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6 Attorneys for Petitioner Night-Prov LLC

8 STATE WATER RESOURCES CONTROL BOARD

11 In the Matter of Appeal of Order No. R4-  
12 2014-0029 Issued to Night-Prov, LLC for  
13 156 West Providencia Avenue, Burbank,  
14 California.

**NIGHT-PROV, LLC'S PETITION FOR  
REVIEW, REQUEST FOR HEARING,  
AND REQUEST FOR STAY**

**DECLARATIONS OF MICHAEL S.  
NIGHTINGALE AND KENNETH A.  
EHRLICH FILED CONCURRENTLY**

1 **I. PETITION FOR REVIEW**

2 In accordance with California Water Code § 13320<sup>1</sup>, Night-Prov, LLC ("Petitioner")  
3 petitions the State Water Resources Control Board ("SWRCB") to review and rescind Order No.  
4 R4-2014-0029 ("Order") issued to Petitioner by the Los Angeles Regional Water Quality Control  
5 Board ("RWQCB") on June 17, 2014.<sup>2</sup> Declaration of Kenneth A. Ehrlich, concurrently submitted  
6 in support of this Petition ("Ehrlich Decl."), Exh. 6. The Order directs Petitioner to prepare and  
7 submit a Subsurface Soil Investigation Workplan ("Workplan") by August 1, 2014 for the real  
8 property at 156 West Providencia Avenue, Burbank, California ("Property"). *Ibid.*

9 As applied to Petitioner, the Order cannot stand because: (1) no historical or current  
10 evidence demonstrates, or even suggests, any releases of heavy metals at the Property by  
11 Petitioner; (2) to the extent that any heavy metals are found at the Property, the source and timing  
12 of such release would predate Petitioner's ownership and/or use of the Property and would be  
13 entirely inconsistent with the exclusive use of the Property as a music studio during the entire  
14 duration of Petitioner's ownership; and (3) to the extent that a Workplan is required, MAG or  
15 Commercial Inspection Services, Inc. ("CIS") should assume sole responsibility for preparation  
16 and implementation of such Workplan. For these reasons, the SWRCB should rescind the Order  
17 against Petitioner.

18 Petitioner requests a hearing on this Petition pursuant to Water Code § 13320 and title 23  
19 §2050 of the California Code of Regulations ("CCR"). In accordance with Water Code § 13321  
20 and 21 CCR §2053, Petitioner also requests that the Order be stayed, pending the outcome of the  
21 SWRCB's decision.

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24  
25 <sup>1</sup> All further references to the "Water Code" refer to the California Water Code unless otherwise  
26 noted.

27 <sup>2</sup> The Order was also issued against MAG Investments, Limited ("MAG") and Mr. Melvin K.  
28 Squires. This Petition relates only to Night-Prov, LLC.

1           A.     NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS OF  
2                    PETITIONER

3                    Night-Prov, LLC  
4                    156 W. Providencia Avenue  
5                    Burbank, California 91502  
6                    Telephone: 818-419-7799  
7                    Email: Nightingalesound@sbcglobal.net

8                    Petitioner requests that copies of all communications and documents relating to this  
9                    Petition also be sent to:

10                   Kenneth Ehrlich, Esq.  
11                   C. J. Laffer, Esq.  
12                   Elkins Kalt Weintraub Reuben Gartside LLP  
13                   2049 Century Park East, Suite 2700  
14                   Los Angeles, California 90067-3202  
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16                   Email: kehrlich@elkinskalt.com  
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18           B.     RWQCB'S SPECIFIC ACTION FOR WHICH PETITIONER SEEKS  
19                    SWRCB REVIEW: RESCIND THE ORDER

20                    Petitioner requests that the SWRCB review and rescind the Order (No. R4-2014-0029), as  
21                    issued to Petitioner by the RWQCB.

22           C.     DATE ON WHICH THE RWQCB ACTED OR FAILED TO ACT

23                    The RWQCB acted on June 17, 2014 when it issued the Order. Ehrlich Decl., Exh. 6.

24           D.     PETITIONER'S STATEMENT OF REASONS THE RWQCB'S ACTION  
25                    OR INACTION WAS INAPPROPRIATE AND IMPROPER

26                    By its own terms, the RWQCB issued the Order in accordance with Water Code § 13267.  
27                    However, Water Code § 13267, subd. (b)(1) only authorizes the RWQCB to require technical or  
28                    monitoring program reports from a "person who has discharged, discharges, or is suspected of  
29                    having discharged or discharging, or who proposes to discharge waste within its region, or any  
30                    citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or  
31                    is suspected of having discharged or discharging, or who proposes to discharge, waste outside of  
32                    its region that could affect the quality of waters within its region."

33                    First, Water Code § 13267, subd. (b)(1) does not apply to Petitioner, because no evidence

1 exists, and the RWQCB offers no evidence to suggest, that Petitioner has or will discharge any  
2 waste that could adversely impact water quality. Specifically, the Order identifies Petitioner as  
3 responsible for suspected discharges of waste at the Property solely on the grounds that Petitioner  
4 "currently owns the [Property]." Ehrlich Decl., Exh. 6. However, the Order expressly states that  
5 the RWQCB's concern regarding potential chromium discharges at the Property derive from the  
6 aerospace industrial operations conducted by CIS at the Property between 1980 and 1994. *Ibid.*  
7 Petitioner did not take title to the Property until 2005, more than a decade after such industrial  
8 operations ceased. Declaration of Michael Nightingale ("Nightingale Decl."), Exh. 1; Ehrlich  
9 Decl., Exh. 7. Moreover, the Property has been used as a music rehearsal and recording studio  
10 since 2002, which does not entail the handling, storage, transport or disposal of heavy metals or  
11 other hazardous waste, including chromium. Nightingale Decl., ¶ 3. Ehrlich Decl., Exhs. 2-4.

12 Water Code § 13267 facilitates the investigation and identification of those parties  
13 responsible for discharging waste that affects water quality. Here, the Order fails to serve the  
14 statute's objective by erroneously targeting Petitioner. Petitioner has engaged in no discharge  
15 activity, and operation of the Property as a music rehearsal and recording studio does not threaten  
16 water quality in any way. Accordingly, the Order should be rescinded as to Petitioner.

17 1. History of Ownership and Operations at the Property.

18 The approximately one-half (0.5) acre Property lies within the City of Burbank.  
19 Nightingale Decl., Exh. 1. Melvin K. Squires and Barbara Jean Squires took title to the Property  
20 on September 13, 1984. Ehrlich Decl., Exh. 9. M.A.G. Investments, Ltd. acquired the Property  
21 from Melvin K. Squires and Barbara Jean Squires on October 23, 1984, and MAG acquired the  
22 site from M.A.G. Investments, Ltd. on June 11, 1997. Ehrlich Decl., Exhs. 10 and 11.

23 CIS was a former tenant at the Property. According to the RWQCB, CIS tested aerospace  
24 hardware at the Property between 1980 and 1994. Ehrlich Decl., Exh. 6. RWQCB files indicate  
25 that CIS used and stored chromium-containing compounds, including chromium dihydrate and  
26 chromic acid, during its industrial operations at the Property. *Ibid.* RWQCB files also indicate  
27 that MAG owned CIS. *Ibid.*

1                   2.     Petitioner's Connection to the Property.

2             Petitioner acquired the Property from MAG in 2005. Nightingale Decl., Exh. 1. Petitioner  
3 has never conducted any manufacturing or other operations at the Property that entail the use,  
4 storage or discharge of chromium waste. Nightingale Decl., ¶ 3. Petitioner simply serves as the  
5 owner and landlord of the Property. Nightingale Decl., ¶ 2, 4, Exh. 1. Petitioner is a single-  
6 purpose real estate entity whose only asset is the Property and whose only tenant is Nightingale  
7 Enterprises Inc. ("Nightingale"). Nightingale has used the Property solely as a music recording  
8 and rehearsal studio since January 2002, long after the cessation of any alleged operations at the  
9 Property involving the use or storage of chromium at the Property. Nightingale Decl., ¶ 3.  
10 Nightingale's studio operations solely consist of the renting of studio space and musical  
11 instruments for rehearsing and recording music. *Ibid.*

12                   3.     No Evidence Exists of Discharges Or Releases of Heavy Metals, Including  
13                   Chromium, by Petitioner.

14             Neither Petitioner nor Nightingale have ever used, or even potentially used, heavy metals  
15 in connection with the Property. Nightingale Decl., ¶ 3. Specifically, Petitioner has never used  
16 heavy metals, and is not a known, or even suspected, discharger of heavy metals. *Ibid.* No  
17 evidence, current or historic, justifies the issuance of the Order against Petitioner. Nightingale's  
18 correspondence of November 14, 2013, March 14, 2014 and May 23 2014 clearly state this point.  
19 *See Ehrlich Decl., Exhs. 2-4.* Petitioner and Nightingale have never taken any actions or  
20 conducted any operations on the Property involving chromium or any other chemical processes,  
21 which would be wholly inconsistent with the use of the Property as a music studio. Nightingale  
22 Decl., ¶3.

23             In addition, the RWQCB has presented absolutely no evidence that Petitioner or  
24 Nightingale has ever been involved with the alleged chromium contamination at the Property. The  
25 Order itself does not offer evidence or conjecture regarding such alleged discharges.

26             Finally, Petitioner and Nightingale have never had any involvement whatsoever with the  
27 operations of CIS or MAG, and have not been affiliated in any way with Melvin Squires.  
28 Nightingale Decl., ¶ 5.

1                   4.     The Order Erroneously Identifies Petitioner as a Responsible Party.

2             The Order incorrectly concludes that Petitioner is “responsible for the suspected discharges  
3 of waste” at the Property. Ehrlich Decl., Exh. 6. This conclusion is solely supported by (i) a  
4 Chemical Storage and Use Questionnaire submitted by CIS to the RWQCB in 1990, and (ii) a  
5 2000 subsurface soil investigation report, both of which predate any involvement by Petitioner or  
6 its tenant, Nightingale, at the Property. Moreover, the alleged contamination referenced in the  
7 Order, which arose from CIS operations and chromium activities, purportedly occurred between  
8 1980 to 1994. Nightingale did not occupy the Property until 2002, and Petitioner did not acquire  
9 the Property until 2005. Nightingale Decl., ¶2, 3, Exh. 1. Finally, the Order offers no explanation  
10 concerning how the rental of rehearsal studios and musical equipment, which has been the sole use  
11 of the Property for the entirety of Petitioner's ownership, did, or even could, in any way involve  
12 the discharge of chromium waste. Therefore, the RWQCB cannot conclude or opine that  
13 Petitioner bears any responsibility for the discharge of chromium waste at the Property.

14                   5.     The Burden of the RWQCB's Order is Not Justified in Light of the  
15                   Limited/Non-Existent Benefits to Be Gained.

16             Water Code§ 13267(b)(1) provides: “[t]he burden, including costs, of these reports shall  
17 bear a reasonable relationship to the need for the report and benefits to be obtained from the  
18 reports.” *City of Arcadia v. State Water Resources Control Board*, 135 Cal.App.4th 1392, 1413-  
19 1414 (2006) (“when [a Regional Board] requires a polluter to furnish ‘technical or monitoring  
20 program reports,’ the ‘burden, including costs, of these reports shall bear a reasonable relationship  
21 to the need for the report[s] and the benefits to be obtained from the reports.’”). Here, no benefit  
22 exists by naming Petitioner as a responsible party and requiring Petitioner to implement the  
23 Workplan because: (1) Petitioner is not a known, or even suspected, discharger of heavy metals;  
24 (2) no historical or current evidence exists of heavy metal discharges or releases at the Property by  
25 Petitioner or Nightingale, a lessee of the Property for twelve (12) years; and (3) any such  
26 discharge of heavy metals remains wholly inconsistent with the chronology of Petitioner's  
27 ownership of the Property and Nightingale's operation of a music studio on the Property both  
28 during, and prior to, Petitioner's ownership.

1 No new or helpful information could result from forcing Petitioner to implement the  
2 Workplan. Furthermore, it is entirely unreasonable to impose any burden on Petitioner given that  
3 it bears absolutely no responsibility for the discharge of waste at the Property or elsewhere.  
4 Accordingly, the Order issued to Petitioner should be rescinded.

5 **E. PETITIONER IS AGGRIEVED BECAUSE, IF NOT RESCINDED, THE**  
6 **ORDER WOULD FORCE PETITIONER TO SPEND TIME AND MONEY**  
7 **ON AN UNWARRANTED INVESTIGATION THAT WILL NOT YIELD**  
8 **NEW OR BENEFICIAL INFORMATION.**

9 Both the legislative objectives of Water Code § 13267 and principles of fairness require  
10 that the RWQCB pursue only those parties responsible for the alleged chromium discharges at the  
11 Property. According to the RWQCB's findings, the alleged chromium contamination occurred  
12 when MAG owned the Property and CIS operated an industrial facility at the Property. Ehrlich  
13 Decl. Exh. 6. It is inconsistent with Water Code § 13267 and wholly inequitable to require  
14 Petitioner, as a subsequent owner of the Property, to bear the time, effort, costs, and other  
15 resources to investigate a condition that Petitioner did not in any way cause. The state's Porter-  
16 Cologne Water Quality Control Act incorporates the theme of "polluter pays". See, e.g., Water  
17 Code § 13001 *et seq.* Here, neither the law nor justice would be served by forcing a non-polluting,  
18 out-of-possession property owner to pay for assessment, remediation, or monitoring activities  
19 associated with pollution caused by unaffiliated third-parties.

20 **F. THE SPECIFIC ACTION BY THE SWRCB THAT THE PETITIONER**  
21 **REQUESTS: GRANT PETITIONER'S REQUEST FOR STAY AND**  
22 **RESCIND THE RWQCB'S ORDER**

23 Petitioner requests that the SWRCB: (1) stay the Order pending the SWRCB's decision on  
24 the Petition; and (2) rescind the Order as issued against Petitioner.

25 **G. PETITIONER'S STATEMENT OF POINTS AND AUTHORITIES IN**  
26 **SUPPORT OF LEGAL ISSUES RAISED BY THE PETITION**

27 Water Code § 13267 allows the RWQCB to issue orders to "any person that has  
28 discharged, discharges, or is suspected of having discharged or discharging, or who proposes to  
discharge waste with its region...". Cal. Water Code § 13267. Petitioner is not, and has never  
been, a discharger of heavy metals and does not propose to discharge heavy metals. Ehrlich Decl.,

1 ¶¶ 3-5, Exhs. 2-4; Nightingale Decl., ¶ 3. Further, no evidence exists of any heavy metal  
2 discharges at the Property caused by Petitioner or during Petitioner's ownership of the Property.  
3 *Ibid.* Accordingly, the SWRCB should rescind the Order because the RWQCB has not provided  
4 sufficient evidence in support of its decision to name Petitioner as a responsible party.

5 The RWQCB attempts to justify the Order by stating that "the potential impact to the  
6 subsurface soils and groundwater at the [Property] from heavy metals has not been determined"  
7 and that "[RWQCB] files indicate that CIS used and stored chromium containing  
8 compounds...during its operations at the [Property]." Ehrlich Decl., Exh. 6. Even if true and CIS  
9 used and stored chromium-containing compounds at the Property, the mere presence of such  
10 compounds does not provide the substantial evidence required to uphold the RWQCB's decision to  
11 issue the Order to Petitioner. See, *In the Matter of Petition of Exxon Company, U.S.A., et al.*, WQ  
12 85-7 at 10-11 (1985). Ehrlich Decl., Exh. 8 ("There must be substantial evidence to support a  
13 finding of responsibility for each party named. This means credible and reasonable evidence  
14 which indicates the named party has responsibility."). Here, no credible or reasonable evidence  
15 links Petitioner's ownership or operations to heavy metal contamination at the Property. Petitioner  
16 has no affiliation whatsoever with the likely polluting parties, MAG, Melvin K. Squires and  
17 Barbara Jean Squires, M.A.G. Investments, Ltd., and CIS-- other than negotiating with MAG for  
18 the sale of the Property in 2005. Purchasing real property from an entity does not constitute  
19 sufficient evidence to deem a party "responsible" for actual or suspected contamination.

20 Because the RWQCB has failed to provide, and cannot provide, the substantial evidence  
21 required for the SWRCB to uphold its actions, the Order issued to Petitioner must be rescinded.

22 **H. PETITIONER HAS PROVIDED THE RWQCB WITH A COPY OF THE**  
23 **PETITION.**

24 A copy of this Petition, along with the documents filed concurrently herewith, was sent via  
25 email and U.S. Mail on July 16, 2014, to the following addresses:  
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Ms. Luz Rabelo  
Water Resources Control Engineer  
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320 West 4th Street, Ste. 200  
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State Water Resources Control Board  
Office of Chief Counsel  
Jeannette L. Bashaw, Legal Analyst  
P.O. Box 100  
Sacramento, CA 95812-0100  
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**I. THE SUBSTANTIVE ISSUES AND OBJECTIONS RAISED IN THE PETITION WERE RAISED BEFORE THE RWQCB**

The substantive issues and objections raised in this Petition were raised with the RWQCB in correspondence dated November 14, 2013, March 14, 2014, and May 23, 2014. Ehrlich Decl., Exhs. 2-4.

**J. PETITIONER'S REQUEST FOR HEARING**

Petitioner requests a hearing on the Petition. In support of this request, Petitioner makes the following points:

1. This Petition contains a summary of the arguments Petitioner intends to make at the hearing;
2. This Petition includes a summary of the testimony or evidence Petitioner intends to introduce, including all documents referenced in this Petition. Petitioner reserves the right to supplement the testimony or evidence at the hearing pursuant to 23 CCR § 2050.6.

**II. PETITIONER'S REQUEST FOR STAY**

Petitioner requests an immediate stay of the Order, pending the SWRCB's decision on the Petition. Petitioner makes this request because: 1) will suffer substantial harm if the stay is not granted; 2) the public will not suffer substantial harm if the stay is granted; and 3) Petitioner has raised substantial questions of law and fact. Ehrlich Decl., ¶¶ 11-16; Nightingale Decl., ¶¶ 2-5.

1           A.     LEGAL GROUNDS IN SUPPORT OF REQUEST FOR STAY

2           In accordance with 23 CCR § 2053(a), a Request for Stay shall be granted if the petitioner  
3 can show “proof of harm to it, lack of harm to the public interest and the existence of substantial  
4 legal or factual issues.” *Colton/San Bernardino Regional Tertiary Treatment and Water*  
5 *Reclamation Authority v. California State Water Resources Control Board*, 2003 WL 22073188,  
6 at \* 1 (2003).

7                     1.     Petitioner Will Suffer Substantial Harm if a Stay is Not Granted.

8           Petitioner challenges the Order on the basis that the RWQCB has not met its burden under  
9 Water Code § 13267. The RWQCB has failed, and continues to fail, to provide any substantial  
10 evidence to establish that the burden, including costs, of the Workplan bears a reasonable  
11 relationship to the need for the Workplan and the benefits to be obtained by the Workplan. Water  
12 Code § 13267. Since Petitioner, a non-polluting out-of-possession owner, would bear a  
13 tremendous burden of completing assessment work in connection with suspected contamination  
14 that Petitioner could not have caused, the RWQCB cannot satisfy Water Code § 13267's  
15 requirements.

16           Petitioner will suffer substantial harm if the Request for Stay is not granted. Petitioner's  
17 Workplan is currently due on August 1, 2014. Unless a stay, or final decision by the SWRCB, is  
18 issued in advance of this date, Petitioner will have to choose between either expending the  
19 significant time and resources to prepare the Workplan in order to meet the RWQCB's deadline or  
20 not complying with the Order. Petitioner should not be forced into a *Hobson's Choice*: either  
21 comply and undertake potentially unnecessary work for which it is not in any way responsible or  
22 not comply and potentially face fines and penalties.

23           If Petitioner implements the Workplan and discovers heavy metals as a result of other  
24 dischargers at the Property or in the area, Petitioner, as a responsible party, will almost certainly  
25 face potential liability for extraordinary investigation, remediation, and monitoring costs. The  
26 USEPA may even name Petitioner as a "PRP" in connection with the San Fernando Valley  
27 Superfund Site. However, in the event that Petitioner discovers heavy metals contamination and  
28 believes it was deposited or otherwise caused by other parties, the practical likelihood of the

1 RWQCB or EPA agreeing with such an argument is virtually zero.

2 The Request for Stay is necessary and imperative because Petitioner will be faced with a  
3 lose-lose situation if its Request for Stay is not timely granted. Petitioner can: (1) comply with the  
4 Order and expend additional and unnecessary time, money, and other resources to implement the  
5 Workplan, potentially exposing itself to unwarranted future liability based on the discharges of  
6 chromium by other parties; or (2) refuse to comply with the Order and face substantial monetary  
7 penalties and a potential misdemeanor conviction.

8 A stay will allow Petitioner to avoid spending unnecessary time, money, and resources to  
9 conduct the investigation. If the SWRCB issues a stay pending its decision on the Petition,  
10 Petitioner will avoid this lose-lose scenario and will have an opportunity to present and argue the  
11 substantive issues that the RWQCB has ignored for more than eight (8) months.

12 2. The Public Will Not be Substantially Harmed if the SWRCB Grants  
13 Petitioner's Stay Request.

14 Based on the 2000 subsurface investigation conducted by Petitioner's predecessors at the  
15 Property, the RWQCB waited thirteen (13) years before seeking additional investigation at the  
16 Property. If the Request for Stay is granted, the Workplan will be placed on hold for  
17 approximately 270 days or until the SWRCB renders a decision. The public will not suffer  
18 substantial harm if Petitioner's Request for Stay is granted. The public would gain no additional  
19 benefit if Petitioner is forced to unjustly and prematurely investigate the area in and around its  
20 Property.

21 The RWQCB's lack of urgency to date and the lack of evidence regarding any alleged  
22 discharges at the Property by Petitioner show that the public will not suffer substantial harm if the  
23 request for stay is granted.

24 3. Petitioner's Petition Raises Substantial Questions of Law and Fact.

25 Petitioner's Petition raises substantial questions of law and fact largely ignored by the  
26 RWQCB for more than eight (8) months. These questions include, but are not limited to the  
27 RWQCB's justification for issuing the Order :

28 a. without evidence of any heavy metal discharges by Petitioner;

1           b.       knowing that the alleged storage or use of chromium containing compounds  
2 at the Property predated Petitioner's ownership of the Property by at least eleven (11) years.

3           c.       knowing that no legal theory or facts render Petitioner responsible in any  
4 way for the actions of its predecessors at the Property (MAG, Melvin K. Squires and Barbara Jean  
5 Squires, M.A.G. Investments, Ltd., and CIS).

6           Moreover, the RWQCB has not provided any evidence ("substantial" or otherwise) to  
7 support its position that the burden imposed on Petitioner, including the costs, bears a reasonable  
8 relationship to the need for the Workplan and the alleged benefits that will be obtained from such  
9 Workplan. Cal. Water Code § 13267. Substantial questions of fact and law still remain and  
10 warrant granting Petitioner's Request for Stay.

11 **III.   CONCLUSION**

12           Petitioner respectfully requests that the SWRCB: a) grant Petitioner's Request for Stay,  
13 and b) rescind the Order issued to Petitioner.

14  
15 DATED: July 16, 2014

ELKINS KALT WEINTRAUB REUBEN GARTSIDE LLP

16  
17  
18 By: 

Kenneth A. Ehrlich

C. J. Laffer

Attorneys for Petitioner Night-Prov, LLC

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10 Attorneys for Petitioner Night-Prov, LLC

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EHRLICH IN SUPPORT OF NIGHT-  
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REQUEST FOR HEARING, AND  
REQUEST FOR STAY**

**FILED CONCURRENTLY WITH  
PETITION FOR REVIEW, REQUEST  
FOR HEARING, REQUEST FOR STAY,  
AND DECLARATION OF MICHAEL S.  
NIGHTINGALE**

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NIGHTINGALE**



1 Property; (4) Order No. R4-2013-0154 fails to present any evidence or explain how Nightingale's  
2 operation of a music studio involved the discharge of chromium waste; (5) Nightingale has no  
3 association or affiliation with CIS, MAG or Melvin K. Squires; and (6) Nightingale does not have  
4 the financial resources or legal authority to comply with Order No. R4-2013-0154 and any such  
5 requirement would be fundamentally unfair. I attach a true and correct copy of Nightingale's  
6 March 14, 2014 petition as Exhibit 3.

7 5. On May 23, 2014, EKWRG submitted a letter to the RWQCB and the SWRCB on  
8 behalf of Nightingale and informed both agencies that Order No. R4-2013-0154 was improper  
9 because (1) Nightingale was not the owner of the Property; (2) Nightingale's operation of a music  
10 studio at the Property, beginning in 2002, does not entail the handling, storage, transport or  
11 disposal of heavy metals or other hazardous waste, including chromium; (3) there is no historical  
12 or current evidence presented by RWQCB, or otherwise, that demonstrates or even suggests there  
13 were any releases of heavy metals by Nightingale at the Property; (4) the RWQCB offered no  
14 evidence showing that Nightingale should incur the significant financial burden of complying with  
15 Order No. R4-2013-0154 or that such burden bears a reasonable relationship to the need for the  
16 Subsurface Soil Investigation Workplan and the benefits to be obtained from the same; (5) any  
17 burden of preparing a Subsurface Soil Investigation Workplan should be borne by MAG or CIS,  
18 based on the allegations contained in Order No. R4-2013-0154 concerning the use and/or storage  
19 of chromium containing compounds during CIS' industrial operations at the Property between  
20 1980 and 1994; and (6) Nightingale has no association or affiliation with CIS or MAG. I attach a  
21 true and correct copy of EKWRG's May 21, 2014 letter as Exhibit 4.

22 6. On June 17, 2014, the RWQCB issued a Rescission of Order No. R4-2013-0154, a  
23 true and correct copy of the Order is attached as Exhibit 5.

24 7. On June 17, 2014, the RWQCB issued Order No. R4-2014-0154 (the "Order") to  
25 Melvin Squires, MAG and Petitioner. The Order required Melvin Squires, MAG and Petitioner to  
26 prepare and submit a Subsurface Soil Investigation Workplan regarding the Property. I attach a  
27 true and correct copy of the Order as Exhibit 6.

28 8. Petitioner acquired title to the Property from MAG on January 12, 2005. I attach a

384634v1

1 true and correct copy of the Grant Deed for the Property evidencing such conveyance as Exhibit 7.

2 9. Because the RWQCB has failed to provide any evidence to support issuing the  
3 Order to Petitioner, on July 16, 2014, EKWRG timely filed the instant Petition. The Petition  
4 challenges the RWQCB's decision to issue the Order to Petitioner, pursuant to Water Code §  
5 13320. The Petition also requests that the SWRCB stay the Order, pending the outcome of the  
6 SWRCB's decision.

7 10. For the SWRCB to grant Petitioner's Request for Stay in accordance with Water  
8 Code § 13321 and 23 CCR § 2053, Petitioner must show: 1) that it will suffer substantial harm if a  
9 stay is not granted; 2) the public will not be substantially harmed if a stay is granted; and 3) the  
10 petition raises substantial questions of law and fact.

11 11. Petitioner will Suffer Substantial Harm if the Stay is not Granted: Petitioner is the  
12 owner of the Property and the landlord; it does not conduct any manufacturing or other operations  
13 at the Property. Nevertheless, the RWQCB has directed Petitioner to implement the Workplan  
14 and submit a report by August 1, 2014. Even though Petitioner is improperly named as responsible  
15 party, unless a stay is granted or the SWRCB reaches a decision prior to August 1, 2014,  
16 Petitioner will be forced to the expend the time, money and resources to implement the Workplan.

17 12. If a Stay is not granted and Petitioner is forced to implement the Workplan, and  
18 heavy metals are discovered as a result of other chromium dischargers, Petitioner, as a responsible  
19 party, will be forced to incur extraordinary costs.

20 13. If the Request for Stay is not timely granted, Petitioner will be faced with a lose-  
21 lose situation. Petitioner will either have to: 1) comply with the Order and expend additional,  
22 unnecessary time, money, and other resources in order to implement the Workplan, potentially  
23 exposing itself to unwarranted future liability based on the discharges of chromium by other  
24 parties; or 2) refuse to comply with the Order and face substantial monetary penalties and a  
25 potential misdemeanor conviction.

26 14. The Public will not be Substantially Harmed if Petitioner's Request for Stay is  
27 Granted: If a Stay is granted, it would simply result in a delay of the implementation of the  
28 Workplan for, at most, approximately 270 days or until the SWRCB issues a decision on the

384634v1

1 Petition. See 23 CCR § 2050.5. This Stay would not halt other ongoing investigations and cleanup  
2 efforts within the San Fernando Valley Superfund Site. Thus, chromium contamination around the  
3 Property would continue to be investigated and, if applicable, remediated during any stay and the  
4 public would not be substantially harmed.

5 15. Because the RWQCB waited thirteen (13) years before deciding that additional  
6 investigation at the Property was necessary, and has failed to present any evidence of any heavy  
7 metal discharges at the Property by Petitioner, an approximately 270 day Stay of the Order will  
8 not substantially harm the public.

9 16. The Petition Raises Substantial Questions of Law and Fact: The Petition argues that  
10 the RWQCB has failed to present any evidence in support of its decision to issue the Order and  
11 name Petitioner as a responsible party. Because the agency has failed to present any evidence, and  
12 there is no history of heavy metal discharges at the Property, the burden imposed on Petitioner,  
13 including the fees and costs, does not bear a reasonable relationship to the need for the heavy  
14 metals assessment and the alleged benefits that will be obtained from such assessment. This is  
15 improper pursuant to Water Code § 13267. Further, because the RWQCB has failed to provide any  
16 substantial evidence to support its decision to name Petitioner as a responsible party, the Order  
17 issued to Petitioner should be rescinded. At the very least, the applicable questions of law and fact  
18 include, but are not limited to the RWQCB's justification for issuing the Order :

- 19 a. without evidence of any heavy metal discharges by Petitioner;
- 20 b. knowing that the alleged storage or use of chromium containing compounds  
21 at the Property predated Petitioner's ownership of the Property by at least eleven (11) years.
- 22 c. knowing that no legal theory or facts render Petitioner responsible in any  
23 way for the actions of its predecessors at the Property (MAG, Melvin K. Squires and Barbara Jean  
24 Squires, M.A.G. Investments, Ltd., and CIS).

25 17. I attach as Exhibit 8 a true and correct copy of *In the Matter of Petition of Exxon*  
26 *Company, USA., et al.*, WQ 85-7 (1985).

27 18. Melvin K. Squires and Barbara Jean Squires acquired title to the Property from  
28 Gilbert Somerfield and Eleanor Somerfield on September 13, 1984. A true and correct copy of the

ELKINS KALT WEINTRAUB REUBEN GARTSIDE LLP  
2049 Century Park East, Suite 2700  
Los Angeles, California 90067-3202  
Telephone: 310.746.4400 • Facsimile: 310.746.4499

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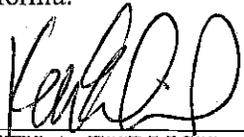
Grant Deed for the Property evidencing such conveyance is attached as Exhibit 9.

19. M.A.G. Investments, Ltd. acquired title to the Property from Melvin K. Squires and Barbara Jean Squires on October 23, 1984. A true and correct copy of the Grant Deed for the Property evidencing such conveyance is attached as Exhibit 10.

20. MAG acquired title to the Property from M.A.G. Investments, Ltd. on June 11, 1997. A true and correct copy of the Grant Deed for the Property evidencing such conveyance is attached as Exhibit 11.

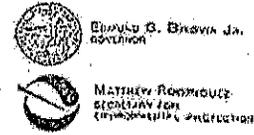
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed July 16, 2014, at Los Angeles, California.



\_\_\_\_\_  
KENNETH A. EHRLICH

# **EXHIBIT 1**



Los Angeles Regional Water Quality Control Board

October 8, 2013

Mr. Melvin K. Squires  
MAG Investments, Limited  
1575 El Verano Drive  
Thousand Oaks, California 91362

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7012 3460 0000 2166 1078

Mr. Michael S. Nightingale  
Nightingale Studios  
156 West Providencia Avenue  
Burbank, California 91502

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7012 3460 0000 2166 1061

SUBJECT: REQUIREMENT FOR TECHNICAL REPORT PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0154

SITE: FORMER COMMERCIAL INSPECTION SERVICES, INCORPORATED FACILITY, 156 WEST PROVIDENCIA AVENUE, BURBANK, CALIFORNIA (FILE NO. 109,0884)

Dear Messrs. Squires and Nightingale:

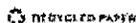
The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within major portions of the Los Angeles and Ventura Counties, including the referenced site.

The Regional Board is investigating potential sources for groundwater contamination within the United States Environmental Protection Agency (USEPA) San Fernando Valley Superfund Site (Superfund Site). It is known that groundwater within the Superfund Site, including the vicinity of the former Commercial Inspection Services, Incorporated (CIS, Inc.) facility, is contaminated with volatile organic compounds (VOCs) and heavy metals, particularly chromium.

The Regional Board has reviewed technical information and historical documents contained in Regional Board case files for the property located at 156 West Providencia Avenue, in the City of Burbank, California (the Site). The Site is currently owned and operated by Nightingale Studios, and formerly owned by MAG Investments, Limited. Regional Board files indicate that CIS, Inc., occupied the Site between 1980 and 1994. CIS, Inc.'s operations at the Site consisted of non-destructive testing of aerospace hardware, including x-ray, fluorescent, magnetic particle, impregnation, ultrasonic and cleaning. Regional Board files state that chromium containing compounds, including sodium dichromate dihydrate and chromic acid, were used and stored during CIS operations at the Site. The subsurface impact, as a result of CIS, Inc.'s operations at the Site, has not been determined.

MARIA MELFANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles



Mr. Melvin K. Squires  
Mr. Michael S. Nightingale  
Former Commercial Inspection Services

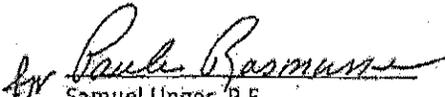
- 2 -

October 8, 2013

Enclosed is a Regional Board order for technical report requirements pursuant to California Water Code Section 13267 Order No. R4-2013-0154 (Order). An Order was previously issued to Mr. Melvin K. Squires of MAG Investments, Limited. The attached Order has been revised to include Nightingale Studios, the current property owner of the Site. The attached Order requires MAG Investments, Limited and Nightingale Studios to prepare and submit a Subsurface Soil Investigation Workplan in order to evaluate the potential for soil and groundwater contamination.

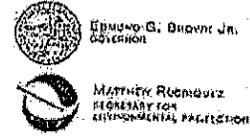
Should you have any questions related to this project, please contact Ms. Luz Rabelo via telephone at (213) 576-6783 or via email at [luz.rabelo@waterboards.ca.gov](mailto:luz.rabelo@waterboards.ca.gov).

Sincerely,

  
Samuel Unger, P.E.  
Executive Officer

Enclosures: California Water Code Section 13267 Order No. R4-2013-0154

cc: Ms. Lisa Hatusiak, USEPA Region IX  
Mr. Leo Chan, City of Glendale  
Mr. Bill Mace, City of Burbank Water Supply Department  
Mr. Vahé Dabbaghian, Los Angeles Department of Water & Power  
Mr. Milad Taghavi, Los Angeles Department of Water & Power  
Mr. Richard Slade, ULARA Watermaster



Los Angeles Regional Water Quality Control Board

ORDER TO PROVIDE A TECHNICAL REPORT FOR  
SUBSURFACE SOIL INVESTIGATION  
CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0154

DIRECTED TO MAG INVESTMENTS, LIMITED AND NIGHTINGALE STUDIOS

FORMER COMMERCIAL INSPECTION SERVICES, INCORPORATED FACILITY  
156 WEST PROVIDENCIA AVENUE, BURBANK, CALIFORNIA  
(FILE NO. 109.0884)

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) makes the following findings and issues this Order pursuant to California Water Code (CWC) section 13267, which authorizes the Regional Board to require the submittal of technical and monitoring reports.

1. The groundwater within the San Fernando Valley Groundwater Basin (Basin) has been impacted by discharges of heavy metals, specifically chromium. The San Fernando Valley Superfund Site (Superfund Site) lies within the Basin. The United States Environmental Protection Agency (USEPA) and the Regional Board are investigating the potential sources of the discharges to the Basin. The agencies are currently focused on identifying individuals and companies responsible for the discharges of chromium in the Basin and holding them responsible for the investigation and remediation of the source sites. The property located at 156 West Providencia Avenue, in the City of Burbank, California (the Site) is a potential source of chromium and overlies the Basin.
2. The Site is currently owned and occupied by Nightingale Studios and formerly owned and operated by MAG Investments, Limited. Between approximately 1980 and 1994, the Site was occupied by Commercial Inspection Services, Incorporated (CIS, Inc.). CIS, Inc. performed non-destructive testing of aerospace hardware at the Site. Testing services included x-ray, fluorescent, magnetic particle, impregnation, ultrasonic and cleaning. Regional Board files state that CIS, Inc. used and stored chromium containing compounds, including sodium dichromate dihydrate and chromic acid, during their operations at the Site. Regional Board files also state that CIS, Inc. is owned by MAG Investments, Limited. An Order was previously issued to Mr. Melvin K. Squires of MAG Investments, Limited. The Order has been revised to include Nightingale Studios, the current property owner of the Site. CIS, Inc. previously conducted investigations and remediation activities at the Site which focused on volatile organic compounds (VOCs) and not on heavy metals. Therefore, the potential impact to the subsurface soils at the Site, has not yet been determined.

3. CWC section 13267(b)(1) states:

"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region, or any citizen or

MARIA MEHRANIAN, CHIEF | SAMUEL UNOCHI, EXECUTIVE OFFICER

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10/2/17

domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

4. Regional Board staff has obtained evidence indicating that there has been a discharge of waste at or from the Site. The supporting evidence includes a Chemical Storage and Use Questionnaire (CUQ) submitted by CIS, Inc. to the Regional Board, dated May 3, 1990, stating the use and storage of chromium containing compounds at the Site. The CUQ indicated that approximately 20 pounds of sodium dichromate dihydrate and approximately 20 pounds of chrome acid were stored at the Site. Additionally, on December 7, 2000 a subsurface soil investigation reported maximum chromium concentration of 3,930 mg/kg in the subsurface soils beneath the Site.

The former CIS, Inc. facility is among the suspected sources of waste discharge in the USEPA Superfund Site because of the chemicals used and the operations conducted at the Site. It is known that groundwater within the Superfund Site, including the vicinity of the former CIS, Inc. facility, is polluted with VOCs and heavy metals, particularly chromium. To date, a complete subsurface investigation of heavy metals in soil or groundwater has not been performed at the Site.

5. This Order identifies MAG Investments, Limited and Nightingale Studios as the entities responsible for the suspected discharges of waste identified in paragraph two (2) and four (4) because MAG Investments, Limited owned and operated the facility where the activities occurred that resulted in the suspected discharges of waste were performed by CIS, Inc. and Nightingale Studios currently owns and operates at the Site.
6. This Order requires the persons/entities named herein to prepare and submit a Subsurface Soil Investigation Workplan (Workplan) in order to evaluate the conditions at the Site and determine if any discharges of heavy metal compounds, specifically chromium, has impacted the soils beneath the Site that could consequently pose a threat to groundwater. You are expected to submit a complete Workplan, as required by this Order, to the Regional Board. The Regional Board may reject the Workplan if it is deemed incomplete and/or require revisions to the Workplan under this Order.
7. The Regional Board needs this information in order to determine whether the Site is a source of discharges of waste, specifically chromium, and to determine whether the subsurface soil conditions at the Site are causing or threatening to cause discharges of waste to the waters of the State within the Basin.
8. The burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The information is

necessary to identify sources of discharges of waste to the Basin and to assure adequate cleanup of the Stainless Steel Products/Industries facility, which as described above potentially poses significant threats to public health and the environment.

9. The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This Order requires submittal of technical and/or monitoring reports and work plans. The proposed activities under the work plan are not yet known. It is unlikely that implementation of the work associated with this Order could result in anything more than minor physical changes to the environment. If the implementation may result in significant impacts on the environment, the appropriate lead agency will address the CEQA requirements prior to implementing any work plan.
10. Any person aggrieved by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the internet at the following link:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

or will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED that MAG Investments, Limited and Nightingale Studios, pursuant to section 13267(b) of the CWC, are required to:

1. Submit a Subsurface Soil Investigation Workplan (Workplan) to the Regional Board by January 15, 2014. Guidance documents to assist you with this task can be found on the Internet at the following links:

*"General Work Plan Requirements for a Heavy Metal Soil Investigation"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/General  
Workplan\\_Requirements\\_for\\_a\\_Heavy\\_Metals\\_Soil\\_Investigation.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/General_Workplan_Requirements_for_a_Heavy_Metals_Soil_Investigation.pdf)

*"Interim Site Assessment & Cleanup Guidebook (May1996),"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/may1996\\_voc  
guidance.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/may1996_voc_guidance.shtml)

*"Quality Assurance Project Plan"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/Board\\_SGV-  
SFVCleanupProgram\\_Sep2008\\_QAPP.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/Board_SGV_SFVCleanupProgram_Sep2008_QAPP.pdf)

Mr. Melvin K. Squires  
Mr. Michael S. Nightingale  
Former Commercial Inspection Services, Incorporated

- 4 -

October 8, 2013

2. The Workplan shall include detailed information of former and existing chromium storage, hazardous waste management, and associated practices.
3. The Workplan must also include proposed soil sampling boring locations which shall extend to a minimum depth of 25 feet below ground surface in the areas of the previous plating processes and waste treatment (sumps, clarifiers, etc.), hazardous waste storage area, and chemical storage area.
4. The Workplan must contain a health and safety plan (HASP), as per the guidelines.
5. The Workplan shall include a detailed schedule of implementation of the Workplan, including field work and providing a report of the results to the Regional Board.
6. Upon approval, the Workplan shall be implemented and a report summarizing the results according to the approved schedule must be submitted to the Regional Board.

The above item shall be submitted to:

Ms. Luz Rabelo  
Water Resources Control Engineer  
Remediation Section  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, California 90013  
Phone: (213) 576-6783  
Email: [luz.rabelo@waterboards.ca.gov](mailto:luz.rabelo@waterboards.ca.gov)

Pursuant to 13267(a) of the CWC, any person who fails to submit reports in accordance with the Order is guilty of a misdemeanor. Pursuant to section 13268(b)(1) of the CWC, failure to submit the required Workplan described above by the specified due date(s) may result in the imposition of administrative civil liability by the Regional Board in an amount up to one thousand dollars (\$1,000) per day for each day the Workplan is not received after the above due date. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning.

The Regional Board, under the authority given by the CWC section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under the 13267 Order. The perjury statement shall be signed by a senior authorized MAG Investments, Limited and Nightingale Studios representative (not by a consultant). The perjury statement shall be in the following format:

"I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and

Mr. Melvin K. Squires  
Mr. Michael S. Nightingale  
Former Commercial Inspection Services, Incorporated

- 5 -

October 8, 2013

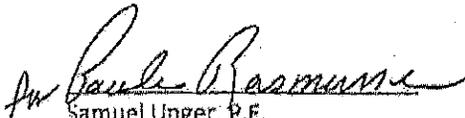
complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The State Board adopted regulations (Chapter 30, Division 3 of Title 23 & Division 3 of Title 27, California Code of Regulation) requiring the electronic submittal of information (ESI) for all site cleanup programs, starting January 1, 2005. Currently, all of the information on electronic submittals and GeoTracker contacts can be found on the Internet at the following link:

[http://www.waterboards.ca.gov/ust/electronic\\_submittal](http://www.waterboards.ca.gov/ust/electronic_submittal).

To comply with the above referenced regulation, you are required to upload all technical reports, documents, and well data to GeoTracker by the due dates specified in the Regional Board letters and orders issued to you or for the Site. However, the Regional Board may request that you submit hard copies of selected documents and data in addition to electronic submittal of information to GeoTracker.

SO ORDERED.

  
Samuel Unger, P.E.  
Executive Officer

Oct. 8, 2013  
Date

# **EXHIBIT 2**

Nightingale Enterprises Incorporated  
DBA Nightingale Studios  
156 W. Providencia Ave.  
Burbank, CA 91502

November 14, 2013

Los Angeles Regional Water Quality Control Board

Subject: Letter received dated October 8, 2013

To whom it may concern:

This letter is in response to the letter dated October 8, 2013 from Los Angeles Regional Water Quality Control Board (LARWQCB) which indicates a requirement for a technical report regarding suspected groundwater contamination. The letter states that Nightingale Studios is the owner of this property. Nightingale Enterprises Inc., DBA Nightingale Studios does not own the referenced property.

Nightingale Enterprises Inc., has occupied the referenced property since January 2002, and has never owned it. The business activities of Nightingale Enterprises Inc., is to provide space for musical recording and rehearsals along with some audio equipment rentals and storage. In no way do the activities involve storage or discharge of any sort of contaminants. Furthermore, Nightingale Enterprises Inc., is in no way associated or affiliated with MAG Investments, Commercial Inspection Services, or Melvin K. Squires.

Contrary to what is written in paragraph 5, Nightingale Studios is being falsely identified as being responsible in any way for the suspected discharges of waste. There is absolutely no evidence of this whatsoever.

It is respectfully demanded that LARWQCB remove Nightingale Enterprises Inc., and Nightingale Studios from any implications in this matter and also the order outlined in the letter dated October 8, 2013. Please respond in writing as to any other concerns you might have.

Sincerely,



Michael S. Nightingale  
Nightingale Enterprises Inc.

# **EXHIBIT 3**

Nightingale Enterprises Incorporated  
DBA Nightingale Studios  
156 W. Providencia Ave.  
Burbank, CA 91502

*Emailed to:*

*Tranlette L. Rubin ; j.bashaw@waterboards.ca.gov*

*Luz Rubin ; luz.rubins@waterboards.ca.gov*

*March 14, 2014*

March 14, 2014

Los Angeles Regional Water Quality Control Board

Subject: Petition submitted to State Water Resources Control Board

To whom it may concern:

Please find enclosed, a copy of the petition sent to the State Water Resources Control Board to remove Nightingale Enterprises Inc., Nightingale Studios, and Michael Nightingale from the order outlined in the letter dated October 8, 2013 from Los Angeles Regional Water Quality Control Board (LARWQCB). A copy of this letter is included in the petition as Exhibit 2. As outlined in the letter dated October 8, 2013 from LARWQCB, this petition was sent in accordance with paragraph 10. Exhibit 1 in the petition is a copy of the letter sent certified mail, in response to the initial correspondence from LARWQCB. Since no written response was made to the original letter, we are taking these steps with the State Water Resources Control Board in an effort to resolve this issue.

Sincerely,



Michael S. Nightingale  
Nightingale Enterprises Inc.

**Petition of Nightingale Studios to Vacate Order No. R4-2013-0154 of the Los Angeles Regional Quality Control Board**

page 1/4

This petition supplements the objection letter of Nightingale Studios dated November 14, 2013, a copy of which is attached as **Exhibit 1**.

**1. Petitioner Information**

Nightingale Enterprises, Inc. DBA Nightingale Studios  
156 W. Providencia Avenue  
Burbank, CA 91502  
(818) 562-6660  
nightingalesound@sbcglobal.net  
contact: Michael S. Nightingale

**2. The action or inaction of the Regional Water Board being petitioned, including a copy of the action being challenged or any refusal to act.**

The petitioner claims the following board actions and inactions are improper:

- (1) The inaction of the Los Angeles Regional Water Control Board to vacate Order no. R4-2013-0154 as it pertains to Nightingale Studios, after the Control Board was provided with a written demand dated November 14, 2013, a copy of which is attached hereto as Exhibit 1.
- (2) Order no. R4-2013-0154 as it pertains to Nightingale Studios. A copy of the order is attached as **Exhibit 2**.

**3. The date the Regional Water Board acted and/or failed to act.**

The Regional Water Board failed to vacate the subject order on and after November 14, 2013. The failure was not known by the petitioner until on or about March 5, 2014.

**4. A statement of the reasons the action and/or inaction was inappropriate or improper.**

- (1) CWC section 13267 was enacted to investigate and identify the individuals and companies responsible for the discharges of chromium into the San Fernando Valley groundwater basin. The Los Angeles Regional Water Quality Control Board (hereinafter LARWQCB) determined that the property located at 156 W. Providencia, Burbank, CA (the site) is a potential source of chromium overlying the basin. The LARWQCB determined that the site was owned and operated by

**Petition of Nightingale Studios to Vacate Order No. R4-2013-0154 of the Los Angeles Regional Quality Control Board**

Page 2/4

Commercial Inspection Services (CIS) between 1980 and 1994 and that CIS used and stored chromium dihydrate and chromic acid. CIS was apparently owned by MAG Investments, Limited/Melvin K. Squires. [See paragraphs 1 and 2 of Order R4-2013-0154] Petitioner does not have any knowledge to either confirm or dispute those findings.

**However, as petitioner informed the LARWQCB both verbally and in writing, petitioner has never conducted any operations of the site that involved chromium or other chemical wastes.** Petitioner operates a music rehearsal and audio rental facility at the site. Petitioner's business rents space and musical equipment to musicians who rehearse and record at the site.

Additionally, Petitioner did not occupy the site until 2002 as a lessee - long after any of the operations involving chromium had ceased.

There is absolutely no evidence that Petitioner was involved in any way with the alleged chromium contamination.

- (2) Petitioner does not own the site. Petitioner has never owned the site.
- (3) Petitioner has not had involvement of any kind with the operations of CIS, MAG Investments or Melvin Squires.
- (4) Paragraphs 5 of R4-2013-0154 incorrectly concludes that Nightingale Studios ***"is responsible for the suspected discharges of waste identified in paragraph two (2) and four (4) . . . because Nightingale Studio currently owns and operates at the Site."***

Since the contamination occurred due to chromium activities that occurred between 1980 to 1994, and as petitioner did not occupy the site until 2002, the conclusion that Nightingale Studios is "responsible" for the discharges of waste is clearly erroneous. Additionally, the Order incorrectly provides that Nightingale Studios currently owns the site. Nightingale Studios has never owned the site. Further, how would the rental of musical equipment and rehearsal studios in any way involve the discharge of chromium waste.

**5. How the petitioner is aggrieved.**

Petitioner is a lessee of the Site only and has never owned the Site. Petitioner

**Petition of Nightingale Studios to Vacate Order No. R4-2013-0154 of the Los Angeles Regional Quality Control Board**

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has no involvement with the alleged chromium discharges that allegedly occurred over 20 years ago. Petitioner does not have the financial resources to secure a Subsurface Soil Investigation Workplan. Petitioner would go out of business if it had to bear those costs.

Petitioner does not have the legal authority to conduct any destructive testing at the Site that is not owned by the petitioner.

Clearly, due fairness as well as the legislative intent for section 13267 requires the LARWQCB to pursue the remedies against the persons and companies responsible for the alleged chromium discharges. According to the findings of the LARWQCB the chromium contaminations was created by CIS, MAG Investments and Melvin Squires. It is wholly unfair to require a subsequent tenant of the Site to bear the time, effort and costs to investigate and possibly remediate a condition that petitioner did not in any way cause.

**6. The action the petitioner requests the State Water Board to take.**

Petitioner requests the State to immediately remove Nightingale Studios from Order R4-2013-0154.

**7. A statement of points and authorities for any legal issues raised in the petition including citations to documents that are referred to.**

See response to section 4 herein above and the attached Exhibits.

**8. A statement that copies of the petition have been sent to the Regional Water Board.**

On March 14, 2014, a copy of this petition was sent to the Regional Water Board.

**9. A statement that the issues raised in the petition were presented to the regional board before the regional board acted, or an explanation of why the petitioner could not raise those objections before the regional board.**

Before October 8, 2013, petitioner was never apprised of the alleged investigation of the LARWQCB into chromium discharge at the Site.

Before October 8, 2013, no person from the LARWQCB contacted Petitioner regarding the investigation of the Site.

**Petition of Nightingale Studios to Vacate Order No. R4-2013-0154 of the Los Angeles Regional Quality Control Board**

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Petitioner's first knowledge of any issue was when it received Order R-4-2013-0154.

Order R4-2013-0154 was apparently issued against CIS, MAG Investments and Melvin Squires before October 8, 2013. Nightingale Studios was apparently added to the order without any due process or opportunity to present evidence of its' non-involvement.

Dated: March 14, 2014



Nightingale Studios by  
Michael S. Nightingale

Nightingale Enterprises Incorporated  
DBA Nightingale Studios  
156 W. Providencia Ave.  
Burbank, CA 91502

EXHIBIT ① (1 page)

November 14, 2013

Los Angeles Regional Water Quality Control Board

Subject: Letter received dated October 8, 2013

To whom it may concern:

This letter is in response to the letter dated October 8, 2013 from Los Angeles Regional Water Quality Control Board (LARWQCB) which indicates a requirement for a technical report regarding suspected groundwater contamination. The letter states that Nightingale Studios is the owner of this property. Nightingale Enterprises Inc., DBA Nightingale Studios does not own the referenced property.

Nightingale Enterprises Inc., has occupied the referenced property since January 2002, and has never owned it. The business activities of Nightingale Enterprises Inc., is to provide space for musical recording and rehearsals along with some audio equipment rentals and storage. In no way do the activities involve storage or discharge of any sort of contaminants. Furthermore, Nightingale Enterprises Inc., is in no way associated or affiliated with MAG Investments, Commercial Inspection Services, or Melvin K. Squires.

Contrary to what is written in paragraph 5, Nightingale Studios is being falsely identified as being responsible in any way for the suspected discharges of waste. There is absolutely no evidence of this whatsoever.

It is respectfully demanded that LARWQCB remove Nightingale Enterprises Inc., and Nightingale Studios from any implications in this matter and also the order outlined in the letter dated October 8, 2013. Please respond in writing as to any other concerns you might have.

Sincerely,



Michael S. Nightingale  
Nightingale Enterprises Inc.



EXHIBIT (2) (7 pages)



Los Angeles Regional Water Quality Control Board

October 8, 2013

Mr. Melvin K. Squires  
MAG Investments, Limited  
1575 El Verano Drive  
Thousand Oaks, California 91362

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7012 3460 0000 2166 1078

Mr. Michael S. Nightingale  
Nightingale Studios  
156 West Providencia Avenue  
Burbank, California 91502

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7012 3460 0000 2166 1061

SUBJECT: REQUIREMENT FOR TECHNICAL REPORT PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0154

SITE: FORMER COMMERCIAL INSPECTION SERVICES, INCORPORATED FACILITY, 156 WEST PROVIDENCIA AVENUE, BURBANK, CALIFORNIA (FILE NO. 109.0884)

Dear Messrs. Squires and Nightingale:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within major portions of the Los Angeles and Ventura Counties, including the referenced site.

The Regional Board is investigating potential sources for groundwater contamination within the United States Environmental Protection Agency (USEPA) San Fernando Valley Superfund Site (Superfund Site). It is known that groundwater within the Superfund Site, including the vicinity of the former Commercial Inspection Services, Incorporated (CIS, Inc.) facility, is contaminated with volatile organic compounds (VOCs) and heavy metals, particularly chromium.

No

The Regional Board has reviewed technical information and historical documents contained in Regional Board case files for the property located at 156 West Providencia Avenue, in the City of Burbank, California (the Site). The Site is currently owned and operated by Nightingale Studios, and formerly owned by MAG Investments, Limited. Regional Board files indicate that CIS, Inc., occupied the Site between 1980 and 1994. CIS, Inc.'s operations at the Site consisted of non-destructive testing of aerospace hardware, including x-ray, fluorescent, magnetic particle, impregnation, ultrasonic and cleaning. Regional Board files state that chromium containing compounds, including sodium dichromate dihydrate and chromic acid, were used and stored during CIS operations at the Site. The subsurface impact, as a result of CIS, Inc.'s operations at the Site, has not been determined.

MARLA MENDIOLA, CHAIR | SAMUEL UDEA, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles

13 17

Mr. Melvin K. Squires  
Mr. Michael S. Nightingale  
Former Commercial Inspection Services

- 2 -

October 8, 2013

*No*  
Enclosed is a Regional Board order for technical report requirements pursuant to California Water Code Section 13267 Order No. R4-2013-0154 (Order). An Order was previously issued to Mr. Melvin K. Squires of MAG Investments, Limited. The attached Order has been revised to include Nightingale Studios, the current property owner of the Site. The attached Order requires MAG Investments, Limited and Nightingale Studios to prepare and submit a Subsurface Soil Investigation Workplan in order to evaluate the potential for soil and groundwater contamination.

Should you have any questions related to this project, please contact Ms. Luz Rabelo via telephone at (213) 576-6783 or via email at [luz.rabelo@waterboards.ca.gov](mailto:luz.rabelo@waterboards.ca.gov).

Sincerely,

*fw Paul Rasmussen*  
Samuel Unger, P.E.  
Executive Officer

Enclosures: California Water Code Section 13267 Order No. R4-2013-0154

cc: Ms. Lisa Hanusiak, USEPA Region IX  
Mr. Leo Chan, City of Glendale  
Mr. Bill Mace, City of Burbank Water Supply Department  
Mr. Vahe Dabbaghian, Los Angeles Department of Water & Power  
Mr. Milad Taghavi, Los Angeles Department of Water & Power  
Mr. Richard Slade, ULARA Watermaster

EUGENE G. BRUNA JR.  
GOVERNORMATTHEW RODRIGUEZ  
SECRETARY FOR  
ECONOMIC DEVELOPMENT

## Los Angeles Regional Water Quality Control Board

ORDER TO PROVIDE A TECHNICAL REPORT FOR  
SUBSURFACE SOIL INVESTIGATION  
CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0154

DIRECTED TO MAG INVESTMENTS, LIMITED AND NIGHTINGALE STUDIOS

FORMER COMMERCIAL INSPECTION SERVICES, INCORPORATED FACILITY  
156 WEST PROVIDENCIA AVENUE, BURBANK, CALIFORNIA  
(FILE NO. 109.0884)

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) makes the following findings and issues this Order pursuant to California Water Code (CWC) section 13267, which authorizes the Regional Board to require the submittal of technical and monitoring reports.

1. The groundwater within the San Fernando Valley Groundwater Basin (Basin) has been impacted by discharges of heavy metals, specifically chromium. The San Fernando Valley Superfund Site (Superfund Site) lies within the Basin. The United States Environmental Protection Agency (USEPA) and the Regional Board are investigating the potential sources of the discharges to the Basin. The agencies are currently focused on identifying individuals and companies responsible for the discharges of chromium in the Basin and holding them responsible for the investigation and remediation of the source sites. The property located at 156 West Providencia Avenue, in the City of Burbank, California (the Site) is a potential source of chromium and overlies the Basin.
- n/a* 2. The Site is currently owned and occupied by Nightingale Studios, and formerly owned and operated by MAG Investments, Limited. Between approximately 1980 and 1994, the Site was occupied by Commercial Inspection Services, Incorporated (CIS, Inc.). CIS, Inc. performed non-destructive testing of aerospace hardware at the Site. Testing services included x-ray, fluorescent, magnetic particle, impregnation, ultrasonic and cleaning. Regional Board files state that CIS, Inc. used and stored chromium containing compounds, including sodium dichromate dihydrate and chromic acid, during their operations at the Site. Regional Board files also state that CIS, Inc. is owned by MAG Investments, Limited. An Order was previously issued to Mr. Melvin K. Squires of MAG Investments, Limited. The Order has been revised to include Nightingale Studios, the current property owner of the Site. CIS, Inc. previously conducted investigations and remediation activities at the Site which focused on volatile organic compounds (VOCs) and not on heavy metals. Therefore, the potential impact to the subsurface soils at the Site, has not yet been determined.
- N/A* 3. CWC section 13267(b)(1) states:

"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or

MARIA MERRIAM, CHAIR | SAMUEL LINDEN, EXECUTIVE OFFICER

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Mr. Melvin K. Squires  
Mr. Michael S. Nightingale  
Former Commercial Inspection Services, Incorporated

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October 8, 2013

domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

4. Regional Board staff has obtained evidence indicating that there has been a discharge of waste at or from the Site. The supporting evidence includes a Chemical Storage and Use Questionnaire (CUQ) submitted by CIS, Inc. to the Regional Board, dated May 3, 1990, stating the use and storage of chromium containing compounds at the Site. The CUQ indicated that approximately 20 pounds of sodium dichromate dihydrate and approximately 20 pounds of chrome acid were stored at the Site. Additionally, on December 7, 2000 a subsurface soil investigation reported maximum chromium concentration of 3,930 mg/kg in the subsurface soils beneath the Site.

The former CIS, Inc. facility is among the suspected sources of waste discharge in the USEPA Superfund Site because of the chemicals used and the operations conducted at the Site. It is known that groundwater within the Superfund Site, including the vicinity of the former CIS, Inc. facility, is polluted with VOCs and heavy metals, particularly chromium. To date, a complete subsurface investigation of heavy metals in soil or groundwater has not been performed at the Site.

5. This Order identifies MAG Investments, Limited and Nightingale Studios as the entities responsible for the suspected discharges of waste identified in paragraph two (2) and four (4) because MAG Investments, Limited owned and operated the facility where the activities occurred that resulted in the suspected discharges of waste were performed by CIS, Inc. and Nightingale Studios currently owns and operates at the Site.

6. This Order requires the persons/entities named herein to prepare and submit a Subsurface Soil Investigation Workplan (Workplan) in order to evaluate the conditions at the Site and determine if any discharges of heavy metal compounds, specifically chromium, has impacted the soils beneath the Site that could consequently pose a threat to groundwater. You are expected to submit a complete Workplan, as required by this Order, to the Regional Board. The Regional Board may reject the Workplan if it is deemed incomplete and/or require revisions to the Workplan under this Order.
7. The Regional Board needs this information in order to determine whether the Site is a source of discharges of waste, specifically chromium, and to determine whether the subsurface soil conditions at the Site are causing or threatening to cause discharges of waste to the waters of the State within the Basin.
8. The burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The information is

No

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Mr. Melvin K. Squires  
Mr. Michael S. Nightingale  
Former Commercial Inspection Services, Incorporated

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October 8, 2013

necessary to identify sources of discharges of waste to the Basin and to assure adequate cleanup of the Stainless Steel Products/Industries facility, which as described above potentially poses significant threats to public health and the environment.

9. The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This Order requires submittal of technical and/or monitoring reports and work plans. The proposed activities under the work plan are not yet known. It is unlikely that implementation of the work associated with this Order could result in anything more than minor physical changes to the environment. If the implementation may result in significant impacts on the environment, the appropriate lead agency will address the CEQA requirements prior to implementing any work plan.
10. Any person aggrieved by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at the following link:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

or will be provided upon request.

**THEREFORE, IT IS HEREBY ORDERED** that MAG Investments, Limited and Nightingale Studios, pursuant to section 13267(b) of the CWC, are required to:

1. Submit a Subsurface Soil Investigation Workplan (Workplan) to the Regional Board by January 15, 2014. Guidance documents to assist you with this task can be found on the Internet at the following links:

*"General Work Plan Requirements for a Heavy Metal Soil Investigation"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/GeneralWorkplanRequirementsforaHeavyMetalsSoilInvestigation.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/GeneralWorkplanRequirementsforaHeavyMetalsSoilInvestigation.pdf)

*"Interim Site Assessment & Cleanup Guidebook (May 1996)"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/may1996\\_voc\\_guidance.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/may1996_voc_guidance.shtml)

*"Quality Assurance Project Plan"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/Board\\_SGV-SFVCleanupProgram\\_Sept2008\\_QAPP.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/Board_SGV-SFVCleanupProgram_Sept2008_QAPP.pdf)

Mr. Melvin K. Squires  
Mr. Michael S. Nightingale  
Former Commercial Inspection Services, Incorporated

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October 8, 2013

2. The Workplan shall include detailed information of former and existing chromium storage, hazardous waste management, and associated practices.
3. The Workplan must also include proposed soil sampling boring locations which shall extend to a minimum depth of 25 feet below ground surface in the areas of the previous plating processes and waste treatment (sumps, clarifiers, etc.), hazardous waste storage area, and chemical storage area.
4. The Workplan must contain a health and safety plan (HASP), as per the guidelines.
5. The Workplan shall include a detailed schedule of implementation of the Workplan, including field work and providing a report of the results to the Regional Board.
6. Upon approval, the Workplan shall be implemented and a report summarizing the results according to the approved schedule must be submitted to the Regional Board.

The above item shall be submitted to:

Ms. Luz Rabelo  
Water Resources Control Engineer  
Remediation Section  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, California 90013  
Phone: (213) 576-6783  
Email: [luz.rabelo@waterboards.ca.gov](mailto:luz.rabelo@waterboards.ca.gov)

Pursuant to 13267(a) of the CWC, any person who fails to submit reports in accordance with the Order is guilty of a misdemeanor. Pursuant to section 13268(b)(1) of the CWC, failure to submit the required Workplan described above by the specified due date(s) may result in the imposition of administrative civil liability by the Regional Board in an amount up to one thousand dollars (\$1,000) per day for each day the Workplan is not received after the above due date. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning.

The Regional Board, under the authority given by the CWC section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under the 13267 Order. The perjury statement shall be signed by a senior authorized MAG Investments, Limited and Nightingale Studios representative (not by a consultant). The perjury statement shall be in the following format:

1. "I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and

Mr. Melvin K. Squires  
Mr. Michael S. Nightingale  
Former Commercial Inspection Services, Incorporated

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October 8, 2013

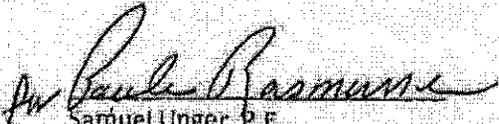
complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The State Board adopted regulations (Chapter 30, Division 3 of Title 23 & Division 3 of Title 27, California Code of Regulation) requiring the electronic submittal of Information (ESI) for all site cleanup programs, starting January 1, 2005. Currently, all of the information on electronic submittals and GeoTracker contacts can be found on the Internet at the following link:

[http://www.waterboards.ca.gov/ust/electronic\\_submittal](http://www.waterboards.ca.gov/ust/electronic_submittal).

To comply with the above referenced regulation, you are required to upload all technical reports, documents, and well data to GeoTracker by the due dates specified in the Regional Board letters and orders issued to you or for the Site. However, the Regional Board may request that you submit hard copies of selected documents and data in addition to electronic submittal of information to GeoTracker.

SO ORDERED.

  
Samuel Unger, P.E.  
Executive Officer

Oct. 8, 2013  
Date

# **EXHIBIT 4**

**Kenneth A. Ehrlich**  
D: 310.746.4412  
F: 310.746.4499  
KEhrlich@elkinskalt.com  
Ref: 11490-0002

**ELKINS  
KALT  
WEINTRAUB  
REUBEN  
GARTSIDE LLP**

May 23, 2014

**VIA E-MAIL AND FEDERAL EXPRESS**

Samuel Unger, P.E., Executive Officer  
Los Angeles Regional Water Quality Control  
Board  
320 West 4th Street, Suite 200  
Los Angeles, California 90013

Thomas Howard, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

Re: 156 West Providencia Avenue, Burbank, California (File No. 109.0884)

Dear Messrs. Unger and Howard:

We represent Mr. Michael S. Nightingale and Nightingale Enterprises, Inc. (Nightingale"), the operator of a recording studio and performance area at 156 West Providencia Avenue, Burbank, California (the "Site"). Mr. Nightingale is a proprietor of Nightingale. Since 2002, Nightingale has operated the studio at the Site, which consists of rehearsal and recording facilities and ancillary audio equipment rental and storage. Neither Mr. Nightingale nor Nightingale own the Site.

We have reviewed the purported Order to Provide a Technical Report for Subsurface Soil Investigation pursuant to California Water Code Section 13267, Order No. R4-2013-0154 (the Order") issued by the Los Angeles Regional Water Quality Control Board (the "Regional Board") on October 8, 2013 seeking to compel Nightingale to prepare and submit a Subsurface Soil Investigation Workplan (the "Workplan") evaluating the potential discharges of chromium at the Site and any resultant impacts to soils and groundwater. Nightingale has no liability for any historic chromium releases at or around the Site, and is not subject to the Order.

Nightingale previously submitted letters to the Regional Board on November 14, 2013 and March 14, 2014 seeking to clarify a number of erroneous assumptions contained in the Order. Nevertheless, both the Regional Board and the State Water Resources Control Board (the "State Board") continue to erroneously pursue Nightingale, which recently retained our services.

**I. THE CITED AUTHORITY DOES NOT APPLY TO NIGHTINGALE**

By its own terms, the Order was issued under the authority of Water Code Section 13267. However, Water Code Section 13267(b)(1) only authorizes the Regional Board to require technical or monitoring program reports from a "*person who has discharged, discharges, or is*

2049 Century Park East, Suite 2700, Los Angeles, California 90067-3202  
Telephone: 310.746.4400 Facsimile 310.746.4499 www.elkinskalt.com

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Thomas Howard  
May 23, 2014  
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*suspected of having discharged or discharging, or who proposes to discharge waste* within its region, or any citizen or domiciliary, or political agency or entity of this state who has *discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge*, waste outside of its region that could affect the quality of waters within its region." In addition, Water Code Section 13267, subd. (b)(1) also requires that the Regional Board provide a "written explanation with regard to the needs for the reports, and *shall identify the evidence that supports requiring the person to provide the reports.*" Moreover, the burden of preparing these reports, including the financial burdens, "shall bear a reasonable relationship to the need for the reports and the benefit to be obtained from the reports." Based on these express requirements of Water Code Section 13267, subd. (b)(1), Since Nightingale has zero responsibility for any of the actual or suspected contamination, Nightingale should bear no responsibility for the preparation of a Workplan. Instead, the burden of the Workplan should fall on MAG Investments, Limited ("MAG") and/or Commercial Inspection Services, Inc. ("CIS")<sup>1</sup>, the prior owner and operator of the Site.

First, Water Code Section 13267(b)(1) does not apply to Nightingale. No evidence suggests that Nightingale has or will ever discharge any waste that could adversely impact water quality, a fact which is actually highlighted by the contents of the Order. Specifically, the Order identifies Nightingale Studios as responsible for suspected discharges of waste at the Site solely on the grounds that Nightingale Studios "currently owns and operates at the Site."<sup>2</sup> The Order's assertion regarding Nightingale's ownership interest in the Site is incorrect. As noted above, Nightingale is, and has only been, merely a tenant at the Site.

Moreover, the Order expressly states that the underlying rationale for the Regional Board's concerns regarding potential chromium discharges at the Site derive from the non-destructive testing of aerospace hardware by CIS at the Site between 1980 and 1994. Of course, Nightingale did not begin operating its music studio at the Site until 2002, *more than a decade after CIS ceased its operations at the Site.* Further, absolutely no element of Nightingale's operation of a recording and rehearsal studio entails the handling, storage, transport or disposal of heavy metals or other hazardous waste, including chromium.

---

<sup>1</sup> According to the Order, the Regional Board files indicate that CIS was owned by MAG.

<sup>2</sup> The Order's assertion regarding Nightingale's ownership interest in the Site is incorrect, as Nightingale is, and has only been, merely a tenant at the Site.

Samuel Unger, P.E.  
Thomas Howard  
May 23, 2014  
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## **II. RWQCB CANNOT FULFILL ITS BURDEN OF IDENTIFYING EVIDENCE REQUIRING NIGHTINGALE TO COMPLY WITH THE ORDER**

In the Order, the Regional Board does not satisfy its burden of "identifying the evidence that supports requiring" Nightingale to prepare and submit the Workplan. As noted above, Nightingale is and has been a tenant at the Site. Its operations do not use or dispose of chromium or other heavy metals. The Regional Board offers no evidence linking Nightingale to past, ongoing or future discharges. Nightingale has no relationship whatsoever to CIS or MAG. Given the timeline and character of Nightingale's business operations, it is entirely unreasonable for the REGIONAL BOARD to suspect Nightingale of any such discharge. In the absence of any credible information linking Nightingale to potential hazardous discharges, no basis exists to require Nightingale to prepare the Workplan.

## **III. NO EVIDENCE SUGGESTS THAT NIGHTINGALE SHOULD INCUR THE FINANCIAL BURDEN OF THE REQUESTED INVESTIGATION**

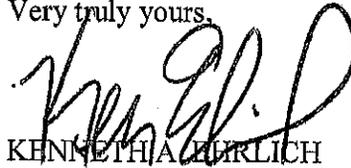
As noted in the Order, the RWQCB (or SWRCB) must show that the financial burden on the purported responsible party bears a reasonable relationship to the need for the requested work and the benefits to be obtained from the same. Cal. Water Code § 13267. In contrast to the statutory requirement, the Order does not show how the significant financial burdens allegedly imposed on Nightingale for the preparation of the Site Workplan bears a reasonable relationship to the need for the Workplan and the benefits to be obtained from the same. Nightingale bears no factual or legal responsibility for the alleged contamination. It does not handle chromium or other heavy metals in its operations. In contrast to these facts, which Nightingale or its proprietors will declare under penalty of perjury, the Order simply offers the unsubstantiated assertion that the "information is necessary to identify sources of discharges of waste to the Basin and to assure adequate cleanup of the Stainless Steel Products/Industries [sic] facility, which...potentially poses significant threats to public health and the environment." The Order fails to show any relationship between identifying the potential discharge of chromium at the Site and the cleanup of an entirely different facility at a different location. No evidence could exist that Nightingale is responsible for chromium contamination at the Site or elsewhere. Further, it is wholly unreasonable to impose any burden on Nightingale given that it bears absolutely no responsibility for the discharge of waste at the Site or elsewhere.

The Order properly identifies MAG as the entity responsible for the suspected discharges of waste at the Site by CIS during MAG's ownership of the Site. Nightingale is not affiliated with MAG or CIS in any way. The state agencies' interests would be best served by mandating the preparation of the Workplan by MAG, given its ownership of the Site during the time of the suspected discharges and its ownership of CIS, the suspected offending entity.

Samuel Unger, P.E.  
Thomas Howard  
May 23, 2014  
Page 4

We look forward to you working with you to quickly resolve these issues. Notwithstanding the foregoing, Nightingale reserves all rights and remedies at law and in equity and waives none.

Very truly yours,



KENNETH A. HURLICH  
Elkins Kalt Weintraub Reuben Gartside LLP

CJL

cc: Deborah Smith (via email)  
Paula Rasmussen (via email)  
Luz Rabelo (via email)  
Lori T. Okun (via email)  
Frances L. McChesney, Esq. (via email)  
Jennifer L. Fordyce, Esq. (via email)  
Nicole L. Kuenzi, Esq. (via email)

# **EXHIBIT 5**



Los Angeles Regional Water Quality Control Board

June 17, 2014

Mr. Melvin K. Squires  
MAG Investments, Limited  
23035 North San Ramon Drive  
Sun City West, Arizona 85375

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7012 1640 0000 6228 2591

Mr. Michael S. Nightingale  
Nightingale Studios  
156 West Providencia Avenue  
Burbank, California 91502

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7013 1090 0000 7172 0466

**SUBJECT: RESCISSION OF REQUIREMENT FOR TECHNICAL REPORT PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2013-0154**

**SITE: FORMER COMMERCIAL INSPECTION SERVICES, INCORPORATED FACILITY, 156 WEST PROVIDENCIA AVENUE, BURBANK, CALIFORNIA (FILE NO. 109.0884)**

Dear Messrs. Squires and Nightingale:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within major portions of the Los Angeles and Ventura Counties, including the above-referenced site (Site).

Regional Board files indicate that Commercial Inspection Services Incorporated (CIS) occupied the Site between 1980 and 1994. CIS's operations at the Site consisted of non-destructive testing of aerospace hardware, including x-ray, fluorescent, magnetic particle, impregnation, ultrasonic, and cleaning. Regional Board files include information that chromium containing compounds, including sodium dichromate dihydrate and chromic acid, were used and stored during CIS's operations at the Site. The subsurface impact, as a result of CIS's operations at the Site, has not been determined. The Site was formerly owned by Mr. Melvin Squires and MAG Investments, Limited and is currently occupied by Nightingale Studios.

On October 8, 2013, the Regional Board issued California Water Code (CWC) section 13267 Order No. R4-2013-0154 to MAG Investments, Limited and Nightingale Studios for the Site. The CWC section 13267 Order No. R4-2013-0154 required MAG Investments, Limited and Nightingale Studios to prepare a Subsurface Soil Investigation Work Plan to evaluate the Site for soil and groundwater contamination.

CHARLES STRINGER, CHAIR | SAMUEL LINGER, EXECUTIVE OFFICER

820 West 4th St., Suite 200, Los Angeles, CA 90012 | www.waterboards.ca.gov/losangeles

Mr. Melvin K. Squires  
Mr. Michael S. Nightingale  
Former Commercial Inspection Services Incorporated

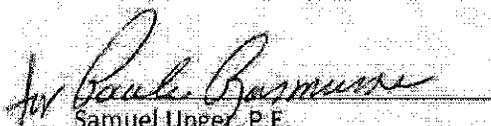
- 2 -

June 17, 2014

The CWC section 13267 Order No. R4-2013-0154 sent to MAG Investments, Limited was returned as undeliverable, which indicated an incorrect address. The Regional Board has since obtained a current mailing address for Mr. Melvin Squires of MAG Investments, Limited. Further, on March 14, 2014, the Regional Board received a letter from Mr. Michael S. Nightingale stating that Nightingale Studios does not own the Site, but rather is a lessee. A Grant Deed was provided to the Regional Board indicating the Site is currently owned by Night-Prov LLC. Based on this information, the Regional Board hereby rescinds CWC Section 13267 Order No. R4-2013-0154 issued to MAG Investments, Limited and Nightingale Studios. A new CWC section 13267 Order will be issued to Mr. Melvin Squires, MAG Investments, Limited, and Night-Prov LLC.

Should you have any questions related to this matter, please contact Ms. Jillian Ly at (213) 576-6731 or [jillian.ly@waterboards.ca.gov](mailto:jillian.ly@waterboards.ca.gov).

Sincerely,

  
Samuel Unger, P.E.  
Executive Officer

cc: Ms. Lisa Hanusiak, USEPA Region IX  
Mr. Leo Chan, City of Glendale  
Mr. Bill Mace, City of Burbank Water Supply Department  
Mr. Yahe Dabbaghian, Los Angeles Department of Water & Power  
Mr. Albert Gastelum, Los Angeles Department of Water & Power  
Mr. Jonathan Leung, Los Angeles Department of Water & Power  
Mr. Richard Slade, ULARA Watermaster  
Mr. Kenneth Ehrlich, Elkins Kalt Weintraub Reuben Gartside LLP  
Mr. Ronald Miyamoto, Night-Prov LLC

# **EXHIBIT 6**



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## Los Angeles Regional Water Quality Control Board

June 17, 2014

Mr. Melvin K. Squires and  
MAG Investments, Limited  
23035 North San Ramon Drive  
Sun City West, Arizona 85375

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7012 3460 0000 2166 0996

Mr. Ronald Miyamoto  
Night-Prov LLC  
2625 Townsgate Road #330  
Westlake Village, California 91361

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7001 0360 0000 3649 3149

**SUBJECT: REQUIREMENT FOR TECHNICAL REPORT PURSUANT TO CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2014-0029**

**SITE: FORMER COMMERCIAL INSPECTION SERVICES, INCORPORATED FACILITY, 156 WEST PROVIDENCIA AVENUE, BURBANK, CALIFORNIA (FILE NO. 109.0884)**

Dear Messrs. Squires and Miyamoto:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within major portions of the Los Angeles and Ventura counties, including the referenced site.

The Regional Board is investigating potential sources for groundwater contamination within the United States Environmental Protection Agency (USEPA) San Fernando Valley Superfund Site (Superfund Site). It is known that groundwater within the Superfund Site, including the vicinity of the former Commercial Inspection Services, Incorporated (CIS) facility, is contaminated with volatile organic compounds (VOCs) and heavy metals, particularly chromium.

The Regional Board has reviewed technical information and historical documents contained in Regional Board files for the property located at 156 West Providencia Avenue, in the City of Burbank, California (Site). Regional Board files indicate that CIS occupied the Site between 1980 and 1994. CIS's operations at the Site consisted of non-destructive testing of aerospace hardware, including x-ray, fluorescent, magnetic particle, impregnation, ultrasonic, and cleaning. According to Regional Board files, chromium containing compounds, including sodium dichromate dihydrate and chromic acid, were used and stored during CIS's operations at the Site. The subsurface impact, as a result of CIS's operations at the Site, has not been determined. The Site was formerly owned by Mr. Melvin Squires and MAG Investments, Limited and is currently owned by Night-Prov LLC.

CHARLES STRINGER, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | [www.waterboards.ca.gov/losangeles](http://www.waterboards.ca.gov/losangeles)

Mr. Melvin K. Squires, MAG Investments,  
Limited, and Mr. Ronald Miyamoto  
Former Commercial Inspection Services Incorporated

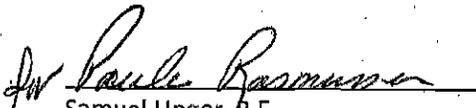
- 2 -

June 17, 2014

Enclosed is a Regional Board order for technical report requirements pursuant to California Water Code section 13267 Order No. R4-2014-0029 (Order). A similar order, Order No. R4-2013-0154, was previously issued to MAG Investments, Limited and Nightingale Studios, dated October 8, 2013. In a letter dated June 17, 2014, the Regional Board rescinded Order No. R4-2013-0154 for MAG Investments, Limited and Nightingale Studios due to incorrect address and ownership information. The attached Order No. R4-2014-0029 continues to include MAG Investments, Limited, the former owner of the Site, and now also includes Mr. Melvin Squires, a former owner of the Site, as well as Night-Prov LLC, the current owner of the Site. The attached Order requires Mr. Melvin Squires, MAG Investments, Limited, and Night-Prov LLC to prepare and submit a Subsurface Soil Investigation Work Plan to evaluate the Site for soil and groundwater contamination.

Should you have any questions related to this matter, please contact Ms. Jillian Ly at (213) 576-6731 or [jillian.ly@waterboards.ca.gov](mailto:jillian.ly@waterboards.ca.gov).

Sincerely,



Samuel Unger, P.E.  
Executive Officer

cc: Ms. Lisa Hanusiak, USEPA Region IX  
Mr. Leo Chan, City of Glendale  
Mr. Bill Mace, City of Burbank Water Supply Department  
Mr. Vahe Dabbaghian, Los Angeles Department of Water & Power  
Mr. Albert Gastelum, Los Angeles Department of Water & Power  
Mr. Jonathan Leung, Los Angeles Department of Water & Power  
Mr. Richard Slade, ULARA Watermaster  
Mr. Michael Nightingale, Night-Prov LLC



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## Los Angeles Regional Water Quality Control Board

### ORDER TO PROVIDE A TECHNICAL REPORT FOR SUBSURFACE SOIL INVESTIGATION CALIFORNIA WATER CODE SECTION 13267 ORDER NO. R4-2014-0029

DIRECTED TO MR. MELVIN SQUIRES, MAG INVESTMENTS, LIMITED, AND NIGHT-PROV LLC

FORMER COMMERCIAL INSPECTION SERVICES, INCORPORATED FACILITY  
156 WEST PROVIDENCIA AVENUE, BURBANK, CALIFORNIA  
(FILE NO. 109.0884)

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) makes the following findings and issues this Order pursuant to California Water Code (CWC) section 13267, which authorizes the Regional Board to require the submittal of technical and monitoring reports.

1. The groundwater within the San Fernando Valley Groundwater Basin (Basin) has been impacted by discharges of heavy metals, specifically chromium. The San Fernando Valley Superfund Site (Superfund Site) lies within the Basin. The United States Environmental Protection Agency (USEPA) and the Regional Board are investigating the potential sources of the discharges to the Basin. The agencies are currently focused on identifying individuals and companies responsible for the discharges of chromium in the Basin and holding them responsible for the investigation and remediation of the source sites. The property located at 156 West Providencia Avenue, in the City of Burbank, California (Site) is a potential source of chromium and overlies the Basin.

The Site is currently owned by Night-Prov LLC and formerly owned and operated by Mr. Melvin Squires and MAG Investments, Limited (prior to 2005). Between approximately 1980 and 1994, the Site was occupied by Commercial Inspection Services, Incorporated (CIS). CIS performed non-destructive testing of aerospace hardware at the Site. Testing services included x-ray, fluorescent, magnetic particle, impregnation, ultrasonic, and cleaning. Regional Board files indicate that CIS used and stored chromium containing compounds, including sodium dichromate dihydrate and chromic acid, during its operations at the Site. Regional Board files also indicate that CIS is/was owned by MAG Investments, Limited, of which Mr. Melvin Squires is/was a partner. CIS previously conducted investigations and remediation activities at the Site, which focused on volatile organic compounds (VOCs) and not on heavy metals. Therefore, the potential impact to the subsurface soils and groundwater at the Site from heavy metals has not yet been determined.

2. CWC section 13267(b)(1) states:

"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is

CHARLES STRINGER, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

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suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

3. Regional Board staff has evidence indicating that there might have been a discharge of waste at or from the Site. The supporting evidence includes a Chemical Storage and Use Questionnaire (CUQ) submitted by CIS to the Regional Board, dated May 3, 1990, stating the use and storage of chromium containing compounds at the Site. The CUQ indicated that approximately 20 pounds of sodium dichromate dihydrate and approximately 20 pounds of chrome acid were stored at the Site. Additionally, on December 7, 2000, a subsurface soil investigation reported maximum chromium concentration of 3,930 milligrams per kilograms in the subsurface soils beneath the Site.

The former CIS facility is among the suspected sources of waste discharge in the USEPA Superfund Site because of the chemicals used and the operations conducted at the Site. It is known that groundwater within the Superfund Site, including the vicinity of the former CIS facility, is polluted with VOCs and heavy metals, particularly chromium. To date, a complete subsurface investigation of heavy metals in soil or groundwater has not been performed at the Site.

4. This Order identifies Mr. Melvin Squires, MAG Investments, Limited, and Night-Prov LLC as the persons/entities responsible for the suspected discharges of waste identified in paragraphs two (2) and three (3). Mr. Melvin Squires and MAG Investments, Limited owned and operated the facility where the activities occurred that might have resulted in the suspected discharges of waste, which were performed by CIS. Night-Prov LLC currently owns the Site.
5. This Order requires the persons/entities named herein to prepare and submit a Subsurface Soil Investigation Work Plan (Work Plan) in order to evaluate the conditions at the Site and determine if any discharges of heavy metal compounds, specifically chromium, has impacted the soils beneath the Site that could consequently pose a threat to groundwater. You are expected to submit a complete Work Plan, as required by this Order, to the Regional Board. The Regional Board may reject the Work Plan if it is deemed incomplete and/or require revisions to the Work Plan under this Order.
6. The Regional Board needs this information in order to determine whether the Site is a source of discharges of waste, specifically chromium, and to determine whether the subsurface soil conditions at the Site are causing or threatening to cause discharges of waste to the waters of the State within the Basin.
7. The burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The information is

necessary to identify sources of discharges of waste to the Basin and to assure adequate cleanup of the facility, which as described above potentially poses significant threats to public health and the environment.

8. The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This Order requires submittal of technical and/or monitoring reports and work plans. The proposed activities under the Work Plan are not yet known. It is unlikely that implementation of the work associated with this Order could result in anything more than minor physical changes to the environment. If the implementation may result in significant impacts on the environment, the appropriate lead agency will address the CEQA requirements prior to implementing any work plan.
9. Any person aggrieved by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at the following link: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**THEREFORE, IT IS HEREBY ORDERED** that Mr. Melvin Squires, MAG Investments, Limited, and Night-Prov LLC, pursuant to section 13267(b) of the CWC, are required to:

1. Submit a Subsurface Soil Investigation Work Plan (Work Plan) to the Regional Board by **August 1, 2014**. Guidance documents to assist you with this task can be found on the Internet at the following links:

*"General Work Plan Requirements for a Heavy Metal Soil Investigation"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/GeneralWorkplan\\_Requirements\\_for\\_a\\_Heavy\\_Metals\\_Soil\\_Investigation.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/GeneralWorkplan_Requirements_for_a_Heavy_Metals_Soil_Investigation.pdf)

*"Interim Site Assessment & Cleanup Guidebook (May 1996)"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/may1996\\_voc\\_guidance.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/may1996_voc_guidance.shtml)

*"Quality Assurance Project Plan"*

[http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/remediation/Board\\_SGV-SFVCleanupProgram\\_Sept2008\\_QAPP.pdf](http://www.waterboards.ca.gov/losangeles/water_issues/programs/remediation/Board_SGV-SFVCleanupProgram_Sept2008_QAPP.pdf)

2. The Work Plan shall include detailed information of former and existing chromium storage, hazardous waste management, and associated practices.

Mr. Melvin K. Squires  
Mr. Ronald Miyamoto  
Former Commercial Inspection Services, Incorporated

- 4 -

June 17, 2014

3. The Work Plan must also include proposed soil sampling boring locations that shall extend to a minimum depth of 25 feet below ground surface in the areas of the previous plating processes and waste treatment (sumps, clarifiers, etc.), hazardous waste storage area, and chemical storage area.
4. The Work Plan must contain a health and safety plan (HASP), as per the guidelines.
5. The Work Plan shall include a detailed schedule of implementation of the Work Plan, including field work and providing a report of the results to the Regional Board.
6. Upon approval, the Work Plan shall be implemented and a report summarizing the results according to the approved schedule must be submitted to the Regional Board.

The above item shall be submitted to:

Ms. Jillian Ly, P.E.  
Water Resources Control Engineer  
Remediation Section  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, California 90013  
Phone: (213) 576-6731  
Email: [jillian.ly@waterboards.ca.gov](mailto:jillian.ly@waterboards.ca.gov)

Pursuant to 13267(a) of the CWC, any person who fails to submit reports in accordance with the Order is guilty of a misdemeanor. Pursuant to section 13268(b)(1) of the CWC, failure to submit the required Work Plan described above by the specified due date(s) may result in the imposition of administrative civil liability by the Regional Board in an amount up to one thousand dollars (\$1,000) per day for each day the Work Plan is not received after the above due date. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning.

The Regional Board, under the authority given by CWC section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under this Order. The perjury statement shall be signed by a senior authorized Mr. Melvin Squires, MAG Investments, Limited, and Night-Prov LLC representative (not by a consultant). The perjury statement shall be in the following format:

"I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Mr. Melvin K. Squires  
Mr. Ronald Miyamoto  
Former Commercial Inspection Services, Incorporated

- 5 -

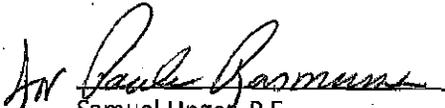
June 17, 2014

The State Board adopted regulations (Chapter 30, Division 3 of Title 23 & Division 3 of Title 27, California Code of Regulation) requiring the electronic submittal of information (ESI) for all site cleanup programs, starting January 1, 2005. Currently, all of the information on electronic submittals and GeoTracker contacts can be found on the Internet at the following link:

[http://www.waterboards.ca.gov/ust/electronic\\_submittal](http://www.waterboards.ca.gov/ust/electronic_submittal).

To comply with the above referenced regulation, you are required to upload all technical reports, documents, and well data to GeoTracker by the due dates specified in the Regional Board letters and orders issued to you or for the Site. However, the Regional Board may request that you submit hard copies of selected documents and data in addition to electronic submittal of information to GeoTracker.

SO ORDERED.

  
Samuel Unger, P.E.  
Executive Officer

6-17-2014  
Date

**EXHIBIT 7**

This page is part of your document - DO NOT DISCARD

05 0187480

RECORDED/FILED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
01/26/05 AT 08:00am

TITLE(S) : DEED



FEE

FEE \$19 U  
5

D.T.T

1350.80

CODE  
20

CODE  
19

CODE  
9

NOTIFICATION SENT \$40

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

2451 - 002 - 019

001

THIS FORM NOT TO BE DUPLICATED

2

RECORDING REQUEST BY

WHEN RECORDED MAIL TO

NAME

NIGHT-PROV LLC

MAILING ADDRESS

156 W. Providence

CITY, STATE ZIP CODE

Burbank, CA

05 0187480

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

Deed

1/26/05

05 0187480

J

RECORDING REQUESTED BY  
LAND AMERICA - LAWYERS TITLE

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE  
SHOWN BELOW, MAIL TAX STATEMENT TO

NIGHT-PROV, LLC  
156 W. Providencia Ave.  
Burbank, CA 91502

Escrow No. 3-60459-2  
Title Order No. 09500078-68

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### Grant Deed

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

Tax Parcel No. 2451-002-019

12

DOCUMENTARY TRANSFER TAX IS \$ 1,350.80

computed on full value of property conveyed, or  
 computed on full value less value of liens or encumbrances remaining at time of sale,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
MAG INVESTMENTS, LTD., A California General Partnership

Hereby GRANT(S) to  
NIGHT-PROV, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

The following described real property in the County of Los Angeles, State of California  
Lot 9 of Tract No. 6311, in the City of Burbank, County of Los Angeles, State of California, as per  
map recorded in Book 67, Page 2 of Maps, in the office of the County Recorder of said County.  
EXCEPT the Southeasterly 165 feet thereof.

DATED. January 12, 2005

MAG INVESTMENTS, LTD, A CALIFORNIA GENERAL PARTNERSHIP

X Art Rios  
ART RIOS, General Partner

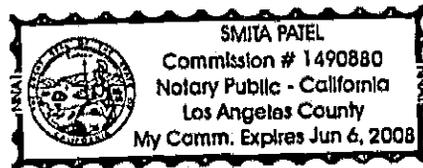
SIGNED IN COUNTY COURT

STATE OF CALIFORNIA  
COUNTY OF Los Angeles  
ON January 18 2005 before me the undersigned, personally appeared  
ART RIOS

Personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is 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 the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal

Signature: [Signature]



MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name Street Address City & State

1/26/05

4

RECORDING REQUESTED BY  
LAND AMERICA - LAWYERS TITLE

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE  
SHOWN BELOW, MAIL TAX STATEMENT TO

NIGHT-PROV, LLC  
156 W. Providencia Ave.  
Burbank, CA 91502

Escrow No 3-60459-2  
Title Order No 09500078-68

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### Grant Deed

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

Tax Parcel No 2451-002-019

DOCUMENTARY TRANSFER TAX IS \$

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
MAG INVESTMENTS, LTD., A California General Partnership

Hereby GRANT(S) to  
NIGHT-PROV, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

The following described real property in the County of Los Angeles, State of California  
Lot 9 of Tract No. 6311, in the City of Burbank, County of Los Angeles, State of California, as per  
map recorded in Book 67, Page 2 of Maps, in the office of the County Recorder of said County.  
EXCEPT the Southeasterly 165 feet thereof.

DATED: January 12, 2005

MAG INVESTMENTS, LTD, A CALIFORNIA GENERAL PARTNERSHIP

*Charles S. Kress*  
\_\_\_\_\_  
CHARLES S. KRESS, General Partner

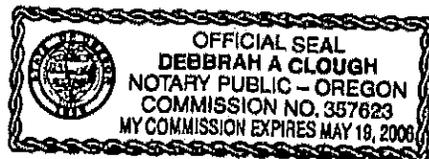
STATE OF CALIFORNIA *Oregon*  
COUNTY OF *Lane*  
ON *1-14-05*  
CHARLES S. KRESS

before me the undersigned, personally appeared

Personally 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 the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature: *Debrah A Clough*



05 0187480

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name Street Address City & State

1/26/05

5

RECORDING REQUESTED BY  
LAND AMERICA - LAWYERS TITLE

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE  
SHOWN BELOW, MAIL TAX STATEMENT TO

NIGHT-PROV, LLC  
156 W. Providencia Ave.  
Burbank, CA 91502

Escrow No 3-60459-2  
Title Order No 09500078-68

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### Grant Deed

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

Tax Parcel No. 2451-002-019

DOCUMENTARY TRANSFER TAX IS \$

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale,

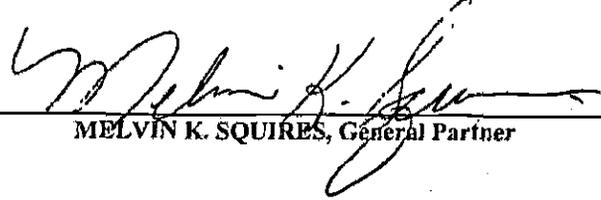
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
MAG INVESTMENTS, LTD., A California General Partnership

Hereby GRANT(S) to  
NIGHT-PROV, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

The following described real property in the County of Los Angeles, State of California  
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map recorded in Book 67, Page 2 of Maps, in the office of the County Recorder of said County.  
EXCEPT the Southeasterly 165 feet thereof.

DATED: January 12, 2005

MAG INVESTMENTS, LTD, A CALIFORNIA GENERAL PARTNERSHIP

x   
 \_\_\_\_\_  
 MELVIN K. SQUIRES, General Partner

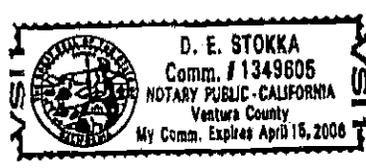
STATE OF CALIFORNIA  
COUNTY OF VENTURA  
ON JANUARY 14, 2005  
MELVIN K. SQUIRES

before me the undersigned, personally appeared

Personally known to me (or proved to me on the basis of satisfactory evidence) to be the person( ) whose name( ) 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( ) on the instrument the person( ) or the entity upon behalf of which the person( ) acted, executed the instrument.

Witness my hand and official seal.

Signature:  \_\_\_\_\_



05 0187480

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name

Street Address

City & State

1/26/05

6

RECORDING REQUESTED BY  
LAND AMERICA - LAWYERS TITLE

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE  
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NIGHT-PROV, LLC  
156 W. Providencia Ave.  
Burbank, CA 91502

Escrow No 3-60459-2  
Title Order No: 09500078-68

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Tax Parcel No. 2451-002-019

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- computed on full value of property conveyed, or
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EXCEPT the Southeasterly 165 feet thereof.

DATED. January 12, 2005

MAG INVESTMENTS, LTD, A CALIFORNIA GENERAL PARTNERSHIP

X   
 \_\_\_\_\_  
 GEORGE OTANEZ, General Partner

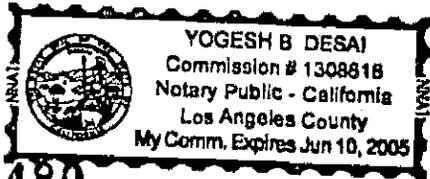
STATE OF CALIFORNIA  
COUNTY OF LOS-ANGELES  
ON JAN. 14<sup>th</sup> 2005

before me the undersigned, personally appeared  
GEORGE OTANEZ

Personally 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 the entity upon behalf of which the person(s) acted, executed the instrument

Witness my hand and official seal.

Signature:   
\_\_\_\_\_



05 0187480

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name	Street Address	City & State
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# **EXHIBIT 8**

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of  
EXXON COMPANY, U.S.A., ET AL.  
of the Adoption of the Cleanup and  
Abatement Order No. 85-066 by the  
California Regional Water Quality  
Control Board, Central Valley Region.  
Our File No. A-387.

ORDER NO. WQ 85-7

BY THE BOARD:

On March 22, 1985, the California Regional Water Quality Control Board, Central Valley Region, adopted Cleanup and Abatement Order No. 85-066 to address pollution problems caused by leaking underground gasoline storage tanks at gas station. The order names John W. and Mary L. Lynch, doing business as Village Market; Exxon Company, U.S.A. and C. P. Phelps. On April 19, 1985, Exxon Company appealed this order. On April 29, 1985, John and Mary Lynch filed an incomplete petition. John and Mary Lynch failed to amend their petition. Accordingly, we have treated them as an interested person to this matter. On April 30, 1985, C. P. Phelps filed a petition on this matter. While the Phelps petition was not timely, it involves the same issues raised by Exxon and we accordingly will consider it. The Regional Board subsequently, on April 18, 1985, issued another cleanup and abatement order naming Norman and Gail Houston previous landowners.

I. BACKGROUND

The Village Market is located in a rural subdivision approximately 6.5 miles west of the City of Tulare in Tulare County. The Village Market has been

in existence since at least 1960 and consists of a two-tank gasoline station and a mini-mart. The facility is adjacent to a ground water recharge pond. Approximately 20 homes on individual water supply wells are in close proximity to the market.

A water contamination problem in the area first became apparent in June 1984, when the Tulare County Health Department received complaints from nearby residents of taste and odor problems. In August 1984, the Health Department notified two residents not to use their water for consumption. Two of three wells selected for analysis were found to contain benzene at concentrations of 16 and 18 parts per billion, well above the State Department of Health Services action levels for drinking water of 0.7 parts per billion. Benzene is water soluble and found in gasoline. Groundwater in this area is at approximately 40 feet and the soils are a fine sandy loam. The two private wells sampled appear to be at 100 to 150 feet below the surface. The record discloses no possible sources of the pollution other than the gas station and none of the parties are contesting this issue.

The basic issue presented in these appeals is one of responsibility for the cleanup. Testimony before the Regional Board indicates that C. P. Phelps, a distributor of gasoline product, has been providing gasoline and service to the gasoline station since approximately 1960 when the facility was called Stewart's Market. At that time Phelps was a Norwalk distributor, a brand of Signal Oil and Gas Company. Exxon acquired the Signal properties in 1967. Phelps supplied Exxon product to the Village Market from 1968 to 1983.

The current landowners are John and Mary Lynch. They acquired the property in July 1981 from Norman Larry and Gail Eileen Houston, who had owned it since April 1979. Three weeks after John and Mary Lynch bought the

property, they noticed that the top portion of the underground gasoline tanks were leaking. John Lynch testified that to deal with this problem, he did not keep the tanks full. In November 1983, John and Mary Lynch replaced the tanks. The new tanks have been tested and do not leak.

The Regional Board adopted a cleanup and abatement order on March 22, 1985, pursuant to Water Code Section 13304. The order names as dischargers John and Mary Lynch, Exxon Company U.S.A. and C. P. Phelps, Inc. The order requires the dischargers implement various remedial actions according to a time schedule. These actions include providing an alternate supply of drinking water to users of known polluted wells, assessment of the extent of the toxic contamination and a comprehensive cleanup program of contaminated soils, ground water and leaked fuel.

## II. CONTENTIONS AND FINDINGS

The basic issue that Exxon and Phelps are contesting is responsibility and ownership of the old underground tanks which leaked. Both parties feel they should be removed from responsibility because they never owned the tanks.

The two underground tanks in question had been at the Village Market for an undetermined period of time. There is some evidence to suggest that these tanks had been in place since the 1940's. It is very unclear as to who owned these tanks. As discussed above, the gasoline supplier and distributor changed several times from 1960 to 1981. Additionally, a number of different parties owned the property from 1960 to 1981.

Copies of two Grant Deeds in the record from previous parties to the Houstons in 1979 and from the Houstons to John and Mary Lynch in 1981 convey generally the lot in question and are silent concerning anything else. There is no evidence in the record which conclusively shows who does own the tanks.

Order No. 85-066 contains a finding that "[t]here is evidence of ownership of the leaking fuel tanks by Exxon Company, USA and by C. P. Phelps, Inc., the distributor of the fuel." The Regional Board relied on several different bases to conclude that the tanks were the personal property of Exxon and Phelps and to thereby name Exxon and Phelps in the order. These have all been challenged by petitioners. We will address each theory in turn.

1. Contention: Tulare County property tax records do not establish that Exxon owned the tanks.

Finding: From 1968 to 1984 Exxon paid personal property taxes to Tulare County for certain property at the Village Market. The record contains copies of the personal property tax records from 1968 to 1984 as submitted by Exxon. Exxon explained its standard practice for payment of personal property taxes in Tulare County. Exxon submits to the County two copies of a form for service station business and property statements, one of which is returned to Exxon by the County with the assessed values. The first such statement in the record before us is from Humble Oil and Refining, Exxon's predecessor in interest, listing the following property at the site: two used pumps, one used air compressor, office furniture and equipment, a credit card imprinter and miscellaneous tools and equipment. Essentially the same listing was provided on the property statements for 1969, 1970, 1971, 1972, and 1973.

However, in 1974 the word "tanks" is listed as an improvement. Exxon argues that Exxon listed only property other than tanks and that the word "tanks" was included by the assessor on the copy returned to Exxon. In 1975 and 1976 the property statement reads merely "equipment only"; on the 1977 statement the words "pump, compressor, tanks and sign" appear. Exxon again

argues this was because the tax assessor added this to the statement returned to Exxon.<sup>1</sup> This argument was not refuted or challenged.

Exxon does admit that it tendered a property statement in 1978 describing as its property pump, compressor, tanks and sign. Exxon alleges that this was an error, as its clerk had copied the "erroneous" tank listing that the County Assessor had added to the previous years' statement.

Since 1979 the only personal property Exxon has listed for this property is a sign and credit card imprinter. There is some discrepancy with the assessor's statement, which also lists pumps and a compressor. Exxon has further submitted an affidavit from its real estate and engineering manager stating that to the best of his knowledge Exxon has never had an ownership or leasehold interest in the tanks. A computer listing of the Village Market equipment from 1974 submitted to us by Exxon shows only a pole, pump, compressor and miscellaneous equipment being owned by Exxon. (It is not clear whether a tank could be considered miscellaneous equipment, but in any event, there is no support in the record for that proposition.)

The Regional Board also relied upon a letter from the California Service Station Association indicating it is general practice within the industry that when an oil company owns the pumps, signs and credit card imprinter, it also has ownership of the underground tanks. Exxon refuted this letter at the hearing, stating that it has never been Exxon's practice.<sup>2</sup>

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<sup>1</sup> Exxon argues they did not contest the two "erroneous" returns for cost-efficiency reasons. We note the total tax due from Exxon on this property in 1974 was \$19.06, and in 1977, \$22.62.

<sup>2</sup> We note that a letter of this sort is clearly hearsay under our rules of procedure. While admissible, it is not sufficient in and of itself to support a finding.

The question thus becomes whether it is reasonable to base a finding of ownership of the tanks on the disputed tax records. As Exxon contends, payment of taxes itself does not establish ownership of property, citing Trabue Pittman Corp. v. County of Los Angeles, (1946) 29 Cal.2d 385, 175 P.2d 512. As we discuss infra, absent any additional information, we find that the Regional Board action is inappropriate.

2. Contention: Ownership interest in the tanks runs with the land.

Finding: Exxon argues that the tanks were fixtures, part of the realty, and therefore belonged to the successive owners of the Village Market. The Regional Board argues that the tanks were not "fixtures" and thus should not be considered real property. California Civil Code Section 660, in defining when a thing is deemed to be affixed to the land, uses such terms as "attached", "imbedded" and "permanently resting". Civil Code Section 1013 further provides:

"[W]hen a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as otherwise provided in this chapter, belongs to the owner of the land unless he chooses to require the former to remove it or the former elects to exercise the right of removal provided for in Section 1013.5 of this chapter."

Both of these statutes have been extensively interpreted by case law. According to Witkin, Summary of California Law, "Personal Property", p. 1663, under modern theories, the manner of the annexation is not the sole nor most important test. There are three main factors: (1) physical annexation; (2) adaptation to use with real property; and most significantly, (3) intention to annex to realty.

The Regional Board and Exxon both cite cases to support their respective interpretations. The cases provide various examples of what may or

may not be considered fixtures. Barcroft and Sons v. Cullen (1933) 217 C. 708, 20 P.2d, cited by Exxon, holds that a steel service comfort station with combined plumbing and wiring is a fixture, but does not speak to tanks. Neither the holdings in People v. Church (1943) 57 Cal.App.2d, 136 P.2d 139 nor Standard Oil v. State Board of Equalization (1965) 232 Cal.App.2d. 91, 42 Cal.Rptr. 543, cited by the Regional Board, deal with gasoline tanks. Church indicates that certain types of equipment at a service station are personal property, noting that these items may be removed without destroying anything. Standard Oil also found that gasoline station equipment to be personal property for purposes of taxes.

We also note that Murr v. Cohn (1927) 87 Cal.App. 478, 262 P. 768 found a gasoline tank to be a trade fixture and removable by the tenant who installed it, as the removal would not hurt the property. An important aspect of all of these cases, however, is the intent of the parties to affix the item to realty.

The record before us provides little help in determining whether the tank in question should be regarded as personal or real property. The record does not indicate when or by whom the tank was installed, nor what the arrangement was between the parties, if any. Assuming arguendo that the tank was installed originally by the property owner, the tank would probably remain realty today. On the other hand, if the tank were installed by a tenant of the owner, or by a predecessor in interest to Exxon, the tank could be regarded as remained personal property, or it could have become affixed to the land. Exxon contends that there is no agreement in the record, pursuant to Civil Code

Section 1013 which demonstrates that Exxon had the right to remove the tanks.<sup>3</sup> Exxon further argues that it did not have or exercise the right to possess and control the tanks before installation or during use. Exxon pertinently notes that John and Mary Lynch removed the tanks without notifying Exxon or obtaining consent or financial contribution from Exxon.

There is insufficient evidence in the record to determine when, how, by whom and under what circumstances the tanks were installed. Accordingly, we can make no determination as to the personal or real property character of the tanks.

3. Contention: Both Phelps and Exxon disagree with the Regional Board's interpretation of Health and Safety Code §25281(r) that under the law there is no distinction between the pumps and the tanks.

Finding: Chapter 6.7 of the Health and Safety Code, entitled "Underground Storage of Hazardous Substances" became effective January 1, 1984. This chapter requires registration and regulation of underground tanks. Section 25281(r) defines "underground storage tank" as meaning "...any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground...."

The Regional Board argues that the law regulating discharges from underground tanks appears to consider pumps and tanks as one, noting that Section 25281(r) includes pipes. Since pumps contain pipes connected to the

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<sup>3</sup> We do note that the record contains a letter from a party who owned the land in 1960 indicating her belief that she never owned the tank but that the gasoline company did. Once again, we note that this is hearsay and as such, does not provide a basis for a finding.

underground tanks, the Regional Board argues that under the law there is no distinction between the pumps and the tanks. Therefore, since Exxon has acknowledged ownership of the pumps, that it should also be considered owner of the tanks.

We disagree. We feel it is stretching the definition of "tanks" to include "pumps". We note that the Legislature could easily have explicitly included pumps within the definition of tanks, but chose not to do so. Elsewhere in the statute the term "pumps" is used (see, e.g. Section 25292(b)(4)(c)). Furthermore, Chapter 6.7 was adopted after the tank in question was removed. Additionally, the statute does not purport to establish responsibility in cases such as that before us.

There is some material in the record indicating that both C. P. Phelps and Exxon may have had ownership and responsibility for the pumps at various times. However, there is no indication that it was the pumps which leaked and caused the harmful discharge. The record supports only the charge of faulty tanks. Absent any contention that the pumps leaked, we find there is no basis to name the owners of the pumps.

### III. REVIEW AND CONCLUSIONS

In reviewing the contentions above, we believe that the record will support only that Exxon declared ownership and paid a small amount of property tax on the tanks in question for at least one year, and possibly two other years. These declarations and payments become the only basis upon which Exxon could properly be named. Exxon has raised a credible defense to these payments being indicative of ownership.

The question thus becomes what standard of review we should apply when reviewing a Regional Board action. Should we uphold a Regional Board action if

there is any possible basis for the action, or should we exercise our independent judgment as to whether the action was reasonable? Generally speaking, the courts use one of two standards in reviewing an action of administrative agency: The substantial evidence test or the independent judgment rule. The former involves an examination of the record to establish the existence or nonexistence of substantial evidence to support the action taken. The latter permits the reviewing court to take a fresh look at the facts to see if the weight of the evidence supports the decision. Under the substantial evidence test, if a court disagrees with the conclusion but finds that there does exist a substantial body of evidence to support the decision, no reversal will take place. With the independent judgment rule, the court would not defer to the agency if the court disagreed with the conclusion.

The State Board is not subject to the exact standards which bind a court. Water Code Section 13320, which provides for State Board review of Regional Board action sets forth a standard of review which is different from ordinary judicial review in two important ways. First, under Section 13320(b) the State Board shall consider both the Regional Board record and "any other relevant evidence" which it wishes in reviewing the order. Second, if the State Board decides the Regional Board action is "inappropriate or improper", the State Board has several options, including remanding or reversing the Regional Board or taking the appropriate action itself. The scope of review thus appears to be closer to that of independent review.

However, any findings made by an administrative agency in support of an action must be based on substantial evidence in the record. (See, e.g. Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d. 506, 113 Cal.Rptr. 836.) Thus, while we can independently review the

Regional Board record, in order to uphold a Regional Board action, we must be able to find that finding of ownership was founded upon substantial evidence.

In our review of the record in the case before us, we find it is not appropriate to name Exxon or Phelps without some additional factual basis. While the disputed payment of taxes for three years provides some evidence of liability, we do not feel it to be sufficient or substantial given the lack of other information in the record and given Exxon's unrefuted explanation that the payments had been erroneously made. For example, the record is devoid of any information as to who paid taxes on the tanks for years other than 1974, 1977, and 1978. Further, there is no information concerning any contracts between any landowners and Exxon, or any predecessors in interest.

We recognize the difficult position in which this places the Regional Board. In this case the Regional Board was searching to find responsible parties who could effectuate the cleanup. Fewer parties named in the order may well mean no one is able to clean up a demonstrated water quality problem. We also recognize that the Regional Board does not have infinite resources available to it to extensively search through various county files in a quest for additional information. We note Exxon itself may have more dispositive information, which may be subpoenaed by the Regional Board. However, in order to name parties such as Exxon and Phelps, we believe there should be more evidence than we have before us currently. Generally speaking it is appropriate and responsible for a Regional Board to name all parties for which there is reasonable evidence of responsibility, even in cases of disputed responsibility. However, there must be a reasonable basis on which to name each party. There must be substantial evidence to support a finding of

responsibility for each party named. This means credible and reasonable evidence which indicates the named party has responsibility.

We note that in other cases we have not hesitated to uphold the Regional Board when it has named multiple parties responsible where there is substantial support in the record. (See, e.g. Board Order WQ 84-6, In the Matter of the Petition of Harold and Joyce Logsdon for a Stay and Review of Cleanup and Abatement Order of the California Regional Water Quality Control Board, Central Valley Region.) The record in this case simply does not contain the requisite evidence to support the naming of Exxon and Phelps in the cleanup order.

#### IV. SUMMARY

1. The Tulare County property tax records are not sufficient by themselves to support naming Exxon as the owner of the tanks.

2. There is insufficient information in the record to make any finding as to whether the tanks in question should be regarded as personal or real property and as to who the true owner is.

3. The Health and Safety Code definition of "underground storage tank" is inapplicable in this case and does not extend liability to the owners or maintainers of pumps.

4. While the State Board's scope of review of Regional Board action is similar to the independent review standard of a court, the findings made by the Regional Board must be supported by substantial evidence in the record.

5. There is not substantial evidence in the record upon which to base a finding that Exxon and Phelps should be named in Cleanup and Abatement Order No. 85-066.

V. ORDER

The Cleanup and Abatement Order No. 85-066 is hereby amended to delete Exxon Company, U.S.A. and C. P. Phelps, Inc.

VI. CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 22, 1985.

Aye: Raymond V. Stone  
Darlene E. Ruiz  
Edwin H. Finster

No: None

Absent: None

Abstain: Eliseo M. Samaniego

*for* Walt Pettit  
Michael A. Campos  
Executive Director

# **EXHIBIT 9**

RECORDING REQUESTED BY

84-1157178

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO

NAME: HELVIN K. SQUIRES  
ADDRESS: BARBARA JEAN SQUIRES  
CITY & STATE: 1575 El Verano, Thousand Oaks, Ca 91362

RECORDED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
1 MIN. PAST 3 P.M. SEP 26 1984

Title Order No. 8410193 Earrow No. 7567

FEE \$4 0

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

(12)

The undersigned declares that the documentary transfer tax is \$1,054.90 and is  
 computed on the full value of the interest or property conveyed, or is  
 computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale. The land, tenements or realty is located in  
 unincorporated area  city of Burbank and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged.

GILBERT SOMERFIELD and ELEANOR SOMERFIELD, husband and wife

hereby GRANT(S) to HELVIN K. SQUIRES and BARBARA JEAN SQUIRES, husband and wife as Community Property

the following described real property in the City of Burbank county of Los Angeles state of California:

Lot 9 of Tract 6311, in the City of Burbank, as per map recorded in Book 67, Page 2 of Maps, in the office of the County Recorder of said County.

EXCEPT the Southeasterly 165 feet thereof.

Dated September 13, 1984

*Gilbert Somerfield*  
Gilbert Somerfield  
*Eleanor Somerfield*  
Eleanor Somerfield

STATE OF CALIFORNIA  
COUNTY OF Los Angeles  
On this the 18th day of September 1984  
Notary Public in and for said County and State, personally appeared  
ELEANOR SOMERFIELD

to 8/ before me the undersigned, a  
GILBERT SOMERFIELD and

personally known to me or proved to me on the basis of satisfactory evidence to be the person, whose name is subscribed to the within instrument and acknowledged that he executed the same.

*Martha Hinojosa*  
Signature of Notary

FOR NOTARY SEAL OR STAMP  
OFFICIAL SEAL  
MARTHA HINOJOSA  
NOTARY PUBLIC - CALIFORNIA  
LOS ANGELES COUNTY  
My Commission Expires Nov. 9, 1985  
Assessor's Parcel No.

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name: See above Street Address: City & State:

# **EXHIBIT 10**

RECORDING REQUESTED BY

85 349305

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO

NAME M.A.G. INVESTMENTS LTD.  
ADDRESS c/o Commercial Inspection Service  
156 West Providencia Avenue  
CITY & STATE Burbank, California 91502  
ZIP

RECORDED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
21 MIN. PAST 2 P.M. MAR 29 1985

Title Order No. Escrow No.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

# Quitclaim Deed

FEE \$5

The undersigned declares that the documentary transfer tax is \$ -0- and is  
 computed on the full value of the interest or property conveyed, or is  
 computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale. The land, tenement, or realty is located in  
 unincorporated area  city of Burbank

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Melvin K. Squires and Barbara Jean Squires

do hereby remise, release and forever quitclaim to

M.A.G. INVESTMENTS, LTD.

the following described real property in the City of Burbank county of Los Angeles state of California:

Lot 9 of Tract 6311, in the City of Burbank, as per map recorded in Book 67, Page 2 of maps in the office of the County Recorder of said County.

Except the Southeasterly 165 feet thereof.

Documentary transfer tax of \$1,054.90 paid through escrow and recorded 9/26/84 (#84-1157178)

Dated October 23, 1984

*Melvin K. Squires*  
MELVIN K. SQUIRES  
*Barbara Jean Squires*  
BARBARA JEAN SQUIRES

STATE OF CALIFORNIA }  
COUNTY OF Ventura } SS.  
On October 23, 1984 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Melvin K. Squires and Barbara Jean Squires\* \* \* \* \*

known to me to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged that they executed the same.

*Ann Marie Lo Monaco*  
Signature of Notary

FOR NOTARY SEAL OR STAMP  
OFFICIAL SEAL  
ANN MARIE LO MONACO  
NOTARY PUBLIC - CALIFORNIA  
PRINCIPAL OFFICE IN  
VENTURA COUNTY  
My Commission Exp. Dec. 25, 1984

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name Street Address City & State

L-11-A (G.S.) (Rev. 8.75) (8 pt)

# **EXHIBIT 11**

97 903615

RECORDING REQUESTED BY

ORDER # **OLD REPUBLIC TITLE COMPANY**  
APN

WHEN RECORDED MAIL TO

Mr. Mel Squires  
MAG Investments  
156 W. Providencia Ave.  
Burbank, CA 91502

RECORDED/FILED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
JUN 18 1997 AT 8 A.M.

FEE \$19 8  
3

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AON: 2746-11-29

### Grant Deed

The undersigned Grantor(s) declare(s):

Documentary transfer tax is \$ None\*

- computed on full value of property conveyed, or
- computed on full value less value of liens and encumbrances remaining at time of sale.
- Unincorporated area:  City of Los Angeles (AA)
- Realty not sold.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

MAG Investments, Ltd., a California General Partnership, who erroneously acquired Title as M.A.G. Investments, Ltd.

hereby GRANT(S) to MAG Investments, Ltd., a California General Partnership

that property in Los Angeles County, State of California, described as:  
LOT 9 OF TRACT NO. 6311. IN THE CITY OF BURBANK, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 67 PAGE(S) 2 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, EXCEPT THE SOUTHEASTERLY 165 FEET THEREOF.

\* "This conveyance confirms a change of name, and the Grantor and Grantee are the same party. (Rev. Stat. 11911).

Mail tax statements to MAG Investments, 156 W. Providencia Ave., Burbank CA 91502

Date June 11, 1997  
STATE OF CALIFORNIA  
County of Los Angeles ss.  
On June 11, 1997 before me,  
the undersigned, a Notary Public in and for said State,  
personally appeared Melvin K. Squires  
Arthur Rios, and George Otankz

MAG INVESTMENTS, LTD.  
Melvin K. Squires  
By: MELVIN K. SQUIRES, General Partner

Arthur Rios  
By: ARTHUR RIOS, General Partner

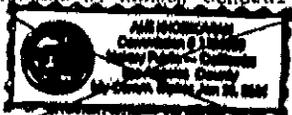
George Otankz, Jr.  
By: GEORGE OTANKZ, JR., General Partner

Charles S. Kress  
By: CHARLES S. KRESS, General Partner

personally 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 the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Allis Shoscow  
Notary Public in and for said County and State  
(Notary's name must be typed or legibly printed)



ORT 151 (1/94)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

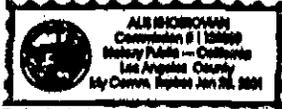
191505-46

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California  
County of Los Angeles  
On JUNE 11, 1997 before me, ALIS KHOSROVIAN  
Name and Title of Officer (e.g., Jane Doe, Notary Public)  
personally appeared MELVIN K. SQUIRES, ARTHUR KOS, & GEORGE CHANEZ, JR.  
Name(s) of Signer(s)

personally known to me  
 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 the entity upon behalf of which the person(s) acted, executed the instrument).



WITNESS my hand and official seal.

*Alis Khosrovian*  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: GRANT DEED

Document Date: JUNE 11, 1997 Number of Pages: ONE

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Individual  
 Corporate Officer  
Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Attorney-in-Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Individual  
 Corporate Officer  
Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Attorney-in-Fact  
 Trustee  
 Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer is Representing: \_\_\_\_\_

97 903615

STATE OF OREGON,

County of LANE

97 903615

FORM No. 21—ACKNOWLEDGMENT,  
Stevens-Hell Law Publishing Co. 111  
Portland OR 97204 25, 1992

BE IT REMEMBERED, That on this 12TH day of JUNE, 1997,  
before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within  
named CHARLES S. KRESS  
known to me to be the identical individual described in and who executed the within instrument and  
acknowledged to me that HE executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed  
my official seal the day and year last above written.



Jane A. Kress  
Notary Public for Oregon  
My commission expires 2-26-98

1 ELKINS KALT WEINTRAUB REUBEN GARTSIDE LLP  
KENNETH A. EHRLICH, State Bar No. 150570  
2 C. J. LAFFER, State Bar No. 260546  
2049 Century Park East, Suite 2700  
3 Los Angeles, California 90067-3202  
Telephone: 310.746.4400  
4 Facsimile: 310.746.4499  
Email: kehrlich@elkinskalt.com  
5 claffer@elkinskalt.com

6 Attorneys for Petitioner Night-Prov, LLC

7  
8 STATE WATER RESOURCES CONTROL BOARD

9  
10  
11 In the Matter of Appeal of Order No. R4-  
12 2014-0029 Issued to Night-Prov LLC for  
156 West Providencia Avenue, Burbank,  
13 California.

**DECLARATION OF MICHAEL S.  
NIGHTINGALE IN SUPPORT OF  
NIGHT-PROV, LLC'S PETITION FOR  
REVIEW, REQUEST FOR HEARING,  
AND REQUEST FOR STAY**

**FILED CONCURRENTLY WITH  
PETITION FOR REVIEW, REQUEST  
FOR HEARING, REQUEST FOR STAY,  
AND DECLARATION OF KENNETH A.  
EHRLICH**

**DECLARATION OF MICHAEL S. NIGHTINGALE**

I, MICHAEL S. NIGHTINGALE, declare and state as follows:

1. I am a Managing Member of petitioner Night-Prov, LLC ("Petitioner") and President and Chief Executive Officer of Nightingale Enterprises Inc. ("Nightingale"). I submit this declaration in support of Petitioner's Petition to the State Water Resources Control Board (the "SWRCB") appealing the issuance of Order No. R4-2014-0029 (the "Order") and Petitioner's Request for Stay. The following facts are based on my own personal knowledge and/or from my review of the file in this matter, and if called to testify as a witness, I could and would testify competently to such facts.

2. Petitioner acquired title to the real property located at 156 West Providencia Avenue, Burbank, California ("Property") from MAG Investment, Ltd. on January 12, 2005. A true and correct copy of the Grant Deed for the Property evidencing such conveyance is attached as Exhibit 1.

3. Nightingale has used the Property solely as a music recording and rehearsal studio since January 2002, long after the cessation of any alleged operations at the Property involving the use or storage of chromium at the Property. Neither Petitioner nor Nightingale have ever conducted any operations or taken any actions on the Property involving the handling, storage, transport, disposal or discharge of heavy metals or other hazardous waste, including chromium or chromium containing compounds. No evidence exists of any heavy metal discharges at the Property caused by Petitioner or during Petitioner's ownership of the Property. Nightingale's studio operations solely consist of the renting of studio space and musical instruments for rehearsing and recording music.

4. Nightingale is a lessee of the Property. Nightingale is not, nor has it even been, the owner of the Property.

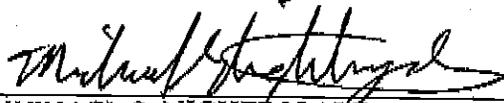
5. Petitioner and Nightingale have no association or affiliation with Commercial Inspection Services, Inc. ("CIS"), MAG, Melvin K. Squires and Barbara Jean Squires, or M.A.G. Investments, Ltd.

ELKINS KALT WEINTRAUB REUBEN GARTSIDE LLP  
2049 Century Park East, Suite 2700  
Los Angeles, California 90067-3202  
Telephone: 310.746.4400 • Facsimile: 310.746.4499

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed July 16, 2014, at Los Angeles, California.

  
MICHAEL S. NIGHTINGALE

# **EXHIBIT 1**

This page is part of your document - DO NOT DISCARD

05 0187480

RECORDED/FILED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
01/26/05 AT 08:00am

TITLE(S) : DEED



FEE

FEE \$19 U  
5

D.T.T

1350.80

CODE  
20

CODE  
19

CODE  
9

NOTIFICATION SENT \$40

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

2451 - 002 - 019

001

THIS FORM NOT TO BE DUPLICATED

2

RECORDING REQUEST BY

WHEN RECORDED MAIL TO

NAME

NIGHT-PROY LLC

MAILING ADDRESS

156 W. Providence

CITY, STATE ZIP CODE

Burbank, CA

05 0187480

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

Deed

1/26/05

05 0187480

J

RECORDING REQUESTED BY  
LANE AMERICA - LAWYERS TITLE

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE  
SHOWN BELOW, MAIL TAX STATEMENT TO

NIGHT-PROV, LLC  
156 W. Providencia Ave.  
Burbank, CA 91502

Escrow No. 3-60459-2  
Title Order No. 09500078-68

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### Grant Deed

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

Tax Parcel No. 2451-002-019

12

DOCUMENTARY TRANSFER TAX IS \$ 1,350.80

computed on full value of property conveyed, or  
 computed on full value less value of liens or encumbrances remaining at time of sale,

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
MAG INVESTMENTS, LTD., A California General Partnership

Hereby GRANT(S) to  
NIGHT-PROV, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

The following described real property in the County of Los Angeles, State of California  
Lot 9 of Tract No. 6311, in the City of Burbank, County of Los Angeles, State of California, as per  
map recorded in Book 67, Page 2 of Maps, in the office of the County Recorder of said County.  
EXCEPT the Southeasterly 165 feet thereof.

DATED. January 12, 2005

MAG INVESTMENTS, LTD, A CALIFORNIA GENERAL PARTNERSHIP

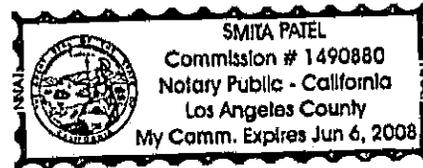
X Art Rios  
ART RIOS, General Partner

STATE OF CALIFORNIA  
COUNTY OF Los Angeles  
ON January 18 2005 before me the undersigned, personally appeared  
ART RIOS

Personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is 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 the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal

Signature: [Signature]



FILED IN COUNTY CLERK'S OFFICE

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name Street Address City & State

1/26/05

4

RECORDING REQUESTED BY  
LAND AMERICA - LAWYERS TITLE

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Title Order No 09500078-68

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Tax Parcel No 2451-002-019

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DATED: January 12, 2005

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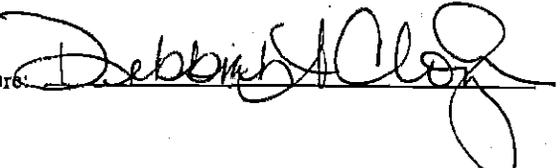
  
 \_\_\_\_\_  
 CHARLES S. KRESS, General Partner

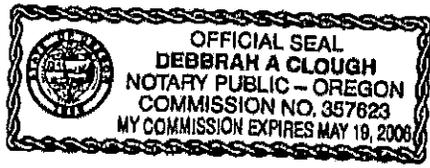
STATE OF CALIFORNIA *Oregon*  
 COUNTY OF *Lane*  
 ON *1-14-05*  
 CHARLES S. KRESS

before me the undersigned, personally appeared

Personally 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 the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature: 



05 0187480

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Name \_\_\_\_\_ Street Address \_\_\_\_\_ City & State \_\_\_\_\_

1/26/05

5

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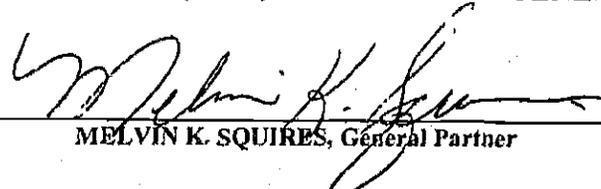
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
MAG INVESTMENTS, LTD., A California General Partnership

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MAG INVESTMENTS, LTD, A CALIFORNIA GENERAL PARTNERSHIP

X   
 \_\_\_\_\_  
 MELVIN K. SQUIRES, General Partner

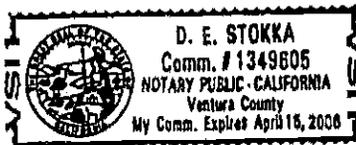
STATE OF CALIFORNIA  
COUNTY OF VENTURA

ON JANUARY 14, 2005 before me the undersigned, personally appeared  
MELVIN K. SQUIRES

Personally 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 the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature: 



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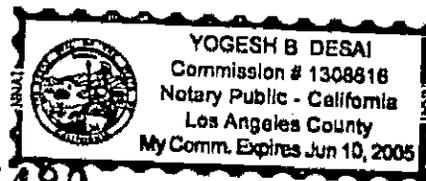
X   
 \_\_\_\_\_  
 GEORGE OTANEZ, General Partner

STATE OF CALIFORNIA  
COUNTY OF LOS-ANGELES  
ON JAN. 14<sup>th</sup> 2005 before me the undersigned, personally appeared  
GEORGE OTANEZ

Personally 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  
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Signature:  \_\_\_\_\_



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