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**Recording Requested By:**

General Electric Company  
640 Freedom Business Center  
King of Prussia, PA 19406

BRENDA DAVIS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
Owner

RDE # 004  
10/07/2005  
12:41 PM

**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

**COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY**

[Former Intersil Facility, 10900 North Tantau Avenue, Cupertino, Santa Clara County]

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 16th day of September, 2005 by General Electric Company ("Covenantor") who is the Owner of record of that certain property situated at 10900 North Tantau Avenue, in the City of Cupertino, 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 "Board"), with reference to the following facts:

- A. The groundwater underlying the northern portion of the Burdened Property contains hazardous materials.
- B. Contamination of the Burdened Property. The Burdened Property was formerly used by Intersil, Inc. for fabrication of semiconductor devices. These operations resulted in contamination of portions of the soil and groundwater with volatile organic compounds, primarily trichloroethene (TCE), which constitute a hazardous materials as that term is defined in Health & Safety Code Section 25260. The soil at the site was remediated from approximately 1988 to 1993 using soil vapor extraction ("SVE") to meet cleanup goals established by the Board. The SVE system was shut down with the Board's approval because the cleanup goals were met. Groundwater is being remediated using a Board approved groundwater extraction and treatment system.
- C. Exposure Pathways. The contaminants addressed in this Covenant were present in portions of the soil and continue to be present in portions of the groundwater beneath the Burdened Property. Without the remedial measures that have been performed on the Burdened Property, exposure to these contaminants could have taken place via in-place contact and wind dispersal resulting in

dermal contact, inhalation, or ingestion by humans. There is a potential risk of exposure via vapor intrusion from soil and groundwater, if future redevelopment of the Property occurs, depending upon the types of uses that may occur, the types of structures built, if any, and the location of any structures. The risk of public exposure to the contaminants in groundwater and soils has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property was used for commercial purposes but is currently vacant and is adjacent to other industrial and commercial land uses, including the former Siemens facility and former AMI Semiconductor site.

E. Full and voluntary disclosure to the Board of the presence of hazardous materials beneath 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 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 be present in soil or groundwater beneath 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 beneath 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 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 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 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 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 Board. "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. Development of the Burdened Property shall be restricted to industrial, commercial, office space, or recreational use.
- b. No residence for human habitation shall be permitted on the Burdened Property.
- c. No hospitals shall be permitted on the Burdened Property.
- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property.
- e. No day care centers for children or day care centers for Senior Citizens shall be

permitted on the Burdened Property.

- f. No Owners or Occupants of the Property or any portion thereof shall conduct any excavation work on the portions of the Property that have been previously remediated by SVE or overlie the portion of the property where groundwater that is being or has been remediated is considered to be contaminated above levels acceptable to the Board, unless notice in writing is given to the Board at least 10 calendar days prior to such activity. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law.
- g. Any Owner or Occupant of the Property or any portions thereof intending to construct any building to be used or occupied by persons on the Property should evaluate the potential for vapor intrusion from soil and groundwater at the Property and should take mitigation measures, as appropriate, to address this potential pathway depending upon the planned uses of the property, the structures to be constructed, and the planned location of any structures to be constructed.
- h. All uses and development of the Burdened Property shall be consistent with any applicable 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 remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing by the Board.
- i. 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 any use, including but not limited to, domestic, potable, or industrial uses, except (1) as part of the existing groundwater monitoring, extraction and treatment remedial measures or (2) as otherwise expressly permitted in writing by the Board.
- j. The Owner shall notify the 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 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 Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs.
- k. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of

the Water Code.

1. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions beneath the Burdened Property. All use and development of the Burdened Property shall preserve, as necessary, the integrity of any remedial structures (e.g. caps, storage pads).

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 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 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 that 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 groundwater under the property, and is subject to a deed restriction dated as of 16 September, 2005, and recorded on OCTOBER 7, 2005, in the Official Records of Santa Clara County, California, as Document No. \_\_\_\_\_, 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 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 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"*

General Electric Company  
Corporate Environmental Programs  
Manager Mid-Atlantic/Southeast/Western Regions  
640 Freedom Business Center  
King of Prussia, PA 19406

*If To: "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.

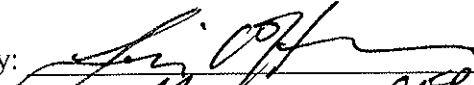
5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

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

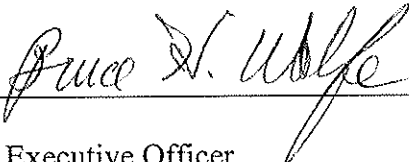
5.6 References. All references to Code sections include successor provisions.

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: General Electric Company

By:   
Title: Manager CEP  
Date: 28 Sept 2005

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

By:   
Title: Executive Officer  
Date: 9-16-05

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Alameda

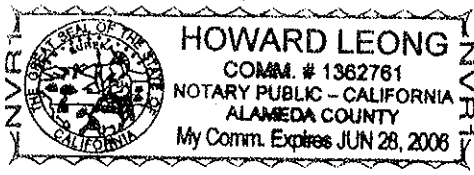
} ss.

On 9/16/2005, 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.

[Signature]  
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 COVENANT  
Title or Type of Document:

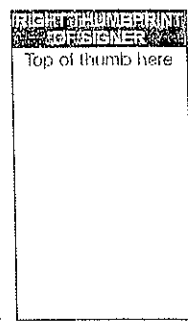
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

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: \_\_\_\_\_





STATE OF PENNSYLVANIA }

}

COUNTY OF Montgomery }

On 26<sup>th</sup> Sept, 20 05 before me, the undersigned a Notary Public in and for said state, personally appeared [Covenantor], 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.

*Kathy S. Russo*

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Notary Public in and for said  
County and State

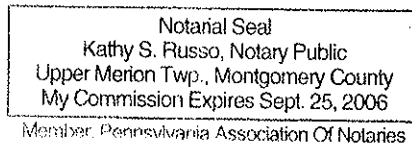


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Exhibit A

Legal Description

That certain land located in the City of Cupertino, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

A portion of Lot 7 of the Partition of the Glendenning Estate Map filed in Book B of Maps, Page 15, Santa Clara County Records, and a portion of the Quito Rancho, also being a portion of the 7.174 acre parcel of land described as Parcel Three in the Deed to Vallco Park, Ltd., recorded October 19, 1967, Book 7898 Official Records, Page 248, Santa Clara County Records, and described as follows:

BEGINNING in the Easterly line of Tantau Avenue at the Northwesterly corner of said 7.174 acre parcel; thence S.  $0^{\circ} 12' 36''$  W., along the Westerly line of Tantau Avenue, 227.8 feet; thence S.  $89^{\circ} 47' 24''$  E., 300.41 feet to the Easterly line of said 7.174 acre parcel; thence N.  $0^{\circ} 12' 36''$  E., along said Easterly line, 227.8 feet to the Northeasterly corner of said 7.174 acre parcel; thence N.  $89^{\circ} 47' 24''$  W., along the Northerly line of said 7.174 acre parcel, 300.41 feet to the point of beginning.

PARCEL TWO:

A portion of Lot 7 of the Partition of the Glendenning Estate, Map filed in Book B of Maps, Page 15, Santa Clara County Records, and a portion of the Quito Rancho, also being a portion of the 7.174 acre parcel of land described as Parcel Three in the Deed to Vallco Park, Ltd., recorded October 19, 1967, Book 7898 Official Records, Page 248, Santa Clara County Records, and described as follows:

BEGINNING in the Easterly line of Tantau Avenue distant thereon S.  $0^{\circ} 12' 36''$  W., 227.80 feet from the Northwesterly corner of said 7.174 acre parcel; thence S.  $89^{\circ} 47' 24''$  E., 300.41 feet to the Easterly line of said 7.174 acre parcel; thence S.  $0^{\circ} 12' 36''$  W., along said Easterly line, 425.21 feet to the Northerly terminus of the center line of Meadow Avenue, as shown on the Map of Tract No. 1867 Westwood Oaks Unit No. 5, on file in Book 93 of Maps, Page 49; thence S.  $89^{\circ} 24' 05''$  W., along the Northerly line of said Tract No. 1867, 122 feet to the Northwesterly corner thereof; thence continuing S.  $89^{\circ} 24' 05''$  W., along a Westerly prolongation of the Northerly line of said Tract No. 1867, 181.83 feet to the Easterly line of Tantau Avenue; thence along the Easterly line of Tantau Avenue,

Northerly along a non-tangent curve having a radius of 637.5 feet, concave Westerly, whose radius bears, N. 83° 52' 46" W., through an angle of 5° 54' 38" an arc length of 65.76 feet; thence N. 0° 12' 36" E., 363.85 feet to the point of beginning.

PARCEL THREE:

A portion of the Quito Rancho, and also being a portion of the 7.90 acre parcel of land described in the Final Order of Condemnation, dated December 17, 1959, a certified copy of which was recorded January 8, 1960, Book 4659 Official Records, Page 613, Santa Clara County Records, and described as follows:

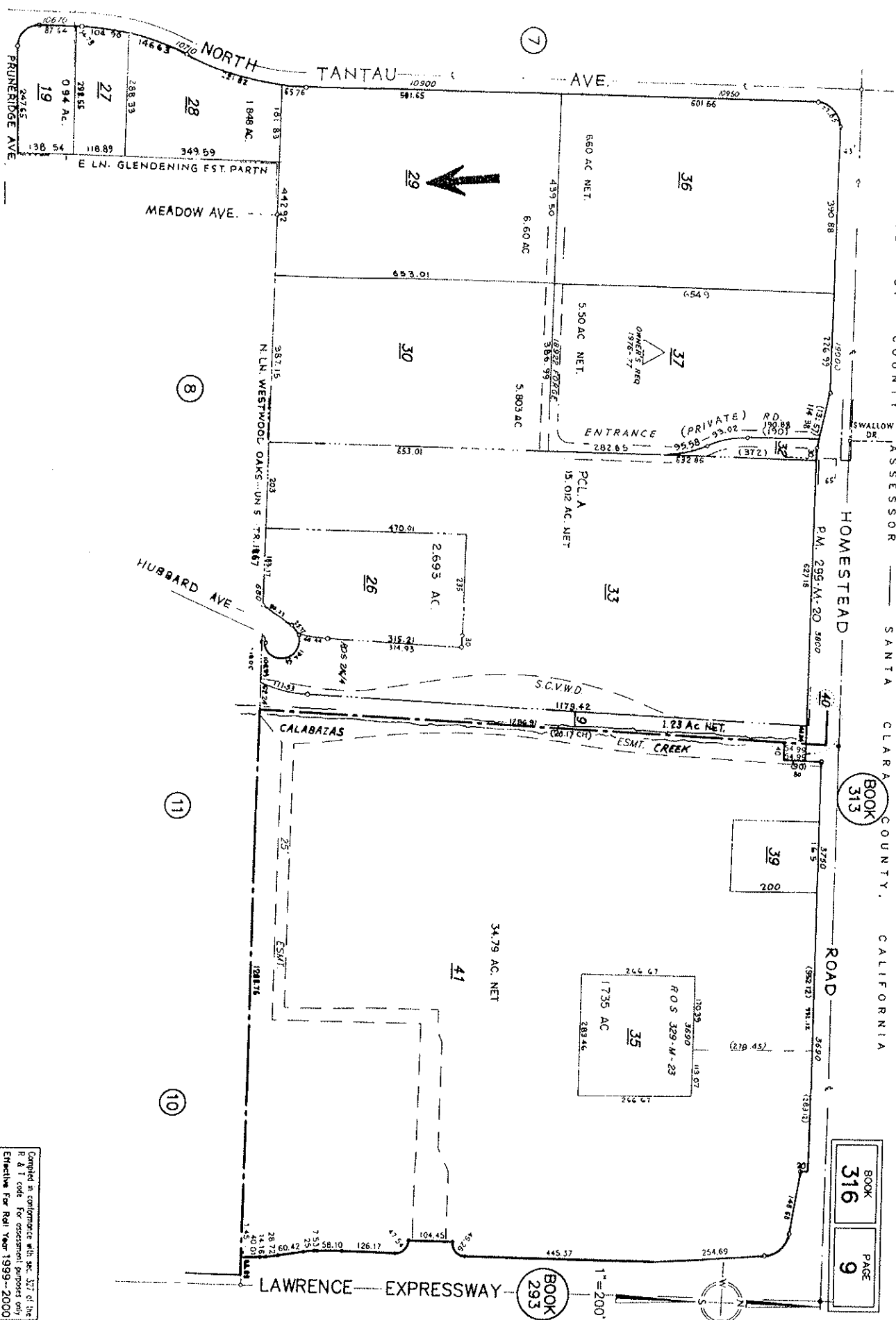
BEGINNING at the Northeasterly corner of the 7.174 acre parcel of land described as Parcel Three in the Deed to Vallco Park, Ltd., recorded October 19, 1967, Book 7898 Official Records, Page 248, also being the Northwesterly corner of said 7.90 acre parcel; thence S. 0° 12' 36" W., along the Easterly line of said 7.174 acre parcel and Westerly line of said 7.90 acre parcel, 653.01 feet to the Northerly terminus of the center line of Meadow Avenue, as shown on the Map of Tract No. 1867 Westwood Oaks Unit No. 5, on file in Book 93 of Maps; Page 49; thence N. 89° 24' 05" E., along the Northerly line of said Tract No. 1867, 139.09 feet; thence N. 0° 12' 36" E., parallel with the Easterly line of said 7.174 acre parcel, 653.01 feet to the Northerly line of said 7.90 acre parcel; thence S. 89° 24' 05" W., along said Northerly line, 139.09 feet to the point of beginning.

ARB 316-09-029

BOOK 313

BOOK 316

PAGE 9



Compiled in accordance with sec. 377 of the R. & I. Code for assessment purposes only. Effective For Roll Year 1999-2000 LAWRENCE E. STONE - ASSESSOR