

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement"), effective as of the last date of execution below ("Effective Date"), is made by and between California River Watch, a non-profit corporation, on behalf of itself and its members ("CRW"), and Uni-Tile & Marble Company. CRW and Uni-Tile & Marble Company are sometimes hereinafter each referred to as a "Party" or collectively as the "Parties."

RECITALS

A. CRW is a 501(c)(3) non-profit public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance, and help restore the surface waters and groundwater including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California.

B. Uni-Tile & Marble Company owns and operates a tile, marble, and kitchen cabinetry facilities located at 21105 Cabot Boulevard in Hayward, California, ("Site"). The Site is subject to various federal and state regulatory requirements under the federal Clean Water Act ("CWA"), including compliance with the State Water Resource Control Board's General Industrial Activities Storm Water Permit ("General Permit"). Uni-Tile & Marble Company (WDID # 2011022285) filed a Notice of Intent and is regulated under the General Permit.

C. On February 19, 2013, CRW served Uni-Tile & Marble Company with a 60-Day Notice of Violations and Intent to File Suit ("Notice Letter") alleging various violations of the CWA relating to activities at the Site. The Notice Letter alleges that Uni-Tile & Marble Company, and the owner, operator, and site manager are responsible for the alleged violations.

D. Uni-Tile & Marble Company and its owner, operator, and site manager denies all of CRW's allegations that it is liable to CRW for any claims that were, or could have been asserted against Uni-Tile & Marble Company based upon the Notice letter.

E. The Parties have expended effort and resources in investigating and evaluating allegations and claims set forth in the Notice Letter, including the exchange of information regarding the Site, as well as engaging in a negotiation and technical dialogue regarding settlement and default judgment proceedings.

F. The Parties now wish to resolve and settle all disputes, obligations, and purported or actual claims or causes of action, which may exist by and between CRW and Uni-Tile & Marble Company, including without limitation any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to the Notice Letter

relating to the Site.

NOW, THEREFORE, in consideration of the execution of this Agreement and the releases, satisfactions and promises made herein, it is hereby agreed upon by the Parties as follows:

TERMS AND CONDITIONS

1. **Parties Bound By This Agreement and Length of Agreement.** This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds, and inures to the benefit of CRW and Uni-Tile & Marble Company and each of their respective assigns, present and future affiliates, parents, subsidiaries, predecessors and successors in interest whether by merger, consolidation, or otherwise, as well as their respective representatives, agents, and administrators, past, present, and future. The "Effective Date" is the last date on which the signature of a Party to this Agreement is executed, and the "Termination Date" is the date that all of the requirements under Sections 2 and 3 are finished by Uni-Tile & Marble Company, or two years after the "Effective Date," whichever occurs first.

2. **Actions by Uni-Tile & Marble Company.** In exchange for the delivery, execution, and performance of this Agreement and of the Release by CRW as provided herein, Uni-Tile & Marble Company shall perform the below specified projects at the Site. Uni-Tile & Marble Company reserves the right, in its sole discretion, to determine (i) which persons shall perform any work described herein, including contractors; and (ii) the scope and technical details of, and manner to implement, any such work, subject to review and approval by the San Francisco Bay Regional Water Quality Control Board ("Regional Board," or such other regulatory agency as may, from time to time, exercise jurisdiction with respect to environmental matters at the Site):

2.1. **Update and Implement a Revised SWPPP and Monitoring Plan.** Uni-Tile & Marble Company shall prepare a revised Storm Water Pollution Prevention Plan ("SWPPP") and implement it consistent with the requirements in the General Permit. Uni-Tile & Marble Company shall provide a copy of the revised SWPPP to CRW for review within sixty (60) days after the end of the 2013-14 Wet Season once all monitoring data is received and can be reviewed. The revised SWPPP shall, in addition to any other provisions, include the following:

2.1.a. Provisions ensuring the SWPPP conforms to applicable provisions contained in (i) Stormwater Best Management Practice Handbook, California Stormwater Quality Association" (EPA Office of Water, EPA-833-F-06-020, Dec 2006; located at the following website:
http://www.epa.gov/npdes/pubs/sector_e_glass.pdf.

2.1.b. An aerial map with a detailed overlay of the Site with notes, legends, and other data as appropriate to ensure that this site map is clear and understandable, and includes the following information, as applicable: Uni-Tile & Marble Company boundaries; outline of all stormwater drainage areas; portions of the drainage area impacted by run-on from surrounding areas; direction of flow of each drainage area; nearby water bodies; municipal storm drain inlets into which Uni-Tile & Marble Company discharges or may discharge stormwater; location of any on-site stormwater collection and conveyance system, associated points of discharge, and flow direction; structural control measures that affect stormwater discharges; locations of any catch basins; location of authorized non-stormwater discharges to the storm drain; outline of all impervious areas of Uni-Tile & Marble Company; locations where industrial materials are directly exposed to precipitation; locations where significant spills or leaks have occurred in the last five (5) years; areas of industrial activities; monitoring locations and a diagram with identifying designations (e.g., numbering) for each drain inlet affected by industrial activities on the Site; and the location of buildings and key surface facilities, including buildings and or activities that may create sources of non-stormwater discharges to the stormwater system, such as process wastewater or wash water.

2.1.c. A narrative description of the information on the site map and the operation of the facility's industrial activities.

2.1.d. Provisions requiring the collection by a qualified consultant of no less than two and up to four wet weather samples annually of any discharge (regardless of whether the rain events are deemed "qualifying" under the General Permit) from the drain inlets affected by industrial activities on the Uni-Tile & Marble Company Site. These wet weather samples shall be analyzed by a certified laboratory for pH, Total Suspended Solids (TSS), Total Organic Carbon (TOC), and certain metals for which EPA has created industrial stormwater benchmarks (*see* Exhibit 1), using EPA approved analytical methods, and monitoring and compliance methodologies set forth by EPA for the Multi-Sector Industrial General Permit.

2.1.e. For any pollutants where the samples collected exceed the EPA Benchmarks set forth in Exhibit 1, the SWPPP will be updated to identify additional BMPs that will reduce these aforementioned pollutants in any discharges to below the EPA Benchmarks set forth in Exhibit 1.

2.2. Installation of Additional Storm Water Protections. Where additional BMPs are required to be identified under Section 2.1.e., Uni-Tile and Marble shall implement the addition of a berm around the property to prevent storm water from leaving the site, move more of the stored items inside or under cover, and/or implement additional BMPs, including enhanced drain protections or a filtration system, prior to discharging stormwater into the storm drain inlets, which will reduce or remove pollutants in stormwater to below the EPA benchmarks listed in Exhibit 1 for those pollutants. Uni-Tile & Marble Company chooses the type and manner of any BMPs, installed berms, and/or filtration systems. Where additional BMPs are required under Section 2.1.e, Uni-Tile and Marble shall provide CRW a report describing the additional BMPs at least 20 days prior to their implementation. As applicable, Uni-Tile and Marble shall provide CRW such reports for the duration of the 5-year non-suit period pursuant to Section 6 of this Agreement.

2.3. Submission of Additional Reports to CRW. To the extent that annual or other monitoring reports are not otherwise uploaded to and made available on the Regional Water Quality Control Board's stormwater database, Uni-Tile & Marble Company agrees to provide CRW with a copy of any reports (e.g., monitoring reports) concerning matters addressed in this Agreement. Uni-Tile & Marble Company may furnish copies of any such reports to CRW in either hard copy or digital form.

3. Fees and Costs. Uni-Tile & Marble Company shall pay to CRW the total sum of Fifty Thousand Dollars (\$50,000.00) for fees and costs. Four payments of twelve thousand, five hundred dollars (\$12,500) will be made; the first to be paid thirty (30) days from the Effective Date of this Agreement, and the others to be paid on or before December 31, 2013, March 31, 2014, and June 30, 2014, respectively. Each of the four payments will be made in the form of a single check made payable to "California River Watch" and will be mailed to Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, CA 95402-5469. Mr. Henry Pan agrees to be personally responsible for any payment under this section not made by Uni-tile & Marble Company on or before the date specified in this section.

4. Actions by California River Watch.

4.1. Within five (5) business days of Effective Date of this Agreement, CRW Watch shall provide the federal District Court for the Northern District of California in case number 3:13-cv-01949 NC with a Notice of Settlement, and shall submit this Agreement to the United States Department of Justice ("DOJ") for the statutory 45-day agency review period set forth in 33 U.S.C. §1365(c).

4.2. Within five (5) business days of the expiration of the agency review period discussed in Section 4.1., CRW shall file with the federal District Court a Notice of Dismissal whereby the Complaint and all claims therein shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). However, the Hon. Judge Nathaniel Cousins, U.S. District Court, shall retain jurisdiction to enforce the terms of Section 3 of this Agreement.

5. **Mutual Release.** It is the intent of the Parties that the execution and delivery of this Agreement constitutes a full and complete satisfaction of all rights, claims and demands by CRW against Uni-Tile & Marble Company, and Uni-Tile & Marble Company against CRW, with respect to any and all allegations and claims made in the Notice Letter under the Clean Water Act. CRW and Uni-Tile & Marble Company, on behalf of itself and any and all of its agents, representatives, successors, members, and assigns, does hereby absolutely, fully, and forever release, relieve, remise, and discharge Uni-Tile & Marble Company and CRW, respectively, and its past and present employees, officers, directors, attorneys, and the predecessors, successors, and assigns of any of them, from any and all causes of action, claims, damages (including punitive damages), demands, debts, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature whatsoever, based upon the claims alleged, or which could have been alleged, in the CWA Notice Letter under the Clean Water Act concerning the Site, including without limitation, any and all claims for violations of the Clean Water Act that occurred at any time up to the Effective Date of this Agreement. The release provided for herein shall be valid and effective whether the claims, causes of action, or liability hereby released (i) are known or unknown, suspected or unsuspected, (ii) are based in contract, tort, statute, or otherwise, or (iii) arise at law or in equity. This release shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

Further, the parties acknowledge that they are familiar with Section 1542 of the California Civil Code. The foregoing release is intended to extend up to the Termination Date for any other claims against each other, known or unknown, suspected or unsuspected, and each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties acknowledge that each has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of California Civil Code

Section 1542, and the waiver contained herein. The Parties acknowledge that their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

6. **Covenant Not to Sue.** For a period of five (5) years following the Effective Date, and surviving the Termination Date of this Agreement, CRW agrees that neither CRW, nor its officers, executive staff, members of its governing board, nor any organization under the control of CRW, its officers, executive staff, members of its governing board, will serve any Notice of Violations and Intent to Sue or file any lawsuit against Uni-Tile & Marble Company seeking relief for alleged violations of the Clean Water Act, Resource Conservation and Recovery Act, Endangered Species Act, or any similar state statutes and/or regulations, including the Porter Cologne Water Quality Control Act, nor will CRW initiate, encourage, or undertake any activity to support such lawsuits against Uni-Tile & Marble Company brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions.

7. **No Admission.** This Agreement is the direct result of a compromise of disputed allegations and claims. As such, this Agreement shall not, for any purpose, be considered as an admission of liability by Uni-Tile & Marble Company, or its owner, operator, or site manager, nor shall the payment of any sum of money in consideration for the execution of this Agreement constitute or be construed as an admission of any liability by Uni-Tile & Marble Company, which expressly denies any such liability or wrongdoing.

8. **Force Majeure.** Uni-Tile & Marble Company shall not be deemed in default or breach of this Agreement by reason of any event that constitutes a force majeure. For purposes of this Agreement, a force majeure is defined as any event arising from causes beyond the reasonable control of Uni-Tile & Marble Company or its contractors that delay or prevents performance. This includes, without limitation, acts of God, acts of war, acts of terrorism, fire, explosion, extraordinary weather events, restraint by court order or public authority, or other causes beyond Uni-Tile & Marble Company's reasonable control. Neither increased costs nor economic hardship shall constitute a force majeure, except in the case of severe hardship, such as bankruptcy or closure of the business.

9. **Breach of Agreement and Dispute Resolution.** Any disputes between CRW and Uni-Tile & Marble Company concerning any alleged breach of this Agreement, except for Uni-Tile's obligations to make timely payments under Section 3 of this Agreement, shall be subject to the following dispute resolution procedures. Any alleged breach of Uni-tile's duties under Section 3 of this Agreement shall be submitted by CRW to the court for enforcement.

9.1. **Good Faith Negotiations.** CRW and Uni-Tile & Marble Company shall

make good faith efforts to resolve informally any alleged breach of the Agreement. If informal efforts to resolve the alleged breach are unsuccessful, the aggrieved Party shall provide written notice of the alleged breach and that Party's intent to initiate the dispute resolution procedure of this Section 9. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of the Agreement alleged to have been breached.

9.2. Mediation. If the dispute is not resolved by the Parties within thirty (30) days after such notice is given, such dispute shall be submitted to mediation before a mutually agreeable neutral mediator. The Parties shall each bear their own costs and attorney's fees incurred in connection with such mediation.

9.3 Arbitration. If, and only if, the dispute cannot be resolved by the Parties pursuant to the above mechanisms, such dispute shall be submitted for binding arbitration before a mutually agreeable neutral arbitrator. In the event that binding arbitration occurs, the Parties agree that no discovery shall be permitted. Briefing will be limited to one brief of no longer than ten (10) pages for each Party, submitted no later than fourteen (14) days before the scheduled arbitration hearing. The arbitration hearing is limited to a maximum of one (1) business day. The determination of the arbitrator shall be binding upon the Parties. Within thirty (30) days after the conclusion of the arbitration hearing, the arbitrator shall issue a written award and a written statement of decision describing the reasons for the award, including the calculation of any damages awarded. The non-prevailing Party shall bear the cost of the arbitrator's fees. If there are multiple issues with different prevailing parties, the arbitrator may consider those facts in allocating the arbitrator's fees. Otherwise, the Parties shall each bear their own costs and attorney's fees incurred in connection with such binding arbitration. Judgment upon any determination rendered by the arbitrator may be entered by any court having competent jurisdiction.

9.4. Waiver. By agreeing to these dispute resolution provisions, including the binding arbitration provision, the Parties understand that they are waiving certain important rights and protections that otherwise may have been available to each of them if a dispute between them were determined by a judicial action including, without limitation, the right to a jury trial, and certain rights of appeal. Other than the remedies contained within this Agreement including dispute resolution and specific performance of the terms of this Agreement, there are no other remedies. The Parties specifically agree that there is no basis within this Agreement or within the contemplation of the Parties to support a claim for consequential damages due to any form of breach.

10. **Notices.** All notices, consents, approvals, requests, demands and other communications (collectively, "Notice") which the Parties are required or desire to serve upon or deliver to the other Party shall be in writing and shall be given by nationally-recognized overnight courier, by certified United States mail, return receipt requested, postage prepaid, addressed as set forth below, or by facsimile or electronic mail addressed as set forth below:

If to CRW:

California River Watch
290 S. Main St, #817
Sebastopol, CA 95472
Tel: (707) 528-8175
Email: US@ncriverwatch.org

Jerry Bernhaut
c/o California River Watch
Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469
Telephone: (707) 595-1852
Email: j2bernhaut@yahoo.com

If to Uni-Tile & Marble Company:

Henry Pan
Uni-Tile & Marble Company
21105 Cabot Boulevard
Hayward, CA 94545
Tel: 510-782-3288
Email: henryxpan@aol.com

Melissa A. Thorme
Downey Brand LLP
621 Capitol Mall, 19th Floor
Sacramento, CA 95814
Tel: 916-520-5376
Email: mthorme@downeybrand.com

The foregoing addresses may be changed by Notice given in accordance with this Section 10. Any Notice sent by mail shall be deemed received two (2) days after the date of mailing. Any Notice sent by facsimile shall be deemed received upon electronic confirmation of the successful transmission thereof, and any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided sender does not receive electronic notice of non-delivery. Any Notice sent by overnight courier

service shall be deemed received on the day of actual delivery as shown by the confirmation of delivery by the messenger or courier service. If the date of receipt of any Notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt shall automatically be deemed extended to the next business day immediately following such weekend or holiday for purposes of calculating time periods commencing upon the date of service.

11. **Attorneys' Fees.** Other than the payment to CRW under Section 3 and subject to the prevailing party provisions under Section 9.3 of this Agreement, each Party shall bear its own past and future attorneys' fees and costs relating to the subject matter of this Agreement.

12. **Parties' Acknowledgment of Terms.** This Agreement has been carefully and fully read and reviewed by CRW and Uni-Tile & Marble Company and their respective counsel, if any, who hereby represent that the contents of this Agreement are understood, and agree that this Agreement is binding on each Party or its respective predecessors, successors, and assigns and as described above.

13. **Interpretation and Applicable Law.** This Agreement shall be construed and interpreted in accordance with the laws of the United States and the State of California without regard to principles of conflicts of law. This Agreement shall be interpreted and construed as a whole, according to its fair meaning and not strictly for or against any Party, and without regard to which Party drafted the Agreement. All of the promises, representations, and warranties contained in this Agreement survive the execution of this Agreement.

14. **No Assignments.** Each Party to this Agreement represents and warrants that it has not assigned, transferred, hypothecated, or sold to any third person or entity, any of the rights or obligations released by or entered into under this Agreement.

15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same agreement. A Party's execution page transmitted by facsimile or electronic mail may be used as though it were an original signature notwithstanding the fact that the party did not provide an original signature.

16. **Headings.** The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.

17. **Entire Agreement In Writing.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter set forth herein and supersedes all previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.

18. **Modification or Amendment.** This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

19. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or other tribunal and, if it cannot be so modified, that this Agreement shall be deemed amended to delete herefrom such provision or portion adjudicated to be invalid or unenforceable, and the remainder of this Agreement shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

20. **Representations and Warranties.** This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

21. **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

22. **Authority.** Each of the persons signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.

//
//

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

Dated: _____

UNI-TILE & MARBLE COMPANY

By: _____

Henry Pan
Owner and Operator

Dated: Oct 22, 2013

CALIFORNIA RIVER WATCH

By: Margaret Bacagalupi

Margaret Bacagalupi
Board President

APPROVED AS TO FORM:

Dated: _____

CALIFORNIA RIVER WATCH

By: _____

Jerry Bernhaut
Counsel for California River Watch

Dated: Oct 21, 2013

DOWNEY BRAND LLP

By: Melissa Thorme

Melissa A. Thorme
Counsel for Uni-Tile & Marble Co.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

Dated: _____

UNI-TILE & MARBLE COMPANY

By: _____

Henry Pan
Owner and Operator

Dated: _____

CALIFORNIA RIVER WATCH


By: _____

Margaret Bacagalupi
Board President

APPROVED AS TO FORM:


Dated: Oct 21, 2013

CALIFORNIA RIVER WATCH

By: 
Jerry Bernhaut
Counsel for California River Watch

Dated: Oct 21, 2013

DOWNEY BRAND LLP

By: 
Melissa A. Thorme
Counsel for Uni-Tile & Marble Co.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

Dated: Oct 28, 2013

UNI-TILE & MARBLE COMPANY

By: _____

Henry Pan
Owner and Operator

Dated: _____

CALIFORNIA RIVER WATCH

By: _____

Margaret Bacagalupi
Board President

APPROVED AS TO FORM:

Dated: Oct 21, 2013

CALIFORNIA RIVER WATCH

By: _____

Jerry Bernhaut
Counsel for California River Watch

Dated: Oct 21, 2013

DOWNEY BRAND LLP

By: _____

Melissa A. Thorme
Counsel for Uni-Tile & Marble Co.

EXHIBIT 1

Target Levels for Industrial Stormwater Sampling

Constituent	Target Levels
Total Suspended Solids (TSS)	100 mg/L
pH	6.0 - 9.0 s.u
Total Organic Carbon (TOC)	120 mg/L
Antimony	0.636 mg/L
Arsenic	0.16854 mg/L
Beryllium	0.13 mg/L
Cadmium*	0.0023 mg/L
Copper*	0.0156 mg/L
Iron	1.0 mg/L
Lead*	0.095 mg/L
Nickel*	0.52 mg/L
Silver*	0.0046 mg/L
Zinc*	0.13 mg/L

*The above parameters are all Benchmarks included in the 2008 Multi-Sector General Permit, but the asterisked constituents are hardness dependent. Hardness calculations are appropriate for discharges to freshwater (*see* Appendix J located at <http://cfpub.epa.gov/npdes/stormwater/msgp.cfm>).

The asterisked EPA benchmarks are set with assumed hardness values of 100 mg/L (CaCO₃).

There are also other assumptions related to these guidance benchmarks:

Receiving water temperature: 20° C.

Receiving water pH: 7.8.

Receiving water salinity: 20 g/kg

Acute to Chronic Ratio (ACR): 10.

In any compliance determination, it shall be Defendant's burden to establish that the assumptions set forth above should not apply, based on actual receiving water sample data as to temperature, pH, hardness, salinity or ACR in the sample(s) in question, and that modified benchmarks are more applicable.