

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESOLUTION NO. R2-2005-0016

AUTHORIZING THE EXECUTIVE OFFICER
TO ENTER INTO AN AGREEMENT FOR MUTUAL RELEASE AND COVENANT NOT TO
SUE WITH LOWE'S HIW, INC., FOR PROPERTY LOCATED AT 811 EAST ARQUES
AVENUE, SUNNYVALE, SANTA CLARA COUNTY, CALIFORNIA

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

1. **Site:** Philips Electronics North America Corporation ("Philips"), which was previously known as Signetics, Inc., currently owns the property located at 811 Arques Road, Sunnyvale, Santa Clara County, California, comprising approximately 15.07 acres, as more particularly described on Attachment 1 (the "Arques Property").
2. **Cleanup Requirements:** Philips is required under Order No. 91-104 adopted by the Water Board on June 19, 1991 (the "Cleanup Order") to investigate and remediate the Signetics Operable Unit ("Signetics OU"), which includes the Arques Property. Philips is also required under the Cleanup Order to jointly (along with Advanced Micro Devices Inc. ("AMD") and TRW Microwave ("TRW")) investigate and remediate the groundwater plume that has migrated from the Signetics OU offsite and has commingled with offsite groundwater plumes from sites owned by AMD and TRW (referred to in the Cleanup Order as the "Offsite Operable Unit" or "Offsite OU"). AMD and TRW are required under separate cleanup orders issued by the Water Board to investigate and remediate the sites owned by AMD and TRW and the Offsite OU.
3. **Remediation Accomplished:** In 1982, a leak in an underground waste solvent storage tank located west of the building located at the Arques Property was identified as a source area. A second source area was subsequently identified near wastewater neutralization tanks which were located on the north side of the building located at the Arques Property. Impacted soil in these two source areas was excavated in 1982 and 1987 and disposed offsite. Philips commenced a groundwater sampling program in 1982 to monitor the effectiveness of the groundwater remediation program and verify containment of the groundwater plume. Chemicals have been detected in the upper four aquifers at the Arques Property. Chemicals have not been detected in the deeper aquifers that are used for public water supply. Philips has implemented a groundwater remediation program consisting of two extraction trenches, two basement dewatering sumps, numerous groundwater extraction wells, numerous groundwater monitoring wells

and a groundwater treatment system. Philips has been pumping and treating the groundwater from the Arques Property since the 1980's. Philips pipes the groundwater extracted from the Arques Property to Philips's property located directly to the north at 440 North Wolfe Road (the "Wolfe Property") for treatment. The treated groundwater is reused at the Arques Property and the Wolfe Property or discharged from the Wolfe Property to the stormwater system. In 1988, Philips installed a soil vapor extraction system in the area north of the building located on the Arques Property and operated the system until 1996 when it was determined that the system was no longer providing significant removal of chemicals.

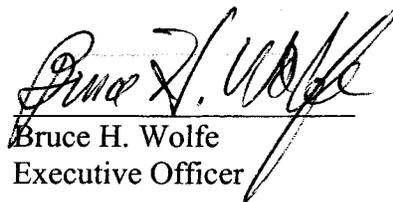
4. **Demolition and Remediation to be Conducted Prior to Redevelopment:** Philips conducted a soil-gas survey and soil investigation in August 2004 to evaluate and locate any remaining contaminated soils that might exist within the areas surrounding the existing buildings. Low level soil-gas plumes were observed. Soil samples were taken in these areas. All soil sample results were well below the 1mg/kg soil cleanup level for volatile organic compounds ("VOCs") specified in the Cleanup Order, and below the Water Boards's current Environmental Screening Levels for TCE and PCE. The results are summarized in the report prepared by Locus Technologies, "Soil-Gas and Soil Investigation, 811 East Arques Avenue" (November 2004). On January 24, 2005, Philips submitted a Demolition Plan, Remediation Plan and Risk Management Plan to the Water Board for approval. After allowing a 30-day period for public review, the Water Board approved these plans on March 28, 2005. In accordance with these approved plans, Philips will commence demolition of the buildings located at the Arques Property and all other improvements in accordance with the Demolition Plan. Philips will remediate any contaminated soil or groundwater that is encountered in connection with the demolition and will relocate groundwater monitoring wells and extraction wells located within the footprint of the Lowe's building, in accordance with the Remediation Plan.
5. **Redevelopment Plans:** Lowe's HIW, Inc. ("Lowe's") plans to purchase the Arques Property from Philips. After Philips has completed demolition and remediation, Lowe's intends to commence construction of a home improvement center on the Arques Property. Lowe's may sell or lease portions of the Arques Property to other retail businesses.
6. **Continuing Remediation Obligations of Philips:** After Philips transfers the Arques Property to Lowe's, Philips will continue to satisfy its obligations under the Cleanup Order, including its obligations to conduct groundwater remediation with respect to the Signetics OU (which includes the Arques Property) and the Offsite OU. Philips will continue to pipe any contaminated groundwater that is extracted from the Arques Property to the Wolfe Property for treatment. Lowe's is not undertaking any soil or groundwater remediation obligations with respect to the Arques Property or any of Philips's obligations under the Cleanup Order.

7. **Deed Restriction:** Pursuant to the Cleanup Order, a Deed of Restriction for Use of Property was recorded against the Arques Property on October 22, 1992 (the "Deed Restriction"). The existing Deed Restriction restricts the use of the upper aquifer groundwater as a source of drinking water and is binding upon successors. The Deed Restriction is attached as Attachment 4. The Water Board intends to modify the Deed Restriction to prohibit future use of the property for sensitive purposes (residences, hospitals, day care centers, etc.) until site cleanup goals have been met.
8. **Lowe's Request:** Lowe's seeks a commitment from the Water Board that it will not name Lowe's, its parent, its affiliates, or any of their officers, directors, shareholders, employees, partners, partnerships, representatives, agents, tenants, lenders and their respective successors and assigns as dischargers or responsible parties in any Water Board enforcement order with regard to existing known conditions of contamination, solely by virtue of being involved in the purchase and redevelopment of the Arques Property. Specifically, Lowe's requests that the Water Board issue a Mutual Release and Covenant Not to Sue ("Mutual Release") to Lowe's for the Arques Property, as set forth in Attachment 1. Without this assurance from the Water Board, Lowe's states that it is not willing to purchase and redevelop the Arques Property. Lowe's also requests that the Water Board revise the notice requirement at Section 3.04 to be consistent with the Mutual Release. The proposed modifications to the Deed Restriction, to be recorded against the Arques Property, are attached as Attachment 5 (the "Revised Deed Restriction").
9. **Board Authority:** Pursuant to Water Code section 13304, the Water Board has authority to enter into agreements whereby the Water Board covenants not to name prospective purchasers, tenants, lenders, and related parties in enforcement actions for known conditions of contamination. For instance, the Water Board may enter into such agreements if it is sufficiently in the public interest to warrant expending public resources necessary to reach such an agreement.
10. **Benefits of Redevelopment:** From approximately 1964 to 1999, Philips operated a semiconductor manufacturing facility at the Arques Property. Manufacturing ceased in approximately 1999. The Arques Property is currently underutilized. Redevelopment of the Arques Property would have economic and social benefits to the local community and to the public at large. The construction of a home improvement center on the site would create approximately 180 jobs, with increased payroll, sales and income taxes accruing to the State and the City of Sunnyvale.
11. **CEQA:** The purchase of the Arques Property is not an activity that requires Board approval. Furthermore, neither the Arques Property transaction nor the Water Board's approval of the Mutual Release is a "project" as defined by Public Resources Code Section 21065 and 14 CCR 15378(a) such that the California Environmental Quality Act ("CEQA") applies.

12. **Public Notice:** The Water Board provided notice of its intention to consider this matter at the April 20, 2005 Water Board meeting and provided an opportunity for interested persons to comment on the draft resolution and its attachments.
13. **Public Hearing:** The Water Board, at a public meeting held on April 20, 2005 heard and considered all comments pertaining to this matter.

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

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on April 20, 2005.


Bruce H. Wolfe
Executive Officer

- Attachment 1: Mutual Release and Covenant Not to Sue
- Attachment 2: Written Instrument of Release and Transfer Document
- Attachment 3: Legal Description of Property

**California Regional Water Quality Control Board
San Francisco Bay Region
Attachment 1 to Resolution No. R2-2005-0016
Mutual Release and Covenant Not To Sue**

I. Introduction

This **Mutual Release and Covenant Not to Sue** ("Mutual Release") is provided in response to a request by the prospective purchaser, Lowe's HIW, Inc. ("Buyer" or "Lowe's"), a Washington corporation and pursuant to San Francisco Bay Regional Water Quality Control Board ("Water Board") Resolution No. R2-2005-0016 ("Resolution") authorizing its Executive Officer to finalize negotiations and sign the Mutual Release concerning the Signetics Facility located at 811 Arques Avenue, Sunnyvale, California ("Property").

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

II. Definitions.

For purposes of this Mutual Release, "Known Conditions" or "Known Condition" means all conditions of pollution in, at, under, originating from or migrating onto or off of the Property or any portion thereof, that were known to the Water Board as of the date that Seller completes site demolition and associated remedial investigations, or 120 days after close of escrow, whichever occurs first. The phrase "known to the Water Board" refers to information regarding pollution in, at, under, originating from or migrating onto or off of the Property, or any portion thereof, that was disclosed to the Water Board or is reasonably discernible from the information contained in the Resolution, Order No. 91-104 adopted by the Water Board on June 19, 1991 (the "Cleanup Order") or the reports, investigations, workplans, or any other information submitted to the Regional Board prior to the date that Seller completes demolition and associated remedial investigations, or 120 days after close of escrow, whichever occurs first. With respect to any claim, cause of action, investigation, or enforcement action asserted or required by the Water Board, the Released Parties shall bear the burden of proving to the Water Board that the condition of pollution at, under, or originating from the Property for which the Water Board is pursuing a claim, cause of action, investigation or enforcement action is a Known Condition.

III. Findings of Fact

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

1. The Property is within the jurisdiction of the Water Board due to the Known Conditions and is subject to the provisions of the Cleanup Order. The Water Board enters into this Agreement pursuant to California Water Code Sections 13000 et seq. The Water Board may release and covenant not to sue or assert claims for environmental investigation or remediation or other related claims against prospective purchasers, and related parties, of environmentally impacted properties, especially where, as here, the agreement is sufficiently in the public interest.
2. Philips Electronics North America Corporation ("Philips"), the current owner of the Property, will complete any necessary cleanup of soils or other surface contamination as necessary to remove any hotspots encountered to at least the cleanup levels specified in the Cleanup Order during demolition and grading activities, in accordance with the Demolition Plan, Remediation Plan and Risk Management Plan, all dated January 24, 2005, and approved by the Water Board on March 28, 2005. No further soil cleanup is required or anticipated with respect to the Known Conditions, based on a risk assessment performed using the Water Board-approved soil and groundwater screening levels. Small amounts of residual contamination will continue to exist at the site in soil after the demolition and redevelopment is complete; however, the concentrations are low enough to not present an unacceptable risk to human health, with the new improvements acting as a cap to prevent human contact with the remaining contaminants, and the Water Board's approval of a deed restriction and implementation of institutional controls. Philips will continue to satisfy its obligations under the Cleanup Order, including its obligations to conduct groundwater remediation with respect to the Property and the offsite groundwater plume.
3. Pursuant to the Cleanup Order, a Deed of Restriction for Use of Property was recorded against the Arques Property on October 22, 1992 (the "Deed Restriction"). The Deed Restriction restricts the use of the upper aquifer groundwater as a source of drinking water and is binding upon successors.
4. No active discharge of pollutants is believed to be currently occurring on the Property.
5. The Released Parties are not responsible parties or affiliated with a responsible party for the Known Conditions, and were not prior to April 22, 2005, an owner of the Property. The sole interest of Buyer in the Property is to purchase and redevelop the Property.
6. Buyer has arranged for the redevelopment of the Property to a productive use that will benefit the public and the community. Benefits include economic and social benefits to the local community and to the public at large. The construction of a home improvement center on the site would create approximately 180 jobs, with increased payroll, sales and income taxes accruing to the State and the City of Sunnyvale.
7. By entering into this Agreement, Buyer certifies that to the best of its knowledge and belief, it has fully and accurately disclosed to the Regional Board any and all information

known to its officers, directors, employees, contractors and agents about pollution and/or contamination of the Property.

8. The Property is not the subject of active enforcement actions or agreement(s) with another agency to address the residual pollution at the site.
9. Buyer will pay for all reasonable costs associated with the Water Board's development and oversight of this Mutual Release pursuant to the California Water Code.
10. This Mutual Release is consistent with the goals and purposes of the Porter-Cologne Act and the federal Clean Water Act.
11. In order to ensure that no activities at the Property, with the exercise of due care, will aggravate, contribute to or create a condition of pollution or nuisance as a result of the Known Conditions, this Mutual Release requires the application of acceptable institutional controls to the Property as more fully set forth below.

IV. Agreement

1. In accordance with the Resolution, the Water Board expressly finds that the Released Parties shall not be liable or otherwise responsible for such Known Conditions and hereby covenants and agrees not to initiate, bring, or support any claim (including without limitation any claim for natural resource damages), order, demand, enforcement action or other civil or administrative proceeding against the Released Parties or their respective successors and assigns with respect to such Known Conditions under any local, state or federal statute, common law, or equitable doctrine, including but not limited to, in their entirety, the United States Code, the various California Codes, or other applicable laws, regulations, ordinances, or civil, judicial or administrative authorities, having application to the handling, release, presence, migration to, through or from, cleanup, containment or maintenance of the Known Conditions at, on, under or originating from or migrating to the Property, or any portion thereof. This Mutual Release shall inure to the benefit of, and pass with each and every portion of the Property and shall benefit any respective successors and assignees of the Released Parties, provided such successors and assignees did not cause or contribute to the Known Conditions and provided further each Released Party that is not a signatory to this Mutual Release executes a written instrument in the form of Attachment 2 hereof.
2. This Release shall remain effective notwithstanding the revocation or modification of the Resolution or the Cleanup Order, and shall be without prejudice to the ability of the Water Board to take action against any party other than the Released Parties, relating to the investigation, cleanup, or cost of investigation or cleanup of the Known Conditions. Nothing contained in this Mutual Release is intended to waive, limit, preclude, diminish or hinder any right of the Released Parties now or in the future available in law, equity, or by agreement.
3. Notwithstanding any other provisions of this Mutual Release, the Water Board reserves the right to assert any claims, enforcement actions or other civil or administrative proceeding against the respective Released Parties arising after the Effective Date which

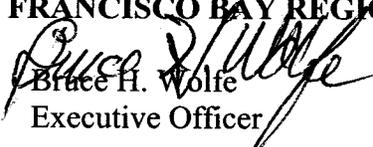
are based on the failure of the respecting Released Parties, to the extent they have control over the Property; to (i) exercise due care at the Property with respect to the Known Conditions, (ii) comply with the requirements and conditions of the Mutual Release, (iii) comply with the Deed Restriction,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

4. This reservation by the Water Board shall be separately and distinctly applied with respect to each of the Released Parties, the intent being that failure by a particular Released Party to comply with any applicable requirement shall not render the Water Board's covenant inapplicable to any other Released Party. Nothing contained in this Mutual Release shall be deemed a waiver of, or a release by, any Released Party of any defense, cross-claim, counterclaim, offer or other rights available to such Released Party in response to any claim, order, demand, enforcement action or other civil or administrative proceeding by the Water Board.
5. In partial consideration therefore, the Released parties, on behalf of themselves and their respective successors in interest, hereby release and covenant not to sue the Water Board, its authorized officers, employees or representatives, with respect to any and all liability or claims associated with or arising out of the Known Conditions.
6. The Mutual Release shall not prohibit the Water Board from asserting any claim, enforcement action, or other civil or administrative proceeding related to any condition of pollution at, under, or originating from the Property that are not Known Conditions.
7. Each Released Party not represented as a signatory below shall, as a precondition to receiving the benefits conferred by this Mutual Release, execute a written instrument in the form attached to the Resolution. Execution and mailing of Attachment 2 to the Water Board by or on behalf of any corporation, partnership, or other entity, shall be sufficient to confer the benefits of the Mutual Release upon all affiliates, parent or subsidiary corporations, and the respective directors, officers, employees, partners, members, agents successors, and assigns of each such entity.
8. The Released Parties further agree to exercise due care at the Property with respect to the Known Conditions, to comply with the Deed Restriction, as revised, to comply with the Risk Management Plan, to comply with all applicable local, state, and federal laws and regulations regarding the Property, and to cooperate in providing the Board and Philips or

its successors or assigns reasonable access to the Property for any necessary monitoring purposes and any necessary operation, maintenance, and repair of wells and remediation facilities.

9. This Mutual Release shall be in full force and effect from the Effective Date. The Effective Date shall be April 20, 2005. Buyer shall have ninety (90) days from adoption of the Resolution to record the Mutual Release and Revised Deed Restriction against the Property, provided that such ninety (90) day period shall be extended by the period of time required by the Executive Officer to fully execute the Mutual Release and Revised Deed Restriction. A copy of the recorded Mutual Release and recorded Revised Deed Restriction shall be provided to the Water Board within twenty (20) days of the recording. The Water Board shall provide acknowledgement of receipt of the recordings as required by this paragraph. Notwithstanding anything to the contrary in the foregoing, if Buyer or its successor(s) fails to record the Mutual Release (in its entirety) within the time frame set forth above, and the Water Board or Executive Officer in its discretion does not extend the time, this Mutual Release shall automatically terminate.
10. This Mutual Release may be executed in one or more counterparts, each such counterpart being deemed an original but all counterparts constituting a single instrument.
11. Each of the undersigned parties hereby certifies, and warrants that he or she is authorized to bind his or her agency or entity to the continuing obligations described herein.

**CALIFORNIA REGIONAL WATER QUALITY BOARD
SAN FRANCISCO BAY REGION**

By: 
Bruce H. Wolfe
Executive Officer

Date: May 3, 2005

ATTEST:

**LOWE'S HIW, INC.,
a Washington corporation**

By: _____

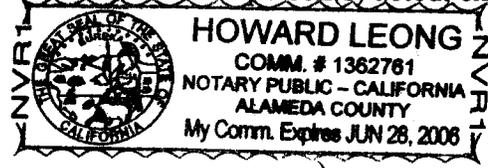
Date: _____

ATTEST:

STATE OF CALIFORNIA)

COUNTY OF ALAMEDA)^{SS.}

On the 3 day of MAY, 2005, before me
HOWARD LEONG, a notary public in and for such County and State, personally
appeared _____ and
BRUCE H WOLFE, known to me or proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or
entity upon behalf of which the person(s) acted, executed the instrument.



Howard Leong
Notary Public

STATE OF _____)
: SS.
COUNTY OF _____)

On the _____ day of _____, 2005, before me
_____, a notary public in and for such County and State, personally
appeared _____ and
_____, known to me or proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or
entity upon behalf of which the person(s) acted, executed the instrument.

Notary Public

**California Regional Water Quality Control Board
San Francisco Bay Region
Attachment 2 to Resolution No. R2-2005-0016
Written Instrument of Release And Transfer Document**

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

1. Released Party has read the Mutual Release and Covenant Not to Sue ("Mutual Release") document, ("Mutual Release") and the related Regional Water Quality Control Board (Water Board) Resolution No. _____ recorded in Book ____, Page _____ in _____ County, California for the "Property," formerly the Signetics facility, located at 811 Arques Avenue, Sunnyvale, California.

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

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

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

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

This Instrument of Release and Transfer Document shall be effective upon execution by the Released Party. Within three days of execution, Released Party agrees to mail a copy of the executed Release to: Executive Officer, Regional Water Quality Control Board, San Francisco Bay Region (address as of April 20, 2005, is 1515 Clay Street, Suite 1400, Oakland, CA 94612).

Authorized Signature (Released Party)

Date

Name/Title: _____

Company Name/Address:

**California Regional Water Quality Control Board
San Francisco Bay Region
Attachment 3 to Resolution No. R2-2005-0016**

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

The following described land situated in the County of Santa Clara, State of California:

Parcel 3, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on August 5, 1991 in Book 629 of Maps, Pages 29 and 30.