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DEVELOPMENT AGREEMENT

CITY: City of Menlo Park

DEVELOPER: Sun Microsystems, Inc.

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DEC 23 1991

Office of City Clerk
City of Menlo Park

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EXHIBITS

- A - Map of Property
- B - Description of Property
- C - Amendment to the Master Plan
- D - Summary of Vested Elements
- E - Conditions
- F - Staff Report

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this 29th day of November, 1991, by and between the City of Menlo Park, a municipal corporation of the State of California ("City") and Sun Microsystems, Inc., a Delaware corporation ("Developer"), pursuant to the authority of California Government Code Sections 65864-65869.5 and City Resolution No. 4159.

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864-65869.5 authorizing the City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property which is the subject of such development agreements.

B. As authorized by Government Code Section 65865(c), City has adopted Resolution No. 4159 establishing the procedures and requirements for the consideration of development agreements within the City.

C. Developer is under contract to purchase that certain parcel of land (the "Property") outlined in Exhibit A attached

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hereto and being more particularly described in Exhibit B, attached hereto, and therefore has an equitable interest in the Property.

D. Raychem Corporation ("Raychem"), the owner of the Property, obtained approval of a Master Plan for the Property and Raychem's adjacent property (the "Master Plan") that, among other things, included development of the Property with office and research and development facilities consisting of 1,036,313 square feet of building space and 2,635 parking spaces.

E. The City examined the environmental effects of the Master Plan in an Environmental Impact Report (the "Master Plan EIR") prepared pursuant to the California Environmental Quality Act (CEQA). On May 10, 1977, the City Council reviewed and certified the Master Plan EIR, adopted certain mitigation measures for the Master Plan, and approved the Master Plan.

F. Developer received approval from City to amend the Master Plan for the Property to, among other things, increase the number of parking spaces to 3,500 spaces. A copy of this approved Amendment to the Master Plan for the Property (the "Project") is attached hereto as Exhibit C.

G. Because the Project substantially conforms to the Master Plan, the City determined, pursuant to CEQA, that the only substantial changes requiring new environmental review were the traffic circulation, air quality, housing/employment, drainage and water use and supply. Accordingly, the City prepared a focused Supplemental EIR analyzing these impacts.

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H. The Final Supplemental EIR for the Project was certified and the Project was approved by the City Council on October 22, 1991.

I. City has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the City's land use planning for and secure orderly development of the Project and otherwise achieve the goals and purposes for which Resolution No. 4159 was enacted by City. A development agreement will attract a large single corporate user to the Property, providing greater opportunities for traffic management and cohesive, attractive site design and improvements and result in important economic benefits, both direct and indirect, to the City. Developer will incur substantial costs in order to comply with the conditions of approval and to assure development of the Property in accordance with this Agreement. In exchange for these benefits to the City and the public, Developer desires to receive assurance that City shall grant permits and approvals required for the development of the Project in accordance with the Existing City Laws, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the parties desire to enter into this Agreement.

J. On September 23, 1991, after conducting a duly noticed public hearing pursuant to Resolution No. 4159, the Planning Commission recommended that the City Council approve this Agreement, based on the following findings and determinations: that this Agreement is consistent with the objectives, policies,

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general land uses and programs specified in the General Plan; is compatible with the uses authorized in and the regulations prescribed for the land use district in which the Property is located; is in conformity with public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City; will not adversely affect the orderly development of property or the preservation of property values within the City; and will promote and encourage the development of the Project by providing a greater degree of certainty with respect thereto.

K. Thereafter, on October 22, 1991, the City Council held a duly noticed public hearing on this Agreement pursuant to Resolution No. 4159 and made the same findings and determinations as the Planning Commission. On that same date, the City Council made a decision to approve this Agreement by introducing Ordinance No. 828 (the "Enacting Ordinance"). On October 29, 1991, the City Council adopted the Enacting Ordinance. The Enacting Ordinance became effective on November 29, 1991.

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5, and in consideration of the mutual covenants and promises of the parties herein contained, the parties agree as follows:

1. Definitions. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

1.1 Amendment to the Master Plan. The revised Master Plan for development of the Project that was approved by the City Council, as defined in Recital F above.

1.2 Approvals. Any and all permits or approvals of any kind or character required under the City Laws in order to develop the Project, including, but not limited to, building permits, use permits, site clearance, grading plans and permits, and certificates of occupancy.

1.3 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of City, governing the permitted uses of land, density, design, improvements and construction standards and specifications applicable to the development of the Property. Specifically, but without limiting the generality of the foregoing, City Laws shall include the City's General Plan, the City's Zoning Ordinance and the City's Subdivision Ordinance.

1.4 Conditions. All conditions, exactions, fees or payments, dedication or reservation requirements, obligations for on- or off-site improvements, services or other conditions of approval called for in connection with the development of or construction on property under the Existing City Laws, whether such conditions constitute public improvements, mitigation measures in connection with environmental review of any project, or impositions.

1.5 Director. The Director shall mean the Director of Community Development for the City of Menlo Park.

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1.6 Enacting Ordinance. Zoning Ordinance No. 828, introduced by the City Council on October 22, 1991 and adopted by the City Council on October 29, 1991, approving this Agreement, as described in Recital K above.

1.7 Existing City Laws. The City Laws in effect as of the Effective Date (as defined in Section 2.1 below).

1.8 Laws. The laws and Constitution of the State of California, the laws and Constitution of the United States and any codes, statutes or executive mandates in any court decision, state or federal, thereunder.

1.9 Master Plan. The Master Plan for the Property and the adjacent property approved by the City Council on May 10, 1977, as described in Recitals E and F above.

1.10 Master Plan EIR. The Environmental Impact Report for the Master Plan approved by the City Council on May 10, 1977, as described in Recital E above.

1.11 Mortgage. A mortgage, deed of trust, sale and leaseback arrangement in which the Property or a portion thereof or an interest therein is sold by Developer and leased back concurrently therewith (which arrangement is subject to no prior contractual encumbrances securing payment of money), or other transaction in which the Property, or a portion thereof or an interest therein, is pledged as security, contracted in good faith and for fair value.

1.12 Mortgagee. The holder of the beneficial interest under a Mortgage.

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1.13 Party. A signatory to this Agreement, or a successor or assign of a signatory to this Agreement.

1.14 Project. The uses, Vested Elements, and site plan approved by or embodied within the Amendment to the Master Plan, as it may hereafter be further modified pursuant to this Agreement.

1.15 Property. The real property outlined in Exhibit A and described in Exhibit B hereto on which Developer intends to develop the Project.

1.16 Resolution No. 4159. Resolution No. 4159 entitled "Resolution of the City Council of the City of Menlo Park Adopting Regulations Establishing Procedures and Requirements for Development Agreements" adopted by the City Council of the City of Menlo Park on January 9, 1990.

2. Effective Date; Condition Subsequent; Term.

2.1 Effective Date. This Agreement shall be dated and the obligations of the parties hereunder shall be effective as of the effective date of the Enacting Ordinance, pursuant to Government Code Section 36937, as specified in Recital K above (the "Effective Date"). Not later than ten (10) days after the Effective Date, the City and Developer shall execute and acknowledge this Agreement, and the City shall cause this Agreement to be recorded in the Official Records of the County of San Mateo, State of California as provided for in Government Code Section 65868.5. However, failure to record this Agreement within the time period provided for in Section 65868.5 shall not affect its validity or enforceability among the Parties.

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2.2 Condition Subsequent. City enters into this Agreement on the condition subsequent that Developer close escrow on the purchase of the Property from Raychem within ninety (90) days after the Effective Date. If Developer does not close escrow on the purchase of the Property within that ninety (90) days, this Agreement shall terminate; however, such termination shall be without prejudice and Developer shall have the right to reapply for a development agreement and/or Project approval for the Property at any time. If a referendum is brought challenging the Enacting Ordinance or if a lawsuit is filed challenging the Enacting Ordinance, this Agreement, the Supplemental EIR for the Project, or the General Plan in existence at the time this Agreement becomes effective, the ninety (90) day time period set forth above shall be extended until thirty (30) days after the date on which the outcome of this referendum or the outcome of such a lawsuit (including appeal periods) is finally decided, at which time Developer must close escrow on the purchase of the Property from Raychem or this Agreement shall terminate; provided that, if the outcome of such referendum or lawsuit (including appeal periods) is not finally decided within one (1) year of the Effective Date, the City may elect to terminate this Agreement. Additionally, if the City determines that the 1991 San Mateo County Congestion Management Program ("CMP") applies to the Project and the Project exceeds the threshold set by the CMP, the ninety (90) day time period set forth above shall be extended until thirty (30) days after the date on which the City/County Association of Governments of San Mateo County ("C/CAG")

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determines whether additional mitigation measures are required as a condition of Project approval; provided that if C/CAG has not made such a determination within one (1) year of the Effective Date, the City may elect to terminate this Agreement.

2.3 Term. The Term of this Agreement shall commence on the Effective Date and shall terminate on the eighteenth anniversary of the Effective Date, unless sooner terminated or extended as hereinafter provided.

3. General Development of the Project.

3.1 Project. Developer shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Amendment to the Master Plan, a copy of which is attached hereto as Exhibit C, and such amendments thereto as shall from time to time be approved, pursuant to this Agreement; and City shall have the right to control development of the Property in accordance with the provisions of this Agreement. Except as otherwise specified herein, this Agreement, the Amendment to the Master Plan and the Existing City Laws shall control the overall design, development and construction of the Project, and all improvements and appurtenances in connection therewith, including, without limitation, the permitted uses on the Property, the density and intensity of uses, the maximum height, the allowable floor area ratios, the number of allowable parking spaces, the amount of required landscaping, the allowable number of occupants, all reservations and dedications of land for public purposes (the "Vested Elements," a summary of which is set forth in Exhibit D

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hereto), and all mitigation measures and conditions required or imposed in order to minimize or eliminate environmental impacts or any impacts of the Project. In the event of any inconsistency between the Amendment to the Master Plan and this Agreement, the provisions of this Agreement shall govern and control.

3.2 Conditions. In consideration of City's entering into this Agreement, Developer shall comply with the Conditions set out in Exhibits E and F attached hereto.

3.3 Project Phasing. To the extent that the Project is developed in phases, the parties acknowledge that presently Developer cannot predict the timing or sequence of any such Project phasing. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, competition and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Project in phases in such order and at such times as Developer deems appropriate within the exercise of its subjective business judgment and the provisions of this Agreement; provided that

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(a) Developer shall include a cafeteria of at least seven thousand five hundred (7,500) square feet in the first phase of building it builds on the Property; and

(b) City shall have the option to terminate this Agreement if Developer has not received a building permit for Phase III of the Project (thus receiving building permits for all square footage allowed by this Agreement) and commenced construction in good faith reliance upon the building permits by the fourteenth anniversary of the Effective Date, in accordance with Section 8; and

(c) As long as this Agreement is in effect, Developer shall have the obligation to comply with the Conditions as set out in Exhibits E and F attached hereto, regardless of the timing of any phase of development of the Property.

By entering into this Agreement, Developer shall not be obligated to develop the Property.

3.4 Other Governmental Permits. Developer or City (whichever is appropriate) shall apply for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project (such as public utility districts, the Bay Conservation and Development Commission or Caltrans) as may be required for the development of, or provision of services to, the Project. City shall promptly and diligently cooperate, at no cost to the City, with Developer in its endeavors to obtain such permits and approvals and, from time to time at the request of Developer, shall attempt with due diligence and in good faith to enter into binding agreements with

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any such entity in order to assure the availability of such permits and approvals or services. To the extent allowed by law, Developer shall be a party or third party beneficiary to any such agreement and shall be entitled to enforce the rights of Developer or City thereunder or the duties and obligations of the parties thereto. Developer shall reimburse City for all its expenses, including, but not limited to, legal fees and staff time (as such costs are normally charged applicants at the time of imposition) incurred in entering into such agreements.

3.5 Additional Fees. Except as set forth in this Agreement, City shall not impose any further or additional fees, taxes or assessments, whether through the exercise of the police power, the taxing power, or any other means, other than those prescribed in the Amendment to the Master Plan, the Existing City Laws and this Agreement, provided that

(a) If City forms an assessment district including the Property, and the assessment district is City-wide or area-wide, as defined below, the Property may be legally assessed through such district based on the benefit to the Property, which assessment shall be consistent with the assessment of other property in the district similarly situated. In no event, however, shall Developer's obligation to pay such assessment result in a cessation or postponement of construction of the Project or affect in any way the development rights for the Project.

(b) City may charge Developer processing fees for land use approvals, building permits and other similar

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permits which are in force and effect on a Citywide basis at the time application is submitted for those permits.

(c) If City exercises its taxing power in a manner which will not change any of the Conditions applicable to the Project and so long as any taxes are uniformly applied on a City-wide or area-wide basis, as defined below, the Property may be so taxed, which tax shall be consistent with the taxation of other properties in the City or area similarly situated.

(d) If state or federal laws are adopted which enable cities to impose fees on existing projects and if, consequently, the City adopts enabling legislation and imposes fees on existing projects on a City-wide or area-wide basis, as defined below, these fees may be imposed on the Project, which fees shall be consistent with the fees imposed on other properties in the City or area similarly situated.

In no event, however, shall any fees, other than those set out in Exhibits E and F, be imposed as a condition of development or occupancy of the Project or any portion thereof.

For purposes of this Agreement, "area-wide" shall cover not only the Property, but also at least all parcels zoned and/or developed in a manner similar to the Property and located east of Highway 101. The Parties acknowledge that the provisions contained in this Section 3.5 are intended to implement the intent of the Parties that Developer has the right to develop the Project pursuant to specified and known criteria and rules, and that City receive the benefits which will be conferred as a

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result of such development without abridging the right of City to act in accordance with its powers, duties and obligations.

3.6 Effect of Agreement. This Agreement, the Amendment to the Master Plan, and all plans, specifications, schematic drawings and models, if any, upon which such Amendment to the Master Plan are based, shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full.

4. Specific Criteria Applicable to Development of the Project.

4.1 Applicable Laws and Standards. Notwithstanding any change in any Existing City Law including, but not limited to any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws and policies applicable to the Property are set forth in Existing City Laws (regardless of future changes in these by City), this Agreement and the Amendment to the Master Plan. The Project has vested rights to be built and occupied on the Property in accordance with the Vested Elements, provided that City may apply and enforce the Uniform Building Code (including the Uniform Mechanical Code, Uniform Electrical Code and Uniform Plumbing Code) and Uniform Fire Code in effect at the time Developer applies for building permits for any aspect of the Project, and provided that Developer is in compliance with all Conditions set out in Exhibits E and F.

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4.2 Application of New City Laws. Nothing herein shall prevent City from applying to the Property new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement, and which do not affect the Vested Elements, impose any further or additional fees or impose any other conditions requiring additional traffic improvements/requirements or additional off-site improvements that are inconsistent with this Agreement or the intent of this Agreement. Any action or proceeding of the City that has any of the following effects on the Project shall be considered in conflict with this Agreement and the Existing City Laws:

- (a) limiting the uses permitted on the Property;
- (b) limiting or reducing the density or intensity of uses, the maximum height, the allowable floor area ratios, the number of allowable parking spaces, the allowable number of occupants, increasing the amount of required landscaping or reservations and dedications of land for public purposes;
- (c) limiting the timing or phasing of the Project in any manner;
- (d) limiting the location of building sites, grading or other improvements on the Property in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement; or

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(e) applying to the Project or the Property any law, regulation, or rule restricting or affecting a use or activity otherwise allowed by this Agreement.

The above list of actions is not intended to be comprehensive, but is illustrative of the types of actions that would conflict with this Agreement and the Existing City Laws.

4.3 Timing. Without limiting the foregoing Section 4.1, no moratorium or other limitation affecting building permits or other land use entitlements, or the rate, timing or sequencing thereof shall apply to the Project; provided, that if the City and County of San Francisco ("San Francisco") imposes a moratorium on additional water allocations on its suburban water purchasers, City shall have no obligation to process approvals for the Project, until such moratorium is lifted. When San Francisco allocates water to the Project, or a portion of the Project, the City shall process approvals for such portion of the Project for which an allocation was received.

4.4 Architectural Review of Project. In order for the Developer to receive approval of the particular design of the Project, or any part thereof, the City may apply the rules and regulations regarding architectural review in effect in the City at the time the Developer applies for building permits for any aspect of the Project, as long as applying these rules and regulations does not affect the Vested Elements, impose any further or additional fees or impose any other conditions requiring additional traffic improvements/requirements or

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additional off-site improvements, that are inconsistent with this Agreement or the intent of this Agreement.

4.5 Easements; Improvements. City shall cooperate with Developer in connection with any arrangements for abandoning existing utility or other easements and facilities and the relocation thereof or creation of any new easements within the Property necessary or appropriate in connection with the development of the Project. All improvements required to be constructed by Developer as Conditions of approval shall be constructed by Developer congruent with each phase of the Project, as set forth in Exhibits E and F.

5. Indemnity. Developer shall indemnify, defend and hold City, and its elective and appointive boards, commissions, officers, agents, and employees, harmless from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development of the Project, any Approval with respect thereto, or claims for injury or death to persons, or damage to property, as a result of the operations of Developer or its employees, agents, contractors or representatives with respect to the Project.

6. Annual Review.

(a) City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance with the terms of this Agreement pursuant to Government Code § 65865.1 and Resolution No. 4159. Notice of such annual review shall include the

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statement that any review may result in amendment or termination of this Agreement. All costs incurred by City for the annual review by City shall be borne by Developer. A finding by City of good faith compliance by Developer with the terms of Agreement shall conclusively determine said issue up to and including the date of said review.

(b) If the City Council makes a finding that Developer has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice to Developer describing (i) such failure to comply with the terms and conditions of this Agreement (referred to herein as a "Default"), (ii) whether the Default can be cured, (iii) the actions, if any, required by Developer to cure such Default, and (iv) the time period within which such Default must be cured. If the Default can be cured, Developer shall have at a minimum 30 days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such 30 day period but can be cured within one (1) year, Developer shall have commenced the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default within 30 days from the date of notice. If the default cannot be cured or cannot be cured within one (1) year, as determined by City during periodic or special review, the City Council may modify or terminate this Agreement as provided in Section 6(d) and Section 6(e).

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(c) If the Developer fails to cure a Default within the time periods set forth above, the City Council may modify or terminate this Agreement as provided below.

(d) Proceedings Upon Modification or Termination. If, upon a finding under Section 6(b) and the expiration of the cure period specified in Section 6(c) above, City determines to proceed with modification or termination of this Agreement, City shall give written notice to Developer of its intention so to do. The notice shall be given at least ten (10) calendar days before the scheduled hearing and shall contain:

- (i) The time and place of the hearing;
- (ii) A statement as to whether or not City proposes to terminate or to modify the Agreement; and
- (iii) Such other information as is reasonably necessary to inform Developer of the nature of the proceeding.

(e) Hearings on Modification or Termination. At the time and place set for the hearing on modification or termination, Developer shall be given an opportunity to be heard, and Developer shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on the issue shall be on Developer. If the City Council finds, based upon substantial evidence, that Developer has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are

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reasonably necessary to protect the interests of the City. The decision of the City Council shall be final.

7. Permitted Delays.

7.1 Extension of Times of Performance. Performance by either Party under this Agreement shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fire, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, restrictions imposed by governmental or quasi-governmental entities other than City, unusually severe weather, acts of the other Party, acts or the failure to act of any public or governmental agency or entity, or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of cause. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the joint agreement of the City and Developer. Litigation attacking the validity of this Agreement, or any permit, ordinance, or entitlement or other action of a governmental agency necessary for the development of the Property pursuant to this Agreement shall also be deemed to create an excusable delay under this Section. In no event, shall

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the Term of this Agreement be extended beyond the original term, without the joint agreement of the City and Developer.

7.2 Supersedure by Subsequent Laws. If any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Developer's reasonable business judgment, then Developer shall have the right to terminate this Agreement by written notice to City. Developer shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

8. Termination.

8.1 City's Right to Terminate. City shall have the right to terminate this Agreement only under the following circumstances:

(a) Developer fails to satisfy the City's condition subsequent to entering into this Agreement, as set forth in Section 2.2. In the case of such termination, neither Developer nor any other person shall have any obligation to City

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under this Agreement, and all Project approvals shall be deemed withdrawn.

(b) Developer has not received building permits for all square footage allowed by this Agreement and commenced construction in good faith reliance upon the building permits by the fourteenth anniversary of the Effective Date.

(c) The City Council has determined that Developer is not in substantial compliance with the terms of this Agreement and this Default remains uncured, all as set forth in Section 6.

8.2 Developer's Right to Terminate. Developer shall have the right to terminate this Agreement only under the following circumstances:

(a) Developer fails to satisfy City's condition subsequent to entering into this Agreement, as set forth in Section 2.2. In the case of such termination, neither Developer nor any other person shall have any obligation to City under this Agreement, and all Project approvals shall be deemed withdrawn.

(b) Developer has found City in breach of this Agreement, has given City notice of such breach and City has not cured such breach within thirty (30) days of receipt of such notice or, if the breach cannot reasonably be cured within such 30 day period, if the City has not commenced to cure such breach within 30 days of receipt of such notice and is not diligently proceeding to cure such breach.

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(c) Developer is unable to complete the Project because of supersedure by a subsequent Law or court action, as set forth in Sections 7.2 and 13.

(d) Developer determines, in its business judgment, that it is not practical or reasonable to pursue development of the Property.

(e) Developer has closed escrow on the purchase of the Property from Raychem, but Developer determines, because of any C/CAG requirements, to terminate this Agreement.

8.3 Mutual Agreement. This Agreement may be terminated upon the mutual Agreement of the Parties.

8.4 Effect of Termination.

(a) General Effect. If this Agreement is terminated for any reason, such termination shall not affect any Condition or obligation due to City from Developer prior to the date of termination and, except as provided in Sections 8.1(a) and 8.2(a), such termination shall not affect any City entitlement or approval with respect to the Property that has been granted prior to the date of termination.

(b) Future Obligations.

(i) If the Agreement is terminated for any of the following reasons, Developer shall have no future obligations to City from the date of termination:

A. Developer's failure to satisfy the condition subsequent to entering into this Agreement, as set forth in Sections 8.1(a) and 8.2(a).

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B. City's breach of this Agreement, as set forth in Section 8.2(b).

C. Developer's termination because of supersedure by a subsequent Law, as set forth in Section 8.2(c).

D. Developer's termination because of C/CAG requirements, as set forth in Section 8.2(e).

(ii) If the Agreement is terminated for any of the following reasons, Developer shall have no future obligations to City from the date of termination, except that Developer shall continue to guarantee the revenue stream to City as set forth in Exhibit E, section 4:

A. Developer's Default, as set forth in Section 8.1(c).

B. Developer's decision not to pursue development of the Property, as set forth in Section 8.2(d).

(iii) Notwithstanding the above, if City elects to terminate this Agreement on or after the fourteenth anniversary of the Effective Date, as set forth in Section 8.1(b), the Developer shall continue to guarantee a revenue stream to City, as set forth in Exhibit E, section 4, as follows:

A. If 0 - 400,000 square feet of the Project is constructed, Developer shall guarantee City \$100,000 per year from 1995 through 2009;

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B. If 401,000 - 750,000 square feet of the Project is constructed, Developer shall guarantee City \$100,000 per year from 1995 through 1997 and \$187,500 from 1998 through 2009;

C. If 751,000 - 1,036,000 square feet of the Project is constructed, Developer shall guarantee City \$100,000 per year from 1995 through 1997, \$187,500 from 1998 through 2002, and \$259,000 from 2003 through 2009.

8.5 Recordation of Termination. In the event of a termination, City and Developer agree to cooperate with one another in executing a Memorandum of Termination to record in the Official Records of San Mateo County within thirty (30) days of the date of termination.

9. Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the Parties hereto, provided that Developer's remedies shall be restricted to bringing an action or actions for writ of mandate, injunction, specific performance or refund for any fees, taxes or assessments imposed in violation of this Agreement.

10. Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such

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other Party in the future. No waiver by a Party of an event of Default shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such event of Default. No express written waiver of any event of Default shall affect any other event of Default, or cover any other period of time, other than any event of Default and/or period of time specified in such express waiver. Except as provided in this Section, all of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

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11. Attorneys' Fees. If either Party brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against the other Party by reason of an event of Default, or otherwise arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees (including, without limitation, fees and expenses), which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this section shall include, without limitation, a Party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due,

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performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

12. Limitations on Actions. City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status. If any action or proceeding is instituted by any third party challenging the validity of any provisions of this Agreement, or any action or decision taken or made hereunder, the parties shall cooperate in defending such action or proceeding.

13. Effect of Court Action. If any court action or proceeding is brought by any third party to challenge this Agreement, or any other permit or Approval required from City or any other governmental entity for development or construction of the Project, or any portion thereof, and without regard to whether or not Developer is a party to or real party in interest in such action or proceeding, then (i) Developer shall have the right to terminate this Agreement upon thirty (30) days notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (ii) any such action or proceeding shall constitute a permitted delay under Section 7. If such court action or proceeding names the City as a party, Developer shall indemnify and defend City or, at City's option,

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pay all costs incurred by City in defending itself; however, City agrees to cooperate with Developer in defending such an action.

14. Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) the requesting Party has been found to be in compliance with this Agreement, and the date of the last determination of such compliance. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The Director shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

15. Mortgagee Protection; Certain Rights of Cure.

15.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage, but all of the terms and conditions contained in this Agreement shall

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be binding upon and effective against any person (including any Mortgagee) who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

15.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 15.1 above, no Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure, or deed in lieu of foreclosure, or transferee of such Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, to guarantee such construction or completion or to be liable for any defaults or monetary obligations arising prior to acquisition of title to the Property by the Mortgagee or transferee and provided further that in no event shall any Mortgagee or its successors or assigns be entitled to a building permit or occupancy permit until all fees due under this Agreement relating to the portion of the Property acquired by such Mortgagee have been paid to the City and until any other default has been cured.

15.3 Notice of Default to Mortgagee; Right to Mortgagee to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice of an event of Default or determination of noncompliance given to Developer. Each Mortgagee shall have the right (but not the obligation) for a

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period of ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth in the City's notice. If the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and may thereafter remedy or cure the Event of Default or noncompliance within ninety (90) days after obtaining possession. If any such Event of Default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Event of Default or noncompliance if such Mortgagee commences a cure during such ninety (90) day periods, and thereafter diligently pursues completion of such cure to the extent possible.

15.4 Right of City to Cure. If Developer defaults under any Mortgage, then City shall have the right, but not the obligation, to cure such default prior to completion of any foreclosure or any proceeding to terminate the interest of Developer in the Property. Each Mortgagee shall provide to City any notice of default given Developer under its Mortgage concurrently with serving the same upon Developer. If City invokes its right to cure hereunder, City shall be entitled to reimbursement from Developer of all costs and expenses incurred by City in curing such default. City shall also be entitled to a

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lien upon any of the Property, or portion thereof, encumbered by the Mortgage with respect to which Developer has defaulted, to the extent of such costs and disbursements.

16. Right to Assign. Developer's rights hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of all or any portion of the Property at any time during the term of this Agreement upon all of the following terms and conditions:

16.1 City Consent. No such assignment shall occur without the prior written consent of City, which said consent shall not be unreasonably withheld. In determining whether or not to grant consent, City shall exercise its discretion based upon, but not limited to, the type of use to which the assignee will put the Property, whether or not the assignee will be a single user and the experience and financial capability of the assignee to perform the conditions set forth in this Agreement. The assignee shall cooperate with the City and provide to the City all information required by the City in order to exercise its discretion under this Section.

16.2 Financing. Notwithstanding Section 16.1, mortgages, deeds of trust, sales and lease-backs, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the Property are permitted without the consent of the City, provided the Developer retains the legal or equitable interest in the Property and remains fully responsible hereunder.

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16.3 Internal Transfers. Notwithstanding Section 16.1 nothing in this Agreement shall be construed as restricting or limiting any internal (i) financing arrangements including mortgages, deeds of trust, sales and lease-backs, and other security arrangements, or (ii) property transfers with respect to the Property when the sole participants in such transactions consist of Developer, its subsidiaries, its parent corporation, and/or other subsidiaries of its parent corporation at any tier.

16.4 Procedure. The City shall administer the provisions of this Section through its Director of Community Development. Developer shall notify the Director in writing of its request for City consent to an assignment or transfer under this Section, together with a statement that if the Director does not notify the Developer within thirty (30) days of receipt of request that the City desires to consider and act upon the request, the request will be deemed approved. If, within such thirty (30) day period, the Director does not so notify the Developer, the request shall be approved, and no further action of the City shall be necessary. If, within such 30-day period the Director notifies the Developer that the request will be considered and acted upon by the Director, the Developer shall furnish such additional information as the Director may reasonably request and the Director shall proceed to consider and act upon the Developer's request for City consent to the proposed assignment or transfer within thirty (30) days of such notification or the receipt of such additional information, if additional information is requested. In the event the Director

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determines that the assignment or transfer should be acted upon by the City Council, the Director shall so notify the Developer within thirty (30) day of receipt of the Developer's notice, along with a request for such additional information as the Director may reasonably request, if any. The City Council shall proceed to consider and act upon the Developer's request for City consent to the proposed assignment or transfer within forty-five (45) days of the date of such notification or the receipt of such additional information, if additional information is requested. Failure to act within the 45-day period shall be deemed an approval of the request.

16.5 Release Upon Transfer. Upon the sale, transfer or assignment of Developer's rights and interests under this Section of this Agreement, Developer shall be released from its obligations pursuant to this Agreement with respect to the Property or portion thereof so transferred which arise subsequent to the effective date of the transfer, provided that the City has consented to this assignment, in writing, and provided that the City has executed a written agreement with the transferee and/or assignee which specifies the rights and obligations of the assignee and/or transferee to the City.

17. Covenants Run With the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors, and assignees, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any

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interest therein, whether by operation of laws or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assignees. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and its property hereunder, and each other person succeeding to an interest in such properties; provided that no liability or obligation shall accrue to any person, if this Agreement terminates pursuant to Section 2.2.

18. Amendment.

18.1 Amendment or Cancellation. Except as otherwise provided in this Agreement, this Agreement may be cancelled, modified or amended only by mutual consent of the parties in writing, and then only in the manner provided for in Government Code Section 65868 and Article 7 of Resolution No. 4159. Any amendment to this Agreement which does not relate to the Term, the Vested Elements or the Conditions shall require the giving of notice pursuant to Government Code Section 65867, as specified by

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Section 65868 thereof, but shall not require a public hearing before the parties may make such amendment.

18.2 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation; however, a failure to record shall not affect the validity of the amendment, termination or cancellation.

18.3 Amendment Exemptions. The following actions shall not require an amendment to this Agreement:

(a) Subdivision. The subdivision of the Property, or the filing of a parcel map or subdivision map that creates new legal lots, shall not require an amendment to this Agreement. Developer may subdivide the Property in accordance with the laws regarding subdivision in effect in the City at the time the Developer applies for any subdivision, as long as applying these laws does not affect the Vested Elements, impose any conditions regarding traffic improvements or requirements or off-site improvements, or impose any fees, taxes, or assessments other than those set out in this Agreement.

(b) Architectural Review. Further architectural review of specific aspects of the Project or an amendment to the Amendment to the Master Plan that is substantially consistent with the Amendment to the Master Plan, as set out in Exhibit C, shall not require an amendment to this Agreement. When architectural review of any aspect of the Project is approved,

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Exhibit C shall be deemed amended by this approval without further action by City or Developer.

19. Notices.

19.1 Procedure. Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the Party's mailing address. The respective mailing addresses of the parties are, until changed as hereinafter provided, the following:

City: City of Menlo Park
701 Laurel Avenue
Menlo Park, California 94025
Attn: Director of Community Development

With a
copy to: City Attorney, City of Menlo Park
1100 Alma Street, Suite 210
Menlo Park, California 94025

Developer: Sun Microsystems, Inc.
2550 Garcia Avenue
MS PAL1-401
Mountain View, California 94043
Attn: Manager, Corporate Real Estate

With a
copy to: Jackson, Tufts, Cole & Black
60 S. Market Street, 10th Floor
San Jose, California 95113
Attn: Margaret A. Sloan, Esq.

Either Party may change its mailing address at any time by giving ten (10) days notice of such change in the manner provided for in this section. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

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20. Miscellaneous.

20.1 Negation of Partnership. The parties specifically acknowledge that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of Developer, the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

20.2 Approvals. Unless otherwise provided herein, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of a Party pursuant to this Agreement, such approval shall not be unreasonably withheld. If a Party shall disapprove, the reasons therefor shall be stated in reasonable detail in writing. Approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

20.3 Project Approvals Independent. All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by the City with respect to the Property, constitute independent actions and approvals by the City. If any provisions of this Agreement or the application of any provision

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of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals. In such cases, such Approvals will remain in effect pursuant to their own terms, provisions and conditions.

20.4 Not A Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Property, or of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Developer shall have the right to prevent or prohibit the use of the Property or the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purposes inimical to the operation of a private, integrated Project as contemplated by this Agreement; provided that the area labelled "p" adjacent to the southern access to the Property and the area labelled "pedestrian trail" adjacent to the San Francisco Bay, as shownh on Exhibit C hereto, shall be kept open to the public as required by the Bay Conservation and Development Commission.

20.5 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall

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remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

20.6 Exhibits. The Exhibits listed in the Table of Contents and referred to herein are deemed incorporated into this Agreement in their entirety.

20.7 Entire Agreement. This written Agreement and the Exhibits contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

20.8 Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the parties. The captions preceding the text of each Article, Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities.

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20.9 Further Assurances; Covenant to Sign Documents.

Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgement or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

20.10 Governing Law. This Agreement, and the rights and obligations of the parties, shall be governed by and interpreted in accordance with the laws of the State of California.

20.11 Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

20.12 Time. Time is of the essence of this Agreement and of each and every term and condition hereof. In particular, City agrees to act in a timely fashion in accepting, processing, checking and approving all maps, documents, plans, permit applications and any other matters requiring City's review or approval relating to the Project or Property.

20.13 Subsequent Projects. After the effective date of this Agreement, City may approve other projects that place a burden on City's infrastructure; however, it is the intent and agreement of the Parties that Developer's right to build and occupy the Project, as described in this Agreement, shall not be diminished despite the increased burden of future approved development on public facilities.

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20.14 Authority. Prior to execution of this Agreement, the Developer shall provide to the City a certificate that its board of directors has, by proper resolution, authorized the person executing this Agreement on behalf of the Developer to execute the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

"City"

CITY OF MENLO PARK, a
municipal corporation of the
State of California

Attest:

Jaye M. Carr
City Clerk - Jaye M. Carr

By: Ted I. Sorensen
Mayor - Ted I. Sorensen

Approved as to Form:

By: Will L. McC...
City Attorney

"Developer"

SUN MICROSYSTEMS, INC., a
Delaware corporation

By: Klaus Kramer
Klaus Kramer
Vice-President, Corporate
Real Estate

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CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
COUNTY OF San Mateo) SS

On November 29, 1991, before me, the undersigned, a Notary Public in and for said State, personally appeared Ted Sorenson, personally known to me or proved to me on the basis of satisfactory evidence to be the Mayor of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Margaret Phelan
Notary Public in and for said State



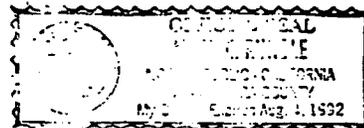
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STATE OF CALIFORNIA)
COUNTY OF Santa Clara) SS

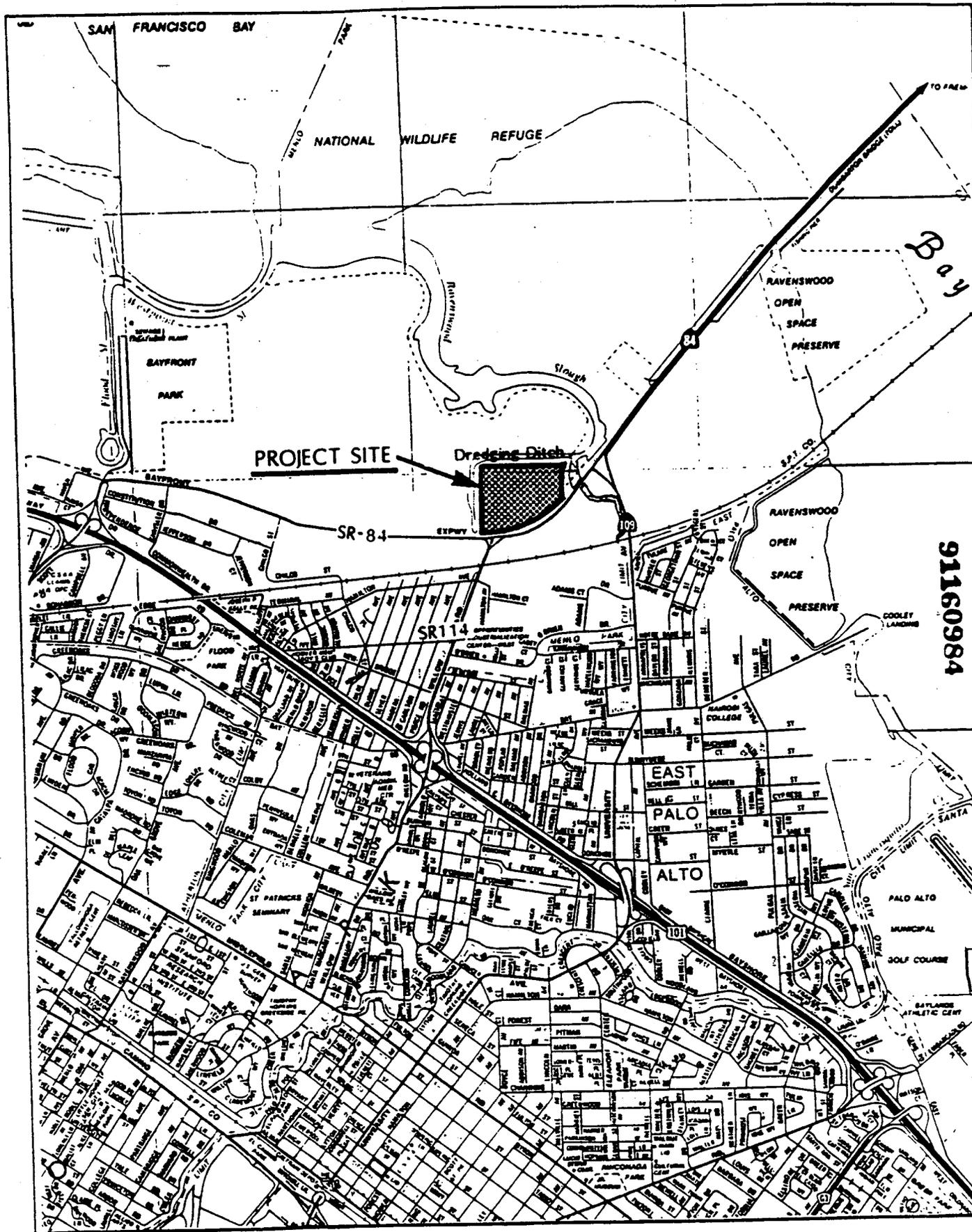
On October 25, 1991, before me, the undersigned, a Notary Public in and for said State, personally appeared Hans Kramer, personally known to me or proved to me on the basis of satisfactory evidence to be the V.P. of Real Estate of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Mary C. Raudie
Notary Public in and for said State



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REVISED
VICINITY MAP

0 3000 Feet
Approximate Scale



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FIGURE 2

September 10, 1991
Job No. 900314.10
File No. 900314.10

Lands of Raychem Corporation

LEGAL DESCRIPTION AS DESCRIBED IN
TITLE REPORT NO. 353624-TD FROM
FIRST AMERICAN TITLE INSURANCE COMPANY

Consulting Engineers
540 Price Avenue
Redwood City, CA 94061
415/365-0412
FAX 415/365-1260

PARCEL I:

All that certain real property situate in the City of Menlo Park, County of San Mateo, State of California, being a portion of Parcel 1 as said Parcel is delineated on that certain Record of Survey filed in Volume 6 of L.L.S. Maps at page 66 in the Office of the Recorder of San Mateo County, and being more particularly described as follows:

BEGINNING at the Northwesterly corner of Parcel 1, above referred to; and running thence along the Northerly line of said Parcel 1, South 89° 55' 16" East 2121.69 feet to the point of intersection of said Northerly line with a line which bears South 56° 36' 25" West from the "True Point of Beginning" in the description of that certain parcel of land designated "Parcel G" in the Deed from Leslie Salt Co. to the State of California, recorded in Volume 5426 of Official Records at page 109, Records of San Mateo County, California; thence leaving said Northerly line of said Parcel, South 59° 43' 52" West 163.02 feet; thence South 51° West 162.00 feet; thence South 31° 30' West 196.00 feet; thence South 19° West 332.00 feet; thence South 11° East 269.32 feet to a point on a curve with a radius of 4950.00 feet being the Northwesterly line of the "Approach to the Dumbarton Bridge" as said Approach is shown on the Record of Survey hereinabove referred to, and also being the Southeasterly line of the above mentioned Parcel 1; and running thence along the last said line and along a curve to the right from a tangent that bears South 50° 34' 30" West, through a central angle of 2° 58' 41", for an arc distance of 257.28 feet; thence South 53° 33' 11" West 1038.33 feet to the Northerly line of the 100' wide right of way of the City and County of San Francisco, as said right of way is shown on the above mentioned Record of Survey; thence along said 100 foot right of way South 89° 20' 50" West 657.79 feet to the Southwest corner of said Parcel 1; thence North 1714.96 feet to the point of beginning.

EXCEPTING THEREFROM that certain parcel condemned for freeway purposes and described as Parcel 45670-1 in that certain Final Order of Condemnation under Action No. 245918 entitled the People of the State of California vs. Raychem

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Legal Description
Lands of Raychem Corporation
September 10, 1991
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Corporation recorded July 27, 1983 as Document No. 83078012 and described as follows:

Portion of that 58.808 acre tract of lands described in the Deed from Stewart Title of the Peninsula to Raychem Corporation, recorded June 14, 1968 in Volume 5487, page 363 (Serial No. 50840-AB), Official Records of San Mateo County, being more particularly described as follows:

COMMENCING at the Southeasterly corner of said 58.808-acre parcel; thence along the Westerly exterior boundary lines of Ravenswood Slough permanently established by Boundary Line Agreement (B.L.A. #98) between State of California and Nathaniel Hellman, et al recorded June 14, 1968 in Book 5487, page 308 (50831-AB), Official Records of said County, North 10° 00' 03" West 45.73 feet; thence leaving said boundary line South 42° 30' 56" West, 25.20 feet; thence North 89° 00' 03" West, 65.29 feet; thence South 0° 59' 57" West, 73.76 feet; thence South 36° 51' 03" West, 70.33 feet to the Southeasterly line of said 58.808 acre parcel; thence along last said line from a tangent that bears North 53° 31' 26.5" East, along a curve to the left with a radius of 4950.00 feet, through an angle of 1° 56' 59.5", an arc distance of 168.46 feet to the point of commencement.

ALSO EXCEPTING THEREFROM that certain parcel condemned for freeway purposes and described as Parcel 45670.2 in the above mentioned Final Order of Condemnation and described as follows:

Portion of that 58.808-acre tract of lands described in the Deed from Stewart Title of the Peninsula to Raychem Corporation, recorded June 14, 1968 in Volume 5487, page 363 (Serial No. 50840-AB), Official Records of San Mateo County, being more particularly described as follows:

COMMENCING at the Southwesterly corner of said 58.808-acre parcel; thence along the Westerly line of said 58.808-acre parcel North 0° 59' 57" East, 84.31 feet; thence leaving said Westerly line South 89° 49' 16" East, 205.97 feet; thence North 27° 03' 33" East, 27.97 feet; thence North 87° 07' 40" East, 60.00 feet; thence South 32° 48' 12" East, 57.02 feet; thence from the tangent that bears North 85° 58' 44" East, along a curve to the left with a radius of 2915.00 feet, through an angle of 1° 32' 41", an arc distance of 78.59 feet to a point of compound curvature; thence along a tangent curve to the left with a radius of 1915.00 feet, through an angle of 18° 19' 32.3", an arc distance of 612.50 feet to the Southeasterly line of said 58.808-acre parcel; thence along last said line and the Southerly line of said 58.808-acre parcel, South 54° 33' 08" West, 395.49 feet and

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Legal Description
Lands of Raychem Corporation
September 10, 1991
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North 89° 38' 32" West, 656.97 feet to the point of commencement. ALSO EXCEPTING THEREFROM fifty percent (50%) of all oil, gas, casing head gas, asphaltum and other hydrocarbons and minerals as reserved in that certain Deed from Edgar Carnduff, et al, to Nathaniel Hellman, etal, recorded September 17, 1964 in 4799 Official Records at page 48 (66533-X) and modified by that certain "Amendment to Reservation" executed by Fred Carnduff, et al, recorded June 14, 1968 in 5487 Official Records at page 381 (50849-AB) which modifies the reservation of said minerals to below 500 feet of the surface except as to two one acre sites in the Northeast and Northwest corner of the above described property for drill sites.

PARCEL II:

Roadway easements described as follows:

(a) All that certain real property situate in the City of Menlo Park, County of San Mateo, State of California, being a portion of Parcel 2 as said Parcel is shown upon that certain Record of Survey Map filed in Volume 6 of L.L.S. Maps at page 66, San Mateo County Records, being a Roadway Easement 50 feet in width the Northwesterly line of which is more particularly described as follows:

BEGINNING at the Southwesterly corner of said Parcel 2; thence along the Northwesterly line of said Parcel 2 North 53° 33' 11" East 1038.33 feet; and continuing along the same said Northwesterly line and along the arc of a tangent curve to the left with a radius of 495.00 feet, through a central angle of 2° 58' 41" for an arc length of 257.28 feet.

(b) All that certain real property situate in the City of Menlo Park, County of San Mateo, State of California, being a portion of Parcel 5 as said Parcel is shown upon that certain Record of Survey Map filed in Volume 6 of L.L.S. Maps at page 66, San Mateo County Records, being a Roadway Easement 50 feet in width the Northwesterly line of which is more particularly described as follows:

BEGINNING at the Northwesterly corner of said Parcel 5; thence along the Northwesterly line of said Parcel 5, South 53° 33' 11" West 420.74 feet.

The side lines of said 50 foot wide strip of land are to be prolonged so as to extend from the Northeasterly boundary line of said Parcel 5 to the Southerly boundary line of said Parcel 5.

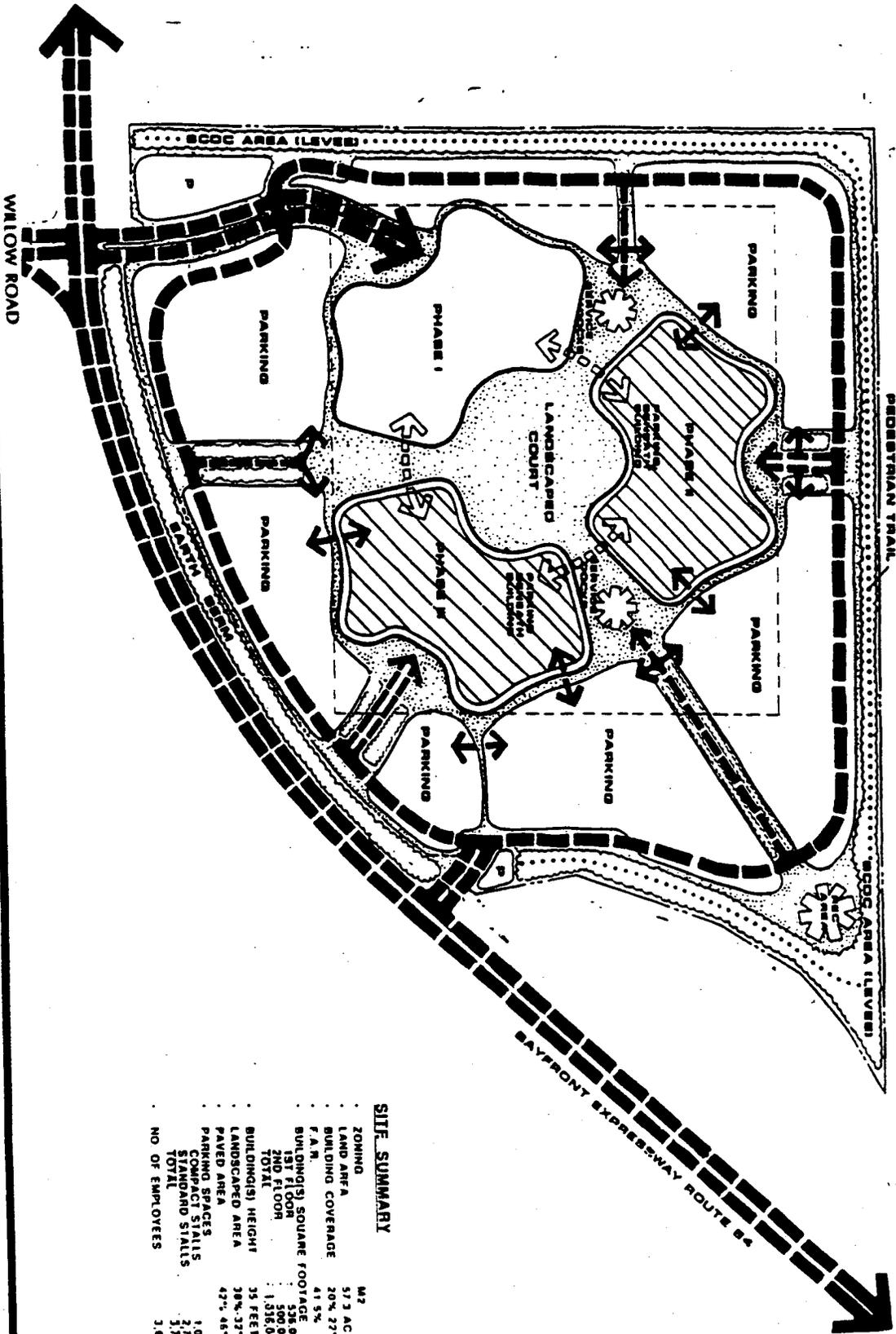
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SITE SUMMARY

• ZONING	M2
• LAND AREA	57.3 AC
• BUILDING COVERAGE	20% 27%
• F.A.R.	41.5%
• BUILDING(S) SQUARE FOOTAGE	
1ST FLOOR	536,000 SQ FT
2ND FLOOR	500,000 SQ FT
TOTAL	1,036,000 SQ FT
• BUILDING(S) HEIGHT	35 FEET
• LANDSCAPED AREA	28% 37%
• PAVED AREA	42% 48%
• PARKING SPACES	1,000 SPACES
• STANDARD STALLS	2,700 SPACES
• TOTAL	3,700 SPACES
• NO. OF EMPLOYEES	3,500

SITE PLAN

EXHIBIT C

EXHIBIT "D"

Summary of Vested Elements

This Summary describes the nature and intensity of uses which have been approved for the Property under the Master Plan, approved by the City on May 10, 1977, and the Amended Master Plan, approved by the City on October 22, 1991, and which are thereby vested herein:

- Permitted Uses:** All uses approved in the above-described permits, including, but not limited to: R & D Engineering and Laboratories, Administrative; Warehousing/Storage; General Industrial; Offices; Cafeterias and Outdoor Eating Areas; Employee Recreation Facilities; Accessory Uses and Associated Parking.
- Height of Building:** Height of structures shall not exceed 35 feet; however, additional height may be permitted subject to obtaining a conditional development permit. "Height" means the vertical distance from the average level of the highest and lowest point of the finished grade of that portion of the lot covered by the structure to the highest point of the structure, excluding elevator equipment rooms, ventilating and air conditioning equipment.
- Floor Area Ratio:** With a Floor Area Ratio of no less than .415
- Maximum Density:** 1,036,000 square feet
- Maximum Employment Intensity:** 3,600 employees
- Parking:** Minimum 3.3 spaces per thousand square feet
Maximum 3.38 spaces per thousand square feet
- Reservation of Land:** The only land required to be reserved or dedicated in connection with the development of the Property is that required for a public parking lot and public trail, as required by BCDC permit 26-78, as amended.
- Landscaping:** Maximum required - 26% site coverage

EXHIBIT "E"

Conditions

1. Below Market Rate ("BMR") Housing Fees. Developer shall pay all BMR fees as required pursuant to Existing City Laws during the term of this Agreement.

2. Traffic Fees.

(a) Phase I. Before receiving occupancy permits for from one (1) to four hundred thousand (400,000) square feet, Developer shall make the following traffic improvements or, at City's option, pay the City to make the following traffic improvements:

(i) At Bayfront/Willow, add a northbound left turn lane to Willow Road; and

within one year of Phase I occupancy, Developer shall make the following traffic improvements, or at the City's option, pay the City to make the following improvements:

(ii) At Willow/Newbridge, add a southbound left turn lane from Newbridge to Willow.

It shall be City's responsibility to obtain any encroachment permits or rights of way necessary for these improvements, and if City has not obtained the necessary permits or rights of way, this Condition shall be satisfied by Developers' paying the estimated cost of the improvements to City, including right of way, acquisition and engineering costs. If actual costs are more or less than the estimated costs, Developer's payment to City shall be adjusted upon proof of the actual costs, provided that Developer shall not be responsible for any additional costs or any refund after five (5) years from the date of Developer's payment of the estimated costs.

If and when the City adopts a traffic impact fee based on an AB 1600 study, Developer shall pay to City, within thirty (30) days of the effective date of the traffic impact fee, the difference between the fee that would be imposed on the square footage of the Project for which building permits have been obtained and the cost Developer incurred to make the improvements or the cost it paid the City to make the improvements listed above. However, if any intersection listed above is not included on the AB 1600 study, the costs associated with such intersection(s) shall not be credited toward the amount of traffic fees owed City under this paragraph. In addition, if Developer is required, as a condition of Project approval, to advance costs for traffic improvements at Bayfront/University,

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these costs shall also be credited toward the amount of traffic fees owed under this paragraph.

In calculating the traffic fee to be imposed, the number of trips per day generated by the Project shall be based on the Environmental Impact Report (EIR) prepared for the Project; however, if traffic monitoring conducted after Phase I is occupied, as recommended in the EIR, indicates that the number of trips per day is less than projected in the EIR, any future AB 1600 fee shall be reduced accordingly.

If the costs Developer incurred to make Phase I traffic improvements and the costs Developer paid to City to make Phase I traffic improvements are greater than the traffic impact fee that would be imposed on the square footage of the Project for which building permits have been obtained, the excess costs expended by Developer shall be credited toward any traffic impact fee imposed by the City on later phases of the Project.

(b) Phases II and III. Before receiving occupancy permits for from four hundred one thousand (401,000) square feet through one million thirty-six thousand (1,036,000) square feet, Developer shall make the following traffic improvements or, at City's option, pay the City to make the following traffic improvements:

- (i) At Bayfront/Willow, add a northbound left turn lane from the Bayfront Expressway to facilitate traffic turning onto Willow Road. Also, add a westbound right turn lane from the Property to allow turns onto Bayfront Expressway; and

Within one year of Phase II occupancy, Developer shall make the following traffic improvements or pay the City to make the following traffic improvements:

- (ii) At Willow/Newbridge, add a third eastbound through lane to extend to the Willow/O'Brien intersection where it will become the exclusive right turn lane. Also, the eastbound Willow Road left turn lane should be lengthened to approximately 400-450 feet.

It shall be City's responsibility to obtain any encroachment permits or rights of way necessary for these improvements, and if City has not obtained the necessary permits or rights of way, this Condition shall be satisfied by Developer's paying the estimated cost of the improvements to City, including right of way, acquisition and engineering costs. If actual costs are more or less than the estimated costs, Developer's payment to City shall be adjusted upon proof of the actual costs, provided that Developer shall not be responsible for any additional costs or

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any refund after five (5) years from the date of Developer's payment of the estimated costs.

If and when the City adopts a traffic impact fee based on AB 1600 study, Developer shall pay to City within thirty (30) days of the effective date of the traffic impact fee, the difference between the fee that would be imposed on the square footage of the Project for which building permits have been obtained and the cost Developer incurred to make the improvements or the cost it paid the City to make the improvements listed above. However, if any intersection listed above is not included on the AB 1600 study, the costs associated with such intersection(s) shall not be credited toward the amount of traffic fees owed City under this paragraph. In calculating the traffic fee to be imposed, the number of trips per day generated by the Project shall be based on the Environmental Impact Report (EIR) prepared for the Project; however, if traffic monitoring conducted after Phase I is occupied, as recommended in the EIR, indicates that the number of trips per day is less than projected in the EIR, the AB 1600 fee shall be reduced accordingly.

(c) The AB 1600 traffic impact fee will be determined when the City has established a City-wide or area-wide traffic impact fee, based on an AB 1600 study; provided that the fee to be paid by Developer shall in no event be more than \$240.00 per trip.^{1/} Developer shall have the right to dispute the amount of the traffic impact fee adopted by the City, if, and only if, the traffic impact fee is \$160.00 or more, pursuant to the following procedure:

- (i) Developer shall give City written notice within thirty (30) days of City's adoption of a traffic impact fee, if Developer disputes the amount of the traffic impact fee. Developer and City shall meet and in good faith attempt to resolve the dispute within forty five (45) days of the adoption of the traffic impact fee. If during that time, Developer and City cannot resolve their dispute, Developer and City shall follow the following procedure to select an arbitrator knowledgeable in AB 1600 traffic studies ("Traffic Professional") to analyze the validity of the traffic fee.

^{1/} The \$240.00 shall be adjusted when the traffic impact fee is imposed on any phase of the Project by the increase, if any, in construction costs as determined by the McGraw-Hill Engineering News-Record 20 City Construction Cost Index (the "Index"). The increase, if any, shall be determined by multiplying the \$240.00 by the Index on the date the traffic impact fee is imposed divided by the Index on the Effective Date.

- (ii) Developer shall give City written notice within sixty (60) days of City's adoption of a traffic impact fee based on an AB 1600 study, if Developer wishes to challenge the validity of the fee.
- (iii) Developer and City shall meet within thirty (30) days of City's receipt of Developer's written notice and attempt to select a Traffic Professional mutually acceptable to both parties. If Developer and City can agree on a Traffic Professional, Developer shall engage the Traffic Professional to analyze the validity of the traffic fee, using its best efforts to have the Traffic Professional complete his or her analysis within sixty (60) days.
- (iv) If Developer and City cannot agree on a Traffic Professional, each Party shall select a Traffic Professional within thirty (30) days of City's receipt of Developer's written notice, and these two professionals shall meet and select a third Traffic Professional mutually acceptable to the first two traffic professionals within sixty (60) days of City's receipt of Developer's written notice. City shall not select as a Traffic Professional anyone who performed any work on the City's AB 1600 study, providing the basis for the traffic impact fees. Developer shall engage the third Traffic Professional to analyze the validity of the City's traffic impact fee, using its best efforts to have the Traffic Professional complete his or her analysis within sixty (60) days.
- (v) City shall cooperate in the analysis by the Traffic Professional by turning over to the Traffic Professional all data, reports and evidence supporting its AB 1600 study, whether such data, reports and evidence are in City's possession or the possession of the consultant(s) who conducted the City's AB 1600 study.
- (vi) The Traffic Professional shall determine from all data, reports and evidence available precisely what the traffic impact fee should be. If the amount of the fee determined by the Traffic Professional is

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within five percent (5%) of the City's established fee, the City's fee shall not be adjusted, and the City shall bear no costs for the work of any and all of the Traffic Professionals. If the amount of the fee determined by the Traffic Professional is not within 5 percent (5%) of the City's established fee, the City's traffic impact fee shall be adjusted to that determined by the Traffic Professional, and the City shall reimburse Developer, within thirty (30) days of the Traffic Professional's determination, for half the costs of the work of any and all of the Traffic Professionals.

(d) If the City has not established an AB 1600 fee by ordinance at the time Developer receives building permits for from 401,000 square feet through 1,036,000 square feet, Developer and City shall enter into a reimbursement agreement, so that future developers can reimburse Developer for its costs of constructing the intersections set forth above, which costs are beyond its share of these improvements, as set forth in the Project EIR, and Developer shall also pay its fair share of the other intersection improvements impacted by Phases II and III, as set forth in the Project EIR.

3. Development Fee. Developer will pay a \$750,000 "development fee" to City at the time the Property is purchased from Raychem.

4. Guaranteed Revenue Stream. Developer will guarantee a revenue stream during the term of the Development Agreement. Developer will pay these amounts, as set forth below, within thirty (30) days of the end of each calendar year, whether or not Developer has commenced construction of any portion of the Project; however, this amount will be credited by (a) any sales tax revenue from Developer to the City from any site in the City and (b) any use tax revenue from Developer to the City from the Property. For the purposes of this section, "Developer" shall include any subsidiary, parent corporation, and/or other subsidiaries of the parent corporation at any tier.

GUARANTEED REVENUE STREAM

<u>YEAR</u>	<u>CALENDAR YEAR</u>	<u>GUARANTEED REVENUE STREAM</u>
1	1992	\$0
2	1993	\$0
3	1994	\$0
4	1995	\$100,000
5	1996	\$100,000

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<u>YEAR</u>	<u>CALENDAR YEAR</u>	<u>GUARANTEED REVENUE STREAM</u>
6	1997	\$100,000
7	1998	\$187,500
8	1999	\$187,500
9	2000	\$187,500
10	2001	\$187,500
11	2002	\$187,500
12	2003	\$259,000
13	2004	\$259,000
14	2005	\$259,000
15	2006	\$259,000
16	2007	\$259,000
17	2008	\$259,000
18	2009	\$259,000
TOTAL		\$3,050,500

5. Developer shall comply with all other conditions of approval of the Project, as set forth in the Staff Report, attached hereto as Exhibit F.

6. Developer and City shall comply with the Mitigation Monitoring Program, adopted by the City at the time of Project approval.

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EXHIBIT F

List of Conditions

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AMENDMENT TO THE RAYCHEM CORPORATION
HEADQUARTERS MASTER SITE PLAN

LIST OF MITIGATION MEASURES

I. POTENTIALLY SIGNIFICANT IMPACTS OF THE MASTER SITE PLAN THAT
REMAIN WITH THE AMENDMENT

Geology and Soils

Mitigation Measure #1: All future buildings would be designed in accordance with the specific recommendations of foundation investigations (See SEIR page 14).

Mitigation Measure #2: All future buildings would be constructed in accordance with applicable building codes, safety standards, and acceptable settlement criteria (See SEIR page 14).

A California licensed engineer would monitor all phases of development (See SEIR page 14).

A safety and disaster action program would also be established to reduce the risks to future employees during a seismic event (See SEIR page 14).

Noise

Mitigation Measure #1: All noise resulting from construction equipment should be monitored. Careful scheduling of construction activity should be implemented (See SEIR page 16).

All engine-driven construction vehicles, equipment, and pneumatic tools should be required to use effective intake and exhaust mufflers; equipment should be properly adjusted and maintained, and should be located as far away from the residential neighborhoods, as possible. All construction equipment should be equipped with mufflers in accordance with OSHA standards (See SEIR page 16).

Mitigation Measure #2: An overall reduction in traffic volumes would result from the project's successful implementation of the SMART TDM Program. The occupant of the site would be required to achieve a reduction in drive-alone commute trips, in accordance with the City's TDM Ordinance. This reduction in traffic volumes would reduce corresponding long-term noise levels (See SEIR page 16).

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Energy

Mitigation Measure #1: Measures to reduce energy consumption that are included in the earlier EIR would be implemented. These measures include the use of solar design principles, the use of large-scale heating and cooling plants, and energy efficient lighting design. In addition, a TDM program would be implemented to reduce the indirect use of energy associated with travel (See SEIR page 17).

Visual and Aesthetic Quality

Mitigation Measure #1: A landscaped buffer would surround the East Campus and create a visual buffer between the area of development and Bayfront Expressway. Development of the proposed amendment would be similar in mass and scale to the approved Master Site Plan development with an overall building coverage of 20 to 22 percent and a building height of approximately 35 feet (See SEIR page 21). An effort has been made to maintain consistency with the previously approved Master Site Plan to avoid new visual impacts.

Cultural Resources

Mitigation Measure #1: In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until (See SEIR page 22):

1. The San Mateo County Coroner has determined that no investigation of the cause of death is required, and
2. If remains are of Native American origin,
 - a. The descendants from the deceased Native Americans have made a recommendation to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or
 - b. The Native American Heritage Commission was unable to identify a descendant or the descendant did not make a recommendation within 24 hours after being notified by the Commission.

Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance:

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1. The Native American Heritage Commission is unable to identify a descendant;
2. The descendant identified fails to make a recommendation; or
3. The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

Water Quality

Mitigation Measure #1: Mitigation measures to reduce or avoid impacts to water quality for the approved Master Site Plan and proposed amendment include the following (See SEIR page 22):

- Parking areas should be constructed of materials other than asphalt or should be designed to permit the maximum amount of storm water to penetrate the sub-strata. Extensive landscaped areas would be used to absorb storm water run-off and provide settlement filtration to discharge into the storm drainage system.
- Oil traps should be installed in all interceptor chambers collecting storm water run-off from impervious parking areas and streets to minimize contamination of the Bay.

II. POTENTIALLY SIGNIFICANT IMPACTS OF THE AMENDMENT TO THE MASTER SITE PLAN

Traffic Circulation - 1994 Conditions

The two principal mitigation measures for Project impacts include: 1) attainment of a reduction in peak period travel through Transportation Demand Management (TDM), and 2) roadway improvements. The TDM program would be required to attain a 25 percent reduction in drive alone commuting by 1993, in accordance with the City of Menlo Park's Transportation System Management Ordinance (Ordinance No. 774). The monitoring program for TDM is described in Mitigation Measure "A" and the monitoring program for the roadway improvements is described in Mitigation Measure "B."

MITIGATION MEASURE A: TDM PROGRAM

Sun Microsystems currently implements a comprehensive Transportation Demand Management (TDM) Program (see Appendix F of the Draft SEIR). The program is referred to as SMART (Sun Microsystems Alternative Resources for Transportation). The TDM program for the Project is anticipated to resemble the current program implemented at the Mountain View campus, since both facilities have similar types of R&D/office activities. The following measures would be implemented at the East Campus Site. In the event that Sun vacates the East Campus Site, future occupants of the site would be required to implement a similar TDM program. The following eight elements will be included in the TDM Program at the East Campus Site:

- 1) Shuttle service (Sunway) is operated between the Fremont BART station and the Mountain View Caltrain station to the Mountain View, Milpitas, and Palo Alto campuses. There are six pick-ups at these stations during the morning commute period and eight drop-offs at the Mountain View Caltrain and six drop-offs at Fremont BART in the evening period. These shuttles operate every 30 minutes throughout the day between campuses. Comparable service at the East Campus Site would be provided to the Menlo Park Caltrain Station and between campus sites.
- 2) Carpool match list assistance will be available at the employee's request. Carpool matching is either provided through Bay Area RIDES or through the in-house electronic mail and "aliases"¹.
- 3) As with other R&D facilities on the Peninsula, any Sun employee can establish vanpools through a lease arrangement with VPSI. Sun provides its employees access to the company data base of employee residences to find participants. This service would be included in the TDM program at the East Campus Site.
- 4) Informal telecommuting would be available to eligible employees with work stations at home.
- 5) Flex-time is informally built into the company. Flex-time would be incorporated into the TDM program for the East Campus Site.
- 6) Several bicycle facilities are available to Sun employees. These include enclosed bike lockers, bike racks, bike racks on the Sun shuttle buses, and showers in all buildings. Bicycle facilities would be provided on the East Campus Site. Bike racks would also be provided on the Sun shuttle buses providing transport to the site. Showers would be provided at the East Campus Site.
- 7) Sun will sell transit passes to the Bay Area transit systems at each office building in the near future. Although these passes will be sold at a regular price (i.e., not subsidized by Sun), they can be purchased with pre-tax wages at a lower cost to the employee. Transit passes will be available for purchase at the East Campus.
- 8) All new employees will be provided information on the TDM Programs at Sun. In addition, transportation fairs will be held to promote alternative modes of travel.

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MITIGATION MEASURE B: ROADWAY IMPROVEMENTS

Funds to implement the required mitigation measures at most of the impacted intersections are not presently available. The City of Menlo Park should implement an AB 1600 Traffic Impact Fee Study to create the funding source for roadway improvements. An AB 1600 Study evaluates the roadway network improvements needed and identifies and establishes a funding mechanism for the construction of the improvements. This study and the funding mechanism it establishes are necessary in order to implement the mitigation for the traffic impacts resulting from the Project and reasonably foreseeable development in the area in an equitable manner.

¹ An alias is Sun Microsystems' term for a method of in-house communications.

Mitigation Measure #1: Add a northbound left turn lane on Willow Road to Bayfront to improve the Level of Service to level D during the AM peak and C during the PM peak at the Bayfront/Willow intersection. The Bayfront/Willow intersection is primarily impacted by the addition of Project generated traffic to the eastern leg of the intersection.

Mitigation Measure #2: Add a third eastbound through lane on Bayfront to improve the PM peak hour Level of Service to level B at the Bayfront/University intersection. This improvement will also require widening through the intersection to allow the northbound right turn lane on University to continue into an exclusive right turn acceleration lane. This added through lane should begin approximately 1,100 feet upstream of the signal with a 240 foot transition taper to accommodate the 2005 peak hour queue lengths.

It is likely that the improvements will be completed and operational prior to Phase I occupancy. However, given the uncertainty of Caltrans' long term plans for the improvements at University/Bayfront, the Caltrans review and approval process may not be completed within a period of time sufficient to provide for the completion of the roadway improvements prior to occupancy of Phase I. Therefore, a Statement of Overriding Considerations has been adopted.

Mitigation Measure #3: The Marsh Road/U.S. 101 interchange has been proposed to be reconstructed to remove the signal for the southbound off-ramp. Currently, the San Mateo County Transportation Authority is trying to accelerate the interchange reconstruction in the State Transportation Improvement Program by one or two years. The Transportation Authority would fund the reconstruction with Measure A funds and would later be reimbursed with State and Federal funds. The improvements include the removal of the loop ramp in the southeast quadrant and the addition of a loop ramp in the southwest quadrant. This design change would remove the southbound off traffic turning left and right onto Marsh Road from signal control. The projected loop ramp Level of Service would be level C during both peak periods.

It is unlikely, but possible, that these improvements at the Marsh Road/U.S. 101 southbound ramps will not be completed when Phase I construction is completed. Therefore, the City of Menlo Park would adopt a Statement of Overriding Considerations for this interim condition.

Mitigation Measure #4: Add a southbound left turn lane to Willow to improve the Level of Service to C during both peak hour periods at the Willow/Newbridge intersection. This improvement will then provide for southbound left, through, and right turn lanes on this approach and will require additional right-of-way from the existing parking lot in

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the northeast quadrant of the intersection. Widening to the east into the parking lot will provide for better alignment to the opposite approach.

Traffic Circulation - 2005 Conditions

Roadway improvements are the principal mitigation measure to reduce traffic impacts due to Cumulative growth and Phases II and III of the Project. The traffic analysis does not differentiate between the requirements for Phase II and those improvements which can be deferred until Phase III. The traffic impacts may be overestimated for the Cumulative + Phases II and III conditions due to Sun's TDM program. Therefore, it is recommended that prior to the construction of Phase II, a TDM Monitoring Report should be prepared to update the existing traffic and roadway conditions at that time (See Monitoring Program description for Phase I, above).

The monitoring program for TDM is described in Mitigation Measure "A" and the monitoring program for the roadway improvements is described in Mitigation Measure "B."

MITIGATION MEASURE A: TDM PROGRAM

The TDM Program Services for Phase I of the project are discussed in the *Traffic Circulation - 1994 Conditions* Section above. These program services would also be included in the TDM Program for Phases II and III of the project.

MITIGATION MEASURE B: ROADWAY IMPROVEMENTS

The maximum mitigation measures which should be required for full development of the Project (Phases I-III) are summarized below. These mitigation measures may not be required if the Project has a successful TDM program (See TDM Monitoring above). Mitigation for full Project development is necessary at six intersections during the AM and PM peak hour. These mitigation measures should be partially or totally funded by the Project at a minimum of three of the six intersections (see Table 14 of the Draft SEIR).

The financing of the improvements listed below should be the result of an AB 1600 Study which was previously recommended for the 1994 roadway improvements. If an AB 1600 fee is established prior to the development of Phases II and III, the Project will pay its share of improvement costs to the impacted intersections. The contribution of the Project would be determined through the TDM Monitoring Program. If TDM monitoring determines that the TDM Program is successful, then the occupant of the site would pay a reduced AB 1600 traffic impact fee. If TDM monitoring determines that the TDM program for Phase I is not successful in achieving a reduction in drive-alone commuting, then the occupant of the site shall be required to pay the full amount of the AB 1600 fee.

Mitigation Measure #1: Add a northbound left turn lane from the Bayfront Expressway to facilitate traffic turning onto Willow Road to mitigate the Bayfront/Willow intersection. Also, add a westbound right turn lane from the Master Site Plan to allow turns onto Bayfront Expressway. These improvements would result in LOS D in the AM and C in the PM peak.

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Mitigation Measure #2:

The University/Bayfront intersection required mitigation of Projected levels of development and requires further mitigation in order to accommodate Cumulative growth. The Circulation Element update of the General Plan suggested the third westbound left turn lane and third eastbound through lane on the Bayfront Expressway. The third eastbound through lane was proposed as mitigation for the Projected level of development.

The third westbound left turn lane on Bayfront Expressway will mitigate Cumulative development, however, three left turn lanes are uncommon. The traffic volumes indicate the need to grade separate this intersection. Both the Bayfront Expressway and University Avenue are state facilities. Caltrans has acknowledged the need to grade separate the intersection.

Currently implementation of the identified improvements is economically infeasible, because no such funding mechanism is in place to pay for the entire cost of the improvements, and it is too great an economic burden to require the project to implement the improvements when its contribution to the net new traffic volumes is only 5.1 percent at this intersection. However, the City of Menlo Park will be performing an AB 1600 Study which will include the University/Bayfront intersection. The City of Menlo Park will require the proposed project to contribute its share of the costs as determined by the AB 1600 study. However, this study may not be in place, or enough funds may not be collected under this study, by the time Phases II and III are occupied. Therefore, a Statement of Overriding Considerations has been adopted.

Mitigation Measure #3:

Add a third eastbound through lane to improve the Level of Service to D for both peak periods at the Willow/Newbridge intersection. This third through lane should extend to the Willow/O'Brien intersection where it will become the exclusive right turn lane noted above. Also, the eastbound Willow Road left turn lane should be lengthened to approximately 400-450 feet to handle future volumes.

Mitigation Measure #4:

Add a northbound left turn lane on Hamilton Avenue from the commercial area to improve the level of service to C at the Willow/Hamilton. Although Phases II and III of the project contribute to the cumulative impacts at this intersection, the impact is primarily the result of local development using Hamilton Avenue as access to Willow Road. Therefore, such local development should be responsible for mitigating the impact. However, the project will contribute to the funding of the improvement through the payment of AB 1600 fees.

Mitigation Measure #5:

Add an eastbound right turn lane onto Willow to improve the level of service to A in the AM peak hour and to B in the PM peak hour at the Willow/O'Brien intersection. Although Phases II and III of the project contribute to the impacts at this intersection, the

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impact is primarily the result of local development. Local development that would use the right turn lane for access should therefore, be responsible for a substantial portion of the funding of the improvements. However, the project will contribute to the funding of the improvement through the payment of AB 1600 fees.

Mitigation Measure #6:

Modifying the signal to two phases would improve the overall delay during the AM peak hour at the University/O'Brien intersection. Although the Project traffic contributes to the impact at this intersection, Caltrans would be responsible for changing the signal phase, upon the City's request, since University is a State facility. However, the project will contribute to the funding of the improvement through the payment of AB 1600 fees.

Housing and Employment

Mitigation Measure #1:

Mitigation is provided to mitigate the effects of new employment on the increased demand for housing (See SEIR page 85).

In accordance with City Ordinance, the project would be assessed an in-lieu housing fee in effect at the time of the approval of the amendment. This housing fee of approximately 1.4 million dollars would apply to the future construction of BMR units.

The General Plan Update EIR identifies a limited potential for residential infill development due to the scarcity of vacant land. Several sites, however, are currently underutilized parcels that could be redeveloped with residential units. Menlo Park should continue pursuing opportunities for rezoning areas currently designated for other land uses to residential uses.

Mitigation Measure #2:

The mitigation provided in Mitigation Measure #1 above would also help mitigate the cumulative impact housing (See SEIR page 85), but a significant impact could remain. Therefore, a Statement of Overriding Considerations is adopted.

Water Use

Mitigation Measure #1:

The following measures would be implemented to reduce the project's impacts on water use (See SEIR page 95).

- Require water-conserving plumbing in all campus facilities.

- Require landscaping with drought-tolerant plant species. These species should be planted even if the drought conditions do not continue. The City of Menlo Park Water Conservation Committee and the Public Works Department would review the project plant list and landscape plans and would make specific recommendations regarding the selection of drought tolerant species.

Menlo Park would apply to the San Francisco Water Department to increase its current water allocation in order to accommodate the development of the East Campus site, if sufficient water allocation does not exist at the time of construction of each phase of the project. If Menlo Park receives the allocation from the Water Department, then Menlo Park could issue a certificate of occupancy for each phase of the project.

III. IMPACTS THAT ARE NOT SIGNIFICANT FOR WHICH MITIGATIONS ARE RECOMMENDED.

Vegetation and Wildlife

Mitigation Measure #1: Extensive new landscaping will be provided on the site. In accordance with the conditions of the BCDC permit, public access will be provided at the eastern edge of the East Campus site. Additional measures to protect the habitat include the limited use of pesticides and herbicides and the use of organic fertilizers for the landscape areas.

Hazardous Materials

Mitigation Measure #1: Monitoring water levels and water quality of the shallow groundwater on-site, due to the proximity of the documented groundwater contamination at the nearby Raychem main facility. Periodic review of regulatory agency files would occur in order to obtain updated information on nearby documented contamination (See SEIR page 18).

Fire Protection

Mitigation Measure #1: In order to reduce the effects on fire services, an adequate water supply will be necessary for both domestic and fire protection systems. In addition, future development would be required to conform to all applicable fire codes and ordinances (See SEIR page 20).

Police Protection

Mitigation Measure #1: Adequate emergency access provided in the approved Master Site Plan would be maintained in the amendment to the Master Site Plan. In addition, the pedestrian trail would provide complete visibility for employees on the property to all points of the trail. Lighting may be provided along the trail and in subsurface parking areas. The Police Department has also recommended that the berm be enclosed in a fence which allows visibility (See SEIR page 21).

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Air Quality

Mitigation Measure #1:

Although construction impacts are not considered significant, any of the following mitigation measures are recommended (See SEIR page 71):

- Provide equipment and manpower for watering (with reclaimed water only) all exposed or disturbed soil surfaces particularly, on windy days or during dry soil conditions (including weekends and holidays).
- Surround the work site with wind breaks, using berms to prevent soil piles from spilling onto traffic lanes.
- Sweep/wash construction areas and adjacent roadways of all mud and dust periodically. In order to prevent unnecessary water use, washing construction areas would only be implemented if sweeping is not effective and would only involve the use of reclaimed water.
- Cover stockpiles of soil, sand, and debris and trucks used for hauling soil to prevent entrainment into the atmosphere by winds.
- Monitor trucks and heavy equipment to ensure that travel occurs on paved surfaces, rather than dirt areas. Wash down trucks leaving the project area to prevent dropping dirt and mud, which could entrained into the atmosphere by wind or passing vehicles.

Mitigation Measure #2:

Sun would implement a Transportation System Management Program as developed for Sun's other campus facilities. This program would thereby, reduce corresponding vehicular emissions (See SEIR page 71).

Hydrology

Mitigation Measure #1:

Construction of the levees around the north and west sides of the site and of the landscaping berm along Route 84 was completed and meets U.S. Army Corps of Engineers' standards (See SEIR page 90). The occupant of the site will periodically maintain and improve the levees in order to ensure that the condition of the levees remains adequate. Improvements to the levees will be implemented on an as needed basis.

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