

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
	)	
Complainant,	)	PCB No.
	)	
v.	)	(Enforcement- NPDES)
	)	
DISTINCTIVE HOMES, LTD., an Illinois limited	)	
liability corporation, and DISTINCTIVE	)	
COMPANIES, LTD., an Illinois	)	
limited liability corporation,	)	
	)	
Respondents.	)	

NOTICE OF ELECTRONIC FILING

TO: LeeAnn Crowe  
James J. Roche & Associates  
642 N. Dearborn St.  
Chicago, IL 60610-4785

PLEASE TAKE NOTICE that today, April 3, 2009, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Motion to Request Relief from Hearing Requirement and Stipulation and Proposal for Settlement a true and correct copy of which is attached and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN,  
Attorney General of the State of Illinois

BY:   
\_\_\_\_\_  
NANCY J. TIKALSKY  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
(312) 814-8567

Date: April 3, 2009

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
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Complainant,	)	PCB No. 08 - 045
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DISTINCTIVE HOMES, LTD., an Illinois limited	)	
liability corporation, and DISTINCTIVE	)	
COMPANIES, LTD., an Illinois	)	
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Respondents.	)	

**MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On February 13, 2008, Complaint number PCB 08-045 was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. On March 25, 2009, a Stipulation and Proposal for Settlement was filed with the Board.
3. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement.

4. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2006), provides as follows:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).


5. No hearing is currently scheduled in the instant case.

6. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2006).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2)(2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
Attorney General of the  
State of Illinois

BY:   
NANCY J. TIKALSKI  
Assistant Attorney General  
Environmental Bureau North  
69 West Washington St., Suite 1800  
Chicago, Illinois 60602  
312-814-8567

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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and DISTINCTIVE HOMES, LTD., an Illinois limited liability corporation, and DISTINCTIVE COMPANIES, LTD., an Illinois limited liability corporation ("Respondents") ("Parties to the Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the

intent of the Parties the Stipulation and Proposal for Settlement that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties

1. On February 13, 2008, a complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 42 of the Act, 415 ILCS 5/42 (2006) against the Respondents ("Complaint").

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006).

3. At all times relevant to the Complaint, Respondents, Distinctive Homes, Ltd. and Distinctive Companies, Ltd. (collectively "Distinctive") have been and are Illinois limited liability corporations that are authorized to transact business in the State of Illinois. Respondents owned Villas of Fountain Hills, a 38 acre residential development with 77 residential lots located at Wolf Road, one block south of 179<sup>th</sup> Street, in the Village of Orland Park, Cook County, Illinois ("Site").

### B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act and Board Water Pollution Regulations as follows:

Count I: **FAILURE TO OBTAIN A CONSTRUCTION PERMIT**

Section 12(b) of the Act, 415 ILCS 5/12(b) (2006), and Section 309.202(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a).

Count II: FAILURE TO OBTAIN A NPDES GENERAL STORM WATER PERMIT

Section 12(f) of the Act, 415 ILCS 12(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a)

**C. Non-Admission of Violations**

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

After the Illinois EPA informed them of the violations, Respondents submitted the necessary permit applications. On March 2, 2007, the Illinois EPA issued Respondents an "as-built" construction permit for the sanitary sewer lines ("Sewer Permit") at the Site. In February 2007, Illinois EPA issued Respondents coverage under the National Pollutant Discharge Elimination System general storm water permit ("NPDES Permit") for the Site.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of Respondents. Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their officers, directors,

agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

**III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondents' failure to obtain coverage under the general NPDES stormwater permit prior to initiating construction activities at the Site.

2. The Site has social and economic value.
3. Respondents' construction activities at the Site were suitable for the area in which they occurred.
4. Obtaining the requisite Sewer Permit and NPDES Permit, in compliance with the Act and Board Public Water Supply Regulations, was both technically practicable and economically reasonable.
5. Respondents have subsequently complied with the Act and with Board regulations.

#### IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2006), provides as follows:

In determining the appropriate civil penalty to be imposed under this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and



7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the Parties to the Stipulation state as follows:

1. The Site is a 38-acre residential development involving the clearing of areas of land of all vegetation and creating piles of soil. Respondents constructed sanitary sewers at the Site in October 2001 but failed to obtain a permit for construction until March 2, 2007 at which time an "as built" Sewer Permit was issued by the Illinois EPA. This constituted approximately five years and five months of non-compliance.

In August 2004, Respondents terminated coverage under their NPDES Permit, leaving the Site lacking coverage under the NPDES permit from August 2004 through February 2007 while construction continued at the Site. This constituted approximately two years and six months of non-compliance.

2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance.

3. By failing to obtain coverage under the general NPDES storm water permit, Respondents avoided the costs of a \$500.00 annual permit fee for the fiscal years 2004-2005 and 2005-2006. Illinois EPA has calculated that the economic benefit Respondents gained by not timely obtaining as construction permit for the Site was \$1,822.00. The penalty of \$10,000.00 exceeds any economic benefit derived by Respondents.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of Ten Thousand dollars (\$10,000.00) will serve to deter further violations and enhance future voluntary compliance with the Act and Board Regulations.

5. To Complainant's knowledge, Respondents have no known previously adjudicated violations of the Act.

6. Respondents did not voluntarily disclose the violations that are the subject matter of the Complaint.

7. The settlement of this matter does not include a supplemental environmental project.

#### V. TERMS OF SETTLEMENT

##### A. Penalty Payment

1. The Respondents shall jointly and severally pay a civil penalty of Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

##### B. Interest and Default

1. If Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue

to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and Respondents' federal tax identification numbers shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Nancy J. Tikalsky, AAG  
Environmental Bureau  
Illinois Attorney General's Office  
69 West Washington St., Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon Respondents' Site which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and

representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This Stipulation in no way affects the responsibilities of Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of Respondents' payment of the Ten Thousand dollars (\$10,000.00) penalty, its commitment to cease and desist as contained in V.D. above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint. The Complainant reserves and this Stipulation is without prejudice to, all rights of the State of Illinois against Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;

- c. liability for natural resources damage arising out of the alleged violations;
- and
- d. liability or claims based on Respondents' failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than Respondents.

**F. Enforcement of Stipulation**

Upon the entry of the Board's Order approving and accepting this Stipulation, the Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

**G. Execution of Stipulation**

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

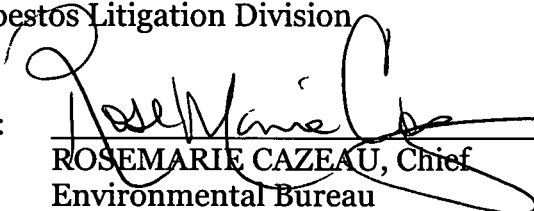
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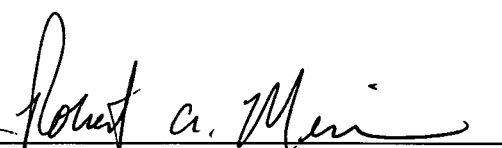
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 3/11/09

DATE: 3/9/09

FOR THE RESPONDENT:

FOR THE RESPONDENT:

DISTINCTIVE HOMES, LTD.

DISTINCTIVE COMPANIES, LTD.

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

PEOPLE OF THE STATE OF ILLINOIS,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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Attorney General  
State of Illinois

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Assistant Attorney General

BY: \_\_\_\_\_  
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Chief Legal Counsel

DATE: \_\_\_\_\_

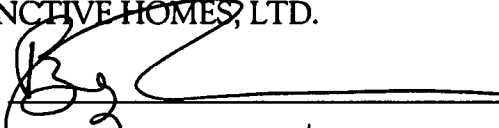
DATE: \_\_\_\_\_


FOR THE RESPONDENT:

FOR THE RESPONDENT:

DISTINCTIVE HOMES, LTD.

DISTINCTIVE COMPANIES, LTD.

BY:   
Name: Bryan Noonke  
Title: Chairman

BY:   
Name: BEYAN NOONKE  
Title: Chairman

DATE: 3/24/09

DATE: 3/24/09

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	)	
Respondents.	)	

CERTIFICATE OF SERVICE

I, Nancy J. Tikalsky, an Assistant Attorney General, do certify that a true and correct copy of the Stipulation and Proposal for Settlement, Motion to Request Relief from Hearing Requirement, and Notice of Filing were sent by certified mail with return receipt requested to the persons listed on the Notice of Filing on April 3, 2009.

BY:   
NANCY J. TIKALSKY