CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESOLUTION NO. R2-2009-0007

AUTHORIZING THE EXECUTIVE OFFICER
TO ENTER INTO AN AGREEMENT FOR MUTUAL RELEASE AND COVENANT NOT TO SUE WITH LOWE'S HIW, INC., FOR PARCEL A PROPERTY LOCATED AT 5600 COTTLE ROAD, SAN JOSE, SANTA CLARA COUNTY, CALIFORNIA

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (the "Water Board") finds that:

1. **Site:** International Business Machines Corporation ("IBM") formerly owned a manufacturing facility located at 5600 Cottle Road, San Jose, Santa Clara County, comprising approximately 350 acres ("Former IBM Facility"). On June 19, 2008, Lowe's HIW, Inc., ("Lowe's") purchased Parcel A, APN 706-06-017, comprising approximately 17.52 acres, as more particularly described in Attachment 1 (the "Property") from IBM. IBM's former administrative buildings were located on the Property.

2. **Cleanup Requirements**: IBM is required under Order No. R2-2002-0082, adopted by the Water Board on August 20, 2002, as amended on January 23, 2007, by Order No. R2-2007-0004 (the "Water Board Cleanup Order"), to investigate and remediate groundwater contamination and associated soils contamination at the Former IBM Facility.

3. **Investigation and Remediation Accomplished**: IBM initiated investigations in 1978 that revealed that inorganic and volatile organic chemicals used and stored at the Former IBM Facility had impacted soil and groundwater. Subsequent investigations determined that chemicals were present in the soil and groundwater beneath the Property, including Freon 113, 1,1,1-trichloroethane, trichloroethylene and 1,1-dichloroethene. Mitigation measures, including excavation and removal of contaminated soils and groundwater extraction and treatment, have been implemented to clean up and control potential adverse environmental impacts. In 2002, the Water Board Cleanup Order approved a groundwater treatment work plan that continues to be implemented today. The Water Board Cleanup Order sets cleanup standards for groundwater.

   Pursuant to the Water Board Cleanup Order, IBM submitted a report entitled "In-Situ Remedial Technologies Work Plan for Feasibility Studies for Source Area Remediation IBM Facility" ("IRTWP") to the Water Board. The Water Board approved the IRTWP on August 14, 2006. In November 2007, IBM implemented the IRTWP at the Property, and groundwater remediation activities are ongoing pursuant to the Water Board Cleanup Order.

4. **Redevelopment Plans**: The former IBM administrative buildings located on the Property have been demolished, except for the basements and foundations. Lowe's will demolish the basements and foundations of the former IBM administrative buildings. After Lowe's has completed demolition of the basements and foundations and the remedial action work under the Lowe's remedial action plan ("RAP") as defined below, and IBM has completed implementation of the site characterization activities and in-situ injections under the IBM Work Plan (defined below), Lowe's intends to commence construction of a home improvement center on the Property. Lowe's may sell or lease portions of the Property to other retail businesses.

5. **Remediation to be Conducted by IBM Under Water Board Cleanup Order Prior to Redevelopment**: On June 6, 2008, IBM submitted a report entitled "Source Zone for Groundwater Contamination Parcel A ("Parcel A Report") to the Water Board. The Parcel A Report discusses the results of membrane interface probe, soil and groundwater investigations conducted at the Property. The Parcel A Report indicates that a potential source zone exists in the immediate vicinity of a sanitary sewer manhole at the Property. Trichloroethylene ("TCE") was detected in groundwater samples from 40 to 55 feet below ground surface ("bgs") at concentrations ranging between 1,500 and 4,200 milligrams per liter. The depth to groundwater in this area of the Property is approximately 30 feet bgs; therefore, the potential source zone appears to be within the saturated zone. The TCE in this source zone is expected to slowly leach into the groundwater. IBM operates a groundwater pump and treat system at the Property. Some of the TCE-impacted groundwater beneath the Property will be pumped and treated by this system.

   On July 30, 2008, IBM submitted its "Remedial Action Work Plan (Revision 1) – Building 025 TCE Source Zone in Groundwater" ("IBM Work Plan") to the Water Board for implementing in-situ remedial actions to accelerate the cleanup of groundwater beneath the Property. On August 6, 2008, the Water Board approved the IBM Work Plan. IBM will implement supplemental site characterization activities and in-situ injections and install temporary monitoring wells prior to Lowe's commencing construction. IBM will continue to monitor groundwater pursuant to the Water Board Cleanup Order after Lowe's construction is completed.

6. **Remediation to be Conducted by Lowe's Under Water Board Requirements Prior to Redevelopment:** The Property was part of the Former IBM Facility and subject to IBM's former hazardous waste facility permit ("Former RCRA Permit"). Lowe's investigations have revealed the presence of the following hazardous constituents of concern ("COCs") in soils: persistent agricultural chemicals (organochlorine pesticides, arsenic and chromium), polynuclear aromatic hydrocarbons, metals and naturally occurring asbestos in serpentine rock fill materials (collectively, "Soil COCs"). In January 2009, Lowe's submitted a soil remedial action work plan ("Lowe's RAP") to the Water Board for cleanup of Soils COCs. On January 28, 2009, the Water Board approved the Lowe's RAP. Lowe's will complete soil remediation in accordance with the Lowe's RAP, including any amendments, to prevent unacceptable risks to human health and the environment. These remedial measures include soil

excavation and relocation to capped areas, capping in-place, and installing geo-markers. The soil cleanup standards for the Property are defined in the Lowe's RAP and are based on the "direct contact" pathway for a commercial land use scenario. Lowe's will submit a remedial action implementation report documenting the results of the completed remedial activities described in the Lowe's RAP within 60 days of completing the remedial action, but not later than December 31, 2009.

7. **Continuing Remediation Obligations of IBM**: IBM will continue to satisfy its remediation obligations under the Water Board Cleanup Order. Lowe's is not undertaking any of IBM's obligations under the Water Board Cleanup Order, including its obligations to conduct groundwater remediation with respect to the Property.

8. **Deed Restriction**: Pursuant to the Water Board Cleanup Order, a Covenant and Environmental Restriction on Property was recorded against the Property on September 28, 2004 (the "Deed Restriction"). The Deed Restriction restricts the use of the upper aquifer groundwater as a source of drinking water; restricts development to industrial, commercial or office space uses; requires development to be consistent with the Water Board Cleanup Order; and requires written approval by the Water Board for excavations more than fifteen feet below ground surface. The Deed Restriction is binding upon successors and requires that the uses and development of the Property be consistent with approved IBM work plans including future amendments thereto. Lowe's will record an additional Environmental Deed Restriction ("EDR") to restrict the use of Property in order to protect present or future human health and safety and the environment as a result of the Soil COCs on the Property. The EDR will require implementation of a Soil Management Plan ("SMP") for the Property. Lowe's and/or future Property owners will manage Soil COCs in accordance with the SMP. The SMP will identify areas where Soil COCs are located and describe procedures for inspection and maintenance of the pavement cap and for soil excavation, handling and disposal.

9. **Lowe's Request**: Lowe's seeks a commitment from the Water Board that it will not name Lowe's, its parent, its affiliates, or any of their officers, directors, shareholders, employees, partners, partnerships, representatives, agents, tenants, lenders and their respective successors and assigns as dischargers or responsible parties in any Water Board enforcement order with regard to Known Conditions (as defined in the Mutual Release) of contamination, solely by virtue of being involved in the purchase and redevelopment of property. Specifically, Lowe's requests that the Water Board enter into a Mutual Release and Covenant Not To Sue ("Mutual Release") with Lowe's for the Property, as set forth in Attachment 1. Without this assurance from the Water Board, Lowe's states that it is not willing to redevelop the Property.

10. **Water Board Authority**: Pursuant to Water Code section 13304, the Water Board has authority to enter into agreements whereby the Water Board covenants not to name prospective purchasers, tenants, lenders, and related parties in enforcement actions for known conditions of contamination. For instance, the Water Board may enter into such agreements if it is sufficiently in the public interest to warrant expending public resources necessary to reach such an agreement.

11. **Benefits of Redevelopment**: IBM ceased all use of the administrative buildings at the Property in approximately 2001. The Property is currently underutilized. Redevelopment of the Property would have economic and social benefits to the local community and to the public at large. The intended construction of a home improvement center on the site would create multiple new jobs, with increased payroll, sales and income taxes accruing to the State and the City of San Jose.

12. **CEQA**: The purchase of the Property is not an activity that requires Water Board approval. Furthermore, neither the Property transaction nor the Water Board's approval of the Mutual Release is a "project" as defined by Public Resources Code Section 21065 and 14 CCR 15378(a) such that the California Environmental Quality Act ("CEQA") applies.

13. **Public Notice**: The Water Board provided notice of its intention to consider this matter at a public meeting and provided an opportunity for interested persons to comment on the tentative resolution and its attachments.

14. **Public Hearing**: The Water Board, at a public meeting, heard and considered all comments pertaining to this matter.

THEREFORE, BE IT RESOLVED THAT the California Regional Water Quality Control Board, San Francisco Bay Region, authorizes the Executive Officer to sign the Mutual Release with Lowe's.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on February 11, 2009.

Digitally signed by Bruce Wolfe
Date: 2009.02.13 16:44:22 -08'00'

Bruce H. Wolfe
Executive Officer

Attachment 1: Mutual Release and Covenant Not To Sue

California Regional Water Quality Control Board
San Francisco Bay Region
Attachment 1 to Resolution No. R2-2009-0007
Mutual Release and Covenant Not To Sue

I. Introduction

This **Mutual Release and Covenant Not to Sue** ("Mutual Release") is provided in response to a request by the prospective purchaser, Lowe's HIW, Inc., a Washington corporation ("Lowe's") and pursuant to San Francisco Bay Regional Water Quality Control Board ("Water Board") Resolution No. R2-2009-0007 ("Resolution") authorizing its Executive Officer to finalize negotiations and sign the Mutual Release concerning Parcel A, APN 706-06-017, comprising approximated 17.52 acres, a portion of the Former IBM Facility located at 5600 Cottle Road, San Jose, California, whose legal description is set forth in Exhibit B ("Property").

Lowe's desires a commitment, to the maximum extent permitted by law, that it, its parents, subsidiaries, partners, partnerships, affiliates, subsequent purchasers, tenants, lenders, and any occupants of the Property, as well as all of their directors, officers, shareholders, managers, employees, partners, affiliates, members, contractors, agents, and their respective successors and assigns (individually, "Released Party" and collectively, "Released Parties") will not be subject to liability for, or the subject of any actions, orders, or other liabilities or requirements related to or arising from the "Known Conditions" (defined below).

II. Definitions

For purposes of this Mutual Release, "Known Conditions" or "Known Condition" means all conditions of pollution in, at, under, originating from or migrating onto or off of the Property or any portion thereof, that were known to the Water Board as of February 11, 2009. The phrase "known to the Water Board" refers to information regarding pollution in, at, under, originating from or migrating onto or off of the Property, or any portion thereof that was disclosed to the Water Board or is reasonably discernible from the information contained in the Resolution, Order No. R2-2002-0082 adopted by the Water Board on August 20, 2002, as amended on January 23, 2007, by Order No. R2-2007-0004 (the "Water Board Cleanup Order"), or the reports, investigations, work plans, or any other information submitted to the Water Board prior to February 11, 2009. With respect to any claim, cause of action, investigation, or enforcement action asserted or required by the Water Board, the Released Parties shall bear the burden of proving to the Water Board that the condition of pollution at, under, or originating from the Property for which the Water Board is pursuing a claim, cause of action, investigation or enforcement action is a Known Condition.

III. Findings of Fact

This Mutual Release is based on the following findings by the Water Board:

1. The Property is within the jurisdiction of the Water Board due to the Known Conditions and is subject to the provisions of the Water Board Cleanup Order. The Water Board

enters into this Agreement pursuant to California Water Code Sections 13000 et seq. The Water Board may release and covenant not to sue or assert claims for environmental investigation or remediation or other related claims against prospective purchasers, and related parties, of environmentally impacted properties, especially where, as here, the agreement is sufficiently in the public interest.

2. International Business Machines Corporation ("IBM"), the former owner of the Property, will complete implementation of the site characterization activities and in-situ injections under the "Remedial Action Work Plan (Revision 1) – Building 025 TCE Source Zone in Groundwater" dated July 30, 2008 ("IBM Work Plan"), in accordance with the Water Board Cleanup Order.

3. Lowe's will implement its soil remedial action plan ("Lowe's RAP"), approved by the Water Board on January 28, 2009, and complete any necessary cleanup of soil or other surface contamination encountered during demolition and grading activities. The hazardous constituents of concern in soils include: persistent agricultural chemicals (organochlorine pesticides, arsenic and lead), polynuclear aromatic hydrocarbons, metals and naturally occurring asbestos in serpentine rock fill materials (collectively, "Soil COCs"). The soil cleanup standards for the Property are defined in the Lowe's RAP and are based on "direct contact" pathway for a commercial land use scenario. Lowe's will complete soil remediation in accordance with the approved Lowe's RAP, including any amendments to prevent unacceptable risks to human health and the environment. These remedial measures include: excavation and relocation to capped areas, capping in-place, and installing geo-markers. IBM will continue to satisfy its obligations under the Water Board Cleanup Order, including its obligations to conduct groundwater monitoring and remediation with respect to the Property.

4. Pursuant to the Water Board Cleanup Order, IBM recorded a Covenant and Environmental Restriction against the Property on September 28, 2004 (the "Deed Restriction"). The Deed Restriction restricts the use of the upper aquifer groundwater as a source of drinking water; restricts development to industrial, commercial or office space uses; requires development to be consistent with the Water Board Cleanup Order; and requires written approval by the Water Board for excavations more than fifteen feet below ground surface. The Deed Restriction is binding upon IBM and its successors. Lowe's will record an additional Environmental Deed Restriction ("EDR") to restrict the use of Property in order to protect present or future human health and safety and the environment as a result of the Soil COCs on the Property. The EDR will require implementation of a Soil Management Plan ("SMP") for the Property. Lowe's and/or future Property owners will manage Soil COCs in accordance with the SMP. The SMP will identify areas where Soil COCs are located and describe procedures for inspection and maintenance of the pavement cap and for soil excavation, handling and disposal.

5. No active discharge of pollutants is believed to be currently occurring on the Property.

6. The Released Parties are not responsible parties or affiliated with a responsible party for the Known Conditions, and were not, prior to June 19, 2008, an owner of the Property. The sole interest of Lowe's in the Property is to purchase and redevelop the Property.

7. Lowe's intends to redevelop the Property to a productive use that will benefit the public and the community. Benefits include economic and social benefits to the local community and to the public at large. The intended construction of a home improvement center on the Property would create multiple new jobs, with increased payroll, sales and income taxes accruing to the State and the City of San Jose.

8. By entering into this Agreement, Lowe's certifies that to the best of its knowledge and belief, it has fully and accurately disclosed to the Water Board any and all information known by Lowe's about pollution and/or contamination of the Property.

9. Except for the Water Board Cleanup Order, the Property is not the subject of active enforcement actions or agreement(s) with another agency to address the residual pollution at the site.

10. Lowe's will pay for all reasonable costs associated with the Water Board's development and oversight of this Mutual Release pursuant to the California Water Code.

11. This Mutual Release is consistent with the goals and purposes of the Porter-Cologne Water Quality Control Act and the federal Clean Water Act.

12. In order to ensure that no activities at the Property, with the exercise of due care, will aggravate, contribute to or create a condition of pollution or nuisance as a result of the Known Conditions, this Mutual Release requires the application of acceptable institutional controls to the Property as more fully set forth below.

IV. Agreement

1. In accordance with the Resolution, the Water Board expressly finds that the Released Parties shall not be liable or otherwise responsible for such Known Conditions and hereby covenants and agrees not to initiate, bring, or support any claim (including without limitation any claim for natural resource damages), order, demand, enforcement action or other civil or administrative proceeding against the Released Parties or their respective successors and assigns, subject to the conditions set forth in the next sentence, with respect to such Known Conditions under any local, state or federal statute, common law, or equitable doctrine, including but not limited to, in their entirety, the United States Code, the various California Codes, or other applicable laws, regulations, ordinances, or civil, judicial or administrative authorities, having application to the handling, release, presence, migration to, through or from, cleanup, containment or maintenance of the Known Conditions at, on, under or originating from or migrating to the Property, or any portion thereof. This Mutual Release shall inure to the benefit of, and pass with each and every portion of the Property and shall benefit any respective successors and assignees of the Released Parties, provided such successors and assignees did not cause or contribute to the Known Conditions and provided further each Released Party that is not a signatory to this Mutual Release executes a written instrument in the form of Exhibit A.

2. This Release shall remain effective notwithstanding the revocation or modification of the Resolution or the Water Board Cleanup Order, and shall be without prejudice to the ability of the Water Board to take action against any party other than the Released

Parties, relating to the investigation, cleanup, or cost of investigation or cleanup of the Known Conditions. Nothing contained in this Mutual Release is intended to waive, limit, preclude, diminish or hinder any right of the Released Parties now or in the future available in law, equity, or by agreement.

3. Notwithstanding any other provisions of this Mutual Release, the Water Board reserves the right to assert any claims, enforcement actions or other civil or administrative proceeding against the respective Released Parties arising after the Effective Date (defined below) which are based on the failure of the respective Released Parties, to the extent they have control over the Property, to (i) exercise due care at the Property with respect to the Known Conditions, (ii) comply with the requirements and conditions of the Mutual Release, (iii) comply with the Deed Restrictions, and any other institutional controls currently in place or that may be subsequently imposed by the Water Board pursuant to the Water Board Cleanup Order, and (iv) cooperate in providing reasonable access to the Property for remediation and monitoring of the Known Conditions required by the Water Board pursuant to the Water Board Cleanup Order. If the Water Board determines that a Released Party has failed to materially comply with any of these four enumerated requirements, after notice and reasonable opportunity for cure, and the Water Board elects to proceed against that Released Party, then this Mutual Release shall be suspended as to that Released Party, and the Water Board and the Released Party shall then have any rights or defenses they would have had as if this Mutual Release and Covenant Not to Sue had not existed. If, following such proceeding, the Water Board determines such action to be warranted, it may declare this Mutual Release to be null and void, with respect to that specific Released Party.

4. The reservation by the Water Board set forth in paragraph (iv)(3) above shall be separately and distinctly applied with respect to each of the Released Parties, the intent being that failure by a particular Released Party to comply with any applicable requirement shall not render the Water Board's covenant inapplicable to any other Released Party.

5. In partial consideration therefore, the Released Parties, on behalf of themselves and their respective successors in interest, hereby release and covenant not to sue the Water Board, its authorized officers, employees or representatives, with respect to any and all liability or claims associated with or arising out of the Known Conditions.

6. The Mutual Release shall not prohibit the Water Board from asserting any claim, enforcement action, or other civil or administrative proceeding related to any condition of pollution at, under, or originating from the Property that are not Known Conditions.

7. Each Released Party that is not a signatory below shall, as a precondition to receiving the benefits conferred by this Mutual Release, execute a written instrument in the form attached hereto and incorporated herein by this reference as Exhibit A (the "Written Instrument of Release"). Proper and legally authorized execution and mailing of the Written Instrument of Release to the Water Board by or on behalf of any corporation, partnership, or other entity, shall be sufficient to confer the benefits of the Mutual Release upon all affiliates, parents or subsidiaries, partners and partnerships, and their

respective directors, officers, shareholders, managers, employees, partners, members, agents, successors, and assigns of each such entity.

8. Lowe's will implement its soil remedial action plan set forth in the Lowe's RAP dated January 2009, and approved by the Water Board on January 28, 2009. Lowe's will submit a remedial action implementation report documenting the results of the completed remedial activities described in the Lowe's RAP within 60 days of completing the remedial action but not later than December 31, 2009. In the event that Lowe's sells or otherwise transfers its interest in the Property prior to development of the Property, it shall ensure that its successor in interest assumes responsibility for implementation of and compliance with such remedial action and risk management measures as they pertain to the Property. Lowe's and the Water Board may extend the deadlines set forth in this paragraph by mutual agreement documented in writing.

9. Lowe's will record an additional Environmental Deed Restriction ("EDR") to restrict the use of Property in order to protect present or future human health and safety and the environment as a result of the Soil COCs on the Property. The EDR will require implementation of a Soil Management Plan ("SMP") for the Property. Lowe's and/or future Property owners will manage Soil COCs in accordance with the SMP. The SMP will identify areas where Soil COCs are located and describe procedures for inspection and maintenance of the pavement cap and for soil excavation, handling and disposal.

10. The Released Parties further agree to exercise due care at the Property with respect to the Known Conditions, to comply with the Deed Restrictions, to comply with all applicable local, state, and federal laws and regulations regarding the Property, and to cooperate in providing the Water Board and IBM or its successors or assigns reasonable access to the Property for any necessary investigation and monitoring purposes and any necessary operation, maintenance, and repair of wells and remediation facilities.

11. This Mutual Release shall be in full force and effect from the Effective Date. The Effective Date shall be February 11, 2009.

12. This Mutual Release may be executed in one or more counterparts, each such counterpart being deemed an original but all counterparts constituting a single instrument.

13. Each of the undersigned parties hereby certifies and warrants that he or she is authorized to bind his or her agency or entity to the continuing obligations described herein.

14. All notices or other communications required or permitted hereunder shall be sent to the following entities:

To Lowe's: (Prior to Store Opening)	Lowe's HIW, Inc. 1530 Faraday Avenue, #140 Carlsbad, CA 92008 Attn: James Manion Sr. Site Development Manager
With a copy to:	Lowe's HIW, Inc. 1530 Faraday Avenue, Suite 140 Carlsbad, CA 92008 Attn: Rob Doane, Esq.
To Owner: (After Store Opening)	Lowe's HIW, Inc. Box 1111 (Highway 268 East, North Wilkesboro, NC 28659) North Wilkesboro, North Carolina 28656-0001 Attn: Property Management Dept. (REO)
With a copy to:	Lowe's HIW, Inc. Box 1111 (Highway 268 East, North Wilkesboro, NC 28659) North Wilkesboro, North Carolina 28656-0001 Attn: Legal Department (REO)
With a copy to:	California Regional Water Quality Control Board, San Francisco Bay Region 1515 Clay Street, Suite 1400 Oakland, CA 94612 Attn: Executive Officer

Exhibits:
A - Written Instrument of Release and Transfer Document
B - Legal Description of Property

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

By: Bruce H. Wolfe
Executive Officer

_____ Date:_____

LOWE'S HIW, INC.,
a Washington corporation

By: _____

_____ Date:_____

ATTEST:

STATE OF _____)
: ss.
COUNTY OF _____)

On the _____ day of _____, 2009, before me _____, a notary public in and for such County and State, personally appeared _____ and _____, known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

_____
Notary Public

STATE OF _____)
: ss.
COUNTY OF _____)

On the _____ day of _____, 2009, before me _____, a notary public in and for such County and State, personally appeared _____ and _____, known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or entity upon behalf of which the person(s) acted, executed the instrument.

_____
Notary Public

Exhibit A
Written Instrument of Release and Transfer Document

_____ [name of new purchaser, lender, lessee, or occupant] (hereinafter "Released Party"), by signing below verifies and warrants as follows:

1. Released Party has read the Mutual Release and Covenant Not to Sue ("Mutual Release") document, ("Mutual Release") and the related Regional Water Quality Control Board (Water Board) Resolution No. R2-2009-0007 for the "Property," formerly part of the IBM facility, located at 5600 Cottle Road, San Jose, California (APN 706-06-017).

2. Released Party understands and agrees that the Mutual Release contains a release by the Water Board and a covenant not to bring or support any action or order against subsequent purchasers, tenants, lenders, and occupants of all or a portion of the Property (as defined in the Mutual Release), including their directors, officers, shareholders, managers, employees, partners, affiliates, members, contractors, agents, and their respective successors, and assigns, related to the Known Conditions (as defined in the Mutual Release), including contamination at, under, or originating from the Property (as defined in the Mutual Release).

3. Released Party understands and agrees that it may enjoy the benefits of the Mutual Release only if it releases and covenants not to sue the Water Board as set forth in the Mutual Release, and that by executing this Release, Released Party releases and covenants not to sue the Water Board in accordance with the terms of the Mutual Release.

4. Released Party understands and agrees that its right to rely on the benefits of the Mutual Release is subject to and conditioned on its own, but only its own, acceptance of all of the provisions of the Mutual Release and its compliance with its obligations under the terms of the Mutual Release.

5. Released Party accepts and agrees to abide by all provisions of the Mutual Release.

This Instrument of Release and Transfer Document shall be effective upon execution by the Released Party. Within three days of execution, Released Party agrees to mail a copy of the executed Release to: Executive Officer, Regional Water Quality Control Board, San Francisco Bay Region (address as of February 11, 2009, is 1515 Clay Street, Suite 1400, Oakland, CA 94612).

_____ _____
Authorized Signature (Released Party) Date

Name/Title: _____
Company Name/Address:_____

Exhibit B

Legal Description of the Property in the City of San Jose, County of Santa Clara, State of California