

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

TENTATIVE RESOLUTION NO. R2-2005-00XX

AUTHORIZING THE EXECUTIVE OFFICER
TO ENTER INTO AN AGREEMENT FOR MUTUAL RELEASE AND COVENANT NOT TO
SUE WITH SUMMIT COMMERCIAL PROPERTIES, INC., FOR THE PROPERTY AT 901
AND 902 THOMPSON PLACE, SUNNYVALE, SANTA CLARA COUNTY

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

- 1. Site:** Advanced Micro Devices, Inc. ("AMD") owned the property located at 901 and 902 Thompson Place, Sunnyvale, Santa Clara County, California, comprising approximately 3.37 acres, as more particularly described in Exhibit B (the "Thompson Property"). On May 20, 2005, AMD sold the Thompson Property to Westcore Properties II, LLC ("Westcore").
- 2. Cleanup Requirements:** AMD is required under Order No. 91-102, adopted by the Water Board on June 19, 1991 (the "Cleanup Order") to investigate and remediate the Thompson Property.
- 3. Remediation Accomplished:** The Thompson Property was developed during the period between about 1968 and 1973. AMD occupied the buildings from the early 1970s through about 1994 and it has been vacant since that time. AMD used the buildings for semi-conductor manufacturing and associated administration/office uses. Contamination of groundwater reportedly resulted from localized spills and leaking underground storage tanks and piping. In the mid-1980s, approximately 100 cubic yards of highly contaminated soil were reportedly excavated from the area north of Buildings 901 and 902. In addition, groundwater extraction and treatment was initiated in 1983. In about 1991, approximately 40 cubic yards of contaminated soil were removed from an area north of Buildings 901 and 902 in the vicinity of the former acid neutralization system. EPA has reported that construction of all cleanup remedies at the Thompson Property is "complete" and that "the removal of underground tanks, contaminated soil and ongoing operation of the groundwater treatment system is helping to keep the contaminant levels within acceptable limits and is preventing the further spread of contaminants". In 1993, the Agency for Toxic Substances & Disease Registry and the California Department of Health Services concluded that the Thompson Property is not an apparent public health hazard.

A Five-Year review report prepared by the Water Board in September 2004 concluded that the groundwater extraction system was ongoing and maintaining hydraulic control of the plume and had significantly reduced volatile organic compounds (VOCs) in groundwater by approximately one order of magnitude. However, it concluded that the system was unlikely to achieve the cleanup goals for groundwater in a reasonable period of time. The review

recommended evaluation of alternative technologies. The consultant therefore recommended that AMD evaluate enhanced in-situ bioremediation for removing VOC from groundwater. AMD recently started implementing enhanced in-situ bioremediation technology at this site.

A pilot study for in-situ bioremediation was conducted from 2002 to 2004. As a result, it was recommended that AMD inject a carbohydrate source (molasses or corn syrup) to develop an in-situ anaerobic reductive zone to promote natural biological processes. The Water Board concurred with the conclusions and agreed with the recommendation to implement enhanced bioremediation. A work plan was submitted in February, 2005 and approved for implementation by the Water Board on April 11, 2005. The implementation of the bioremediation program is currently in progress.

AMD will monitor the effectiveness of the groundwater remediation program and assess containment and cleanup of the groundwater plume.

4. Demolition and Remediation to be Conducted Prior to Redevelopment: As noted above there is ongoing groundwater extraction at the Thompson Property, and AMD is planning to install an enhanced in-situ bio-remediation system. The prospective purchaser, Summit Commercial Properties, Inc., or its assignee (“Summit”) is preparing a Soil Management Plan to be approved by the Water Board before any demolition takes place. In accordance with this approved plan, Summit will commence demolition of the buildings located at the Thompson Property and all other improvements in accordance with the Soil Management Plan. AMD will remediate any contaminated soil or groundwater that is encountered in connection with the demolition as required by Cleanup Order and the Environmental Easement Agreement.

5. Redevelopment Plans: Summit plans to purchase the Thompson Property from Westcore. Westcore purchased the property from AMD and has assigned all of its rights, title, and interest in and to the purchase agreement with respect to the property to Summit. After it has completed demolition and remediation, Summit intends to commence construction of a self-storage facility on the Thompson Property.

6. Continuing Remediation Obligations of AMD: On May 20, 2005, AMD and Westcore recorded an “Environmental Easement Agreement” regarding the Property (“Easement”). It provides, among other things, that AMD shall be responsible for performing the remedial action and pay all costs in connection with the remedial action. It also requires AMD to remove any soil or groundwater containing hazardous materials in concentrations requiring removal, which are encountered during construction activities. After Summit acquires the Thompson Property, AMD will continue to satisfy its obligations under the Cleanup Order, including its obligations to conduct groundwater remediation with respect to the Thompson Property and the other Companies located within the Offsite Operable Unit, which include TRW Microwave at 825 Stewart Drive and Philips at 811 East Arques Avenue. Summit is not undertaking any soil or groundwater remediation obligations with respect to the Thompson Property or any of AMD’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 901 Thompson on January 4, 2003, and against 902 Thompson on January 17, 1994 (the “Water Board Deed Restriction”). The Water Board Deed Restriction

restricts the use of the upper aquifer groundwater beneath the Thompson Property as a source of drinking water and is binding upon successors. On May 20, 2005, AMD recorded a “Covenant to Restrict Use of Property, Environmental Restrictions” (“AMD Deed Restriction”) against the Thompson Property. The AMD Deed Restriction prohibits sensitive uses such as residential development, hospitals, day care, or schools and, as do the prior deed restrictions, prohibits extraction of groundwater for use or purposes other than remediation. It further provides that no activities that will disturb the soil beneath the Thompson Property, such as grading, excavation, removal, etc., shall be permitted without a Soil Management Plan and a Health and Safety Plan submitted to the Water Board or other responsible governmental agency for review. It also requires that the Board and AMD be notified of excavation and similar activities.

8. Summit’s Request: Summit seeks a commitment from the Water Board that it will not name Summit, 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 Thompson Property. Specifically, Summit requests that the Water Board enter into a Mutual Release and Covenant Not to Sue (“Mutual Release”) with Summit for the Thompson Property, as set forth in Attachment 1 hereto. Without this assurance from the Water Board, Summit states that it will not be able to purchase and redevelop the Thompson Property.

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 1973 to 1994, AMD operated a semiconductor manufacturing facility at the Thompson Property. Manufacturing ceased in approximately 1994. The Thompson Property is currently underutilized. Redevelopment of the Thompson Property would have economic and social benefits to the local community and to the public at large. A Fact Sheet for Property Redevelopment is attached.

11. CEQA: The purchase of the Thompson Property is not an activity that requires Board approval. Furthermore, neither the Thompson 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 a public meeting and provided an opportunity for interested persons to comment on the tentative resolution and its attachments. The draft resolution and its attachments were mailed to the interested parties and regulatory agencies, and posted on the Water Board website.

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

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

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 _____, 2005.

Bruce H. Wolfe
Executive Officer

Attachment 1: Mutual Release and Covenant Not to Sue

**California Regional Water Quality Control Board
San Francisco Bay Region
Attachment 1 to Resolution No. R2-2005-00XX
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, Summit Commercial Property, Inc. or its assignee (“Buyer” or “Summit”), a California corporation and pursuant to San Francisco Bay Regional Water Quality Control Board (“Water Board”) Resolution No. R2-2005-00___ (“Resolution”) authorizing its Executive Officer to finalize negotiations and sign the Mutual Release concerning the AMD Facility located at 901 and 902 Thompson Place, 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 Effective Date, as defined below. 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. 91-102 adopted by the Water Board on June 19, 1991 (the “Cleanup Order”) or the reports, investigations, work plans, or any other information submitted to the Water Board as of the Effective Date. 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

The Water Board bases this Mutual Release on the following findings:

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. Advanced Micro Devices, Inc. (“AMD”), which previously owned 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 Soil Management Plan dated September 28, 2005, and approved by the Water Board on October 5, 2005. Small amounts of residual contamination may continue to exist at the Property 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. AMD 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 901 Thompson on January 4, 2003, and against 902 Thompson on January 17, 1994 (the “Water Board Deed Restriction”). The Water Board Deed Restriction restricts the use of the upper aquifer groundwater beneath the Thompson Property as a source of drinking water and is binding upon successors. On May 20, 2005, AMD recorded a “Covenant to Restrict Use of Property (Environmental Restriction)” (“AMD Deed Restriction”) against the Property. The AMD Deed Restriction prohibits sensitive uses such as residential development, hospitals, day care, or schools and, as do the prior deed restrictions, prohibits extraction of groundwater for purposes other than remediation. It further provides that no activities that will disturb the soil beneath the Property, such as grading, excavation, removal etc., shall be permitted without a Soil Management Plan and a Health and Safety Plan submitted to the Water Board or other responsible governmental agency for review. It also requires that the Water Board and AMD be notified of excavation and similar activities. The Water Board and AMD Deed Restrictions are 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 October 19, 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.

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 Water 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 Water Quality Control 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, subject to the conditions set forth in the next sentence, with respect to such Known Conditions under any local, state or federal statute, common law, or equitable doctrine, including but not limited to, in their entirety, the United States Code, the various California Codes, or other applicable laws, regulations, ordinances, or civil, judicial or administrative authorities, having application to the handling, release, presence, migration to, through or from, cleanup, containment or maintenance of the Known Conditions at, on, under or originating from or migrating to the Property, or any portion thereof. This Mutual Release shall inure to the benefit of, and pass with each and every portion of the Property and shall benefit any respective successors and assignees of the Released Parties, provided such successors and assignees did not cause or contribute to the Known Conditions and provided further each Released Party that is not a signatory to this Mutual Release executes a written instrument in the form of Exhibit A 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 respective Released Parties, to the extent they have control over the Property, to (i) exercise due care at the Property with respect to the Known Conditions, (ii) fully implement the Soil Management Plan dated September 28, 2005, (iii) comply with all the deed restrictions 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. The reservation by the Water Board set forth in Paragraph (IV)(3) above shall be separately and distinctly applied with respect to each of the Released Parties, the intent being that failure by a particular Released Party to comply with any applicable requirement shall not render the Water Board's covenant inapplicable to any other Released Party.
5. In partial consideration therefore, the Released Parties, on behalf of themselves and their respective successors in interest, hereby release and covenant not to sue the Water Board, its authorized officers, employees or representatives, with respect to any and all liability or claims associated with or arising out of the Known Conditions.
6. The Mutual Release shall not prohibit the Water Board from asserting any claim, enforcement action, or other civil or administrative proceeding related to any condition of pollution at, under, or originating from the Property that are not Known Conditions.
7. Each Released Party 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 hereto and incorporated herein by this reference as Exhibit A (the "Written Instrument of Release"). Proper and legally authorized execution and mailing of Exhibit A the Written Instrument of Release to the Water Board by or on behalf of any corporation, partnership, or other entity, shall be sufficient to confer the benefits of the Mutual Release upon all affiliates, 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 restrictions, to comply with the Soil

Management Plan, to comply with all applicable local, state, and federal laws and regulations regarding the Property, and to cooperate in providing the Water Board and AMD 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 October 19, 2005. Buyer shall have ninety (90) days from the Effective Date to record the Mutual Release, including exhibits, 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. A copy of the recorded Mutual Release 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: _____

**SUMMIT COMMERCIAL PROPERTIES, INC.,
A California corporation**

By:

_____ Date: _____

ATTEST:

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

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

Exhibit B

Legal Description of the Property in the City of Sunnyvale, County of Santa Clara, State of California
(From the County of Santa Clara Assessors Office)

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

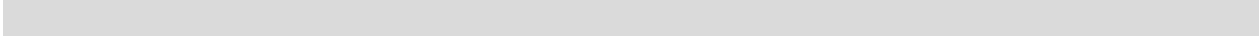
All that certain real property situation in the City of Sunnyvale, County of Santa Clara, State of California, as described as follows:

Parcel A, as shown on that Certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on August 17, 1971 in Book 288 of Maps, Page 36.

APNs: 205-26-6 and 205-26-5

Exhibit C

Fact Sheet for Property Redevelopment



Fact Sheet
Property Redevelopment
901 and 902 Thompson Place, Sunnyvale, California

September 2005

Project Description

Over the next several months, the two buildings located at 901 and 902 Thompson Place will be demolished, and a new commercial building will be constructed. Preliminary plans for construction of a self-storage facility have been submitted for approval to the City of Sunnyvale.

Environmental Conditions

The historical use of this property included facilities that used volatile organic compounds in manufacturing processes. As a result, the groundwater under the site contains detectable levels of volatile organic compounds. The groundwater is located approximately 10 to 15 feet below the ground surface. There are no locations at the site where groundwater reaches the surface, or can be directly contacted by the public. Drinking water for the site and surrounding area comes from offsite and is not affected by the chemicals in the groundwater. Contaminated soils have previously been removed from the site. If additional contaminated soils are encountered during demolition and excavation, they will be removed pursuant to a Soils Management Plan approved by the Regional Water Quality Control Board ("Water Board").

The remediation at this site is being performed with the oversight and approval of the Regional Water Quality Control Board (Water Board). Groundwater has been treated by a series of extraction wells that pump groundwater to an onsite treatment system. This cleanup activity was initiated in the early 1980's, and operated until December 2002, when pilot testing of a new groundwater treatment program was initiated. Following the successful results of the pilot study, the Water Board has approved implementation of an enhanced bio-remediation system to address remaining groundwater contamination. Advanced Micro Devices (AMD), the former owner of the property, will inject a carbohydrate source (molasses or corn syrup) to develop an in-situ anaerobic reductive zone to promote natural biological processes and expedite cleanup activities. The enhanced bioremediation system is currently under construction with an estimated startup date of October 2005. It is estimated that the system will be operated for 3 to 5 years before cleanup goals are met.



During the demolition and construction, measures will be taken to minimize noise and dust issues. The soil and air quality will be monitored throughout the project to ensure that all levels are protective of health for the onsite construction workers and the neighboring properties. Details of the monitoring activities are presented in the Soils Management Plan that is available upon request at the RWQCB offices in Oakland.

Regulatory Information

This project is being performed with the approval of the City of Sunnyvale and the Regional Water Quality Control Board (Water Board). If you have questions regarding this project, please contact City of Sunnyvale through:

Ron Staricha (RStaricha@ci.sunnyvale.ca.us)
P.O. Box 3707
Sunnyvale, CA 94088-3707
(408) 730-7100

The Water Board has been overseeing the remediation at this site for many years. If you have specific environmental questions regarding the site, please contact the Water Board through:

Max Shahbazian (MShahbazian@WaterBoards.ca.gov)
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-4824