

Exhibit A

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
Southeastern Division

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:
UNITED STATES OF AMERICA, :
:
 Plaintiff, :
:
v. :
:
CHARLESWOOD, INC. :
:
 Defendant. :
:
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:
----- X

Civil Action No.

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Whereas,

The United States of America (“United States” or “Plaintiff”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a Complaint in this matter pursuant to Section 309 of the Clean Water Act (the “Act”), 33 U.S.C. § 1319, alleging that the Defendant Charleswood, Inc. (“Defendant” or “Charleswood”) violated the requirements of the Act and EPA’s regulations relating to control of storm water pollution; Charleswood does not admit any wrongdoing or liability to the Plaintiff arising out of the transactions or occurrences alleged in the Complaint; and The Parties recognize, and the Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith and that implementation of this Decree will avoid prolonged and complicated litigation between the Parties, and that this Decree is fair, reasonable, and in the public interest.

I. DEFINITIONS

1. Definitions. Terms used in this Consent Decree which are defined in the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§1251-1387, or in the regulations promulgated under the CWA shall have the meaning assigned to them in the Act or in such regulations. Whenever the terms listed below are used in this Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. Applicable Permit – for any particular date, the version of the construction general water discharge permit issued by the North Dakota Department of Health (“NDDH”) in effect as of that date; for October 11, 2004 through September 30, 2009, this is Permit No. NDR10-0000; for October 1, 1999 through September 30, 2004, this was Permit No. NDR03-0000; in the event the NDDH issues an individual storm water discharge permit or permits to Charleswood for all or a part of the Development, this term shall also include any such

individual permit(s) for the period in which any such permit(s) may be in effect. In the event of a gap in permit coverage, the NDDH general storm water discharge permit most recently issued to Charleswood shall govern for purposes of this Decree.

- b. Best Management Practices or BMPs – storm water discharge management activities, procedures, or practices required by the Applicable Permit.
- c. Charleswood – Charleswood, Inc., a North Dakota corporation.
- d. Charleswood Development – the entirety of the development in the City of West Fargo, Cass County, North Dakota, with a total approximate size of 480 acres and located in or near Sec. 17, T139N, R49W, and any and all parcels or lots within or constituting this development, as shown on Attachment 1.
- e. City – the City of West Fargo, North Dakota.
- f. Clean Water Act (“CWA” or the “Act”) – the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251-1387.
- g. Day – a calendar day unless expressly stated to be a business day. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
- h. Defendant – Charleswood, Inc., a North Dakota corporation.
- i. Development – any lots or parcels in the Charleswood Development defined above that are owned and/or operated by Charleswood. This includes but is not limited to the highlighted areas known as the Gated Community (or “Area 1”); the Office Park (or “Area 2”); the Commercial Site (or “Area 3”); and 27 individual Residential Lots within the Charleswood Development, as shown on Attachment 2, and in greater detail in 2A) (Residential Lots) and 2B) (Office Park/ Area 2). This term does not include the lots on which the Charleswood business

office is located (Lot 1, Block 8, and the West Four (4) Feet of Lot 2, Block 8, Charleswood 1st Addition to the City of West Fargo) (615 15th Avenue East, West Fargo, North Dakota 58078-4015) provided that no additional construction is commenced on these lots.

j. Entry of this Consent Decree – 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.

k. Environmental Protection Agency (“EPA”) – the United States Environmental Protection Agency.

l. NDDH – the North Dakota Department of Health.

m. Notice of Intent – a request for coverage under any Applicable Permit.

n. Notice of Termination – a notice by a permittee to the NDDH of termination of his, her, or its coverage under any Applicable Permit.

o. NPDES or National Pollutant Discharge Elimination System – the national program authorized by 33 U.S.C. §1342 for issuing, modifying, terminating, monitoring, and enforcing CWA permits. Since June 14, 1975, the NDDH has administered the North Dakota NPDES program.

p. Parties – the United States of America (“Plaintiff”) and Charleswood, Inc. (“Defendant” or “Charleswood”).

q. Plaintiff – the United States of America.

r. Records – any record, report, document or photograph.

s. Self-Inspection – a storm water compliance inspection of the Development performed by the Storm Water Compliance Officer (or his or her designated representative) in compliance with the terms of the Applicable Permit.

- t. Stabilization – a process whereby the land surface is naturally or physically secured such that coverage by the Applicable Permit is no longer required.
- u. Storm Water Compliance Officer – the Charleswood officer designated to oversee storm water compliance activities at the Development.
- v. Storm Water Pollution Prevention Plan (“SWPPP”) – a plan for controlling pollutants in storm water discharges from any part of the Development that meets the requirements of the Applicable Permit.
- w. Storm Water Professional – an individual is a Storm Water Professional if he or she is currently certified by (i) the International Erosion Control Association under the Certified Professional in Erosion & Sediment Control (“CPESC”) program; (ii) any other program that provides: (a) at least 6 (six) hours of classroom training on the principles, practices and legislation of erosion and sediment control, including storm water regulations and permits; (b) a written exam designed to measure the proficiency of storm water principles; and (c) annual re-certification; or (iii) another storm water training program, either classroom or web-based, agreed to by EPA after a request made to the EPA representative(s) listed in Paragraph 55 (Notification).
- x. Storm Water Requirements – the requirements of this Decree, of any Applicable Permit, and the storm water requirements of the Clean Water Act, any federal regulation, any state statute, and any local ordinance.
- y. Unrelated – two entities are unrelated for purposes of this Decree if they have no common ownership, no common officers, and no common employees. The sale or conveyance of any lot or parcel within the Development from one entity to another does not in itself make a

buyer and seller related. The Defendant and Charleswood Monument Association, a North Dakota cooperative association, are unrelated.

II. PARTIES BOUND

2. Jurisdiction and Venue. The Parties agree that this Court has jurisdiction over the subject matter herein and over the Parties hereto pursuant to 33 U.S.C. §1319(b) and 28 U.S.C. §§1331, 1345 and 1355, and that venue is proper under 33 U.S.C. §1319(b) and 28 U.S.C. §1391(b) and (c). Charleswood consents to the Court's jurisdiction over this Decree and over Charleswood, consents to venue in this judicial district, and agrees that the Complaint states a claim upon which relief may be granted under 33 U.S.C. §§1319 and 1342. Except as expressly provided herein, this Decree shall not create any rights in any party other than the Parties to this Decree. Notice of commencement of this action was given to the State of North Dakota pursuant to Section 309(b) of the CWA, 33 U.S.C. §1319(b).

3. Parties Bound. Upon entry of this Decree, the provisions of this Decree shall apply and be binding upon the Plaintiff and Charleswood and its successors or assigns. Purchasing real property from Charleswood shall not in itself make an entity a successor or assign of Charleswood.

Charleswood shall provide a copy of this Consent Decree to each contractor hired by Charleswood to perform work required by this Consent Decree, and shall condition all contracts entered into hereunder between Charleswood and any such person or entity upon performance of the work in conformity with the terms of this Consent Decree.

4. Responsibility for Acts of Charleswood's Contractors and Consultants.

Charleswood shall be responsible for ensuring that all construction or other related work at portions of the Development for which Charleswood has responsibility under Section III (Charleswood's Compliance Program), including but not limited to work by any contractor or

consultant hired by Charleswood, is performed in accordance with all Storm Water Requirements. In any action to enforce this Decree, Charleswood shall not assert as a defense the failure of any of its employees, contractors, or consultants to take action(s) required to comply with this Decree.

III. CHARLESWOOD'S COMPLIANCE PROGRAM

5. City-Owned Property. Charleswood shall have no obligation under this Section III (Charleswood's Compliance Program) for any lot or parcel in the Development owned by the City of West Fargo provided that Charleswood's Applicable Permit requirements are met.

6. Conveyance of Lots by Deed. Charleswood shall have no obligation under this Section III (Charleswood's Compliance Program) for any lot or parcel in the Development after Charleswood conveys legal title for that lot or parcel, provided that (a) Charleswood is not in any way involved in activities at that lot or parcel; and (b) documentation recorded with the County Recorder of Cass County, North Dakota, demonstrates that title has passed from Charleswood to an unrelated entity.

7. Permits and Compliance. Charleswood shall comply with all Storm Water Requirements for the Development, including, but not limited to, maintaining coverage under, and complying with, the Applicable Permit.

8. SWPPP. Charleswood has provided EPA with a SWPPP for the Development. Charleswood shall update its SWPPP as required by the Applicable Permit, as necessary to reflect any changes at the Development. Each update to the SWPPP must be made by a Storm Water Professional, must meet all Storm Water Requirements, and must, at a minimum, contain specific BMPs for common areas and individual lots, including but not limited to vegetated buffers, designated concrete washout areas, and vehicle track-out areas at times of the year during which construction occurs. EPA may, as appropriate, request updates to the SWPPP.

Within 30 days of receiving any update to the SWPPP, EPA will provide Charleswood with any recommendation(s) EPA determines necessary. Charleswood shall implement these recommendations, or notify EPA in writing that it disputes the recommendation(s). In such instance, the procedures set forth in Paragraph 36 (Informal Dispute Resolution) shall be followed by the Parties. Charleswood shall implement all provisions of the SWPPP in accordance with Storm Water Requirements.

9. City Property and SWPPP Requirements. The SWPPP shall define Charleswood's responsibilities for Storm Water Requirements, including BMPs, for any lot or parcel in the Development owned by the City of West Fargo.

10. BMPs. Charleswood must implement all BMPs as required by the SWPPP, the Applicable Permit, or any other Storm Water Requirements for the Development.

11. Self-Inspections and Maintenance. Charleswood shall conduct self-inspections of the Development and maintain BMPs at the Development in accordance with the terms of the Applicable Permit. To verify compliance, Charleswood shall institute the following measures:

a. All self-inspections must be performed by a Storm Water Professional Charleswood has identified in its SWPPP or any amendment to its SWPPP. The Storm Water Professional must be knowledgeable in the principles and practices of erosion and sediment controls and must be skilled in assessing (i) any conditions at construction sites that may impact storm water quality; and (ii) the effectiveness of any sediment and erosion or storm water control measures.

b. Charleswood shall maintain records of self-inspections in accordance with the Applicable Permit and for any longer period required by this Decree. Charleswood shall provide EPA with any self-inspection records within 20 (twenty) days of any EPA request for those

records. Charleswood shall use the Storm Water Inspection Report (Attachment 3) to make a record of each self-inspection.

c. Charleswood must retain a record of each self-inspection and all actions taken in response to each self-inspection for at least three (3) years from the date that its coverage under any Applicable Permit expires or is terminated, or for the time period required by Paragraph 50 (Preservation of Records), whichever is longer.

d. If a missing, ineffective, or breached BMP is identified during a self-inspection required by the Applicable Permit, Charleswood shall note the deficiency in writing on the Storm Water Inspection Report (Attachment 3) and correct the deficiency within the time required by and otherwise in accordance with the terms of the Applicable Permit. Charleswood shall install or modify all required additional or different BMPs in accordance with the terms of the Applicable Permit. Charleswood shall modify the SWPPP to reflect those changes in accordance with the terms of the Applicable Permit.

e. Charleswood shall record the date of each BMP correction or maintenance activity and SWPPP modification on the Storm Water Inspection Report (Attachment 3). The Storm Water Compliance Officer shall verify that all identified correction and maintenance activities have in fact been performed and shall confirm this verification within seven (7) days of the completion of the corrections or maintenance by initialing the Storm Water Inspection Report (Attachment 3) on or near the corresponding entry. In the absence or disability of the Storm Water Compliance Officer, Charleswood may designate another individual as an alternate Storm Water Compliance Officer solely for purposes of making a verification required by this subparagraph, provided that Charleswood (i) has designated that individual in the SWPPP or any SWPPP amendment as a Storm Water Professional who may perform inspections under

Subparagraph 11.a. of this Consent Decree and (ii) notifies EPA in writing no later than 10 (ten) days after each such verification of the reason(s) the Storm Water Compliance Officer has not been or will not be able to perform that verification.

12. BMP Documentation. Within 45 (forty-five) days of the entry of this Decree, Charleswood must submit written documentation, which may include photographs, to EPA demonstrating how BMPs have been developed and implemented at all lots in the Development. This description should indicate the type of BMP provided for each lot or other parcel. Lots need not be separately photographed. At least one representative photograph of each type of BMP will be sufficient to provide this description, provided that each photograph indicates how the BMP prevents sediment loss from any non-stabilized lot. For any lot or other portion of the Development that has been stabilized, Charleswood must provide a written description of the current status of the property.

13. Notice of Termination. Upon Charleswood's conveyance by deed of the last remaining lot in the Development, Charleswood shall submit a Notice of Termination as required by the Applicable Permit.

IV. BUILDER OVERSIGHT

14. Builder Compliance. Charleswood shall take the following steps to ensure that all builders at the Development comply with all applicable Storm Water Requirements.

a. Charleswood shall include language in each of its contracts for conveying lots or other parcels within the Development to builders or other developers that notifies each such buyer of the buyer's responsibility (i) to obtain NPDES storm water permit coverage and to comply with Storm Water Requirements, (ii) to use washout areas designated by Charleswood, and (iii) to remove any measurable quantity of sediment that leaves the lot or other parcel due to

the structural failure or lack of any BMP. For purposes of the preceding sentence, “measurable quantity” means any deposit or group of deposits of mud, dirt, sediment, or similar material exceeding one-half cubic foot in volume over any land area of 100 square feet or less, and “remove” means to place the sediment back on the site from which it originated or to properly dispose of or transport it from the Development.

b. Charleswood shall require any builder on a lot or other parcel within the Development to which Charleswood holds title either to comply with Charleswood’s SWPPP or to develop and implement its own SWPPP for that lot or other parcel. For any such lots, Charleswood shall ensure that any SWPPP developed or implemented by a builder for any lot or parcel within the Development complies with the Applicable Permit.

c. Charleswood shall provide at least one clearly designated concrete washout area for builders within the Development and shall require any builder on a lot or other parcel within the Development to which Charleswood holds title not to use any other area for washing equipment. Each washout area must also be designated in the SWPPP.

V. STORM WATER COMPLIANCE OFFICER

15. Storm Water Compliance Officer. Charleswood has designated Bruce Clapham as its Storm Water Compliance Officer. The Storm Water Compliance Officer shall:

- (1) oversee all storm water compliance activities at the Development for which Charleswood is responsible under Section III (Charleswood’s Compliance Program), including the responsibilities identified in this Decree;
- (2) be a Storm Water Professional;
- (3) have the authority to implement storm water management practices and instruct and direct contractors, consultants, builders, and Charleswood employees to comply with

all Storm Water Requirements for all parts of the Development for which Charleswood is responsible under Section III (Charleswood's Compliance Program); and

(4) be reasonably accessible through the contact information contained in the SWPPP should a regulatory official seek information concerning storm water compliance at the Development.

16. Training Records. For at least three (3) years from the date that coverage under the Applicable Permit expires or is terminated, Charleswood shall maintain training records demonstrating that its Storm Water Compliance Officer and any other individuals performing self-inspections at the Development as required by Paragraph 11 (Self-Inspections and Maintenance) have had all training and have other qualifications required by this Decree. Upon request, such records will be provided to EPA within 20 (twenty) days.

VI. ADDITIONAL REPORTS TO EPA

17. Lots Still Owned By Charleswood. No later than 30 (thirty) days after this Decree is entered, Charleswood shall provide EPA with a detailed list of all lots and/or other parcels of the Development that Charleswood still owns.

18. Lots Conveyed by Deed. Charleswood shall submit to EPA semi-annual reports listing all lots and/or other parcels of the Development that it has conveyed title by deed to another party. Each report shall list all lots conveyed in a six-month period and shall be due 30 days after the end of that period. The first report is due 30 (thirty) days after entry of this Decree and shall list all lots and/or other parcels conveyed within the six (6) months preceding entry of this Decree.

19. Area 1. After entry of this Consent Decree, Charleswood shall notify EPA at least 30 (thirty) days in advance of any construction in Area 1 of the Development, as shown in

Attachment 2. Charleswood shall notify EPA within 30 (thirty) days after the conveyance by deed of Area 1, or any portion thereof, as shown in Attachment 2.

20. Certification Statement. All reports and records Charleswood submits to EPA shall include a certification statement by an authorized Charleswood official, stating as follows:

I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), 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.

VII. CIVIL PENALTY

21. Civil Penalty Amount. Within 30 (thirty) days after Entry of this Decree, Charleswood shall pay \$37,500 as a civil penalty.

22. Method of Payment. Payment of the penalty shall be made by Charleswood in the following manner:

a. payable by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with current EFT procedures and accordance with written instructions to be provided to Charleswood, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of North Dakota, 655 First Ave. North, Suite 250, Fargo, N.D. 58102-4932, (701) 297-7400.

b. At the time of payment, Charleswood shall send to the U.S. Department of Justice, the United States Attorney, and the U.S. EPA Region 8 at the addresses specified in Paragraph 55 (Notification), copies of the EFT authorization form and the EFT transaction

record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Charleswood, Inc., and shall reference the Civil Action Number assigned by the Court as well as the U.S. Department of Justice Case No. 90-5-1-1-08299. Charleswood shall also send the same information by email to acctsreceivable.CINWD@epa.gov; and by U.S. mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

23. No Federal Tax Deduction. Charleswood shall not deduct any penalties paid under this Decree pursuant to this Section VII (Civil Penalty) or Section VIII (Stipulated Penalties) in calculating its federal income tax.

VIII. STIPULATED PENALTIES

24. Liability for Stipulated Penalties. Charleswood shall be liable for stipulated penalties to the United States for violations of this Decree as specified below, unless excused under Section XI (Force Majeure). Notwithstanding any statement in this Section VIII (Stipulated Penalties), Charleswood shall be liable for stipulated penalties for portions of the Development for which Charleswood has responsibility under Section III (Charleswood's Compliance Program) at the time of the violation. The stipulated penalties shall apply to the following actions, or failures to act, by Charleswood during the term of this Decree, as documented by an EPA or NDDH inspection:

a. For failure to submit a Notice of Intent or otherwise obtain a permit for any portion of the Development, failure to prepare a SWPPP for any portion of the Development, failure to have the SWPPP available at the Development, or failure to have documentation of coverage under the Applicable Permit available at the Development, \$1,200 per day per violation;

- b. For each deficiency in a SWPPP for the Development or any portion of the Development, including any failure to update the SWPPP, \$1,000 per day per violation;
- c. For failure to install or maintain an adequate BMP, as required by the SWPPP and the Applicable Permit, including but not limited to improper or incomplete installation or maintenance, or installation of an inadequate BMP, \$1,000 per day per violation for each inadequate or incompletely installed or maintained BMP;
- d. For failure to conduct the periodic inspections required under the Applicable Permit, \$1,000 for each missed or inadequate inspection;
- e. For failure to prepare a periodic self-inspection report that contains all information required for such reports pursuant to the Applicable Permit, \$1,000 for each inadequate inspection report;
- f. For failure to maintain inspection reports at the Development in a secure location that is protected from the weather, or to make such reports timely under paragraph 11.b. available upon request, \$1,000 for each report;
- g. For failure to take any corrective action identified by self inspections, \$1,000 per day for the first ten (10) days of each violation, and \$1,500 per day for each subsequent day of each violation, provided, however, that Charleswood shall have seven (7) calendar days from the date of the self inspection where a violation is identified to take corrective action to remedy the violation before stipulated penalties begin to accrue for that violation, provided further, however, that in order to avoid the imposition of stipulated penalties, Charleswood must timely document the date that the corrective action was implemented. The provision in this subparagraph allowing Charleswood seven (7) calendar days to take corrective action to remedy a violation

does not relieve Charleswood of its obligations regarding revision and implementation of the SWPPP set forth in the Applicable Permit;

h. For failure to provide written documentation for BMPs, as required by Paragraph 12 (BMP Documentation), \$1,000 per day of violation;

i. For failure to submit a Notice of Termination, as required by Paragraph 13 (Notice of Termination), \$1,000 per day of violation;

j. For failure to provide EPA a list of lots and/or other parcels, as required by Paragraph 17 (Lots Still Owned by Charleswood), \$1,000 per day of violation;

k. For failure to provide EPA a list of lots and/or other parcels conveyed by deed, as required by Paragraph 18 (Lots Conveyed by Deed), \$1,000 per day of violation.

25. Payment of Stipulated Penalties. All stipulated penalties owed to Plaintiff by Charleswood under this Section VIII (Stipulated Penalties) shall be due and payable within 30 (thirty) days of Charleswood's receipt of Plaintiff's demand for stipulated penalties unless Charleswood invokes the procedures under Section X (Dispute Resolution). Payment of stipulated penalties and notification that the stipulated penalties have been paid shall be made in accordance with the instructions set forth in Section VII (Civil Penalty) of this Decree, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state the violation(s) for which the penalties are being paid.

26. Accrual of Stipulated Penalties. Stipulated penalties shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Decree.

27. Effect of Dispute Resolution. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or a decision of EPA that is not appealed to the Court, Charleswood shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 days of the effective date of that agreement or its receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Charleswood shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph 27.c., below.

c. If any Party appeals the District Court's decision, Charleswood shall pay all accrued penalties determined to be owing, together with interest, within 15 (fifteen) days of receiving the final appellate court decision.

28. Interest on Unpaid Stipulated Penalties. If Charleswood fails to pay stipulated penalties when due, Charleswood shall pay interest at the rate established by the Secretary of the Treasury under 31 U.S.C. §3717 beginning upon the day the stipulated penalties were due.

29. Additional Relief. Subject to Section IX (Effect of Settlement / Reservation of Rights) of this Decree, the stipulated penalties provided for in this Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for any violation by Charleswood of this Decree or applicable law.

IX. EFFECT OF SETTLEMENT / RESERVATION OF RIGHTS

30. Claims Resolved. This Decree resolves the civil claims of the United States against Charleswood for the violations alleged in the Complaint in this action through the date of

lodging of this Decree in the Office of the Clerk of the United States District Court for the District of North Dakota.

31. Reservation of Rights. The United States reserves all legal and equitable remedies available to enforce the provisions of this Decree, except as expressly stated in Paragraph 30 (Claims Resolved). This Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or its implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 30 (Claims Resolved).

32. Not a Permit. This Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Charleswood is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Charleswood's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Decree, warrant or aver in any manner that Charleswood's compliance with any aspect of this Decree will result in compliance with the Act, or with any other provisions of federal, State, or local laws, regulations, or permits.

33. Third Parties. This Decree does not limit or affect the rights of Charleswood or of the United States against any third parties, not party to this Decree, nor does it limit the rights of third parties, not party to this Decree, against Charleswood, except as otherwise provided by law. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

34. Charleswood's Reservation of Rights. Except as expressly provided in this Decree, Charleswood reserves all defenses and all rights and remedies, legal and equitable, available to it in any action brought by the Plaintiff to enforce any Storm Water Requirements.

X. DISPUTE RESOLUTION

35. Exclusive Remedy. Unless otherwise expressly provided for in this Decree, the Dispute Resolution procedures of this Section X (Dispute Resolution) shall be the exclusive mechanism to resolve disputes arising under this Decree.

36. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Decree shall first be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when Charleswood sends the United States a written Notice of Dispute. Such Notice of Dispute shall clearly state the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is extended by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, Charleswood invokes formal dispute resolution procedures as set forth below.

37. Formal Dispute Resolution.

a. If it wishes to invoke formal dispute resolution procedures, Charleswood shall do so, within the time period provided above, by serving on the Plaintiff a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to any factual data, analysis, opinion, or documentation supporting Charleswood's position.

b. Within 30 (thirty) days of receipt of Charleswood's Statement of Position, the Plaintiff shall serve its statement of position upon Charleswood. The Plaintiff's Statement of

Position shall include, but need not be limited to, any factual data, analysis, opinion, or documentation supporting the Plaintiff's decision. The United States' Statement of Position shall be binding on Charleswood, unless Charleswood files a motion for judicial review of the dispute in accordance with the following paragraph.

38. Petitions to the Court. Charleswood may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Paragraph 55 (Notification) of this Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) days of Charleswood's receipt of the United States Statement of Position pursuant to the preceding paragraph. The motion shall contain a written statement of Charleswood's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Decree. The United States shall respond to Charleswood's motion within the time period allowed by the Local Rules of this Court. Charleswood may file a written reply memorandum, to the extent permitted by the Local Rules.

39. Standard of Review. Except as otherwise provided in this Decree, in any dispute brought pursuant to Paragraph 38 (Petitions to the Court), Charleswood shall have the burden of demonstrating that its position complies with, and better serves the objectives of, this Decree.

40. Effect on Other Obligations. The invocation of dispute resolution procedures under this Section X (Dispute Resolution) shall not, by itself, extend, postpone, or affect in any way any obligation of Charleswood under this Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of

the dispute as provided in Paragraph 27 (Effect of Dispute Resolution). If Charleswood does not prevail in the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. FORCE MAJEURE

41. Definition of Force Majeure. For purposes of this Decree, "Force Majeure" is defined as any event arising from a cause beyond the reasonable control of Charleswood, of any entity controlled by Charleswood, or of Charleswood's contractors, that delays or prevents the performance of any obligation under this Decree despite Charleswood's best efforts to fulfill the obligation. The requirement that Charleswood exercise "best efforts to fulfill the obligation" includes using best efforts to address the effects of any such event (a) before it occurs, to the extent it can be reasonably anticipated, (b) as it is occurring and (c) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Charleswood's financial inability to perform any obligation under this Consent Decree.

42. Required Notification of Force Majeure. If any event occurs or has occurred that may delay the performance of any obligation under this Decree, whether or not caused by a force majeure event, Charleswood shall provide notice orally or by electronic or facsimile transmission to at least one representative of Plaintiff named in Paragraph 55 (Notification), within seventy-two hours of when Charleswood first knew that the event might cause a delay. Within seven days thereafter, Charleswood shall provide in writing to EPA 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; Charleswood'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 Charleswood, such event may cause or contribute to an endangerment to public health, welfare or the environment. Charleswood 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 Charleswood 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. Charleswood shall be deemed to know of any circumstance of which Charleswood, any entity controlled by Charleswood, or Charleswood's contractors reasonably knew or should have known.

43. Procedures for Extension. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Charleswood in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

44. Effect on Other Obligations. An extension of one compliance date based on a Force Majeure shall not automatically extend any other compliance date.

45. EPA Disagreement. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Charleswood in writing of its decision. If Charleswood elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than twenty (20) days after receipt of EPA's notice. In any such proceeding, Charleswood shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure

event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Charleswood complied with the requirements of this Section XI (Force Majeure). If Charleswood carries this burden, the delay at issue shall be deemed not to be a violation by Charleswood of the affected obligation of this Decree identified to EPA and the Court.

XII. GENERAL PROVISIONS

46. No Warranty by the United States. The United States does not, by its consent to entry of this Decree, warrant or aver in any manner that Charleswood's compliance with this Decree will result in compliance with the provisions of Storm Water Requirements. Notwithstanding the United States' review and approval of any data, reports or plans formulated pursuant to this Decree, Charleswood shall remain solely responsible for compliance with all Storm Water Requirements.

47. Headings. Headings in this Decree are provided for convenience only and shall not affect the substance of any provision.

48. Right of Entry. The United States and its representatives, including attorneys, contractors, and consultants shall have the authority to enter at reasonable times, with proper notice and upon presentation of credentials, any facility covered by this Decree or any facility where records related to this Decree are kept, to:

- a. monitor the progress of activities required by this Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Decree;
- c. obtain documentary evidence, including photographs and similar data; and
- d. assess Charleswood's compliance with this Decree.

This paragraph does not entitle the United States to access or obtain copies of records that are subject to the attorney-client or attorney work product privilege.

49. No Limitation on Other Rights of Entry. This 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 Charleswood to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

50. Preservation of Records. Until three (3) years after the termination of this Decree, Charleswood 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 Charleswood's performance of its obligations under this Decree. 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 United States, Charleswood shall, within twenty (20) days of receiving the request, provide copies of any documents, records, or other information required to be maintained by it under this paragraph.

51. Notification Prior to Destruction of Records. At the conclusion of the information-retention period provided in the preceding paragraph, Charleswood shall notify the United States at least 90 (ninety) 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 United States, Charleswood shall deliver any such documents, records, or other information to

EPA. Charleswood may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Charleswood asserts such a privilege, it shall provide 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 each 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 Charleswood. However, no documents, records, or other information created or generated pursuant to the requirements of this Decree shall be withheld on grounds of privilege.

52. Confidential Business Information. Charleswood may also assert that information required to be provided under this Decree is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Charleswood seeks to protect as CBI, Charleswood shall follow the procedures set forth in 40 C.F.R. Part 2.

53. Signatories/Service. The undersigned officer of Charleswood certifies that he is authorized to enter into this Decree and to execute and legally bind Charleswood to the terms and conditions of this Decree. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Charleswood agrees to accept certified mail with respect to all matters arising under or relating to this Decree and, provided the requirements of Paragraph 55 (Notification), below, are met, to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

54. No Effect on Right to Obtain Information. This Decree in no way limits or affects any right held by the United States to enter and inspect or to obtain information from

Charleswood pursuant to applicable federal laws, regulations, or permits. Nor does it limit or affect any duty or obligation of Charleswood to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

55. Notification.

a. Written notifications or oral communications under this Decree shall be made to the individuals specified below or to such other individuals as may be designated by a Party on written notice to the other Parties:

As to the United States:

Shon Hastings
Assistant United States Attorney
District of North Dakota
U.S. Department of Justice
655 First Ave. North, Suite 250
Fargo, ND 58102-4932

and

Heidi K. Hoffman
Environmental Enforcement Section
U.S. Department of Justice
1961 Stout St., 8th Floor
Denver, CO 80294-1961

and

Aaron Urdiales, 8ENF-W-NP
Office of Enforcement, Compliance, and Environmental Justice
U.S. Environmental Protection Agency
1595 Wynkoop St.
Denver, CO 80202-1129

As to Charleswood:

Bruce Clapham, President
Charleswood, Inc.
615 15th Ave. East
West Fargo, ND 58078-4015

with a copy to

Michael D. Nelson, Attorney at Law
Ohnstad, Twichell, PC
901 13th Ave. East
P.O. Box 458
West Fargo, ND 58078-0458

b. Notifications to or communications with a Party shall be deemed submitted on the date they are sent by electronic mail, first-class mail, or by an overnight delivery service.

56. Entire Agreement. This Decree constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

57. Retention of Jurisdiction. The Court shall retain jurisdiction over this case until termination of this Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Paragraphs 38 (Petitions to the Court) or 58 (Modification), or effectuating or enforcing compliance with the terms of this Decree.

58. Modification. This Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

59. Costs of Suit. Each Party to this action shall bear its own costs, attorneys' fees and consultants' fees incurred prior to entry of this Decree. However, the United States shall be

entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Charleswood.

60. Public Notice. This Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to modify or withdraw its consent to this Decree if the comments regarding this Decree disclose facts or considerations indicating that this Decree is inappropriate, improper or inadequate.

61. Agreement to Entry of Decree. Charleswood consents to entry of this Decree without further notice and agrees not to withdraw from or oppose entry of this Decree by the Court or to challenge any provision of this Decree, unless the United States has notified Charleswood in writing that it no longer supports entry of this Decree.

62. Request to Terminate Decree. No sooner than three (3) years after entry of this Decree, Charleswood may request the Plaintiff's consent to terminate this Decree. In seeking such consent, Charleswood shall demonstrate that:

a. Charleswood has paid all monies, civil penalties, interest, and stipulated penalties due under this Decree;

b. There are no unresolved matters subject to dispute resolution pursuant to Section X (Dispute Resolution);

c. No enforcement action under this Decree is pending; and

d. Charleswood is in compliance with the requirements set forth in Section III (Charleswood's Compliance Program).

63. Response to Request for Termination. Plaintiff shall notify Charleswood in writing that it objects or does not object to the request to terminate. If Plaintiff objects,

Charleswood may invoke the provisions of Section X (Dispute Resolution), and the Decree shall remain in effect pending resolution of the dispute by the Parties or, ultimately, the Court.

64. Termination of Decree. The Court may terminate this Decree sixty days after Charleswood has filed with the Court a motion to terminate the Decree and served a copy of that motion upon the Plaintiff, so long as either (i) Charleswood's motion to terminate this Decree is accompanied by a true and correct copy of the Plaintiff's notice that it does not object to the termination or (ii) Charleswood prevails in the dispute resolution process invoked pursuant to Paragraph 63 (Response to Request for Termination).

65. Final Judgment. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment of the Court as to the United States and Charleswood.

SO ORDERED THIS _____ DAY OF _____, 2009.

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

DREW H. WRIGLEY
United States Attorney

SHON HASTINGS
Assistant United States Attorney
District of North Dakota
U.S. Department of Justice
655 First Ave. North, Suite 250
Fargo, ND 58102-4932
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(701) 297-7444 (Facsimile)

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
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Washington, D.C. 20044-7611

HEIDI K. HOFFMAN
Trial Attorney
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U.S. Department of Justice
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(303) 844-1350 (Facsimile)

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FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

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Director, Water Enforcement Division
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Washington, D.C. 20640

EDDIE A. SIERRA
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United States Environmental Protection Agency
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MICHAEL T. RISNER
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Office of Enforcement Compliance
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United States Environmental Protection Agency
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MARGARET J. (PEGGY) LIVINGSTON
Enforcement Attorney
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop St.
Denver, CO 80202-1129
(303) 312-6858 (Phone)
(303) 312-7202 (Facsimile)

FOR DEFENDANT CHARLESWOOD, INC.:

BRUCE CLAPHAM, President
Charleswood, Inc.
615 15th Ave. East
West Fargo, ND 58078-4015

Approved as to form and content:

MICHAEL D. NELSON
Attorney for Charleswood, Inc.
Ohnstad, Twichell, PC
901 13th Ave. East
P. O. Box 458
West Fargo, ND 58078-0458
(701) 282-3249 (Phone)
(701) 282-0825 (Facsimile)

APPENDICES

The following Appendices in the form of attachments, which may change pursuant to Paragraphs 6 and 58 of the Consent Decree, are incorporated herein:

ATTACHMENT 1: Map of Charleswood Development

ATTACHMENT 2: Highlighted areas within the Charleswood Development that are owned and/or operated by Charleswood. These areas are known as the Gated Community (or "Area 1"); the Office Park (or "Area 2"); the Commercial Site (or "Area 3"); and Residential Lots within the Charleswood Development. ATTACHMENT 2 includes 2A) (Residential Lots) and 2B) (Office Park/ Area 2).

Lots/parcels identified in ATTACHMENT 2A) Page 1 are:

- Lot 12, Block 3 – Charleswood River Estates 7th Addition
- Lot 25, Block 4 – Charleswood River Estates 7th Addition
- Lot 26, Block 4 – Charleswood River Estates 7th Addition
- Lot 27, Block 4 – Charleswood River Estates 7th Addition
- Lot 28, Block 4 – Charleswood River Estates 7th Addition
- Lot 29, Block 4 – Charleswood River Estates 7th Addition
- Lot 30, Block 4 – Charleswood River Estates 7th Addition
- Lot 11, Block 5 – Charleswood River Estates 7th Addition
- Lot 1, Block 1 – Charleswood River Estates 8th Addition
- Lot 3, Block 1 – Charleswood River Estates 8th Addition
- Lot 6, Block 1 – Charleswood River Estates 8th Addition
- Lot 7, Block 1 – Charleswood River Estates 8th Addition
- Lot 10, Block 1 – Charleswood River Estates 8th Addition
- Lot 11, Block 1 – Charleswood River Estates 8th Addition
- Lot 5, Block 2 – Charleswood River Estates 8th Addition
- Lot 7, Block 1 – Charleswood River Estates 17th Addition
- Lot 8, Block 1 – Charleswood River Estates 17th Addition
- Lot 11, Block 1 – Charleswood River Estates 17th Addition
- Lot 12, Block 1 – Charleswood River Estates 17th Addition
- Lot 1, Block 2 – Charleswood River Estates 17th Addition
- Lot 2, Block 2 – Charleswood River Estates 17th Addition
- Lot 9, Block 2 – Charleswood River Estates 17th Addition
- Lot 6, Block 4 – Charleswood River Estates 17th Addition
- Lot 7, Block 4 – Charleswood River Estates 17th Addition
- Lot 14, Block 4 – Charleswood River Estates 17th Addition

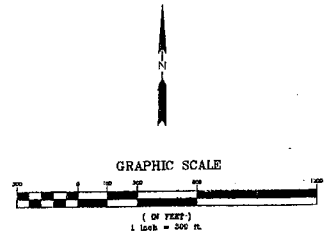
Lots/parcels identified in ATTACHMENT 2A) Page 2 are:

- Lot 14, Block 2 – Charleswood River Estates 5th Addition
- Lot 1, Block 2 – Charleswood River Estates 3rd Addition (will become part of the “Gated Community” depicted in yellow highlight on ATTACHMENT 2)


Lots/parcels identified in ATTACHMENT 2B) are:

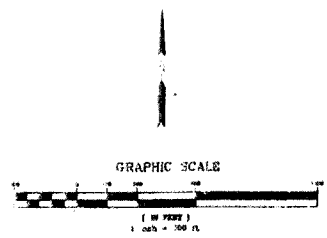
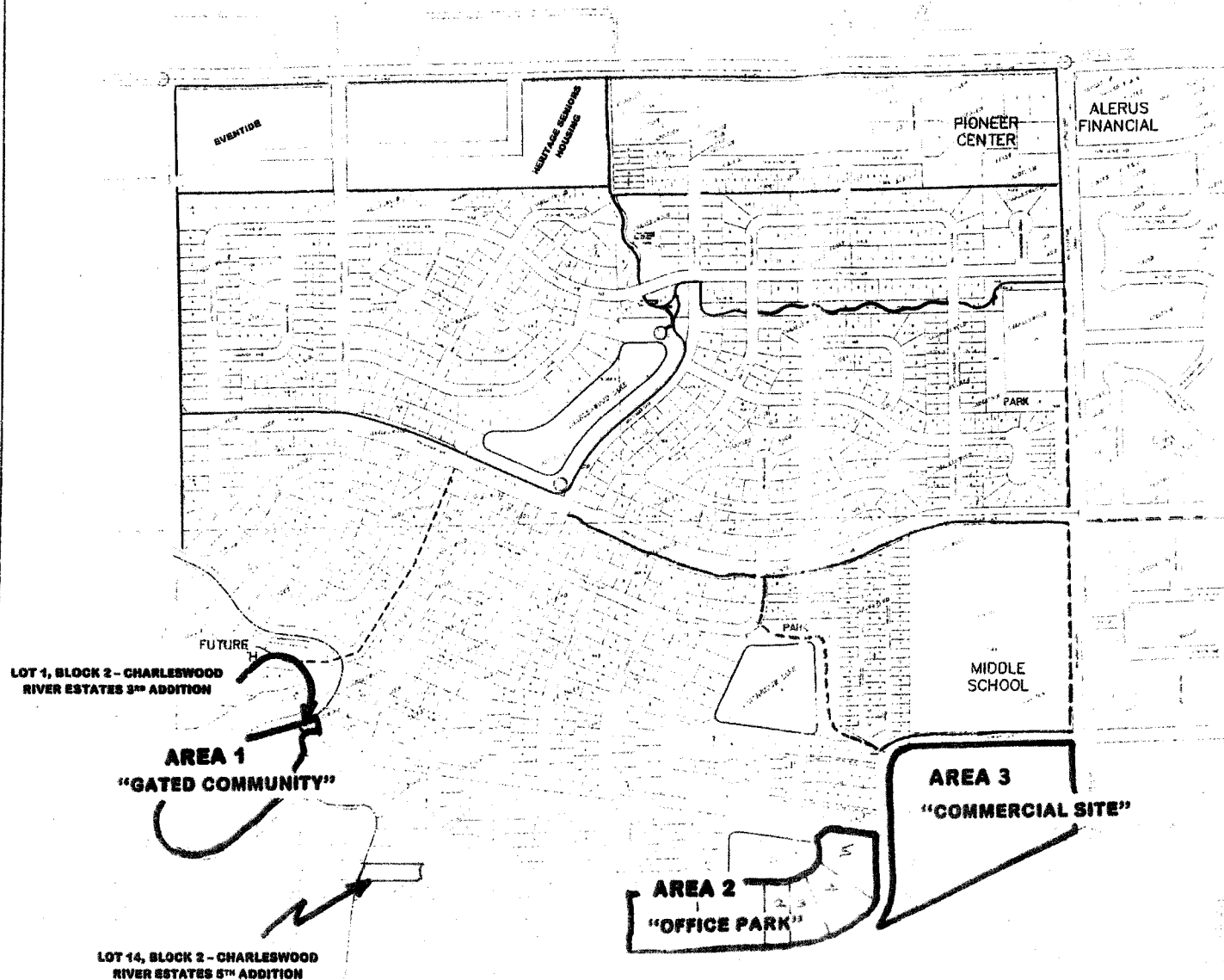
- Office Park Lots, platted as Lots 2, 3, 4, and 5, Block 1 – Charleswood 25th Addition (also shown in yellow highlight in Area 2 of ATTACHMENT 2)

ATTACHMENT 3: Storm Water Inspection Report and User Instructions



ATTACHMENT 1

CHARLESWOOD CONCEPT PLAN WEST FARGO, NORTH DAKOTA		DATE 7/21/04	REVISED
 moore engineering inc.		DRAWN BY PJT	PROJ. NO. 2004
		CHD BY	DRAWING 1 OF 1
		SCALE	

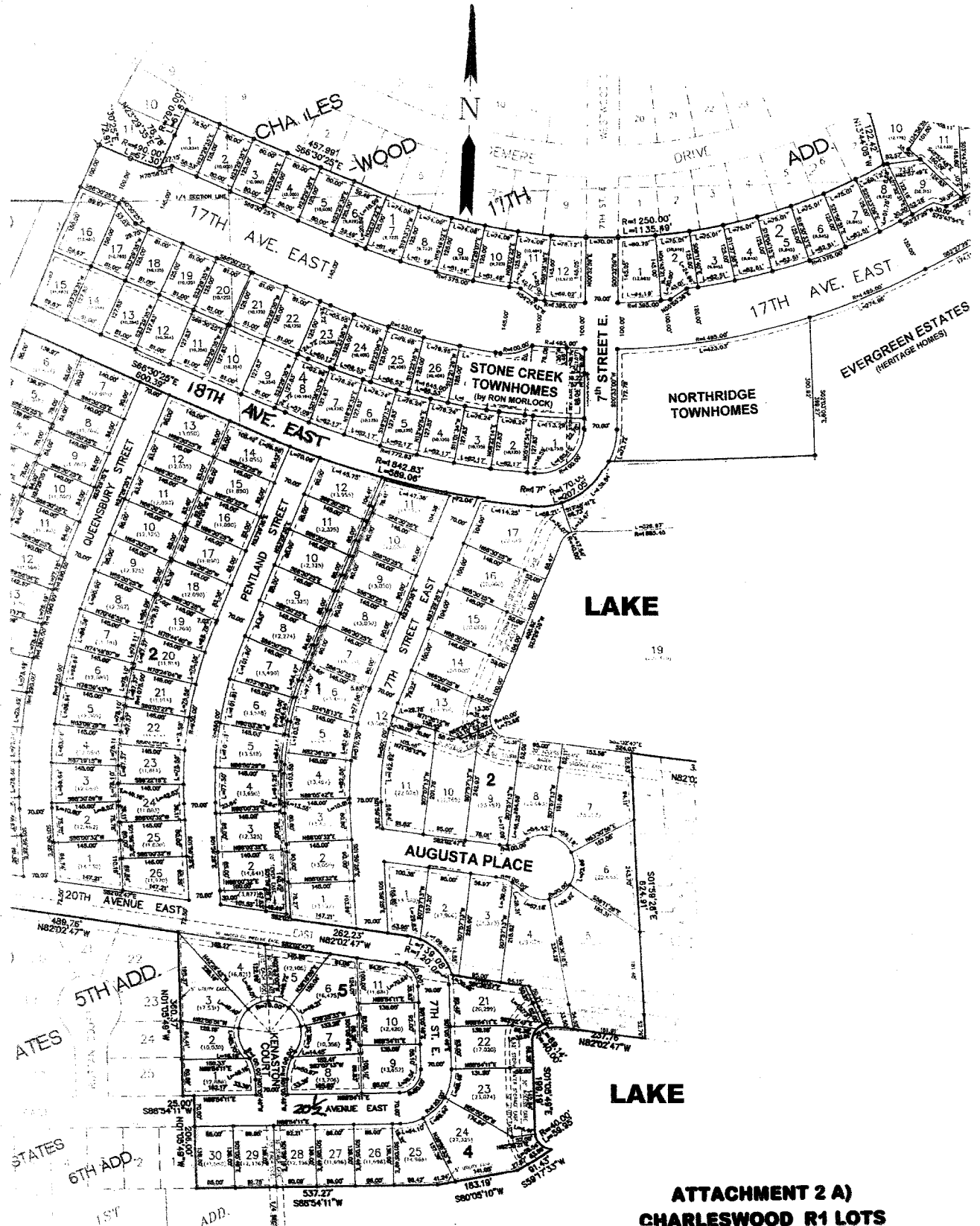


ATTACHMENT 2

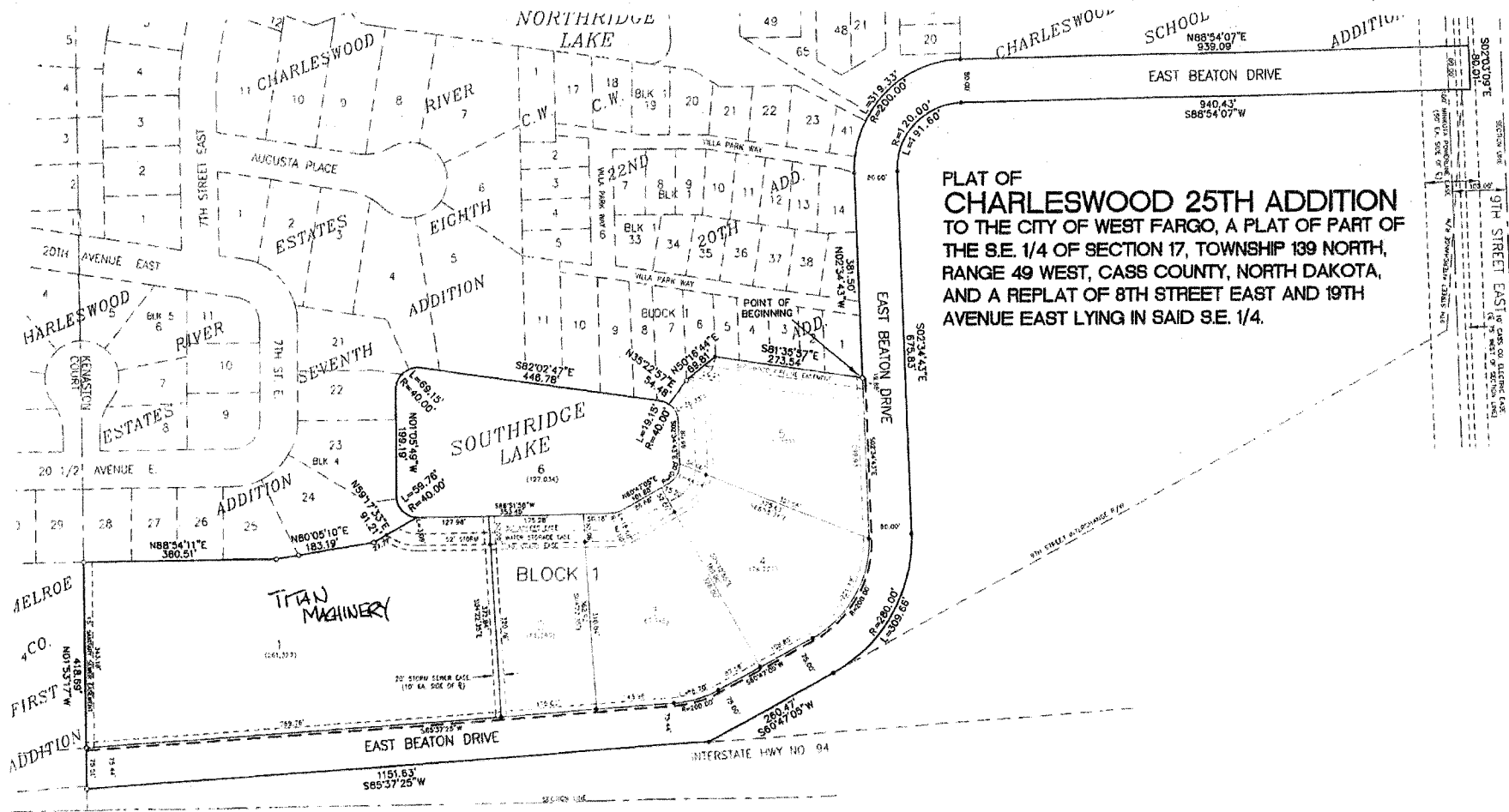
@ 06/14/09

CHARLESWOOD CONCEPT PLAN
WEST FARGO, NORTH DAKOTA

CONCEPT PLAN



ATTACHMENT 2 A)
CHARLESWOOD R1 LOTS
@ 06/14/09



PLAT OF
CHARLESWOOD 25TH ADDITION
TO THE CITY OF WEST FARGO, A PLAT OF PART OF
THE S.E. 1/4 OF SECTION 17, TOWNSHIP 139 NORTH,
RANGE 49 WEST, CASS COUNTY, NORTH DAKOTA,
AND A REPLAT OF 8TH STREET EAST AND 19TH
AVENUE EAST LYING IN SAID S.E. 1/4.

ATTACHMENT 2 B)
CHARLESWOOD OF LOTS
@ 06/14/09

ATTACHMENT 3

MAINTENANCE	YES	NO	N/A	CORRECTIVE ACTION - DATE DUE
Is the Development free of excess sediment or other pollutants that may be exiting it?				
Are the streets/gutters free of excessive sediment from the Development?				
Are exit/entrance controls on the Development properly located, in working condition, and no repairs necessary?				
Are exposed areas on the Development stabilized as required?				
Are stockpiles on the Development located and stabilized as required?				
Are sediment and erosion control BMPs on the Development properly located, in working condition, and no repairs necessary?				
Are washouts, concrete or otherwise, properly located, in working condition, and no repairs necessary, and consistent with the SWPPP?				
Are solid and hazardous materials and wastes managed as required?				
Are trash, construction materials and debris, and other solid wastes properly located and managed as required?				
Are portable toilets properly located, installed, and maintained as required?				
Are BMPs on the Development appropriate for storm water control?				
Are the storm water BMPs and the SWPPP for the Development consistent with each other?				
Have all significant items related to storm water discharges for the Development been noted?				

Are any violations of the Applicable Permit (other than those noted above) apparent?				
--	--	--	--	--

Certification

I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), 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.

Signature: _____

Title: _____

Name: _____

Date: _____

STORM WATER INSPECTION REPORT: User Instructions

IMPORTANT

This form consists of the Storm Water Inspection Report and User Instructions. These are legal documents.

The Storm Water Inspection Report is to be completed by the designated person as outlined in the Development's Storm Water Pollution Prevention Plan ("SWPPP").

Check a response to each question in the report. For any "No" answers, provide the corrective action needed for compliance, the location where the corrective action is needed, and the date such corrective action is due. **UNLESS OTHERWISE NOTED**, the date of the inspection will be the date the apparent non-compliance, maintenance issue or deficiency was first noted.

Before proceeding with any inspection, you must first verify whether all corrective action(s) identified in response to "No" answers identified from the prior inspection, if any, are undertaken within the time period allowed by the Applicable Permit. Such information must be restated or carried over to the current inspection report until the corrective action is taken and the date of completion of such corrective action is noted. This is true regardless of the time period allowed by the Applicable Permit.

You must sign and date the completed Storm Water Inspection Report. If you are filing your reports electronically, you must follow the specific procedures set forth to ensure authentication of such reports. All completed Storm Water Inspection Reports must be kept with the SWPPP.

PROCEDURES

You must record the following information on each and every Storm Water Inspection Report:

- **Inspection Date.** Insert the date on which the inspection is being performed.
- **Inspector.** Enter the name of the person performing the inspection.
- **Weather.** Describe the current weather conditions (e.g. dry, rain, snow icy). Also, indicate from where the weather data is obtained (e.g. personal observation, website, rain gauge, etc.).
- **Last Precipitation Date/ Amount.** Note the date of the last precipitation, after the date of your last inspection and prior to this one, if any, and the amount of precipitation.

- **Government Agency inspections.** Note whether you are aware of any inspection by federal, state, or local agencies at the Development since the date of your last inspection. If so, record the name of each agency that performed the inspection, the name and position of the person that performed the inspection for that agency, and the date of each inspection. If you have received written notice of violations from an inspection that you are challenging as not being violations, include this information, as well as items that you are not challenging that require follow-up.
- **Inspection Type.** Circle the inspection type that represents the purpose of the inspection (either "Regular," "Precipitation," or "Final"). Only one inspection type may be circled. An inspection is required to be undertaken in each of the following circumstances: every fourteen (14) days, within 24 hours after any storm event of greater than .5 inches of rain, or prior to the filing of the Notice of Termination for the Development.

You must check "Yes," "No," or "N/A" for each question. For any "No" answers, provide the corrective action needed for compliance and the date such corrective action is due. UNLESS OTHERWISE NOTED, the date of the inspection will be the date the apparent non-compliance, maintenance issue or deficiency was first noted.

QUESTIONS

You must respond to all of the following questions on each and every Storm Water Inspection Report:

General

Are the Applicable Permit, notification letter, and the SWPPP on the Development?
You must verify that the Applicable Permit, notification letter (if applicable), and the SWPPP are located on the Development.

Is the contact information in the office of Charleswood on the Development? You must verify that the name and phone number of the Storm Compliance Officer are located in the office of Charleswood on the Development.

Was the Storm Water Inspection Report for the last inspection signed by the Storm Water Compliance Officer, or in the absence of the Storm Water Compliance Officer, his designee, and certified if and as required by the Applicable Permit?
You must verify that the report for the prior inspection was signed by the Storm Water Compliance Officer who did the inspection, or his designee, and certified if and as required by the Applicable Permit.

Have "No" responses from the previous inspection been timely addressed with the appropriate corrective action? (If "No," explain) You must verify whether all corrective actions from "No" responses on the previous inspection have been completed.

If not, explain the reasons why these actions have not been accomplished, what actions remain to be taken and whether the response to date satisfied applicable permit requirements.

Have all prior BMP corrections or maintenance activities called for in previous storm water inspection reports been initialed – on previous storm water inspection reports – to confirm verification that all identified correction and maintenance activities have in fact been performed, as required in paragraph 11.e. of the Consent Decree? Paragraph 11.e. of the Consent Decree requires that “Charleswood shall record the date of each BMP correction or maintenance activity and SWPPP modification on the Storm Water Inspection Report. The Storm Water Compliance Officer shall verify that all identified correction and maintenance activities have in fact been performed and shall confirm this verification within seven (7) days of the completion of the corrections or maintenance by initialing the Storm Water Inspection Report (Attachment 3) on or near the corresponding entry.”

Maintenance

Is the Development free of excess sediment or other pollutants that may be exiting it? You must note whether excess sediment or pollutants are exiting any of the Development’s lots or parcels of land, and check applicable BMPs such as outfalls, exit/entrance controls, site perimeter controls, receiving water courses and adjacent offsite areas for excessive sediment or other pollutant discharges. You must also verify and record whether excessive sediment or other pollutants are being discharged onto the Development from adjacent properties.

Are streets/gutters free of excessive sediment from the Development? You must verify that the streets adjacent to the Development are free of excessive sediment coming from those lots or parcels. You must verify and record whether the source of sediment is from adjacent properties.

Are exit/entrance controls properly located, in working condition, and no repairs necessary? You must verify that exit/entrance controls on the Development, such as stone pads, rumble grates, and other access points, are properly located, in working condition, and maintained consistent with the SWPPP with no repairs necessary.

Are exposed areas on the Development stabilized as required? You must verify that exposed areas on the Development are stabilized consistent with the SWPPP.

Are stockpiles on the Development located and stabilized as required? You must verify that stockpiles are located, stabilized, and maintained with BMPs consistent with the SWPPP. You must confirm that stockpiles are located in areas where they may minimize the potential for discharging excessive sediment from the Development or onto any street or gutter.

Are sediment and erosion control BMPs properly located, in working condition, and no repairs necessary? You must verify that erosion and sediment controls are properly located and in working condition and that no repairs are necessary. You must confirm that erosion and sediment controls, such as, by way of illustration, linear barriers, soil stabilization techniques, sediment points/traps and inlet protection, are properly placed, appear to be working, and are maintained consistent with the SWPPP. If any sediment and/or erosion control BMP is in need of repair, indicate its location on the "Corrective Action" section of the inspection report.

Are washouts, concrete or otherwise, properly located, in working condition, and no repairs necessary? You must verify that concrete or other washout areas are properly placed, appear to be working, and are maintained consistent with the SWPPP.

Are solid and hazardous materials and wastes managed as required? You must verify that solid and hazardous materials and wastes (which include all construction materials and waste) are managed as required. You must confirm that storage and containment areas and controls and that management of non-storm water and hazardous materials, including leaks and spills, are implemented consistent with the SWPPP. You may check "N/A" if this provision is not applicable to the Development.

Are trash, construction materials and debris, and other solid wastes properly located and managed as required? You must verify that trash, construction materials and debris, and other solid wastes are properly located and managed as required. You must confirm that controls for the collection and storage of these materials are properly placed, appear to be effective, and are maintained consistent with the SWPPP. You may check "N/A" if this provision is not applicable to the Development.

Are portable toilets provided and properly located, installed, and maintained as required? You must verify that portable toilets are provided and located, installed and maintained as required. You must confirm that portable toilets are located off roads and away from gutters and inlets, and are properly anchored and maintained. You may check "N/A" if this provision is not applicable to the Development.

Are BMPs on the Development appropriate for storm water controls? You must verify that the BMPs implemented on the Development are appropriate for storm water controls, that is, that they are effective at minimizing pollutants in storm water discharges from the Development. If any BMP is not effective, indicate the BMP that should be implemented and when it will be implemented.

Are the storm water BMPs and the SWPPP for the Development consistent with each other? You must verify that the storm water BMPs and the SWPPP for the Development are consistent with each other. You must confirm that the storm water BMPs shown on the SWPPP exist on the Development and that those that exist on the Development are shown on the SWPPP. If the BMPs and the SWPPP are not consistent, indicate when the SWPPP will be updated.

Have all significant items related to storm water discharges for the Development been noted? You must ensure that anything that may significantly interfere with controlling pollutants in storm water discharges from the Development (e.g. stockpiling of materials on the Development) is noted on the inspection report, and fill in the "Corrective Action" portion as required.

Are any violations of the Applicable Permit (other than those noted above) apparent? You must note any violations of the Applicable Permit that are apparent during the inspection which have not already been recorded on the inspection report.

