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**Recording Requested By:**

Applied Materials, Inc.

**When Recorded, Mail To:**

Bruce H. Wolfe, Executive Officer  
 California Regional Water Quality Control Board  
 San Francisco Bay Region  
 1515 Clay Street, Suite 1400  
 Oakland, California 94612

BRENDA DAVIS  
 SANTA CLARA COUNTY RECORDER  
 Recorded at the request of  
 Recording Service

RDE # 008  
 8/26/2005  
 2:33 PM

MS  
 SEP 26 2005

**COVENANT AND ENVIRONMENTAL RESTRICTION  
 ON PROPERTY**

**Former Fairchild Semiconductor Property at 974 East Arques Avenue  
 Sunnyvale, Santa Clara County**

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 11<sup>th</sup> day of July, 2005 by Applied Materials, Inc. ("Covenantor") who is the Owner of record of that certain property situated at 974 East Arques Avenue, in the City of Sunnyvale, County of Santa Clara, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Water Board"), with reference to the following facts:

A. The Burdened Property and groundwater underlying the property contains hazardous materials.

B. Contamination of the Burdened Property. Fairchild occupied the site from 1968 to 1972 and conducted manufacturing processes at the site including photo resist, screen printing, etching, alodining, and spray painting. Hewlett Packard occupied the site from 1978 to 1993, and conducted light assembly, alodining, metal fabrication, and painting. Soil and groundwater at the Burdened Property was contaminated by a former acid waste neutralization (AWN) sump, which was located at the western edge of the building and used by both Fairchild and Hewlett Packard. The soil and groundwater was contaminated with organic chemicals including trichloroethylene, 1,1,1-trichloroethane, cis-1,2-dichloroethene, methylene chloride and perchloroethene, which constitute hazardous materials as that term is defined in Cal. Health & Safety Code Section 25260. There is also a volatile organic compound (VOC)-impacted groundwater plume extending northward from Mohawk Laboratories to East Arques Avenue. In 1986, Hewlett Packard removed the AWN sump and excavated 190 cubic yards of soil. In 1995 an additional 3,000 cubic yards of soil were excavated from the saturated and unsaturated zones in the area of the former sump. In 1987, Hewlett Packard started extracting groundwater from the former AWN sump area and in 1995 a reactive wall with iron filings was installed. In 1998,

two recovery wells were installed to limit further migration of VOCs from 974 East Arques Avenue. In April 2000, a Final Remedial Action Plan was submitted by Locus Technologies and approved by the Water Board in September 2000. The RAP concluded that soils across the site were below cleanup levels and therefore, no further soil remediation is required. As for the groundwater, the RAP concluded that the current groundwater extraction from two recovery wells, the treatment of the extracted groundwater, institutional controls and groundwater monitoring are providing hydraulic control and removing chemical mass from the groundwater beneath the site. Therefore, as long as the current system is in place, no additional groundwater remediation is recommended at the site.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in groundwater on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via in-place contact resulting in dermal contact, inhalation or ingestion by humans. However, ingestion and dermal contact is unlikely because ground water is roughly ten feet below ground surface and the groundwater is not used for human consumption. Another likely exposure pathway is through the volatilization of chemicals in groundwater to indoor and outdoor air. Risk assessment calculations have been completed and the potential for indoor and outdoor inhalation exposure does not pose a significant human health risk. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used for industrial land uses and is adjacent to commercial land uses such as Fry's Electronics and industrial land uses such as Bruce's Awning. There are no residential areas immediately adjacent to the Burdened Property.

E. Full and voluntary disclosure to the Water Board of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.

F. Covenantor desires and intends that in order to benefit the Water Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

## ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest

thereof, for the benefit of the Water Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Water Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Water Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Water Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

## ARTICLE II DEFINITIONS

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

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

## ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

a. All uses and development of the Burdened Property shall be consistent with any applicable Water Board Order or Risk Management Plan, each of which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Water Board, unless otherwise expressly permitted in writing by the Water Board.

b. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for potable uses, unless expressly permitted in writing by the Water Board.

c. The Owner shall notify the Water Board of each of the following: (1) The type, cause, location and date of any disturbance to any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Water Board, which could affect the ability of such remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the Water Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Water Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Water Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of July 11th, 2005, and recorded on Aug. 26, 2005, 2005, in the Official Records of Santa Clara County, California, as Document No. 18545017, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

#### ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened

Property or any portion thereof may apply to the Water Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Water Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

## ARTICLE V MISCELLANEOUS

5.1 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 Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

*If To: "Covenantor"*  
Applied Materials, Inc.  
3340 Scott Boulevard  
P.O. Box 58039  
Santa Clara, CA 95054  
Attn: Alicia Collins; MS 0506

*If To: "Water Board"*  
Regional Water Quality Control Board  
San Francisco Bay Region  
Attention: Executive Officer  
1515 Clay Street, Suite 1400  
Oakland, California 94612

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

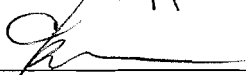
5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Water Board. This instrument shall be recorded by the Covenantor in the County of Santa Clara within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

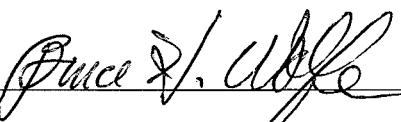
5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

Covenantor: Applied Materials, Inc.

By:  Jim Barnhart  
Title: Senior Director, Corporate Asset Service  
Date: August 23, 2005

Agency: State of California  
Regional Water Quality Board,  
San Francisco Bay Region

By:  Bruce H. Wolfe  
Title: Executive Officer  
Date: July 11, 2005

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, 2005 before me, the undersigned a Notary Public in and for said state, personally appeared Applied Materials, Inc., personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said  
County and State

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, 2005 before me, the undersigned a Notary Public in and for said state, personally appeared [EXECUTIVE OFFICER], personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said  
County and State

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

REAL PROPERTY in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel A as shown on that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, Sate of California on January 17, 1984 in Book 524 of Maps, pages 6 and 7.

APN: 205-36-006, 006, 008

ARB: 206-58-022.02, 21, 30, 26 and 28



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Alameda

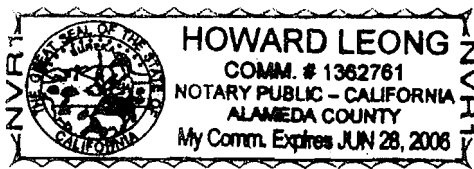
} ss.

On 7/11/2005, before me, Howard Leong, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared BRUCE H. WOLFE  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

*Howard Leong*  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: COVENANT & ENVIRON RESTRICTION ON PROP.

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

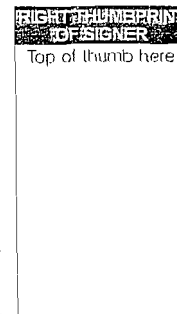
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Francisco

On August 19, 2005 before me, Tracy Leigh Ogden,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jim Barnhart,  
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity ~~(ies)~~ and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Tracy Leigh Ogden  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: Deed Restriction - Arques Campus

Document Date: July 11, 2005 Number of Pages: 8

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

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

Signer's Name: \_\_\_\_\_

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

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_

Signer's Name: \_\_\_\_\_

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

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_