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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>v.</p> <p>IVORY HOMES, LTD.,</p> <p>Defendant.</p>	<p>Civil Action No: 2:14-cv-00460BCW</p> <p>CONSENT DECREE</p> <p>Honorable Brooke C. Wells</p>
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A. Whereas, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has alleged that Ivory Homes, Ltd. ("Ivory Homes" or "Defendant") has violated the Clean Water Act ("CWA"), and the regulations promulgated pursuant to that statute, including the conditions and limitations of the applicable National Pollution Discharge Elimination System ("NPDES") permit;

B. Whereas, the Defendant neither admits nor denies the allegations made by the United States and EPA (hereinafter "Plaintiff"), and nothing in this Consent Decree shall constitute or be construed as an admission of liability, fact or law, or of any wrongdoing on the part of the Defendant;

C. Whereas, the Defendant instituted significant improvements to its storm water compliance program over the past three-and-a-half years that are designed to better ensure the selection, operation, and maintenance of storm water control measures and reduce the amount of sediment in storm water runoff from its construction sites;

D. Whereas, the Parties have consented to the entry of this Decree without trial of any issues;

E. Whereas, the Parties recognize, and this Court finds by entering this Decree, that the Parties have negotiated in good faith, that implementation of this Decree will avoid prolonged and complicated litigation between the parties, and that it is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law, except as expressly provided herein, and

upon consent and agreement of the parties, it is hereby ORDERED, DECREED, and ADJUDGED as follows:

I. GENERAL PROVISIONS

1. Definitions. Except as specifically provided in this Consent Decree, the terms used in this Consent Decree shall be defined in accordance with definitions in the Clean Water Act and the regulations promulgated pursuant to the Clean Water Act. Whenever the terms listed below are used in this Consent Decree, the following definitions apply:

a. Action Item – a condition that requires action to be taken to achieve or maintain compliance with Storm Water Requirements, including, but not limited to, updating a Storm Water Pollution Prevention Plan (“SWPPP”), maintaining or repairing an existing Best Management Practice (“BMP”), and implementing a new or modified BMP;

b. Applicable Permit – Storm Water General Permit for Construction Activities No. UTR300000 issued on July 1, 2008 by the Utah Department of Environmental Quality, Division of Water Quality (“UT DWQ”), any subsequent storm water construction permit issued by UT DWQ, and any storm water construction permit issued by an Authorized State for which Ivory Homes is required to submit a Notice of Intent;

c. Authorized State – a state with an NPDES Program that has been authorized by EPA under 33 U.S.C. 1342(b) and 40 C.F.R. Part 123;

d. Best Management Practices (“BMPs”) – the definition in 40 C.F.R. § 122.2, in its current form or as it may be amended in the future. That definition currently is: “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘Waters of the United States.’ BMPs

also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.”

e. Biannual Compliance Review – a report in the form attached at Appendix E and as required by Paragraph 39 (Biannual Compliance Review)

f. Clean Water Act – the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387;

g. Company Storm Water Compliance Manager – an employee of Ivory Homes designated pursuant to Paragraph 26 (Designation of Storm Water Compliance Managers) to oversee storm water compliance activities for Ivory Homes;

h. Construction Activity – includes: (1) clearing, grading and excavation that results in land disturbance of equal to or greater than one acre; (2) the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre; or (3) any other construction activity designated by EPA or an Authorized State, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to Waters of the United States pursuant to 40 C.F.R. § 122.26(b)(15)(ii). Construction Activity does not include small construction activity as that term is used in 40 C.F.R. § 122.26(b)(15)(i)(A) or (B);

i. Contractor – any contractor or sub-contractor (other than a Storm Water Consultant) engaged in the following Construction Activities at a Site:

- (1) Earthmoving/Excavation Contractors
- (2) Storm Drain Installation Contractors

- (3) Water and Sewer Installation Contractors
- (4) Paving Contractors (including curb and gutter installation)
- (5) Masonry Contractors
- (6) Interior and Exterior Painting and Staining Contractors
- (7) Stucco Contractors
- (8) Landscape Installation Contractors
- (9) Framing/ Siding/Insulation Contractors
- (10) Drywall Contractors
- (11) Latrine Contractors
- (12) Tree and Vegetation Clearing Contractors
- (13) De-Watering Contractors
- (14) Erosion Prevention and Sediment Control Contractors
- (15) Footing/Foundation Contractors
- (16) Roofing Contractors;
- (17) Storm Water BMP Maintenance Contractors

j. Contractor Supervisor – the individual designated by each Contractor who shall have the authority to oversee, instruct and direct his/her employees for purposes of storm water compliance at Ivory Homes’ Sites;

k. Corrective Action – an action taken or that is necessary to be taken to address an Action Item and/or achieve or maintain compliance with Storm Water Requirements;

l. Date of Entry – the date this Decree is signed by the Court;

m. Day – a calendar Day unless expressly stated to be a business Day;

- n. Decree – this Consent Decree, including all Appendices;
- o. Defendant – Ivory Homes, Ltd. and Ivory Development, LLC (“Ivory Homes”), their successors and assigns, as well as any subsidiaries, divisions, or related companies, including limited liability corporations, that engage in Construction Activity. For purposes of this definition, a “related company” means entities where Ivory Homes, Ltd and/or Ivory Development, LLC, or their successors and assigns, subsidiaries, or divisions, own a majority interest in the entity.
- p. Defined Water Drainage Course – any non-enclosed waterway or conveyance with the potential to or that carries run-off from a Site to Waters of the United States, including but not limited to streams and creeks;
- q. EPA – the United States Environmental Protection Agency;
- r. Force Majeure Event – any event beyond the control of the Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Decree despite Defendant’s best efforts to fulfill the obligation. "Best efforts" include anticipating any potential Force Majeure Event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. A Force Majeure Event does not include: (i) Defendant’s financial inability to perform any obligation under this Decree; (ii) Defendant’s failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Decree; or (iii) failure of Defendant to approve contracts;

s. NPDES – National Pollutant Discharge Elimination System – the national program authorized by 33 U.S.C. § 1342 for issuing, modifying, terminating, monitoring, and enforcing the CWA permits. The Utah Department of Environmental Quality, Division of Water Quality (“UT DWQ”) administers the Utah NPDES program;

t. Notice of Intent – a request for coverage under an Applicable Permit;

u. Notice of Termination – notification that coverage under the Applicable Permit is ready for termination;

v. Parties – Plaintiff and Defendant;

w. Plaintiff – the United States acting on behalf of EPA;

x. Pre-Construction Inspection and Review – the inspection and review required by Paragraph 35 (Pre-Construction Inspection and Review);

y. Pre-Construction Inspection and Review Form – the form attached at Appendix B and as required by Paragraph 35 (Pre-Construction Inspection and Review);

z. Quarterly Compliance Inspection – the form attached at Appendix D and as required by Paragraph 38 (Site Storm Water Compliance Review and Oversight);

aa. Record – any record, report, information, document, or photograph required to be created or maintained pursuant to Storm Water Requirements;

bb. Sediment Basin – an engineered temporary ponding basin formed by an embankment or excavation identified in the SWPPP for a Site as a BMP to capture sediment;

cc. Site(s) – any area where Ivory Homes engages in Construction Activity where coverage under the Applicable Permit is required. Ivory Homes may treat non-contiguous areas that are part of a common plan of development as a single Site;

- dd. Site Inspection – an inspection of a Site, as required by Paragraph 36 (Inspections);
- ee. Site Inspection Report – the form attached at Appendix C and as required by Paragraph 36 (Inspections);
- ff. Site Storm Water Compliance Manager – an employee of Ivory Homes designated pursuant to Paragraph 26 (Designation of Storm Water Compliance Managers) to oversee storm water compliance activities at a Site;
- gg. State – the State of Utah;
- hh. Storm Water Compliance Managers – any one of either Site Storm Water Compliance Managers or the Company Storm Water Compliance Manager;
- ii. Storm Water Consultant – any person or company who assists Storm Water Compliance Managers in complying with Storm Water Requirements. Consistent with such person’s responsibilities at a Site, each person who is a Storm Water Consultant shall: (1) possess the skills to assess conditions at a Site that could impact the quality of storm water and non-storm water discharges and compliance with Storm Water Requirements; and (2) be knowledgeable in the principles and practices of sediment and erosion control and other BMPs used to minimize pollutants in storm water discharges from Construction Activities;
- jj. Storm Water Records – all written records required to be created or maintained under the Storm Water Requirements;
- kk. Storm Water Requirements – the requirements (in their current form or as may be modified in the future) set forth in: (i) this Decree; (ii) Applicable Permits; and (iii) the storm water requirements of the Clean Water Act, and applicable federal regulations;

ll. Storm Water Trained – an individual who has completed the training set forth in Paragraph 43 (Storm Water Management Training) and Paragraph 44 (Annual Refresher Training);

mm. Storm Water Training Program – this term includes all of the training required by Paragraph 43 (Storm Water Management Training);

nn. SWPPP – a Storm Water Pollution Prevention Plan that meets Storm Water Requirements, for minimizing pollutants (as defined pursuant to 33 U.S.C. § 1362(6)) in storm water and non-storm water discharges;

oo. Waters of the United States – any water into which a discharge of pollutants without a permit is prohibited under Section 301 of the Clean Water Act, 33 U.S.C. § 1311, in its current form or as may be amended in the future.

2. Jurisdiction and Venue.

a. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 33 U.S.C. § 1319 and 28 U.S.C. §§ 1331, 1345, 1355, and 1367. The Complaint states a claim upon which relief may be granted under 33 U.S.C. § 1319. Venue is proper under 28 U.S.C. § 1391(b) and (c).

b. Until such time as this Court terminates this Decree, this Court will retain jurisdiction for the purposes of issuing such further orders and directions as may be necessary and appropriate for the implementation or modification of this Decree, and for enforcing compliance with the provisions of this Decree.

c. For purposes of this Decree, the Defendant consents to and will not contest the jurisdiction of this Court over this matter.

3. Parties Bound. The obligations of this Decree apply to and are binding upon Plaintiff and upon the Defendant, as provided by the terms of this Decree, and any successors, assigns, or other entities or persons otherwise bound by law, including but not limited to Federal Rule of Civil Procedure 65(d).

4. Responsibility for Acts of Others. The Defendant shall be responsible for complying with Storm Water Requirements at its Sites. Except as expressly provided in the Decree, the Defendant may delegate the performance of storm water compliance duties required under this Decree to Storm Water Consultants provided that such Storm Water Consultants have authority to carry out the delegated task. Any such delegation does not relieve the Defendant of responsibility for the proper performance of any delegated task or for compliance with Storm Water Requirements. In any action to enforce this Decree, the Defendant shall not assert as a defense the failure by any officer, director, trustee, servant, assign, employee, agent, Contractor, Storm Water Consultant, or entity in active concert or participation with that Company to take any action necessary to comply with Storm Water Requirements at Sites.

5. Public Notice. The Parties acknowledge and agree that the final approval and entry of this Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides that notice of proposed consent decrees be given to the public and that the public shall have at least 30 (thirty) Days in which to make any comments. The United States may withhold or withdraw its consent to this Decree based on such comments.

6. Agreement Not to Challenge Decree. Defendant agrees not to oppose entry of this Decree by this Court or to challenge any provision or requirement in this Decree or incorporated into this Decree, including but not limited to challenging the validity or

enforceability of any such provision or requirement, unless the United States has notified Defendant in writing that it no longer supports entry of this Decree or that the Decree requires modification.

7. Not a Permit Modification. This Decree is neither a permit nor a modification of existing permits under any federal law, and in no way relieves Defendant of its responsibilities to comply with all applicable federal regulations. Notwithstanding Plaintiff's review and approval of any data, reports or plans formulated pursuant to this Decree, the Defendant shall remain solely responsible for compliance with Storm Water Requirements and any other applicable state, federal, or local law, permit or regulation. Defendant shall update as necessary Appendices to this Decree to remain in compliance with applicable state, federal, or local law, permit or regulation.

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

9. Computation of Time. The computation of any period of time set forth in this Decree shall be governed by Rule 6 of the Federal Rules of Civil Procedure.

10. Final Judgment. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the Parties.

11. Purpose of Decree. It is the express purpose of this Decree to further the objectives of the Clean Water Act as well as regulations and permits issued pursuant to that Act. All obligations in this Decree shall have the objective of causing the Defendant to be and remain in full compliance with the Act, the regulations and permits issued pursuant to the Clean Water

Act, as well as state and local laws, regulations, and permits authorized pursuant to the Clean Water Act.

12. Access.

a. Until termination of this Decree, Plaintiff, their representatives, contractors, consultants and attorneys and their contractors and consultants shall each have the authority to enter, at reasonable times and upon presentation of credentials, any site within the geographic boundaries of the Plaintiff or any location within the geographic boundaries of the Plaintiff at which records relating to this Decree are kept for the purposes of:

- (1) monitoring the Defendant's compliance with this Decree;
- (2) verifying any data or information submitted by the Defendant pursuant to this Decree;
- (3) obtaining samples from any Site and, upon request, splits or duplicates of any samples taken by Defendant, its contractors or consultants; and
- (4) reviewing and copying any records required to be kept by Defendant pursuant to this Decree.

b. Nothing in this paragraph or any other provision of this Decree shall be construed to limit any statutory right of entry or access or other information gathering authority pursuant to any federal law.

13. Preservation of Records. In addition to complying with any other federal records preservation requirements, until one calendar year after termination of this Decree, the Defendant shall preserve at least one legible copy of all Storm Water Records in its possession, custody, or control. Within 30 (thirty) Days of retaining or employing any consultant or contractor for the

purpose of carrying out the terms of this Decree, the Defendant shall ensure that any such consultant or contractor required to maintain Storm Water Records provides the Defendant with access to electronic copies of all such records.

14. Authority to Sign Decree. The undersigned representatives of the Defendant certify that they are authorized to enter into this Decree and to execute and legally bind the Defendant to the terms and conditions of this Decree and meet the requirements for authorized signatory found in 40 C.F.R. § 122.22(a) or (b). For purposes of this paragraph, where the signatory is a limited liability company, a member or officer of a member of the limited liability company shall qualify as a corporate officer thereof.

15. Service. The Defendant shall identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on that Defendant's behalf with respect to all matters arising under or relating to this Decree. The Defendant agrees to accept service in that manner and to waive the formal service requirements of Federal Rule of Civil Procedure 4 and any applicable local rules of this Court, including, but not limited to, service of summons.

16. Notices.

a. When written notification or communication is required by the terms of this Decree, such notification or communication shall be addressed to the following individuals at the addresses specified below (or to such other addresses as may be designated by written notice to the parties):

As to the United States:
Assistant Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

P.O. Box 7611
Washington, D.C. 20044
Reference Case No. 90-5-1-1-09865

As to the Environmental Protection Agency:
U.S. Environmental Protection Agency, Region 8
Attention: NPDES Enforcement Unit Chief
1595 Wynkoop Street, 8ENF-W-NP
Denver, CO 80202
Phone: (303) 312-6312

As to Ivory Homes:
Operations Manager
Ivory Homes, Ltd.
978 E. Woodoak Lane
Salt Lake City, Utah 84117

Benson L. Hathaway, Jr.
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84145-0120

b. Notifications to or communications with any Party shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested or submitted to an overnight courier service with delivery verification.

17. Certification of Reports and Submissions. Any report or other document submitted by the Defendant pursuant to this Decree which makes any representation concerning compliance or noncompliance shall contain a certification that conforms to the requirements of 40 C.F.R. § 122.22.

18. Entire Agreement. This Decree is the final, complete, and exclusive agreement between the Parties. The Parties acknowledge that there are no inducements, promises,

representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree.

19. Modification. The terms of this Decree may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

20. Costs of Suit. Each party to this action shall bear its own costs and attorneys' fees incurred prior to entry of the Decree in this action.

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

- a. The Defendant has paid all monies, civil penalties, interest, and stipulated penalties due under this Decree;
- b. The Defendant is in compliance with this Decree;
- c. There are no unresolved matters subject to dispute resolution pursuant to Section VI (Dispute Resolution); and
- d. No enforcement action under this Decree is pending.

22. Response to Request for Termination. Following receipt by Plaintiff of the request to terminate this Decree, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Decree. If the United States agrees that the requirements of Paragraph 21 (Request to Terminate Decree) are satisfied, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree. If the United States

does not agree that the requirements of Paragraph 21 (Request to Terminate Decree) are satisfied, Ivory Homes may invoke the provisions of Section VI (Dispute Resolution), and the Decree shall remain in effect pending resolution of the dispute by the Parties, or, ultimately, the Court. However, Ivory Homes shall not seek dispute resolution of any dispute regarding termination under Paragraph 63 (Formal Dispute Resolution) until 45 (forty-five) Days after Plaintiff has received its request for termination.

23. Appendices. The Appendices identified in the Table of Contents are attached and incorporated by reference.

II. COMPLIANCE PROGRAM

24. Application of Compliance Program. Where a provision of this Section II (Compliance Program) assigns to Defendant a duty at any Site, Defendant shall carry out such duty.

25. Compliance. Defendant shall comply with all applicable Storm Water Requirements at Ivory Homes' Sites and shall not violate the prohibition in Section 301(a) of the Act by discharging pollutants in storm water without an Applicable Permit, or by making prohibited non-storm water discharges, to Waters of the United States or the State from any of Ivory Homes' Sites.

26. Designation of Storm Water Compliance Managers.

a. Site Storm Water Compliance Manager. Defendant shall designate at least one Site Storm Water Compliance Manager for each Site prior to the commencement of Construction Activities at a Site or within 30 (thirty) Days of the Date of Entry of this Consent Decree, whichever is later. The Site Storm Water Compliance Manager may be the same person

at different Sites and may have other duties at a Site, provided that each Site Storm Water Compliance Manager is afforded sufficient time and authority to meet each obligation of this paragraph for each Site for which that individual is responsible. More than one Site Storm Water Compliance Manager may be appointed for a Site. Each Site Storm Water Compliance Manager shall:

(1) be Storm Water Trained: (a) before the person is appointed a Site Storm Water Compliance Manager at a Site; or (b) within 30 (thirty) Days of the Date of Entry of the Consent Decree, whichever is later;

(2) be given and have reviewed a copy of the SWPPP for a Site and relevant compliance sections of this Decree prior to beginning work at a Site;

(3) have the authority and responsibility to manage all tasks necessary to comply with Storm Water Requirements and this Decree at a Site, including work performed by Contractors and Storm Water Consultants. All Site Storm Water Compliance Managers at each Site are required to take or direct action to comply with Storm Water Requirements and the provisions of this Decree at a Site, without regard to where or when he or she observes or learns of a particular Action Item;

(4) have the authority and responsibility to stop work at a Site when necessary to comply with Storm Water Requirements or the provisions of this Decree, and have the authority and responsibility to order or recommend such other sanctions or actions as necessary to comply with Storm Water Requirements and this Decree at a Site;

(5) be familiar with and have the authority to certify, as allowed by the Applicable Permit, and cause a Site's SWPPP to be amended;

(6) be the point of contact at a Site for regulatory officials and Defendant's employees, or Contractors' employees regarding Storm Water Requirements;

(7) report to the Company Storm Water Compliance Manager regarding compliance with Storm Water Requirements and this Decree; and

(8) be on Site:

(a) 1 (one) Day a week when clearing, grading, sewer installation, water main installation or construction of streets and sidewalks are occurring; and

(b) for such additional time when other construction-related activities are occurring, and as is necessary to ensure that he or she can: (i) visually observe and review the work in light of predicted storm events; (ii) direct additional installation and maintenance of BMPs related to such work as necessary; and (iii) cause Action Items related to such work to be promptly identified and Corrective Actions timely taken.

(9) in case of absence, illness or other emergency, designate an alternate Storm Water Compliance Manager who meets the requirements of Paragraph 26.a. (Site Storm Water Compliance Manager) and who will perform the duties of the Site Storm Water Compliance manager as set forth in Paragraph 26.a.(1) – (9), above, until the original Site Storm Water Compliance Manager can return to work.

b. Company Storm Water Compliance Manager. Defendant shall designate one Company Storm Water Compliance Manager within 7 (seven) Days of the Date of Entry of this Consent Decree. The Company Storm Water Compliance Manager shall:

(1) be an employee of the Defendant;

(2) be Storm Water Trained no more than 30 (thirty) Days after the Date of Entry of this Decree;

(3) have the authority and responsibility to manage all activities necessary to meet Storm Water Requirements and the provisions of this Decree at a Site, including those activities performed by Contractors;

(4) have the authority to order any person to stop any work at a Site when necessary to comply with Storm Water Requirements and this Decree and to order or recommend such other sanctions or actions as necessary to comply with Storm Water Requirements and this Decree;

(5) oversee each Site Storm Water Compliance Manager and confer with each Site Storm Water Compliance Manager at least once a month;

(6) be familiar with and have the authority to certify and cause a Site's SWPPP to be amended;

(7) oversee the development and implementation of the Storm Water Training Program established pursuant to Paragraph 43 (Storm Water Management Training) and Paragraph 44 (Annual Refresher Training);

(8) oversee the development and maintenance of the list of Sites as required by Paragraph 27 (List of Sites);

(9) submit the Biannual Compliance Review to EPA pursuant to Paragraph 39 (Biannual Compliance Review);

(10) serve as Defendant's point of contact for EPA regarding Defendant's compliance with Storm Water Requirements and this Decree; and

(11) approve or disapprove the SWPPPs and major SWPPP modifications at all Sites.

The Company Storm Water Compliance Manager's responsibilities under Paragraph 26.b.(5), (7)-(8), and (11), above, may not be delegated to anyone else.

c. Monthly Storm Water Meetings For Storm Water Compliance Managers.

Defendant shall have monthly storm water meetings for all Storm Water Compliance Managers.

The monthly storm water meetings shall address the following areas:

- (1) Action Items not addressed within 7 (seven) Days;
- (2) any recurring Action Items;
- (3) problems with Contractors;
- (4) any material changes to SWPPPs;
- (5) issues with conducting adequate inspections and use of proper forms;
- (6) any changes in regulations, permits or Ivory Homes policies; and
- (7) any other storm water related issues that need to be addressed for

purposes of compliance.

27. List of Sites.

a. Within 30 (thirty) Days of the Date of Entry, Ivory Homes shall provide, electronically and in hard copy, a list of sites ("List") to Plaintiff in accordance with Paragraph 16 (Notices).

(1) The initial List shall include all Sites where Construction Activity has commenced and final stabilization has not occurred as of the Date of Entry.

(2) The List shall provide for each Site:

(a) the state and county in which the Site is located;
(b) the Site name, address, and latitude and longitude;
(c) the date that the Pre-Construction Inspection and Review Form was signed, for Sites where Ivory Homes commenced construction activity after the Date of Entry;

(d) the estimated number of acres that will be disturbed at the Site;
(e) the effective date of the Applicable Permit coverage, permit number, and the name of the permit holder(s);

(f) the name and contact number for the relevant Site Storm Water Compliance Manager(s) and Company Storm Water Compliance Manager; and

(g) when applicable, the date the NOT was signed.

b. Ivory Homes shall update the List by adding new Sites started during the prior calendar quarter by the 30th (thirtieth) Day of the next calendar quarter. Any Site for which permit coverage was terminated shall be included on the first quarterly update following such permit coverage termination, but need not be included in the List in subsequent updates.

28. Permits. At a Site where coverage under an Applicable Permit is or will be required, Ivory Homes shall obtain permit coverage at that Site prior to signing the Pre-Construction Inspection and Review Form, or within the time required by the Applicable Permit, whichever is earlier.

29. Storm Water Plans and Records.

a. Prior to the commencement of Construction Activities at each Site, Ivory Homes shall prepare a Site-specific SWPPP. The SWPPP shall include a narrative report which

describes in narrative form BMPs to be installed and a justification for the BMPs selected, the sequence of the installation of BMPs, and the specifications for BMP installation and maintenance. The SWPPP shall address the question of whether phasing of the grading activities at the Site is an appropriate BMP and, if phasing of grading activity is selected, contain a narrative description of the phases and how the phases were designed.

b. All SWPPPs and SWPPP amendments shall comply with the terms and conditions of the Applicable Permit, this Decree, and the CWA. Ivory Homes shall use the SWPPP Criteria, attached hereto as Appendix A, as a guide.

c. If there is more than one Site Storm Water Compliance Manager for the Site, the SWPPP shall specify how transitions between Site Storm Water Compliance Managers shall be handled and how responsibilities shall be coordinated.

d. SWPPPs shall be revised or amended in accordance with the Applicable Permit.

e. All SWPPPs and SWPPP amendments that alter the schedule for construction, the placement or design of structural BMPs, or the narrative analysis shall be certified pursuant to 40 C.F.R. § 122.22. For purposes of this subparagraph, the Site Storm Water Compliance Manager may be delegated authority to certify SWPPP amendments.

f. All Site Storm Water Compliance Managers assigned to a Site and the Company Storm Water Compliance Manager shall review and become familiar with the SWPPP for that Site. This task cannot be delegated.

g. Before the commencement of Construction Activity at the Site, the individual who prepares the SWPPP shall certify on the face of the SWPPP that he or she has

been to the Site, reviewed the SWPPP in light of site conditions, and determined that the SWPPP calls for BMPs appropriate for Site conditions.

h. Before commencement of Construction Activity at the Site, the Site Storm Water Compliance Manager shall provide a copy of the relevant compliance sections of this Decree and the Site SWPPP to each Storm Water Consultant, and review with him or her the requirements of each document.

i. The SWPPP and any Records required to be maintained with the SWPPP by the Applicable Permit or by Paragraphs 35 (Pre-Construction Inspection and Review), 36 (Inspections), 37 (Maintenance), and 38 (Site Storm Water Compliance Review and Oversight) shall be maintained pursuant to the Applicable Permit. Records required to be maintained by Paragraph 43 (Storm Water Management Training) and Paragraph 44 (Annual Refresher Training) may be maintained electronically.

30. Requirements Concerning Best Management Practices (“BMPs”). At all Sites, Defendant shall:

a. use BMPs of the types and in the quantities sufficient to reduce to the extent practicable pollutants in storm water discharges from the Site and the amount of disturbed soil; and

b. inspect and maintain BMPs as required under the Applicable Permit.

31. Stabilization Requirements. At all Sites, Defendant shall comply with stabilization requirements in the Applicable Permit.

32. Criteria for Grading and Clearing. At all Sites, Defendant shall:

a. schedule grading activities so that the time period for disturbed areas to be without vegetative cover is minimized to the extent practicable and conforms with the Applicable permit, federal, state and local law;

b. prohibit clearing, grubbing or grading within 50 (fifty) feet of a Defined Water Drainage Course except as authorized by federal, state and local law.

33. Criteria for Sediment Basins. At all Sites, Defendant shall:

a. construct and maintain Sediment Basins as required by the Applicable Permit;

b. locate each Sediment Basin as close to the sediment source as possible (Sediment Basins may not be located offsite);

c. provide each Sediment Basin with a stabilized spillway to minimize the potential for erosion of the spillway;

d. ensure that the Waters of the United States are not used as Sediment Basins unless such activity is explicitly authorized by all necessary permits, including but not limited to any permit required pursuant to 33 U.S.C. § 1344;

e. design each Sediment Basin to discharge at a rate that will not cause scouring of the banks or bottom of the receiving water.

34. Requirements for Construction Exits. At all Sites, Defendant shall design construction exits that provide a buffer area where construction vehicles can drop their mud to avoid transporting it off Site, and shall require vehicles to exit the Site or individual disturbed portions of the Site, as appropriate, through these buffer areas.

35. Pre-Construction Inspection and Review

a. Prior to the commencement of Construction Activity at a Site, a Storm Water Compliance Manager shall perform a Pre-Construction Inspection and Review. Where any entity other than Ivory Homes commenced Construction Activities at a Site, a Storm Water Compliance Manager shall perform a Pre-Construction Inspection and Review no later than 7 (seven) Days after Ivory Homes assumes ownership or operational control of part or the entirety of a Site, whichever comes first.

b. For purposes of this paragraph, the commencement of Construction Activity does not include geotechnical investigations, surveying, environmental testing, plant (vegetation) salvage, or the initial installation of BMPs that are not Sediment Basins, provided none of these activities involve significant soil disturbance or require a federal permit.

c. The Pre-Construction Inspection and Review shall include an inspection of the entire Site and completion of the Pre-Construction Inspection and Review Form attached at Appendix B. Prior to the commencement of Construction Activity, Corrective Action must be completed for each Action Item identified during the Pre-Construction Inspection and Review.

d. A Storm Water Compliance Manager shall review and sign the Pre-Construction Inspection and Review Form. This task cannot be delegated. The Pre-Construction Inspection and Review Form shall be kept with the SWPPP.

36. Inspections.

a. For each Site, at a minimum, the Site Storm Water Compliance Manager shall either inspect the Site or cause the Site to be inspected by an employee of Ivory Homes who is Storm Water Trained or a Storm Water Consultant at the frequency required by the Applicable

Permit. Site Inspections shall start from the date the Pre-Construction Inspection and Review is signed, or the date required by the Applicable Permit, whichever is earlier. The individual performing the inspection shall record the Site inspection on the Site Inspection Report attached as Appendix C.

b. The Site Storm Water Compliance Manager shall review and sign the Site Inspection Report attached as Appendix C. This task cannot be delegated.

c. A copy of the final Site Inspection Report generated prior to the submittal of a Notice of Termination shall be clearly labeled as such.

d. The Site Inspection Reports shall be kept with the SWPPP.

37. Maintenance.

a. Ivory Homes shall maintain each Site or cause each Site to be maintained in accordance with Storm Water Requirements.

b. For every Action Item observed during the Site Inspection or the Quarterly Compliance Inspection, as required by Paragraph 38 (Site Storm Water Compliance Review and Oversight), the inspector shall record on the Site Inspection Report:

(1) a specific reference to the Action Item;

(2) the inspection date;

(3) the Corrective Action taken; and

(4) the date the Corrective Action was completed. This task cannot be delegated.

c. Ivory Homes shall cause each Corrective Action to be completed within 7 (seven) Days or as specified in the Applicable Permit, whichever is sooner.

38. Site Storm Water Compliance Review and Oversight.

a. At least once each calendar quarter, the Company Storm Water Compliance Manager or a Storm Water Consultant acting on behalf of the Company Storm Water Compliance Manager, shall conduct an unannounced Quarterly Compliance Inspection of each Site. The review shall include a Site inspection and a review of applicable records. The results shall be recorded on a Quarterly Compliance Inspection Form attached at Appendix D. The Quarterly Compliance Inspection shall not be conducted by the same person who conducted any Site Inspection under Paragraph 36 (Inspections) at the Site during that quarter.

b. No later than 14 (fourteen) Days after the Quarterly Compliance Inspection, the Company Storm Water Compliance Manager shall review the Quarterly Compliance Inspection Form with the Site Storm Water Compliance Manager(s), all of whom shall initial the Quarterly Compliance Inspection Form. Corrective Actions identified under this sub-paragraph shall be performed in accordance with the requirements of Paragraph 37 (Maintenance). No task in this sub-paragraph may be delegated.

c. Ivory Homes shall take a Corrective Action for each Action Item identified during the Quarterly Compliance Inspection and as recorded on the Quarterly Compliance Inspection Form. This task shall be completed in the same manner as required under Paragraph 37 (Maintenance).

d. Copies of the Quarterly Compliance Inspection Form shall be kept with the SWPPP.

39. Biannual Compliance Review. By March 1st and September 1st of each calendar year, the Company Storm Water Compliance Manager shall submit to Plaintiff a Biannual

Compliance Review in accordance with the procedures and form attached as Appendix E. The report due on March 1st shall cover the preceding August through January, and the report due September 1 shall cover the preceding February through July. The Company Storm Water Compliance Manager shall certify the report, a task which cannot be delegated. Copies shall be sent to the corporate officers of Ivory Homes and each Site Storm Water Compliance Manager designated as the primary Site Storm Water Compliance manager in the SWPPP.

40. Public Notification Signs. Ivory Homes shall post a copy of the public notification sign required by the Applicable Permit at each Site. The public notification sign must be visible from the public road that provides access to the Site's main entrance and must remain posted at the Site until the permit has been terminated.

41. Designation of Contractor Supervisors. Within sixty (60) Days of the Date of Entry, or prior to a Contractor beginning work for Ivory Homes pursuant to a contract entered into after the Date of Entry, whichever is earlier, Ivory Homes shall require each Contractor to designate one individual as the Contractor Supervisor, who shall have the authority to oversee, instruct and direct his/her employees for purposes of storm water compliance at Ivory Homes' Sites.

42. Contractor Compliance.

a. Within sixty (60) Days of the Date of Entry or prior to a Contractor beginning work for Ivory Homes, whichever is later, Ivory Homes shall provide by posting on an Internet site or otherwise delivering to each Contractor: (i) the Storm Water Tip Sheet included in Appendix F-1; (ii) an overview of the Ivory Homes storm water program; (iii) information explaining how to contact a Site Storm Water Compliance Manager and how to obtain additional

storm water compliance information; and (iv) Ivory Homes' compliance expectations including a description of the potential consequences for failure to comply with Storm Water Requirements.

b. Ivory Homes' contracts entered into or modified after the Date of Entry with a Contractor shall: (i) require compliance with the Applicable Permit and with instructions by Ivory Homes' Storm Water Compliance Managers to comply with Storm Water Requirements; (ii) identify the location for Contractor Supervisors of any additional compliance information, including any applicable Site-specific SWPPP requirements, as necessary, and require Contractor Supervisors to obtain and review this information; (iii) identify the Internet address where the Storm Water Tip Sheet may be located and require the Contractor Supervisors to review and distribute the Storm Water Tip Sheet to their employees and sub-contractors prior to commencement of work at a Site; and (iv) describe the consequences for failure to comply with the Applicable Permits.

c. In any action to enforce this Consent Decree, Ivory Homes shall not raise as a defense the failure of Contractors to take any actions necessary to comply with provisions of this Consent Decree, unless Ivory Homes establishes that the failure resulted from a Force Majeure event as defined in Section V.

43. Storm Water Management Training. Prior to beginning work at a Site or within 60 (sixty) Days of the Date of Entry of this Decree, whichever is later, Ivory Homes shall require Storm Water Compliance Managers and all Ivory Homes employees who, in the field at a Site, primarily and directly supervise (or who primarily and directly assist in the supervision of) Construction Activities to be trained and certified in Storm Water Management Training, as set forth in Appendix F-2 (Storm Water Management Training). These individuals must attend and

successfully complete at least 4 (four) hours of classroom training or comparable web-based storm water management training. Completion of the Utah Storm Water Advisory Committee's Registered Stormwater Inspector (RSI) Program training including training completed 2 (two) years prior to the Date of Entry of this Decree, shall be sufficient to meet the requirements of Paragraph 43.a.(1)-(15), below. However, those who complete the RSI training program must also complete supplemental training provided by Ivory Homes that meets the requirements of Paragraph 43.a.(14), below.

a. Training Areas To Be Covered. Storm water management training shall cover the following areas:

- (1) an introduction to the importance of erosion and sediment control;
- (2) a review of Storm Water Requirements, including the fines and penalties for non-compliance;
- (3) a review of proper preparation of a Notice of Intent and Notice of Termination and other filing requirements;
- (4) a review of the contents of the SWPPP;
- (5) updating and maintaining an accurate SWPPP;
- (6) a review of the principles of erosion and sediment control;
- (7) a review of the types of BMPs available and discussion of the principles and methods of BMP selection consistent with the Applicable Permit and the guidance documents cited in that permit;
- (8) a discussion of non-storm water pollutants and their control;

(9) a review of proper installation and maintenance of BMPs, including examples of acceptable and unacceptable BMP installation and maintenance;

(10) a review of the inspection requirements;

(11) a discussion of records management and organization;

(12) a discussion of Site posting requirements;

(13) a discussion of permit transfer and termination procedures, including stabilization requirements;

(14) a review of the requirements of this Decree, which may be covered in a separate supplemental training, that includes the use of the inspection forms required by this Decree, and a discussion of the requirements for corrections and certification of the information contained within the inspection forms; and

(15) a written examination to determine proficiency in the principles and practices of, and statutes governing, erosion and sediment control and the requirements of this Decree and, upon successful completion of the examination, issuance of a training certificate that is valid for 12 (twelve) months. In those situations where an individual has or will be completing the RSI training program, both the RSI training and the supplemental training addressed at Paragraph 43.a.(14), above, must be completed prior to issuance of the training certificate.

b. Storm Water Instructors. Ivory Homes shall ensure that each storm water instructor is a Storm Water Consultant or an employee of Ivory Homes who is Storm Water Trained.

44. Annual Refresher Training. Ivory Homes shall provide annual refresher training for Storm Water Compliance Managers as set forth in Appendix F-2/Storm Water Management

Training. The annual refresher training shall consist of 2 (two) to 3 (three) hours of classroom training or comparable web-based training addressing the same subject areas as covered in Paragraph 43.a.(1)-(15), above, and also provide updates on new regulations, trends in Ivory Homes' storm water control compliance at their Sites, and new corporate policies to strengthen compliance efforts. The annual refresher training shall include a written or web-administered test to determine proficiency in the principles and practices of, and statutes governing, erosion and sediment control and the requirements of this Decree. Upon successful completion of the annual refresher training, a renewal certificate valid for 12 (twelve) months shall be issued. Individuals subject to the requirements of this paragraph shall maintain a current certification in order to continue performing his/her duties under this Decree.

45. Annual Evaluation of Training Programs. The Company Storm Water Compliance Manager shall evaluate annually the training programs set forth in Paragraph 43 (Storm Water Management Training) and Paragraph 44 (Annual Refresher Training), and determine whether any changes are necessary. A written evaluation of the training programs set forth in Paragraphs 43 and 44, as well as a description of any significant changes, shall be included in the September 1 Biannual Compliance Review.

46. Documents Kept With SWPPP. All documents created and maintained pursuant to Paragraph 43 (Storm Water Management Training) and Paragraph 44 (Annual Refresher Training) shall be kept with the SWPPP or maintained electronically.

47. Corporate Acquisition. After the Date of Entry, in the event that Ivory Homes acquires or merges with another company, 60 (sixty) Days after the closing of the transaction, the acquired or merged company shall be deemed Ivory Homes for purposes of this Decree.

Nothing in this paragraph relieves Ivory Homes of its duty to comply with applicable law including Applicable Permits.

48. Submission of Records to Plaintiff.

a. Upon Plaintiff's request for a Record, within 20 (twenty) Days, Ivory Homes shall provide a copy, as set forth in Paragraph 16 (Notices), of any Record required under this Decree. This paragraph does not apply to requests for a Record made during an inspection by Plaintiff or its authorized representatives.

b. Ivory Homes shall certify any Record submitted to Plaintiff in accordance with the certification requirements set forth at 40 C.F.R. § 122.22. A Storm Water Manager shall be a "duly authorized representative" if the requirements of 40 C.F.R. § 122.22 are met.

III. CIVIL PENALTY

49. Civil Penalty. Within 30 (thirty) Days after the Date of Entry, Defendant shall pay a civil penalty of \$250,000.

50. Method of Payment. Payment of such civil penalty shall be made in the following manner:

a. Defendant shall transfer the amount owed by FedWire Electronic Funds Transfer ("EFT" or "wire transfer") to the United States in accordance with current EFT procedures and in accordance with written instructions to be provided by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office, District of Utah, referencing U.S. Department of Justice Case Number 90-5-1-1-09865. The cost of such wire transfer shall be the responsibility of Ivory Homes, and Ivory Homes shall send to the U.S. Department of Justice and the U.S. EPA Region 8, at the addresses specified in Paragraph 16 (Notices), copies of the EFT authorization

form, the EFT transaction record, and the transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the above-captioned case Consent Decree, and shall reference the Civil Action Number and the U.S. Department of Justice Case Number 90-5-1-1-09865. Ivory Homes also shall send the same information by email to acctsreceivable.CINWD@epa.gov and by mail to:

EPA Cincinnati Finance Center
26 Martin Luther King Drive
Cincinnati, Ohio 45268

b. No portion of the civil penalty paid pursuant to this Decree may be used to reduce Defendant's federal or state tax liability.

IV. STIPULATED PENALTIES

51. Stipulated Penalty Amounts. Plaintiff may use the reports submitted by the Defendant or information gathered by the Plaintiff to identify violations for which stipulated penalties may be assessed. For each of the instances listed below, if Ivory Homes fails to comply fully and timely with the requirements of this Decree or the Applicable Permit, upon written demand of the Plaintiff, Ivory Homes shall pay stipulated penalties in the following amounts:

a. Pursuant to the requirements of Paragraph 26 (Designation of Storm Water Compliance Managers), failure to designate a properly qualified Site Storm Water Compliance Manager or Company Storm Water Compliance Manager:

<u>Days of Violation</u>	<u>Penalty Per Day</u>
1 st through 30 th Day	\$500
31 st and beyond	\$750

b. Pursuant to the requirements of Paragraph 27 (List of Sites), failure to submit or update a List of Ivory Homes Sites: \$750 per missed or materially inaccurate list.

c. Pursuant to the requirements of Paragraph 28 (Permits), failure to obtain permit coverage at any Site prior to signing the Pre-Construction Inspection and Review Form or within the time required by the Applicable Permit (whichever is earlier):

<u>Days of Violation</u>	<u>Penalty Per Day</u>
1 st through 7 th Day	\$500
8 th through 14 th Day	\$1,000
15 th and beyond	\$1,250

d. Pursuant to the requirements of Paragraph 29 (Storm Water Plans and Records), failure to prepare an initial SWPPP prior to conducting Construction Activities at a Site, or, if prepared, a material failure to modify or update any SWPPP as related to ongoing Construction Activities:

<u>Days</u>	<u>Missing Initial SWPPP Penalty Per Violation Per Day</u>	<u>SWPPP Not Updated/Incomplete Penalty Per Violation Per Day</u>
1 st through 14 th Day	\$500	\$250
15 th through 30 th Day	\$1,000	\$500
31 st and beyond	\$1,500	\$1,000

e. Pursuant to the requirements of Paragraph 31 (Stabilization Requirements), failure to comply with stabilization requirements in the Applicable Permit:

<u>Days of Violation</u>	<u>Penalty Per Day</u>
1 st through 14 th Day	\$500
15 th through 30 th Day	\$1,000
31 st and beyond	\$1,500

f. Pursuant to the requirements of Paragraph 35 (Pre-Construction Inspection and Review), failure to perform or document a Pre-Construction Inspection and Review and/or to complete all Corrective Actions prior to the initiation of Construction Activities: \$1500 per

missed or undocumented review and/or to complete all Corrective Actions prior to the initiation of Construction Activities.

g. Pursuant to the requirements of Paragraph 36 (Inspections), failure to perform a Site Inspection at the frequency required by the Applicable Permit: \$500 per missed inspection.

h. Pursuant to the requirements of Paragraphs 37 (Maintenance) and 38 (Site Storm Water Compliance Review and Oversight), failure to conduct Quarterly Compliance Inspection and/or take Corrective Action for each Action Item identified during the review:

<u>Days of Violation</u>	<u>Penalty Per Day</u>
1 st through 7 th Day	\$500
8 th through 14 th Day	\$1,000
15 th and beyond	\$1,250

i. Pursuant to the requirements of Paragraph 39 (Biannual Compliance Review), failure to prepare and/or timely submit a Biannual Compliance Review: \$750 per missed or incomplete review.

j. Pursuant to the requirements of Paragraphs 41 (Designation of Contractor Supervisors) and 42 (Contractor Compliance), failure to ensure that each Contractor at a Site has designated one individual as the Contractor Supervisor, and failure to comply with the requirements in Paragraph 42 at each Site: \$250 per violation per affected Contractor.

k. Pursuant to the requirements of Paragraph 43 (Storm Water Management Training) and Paragraph 44 (Annual Refresher Training), failure to provide Storm Water Management Training and Annual Refresher Training to individuals as required: \$250 per affected person.

l. Pursuant to the requirements of Paragraph 48 (Submission of Records to Plaintiff), failure to submit and/or certify requested records to Plaintiff: \$250 per missed or late record.

52. Payment of Stipulated Penalties. All penalties owed to Plaintiff under this Section shall be due and payable within 30 (thirty) Days of the Defendant's receipt from any Plaintiff of a demand for payment of the penalties, unless Defendant invokes the procedures under Section VI (Dispute Resolution). The Plaintiff may, in the exercise of its unreviewable discretion, waive its right to any or all of its portion of the stipulated penalty amount or its investigation and enforcement costs.

53. Accrual of Stipulated Penalties. Stipulated penalties under this section shall begin to accrue on the Day after performance is due or the Day a violation occurs, whichever is applicable, and shall continue to accrue through the final Day of the correction of the noncompliance or completion of the activity. Stipulated penalties as set forth in Paragraph 51 (Stipulated Penalty Amounts) shall accrue simultaneously for separate violations of this Consent Decree.

54. No Effect on Obligation to Comply. The payment of penalties shall not alter in any way the Defendant's obligation to comply with the requirements of this Decree.

55. 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 by a decision of the United States that is not appealed to this Court, the Defendant shall pay accrued penalties determined to

be owing to Plaintiff within 30 (thirty) Days of the agreement or the receipt of the United States' decision or order;

b. If the dispute is appealed to the Court and Plaintiff prevails in whole or in part, the Defendant shall pay such penalties as determined by the Court to be reasonably owed to Plaintiff within 30 (thirty) Days of receipt of the Court's decision or order, except as provided in subparagraph c., below, of this paragraph;

c. If the Court's decision is appealed by any party, the Defendant shall pay all accrued penalties determined by the District Court to be owing to Plaintiff into an interest bearing escrow account within 30 (thirty) Days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 30 (thirty) Days. Within 15 (fifteen) Days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to Plaintiff or to the Defendant to the extent that they prevail.

56. Interest on Late Payment. If the Defendant fails to pay stipulated penalties when due, the Defendant shall pay interest accrued 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.

57. Non-Exclusivity of Remedy. Subject to the provisions of Section VII (Effect of Settlement) and Paragraph 68 (Plaintiff's Reservation of Rights), 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 Defendant's violation of this Decree or applicable law.

V. FORCE MAJEURE

58. Required Notification for Force Majeure. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure Event, Defendant shall provide notice orally or by electronic facsimile transmission to the individuals identified in Paragraph 16 (Notices) within 72 (seventy-two) hours of when Defendant first knew that the event might cause a delay. The written notice by Defendant shall indicate whether Defendant claims that the delay should be excused due to a Force Majeure Event. The notice shall describe in detail the basis for the Defendant's contention that it experienced a Force Majeure Event, if it intends to assert such a claim, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Defendant shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify Plaintiff shall render this Section V (Force Majeure) void and of no effect as to the event in question, and shall be a waiver of Defendant's right to obtain an extension of time for its obligations based on a Force Majeure Event.

59. Procedures for Extension. If the United States finds that a delay in performance is, or was, caused by a Force Majeure event, Plaintiff shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such a period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section VI (Dispute Resolution) shall apply, and the Defendant shall have the burden of proving that the delay is, or was, caused by a Force

Majeure event and that the amount of additional time requested is necessary to compensate for that event.

60. Effect on Other Obligations. Compliance with a requirement of this Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. The Defendant shall make a showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

VI. DISPUTE RESOLUTION

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

62. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen on the Day Defendant hand delivers the United States a written Notice of Dispute or on the Day following delivery by overnight courier, or 3 (three) Days following delivery by U.S. Mail. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 (sixty) Days from the date the dispute arises, unless that period is modified 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 45 (forty-five) Days after the conclusion of the informal negotiation period, the Defendant invokes formal dispute resolution procedures set forth in Paragraph 63 (Formal Dispute Resolution).

63. Formal Dispute Resolution.

a. Within 45 (forty-five) Days after the conclusion of the informal negotiation period, a Defendant may invoke formal dispute resolution procedures by serving on the United States 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, or opinion supporting the Defendant's position and all supporting documentation relied upon by the Defendant.

b. The United States shall serve its Statement of Position within 45 (forty-five) Days of receipt of the Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the United States. The State and the City (where the activity under dispute occurs within the City) may serve a Statement of Position. The United States' Statement of Position shall be binding on the Defendant, unless the Defendant files a motion for judicial review of the dispute in accordance with Paragraph 64 (Petitions to the Court).

64. Petitions to the Court. In the event that the parties cannot resolve a dispute as set forth in Paragraph 63 (Formal Dispute Resolution), the following procedures shall control:

a. The Defendant may seek judicial review of the dispute by filing with the Court and serving on Plaintiff a motion requesting judicial resolution of the dispute. The motion shall be filed within 45 (forty-five) Days of receipt of the United States' Statement of Position set forth in Paragraph 63 (Formal Dispute Resolution). The motion shall contain a written statement of the Defendant'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.

b. The United States shall respond to the Defendant's motion within 45 (forty-five) Days of receipt of the motion, unless the parties stipulate otherwise.

c. The Defendant may file a reply memorandum within 30 (thirty) Days of receipt of the United States' response.

d. The United States reserves the right to argue that its position is reviewable only on the administrative record and shall be upheld unless arbitrary and capricious or otherwise not in accordance with law. For purposes of this Decree, the administrative record shall comprise the Statements of Position exchanged by the Parties pursuant to Paragraph 63 (Formal Dispute Resolution), including any documents attached to or incorporated by reference in those Statements.

65. Effect on Other Obligations. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of any Defendant under this Decree not directly in dispute, unless Plaintiff agrees in writing or the Court orders otherwise.

VII. EFFECT OF SETTLEMENT

66. Covenants Not to Sue.

a. In consideration of the payment of the penalty required by Paragraph 49 (Civil Penalty) and the full and satisfactory compliance by the Defendant with the terms of this Decree, the United States hereby covenants not to sue or take administrative action against the

Defendant for the civil violations alleged in the Complaint filed in this action through the Date of Lodging.

b. The Defendant hereby covenants not to sue the Plaintiff for any actions undertaken by the Plaintiff for the civil violations alleged in the Complaint filed in this action through the Date of Lodging.

67. No Effect on Third Parties. This Decree does not limit or affect the rights of the Plaintiff or Defendant against any third parties, not party to this Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

68. Plaintiff's Reservations of Rights. The Plaintiff reserves all legal and equitable remedies available to enforce the provisions of this Decree. This Decree shall not be construed to limit any right to obtain penalties or injunctive relief available to the Plaintiff under the Clean Water Act, or implementing regulations, or under other federal, State, or local laws, regulations, or permit conditions, except as expressly specified in Paragraph 66.a. (Covenants Not to Sue).

69. No Waiver of Sovereign Immunity. Nothing in this Decree shall create a cause of action against the Plaintiff nor shall anything in this Decree be deemed to waive the sovereign immunity of the Plaintiff.

SO ORDERED THIS _____ DAY OF _____, 2014

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of the Decree in United States v. Ivory Homes, Ltd. subject to the public notice requirements of 28 C.F.R. §50.7,

FOR THE UNITED STATES OF AMERICA

Date


NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division

June 23, 2014
Date


HEIDI K. HOFFMAN
Trial Attorney
Environmental Enforcement Section
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Heidi.Hoffman@usdoj.gov

WE HEREBY CONSENT to the entry of the Decree in United States v. Ivory Homes, Ltd. subject to the public notice requirements of 28 C.F.R. §50.7,

FOR THE UNITED STATES OF AMERICA

DAVID B. BARLOW
United States Attorney
District of Utah

June 23, 2014

Date



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Salt Lake City, Utah 84111
Telephone: (801) 325-3233
Sandra.Steinvoort@usdoj.gov

WE HEREBY CONSENT to the entry of the Decree in United States v. Ivory Homes, Ltd.
subject to the public notice requirements of 28 C.F.R. §50.7,

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

5-22-14

Date


MARK POLLINS
Director, Water Enforcement Division
Office of Civil Enforcement (2243-A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Pollins.Mark@epa.gov

WE HEREBY CONSENT to the entry of the Decree in United States v. Ivory Homes, Ltd. subject to the public notice requirements of 28 C.F.R. §50.7,

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

June 10, 2014

Date

[Redacted Signature]

EDDIE A. SIERRA
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

MAY 19, 2014

Date

[Redacted Signature]

ANDREA MADIGAN
Acting Director, Legal Enforcement Program
Office of Enforcement Compliance
and Environmental Justice
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

May 12, 2014

Date

[Redacted Signature]

MARC WEINER
Enforcement Attorney
U.S. Environmental Protection Agency
Region 8/ Mail Code: 8ENF-L
1595 Wynkoop Street
Denver, Colorado 80202
Telephone: (303) 312-6913
Weiner.Marc@epa.gov

WE HEREBY CONSENT to the entry of the Decree in United States v. Ivory Homes, Ltd. subject to the public notice requirements of 28 C.F.R. §50.7,

FOR THE DEFENDANT IVORY HOMES, LTD.

June 5, 2014

Date


DAVID M. BROADBENT
Operations Manager
Ivory Homes, Ltd.
978 E. Wood Oak Lane
Salt Lake City, Utah 84117

June 9, 2014

Date


BETH S. GINSBERG
Counsel for Ivory Homes, Ltd.
Stoel Rives LLP
600 University Street
Suite 3600
Seattle, Washington 98101
Phone: (206) 386-7581
bsginsberg@stoel.com

APPENDIX A
SWPP CRITERIA

INSTRUCTIONS FOR STORM WATER PLAN PREPARATION

All SWPPPs shall comply with the terms and conditions of the Applicable Permit: (i) utilize BMPs appropriate for the specific Site conditions at all stages of construction; (ii) select BMPs designed to be effective in eliminating or significantly minimizing pollutants in storm water discharges from the Site; (iii) utilize an adequate combination of erosion and sediment control BMPs; (iv) connect the use of BMPs to specific construction activities and to a time schedule triggered by those activities; (v) provide separate plan sheets for clearing and mass grading, utility and road installation, and building activities; (vi) provide narrative descriptions of the inspection and repair procedures to ensure BMPs are kept in effective operating condition; (vii) provide narrative descriptions of BMPs to explain the basis for BMP selection; and (viii) include methods for preventing non-storm water discharges.

The guidelines below are intended to aid personnel in contracting for consulting services for the preparation of Storm Water Pollution Prevention Plans (SWPPP).

Abbreviations

EPA	Environmental Protection Agency
NPDES	National Pollutant Discharge Elimination System
SWPPP	Storm Water Plan
NOI	Notice of Intent
NOT	Notice of Termination
MS4	A municipal separate storm water collection system
BMP	Best Management Practice

Performance Guidelines

There are three performance guidelines to which SWPPPs should conform. They should:

1. **Meet regulatory requirements.** In states where the Federal EPA has authorized the state to implement the requirements of the federal NPDES program, "regulatory requirements" are defined as the latest edition of the state's general permit for discharges from large and small construction sites or an individual permit. In states where the Federal EPA has retained authority over the NPDES program or otherwise continues to issue NPDES permits (e.g. on tribal lands), "regulatory requirements" are defined as the latest edition of the "National Pollution Discharge Elimination System (NPDES) General Permit for Discharge from Large and Small Construction Activities" or an individual permit.

2. **Be easy to follow and implement.** It is important that the SWPPP be written in such a manner that it is easy for Ivory Homes operational personnel to understand and implement. The SWPPP should not be prepared in a vacuum by the consultant, but should reflect discussions and agreements that have been made between the consultants and Ivory Homes' operational personnel. These discussions and agreements should include such things as construction sequencing and types of Best Management Practices (BMPs) that Ivory Homes feels are the

most cost effective and easiest to maintain.

3. **Be efficient.** There may be several ways in which the reduction of pollutants from storm water discharges can be achieved in order to comply with Storm Water Requirements. It is the goal of Ivory Homes to achieve compliance in the most efficient manner possible. When analyzing efficiency, initial costs should be combined with long-term costs (including operation and maintenance costs and potential replacement costs) to determine the appropriate solution for each situation.

Contents of the SWPPP (Checklist)

I. A Copy of the NOI and Other Storm Water Related Permits that are required for the Site.

Copies of any federal, state or local storm water related permits should be included with the SWPPP. Questions that need to be addressed and answered in this section include:

- a) What storm water permits do I need?
- b) Do my subcontractors need separate permits or can they be covered under my permit?

II. Storm Water Pollution Prevention Plan (SWPPP) Certification. The SWPPP must be certified as per the Applicable Permit. Check the Applicable Permit to see which of the following signatures are required.

- a) Signed by the owner of the Site.
- b) Signed by the operator of the Site.
- c) Signed by the Registered Professional Engineer who is responsible for the preparation of the SWPPP.

An example of a Title Block for the certification is as shown below:

ABC XYZ 123 HOMES,
A Delaware corporation,

By: _____
Name: _____
Title: _____

III. Contact Information

The SWPPP shall include the names, phone numbers and a description of each person's duties for the following individuals. If there is more than one Site Storm Water Compliance Manager for a Site, each Site Storm Water Compliance Manager's responsibilities shall be specified in the SWPPP:

- a) Site Storm Water Compliance Manager

- b) Company Storm Water Compliance Manager
- c) Field Manager for the Site (if different)

IV. Notice and Recordkeeping

- a) Posting NOI.
- b) Location of SWPPP and Inspection Reports.
- c) Retention of Records.

V. Responsibilities of Owners and Operators

If there is more than one permittee at the Site, the SWPPP shall include a list of activities that must be completed by each permittee and who has been assigned to implement each activity.

VI. Definition of Permit Area

Check the Applicable Permit to see which of the following are required:

- a) **Site** name, address, county or governmental subdivision and latitude and longitude of the **Site**.
- b) locations where storm water is discharged or will discharge to a surface water
- c) Name of the agency or agencies that have jurisdictional authority for storm water pollution prevention.
- d) The function of the project (i.e., single family detached residential, townhouse, condo development).
- e) A description of any other activities such as dedicated crusher plants, asphalt plants, equipment staging areas, or material storage areas that may operate on the project site.
- f) Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities, including off-site borrow pits and fill areas.
- g) A general location map (e.g., USGS quadrangle map, a portion of a city or county map or other map with enough detail to show the location of the construction site and Jurisdictional Waters within one mile of the site).
- h) Runoff coefficient before and after construction

VII. Site Plan and BMP Map

Check the Applicable Permit to see which of the following are required:

- a) Direction of storm water flow and approximate slopes anticipated after major grading activities.
- b) Areas of soil disturbance and areas that will not be disturbed.
- c) Locations of major structural and non-structural BMPs.
- d) Locations where stabilization practices are expected to occur.
- e) Locations of off-site material, waste, borrow or equipment storage areas.
- f) Locations of all Jurisdictional Waters.

- g) Locations where storm water discharges to Jurisdictional Waters.
- h) Areas where final stabilization has been accomplished and no further construction-phase permit requirements apply.
- i) Construction boundaries

VIII. Endangered and Threatened Species and Critical Habitat Protection, as required by the Applicable Permit

IX. Historic Properties Protection, as required by the Applicable Permit

X. Statement and Description of Storm Water Discharge Management Controls to Reduce Pollutants

- a) A description of all pollutant control measures (i.e. BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges. Each major activity in the project construction process should be clearly defined and the BMPs related to that activity should be listed. It is recommended that in addition to appearing on a comprehensive map, these also appear on "tear out" sheets that can be posted in the construction office.
- b) A description of interim and permanent stabilization practices for the site, including a schedule of when the practices will be implemented.
- c) Dates when major grading activities occur.
- d) Dates when construction activities temporarily or permanently cease on a portion of the site.
- e) Dates when stabilization measures are initiated.
- f) A description of structural practices to divert flows from exposed soils, retain/detain flows or otherwise limit runoff and/or the discharge of pollutants from exposed areas of the site.
- g) A description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges after construction operations have been completed.
- h) A description of the measures to prevent the discharge of solid materials, including building materials, to the Jurisdictional Waters.
- l) A description of the measures to minimize, to the extent practicable, off-site vehicle tracking of sediments onto paved surfaces and the generation of dust.
- j) A description of controls and measures that will be implemented to control the storm water discharges from on-site crusher and asphalt plants.

XI. Description of Non-Storm Water Discharge Management Controls to Reduce Pollutants. Refer to the Applicable Permit for which non-storm water discharges are allowable and which are prohibited. The list below is for discussion purposes only.

- a) Discharges from fire fighting activities.
- b) Fire hydrant flushing.
- c) Waters used to wash vehicles where detergents are not used.

- d) Water used to control dust.
- e) Water used to flush waterlines and wash down buildings.
- f) Air conditioning condensate.
- g) Uncontaminated spring water, groundwater and discharges from foundation drains.
- h) Uncontaminated excavation dewatering.
- l) Landscape irrigation.

XII. Procedures for Dealing with Spills, and Releases in Excess of Mandated Reportable Quantities, as required by the Applicable Permit.

- a) A list of emergency contact numbers.
- b) A table listing types of materials and the reportable quantity of each.
- c) Procedures for dealing with and reporting spills and releases.

XIII. Maintenance of Storm Water Discharge Management Controls

A description of the maintenance requirements for the BMPs laid out in the SWPPP.

XIV. Inspections

- a) Frequency of inspection.
- b) Standardized forms for inspection reports.

XV. Procedures for Updating and Modifying the SWPPP

- a) A statement designating when the SWPPP must be amended.
- b) A statement of the procedure that should be followed to update and modify the SWPPP.

XVI. Notice of Termination

- a) When a NOT is filed.
- b) Procedure for filing a NOT.

APPENDIX B

PRE-CONSTRUCTION INSPECTION AND REVIEW FORM

Pre-Construction Inspection and Review

	YES	NO	N/A
1 - Does the SWPPP indicate who it was prepared by?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 - Is the SWPPP certified with a date?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 - Is the SWPPP certified by the SWPPP preparer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 - Has the individual who prepared the SWPPP certified the face of the SWPPP that he or she <ul style="list-style-type: none"> • used the SWPPP criteria (Appendix A of the Consent Decree) as a guide, • has been to the Site and reviewed the SWPPP in light of site conditions, and • determined that the SWPPP calls for BMPs appropriate for Site conditions? 	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 - Has the Site Storm Water Compliance Manager provided a copy of the relevant compliance sections of this Decree and the Site SWPPP to each Storm Water Consultant, and reviewed with him or her the requirements of each document?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 - Have all Site Storm Water Compliance Managers assigned to a Site and the Company Storm Water Compliance Manager reviewed and become familiar with the SWPPP for that Site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 - If there is more than one Site Storm Water Compliance Manager for the Site, does the SWPPP specify how transition between Site Storm Water Managers shall be handled and how responsibilities shall be coordinated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SITE STATUS			
8 - Are all initial-phase BMPs called for by the SWPPP and Applicable Permit properly located and installed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9 - For those Sites where construction has already commenced, are the BMPs working properly and are they appropriate for existing site conditions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 - Has all Required Training and Orientation occurred as required?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Project Information: Enter the following information:

- Type of site
- Date that Ivory Homes assumed ownership or operational control of the Site (whichever comes first)
- City in which Site is located
- County in which Site is located

Pre-Construction Inspection and Review

Page:2

- Special District in which Site is located (if applicable)
- State in which Site is located.

Permit Coverage Information: Does the Site need coverage under the Applicable Permit? If no, enter "no permit coverage is required" and have the Company Storm Water Compliance Manager sign in this box. If yes, enter the following information:

- Issuing Authority.
- Name of Permittee.
- Permit No. (if applicable).
- Date of Permit Coverage.

Contact Information: Enter the following information here: (1) Name of Site Storm Water Compliance Manager(s), telephone number, and whether training verification is completed and the date of last training. (2) Company Storm Water Compliance Manager's name, telephone number, and whether or not training verification is completed with date of last training.

NOTE: Do not sign this pre-construction review worksheet until all items on this worksheet have been corrected and the date of correction noted. Do not commence Construction Activity until this worksheet has been signed. For the purposes of this form, Construction Activity does not include geotechnical investigations, surveying, environmental testing, plant (vegetation) salvage, or initial installation of BMPs that are not sediment basins, provided that none of these activities involve significant soil disturbance.

APPENDIX C
SITE INSPECTION REPORT

Ivory SWPPP Inspection

Page:1

	YES	NO	N/A
INSPECTIONS MUST INCLUDE ALL AREAS OF THE SITE DISTURBED BY CONSTRUCTION ACTIVITY AND AREAS USED FOR STORAGE OF MATERIALS THAT ARE EXPOSED TO PRECIPITATION.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1 - Has an NOI permit (applicable state and/or city) been filed for construction activities specific to this project and are these permits current and in the SWPPP?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 - Is the NOI posted on site with a Site Notice that signifies where the SWPPP is located and the person to call for SWPPP questions regarding this site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 - Are certification pages in the SWPPP signed by the owner and operator of the project according to local/state/federal signature standards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 - Are qualifications listed in the SWPPP for the person inspecting the site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 - Is site FREE from any discharges of sediments (i.e: erosion/stockpiles) or other pollutants (i.e., fuel, concrete waste/washout waters, stucco waste, portable toilet, trash, debris, etc.) leaving site boundaries or perimeters (i.e. lot boundaries, into streets, parking areas, into storm sewers, discharged to surface waters, or site perimeter boundary)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 - Are current erosion/sediment pollutant controls (BMPs) described in the SWPPP and applied to the site adequate to keep any sediment/pollutants from leaving site boundaries or perimeters including discharge to surface waters or storm sewers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 - Are impervious surfaces FREE from evidence of tracking of sediment/pollutants (roads, ramps, sidewalks, parking areas, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8 - Are all construction traffic access/exit points stabilized properly and being properly maintained?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9 - Is the site FREE from any offsite (i.e. stream, creek, or concentrated flows onto the site) flows entering the construction site and causing erosion?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 - Is the site FREE from any conditions that would require dewatering off site perimeter boundaries (i.e., any water on the construction site that needs to be discharged off the site perimeter boundary or into the storm drain system)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 - Are BMPs implemented on site described/depicted in the BMP section of the SWPPP?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- NOTE: For SWPPP updating, this requires entering the specific BMP information on the project site map in the SITE MAPS section by description, date and location when managing your SWPPP in complianceGO.

Appendix C

Ivory SWPPP Inspection

12 - Are BMPs utilized on site able to be noted on the SWPPP map (are the SWPPP and site consistent with each other)?

- NOTE: For map updating, this requires the SITE MAP to be updated with specific BMPs (including dates/locations when a BMP was added, moved, repaired, or removed with an activity description where applicable) in the SITE MAPS section when using complianceGO.

13 - Is the site active with no temporary or permanent delay in construction activities that exceeds 21 days?

14 - Are all pollutants/hazardous materials (fuel, concrete waste/washout waters, stucco waste, paint, portable toilet, trash bin, etc.) /spoils/stockpiles on site identified on the SWPPP map?

- NOTE: For map updating, this requires the SITE MAP to be updated with specific pollutants (including dates/locations when a pollutant was introduced, moved, or removed with an activity description where applicable) in the SITE MAPS section when using complianceGO.

15 - Have all BMPs identified in the SWPPP been removed where they are no longer needed?

- NOTE: For SWPPP updating, this requires the site map to be updated in the SITE MAPS section when managing your SWPPP in complianceGO.

16 - Is site FREE from any clearing, grubbing or grading within 50 feet of a Defined Water Drainage Course?

17 - Are future inspections still needed?

Site Activity and Required Please also update the current map with this information in the site maps section when using complianceGO.

Disturbance/Stabilization Information (Includes sediment basins):

- Please indicate the current phase or phases of construction activity for this site.
- Note the dates and locations of any new disturbances/excavations/major digs in this section.
- Note the date and location of any areas that have been temporarily/permanently stabilized or sold.
- Note the date and location when construction or development activities have temporarily or permanently ceased on any given portion of the site. Please also indicate what temporary or permanent stabilization measures will be applied to applicable areas.
- Describe the level and condition of each sedimentation basin and note the date of the last maintenance activities for that basin.
- Confirm whether sediment basins are properly located and whether spillways are properly stabilized.
- Confirm that the discharge from each sediment basin is not causing scouring of the banks or bottom of the receiving water.

Ivory SWPPP Inspection

Page:3

**Communication /
and Regulatory
(where applicable):**

- Please indicate who these inspection findings were reviewed with on site, including the approximate time of communication.
- Describe in detail the outcomes if a regulatory inspection has been conducted. Please list who the regulatory inspector was, what aspects of the documents and/or site were discussed, whether or not there were any concerns, and any new action items that were a result of the visit.

Notes and Required Weather Information: Please provide any pertinent notes and documentation that helps to support the compliance efforts of this site. For routine compliance and monitoring compliance inspections, please describe:

- weather conditions for this site at the time of inspection
- weather conditions since the last inspection or commencement of construction if first inspection.
- Best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches) and whether any discharge occurred.

APPENDIX D

QUARTERLY COMPLIANCE INSPECTION FORM

Quarterly Compliance Inspection

	YES	NO	N/A
INSPECTIONS MUST INCLUDE ALL AREAS OF THE SITE DISTURBED BY CONSTRUCTION ACTIVITY AND AREAS USED FOR STORAGE OF MATERIALS THAT ARE EXPOSED TO PRECIPITATION.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1 - Has an NOI permit (applicable state and/or city) been filed for construction activities specific to this project and location and are these permits in the SWPPP?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 - Is there a posting notice on site that signifies where the SWPPP and permit are located, and the person to call for SWPPP questions regarding this site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 - Are certification pages in the SWPPP signed by the owner and operator of the project according to local/state/federal signature standards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 - Are qualifications listed in the SWPPP for the person inspecting the site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 - Is site FREE from any discharges of sediments (i.e: erosion/stockpiles) or other pollutants (i.e., fuel, concrete waste/washout waters, stucco waste, portable toilet, trash, debris, etc.) leaving site boundaries or perimeters (i.e. lot boundaries, into streets, parking areas, into storm sewers, discharged to surface waters, or site perimeter boundary)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 - Are current erosion/sediment pollutant controls (BMPs) described in the SWPPP and applied to the site adequate to keep any sediment/pollutants from leaving site boundaries or perimeters including discharge to surface waters or storm sewers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 - Are impervious surfaces FREE from evidence of tracking of sediment/pollutants (roads, ramps, sidewalks, parking areas, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8 - Are all construction traffic access/exit points stabilized properly and being properly maintained?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9 - Is the site FREE from any offsite (i.e. stream, creek, or concentrated flows onto the site) flows entering the construction site and causing erosion?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 - Is the site FREE from any conditions that would require dewatering off site perimeter boundaries (i.e., any water on the construction site that needs to be discharged off the site perimeter boundary or into the storm drain system)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 - Are BMPs implemented on site described/depicted in the BMP section of the SWPPP?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- NOTE: For SWPPP updating, this requires entering the specific BMP information on the project site map in the SITE MAPS section by description, date and location when managing your SWPPP in complianceGO.

Quarterly Compliance Inspection

Page:2

12 - Are BMPs utilized on site able to be noted on the SWPPP map (are the SWPPP and site consistent with each other)?

- NOTE: For map updating, this requires the SITE MAP to be updated with specific BMPs (including dates/locations when a BMP was added, moved, repaired, or removed with an activity description where applicable) in the SITE MAPS section when using complianceGO.

13 - Is the site active with no temporary or permanent delay in construction activities that exceeds 21 days?

14 - Are all pollutants/hazardous materials (fuel, concrete waste/washout waters, stucco waste, paint, portable toilet, trash bin, etc.) /spoils/stockpiles on site identified on the SWPPP map?

- NOTE: For map updating, this requires the SITE MAP to be updated with specific pollutants (including dates/locations when a pollutant was introduced, moved, or removed with an activity description where applicable) in the SITE MAPS section when using complianceGO.

15 - Have all BMPs identified in the SWPPP been removed where they are no longer needed?

- NOTE: For SWPPP updating, this requires the site map to be updated in the SITE MAPS section when managing your SWPPP in complianceGO.

16 - Is site FREE from any clearing, grubbing or grading within 50 feet of a Defined Water Drainage Course?

17 - Were site inspection records including action logs for the quarter reviewed?

18 - Are future inspections still needed?

Site Activity and Required Please also update the current map with this information in the site maps section when using complianceGO.

Disturbance/Stabilization Information
(Includes sediment basins):

- Please indicate the current phase or phases of construction activity for this site.
- Note the dates and locations of any new disturbances/excavations/major digs in this section.
- Note the date and location of any areas that have been temporarily/permanently stabilized or sold.
- Note the date and location when construction or development activities have temporarily or permanently ceased on any given portion of the site. Please also indicate what temporary or permanent stabilization measures will be applied to applicable areas.
- Describe the level and condition of each sedimentation basin and note the date of the last maintenance activities for that basin.
- Confirm whether sediment basins are properly located and whether spillways are properly stabilized.
- Confirm that the discharge from each sediment basin is not causing scouring of the banks

Appendix D

Quarterly Compliance Inspection

Page:3

or bottom of the receiving water.

**Communication /
and Regulatory
(where applicable):**

- Please indicate who these inspection findings were reviewed with on site, including the approximate time of communication.
- Describe in detail the outcomes if a regulatory inspection has been conducted. Please list who the regulatory inspector was, what aspects of the documents and/or site were discussed, whether or not there were any concerns, and any new action items that were a result of the visit.

Notes and Required Please provide any pertinent notes and documentation that helps to support the compliance
Weather efforts of this site. For routine compliance and monitoring compliance inspections, please
Information: describe:

- weather conditions for this site at the time of inspection
- weather conditions since the last inspection or commencement of construction if first inspection.
- Best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches) and whether any discharge occurred.

APPENDIX E

BIANNUAL COMPLIANCE REVIEW FORM

How does compliance in this six month period compare to the prior six month period (e.g., were there more instances of a particular violation, fewer of another, are there any detectable trends)?:

Are there any recurring Action Items? If so, describe actions to be taken in the next six month period to prevent their recurrence:

For the September 1 Report: Based on experience with the training program over the last year, should significant changes be made to the Training Program? (circle one) **Y** or **N**

If yes, provide proposed changes and the reasons for them:

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 the 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.

Company Storm Water Compliance Officer:

Signature: _____ Date: _____

Name: _____

APPENDIX F-1
STORM WATER TIP SHEET

List of Contractor Do's & Don'ts

DO:

- **DO** go to the Site Storm Water Compliance Representative with any questions regarding storm water pollution prevention or this list.
- **DO** place all trash and debris in the receptacles provided.
- **DO** use designated washout areas for cleaning equipment (e.g., concrete trucks, except those with self-contained washouts, must use the designated concrete washout area).
- **DO** report any spills of petroleum or other chemicals to the Site Storm Water Compliance Representative.
- **DO** immediately comply with any instructions given by the Site Storm Water Compliance Representative or other Ivory personnel.

DON'T:

- **DON'T** allow any solvents, chemicals, or rinse liquids to drain into a street or storm drain, a creek, waterway, or other water body.
- **DON'T** disable, damage, or interfere with any silt fence or similar erosion control device.
 - For example, **DON'T** run over a silt fence or straw wattle or forget to replace any silt fence or straw wattle you temporarily relocate.
- **DON'T** disable, damage, or interfere with any inlet controls.
 - For example, **DON'T** remove inlet controls (unless an action is needed to prevent flooding) or place dirt or debris in or adjacent to inlet controls.
- **DON'T** disable, damage, or interfere with any storm water pollution prevention controls at construction entrances.
 - For example, **DON'T** evade stone construction entrances.
- **DON'T** disable, damage, drive over, or interfere with any geotextile, matting, or mulch.
- **DON'T** disable, damage, or interfere with any other storm water pollution prevention controls.

Remember: The failure to comply with storm water requirements at this site is a breach of your contractual obligations and can result in economic sanctions or termination.

APPENDIX F-2

STORM WATER MANAGEMENT TRAINING

APPENDIX F-2: STORM WATER MANAGEMENT TRAINING

STORM WATER MANAGEMENT TRAINING

RSI Program Training Outline

1. Roles and Requirements of an Inspector
2. Storm Water Regulations
3. General Permit for Construction Activities
4. Storm Water Pollution Prevention Plans (SWPPP)
5. The NOI and the NOT
6. Erosion and Sedimentation
7. Construction Site BMPs – Erosion Control
8. Construction Site BMPs – Sediment Control
9. Construction Site BMPs – Site Management and Planning
10. Construction Site BMPs – Runoff Control
11. Construction Site BMPs – Good Housekeeping
12. Introduction to the Inspection Form
13. Using the Inspection Form
14. Inspector Skills
15. SWPPP Review
16. Site Inspection and Review
17. Exam

Additional Annual Refresher Training Topics

1. Updates on new regulations
2. Trends in Ivory Homes' storm water compliance at Sites
3. New corporate policies to strengthen compliance efforts

Ivory Homes Consent Decree Requirements Review

1. Training Requirements
2. Pre-Construction Inspection Requirement
 - ✓ Include form-certification requirement
3. Site Inspection Requirement
 - ✓ Include form-certification requirement
4. Quarterly Compliance Inspection
 - ✓ Include form-certification requirement
5. Action Item Completion Requirement
 - ✓ Include form-certification requirement