be the person who executed the within Environmental Covenant on behalf of said Agency and acknowledged to me that he executed the same for the purposes therein stated.

\_\_\_\_\_  
Notary Public