

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 6:06-cv-00031(nkm)
)	
SAVOY SENIOR HOUSING)	
CORPORATION, et al.,)	
)	
Defendants.)	
)	

CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed the Complaint herein alleging that the defendants in this action violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendants Savoy Senior Housing Corporation, Savoy Liberty Village, LLC, SDB Construction, Inc., Jacob A. Frydman, Best G.C., Inc. (a/k/a Best Grading), and Acres of Virginia, Inc., violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States, without authorization pursuant to CWA Section 404, 33 U.S.C. § 1344, and by discharging pollutants, including stormwater containing sediment, into waters of the United States without authorization pursuant to CWA Section 402, 33 U.S.C. § 1342, and in

violation of a permit, once obtained, at and in the vicinity of the Liberty Village Site, 5700 Candler's Mountain Road, Campbell County, Virginia, (the "Site");

WHEREAS, the claims in the Complaint against Jacob A. Frydman are being dismissed in this Consent Decree;

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

WHEREAS, the defendants have asserted various defenses to the Complaint and various Cross-Claims seeking fulfillment and payment of certain contractual obligations owed by one or more of the defendants and/or asserting certain claims for indemnity, contribution, torts or the like;

WHEREAS, the United States and defendants agree that settlement of this case is in the public interest, and in their best interests, in that these parties are avoiding additional litigation costs and expenses by reaching a settlement of this matter, and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA in this case and the various Cross-Claims in this action;

WHEREAS, each defendant denies any liability for the CWA violations alleged by the United States and for the various Cross-Claims in this action;

WHEREAS, Liberty Ridge, LLC, as the current owner of the Liberty Village property, has consented to be added as a party to this case and to be bound by this Consent Decree solely

for purposes of performing the Restoration Project (as defined herein) in the manner and to the extent required by Paragraph 23 of this Consent Decree and the other provisions applicable to Liberty Ridge, LLC, which effectuate such purpose; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

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

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the United States, Defendants, Liberty Ridge, LLC, and Jacob A. Frydman (collectively "the Parties") pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Western District of Virginia, pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Defendants do conduct and/or have conducted business in this District, the subject property is located in this District, and the causes of action alleged herein arose in this District.

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

II. APPLICABILITY

4. The terms and obligations of this Consent Decree shall apply to and be binding upon (a) Savoy Senior Housing Corporation, Savoy Liberty Village, LLC, SDB Construction, Inc., Best G.C., Inc. (a/k/a Best Grading) (hereinafter "Best, G.C., Inc."), and Acres of Virginia, Inc. (collectively "Defendants"); (b) Liberty Ridge, LLC; (c) each officer, director, agent, employee, servant, successor, manager, member, and/or assign of Defendants or Liberty Ridge, LLC, in such capacity and whether or not such person has notice of this Consent Decree; and (d) any person, firm, association or corporation who is, or will be, acting in concert or participation with any of the Defendants or Liberty Ridge, LLC, whether or not such person has notice of this Consent Decree. However, any terms and obligations of this Consent Decree that apply to a specific Defendant do not also apply to the other Defendants or Liberty Ridge, LLC, unless otherwise stated in this Consent Decree. Any terms and obligations of this Consent Decree that apply to Liberty Ridge, LLC, do not apply to Defendants, unless otherwise stated in this Consent Decree. In any action to enforce this Consent Decree against a Defendant or Liberty Ridge, LLC, neither a Defendant nor Liberty Ridge, LLC, shall raise as a defense the failure of any of their officers, directors, agents, employees, successors or assigns, or of any person, firm or corporation acting in concert or participation with said Defendant or Liberty Ridge, LLC, to take any actions necessary to comply with the provisions hereof. As noted in Paragraph 15 below, Liberty Ridge, LLC, is joined as a party to this action and Consent Decree solely for the purpose of performing the Restoration Project (as defined herein) in the manner and to the extent required by Paragraph 23 of this Consent Decree and the other provisions applicable to Liberty Ridge, LLC, which effectuate such purpose.

5. The voluntary or involuntary transfer of ownership or other interest in the restoration areas identified on Map A shall not alter or relieve each Defendant of its obligation to comply with all of the terms of this Consent Decree that apply to each such Defendant. Nor shall the voluntary or involuntary transfer of ownership or other interest in the restoration areas identified on Map A alter or relieve Liberty Ridge, LLC, of its obligation to comply with the terms of this Consent Decree that apply to Liberty Ridge, LLC. At least fifteen (15) days prior to the transfer of ownership or other interest in any of the restoration areas identified on Map A, the party making such transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify EPA and the United States Department of Justice at the addresses specified in Section X below that such notice has been given. As a condition to any such transfer, the Defendants and Liberty Ridge, LLC, shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE AND DISMISSAL OF CROSS-CLAIMS

6. a. This Consent Decree shall constitute a complete and final settlement of the various Cross-Claims in this action and all civil claims alleged in the Complaint against the Defendants under CWA Section 301 concerning the Site, including any such claims for discharges on or in the Utility Line Corridor identified on Map A, and any CWA Section 301 civil claims that, at the time of filing the Complaint, could have been brought against the Defendants and/or Liberty Ridge, LLC, for the discharge of dredged or fill material, or for the discharge of sediment in stormwater, on the Site or on or in the Utility Line Corridor identified on Map A.

b. All of the Cross-Claims filed in this action are dismissed with prejudice.

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

8. Except as in accordance with this Consent Decree, Defendants and their agents, successors and assigns are enjoined from future discharges of any pollutant into waters of the United States at the Site or the Utility Line Corridor identified on Map A, unless such discharge complies with the provisions of the CWA and its implementing regulations.

9. The Parties acknowledge that Nationwide Permit 32, found at 72 Fed. Reg. 11,092 (Mar. 17, 2007), authorizes any fill that was placed as of April 15, 2003 on the 140-acre Liberty Village Site, including the Utility Line Corridor identified on Map A, to remain in place, subject to the conditions provided in the Nationwide Permit and this Consent Decree. The Parties further acknowledge that Nationwide Permit 32 authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of Nationwide Permit 32 and this Consent Decree.

10. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the United States Army Corps of Engineers to issue, modify, suspend, revoke or deny any

individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

11. This Consent Decree in no way relieves each Defendant or Liberty Ridge, LLC, of its responsibility, if any, to comply with any applicable federal, state, or local law, regulation or permit, including but not limited to any permit that may be required to address stormwater discharges at the Site and/or the Utility Line Corridor identified on Map A.

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

13. Except as specifically provided in this Consent Decree, the United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law. Except as specifically provided in this Consent Decree, Defendants and Liberty Ridge, LLC, reserve any and all legal and equitable remedies available to them in defending against the enforcement of this Consent Decree and applicable law.

14. Nothing in this Consent Decree shall constitute an admission of fact or law by any party, and each Defendant denies any liability under the Complaint and the various Cross-Claims in this action.

15. a. This Consent Decree resolves the United States' claims against Defendants Savoy Senior Housing Corporation, Savoy Liberty Village, LLC, SDB Construction, Inc., Best G.C., Inc., and Acres of Virginia, Inc., as further set forth in Paragraph 6. Based upon its participation in making the payment referenced in Paragraph 17, as of the entry date of this Consent Decree, Defendant Acres of Virginia, Inc., has completed and fully satisfied its

obligations under this Consent Decree, except for the requirements in Paragraphs 8 and 24, and thus shall have no further duty, obligation, or liability under this Consent Decree, with the exception of the requirements in Paragraphs 8 and 24. Defendants Savoy Senior Housing Corporation, Savoy Liberty Village, LLC, and SDB Construction, Inc., and Defendant Best G.C., Inc., will complete their respective obligations under the Consent Decree, except for the requirements in Paragraphs 8 and 24, upon making the payments required of these Defendants under this Consent Decree.

b. Consistent with the terms of Paragraph 50 of this Consent Decree, the claims in the Complaint against Jacob A. Frydman are hereby dismissed. Jacob A. Frydman is not a Defendant as that term is defined in Paragraph 4 above and used in this Consent Decree.

c. Liberty Ridge, LLC, is hereby joined as a party to this action, pursuant to Fed. R. Civ. P. 19(a), solely for the purpose of performing the Restoration Project (as defined herein) in the manner and to the extent required by Paragraph 23 of this Consent Decree and the other provisions applicable to Liberty Ridge, LLC, which effectuate such purpose. The Complaint in this action is hereby deemed amended to include Liberty Ridge, LLC, as a party to this action consistent with this Paragraph 15(c). Insofar as service of a summons and such amended complaint upon Liberty Ridge, LLC, would otherwise be necessary, Liberty Ridge, LLC, hereby waives service of the summons and such amended complaint. Liberty Ridge, LLC, is not a Defendant as that term is defined in Paragraph 4 above and used in this Consent Decree.

d. The obligations of Defendants Savoy Senior Housing Corporation, Savoy Liberty Village, LLC, and SDB Construction, Inc., under this Consent Decree are joint and several among each other.

IV. SPECIFIC PROVISIONS

PAYMENT OF CIVIL PENALTIES AND INJUNCTIVE RELIEF

16. Defendants shall pay a total of \$1,375,000.00, of which \$300,000.00 will be paid as a civil penalty in accordance with Paragraph 18 below, and the remaining \$1,075,000.00 will fund the injunctive relief requirements of this Consent Decree, as described in Paragraphs 21 through 26 below; provided, however, that if the amount placed into the Registry of the Court at the time of lodging of this Consent Decree in accordance with Paragraph 17 is \$1,080,000.00, then the total payment by Defendants shall be \$1,370,000.00 and the amount to fund the injunctive relief requirements of this Consent Decree shall be \$1,070,000.00. The payments by Defendants shall be made in accordance with Paragraph 17 below. This Consent Decree makes no allocation of this payment among the Defendants, except with respect to the deferred payments in Paragraph 17 below. Nor does the order in which each Defendant makes a payment into the Registry of the Court under this Consent Decree allocate such payment to any specific payment category or purpose under this Consent Decree, regardless of the order in which such payments are made from the Registry of the Court in accordance with this Consent Decree.

17. As of the date of lodging of this Consent Decree, the Defendants have deposited either \$1,020,000.00 or \$1,080,000.00 into the Registry of the Court. The remaining sums shall be paid as follows:

a. Not later than 180 calendar days after the entry of this Consent Decree, Defendants Savoy Senior Housing Corp., Savoy Liberty Village, LLC, and SDB Construction, Inc., shall pay \$170,000.00 into the Registry of the Court in accordance with the directions in Paragraph 17(c) below. Not later than 365 calendar days after the entry of this Consent Decree,

Defendants Savoy Senior Housing Corp., Savoy Liberty Village, LLC, and SDB Construction, Inc., shall pay an additional \$120,000.00 into the Registry of the Court in accordance with the directions in Paragraph 17(c) below. Within three calendar days of making each of the payments required by this Paragraph 17(a), Defendants Savoy Senior Housing Corp., Savoy Liberty Village, LLC, and SDB Construction, Inc., shall provide written notice to the addresses specified in Section X of this Consent Decree and to the addresses in Paragraph 17(d) below, that each such payment was made into the Registry of the Court.

b. Not later than 180 calendar days after the entry of this Consent Decree, Defendant Best G.C., Inc., shall pay \$32,500.00 into the Registry of the Court in accordance with the directions in Paragraph 17(c) below. Not later than 365 calendar days after the entry of this Consent Decree, Defendant Best G.C., Inc., shall pay an additional \$32,500.00 into the Registry of the Court in accordance with the directions in Paragraph 17(c) below. Within three calendar days of making each of the payments required by this Paragraph 17(b), Defendant Best G.C., Inc., shall provide written notice to the addresses specified in Section X of this Consent Decree and to the addresses in Paragraph 17(d) below, that each such payment was made into the Registry of the Court. This Paragraph 17(b) shall not apply if the Defendants' initial payment into the Registry of the Court is \$1,080,000.00.

c. To make the payments to the Registry of the Court required by Paragraph 17(a), Defendants Savoy Senior Housing Corp., Savoy Liberty Village, LLC, and SDB Construction, Inc., shall for each payment file with the Court the stipulation and order in Appendix B (with the blanks for payment amount filled in) to this Consent Decree, with such filing to be made in adequate time to ensure payment to the Registry of the Court on or before the

applicable deadline in Paragraph 17(a). To make the payments to the Registry of the Court required by Paragraph 17(b), Defendant Best G.C., Inc., shall for each payment file with the Court the stipulation and order in Appendix C (with the blanks for payment amount filled in) to this Consent Decree, with such filing to be made in adequate time to ensure payment to the Registry of the Court on or before the applicable deadline in Paragraph 17(b). Upon the Court's entry of a stipulated order authorizing payment to the Registry of the Court, the paying Defendant(s) shall, within five business days, deliver the stipulated order and payment to the Clerk's Office for delivery to the Registry of the Court. The Parties to this Consent Decree hereby stipulate to each filing of the stipulation and order as set forth in this Paragraph 17(c).

d. Addresses for notification of payments in this Paragraph (in addition to the addresses in Section X):

- (1) April Bowie, Docket Clerk
United States Environmental Protection Agency
Region III
1650 Arch St., Mail Code 3RC00
Philadelphia, PA 19103-2029
- (2) Lori Weidner
United States Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

CIVIL PENALTIES

18. Of the total amount required to be paid by the Defendants pursuant to this Consent Decree, \$300,000.00 shall be paid as a civil penalty. Upon the filing of a stipulated order by the United States, the Registry of the Court shall make a payment of \$300,000.00 from the Registry

of the Court in accordance with the instructions in Paragraph 19 below or such other instructions set out in the stipulated order. The filing of the stipulated order and the civil penalty payment from the Registry of the Court referenced in this paragraph shall not be made until after the payments from the Registry of the Court for the stream and wetland restoration/mitigation have been made pursuant to Paragraphs 26(a) and (b) below and sufficient funds are present in the Registry of the Court for the Restoration Project pursuant to Paragraph 23.

19. The civil penalty payment shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number (2006v00263), EPA Region 3, and the DOJ case number (90-5-1-1-17868). Payment shall be made in accordance with instructions provided by the Financial Litigation Unit of the United States Attorney's Office for the Western District of Virginia. Any payment received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

20. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section VIII) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21, and are not tax deductible expenditures for purposes of federal law.

RESTORATION, MITIGATION AND PRESERVATION

21. Of the total payments required by this Consent Decree, \$1,075,000.00 shall be used for restoration and mitigation, as provided in Paragraphs 22-26 below; provided, however, that if the amount placed into the Registry of the Court at the time of lodging of this Consent Decree is \$1,080,000.00, then \$1,070,000.00 of the total payments required by this Consent Decree shall be used for restoration and mitigation, as provided in Paragraphs 22-26 below.

22. Of the restoration and mitigation funds specified in Paragraph 21, \$253,000.00 shall be available for funding the Restoration Project, in accordance with Paragraph 23(e) below. At the time of completion of the Restoration Project, any amount of the \$253,000.00 that has not been paid out of the Registry of the Court for the Restoration Project in accordance with Paragraph 23(e) below shall be disbursed from the Registry of the Court in accordance with Paragraph 26(d) below.

23. The Restoration Project.

a. The restoration work under this Consent Decree (the "Restoration Project") is set forth in this Paragraph and the Work Plan attached as Appendix A to this Consent Decree (the "Work Plan"). The Work Plan is incorporated as an enforceable term of this Consent Decree, and any design plans and schematic drawings approved by EPA pursuant to the Work Plan are incorporated as enforceable terms of the Work Plan and this Consent Decree.

b. Liberty Ridge, LLC, shall undertake and complete the Restoration Project, pursuant to the terms, conditions, and schedules set forth for the Restoration Project in this Consent Decree and the Work Plan that has been approved by EPA, including any design plans and schematic drawings approved by EPA. Liberty Ridge, LLC, shall have no obligation to

undertake further work to implement the Restoration Project if, and at such time that, the costs incurred by Liberty Ridge, LLC, and approved by EPA, to implement the Restoration Project equal or exceed \$253,000.00. In the event that such approved costs equal or exceed \$253,000.00, Liberty Ridge, LLC, shall promptly provide notice to EPA and the Department of Justice at the addresses in Section X below, including a list of the items in the Work Plan that have not been completed; and, the requirements of subparagraph 23(d) shall not apply. However, in the event that such approved costs equal or exceed \$253,000.00, nothing in this Consent Decree shall preclude Liberty Ridge, LLC, from voluntarily performing additional work or expending additional funds to complete the Restoration Project, provided that such additional work comports with this Consent Decree.

c. In the event that Liberty Ridge, LLC, seeks to use contractors and/or consultants other than those identified in the Work Plan, then Liberty Ridge, LLC, shall first seek approval from EPA in writing.

d. After completing the tasks in the Work Plan, Liberty Ridge, LLC, shall notify EPA and the Department of Justice at the addresses in Section X below that the Restoration Project is complete. EPA shall either notify Liberty Ridge, LLC, that the Restoration Project is not complete and specify the additional work necessary to obtain completion, or certify in writing that Liberty Ridge, LLC's implementation of the Restoration Project is complete (at which point Liberty Ridge, LLC, shall have no further obligations with respect to the Restoration Project).

e. The Restoration Project shall be funded with the \$253,000.00 in the Registry of the Court described in Paragraph 22 above. On a periodic basis, not to exceed once

every 30 calendar days, Liberty Ridge, LLC, shall submit a request for reimbursement to EPA and the Department of Justice at the addresses set forth in Section X of this Consent Decree, which request must include reasonably detailed itemized descriptions and costs for the work performed on the Restoration Project for which Liberty Ridge, LLC, is seeking reimbursement, and the invoices of Liberty Ridge, LLC's contractors and consultants for such work; provided, however, that Liberty Ridge, LLC, shall not submit a request for reimbursement for less than \$25,000.00, unless it is the final request for reimbursement. EPA shall then either approve or disapprove the items specified in the request for reimbursement, and, upon the filing of a stipulated order by the United States, a payment from the Registry of the Court for all approved items shall be made to Liberty Ridge, LLC. If EPA disapproves of any item or items in a request for reimbursement by Liberty Ridge, LLC, then, within 30 days of receiving the request for reimbursement, EPA shall notify Liberty Ridge, LLC, in writing, of the specific items that EPA has disapproved. Liberty Ridge, LLC, and the United States shall use the Dispute Resolution procedures in Section VII of this Consent Decree to resolve any items disapproved by EPA. A dispute regarding specific items in a request for reimbursement by Liberty Ridge, LLC, shall not delay payment from the Registry of the Court for those items that EPA has approved.

f. Reimbursable costs under this Paragraph shall be limited to costs incurred by Liberty Ridge, LLC, in carrying out the Work Plan, provided that such costs are reasonable and customary costs for contract labor, materials, equipment, on-site project management, permit applications and fees, surveys and plans, monitoring and reporting, environmental consultants, and engineers. Reimbursable costs under this Paragraph shall also include reasonable and customary labor costs for employees of Liberty Ridge, LLC, and/or its affiliates provided that

such labor costs have been incurred in on-site performance of the Work Plan or in on-site supervision of such work. Reimbursable costs under this Paragraph shall not include attorneys fees, legal costs, overhead, performance bonds or fees associated with such bonds, penalties, or fines.

24. Upon completion of the Restoration Project, neither Defendants nor Liberty Ridge, LLC, and/or their affiliates shall mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any area covered by the Restoration Project, except as approved by EPA in writing. However, nothing in the prior sentence shall preclude Liberty Ridge, LLC, from taking reasonable steps that are consistent with best management practices and all applicable regulatory requirements for stormwater detention systems, with regard to the sediment ponds within the Restoration Project.

25. To ensure that the areas addressed by the Restoration Project are not disturbed, Liberty Ridge, LLC, shall, within fifteen (15) calendar days of entry of this Consent Decree, record a certified copy of this Consent Decree in the Clerk's Office of the Circuit Court of Campbell County, Virginia. Thereafter, each deed, title, or other instrument conveying an interest in any property identified in Map A shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

26. Off-Site Stream and Wetlands Mitigation.

a. Upon the filing of a stipulated order by the United States, which filing is to occur within a reasonable time after entry of this Consent Decree and after receipt by the United States of necessary documents from the owners/operators of the Wreck Island Stream Bank, the

Registry of the Court shall make a payment of \$767,000.00 from the Registry of the Court to Virginia Habitats, L.L.C., as specified in the stipulated order filed by the United States, for the purchase of stream restoration credits from the Wreck Island Stream Bank; provided, however, that if the amount placed into the Registry of the Court at the time of lodging of this Consent Decree is \$1,080,000.00, then the payment in this Paragraph 26(a) may be increased up to \$798,300.00.

b. Upon the filing of a stipulated order by the United States, which filing is to occur after the payment in Paragraph 26(a) has been made and after receipt by the United States of any necessary documents from the wetlands mitigation bank(s) referred to in this Paragraph 26(b), the Registry of the Court shall make a payment of \$18,700.00 from the Registry of the Court, as specified in the stipulated order filed by the United States, for the purchase of wetland mitigation credits from a wetlands mitigation bank or banks.

c. Upon the filing of a stipulated order by the United States, which filing is to occur after the payments in Paragraph 26(a) and (b) have been made and the civil penalty payment has been made pursuant to Paragraphs 18-19, the Registry of the Court shall transmit any funds remaining in the Registry of the Court (aside from the \$253,000.00 set aside for the Restoration Project), as specified in the stipulated order filed by the United States, to a restoration bank(s) and/or CWA restoration project(s) for the restoration and/or preservation of streams or wetlands.

d. In the event that the Restoration Project has been certified by EPA as complete pursuant to Paragraph 23(d) and there are funds remaining from the \$253,000.00 set aside for the Restoration Project, then, upon the filing of a stipulated order by the United States,

the Registry of the Court shall transmit those remaining funds to a mitigation or restoration bank(s) and/or CWA restoration project(s) identified by the United States.

e. In the event that some or all credits are unavailable from any restoration bank specified by Paragraph 26(a)-(b), then, upon the filing of a stipulated order by the United States, the Registry of the Court shall transmit the specified funds to a mitigation or restoration bank(s) and/or CWA restoration project(s) identified by the United States.

27. The Parties hereby stipulate to motions and/or orders prepared and filed by the United States to cause any payment to be made from the Registry of the Court pursuant to this Consent Decree.

V. NOTICES AND OTHER SUBMISSIONS

28. Within 30 calendar days after the deadline for completing any Major Task designated as such in the Work Plan, Liberty Ridge, LLC, shall provide EPA and the Department of Justice with written notice, at the addresses specified in Section X of this Consent Decree, of whether or not that Major Task has been completed.

29. If the required Major Task has been completed, the notice shall specify the date when it was completed, and explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Work Plan.

30. In all notices, documents or reports submitted to the Department of Justice and EPA pursuant to this Consent Decree, Liberty Ridge, LLC, shall, by signature of a senior management official, certify such notices, documents and reports as follows:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my

direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information contained in or accompanying this (submission/document) is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

31. A. Until five years after termination of this Consent Decree, Liberty Ridge, LLC, shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the tasks in the Work Plan and this Consent Decree, regardless of any corporate retention policy to the contrary. Until five years after termination of this Consent Decree, Liberty Ridge, LLC, shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in the Work Plan and this Consent Decree. At the conclusion of the document retention period, Liberty Ridge, LLC, shall notify the Department of Justice and EPA, at the addresses in Section X, at least 90 calendar days prior to the destruction of any such records or documents, and, upon request by the Department of Justice or EPA, shall deliver any such records or documents to the Department of Justice or EPA.

B. As an alternative to Paragraph 31A, Liberty Ridge, LLC, shall, within 90 days after completion of the Restoration project, provide to the Department of Justice and EPA at the addresses in Section X, electronic copies all documents, records, and information of whatever kind, nature or description that relate to the performance of the tasks in the Work Plan and this

Consent Decree and that are within the possession or control of Liberty Ridge, LLC, and its contractors and agents. Liberty Ridge, LLC, shall simultaneously provide a certification in accordance with Paragraph 30 above, that the electronic copies constitute a complete set of the documents, records, and information described in this Paragraph 31B.

32. Liberty Ridge, LLC, may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Liberty Ridge, LLC, asserts such a privilege, it shall provide the Department of Justice and EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

33. A. Until termination of this Consent Decree, the United States and its authorized representatives (including contractors) shall have authority at all reasonable times to enter the areas identified on Map A to:

- 1) Monitor the activities required by this Consent Decree;
- 2) Verify any data or information submitted to the United States;
- 3) Obtain samples, photographs, data, or other evidence;
- 4) Inspect and evaluate the Restoration Project; and
- 5) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

B. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States and its agencies to conduct inspections, to require monitoring and to obtain information as authorized by law.

VII. DISPUTE RESOLUTION

34. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and the party affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) calendar days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and the affected Defendant or the United States and Liberty Ridge, LLC, cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) calendar days after the end of the informal negotiations period, the affected Defendant or Liberty Ridge, LLC, as the case may be, file(s) a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) calendar days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the affected Defendant or Liberty Ridge, LLC, shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that the affected Defendant's or Liberty Ridge, LLC's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

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

36. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of the affected Defendant or Liberty Ridge, LLC, under this Consent Decree, except as provided in Paragraph 44 below regarding payment of stipulated penalties by Defendants.

VIII. FORCE MAJEURE

37. Liberty Ridge, LLC, shall perform the actions required of it under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Liberty Ridge, LLC, including its employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased

costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits.

38. If Liberty Ridge, LLC, believes that a Force Majeure event has affected its ability to perform any action required under this Consent Decree, then Liberty Ridge, LLC, shall notify the Department of Justice and EPA in writing within seven (7) calendar days after the event at the addresses listed in Section X. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay;
- D. any measures taken or planned by Liberty Ridge, LLC, to prevent or minimize the delay and a schedule for the implementation of such measures; and
- E. Liberty Ridge, LLC's rationale for attributing any delay to a force majeure event.

Liberty Ridge, LLC, may also provide to the Department of Justice and EPA any additional information that it deems appropriate to support its conclusion that a Force Majeure event has affected its ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the Department of Justice and EPA shall constitute a waiver of any claim of Force Majeure as to the event in question.

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

40. If EPA does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Liberty Ridge, LLC, then EPA's position shall be binding, unless Liberty Ridge, LLC, invokes Dispute Resolution under Section VII of this Consent Decree, which Liberty Ridge, LLC, must do no later than ten days after receiving EPA's decision.

41. Liberty Ridge, LLC, shall bear the burden of proving by a preponderance of the evidence (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Liberty Ridge, LLC, and any entity controlled by it, including its contractors and consultants; (2) that Liberty Ridge, LLC, or any entity controlled by it could not have foreseen and prevented such noncompliance; and (3) the number of calendar days of noncompliance that were caused by such circumstances.

IX. STIPULATED PENALTIES

42. After entry of this Consent Decree, if a Defendant fails to timely fulfill any obligation it is required to fulfill under this Consent Decree, then the Defendant shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- | | | |
|----|---|--------------------|
| A. | For Day 1 up to and including
Day 30 of non-compliance | \$500.00 per day |
| B. | For Day 31 up to and including
60 of non-compliance | \$1,000.00 per day |
| C. | For Day 61 and beyond
of non-compliance | \$1,500.00 per day |

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

43. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the affected parties pursuant to the Dispute Resolution provisions in Section VII shall be resolved upon motion to this Court as provided in Paragraphs 34 and 35.

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

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

46. A Defendant shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number (2006v00263), EPA Region 3 and the DOJ case number (90-5-1-1-17868). Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Western District of Virginia. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, within 7 calendar days of payment of any stipulated penalties, the paying Defendant shall provide written notice, at the addresses specified in Section X of this Decree.

X. ADDRESSES

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

A. TO EPA:

- (1) Pamela Lazos
Senior Assistant Regional Counsel
United States Environmental Protection Agency
Region III
1650 Arch St., Mail Code 3RC20
Philadelphia, PA 19103-2029
- (2) Jeffrey Lapp
United States Environmental Protection Agency
Region III
1650 Arch St., Mail Code 3EA31
Philadelphia, PA 19103-2029

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

David J. Kaplan, Attorney
Kent Hanson, Attorney
Kenneth C. Amaditz, Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

C. TO DEFENDANT ACRES OF VIRGINIA:

- (1) Thomas Brooks, Sr., President
Acres of Virginia, Inc.
404 Clay St.
Lynchburg, VA 24504
- (2) Sidney H. Kirstein, Esquire
James A. Downey, Jr., Esquire
819 Main Street
Post Office Box 8
Lynchburg, Virginia 24505

D. TO DEFENDANT BEST G.C., INC.:

- (1) Lewis T. Falwell, President
Best G.C., Inc.
3921 Campbell Ave.
P.O. Box 10038
Lynchburg, VA 24506
- (2) Brian L. Buniva, Esquire
LeClair Ryan, A Professional Corporation
Riverfront Plaza, East Tower, 8th Floor
951 East Byrd Street
P.O. Box 2499
Richmond, VA 23218

E. TO DEFENDANTS SAVOY SENIOR HOUSING CORP., SAVOY LIBERTY VILLAGE, LLC, AND SDB CONSTRUCTION, INC.:

- (1) Jacob A. Frydman
One Dag Hammarskjold Plaza
885 Second Ave., 34th Floor
New York, NY 10017
- (2) David C. Wrobel
Wrobel & Schatz LLP
1040 Avenue of the Americas
11th Floor
New York, New York 10018

F. TO LIBERTY RIDGE, LLC

- (1) Jerry L. Falwell, Jr.
Liberty Ridge, LLC
1971 University Blvd.
Lynchburg, VA 24502
- (2) A. Peter Brodell, Esquire
Williams Mullen
1021 East Cary Street - 17th Floor
P.O. Box 1320
Richmond, Virginia 23218-1320

XI. COSTS OF SUIT

48. Each Party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should a Defendant or Liberty Ridge, LLC, subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, then the Defendant or Liberty Ridge, LLC, as the case may be, shall be liable for any costs or attorneys' fees incurred by the United States in any action against the Defendant or Liberty Ridge, LLC, for noncompliance with or enforcement of this Consent Decree. The prior sentence shall not apply to any disputes

between Liberty Ridge, LLC, and EPA arising from EPA's disapproval of items on requests for reimbursement for the Restoration Project.

XII. PUBLIC COMMENT

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

XIII. CONTINUING JURISDICTION OF THE COURT

50. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. In addition, the Court shall retain jurisdiction over this action to enforce any stipulated judgment(s) against any party, including any party named in the Complaint (but excluding Acres of Virginia, Inc.), that the United States may file regarding the guaranty of any payments required by this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XIV. MODIFICATION

51. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing. No modification of this Consent Decree shall take effect unless signed by the United States, the Defendants, and Liberty Ridge, LLC, and approved by the Court; provided, however, that modifications to the Work Plan shall take effect if signed by EPA and Liberty Ridge, LLC.

XV. TERMINATION

52. Except for Paragraphs 24, 31 and 32, this Consent Decree may be terminated by one of the following:

A. Defendants, Liberty Ridge, LLC, and the United States may at any time make a joint motion to the Court for termination of this Consent Decree or any portion of it; or

B. Liberty Ridge, LLC, may make a unilateral motion to the Court to terminate the provisions of this Consent Decree insofar as they are applicable to Liberty Ridge, LLC, after each of the following has occurred:

1. Liberty Ridge, LLC, has obtained and maintained compliance with all provisions of this Consent Decree applicable to Liberty Ridge, LLC, and with the CWA, for twelve (12) consecutive months (which shall be deemed to include the final 12 months of monitoring and reporting under the Restoration Project, assuming that Liberty Ridge, LLC's obligations have not been discharged sooner pursuant to the terms of Paragraph 23(b) of this Consent Decree);

2. Liberty Ridge, LLC, has certified compliance pursuant to subparagraph 1 above to the Court and all Parties at the addresses in Section X; and

3. within forty-five (45) calendar days of receiving such certification from Liberty Ridge, LLC, EPA has not contested in writing that such compliance has been achieved. If EPA disputes full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

C. A Defendant may make a unilateral motion to the Court to terminate the provisions of this Consent Decree insofar as they are applicable to that Defendant after each of the following has occurred:

1. The Defendant has obtained and maintained compliance with all provisions of this Consent Decree and the CWA at the Liberty Village Site and the Utility Line Corridor for twelve (12) consecutive months;

2. The Defendant has paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

3. The Defendant has certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all Parties at the addresses in Section X; and

4. within forty-five (45) calendar days of receiving such certification from the Defendants, EPA has not contested in writing that such compliance has been achieved. If EPA disputes full compliance, this

Consent Decree shall remain in effect pending resolution of the dispute by
the parties or the Court.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2008.

United States District Judge

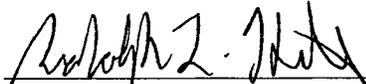
ON BEHALF OF THE UNITED STATES:

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division



David J. Kaplan, Attorney
Kent Hanson, Attorney
Kenneth C. Amaditz, Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

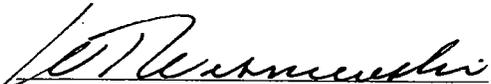
Dated: 4/6/09



RANDOLPH L. HILL, Acting Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Dated: 11/24/08

Cheryl Rose
Senior Attorney
Water Enforcement Division
Office of Civil Enforcement - OECA
1200 Pennsylvania Ave., NW
Washington, DC 20460



DONALD S. WELSH

Regional Administrator

U.S. Environmental Protection Agency, Region III

Dated: 1/5/09



WILLIAM C. EARLY

Regional Counsel

U.S. Environmental Protection Agency, Region III

Dated: 11/24/08

Pamela Lazos

Senior Assistant Regional Counsel

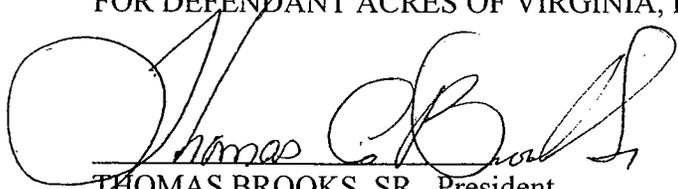
United States Environmental Protection Agency

Region III

1650 Arch St., Mail Code 3RC20

Philadelphia, PA 19103-2029

FOR DEFENDANT ACRES OF VIRGINIA, INC.

A large, stylized handwritten signature in black ink, appearing to read "Thomas Brooks, Sr.", written over a horizontal line.

THOMAS BROOKS, SR., President
Acres of Virginia, Inc.
404 Clay St.
Lynchburg, VA 24504
(434) 528-4674

Dated: 11-6-08

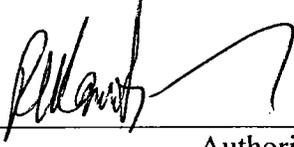
FOR DEFENDANT BEST G.C., INC.



LEWIS T. FALWELL, President
Best G.C., Inc.
3921 Campbell Ave.
P.O. Box 10038
Lynchburg, VA 24506
(434) 841-7900

Dated: 11/24/8

FOR DEFENDANT SAVOY SENIOR HOUSING CORPORATION

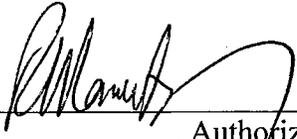
A handwritten signature in black ink, appearing to be "R. Lamb", written over a horizontal line.

, Authorized Agent

Savoy Senior Housing Corp.
One Dag Hammarskjold Plaza
885 Second Ave., 34th Floor
New York, NY 10017

Dated: 11/12/08

FOR DEFENDANT SAVOY LIBERTY VILLAGE, LLC

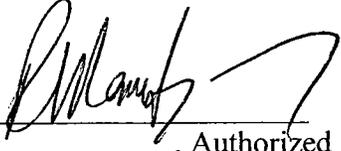


_____, Authorized Agent

Savoy Liberty Village, LLC
One Dag Hammarskjold Plaza
885 Second Ave., 34th Floor
New York, NY 10017

Dated: 11/12/08

FOR DEFENDANT SDB CONSTRUCTION, INC.

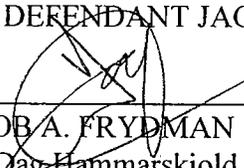


_____, Authorized Agent

SDB Construction, Inc.
One Dag Hammarskjold Plaza
885 Second Ave., 34th Floor
New York, NY 10017

Dated: 11/12/08

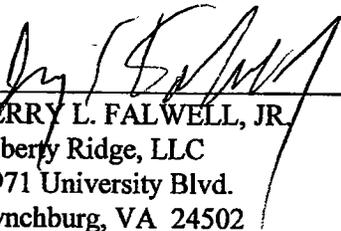
FOR DEFENDANT JACOB A. FRYDMAN



JACOB A. FRYDMAN
One Dag Hammarskjold Plaza
885 Second Ave., 34th Floor
New York, NY 10017

Dated: 11/6/08

FOR LIBERTY RIDGE, LLC



JERRY L. FALWELL, JR.
Liberty Ridge, LLC
1971 University Blvd.
Lynchburg, VA 24502

Dated: 11/10/08

Appendix A: Work Plan

This Work Plan sets forth the timeline and performance standards for the restoration work to be undertaken by Liberty Ridge, LLC (“Liberty Ridge”) pursuant to the Consent Decree in United States v. Savoy Senior Housing Corp., et al., 6:06-cv-31 (W.D. Va.). The Work Plan is incorporated into the Consent Decree and, taken together with Paragraph 23 of the Consent Decree, constitutes the “Restoration Project.”

The Restoration Areas covered by this Work Plan are depicted on Map A attached to the Consent Decree.

EPA has approved Reynolds-Clark, Perkins & Orrison, and Old Dominion Landscaping as contractors and consultants to perform this Work Plan. EPA has also approved Liberty University as the party responsible for VPDES permitting and for performing on-site construction supervision for this Work Plan.

I. General Requirements

In performing the Work Plan, Liberty Ridge shall comply with any required local, state and federal requirements (e.g., approvals of County E & S plan, Virginia Stormwater Management Plan, Stormwater Pollution Prevention Plan, VPDES permit application).

If necessary, Liberty Ridge shall obtain one-foot contour topographic Survey within the Utility Line Corridor, Pond 1, Pond 3, and Pond 4 areas (collectively, “the Restoration Areas”), with the survey to include adjacent side-slopes and stream channel components for the Utility Line Corridor.

Each of the Sections III through VI below shall be considered a “Major Task” for the purposes of Paragraphs 28-29 of the Consent Decree.

II. Planning and Design

Liberty Ridge shall prepare design plans and schematic drawings, in accordance with the specifications set forth herein, for the stream restoration work in the Utility Line Corridor (Section III below), the new riser elevation at Pond 1 (Section IV below), and the marsh enhanced forebay at Pond 4 (Section VI below). Liberty Ridge shall also prepare designs and schematic drawings for the plantings required in the Restoration Areas (to include an identification of species for planting); an eradication plan for invasive species in the Restoration Areas; and an overall E&S plan for the Restoration Areas.

Schedule: Liberty Ridge shall provide copies of all design plans and schematic drawings to EPA (at the addresses provided in Section X of the Consent

Decree) and copies of the E&S Plan to appropriate County regulators not later than 60 calendar days after entry of the Consent Decree.

EPA will review the design plans and schematic drawings in accordance with the provisions in Section IX below.

All design plans and schematic drawings approved by EPA are automatically incorporated as enforceable terms of this Work Plan and the Consent Decree.

III. Utility Line Corridor Restoration

Liberty Ridge shall perform the following tasks to restore the stream and adjacent areas in the Utility Line Corridor:

- Take pre-construction and post-construction/planting photographs from at least 10 approved permanent photo-stations to cover the entire subject area
- Install all temporary and final E&S measures
- Re-grade the corridor to remove rill erosion and allow sheet flow from adjacent slopes to enter the existing stream channel. Final grades and slopes will be provided in the E&S Plan.
- Install fifteen (15) Right-of-Way diversions / waterbars according to the Virginia Erosion and Sediment Control Handbook (STD & SPEC 3.11).
- Remove five existing check dams from the stream
- Remove existing culvert and restore stream channel as follows:
 - a. Dimensions
 - i. 5 feet wide bottom width
 - ii. No steeper than 3:1 side-slopes / stream banks
 - b. Profile
 - i. If slope is greater than 2%, native cobble shall be installed along channel bottom
 - ii. If slope is less than 2%, no cobble shall be installed.
 - c. Reference Reach
 - i. Utilize the downstream (non-impacted reach) for the basis of the channel restoration
 - ii. Prepare a schematic cross-section and profile and approval prior to stream restoration activities.
- Incorporate three inches of topsoil (with appropriate organic matter) to all disturbed areas
- Apply a native wetland or upland seed mix, as appropriate, to all disturbed areas (+/- 1.5 acres)
- Install E&S Matting (EC-2) to all disturbed areas (+/- 1.5 acres)

- Remove approximately 80 LF of riprap within existing channel near confluence of impacted and non-impacted streams
- Restore the stream system as follows:
 - a. Dimensions
 - i. 5 feet wide bottom width
 - ii. No steeper than 3:1 side-slopes / stream banks
 - b. Profile
 - i. If slope is greater than 2%, native cobble shall be installed along channel bottom
 - ii. If slope is less than 2%, no cobble shall be installed.
 - c. Reference Reach
 - i. Utilize the upstream (non-impacted reach) for the basis of the channel restoration.
 - ii. Prepare a schematic cross-section and profile and approval prior to stream restoration activities.
- Treat invasive species with an aquatic herbicide approved for such use (backpack spraying or injection)
- Install the following plantings per the approved schematic plan
 - a. 10 one-gallon, containerized species (final location to be approved).
 - b. 10 two-inch caliper trees (final location to be approved).
 - c. All staking, topsoil, fertilizer, and soil amendment shall be completed per the approved Seeding and Planting Plan (part of the E&S Plan).

Schedule: Liberty Ridge shall complete the tasks set forth in this section not later than 30 business days after the later of EPA approval of the design plans and schematic drawings or the County's approval of the E&S Plan (hereinafter "the Plan Approval Date").

IV. Pond 1 Restoration and Enhancement

Liberty Ridge shall perform the following tasks to restore and enhance Pond 1 and adjacent areas:

- Take pre-construction and post-construction/planting photographs from at least 2 approved permanent photo-stations to cover the entire subject area
- Install temporary and final E&S measures
- Dewater the pond sufficient to allow "work in the dry" conditions.
- Modify the existing outlet structure to prevent backflooding of the existing wetlands. No more than six inches of inundation shall occur for a duration exceeding 24 hours. Final normal pool elevations shall be no more than 12 inches below the existing wetlands. Final grades will be provided in the E&S Plan.
- Remove excess sediment and dispose of onsite. Disposal location shall be identified on the E&S Plan.

- Incorporate three inches of topsoil (with appropriate organic matter) to all seeding and planting areas.
- Apply a native wetland or upland seed mix, as appropriate, to all disturbed areas (+/- 0.5 acre).
- Install E&S Matting (EC-2) to all disturbed areas above normal pool once final grades have been established.
- Install the following plantings per the approved schematic plan:
 - a. 120, one-gallon containerized species.
 - b. 1,525 emergent wetland plugs
 - c. All staking, topsoil, fertilizer, and soil amendment shall be completed per the approved Seeding and Planting Plan (part of the E&S Plan).

Schedule: Liberty Ridge shall complete the tasks set forth in this section not later than 38 business days after the "Plan Approval Date."

V. Pond 3 Restoration and Enhancement

Liberty Ridge shall perform the following tasks to restore and enhance Pond 3 and adjacent areas.

- Take pre-construction and post-construction/planting photographs from at least 2 approved permanent photo-stations to cover the entire subject area
- Install temporary and final E&S measures
- Incorporate three inches of topsoil (with appropriate organic matter) to all seeding and planting areas.
- Apply a native wetland or upland seed mix, as appropriate, to all disturbed areas (+/- 0.5 acre).
- Install E&S Matting (EC-2) to all disturbed areas above normal pool once final grades have been established.
- Install the following plantings per the approved Schematic Plan:
 - a. 50 two-inch caliper trees
 - b. 50 one-gallon containerized scrub-shrub upland species.
 - c. 180 one-gallon containerized scrub-shrub wetland species
 - d. 1,125 emergent wetland plugs
 - e. All staking, topsoil, fertilizer, and soil amendment shall be completed per the approved Seeding and Planting Plan (part of the E&S Plan).

Schedule: Liberty Ridge shall complete the tasks set forth in this section not later than 49 business days after the Plan Approval Date.

VI. Pond 4 Restoration and Enhancement

Liberty Ridge shall perform the following tasks to restore and enhance Pond 3 and adjacent areas:

- Take pre-construction and post-construction/planting photographs from at least 2 approved permanent photo-stations to cover the entire subject area
- Install temporary and final E&S measures
- Dewater the pond sufficient to allow “work in the dry” conditions.
- Create a marsh-enhanced forebay (+/- 500 square feet) and wetland benches (+/- 4,000 square feet).
- Conduct VSMP monitoring and reporting activities throughout construction window and per state standards.
- Incorporate three inches of topsoil to all seeding and planting areas.
- Apply a native wetland or upland seed mix, as appropriate, to all disturbed areas (+/- 0.15 acre).
- Install E&S Matting (EC-2) to all disturbed areas above normal pool once final grades have been established.
- Install the following plantings per the approved schematic plan
 - a. 20 two-inch caliper trees
 - b. 134 one-gallon containerized scrub-shrub upland species.
 - c. 134 one-gallon containerized scrub-shrub wetland species
 - d. 1,075 emergent wetland plugs
 - e. All staking, topsoil, fertilizer, and soil amendment shall be completed per the approved Seeding and Planting Plan (part of the E&S Plan).

Schedule: Liberty Ridge shall complete the tasks set forth in this section not later than 66 business days after the “Plan Approval Date.”

VII. Survivability of Plantings and Control of Invasive Species

Liberty Ridge shall perform the following tasks and meet the following performance standards:

- all protective netting applied to the Restoration Areas noted above shall be removed after the third year from the date of installation.
- native non-invasive herbaceous plant coverage shall be at least 80% after 5 years from the date of installation. Any seeds used for plant establishment should conform to the Virginia Seed Law (Sections 3.1-262 Code of Virginia) and Virginia Seed Regulations (2 VAC 5-290-10 et seq) and shall be free of tall fescue, Bermuda grass, and other allelopathic turf grass species, as well as plant species on the Virginia Department of Conservation and Recreation’s Invasive Alien Plant List.

- for a period of 5 years after installation of the plantings required in Sections III-VI above, no more than 5% cover shall be made up by invasive species such as *Typha latifolia*, *Phragmites australis*, *Lonicera japonica*, *Puerraria lobata*, or *Ailanthus altissimus*. Invasive species are identified on the Virginia Department of Conservation and Recreation's Invasive Alien Plant list.
- Ensure 100% survivability of all installed trees and shrubs, and 80% of the installed plugs for a period of five years from date of installation.

VIII. Monitoring and Reporting

At least once each year, Liberty Ridge shall submit to EPA (at the addresses in Section X of the Consent Decree) a monitoring report that documents field conditions. The report shall include: (a) photographs from the established photo-stations for each of the Restoration Areas; (b) a general narrative that describes the condition of the site and Restoration Areas; (c) a description of vegetation coverage for the Restoration Areas; (d) stem density survival rates for the Restoration Areas; and (e) any remedial actions (e.g., supplemental plantings) taken or recommended.

Liberty Ridge shall also submit to EPA (at the addresses in Section X of the Consent Decree) a report that documents the completion of the Major Tasks in Sections III-VI above. The report shall include: (a) photographs from established photo-stations in each of the Restoration Areas; (b) a narrative describing the post-construction condition of the Restoration Areas; (c) a description of the status of remedial measures implemented; and (d) any remedial actions taken or recommended. The report in this paragraph may be combined with the annual reports described in the preceding paragraph.

IX. Review and Approval

For any design plan or schematic drawing that this Work Plan requires Liberty Ridge to provide to EPA for review and approval, EPA may, in its discretion: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) disapprove, in whole or in part, the submission, directing Liberty Ridge to modify the submission; or (d) any combination of the above. A disapproval under (c) or (d) will set forth the reasons for the deficiencies in sufficient detail for Liberty Ridge to correct the deficiencies.

Upon receipt of a notice of disapproval, in whole or in part, of a submission under this Work Plan, Liberty Ridge shall, within 30 calendar days, or such longer time as specified by EPA in such notice or agreed to in writing by EPA, revise the submission as specified by EPA and resubmit the submission to EPA for approval.

In the event that the submission, or portion thereof, is again disapproved by EPA, EPA may again require Liberty Ridge to implement changes as required by EPA, in accordance with the preceding paragraphs. EPA may also modify the submission to cure the deficiencies identified by EPA, subject only to the Dispute Resolution procedures in Section VII of the Consent Decree.

All design plans and schematic drawings approved by EPA are automatically incorporated as enforceable terms of this Work Plan and the Consent Decree.

EPA's review and approval of any submission required by this Work Plan does not relieve Liberty Ridge of its obligation to comply with the provisions of applicable federal, state, or local laws, regulations, or permit conditions.

Completion of the Work Plan and Restoration Project shall be governed by Paragraph 23(d) of the Consent Decree (subject to Paragraph 23(b) of the Consent Decree).

X. Extensions of Time and Modifications of Work Plan

As provided in Paragraph 51 of the Consent Decree, modifications to the Work Plan will take effect when approved by Liberty Ridge and EPA in writing.

EPA and Liberty Ridge acknowledge that extended periods of rainfall may delay portions of the restoration work set forth above. EPA and Liberty Ridge will work cooperatively to ensure that the work proceeds on a timely basis and to extend deadlines in the Work Plan as necessary.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 6:06-cv-00031(nkm)
)	
SAVOY SENIOR HOUSING)	STIPULATION AND ORDER TO
CORPORATION, et al.,)	DEPOSIT SUM OF MONEY IN THE
)	REGISTRY OF THE COURT
Defendants.)	
_____)	

WHEREAS, the claims in this case have been resolved by a Consent Decree entered by this Court;

WHEREAS, pursuant to Paragraph 17(a) of the Consent Decree, Defendants Savoy Senior Housing Corp., Savoy Liberty Village, LLC, and SDB Construction, Inc., are required to make payments to the Registry of the Court as specified in the Consent Decree; and

WHEREAS, pursuant to Paragraph 17(c) of the Consent Decree entered in this matter, the Parties have stipulated to filing of this Stipulation and Order;

THEREFORE, IT IS HEREBY ORDERED that Defendants Savoy Senior Housing Corp., Savoy Liberty Village, LLC, and SDB Construction, Inc., will cause the amount of \$ _____ to be deposited with the Clerk into the Registry of this Court within five (5) business days of this Order; and

IT IS FURTHER ORDERED that Defendants Savoy Senior Housing Corp., Savoy Liberty Village, LLC, and SDB Construction, Inc., shall transmit a copy of this Order to the Clerk's Office for delivery to the Registry of the Court with the aforementioned payment; and

IT IS FURTHER ORDERED that the sum of money set forth in this Order shall remain on deposit in the Registry of the Court until such time as the Court issues an order directing the disposition of funds, in whole or in part, pursuant to the Consent Decree; and

IT IS FURTHER ORDERED that the Clerk shall provide a copy of this Order to the Financial Unit.

SO ORDERED THIS ____ DAY OF _____, 20__.

United States Magistrate Judge

Respectfully submitted by:

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 6:06-cv-00031(nkm)
)	
SAVOY SENIOR HOUSING)	STIPULATION AND ORDER TO
CORPORATION, et al.,)	DEPOSIT SUM OF MONEY IN THE
)	REGISTRY OF THE COURT
Defendants.)	
_____)	

WHEREAS, the claims in this case have been resolved by a Consent Decree entered by this Court;

WHEREAS, pursuant to Paragraph 17(b) of the Consent Decree, Defendant Best G.C., Inc., is required to make payments to the Registry of the Court as specified in the Consent Decree; and

WHEREAS, pursuant to Paragraph 17(c) of the Consent Decree entered in this matter, the Parties have stipulated to filing of this Stipulation and Order;

THEREFORE, IT IS HEREBY ORDERED that Defendant Best G.C., Inc., will cause the amount of \$_____ to be deposited with the Clerk into the Registry of this Court within five (5) business days of this Order; and

IT IS FURTHER ORDERED that Defendant Best G.C., Inc., shall transmit a copy of this Order to the Clerk's Office for delivery to the Registry of the Court with the aforementioned payment; and

IT IS FURTHER ORDERED that the sum of money set forth in this Order shall remain on deposit in the Registry of the Court until such time as the Court issues an order directing the disposition of funds, in whole or in part, pursuant to the Consent Decree; and

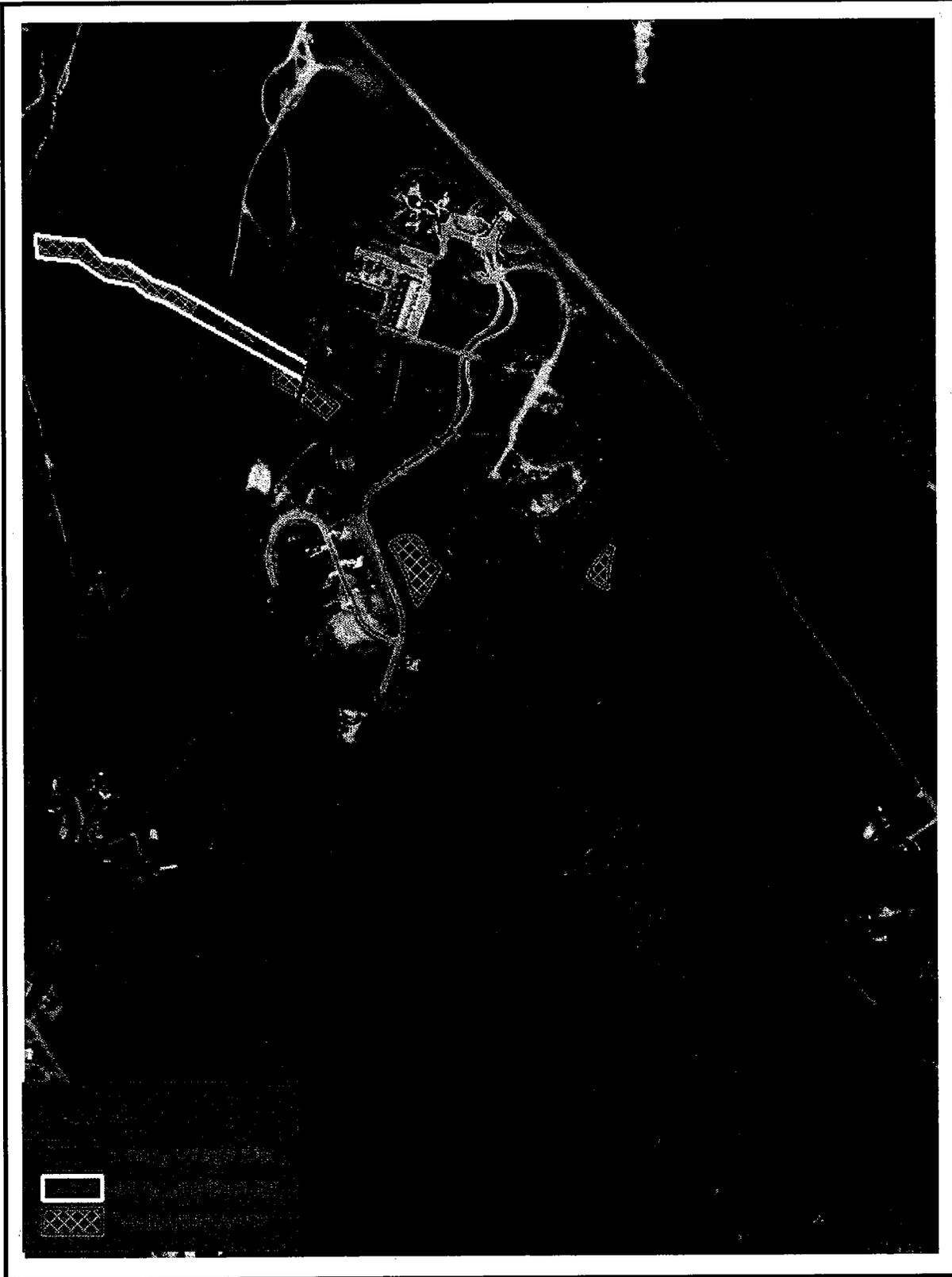
IT IS FURTHER ORDERED that the Clerk shall provide a copy of this Order to the Financial Unit.

SO ORDERED THIS ____ DAY OF _____, 20__.

United States Magistrate Judge

Respectfully submitted by:

Map A



Aerial Photography: Summer 2006

800 400 0 800 1,600 2,400 3,200 Feet