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When Recorded, Mail to:

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attention: City Clerk

### HISTORIC EASEMENT AGREEMENT

This Historic Easement Agreement ("Agreement") is made and entered into this 4<sup>th</sup> day of September, 1998, by and between SUN MICROSYSTEMS, INC., ("Owner") and the City of Santa Clara, a chartered municipal corporation, ("City").

#### RECITALS

A. Owner is the owner of certain real property consisting of approximately 82.5 acres at Montague Expressway and Lafayette Street in the City, which is a portion of the former Agnews West Developmental Center ("Property"), and more particularly described in Exhibit A hereto.

B. City has adopted a General Plan and, pursuant thereto, may accept grants of historic easements on privately owned lands lying within the City.

C. City finds this historic easement to be consistent with the City's adopted General Plan and the project approvals for the Sun Microsystems campus on the Property and in the best interest of the City.

D. Both Owner and City desire to limit the use of a portion of the Property by dedication of an historic easement in order to

preserve the historic structures and landscaping on such land and recognize that the preservation of such historic structures and landscaping is an important physical, social, aesthetic and economic asset to the City and the Owner.

NOW, THEREFORE, the parties, in consideration of the mutual covenants and conditions set forth herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. Grant of Historic Easement. Owner, as grantor, hereby grants an historic easement to the City of Santa Clara, a chartered municipal corporation, located in the County of Santa Clara, State of California, over the real property described and shown on as Exhibit B hereto (the "Easement Property") to have and to hold said historic easement for the term and for the purposes and subject to the conditions, covenants and exceptions described herein.

2. Statutory Authorization. This Agreement and grant of historic easement are made and entered into pursuant to California Civil Code Sections 815 through 816.

3. Restriction on Use of Easement Property. During the term of this Agreement and the historic easement granted herein, Owner (for the direct benefit of the Easement Property, the Owner, and the City) hereby declares that the Easement Property shall be subject to restrictive covenants running with the land which shall be binding upon Owner and all subsequent grantees. Said restrictive covenants shall be:

a. against the right of Owner to construct any improvements on or within the Easement Property except for public and private utilities easements, a public restroom, streets, sidewalks, and street and sidewalk-amenities including, without limitation, street lights, trash cans and benches, signs (including, but not limited to, entrance signs, directional signs, signs restricting access outside the Easement Property, and City "Park" regulation signs, all as approved by the City), and other improvements authorized by the City; and

b. against the right of the Owner to alter the exterior or interior of the four significant historic structures within the Easement Property--the Clock Tower building, the Auditorium, the Mansion, and the Administration Building ("Historic Structures")--

other than to rehabilitate these buildings in accordance with the Secretary of Interior standards for rehabilitation; and

c. against Owner's demolishing or allowing deterioration of the Historic Structures and/or Easement Property; and

d. against the removal of mature vegetation and trees, except as may be required for fire prevention, thinning, elimination of diseased growth, and similar measures.

The City Council of the City may authorize exceptions to the foregoing restrictive covenants, provided such exceptions are consistent with the purpose of this easement and not incompatible with maintaining and preserving the historic character of the Easement Property.

4. Maintenance and Repair. Owner shall keep the Easement Property, including Historic Structures and landscaping on the Easement Property, well maintained and repaired, and all costs for such maintenance and repair shall be borne by Owner.

a. Owner recognizes that proper maintenance of the Easement Property is for the benefit not only of the Owner but also of the City and that the City may, upon notice and hearing, as set forth below, exercise powers of enforcement.

b. The City may, by mail or personal delivery, give written notice of the breach of any maintenance or repair obligation to the Owner with a demand that such breach be remedied. If such breach is not remedied within thirty (30) days of when notice is given, the City shall have standing and the right (but not the obligation) to bring a court action against the Owner to enforce such provision. In addition, the City shall be entitled to recover reasonable attorneys' fees and costs incurred in such action.

c. The notice shall also contain a date for a hearing on the matter before the City Manager or the City Manager's designee (which hearing shall be held no sooner than fifteen (15) days after notice is given) to determine if there has been inadequate maintenance or repair. After such hearing, the City Manager shall notify the Owner in writing of his or her determination. If the City Manager determines that there has been a breach of Owner's obligation to maintain and/or repair the

Easement Property, the Owner may make written appeal of that decision to the City Council. In case of an appeal, the City Council shall set the matter for hearing within thirty (30) days of the appeal and shall determine whether or not there has been a breach of Owner's obligation to maintain and/or repair. If the City Manager determines there has been such a breach (and there is no appeal) or if the City Council determines there is a breach of Owner's obligation to maintain and/or repair, the City shall have the right to undertake the necessary maintenance or repair of the Easement Property. Any and all costs incurred by the City in performing the necessary maintenance or repair of the Easement Property shall be a lien against the Easement Property and shall be the personal responsibility of the Owner.

d. Nothing contained in this section shall limit any other right or remedy which the City may have under its ordinances or state law.

e. The City's authority under this section is limited to those matters over which the City has jurisdiction, and in which it has a legitimate public interest, such as maintenance and repair, but does not extend to matters that concern the private interests of the Owner.

f. If any Historic Structure on the Easement Property is destroyed by fire, explosion, earthquake, or any other act of God or terrorist act to an extent of more than fifty percent (50%) of its reasonable value, Owner shall not be required to replace or repair the Historic Structure to its original condition.

5. Public Use. The public shall have a right of entry upon the Easement Property as set forth in the Access to Historic Easement Agreement, as it may be amended from time to time, entered into between Owner and City.

6. Term of Agreement. This Historic Easement Agreement shall be effective on the date of recordation of this Historic Easement Agreement and shall remain in effect in perpetuity.

7. Notice. Any notice or communication required hereunder between City or Sun must be in writing, and may be given either personally or by registered or certified mail (return receipt requested). If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees

designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City:

City of Santa Clara  
City Hall  
1500 Warburton Avenue  
Santa Clara, California 95050  
Attn: City Manager

If to Sun:

Sun Microsystems, Inc.  
901 San Antonio Road, MS MTV81-104  
Palo Alto, CA 94303  
Attn: Vice President, Real Estate

With a copy to:

Sun Microsystems, Inc.  
901 San Antonio Road, MS PAL1-521  
Palo Alto, CA 94303  
Attn: Office of General Counsel

8. Successors in Interest. This Agreement and the historic easement shall run with the Easement Property and shall be binding

upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

"Owner"

Date: June 5, 1998

SUN MICROSYSTEMS, INC.

By: William T. Agnello  
WILLIAM T. AGNELLO,  
Vice President, Real Estate  
and the Workplace

"City"

CITY OF SANTA CLARA

APPROVED AS TO FORM:

Michael R. Downey  
MICHAEL DOWNEY,  
City Attorney

Judy Truller  
Mayor

ATTEST:

Judy Boccignome  
JUDY BOCCIGNOME  
City Clerk

Jennifer Sparacino  
JENNIFER SPARACINO  
City Manager

ACCESS TO HISTORIC EASEMENT AGREEMENT

This Access to Historic Easement Agreement ("Agreement") is made and entered into this 4<sup>th</sup> day of September, 1998, by and between SUN MICROSYSTEMS, INC., a Delaware corporation, ("Sun") and the City of Santa Clara, a chartered municipal corporation, ("City").

RECITALS

A. Sun owns certain real property ("Property") consisting of approximately 82.5 acres at Montague Expressway and Lafayette Street in the City of Santa Clara, Santa Clara County, more particularly described in Exhibit A attached hereto.

B. Sun and the City have limited the use of a portion of the Property consisting of approximately 14.6 acres described in Exhibit B hereto ("Easement Property") by dedication of an Historic Easement from Sun to the City pursuant to an Historic Easement Agreement in order to preserve significant historic structures and landscaping on the Easement Property, and City and Sun recognize that the preservation of such historic structures and landscaping is an important physical, social, aesthetic, and economic asset to the City and Sun.

C. Pursuant to the Historic Easement Agreement, Sun has agreed to certain restrictions on the use of the Easement Property and certain obligations regarding maintenance and repair of the Easement Property and public access to the Easement Property.

D. This Agreement sets out the terms of access to the Easement Property.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. Exterior Access. Sun shall allow the Easement Property to be open to the public between the hours of 6 a.m., and one-half an hour after sunset daily, provided that the City Manager (or designee) and Sun's Vice President of Real Estate (or designee) may agree to close the Easement Property to the public for any interval of time, either temporarily or at regular or stated intervals, due

to emergencies, repair and maintenance, or particular scheduled events conducted by Sun or the City on the Property.

2. Regulations. The following regulations shall apply to the Easement Property, and pursuant to City Ordinance No. 1394, Section 18-10, it shall be unlawful for any person to violate any such regulation, and persons failing to observe these rules and regulations may be suspended from use of the Easement Property.

a. No dogs are allowed except on a six foot leash. Dog excrement must be removed by owner.

b. Riding of bicycles is prohibited except in designated areas. Bicycles must be parked in designated areas.

c. Shoes or sandals must be worn at all times.

d. Climbing of trees, fences, buildings, and other structures is prohibited.

e. Baseball and softball are prohibited.

f. Bicycling, hardball, golfing, graffiti, littering, power model airplanes and rockets, archery, guns, knives, skateboards, fireworks, etc., are not allowed.

g. No fires or portable barbeques are allowed.

h. Motor vehicles including scooters and motorcycles are not allowed except on streets, provided that Sun may use motor vehicles for maintenance purposes.

i. No amplified music is allowed out of doors without first obtaining a permit from the Parks and Recreation Department.

j. No portable play apparatus or inflatable jump pits are allowed without the permission of the Parks and Recreation Department.

k. No fighting, rock throwing, and boisterous actions, including challenging to fight, disturbing others by loud and unreasonable noise, and using profane, indecent language, or offensive words inherently likely to produce violent reactions is allowed.



1. No alcohol is allowed, except as set forth in Paragraph 12 below.

3. Administration Building. No public access shall be permitted to the Administration Building, other than invitees of Sun.

4. Clock Tower Building. The interior of the ground floor of the Clock Tower Building shall be available for access by the public by prearranged tours held on Tuesdays and Thursdays (excluding holidays) at 10 a.m. and other times as may be prearranged with Sun in Sun's discretion.

5. Mansion--Second Floor. No public access shall be permitted to the second floor of the Mansion, other than Sun's invitees, provided that if no Sun invitees are occupying the second floor and Sun is not making use of the first floor, the second floor shall be available for viewing by tour at the times and in the manner set forth in Section 4 above.

6. Auditorium

a. The Auditorium shall not be available to the public on weekday days.

b. On Tuesday and Thursday evenings and on all weekends, except the third weekend of each month, the Auditorium may be used according to the following priorities:

i. City sponsored activities, provided that the City schedules the Auditorium six (6) months in advance of each event.

ii. Sun sponsored activities, provided that Sun schedules the Auditorium with the City between three (3) and six (6) months in advance of each event.

iii. Other groups and members of the public in order of the priority set out in Paragraph 11 below, provided that they shall not be allowed to schedule events more than three (3) months in advance.

c. On Monday and Wednesday evenings and the third weekend of the month, the Auditorium may be used according to the following priorities:

i. Sun sponsored activities, provided that Sun schedules the Auditorium with the City ninety (90) days in advance of each event.

ii. City sponsored activities.

iii. Other groups and members of the public in order of the priority set out in Paragraph 11 hereof.

7. Mansion (First Floor).

a. The Mansion shall not be available to the public on weekday days.

b. On Monday evenings and on the first and third weekends of each month, the Mansion (First Floor) may be used according to the following priorities:

i. City of Santa Clara sponsored activities, provided that the City schedules the Mansion (First Floor) six (6) months in advance of each event.

ii. Sun sponsored activities, provided that Sun schedules the Auditorium with the City between three (3) and six (6) months in advance.

iii. Other groups and members of the public in order of the priority set out in Paragraph 11 hereof, provided that they shall not be allowed to schedule events more than three (3) months in advance.

c. On all other evenings and weekends of each month, other than those set out in subparagraph 7b above, the Mansion (First Floor) may be used according to the following priorities:

i. Sun sponsored activities, provided that Sun schedules the Mansion (First Floor) with the City ninety (90) days in advance of each event.

ii. City sponsored activities.

iii. Other groups and members of the public in order of the priority set out in Paragraph 11 hereof.

8. Definitions: Evenings, Weekends, and Holidays.

a. Evenings for the purpose of this Agreement are defined as Monday through Thursday from 7 p.m. to 11 p.m., for the Auditorium and Monday through Thursday from 7 p.m. to 10 p.m., for the Mansion (First Floor).

b. Weekends for the purpose of this Agreement are defined as Friday from 7 p.m. to 12 midnight, Saturday from 9 a.m. to 12 midnight, and Sunday from 8 a.m. to 12 midnight, provided, however, that for use of the Mansion (First Floor), all weekend nights shall end at 10 p.m.

c. The first weekend of each month for the purpose of this Agreement means the weekend beginning with the first Friday of each month. For example, if August 1st falls on a Friday, that begins the first weekend, but if August 1st falls on a Saturday, the first weekend is not until the weekend beginning on Friday, the 7th.

9. Incidental Use. When the Easement Property is available to the public and/or when the Mansion (First Floor) or Auditorium is being used by the City or public pursuant to this Agreement, the public shall also have a right to park in nearby parking lots designated for public use on the Property and walk across the Property and Easement Property to reach their destinations.

10. Ineligible Organizations. Use of the Mansion (First Floor) and Auditorium shall not be granted to the following individuals or groups:

a. Any individual or group which has as its object the overthrow of the United States or the State of California by force, violence, or other means.

b. Any individual or group which is a for-profit partnership, association, corporation, limited liability partnership or limited liability corporation, or has as its object the promotion or sales of commercial products.

c. Non-resident groups. A non-resident group shall mean any organization or group in which at least 51% or more of the individuals in the group are not residents of the City.

11. Classification. The following classification shall apply for purposes of determining priority use by the public of the Mansion (First Floor) and Auditorium as well as applicable fees and charges:

<u>Priority</u>	<u>Types of Groups</u>
1	Santa Clara Unified School District, other school districts having reciprocal agreements with the City, and any other schools located within City limits.
2	Government units and public agencies.
3	Youth organizations that: a. Are non-profit b. Serve the City c. Have an organization structure d. Do not charge an admission
4	Semi-public agencies
5	Non-profit community service groups, civic associations, churches, and charitable organizations.
6	Other schools that serve City residents (Santa Clara University, Bellarmine, Archbishop Mitty, etc.).
7	Special interest groups serving City residents (dance clubs, photo clubs, art associations, sports clubs, etc.).
8	Private Parties: a. All groups in priority Nos. 1-7 above who wish to conduct a special activity not open to the general public. b. City residents conducting private family or invitational parties, such as receptions.
9	Fund raising activities--all priorities in categories Nos. 2-8.

Note:

- a. Private "non-group" parties (as in 8b above) are classified as resident even though 51% of group participants may not live within the City.
- b. Groups will be required to provide a roster of participants to show proof of residency in the City.

12. Facility Regulations. The general public entering the Clock Tower Building, Mansion, and Auditorium ("Historic Facilities") shall observe the following facility regulations:

- a. No smoking or the use of any tobacco product is allowed.
- b. No animals, except guide dogs, are allowed.
- c. Possession of aerosol paint is prohibited and is a misdemeanor.
- d. Alcohol is prohibited, except for wine, champagne, and beer.
- e. Use of rice, birdseed, confetti, open flames, nails, thumbtacks, staples, and glue is prohibited.

13. Facilities Rental Agreement. All public users of the Mansion and Auditorium must file an application with the City, execute a facilities rental agreement, pay the rental fee and refundable security deposit, and provide a certificate of insurance prior to the final approval and booking of the rental, all in accordance with the City's Parks and Recreation Department regulations.

14. Enforcement. With regard to members of the public, this Agreement may be enforced by Sun, as the owner of the Easement Property, and/or the City, as the easement holder of the Easement Property. The City agrees to have a City staff member supervising all City events and public events in the Mansion and Auditorium, including set-up and clean-up and to make its Police and Fire Departments available on an as-needed basis to enforce the rules and regulations set out in this Agreement.

15. Indemnity; Insurance.

a. City agrees to protect, defend, hold harmless, and indemnify Sun, its officers, directors, employees, and agents, from and against all claims, injuries, liability, loss, costs, expense, or damage, however caused, including all costs and attorneys' fees, for any loss of or damage to property (real and/or personal) and for personal injury to or death of any person(s) which may arise from the public's use of the Property, except due to Sun's (or its

officers, directors, employees, or agents') negligence, misconduct, or failure to maintain the Easement Property.

b. Sun agrees to protect, defend, hold harmless, and indemnify the City, its officers, employees, and agents, from and against all claims, injuries, liability, loss, costs, expense, or damage, however caused, including all costs and attorneys' fees, for any loss of or damage to property (real and/or personal) and for personal injury to or death of any person(s) which may arise from Sun employees, agents, guests, or invitees use of the Property, except due to City's (or its officers, employees, or agents') negligence or misconduct.

c. City shall provide to Sun adequate evidence of self-insurance or certificates of insurance evidencing the following insurance coverages set forth in Subparagraph e below and issued by carriers of recognized responsibility with a financial rating of at least B+:IX when admitted in California or A:X if not admitted in California as rated in the latest Best's Insurance Guide (or, if discontinued, a comparable rating from a generally recognized standard for rating insurance companies).

d. Sun shall provide to City adequate evidence of self-insurance or certificates of insurance evidencing the following insurance coverages set forth in Subparagraph e below and issued by carriers of recognized responsibility with a financial rating of at least B+:IX when admitted in California or A:X if not admitted in California as rated in the latest Best's Insurance Guide (or, if discontinued, a comparable rating from a generally recognized standard for rating insurance companies).

e. Coverage requirements for Sun and the City are as follows:

i. Statutory workers compensation and employer's liability coverage as required by law for injury, disease, and death.

ii. Commercial general liability and auto insurance with combined single limit coverage or equivalent in the amount of Two Million Dollars (\$2,000,000) per occurrence. Such policy shall provide coverage for premises and operations, completed operations (for at least one (1) year following completion of the work) and broad form property damage and blanket contractual liability coverage. All policies shall contain coverage for automobile and

general liability and shall be noncontributing with any other insurance of the insured and shall be occurrence-based. All commercial general liability and auto liability policies of City shall name Sun, and its respective agents, officers, directors, shareholders, partners, employees and contractors, as additional insureds as its interests may appear. All commercial general liability and auto liability policies of Sun shall name City, its respective agents, officers, employees, and contractors as additional insureds, as its interests may appear.

iii. Any modification, renewal, replacement, or cancellation of such insurance coverages of the insured party shall require at least thirty (30) days prior written notice to the other party. In no event shall the foregoing coverage limits affect or limit in any manner City's or Sun's contractual liability regarding indemnification.

16. Term. This Agreement shall commence upon the date the Historic Easement Agreement is recorded and shall remain in effect as long as the Historic Easement Agreement is in effect.

17. Termination of Agreement for Default. If either party fails to cure any breach of its obligations hereunder within thirty (30) days following written notice thereof from the other party (or, if such cure cannot be completed within said thirty (30) day period using diligent efforts, then within such reasonable period of time, provided that the defaulting party commences to effect such cure within said thirty (30) day period and thereafter diligently prosecutes the same to completion), then the non-defaulting party may commence dispute resolution proceedings as set forth in Paragraph 18 of this Agreement.

18. Dispute Resolution. If the parties are in dispute regarding any condition or section of this Agreement, the parties shall endeavor to settle such dispute by mediation. Each party shall bear its own attorneys' fees and costs in connection with such mediation. If the parties are unable to settle such dispute by mediation, the parties shall submit the dispute to arbitration. Any award under arbitration shall be binding, and the prevailing party shall be entitled to recover its attorneys' fees and costs incurred in connection with such arbitration. Any demand for mediation or arbitration shall be made within thirty (30) days from the date such dispute arose. During any such mediation or arbitration, the parties shall continue to perform in the manner and within the time periods required under this Agreement.

19. Entire Agreement; Amendment. This Agreement represents the entire agreement with regard to access between the parties and supersedes any other oral agreements or understandings between the parties. This Agreement may be amended only by a written document executed by both parties hereto.

20. Attorneys' Fees. The prevailing party in any action to interpret or enforce this Agreement shall be entitled to recover its reasonable attorneys' fees.

21. Non-Assignability; Successors in Interest. This Agreement may not be assigned by either party, except that Sun may assign this Agreement to a successor owner to all or a portion of the Property. The Agreement shall be binding upon and inure to the benefit of the successors of the parties hereto.

22. Violation of Agreement. A violation of this Agreement shall be considered a default under the Development Agreement entered into between Sun and the City and shall be governed by Article 9 of the Development Agreement regarding defaults and may result in termination of the Development Agreement. This Agreement may also be enforced by injunction in a court of equity as specific performance is important to the integrity of this Agreement.

23. Waiver. The parties agree that any waiver by a party of any breach of violation of any term or condition of this Agreement by another party shall not be deemed to be a waiver by that party or another party of any other term or condition contained in this Agreement or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by a party of the performance of any obligation or duty by another party shall not be deemed to be a waiver of any term or condition of this Agreement.

24. Notice. Any notice or communication required hereunder between City or Sun must be in writing, and may be given either personally or by registered or certified mail (return receipt requested). If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the



party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City:

City of Santa Clara  
City Hall  
1500 Warburton Avenue  
Santa Clara, California 95050  
Attn: City Manager

If to Sun:

Sun Microsystems, Inc.  
901 San Antonio Road, MS MTV81-104  
Palo Alto, CA 94303  
Attn: Vice President, Real Estate

With a copy to:

Sun Microsystems, Inc.  
901 San Antonio Road, MS PAL1-521  
Palo Alto, CA 94303  
Attn: Office of General Counsel

25. Annual Review. The City Manager (or designee) and Sun's Vice President of Real Estate (or designee) shall annually review this Agreement. Both parties shall appoint specific personnel to represent the City and Sun in between annual reviews to communicate about all issues regarding this Agreement.

26. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, in full or in part, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid, and enforceable, and the other provisions of this Agreement shall not be affected thereby.

27. No Partnership. Nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, unincorporated association, or similar relationship between Sun and the City, and neither party shall have the

authority to assume or create any obligation or make any representation on behalf of the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SUN MICROSYSTEMS, INC.

By: William T. Agnello  
WILLIAM T. AGNELLO,  
Vice President, Real Estate  
and the Workplace

CITY OF SANTA CLARA

APPROVED AS TO FORM:

Michael P. Downey  
MICHAEL DOWNEY,  
City Attorney

Judy Nadler  
Mayor

ATTEST:

J. L. Boccignone  
JUDY BOCCIGNONE  
City Clerk

Jennifer Sparacino  
JENNIFER SPARACINO  
City Manager