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Recording Requested By:

Tech Facility 1, Inc.

55 Charles Lindbergh Blvd.

Uniondale, New York 11553

When Recorded, Certified Copies of the Recorded Instrument Should be Mailed To:

Regional Board Executive Officer

California Regional Water Quality Control Board

San Francisco Bay Region

2101 Webster St, Suite 500

Oakland, CA 94612

11507222

FILED AT REQUEST OF ATTORNEY AUG 20 4 09 PM '92 SANTA CLARA COUNTY LAURIE KANE RECORDER

Vincenti & Schickler

3 New York Plaza

New York, New York 10004

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RMF	28
MICRO	2
RTCF	26
LIEN	
SMPF	
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COVENANT AND AGREEMENT

TO RESTRICT USE OF PROPERTY

This Covenant and Agreement ("Covenant") is made as of the 10th day of August, 1992 by, Tech Facility 1, Inc. ("Covenantor"), which is the owner of record

of certain property situated in the city of Santa Clara, County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") for the benefit of the Property and the California Regional Water Quality Control Board, San Francisco Bay Region (the "Regional Board"), with reference to the following facts:

A. The Property is located at: 825 Stewart Drive, Sunnyvale, CA 94088, and is commonly referred to as the Former TRW Site.

B. The site is on the National Priorities List (NPL) and is regulated by Regional Board Orders, as indicated herein:

a.	June, 1984	Cleanup and Abatement Order issued.
b.	October, 1985	Waste Discharge Requirements Adopted, Order No. 85-107.
c.	January, 1988	Site Cleanup Requirements Adopted, Order No. 88-015.
d.	June 1988	Site proposed for inclusion on the National Priorities List (NPL).

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e.	April 1989	Regional Board Adopted Revised Site Cleanup Requirements, Order No. 89-057.
f.	September 1989	Waste Discharge Requirements Revised and Re-Issued, Order No. 89-146.
g.	February 1990	Site formally added to the NPL.
h.	June 1991	Final Site Cleanup Requirements Adopted, Order No. 91-103.

C. Pursuant to the South Bay Multi-Site Cooperative Agreement and the South Bay Ground Water Contamination Enforcement Agreement, entered into on May 2, 1985 (as subsequently amended) by the Regional Board, the U.S. Environmental Protection Agency and the California Department of Health Services, the Regional Board has been acting as the lead regulatory agency. The Regional Board will continue to regulate the discharger's remediation and administer enforcement actions under the federal Comprehensive Environmental Response, Compensation and Liability Act as amended, and the California Water Code, Health and Safety Code, and regulations adopted there under.

D. Most of the ground water underlying the site is impacted by Volatile Organic Compounds (VOCs) originating from sources off-site and on-site. Monitoring wells were installed

to define the vertical extent of the plume. There are six local ground water aquifers at the TRW facility and they are defined as the upper aquifer which includes the A, B1, B2, B3, B4 and B5 zones. Beneath this upper aquifer is the lower regional aquifer referred to as the C aquifer. As of October 1991, the vertical extent of ground water pollution extends into the B2 zone at a depth of approximately 65 feet from ground surface. The VOCs found in the ground water are TCE ranging from 7.8 to 15,000 ppb, 1,2-DCE ranging from 0.6 to 38,000 ppb, vinyl chloride ranging up to 3300 ppb, PCE ranging up to 700 ppb and Freon-113 ranging up to 1900 ppb. The other compounds detected on site are 1,1-DCE, 1,1-DCA, 1,1,1-TCA and 1,2-DCB but their concentrations are below the maximum contaminant level drinking water standards determined by California Department of Health Services (DHS) now known as California Department of Toxic Substances Control (DTSC). No ground water pollution has been detected directly beneath the site in the B3 zone which extends to a depth of approximately 80 feet However, ground water pollution, underlying sites in the vicinity of 825 Stewart Drive, has been detected in the B3 zone and in the B4 zone, which extends to a depth of approximately 115 feet.

E. The sources of ground water pollution have been identified as off-site and on-site sources. The off-site sources are upgradient to the west and south and originate

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from leaks in underground storage tanks. The on-site source originated from a leak in an underground storage tank. The tank and the surrounding contaminated soil were removed in 1983.

F. Regional Board Order 91-103 requires Covenantor to implement a deed restriction prohibiting the use of the upper aquifer as a source of drinking water, and for controlling on-site activities that could endanger the public health or the environment due to exposure to VOCs (91-103, Section C.4.a.). However, the water can be used for purposes other than drinking water after the VOCs have been removed by proper treatment.

G. Covenantor desires and intends that use of the Property shall be subject to observance of the requirements stated herein.

Now, therefore, Covenantor and the Regional Board declare and agree as follows:

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ARTICLE I

DEFINITIONS

1.01 Areas of Investigation. "Areas of Investigation" shall mean those areas on the Property investigated for the presence of chemicals and which will be remediated until ground water cleanup standards have been achieved and pollutant levels have been stabilized in onsite aquifers in accordance with Regional Board Order 91-103, and/or subsequent orders and/or any amendments to these orders. These are depicted on the map attached as Exhibit B.

1.02 Regional Board. "Regional Board" shall mean the California Regional Water Quality Control Board, San Francisco Bay Region and shall include its successor agencies, if any.

1.03 Ground Water. "Ground Water" shall mean, pursuant to Title 22, California code of Regulations, Section 66079, Water below the land surface in a zone of saturation.

1.04 Upper and Lower Aquifer. The upper aquifer at the TRW facility as defined by the Regional Board includes A, B1, B2, B3, B4 and B5 zones. This upper aquifer extends from approximately 6 to 123 ft below ground surface (bgs). The lower aquifer in the TRW facility vicinity as defined by the

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Regional Board is the C aquifer which occurs approximately 150 ft bgs.

1.05 Production Well. "Production Well(s)" shall mean any well, boring or excavation that allows extraction of ground water from the upper aquifer which includes A, B1, B2, B3, B4 and B5 zones which exist above a depth of approximately 123 feet (approximately 83 feet below mean sea level) below ground surface.

1.06 Improvements. "Improvements" shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon the Property.

1.07 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the property.

1.08 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs and assigns, who hold fee simple title to all or any portion of the Property.

1.09 Property. The "Property" consists of the land described in Exhibit A.

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ARTICLE II

ESTABLISHMENT OF RESTRICTIONS

2.01 Provisions to Run with the Land. This covenant sets forth and establishes a common scheme and plan for the use, enjoyment, conveyance, development, repair, maintenance and improvement of the Property, and establishes certain protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, ground leased, sold, hypothecated, encumbered, and conveyed. Each and all of the Restrictions are declared to be in furtherance of a plan established for the purpose of enhancing and protecting the value, desirability and enjoyment of the Property. Each and all of the Restrictions shall run with the land, including any interest in the Property conveyed or reserved, and be for the benefit of and be binding on any interest conveyed or reserved, and all parties having or acquiring any right, title, interest or estate in the Property and any successors in interest thereto. Each and all of the Restrictions are imposed as equitable servitude upon the Property and on any portion thereof, for the benefit of the Property and the Regional Board and shall be enforceable solely by the Regional Board and any successor agency thereto.

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2.02 Concurrence of Owners Presumed. All purchasers and ground lessees of the Property or any portion thereof shall be deemed by their purchase, leasing, or possession of all or any portion of the Property, to be in accord with the Restrictions and to agree for and among themselves, their heirs, successors, and assigns, and the agents, employees, and ground lessees of such owners, heirs, successors, and assigns that the Restrictions shall be adhered to for the benefit of the Regional Board and the future owners and occupants of the Property and that their interest in the Property shall be subject to the Restrictions contained herein.

2.03 Incorporation Into Deeds and Leases. Covenantor covenants that the Restrictions shall be contained in each and all deeds and leases of any portion of the Property in accordance with Sections 1468, 1469, and 1470 of the California Civil Code, provided, however, that the right to enforce the Restrictions shall exist only in the Regional Board. In addition to any express provision required to comply with California Civil Code Section 1468, 1469 and 1470, the following statement shall appear:

> This grant of interest in real property is expressly made subject to the certain Covenant and Agreement dated as of August 10, 1992, and recorded on _____, in the Official Records

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of the county of Santa Clara, State of California, as document No. _____, which Covenant and Agreement imposes certain covenants, conditions, and restriction on usage of ground water underlying the real property described herein. The provisions of the Covenant and Agreement are incorporated herein and made a part hereof as if set forth in full. The only persons who have the right to enforce the Covenant and Agreement are the California Regional Water Quality Control Board, San Francisco Bay Region.

2.04 Statement Regarding Hazard. Nothing in this Covenant shall be construed as a statement, admission or declaration that any existing or potential health, environmental, or other hazard exists or will exist on the Property or on any portion of it.

ARTICLE III

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Covenantor promises to restrict the use of the Property as follows:

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(1) No water production wells may be drilled in the upper or lower aquifer as defined in Section 1.04 on the Property without the express prior written approval of the Regional Board and any other agency with jurisdiction. In addition, notification and review of well installation by the Regional Board is required before monitoring or other test wells are installed. The following are not subject to this provision: borings for the purpose of testing soils; excavation for foundations, utilities or similar purposes; or, borings to define geology.

3.02 Conveyance of Property. Any person acquiring ownership of the Property, or any portion thereof, or entering into a ground lease as lessee of the Property, or any portion thereof, shall provide, within 30 days of any such purchase or ground lease, written notice of the purchase or ground lease to the Regional Board and to Covenantor at the addresses specified in paragraph 5.02. The Regional Board shall not by reason of the Covenant have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property or of any portion of the Property. Notice is required hereunder only for the purpose of maintaining a current record of the Owners and ground lessees of the Property.

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3.03 Enforcement. Failure of the Owner or Occupants to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Regional Board, by reason of the Covenant, to require that the Owner or Occupant modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Regional Board to file civil and criminal actions against the Owner as provided by law. This Covenant shall not create any private right of action against Covenantor or any Owner or Occupant of the Property or any portion thereof.

3.04 Extent of Covenantor's Obligations. Upon conveyance of all or any portion of the Property by deed, ground lease or other appropriate instrument, which conveyance instrument contains the provisions set forth in Paragraph 2.03, Covenantor shall be released from any and all obligations under this Covenant as to that portion of the Property which has been conveyed. At no time shall Covenantor have an obligation of any kind whatsoever to police or to enforce the observance of the covenants and restrictions contained herein by other Owners or Occupants of the Property or any portion thereof.

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ARTICLE IV

VARIANCE AND TERMINATION

4.01 Variance. Any Owner or Occupant of the Property or any portion thereof, may apply to the Regional Board for a written variance from the provisions of this Covenant.

4.02 Termination. The Restrictions shall remain in full force and effect until ground water cleanup standards have been achieved and pollutant levels have been stabilized in onsite aquifers in accordance with Regional Board Order 91-103, and/or subsequent orders and/or amendments to these orders. Any Owner or Occupant of the Property or a portion thereof, may apply to the Regional Board for an amendment or termination of the Restrictions as applied to that portion of the Property which is owned or ground leased by the Owner or Occupant. The Restrictions shall remain in full force and effect with respect to the Property and shall run with the land until such time as the Owner of the Property, or any portion thereof, records a release of the Property or a portion thereof from the provisions of the Restrictions. Any such release shall contain a sworn statement that the Owner of the Property to be released has demonstrated, to the written satisfaction of the Regional Board, that the Restrictions are no longer reasonably necessary to protect the public health or

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safety from any chemicals which may be located on the Property or that portion of the Property to be released from the Restrictions. In addition, any such release shall have attached an acknowledgement by the Regional Board that the statements contained in the release are correct. Any such release shall be effective without the concurrence of any other Owner of any portion of the Property, or any adjacent property.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V

MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person shall desire to give or serve any notice, demand, or other communication with respect

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to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (i) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or (ii) five (5) days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested, to Covenantor and the Regional Board at the following addresses or at such other addresses as Covenantor or the Regional Board may designate in a written notice which shall be addressed and delivered personally or by certified mail to each of the then Owners and Occupants of the Property.

To: Tech Facility 1, Inc.
55 Charles Lindbergh Blvd
Uniondale, New York 11553
ATTENTION: PRESIDENT

COPY To: California Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster St, Suite 500
Oakland, CA 94612

FEI Microwave, Inc.
825 Stewart Drive
Sunnyvale, CA 94088
ATTENTION: PRESIDENT

5.03 Partial Invalidity. If any portion of this Covenant is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion has not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not intended to aid in the meaning or interpretation of any part of the Covenant.

5.05 Recordation. This instrument shall be executed by Covenantor and by the Executive Officer, Regional Water Quality Control Board, San Francisco Bay Region. This instrument shall be recorded by Covenantor in the County of Santa Clara within ten (10) days of the date of full execution.

5.06 Statement of Compliance. Within a reasonable time of receipt of a written request from any Owner or Occupant of a Property or any portion thereof, the Regional Board shall provide to such Owner or Occupant a written statement,

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substantially in the form attached hereto as Exhibit C, indicating whether to the Regional Board's knowledge such Owner or Occupant is operating in compliance with the provisions of this Covenant, and such confirmation shall be conclusive as of the date prepared.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN FRANCISCO BAY REGION

By: _____

Title: EXECUTIVE OFFICER

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IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

TECH FACILITY 1, Inc.

By: _____

Title: Vice President

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EXHIBIT A

825 STEWART DRIVE, SUNNYVALE, CA PROPERTY DESCRIPTION

EXHIBIT "A"

LEGAL DESCRIPTION

Portion of Lot 14, as shown upon that certain Map entitled, "Tract No. 2421 International Science Center", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on July 15, 1959 in Book 108 of Maps, at pages 53, 54, 55 and 56, and more particularly described as follows:

Beginning at the Southwesterly corner of Lot 14, as said Lot is shown upon the Map above referred to; thence from said point of beginning South 89° 34′ 05" East along the Southerly boundary of said Lot 14 for a distance of 436.446 feet; thence North 0° 25′ 55" East and parallel with the Westerly line of De Guigne Drive, as said drive is shown upon the Map above referred to for a distance of 504.45 feet; thence North 89° 34′ 05" West and parallel with the Southerly line of said Lot 14 for a distance of 302.00 feet, more or less, to a point in the Westerly line of said Lot 14; thence South 14° 54′ 25" West along the most Westerly line of said Lot 14 for a distance of 520 feet, more or less, to the point of beginning.

EXHIBIT B

825 STEWART DRIVE, SUNNYVALE, CA SITE MAP

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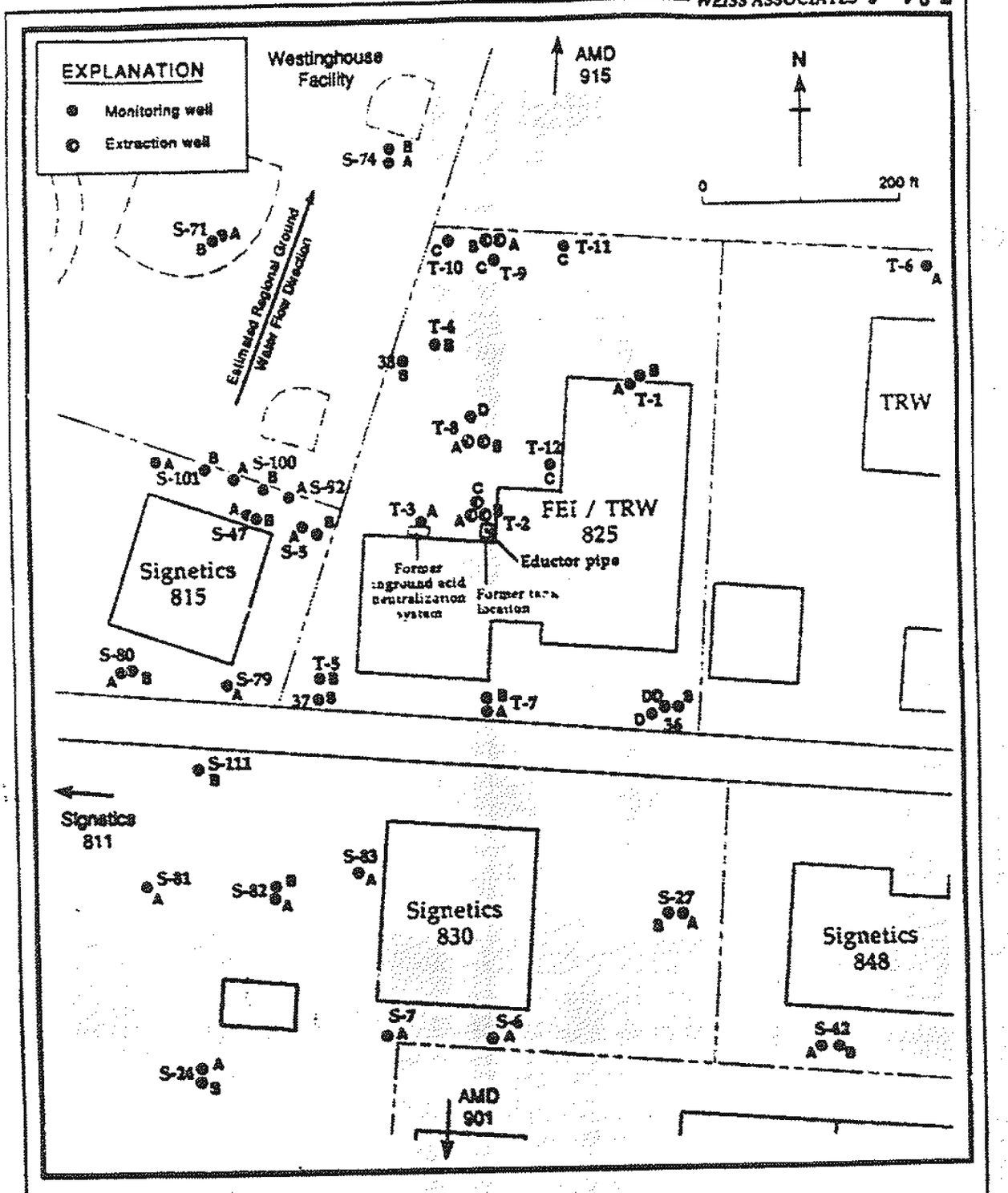
WEISS ASSOCIATES



Monitoring and Extraction Well Locations - 825 Stewart Drive, Sunnyvale, California

EXHIBIT "B"

EXHIBIT C

Date _____

_____

_____

_____

Dear _____:

This is to notify [Owner] in response to a request dated _____ made pursuant to that certain Covenant and Agreement to Restrict Use of Property dated ___ _____ (the "Covenant") and recorded in the official Records of Santa Clara County at Page _____ of Book _____ that the California Regional Water Quality Control Board, San Francisco Bay Region (the "Regional Board") has no knowledge of any failure of [Owner] to comply with the provisions of the Covenant. [or Regional Board has knowledge of the following facts: _____.] In providing this statement, the Regional Board has relied upon review of its official records and has made no other inquiries and has made no inspection of the Property owned by [Owner].

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION

By: _____

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STATE OF CALIFORNIA)

)

COUNTY OF _____)

On _____, 1992, before me, the undersigned, a Notary Public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as _____ _____ _____ of _____ _____ _____, a _____ _____ corporation, on behalf of the corporation, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

_____

Notary Public in and for said County and State

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STATE OF NEW YORK)
)
COUNTY OF NASSAU)

On 7 August, 1992, before me, the undersigned, a Notary Public in and for said state, personally appeared Joseph Kastenholz, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Vice President of TECH FACILITY 1, Inc., a DELAWARE corporation, on behalf of the corporation, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

Carol Lieberman

Notary Public in and for said County and State

CAROL LIEBERMAN
NOTARY PUBLIC, State of New York
No. 30-4684665
Qualified in Nassau County
Commission Expires October 31, 199

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STATE OF CALIFORNIA)

)

COUNTY OF ALAMEDA)

On AUGUST 11, 1992, before me, the undersigned, a Notary Public in and for said state, personally appeared STEVEN R. RITCHIE, ~~personally known to me~~ or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as EXECUTIVE OFFICER of the California Regional Water Quality Control Board, San Francisco Bay Region, the agency that executed the within instrument, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

Remedios T. Deocampo

Notary Public in and for said County and State

OFFICIAL SEAL
REMEDIOS T. DEOCAMPO
NOTARY PUBLIC-CALIFORNIA
ALAMEDA COUNTY
My Comm. Expires May, 16, 1994

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