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**DEVELOPMENT AGREEMENT**

**Between**

**CITY OF PALO ALTO, A Chartered City**

**and**

**BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,  
A body having corporate powers under the laws of the  
State of California**

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Exhibits

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Exhibit E - Mayfield Lease

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (hereinafter “Agreement”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 2005, by and between the CITY OF PALO ALTO, a chartered city of the State of California (hereinafter “City”), and THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (hereinafter “Stanford”).

### **RECITALS**

THIS DEVELOPMENT AGREEMENT is entered into on the basis of the following facts, understandings and intentions of the parties:

A. Definitions.

These Recitals use certain terms with initial capital letters that are defined in Section 1 of this Agreement. City and Stanford intend to refer to those definitions when the capitalized terms are used in these Recitals.

B. Outline of Terms.

Under this Agreement, under the conditions described below, Stanford will lease to the City, for fifty-one years, the Mayfield Site at the corner of Page Mill Road and El Camino Real, for use by the City for the purposes defined in the lease. The City in turn will grant to Stanford the vested right to demolish and relocate 300,000 square feet of existing office development and to build 250 Dwelling Units on the cleared sites, in accordance with the rules described below. Stanford will have the vested right to use this, and certain other existing or rebuilt square footage in the Research Park, for office/research and development uses until this Agreement expires. Under this Agreement, Stanford will be permitted to exceed the floor area ratio currently allowed on certain sites by the zoning by no more than twenty five percent. The total square footage available for non-residential development in the Research Park is not increased by this Agreement. In addition City will accept the lease of the Mayfield Site as mitigation for any community service impacts on the City resulting from all future development at Stanford that was authorized by the General Use Permit approved by the County of Santa Clara in December of 2000. The City also agrees not to reduce the floor area ratio in the Stanford Research Park until 2011, the year in which the City plans to review its Comprehensive Plan. Stanford agrees to build at least 250 units of housing in the Research Park at the identified sites.

C. Nature and Purpose of Development Agreements.

Development agreements were authorized by the State of California in 1979, through the adoption of Government Code Sections 65864-65869.5. These statutes authorize a city to enter into binding agreements for the development of real property within the city. Because California has a “late vesting” rule, landowners usually cannot be certain that they can proceed with a development project until they have actually obtained a building permit and started building. This lack of certainty can discourage long range planning and investment and make it more difficult for cities to provide needed public facilities. A development agreement, in which a city

agrees that, for a certain period of time, it will not change the rules applicable to a project, and the property owner agrees to assist with the provision of public facilities, can benefit all parties.

D. Authority for City Development Agreements.

Pursuant to Government Code Section 65865, the City adopted Resolution No. 6597 establishing procedures and requirements for consideration of development agreements in Palo Alto.

E. Comprehensive Plan.

In July of 1998, the City of Palo Alto adopted its 1998-2010 Comprehensive Plan, a document containing the City's official policies on land use and community design, transportation, housing, natural environment, business and economics, and community services. Its policies apply to both public and private properties. The Plan is used by the City Council and Planning Commission to evaluate land use changes in the City, including the adoption of this development agreement. It is intended to guide City land use decisions through 2010.

F. Nature of Recitals.

These recitals are intended in part to paraphrase and summarize this Agreement, however, the Agreement is expressed below with particularity and the Parties intend that their rights and obligations be determined by those provisions and not by the Recitals.

G. Construction of Agreement.

This Agreement, *inter alia*, grants vested rights to Stanford for certain specified development with the limitations and conditions in the Agreement. Because this is one of the overriding purposes of the Agreement, no inference should be drawn from the fact that the Agreement sometimes makes reference to some promises as "vested" and in other cases does not. Similarly, this Agreement modifies some of the City's 2003 Rules (as defined in Section 1.1), and no inference should be drawn from the fact that in some instances the Agreement expressly states that it is modifying the 2003 Rules and in other instances does not. Finally, although Sections 5 and 6 are respectively labeled "Stanford's Promises" and "City's Promises," promises of both parties are contained in each section.

NOW, THEREFORE, the parties do hereby agree as follows:

1. Definitions.

In this Agreement, unless the context otherwise requires:

1.1. 2003 Rules and Modified 2003 Rules.

"2003 Rules" means the City's ordinances, resolutions, rules, regulations and official policies in effect on June 10, 2003, including those that are listed in Exhibit B attached hereto. Any such ordinance, resolution, rule, regulation or official policy shall be deemed part of the 2003 Rules, regardless of whether it is included within Exhibit B. The "Modified 2003 Rules"



means the 2003 Rules, as modified by this Agreement and the Ordinance amending the Zoning Ordinance to add Chapter 18.62 as set forth in Exhibit D attached hereto.

1.2. Architectural Review Approval.

“Architectural Review Approval” means the approval of the design under the 2003 Rules, specifically Chapters 18.76.020 and 18.77.070 of the Palo Alto Municipal Code and other sections of the Municipal Code, as modified by Section 6 of this Agreement.

1.3. Associated Square Footage.

“Associated Square Footage” means the Gross Floor Area in Existing Improvements on Designated Sites, or replacement of such Gross Floor Area, designated as such by Stanford pursuant to Section 6.1.2 and used in connection with Replacement Square Footage.

1.4. City.

“City” means the City of Palo Alto.

1.5. Comprehensive Plan.

“Comprehensive Plan” means the 1998-2010 Palo Alto Comprehensive Plan.

1.6. Days.

“Days” shall mean calendar days.

1.7. Designated Project.

“Designated Project” is a project that includes Replacement Square Footage on a Designated Site designated by Stanford as provided in Section 6.3.2 of this Agreement, and which may also include Associated Square Footage. A Designated Project may be less than an entire Designated Site, but shall be no less than an entire building and shall include only Replacement Square Footage and Associated Square Footage.

1.8. Designated Site.

“Designated Site” is a Site in the Research Park selected by Stanford for development of Replacement Square Footage by notice pursuant to Section 6.3.1. A Designated Site shall include at least one Designated Project and may include other buildings.

1.9. Development Agreement Act.

“Development Agreement Act” means Sections 65864 – 65869.5 of the California Government Code.

#### 1.10. Development Impact Fees.

“Development Impact Fees” means all fees now or in the future collected by the City from applicants for new development (including all forms of approvals and permits necessary for development) for the funding of public services, infrastructure, improvements or facilities, but not including taxes or assessments, or fees for processing applications or permits or for design review. The fees included in this definition include, but are not limited to those included in Chapters 16.45, 16.57, 16.58 of the Municipal Code as set forth in the 2003 Rules, those for traffic improvements and mitigation, and those for other facilities or related purposes (including school facility fees imposed by the City but not including any school fees imposed by a school district); provided nothing herein shall preclude City from collecting fees lawfully imposed by another entity having jurisdiction which City is required or authorized to collect pursuant to State law.

#### 1.11. Discretionary Action.

“Discretionary Action” includes a discretionary approval or disapproval and means an action that requires the exercise of judgment, deliberation or a decision, and that contemplates and authorizes the imposition of revisions or conditions by City, including any board, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity that merely requires City, including any board, commission or department and any officer or employee thereof, to determine whether there has been compliance with applicable statutes, ordinances, regulations, or conditions of approval.

#### 1.12. Dwelling Unit.

“Dwelling Unit” means a room or group of rooms, including living, sleeping, eating, cooking, and sanitation facilities, constituting a separate and independent housekeeping unit, occupied or intended for occupancy by one household on a nontransient basis and having not more than one kitchen.

#### 1.13. Effective Date.

“Effective Date” means June 10, 2003.

#### 1.14. Existing Improvements.

“Existing Improvements” means the buildings and associated improvements on a Designated Site on the Effective Date.

#### 1.15. Existing Square Footage.

“Existing Square Footage” means buildings and associated improvements on a Housing Site on the Effective Date.

1.16. FAR and floor area ratio.

“FAR” and “floor area ratio” mean the maximum ratio of Gross Floor Area on a site to total site area.

1.17. Gross Floor Area

“Gross Floor Area” is defined in the 2003 Rules at Section 18.04.030(65)(A) and (B) of the Municipal Code.

1.18. Housing.

“Housing” means the 250 Dwelling Units that Stanford is required to build under this Agreement.

1.19. Housing Site.

“Housing Site” means the land upon which some of the Housing is built or proposed to be built. Currently, the Housing Sites are the existing leaseholds commonly known as 2450, 2470, and 2500 El Camino Real (collectively sometimes the “El Camino Sites”), and 1451, 1501 and 1601 California Avenue, Palo Alto, California (collectively, sometimes the “California Sites”). At its option, Stanford may include 505 California Avenue in the El Camino Sites. Any substitute Site selected pursuant to Section 6.4.2 below shall also be a Housing Site under this Agreement. A Housing Site need not correspond exactly to an existing leasehold, but instead may be less than a leasehold or a combination of two or more leaseholds or portions thereof.

1.20. Mayfield Lease.

“Mayfield Lease” means that certain ground lease to be entered into by and between Stanford as Landlord and City as Tenant, with respect to the Mayfield Site. A copy of the Mayfield Lease is attached hereto as Exhibit E.

1.21. Mayfield Site.

“Mayfield Site” means the real property owned by Stanford and described on Exhibit A to the Mayfield Lease.

1.22. Mortgage.

“Mortgage” means and refers, singly and collectively, to any mortgages, deeds of trust, security agreements, assignments and other like security instruments encumbering all or any portion of the Research Park or Stanford’s rights under this Agreement.

1.23. Mortgagee.

“Mortgagee” means the holder of any Mortgage encumbering all or any portion of the Research Park or Stanford’s rights under this Agreement, and any successor, assignee or transferee of any such Mortgage holder.

1.24. Party.

“Party” means a signatory to this Agreement, or a successor or assign of a signatory to this Agreement.

1.25. Phase 1 Square Footage and Phase 2 Square Footage.

“Phase 1 Square Footage” and “Phase 2 Square Footage” are defined in Section 6.1.1.

1.26. Related Housing.

“Related Housing” is defined in Section 6.1.5.

1.27. Replacement Square Footage.

“Replacement Square Footage” is defined in Section 6.1.1.

1.28. Research Park.

“Research Park” means that area so labeled on Exhibit A.

1.29. Signatory Party.

“Signatory Party” means a signatory to this Agreement and does not include successors or assigns.

1.30. Site.

“Site” means a leasehold or assessor’s parcel (or multiple leaseholds or assessor’s parcels) in the Research Park used by City for purposes of determining compliance with zoning and Comprehensive Plan standards, including FAR and setbacks.

1.31. Stanford.

“Stanford” means the Board of Trustees of the Leland Stanford Junior University, a body having corporate powers under the laws of the State of California.

1.32. Subsequent Approvals.

“Subsequent Approvals” means any approval or other action by City for which Stanford applies after June 10, 2003 that is necessary or desirable to implement the rights vested in Stanford by this Agreement, including discretionary and ministerial approvals.

1.33. Subsequent Rules.

“Subsequent Rules” means all City ordinances, resolutions, rules, regulations and official policies in effect at the time a City action is to be taken, as they would apply to the Designated Sites and Designated Projects or to Housing Sites and Housing had this Development Agreement not been adopted.

1.34. Subsequent Applicable Rules.

“Subsequent Applicable Rules” means the City ordinances, resolutions, rules, regulations and official policies that are adopted and become effective after the Effective Date that do not conflict with the Modified 2003 Rules, or that are expressly made applicable to the subject matter of this Agreement by Sections 7 or 8, below.

1.35. Term.

“Term” shall mean the term of this Development Agreement as set forth in Section 17.

1.36. Vested Right.

“Vested Right” means a property right conferred by this Agreement that may not be taken by City.

2. Interest of Stanford.

As of the Effective Date, Stanford represents that it has a legal or equitable interest in the Research Park, which is the property that is subject to this Agreement.

3. Binding Effect.

Except as otherwise expressly provided herein, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, the Parties’ successors in interest or assignees to any portion of the Research Park. Provided, Stanford’s benefits under this Agreement shall inure only to those to whom Stanford has expressly assigned them and only to the extent of the assignment.

4. Negation of Agency.

The Parties acknowledge that, in entering into and performing this Agreement, each Party is acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Stanford joint venturers or partners.

5. Stanford’s Promises.

5.1. Mayfield Lease.

No later than thirty-five days after this Agreement has been fully executed by the Signatory Parties, Stanford shall execute and deliver to City duplicate originals of the Mayfield Lease; provided that City shall not take possession of the Mayfield Site until Stanford has completed the work described in Section 5.2, and the City has accepted the work and acknowledged that it has been completed in accordance with this Agreement and the Mayfield Lease.

5.2 Athletic Fields.

Stanford shall construct “The Stanford/Palo Alto Community Playing Fields” in accordance with the Mayfield Lease. Stanford shall commence such construction within 100 days after the City’s adoption of the ordinance authorizing the Agreement, but in no event before the Mayfield Lease is fully executed, and shall diligently prosecute the construction to completion, provided that construction shall not commence during the period commencing October 1 and ending April 15 unless the Parties mutually agree otherwise.

5.3. Compliance With Agreement; No Obligation to Develop Replacement Square Footage.

Stanford shall comply with the terms and conditions of this Agreement when developing the Designated Projects. Nothing contained in this Agreement shall require Stanford to construct all or any part of the Replacement Square Footage.

5.4. Housing.

Stanford shall construct 250 Dwelling Units on the Housing Sites in accordance with the terms of this Agreement. Stanford shall file an initial application for at least 185 units by December 31, 2013, and for the remaining units by December 31, 2020. If more than one Subsequent Approval is required for the first or any subsequent phase, Stanford shall diligently file applications for the additional approvals as soon as feasible after the approval of the initial application. Stanford’s obligation to construct 250 Dwelling Units is conditioned upon City granting and approving all Subsequent Approvals under the terms of this Agreement for the construction of Housing proposed by Stanford. Upon receipt of building permits, Stanford shall diligently prosecute construction to completion. Stanford’s obligations relating to Housing under this Agreement (except for BMR Units, addressed in Section 5.5 below) shall remain in effect until such Housing is built and ready to be occupied.

5.5. Below Market Rate Units.

Notwithstanding any subordination to a third party that Stanford may require pursuant to Exhibit C attached, Stanford shall provide Below Market Rate (“BMR”) Units as provided in Exhibit C attached, and its obligations to provide such BMR Units shall remain in effect for the term of affordability set forth in Exhibit C, and shall survive the Term of this Agreement. If Stanford elects to construct the “70 BMR Unit Alternative” in Exhibit C and intends to assign any of its obligations in this Agreement relating thereto to a third party developer or provider pursuant to Section 18 below, Stanford shall provide City with satisfactory proof that such developer or provider has an adequate record of building affordable housing of sufficient quality and/or a demonstrated management capability for operating such affordable housing, as the case may be. Any such assignment shall not be effective unless and until approved by the City under the procedures in Section 18, and such approval shall not be unreasonably withheld. If there is such an assignment, then prior to construction of the 70 BMR Unit Alternative Stanford shall submit the specifications for the interiors of buildings and individual units to City for review to determine if they are of sufficient quality, as specified in Exhibit C. If Stanford and City are unable to agree on the adequacy of the specifications, the matter shall be submitted to an

independent architect (jointly selected by Stanford and City) for review, and Stanford shall abide by the architect's determination and modify the specifications to the extent required by that determination.

#### 5.6 Traffic Mitigation Program.

5.6.1. In addition to those mitigations provided in Section 8.10 below and no later than six months after the start of construction of any of the Phase 1 Square Footage, Stanford will (1) employ a half-time, qualified Transportation Demand Management ("TDM") coordinator for the Research Park, and (2) continue or resume, as the case may be, the current service and route for the existing Hanover Shuttle. Stanford's obligations under this section 5.6.1 shall terminate when the first 100,000 square feet of Existing Square Footage is demolished. For purposes of this Agreement, the Hanover Shuttle means that dedicated peak-hour shuttle required by the final 2475 Hanover Mitigated Negative Declaration that serves the Page Mill Road/Hanover/California Avenue/El Camino Real super-block.

5.6.2. As additional development is proposed in the Research Park beyond that for which vested rights have been granted under this Agreement, the City will evaluate it in the context of the long term TDM program outlined in the EIR for full Research Park build-out. Nothing in this Agreement shall preclude the City from otherwise exercising its full discretion in evaluating or mitigating the traffic or any other impacts of any such additional development in the Research Park.

### 6. City's Promises.

#### 6.1. Replacement and Associated Square Footage.

##### 6.1.1. Replacement Square Footage.

City hereby grants to Stanford the vested right to develop, construct and use a total of 300,000 square feet of Gross Floor Area on one or more Designated Sites, together with additional associated space exempt from the definition of Gross Floor Area (pursuant to Section 18.04.030(65)(B)(i), (ii) and (iv) of the Municipal Code as set forth in the 2003 Rules) (the "Replacement Square Footage") during the Term. The amount of Replacement Square Footage vested in and available to Stanford upon execution of this Agreement shall be 100,000 square feet (sometimes hereafter "Phase 1 Square Footage"). The remaining 200,000 square feet (sometimes hereafter "Phase 2 Square Footage") shall be developed as provided below in Section 6.1.5. Stanford may use the Replacement Square Footage to construct new buildings, to enlarge existing buildings, or to construct enlarged buildings to replace Existing Improvements. Stanford shall advise the City, in writing, when applying for approval of a project to construct Gross Floor Area in the Research Park, whether the new floor area is to be considered Replacement Square Footage.

##### 6.1.2. Associated Square Footage.

Stanford is hereby granted the right to designate a total of 1,200,000 square feet as Associated Square Footage (as defined in Section 1.3) for use in connection with Replacement Square Footage in one or more Designated Projects.

### 6.1.3. Uses.

The permitted uses of the Replacement Square Footage and Associated Square Footage during the Term shall be those described in the 2003 Rules, including each and every permitted use specified therein in Chapter 18.60 “LM Limited Industrial/Research Park District Regulations.”

### 6.1.4. Development Standards.

The development standards for Replacement Square Footage and Associated Square Footage, including but not limited to floor area ratio, setbacks, height limits, parking and loading standards, minimum site dimensions, and site coverage during the Term shall be those described in the Modified 2003 Rules.

### 6.1.5. Subsequent Approvals for Phase 2 Square Footage and Construction.

Stanford is entitled to replace demolished Existing Square Footage with Phase 2 Square Footage when it is sufficiently committed to build a Housing project on the Site made available by the demolition (hereinafter “Related Housing”), as provided in this section. Stanford may apply for Subsequent Approvals for Phase 2 Square Footage at any time. Stanford may demolish existing buildings and clear (but not excavate) the Site of such Phase 2 Square Footage at any time. Upon Stanford’s compliance with the Modified 2003 Rules governing issuance, City shall issue building permits for the Phase 2 Square Footage; provided Stanford shall not be entitled to receive a building permit for construction of any project utilizing Phase 2 Square Footage until (a) demolition of the related Existing Square Footage and (b) the occurrence of one of the following with respect to the application for the Related Housing:

- Architectural Review Approval by the Director of Planning and Community Environment (“the Director”) without an appeal; or
- Architectural Review Approval by the City Council after an appeal; or
- Appeal without action by the City Council within 60 days after the appeal is filed; or
- Expiration of the applicable cumulative period without action by the Director approving or denying an application for Architectural Review Approval of the Related Housing (“the pending application”). For purposes of this Section 6.1.5 the *applicable cumulative period* shall be determined by adding (a) the number of days allowed for decision on the pending application under sections 65950 through 65951 of the Permit Streamlining Act and (b) the number of days, if any, allowed for preparation of environmental documentation for the pending application under section 21151.5 of CEQA. For example, the applicable cumulative period for decision on a pending application for which a negative declaration is prepared would be sixty days [Gov’t Code § 65950(a)(3)] plus 180 days [Pub. Res. Code § 21151.5(a)(1)(B)] for a total of 240 days from the date the pending application was determined or deemed complete. [*Id.* at



§ 21151.5(a)(2).] For further example, the applicable cumulative period for decision on a pending application that is exempt from CEQA would be 60 days after the City determines the project is exempt [Gov't Code, § 65950(a)(4)], as CEQA does not provide any time limit for making that determination.

Neither the Director nor the Architectural Review Board shall refer the matter to the Planning Commission or City Council under Chapter 16.48 of the Municipal Code as set forth in the 2003 Rules. Upon Stanford's compliance with the Modified 2003 Rules governing issuance, City shall issue occupancy permits for the Phase 2 Square Footage; provided Stanford shall not be entitled to receive a certificate of occupancy for such Phase 2 Square Footage until it has commenced construction of the Related Housing under an issued building permit or until the expiration of an applicable time period above, whichever is earlier. City shall not require the construction or completion of Phase 2 Square Footage as a condition to any Subsequent Approval required for the Housing, including building and occupancy permits. Stanford may apply for Subsequent Approvals for all or any part of the Housing at any time and may begin construction at any time after any required Subsequent Approvals are issued, so long as it complies with the requirements of Section 5.4 of this Agreement.

## 6.2. Mayfield Lease.

Not later than thirty-five days after Stanford delivers duplicate executed originals of the Mayfield Lease pursuant to Section 5.1 above, City shall execute an original of the Mayfield Lease and return it to Stanford.

## 6.3 Research Park Designated Sites.

### 6.3.1. Designated Sites.

From time to time during the Term, Stanford may give written notice to City that one or more Sites in the Research Park is to be a Designated Site. Stanford may rescind any such designation before commencement of construction of the Designated Project on the Site by filing a written withdrawal of its application or, if the Project has been approved, by filing a written surrender of the Subsequent Approvals for the Project.

### 6.3.2. Designated Projects.

From time to time during the Term, Stanford may define an existing or proposed building or buildings on any Designated Site as a Designated Project. The total Gross Floor Area that Stanford may define for all Designated Projects is the total of Replacement Square Footage and Associated Square Footage – i.e., 1,500,000 square feet. Associated Square Footage shall be designated by Stanford, as necessary to ensure that a Designated Project shall in its entirety be subject to the same development standards. Stanford may rescind its designation of a Designated Project at any time prior to commencement of construction of the Project by filing a written withdrawal of its application or, if the Project has been approved, by filing a written surrender of the Subsequent Approvals for the Project. Designations of a Designated Site and Designated Project are irrevocable once construction commences on a Designated Project on the Designated Site. Stanford shall have the vested right to develop, construct and use each Designated Project under the Modified 2003 Rules. City shall permit construction of each

Designated Project subject only to Stanford obtaining Architectural Review Approval and required building permits, complying with the conditions of the Architectural Review Approval, paying all required fees (if any), and otherwise proceeding in compliance with this Agreement. City shall permit occupancy and use of each Project upon Stanford's compliance with said permits and applicable conditions of this Agreement and issuance of a certificate of occupancy as required by section 16.04.120 of the Municipal Code as set forth in the 2003 Rules.

#### 6.3.3. FAR Shift up to 25% Over Base.

Stanford may exceed the FAR allowed by the 2003 Rules on one or more Designated Sites through the use of Replacement Square Footage, by an amount not to exceed twenty-five percent (25%) of the amount otherwise allowed. Furthermore, FAR may be increased on a Designated Site only if the proposed Designated Project complies with the Modified 2003 Rules, and FAR may not be increased on any Site fronting on California Avenue. Stanford may develop each Designated Site with a coverage that does not exceed thirty percent (30%) of the Designated Site, except that site coverage in areas zoned LM-5 and LM-5(D) shall not exceed twenty-five percent (25%). If Stanford has used all of its Associated Square Footage but has unused Replacement Square Footage and Stanford elects not to develop this Replacement Square Footage as a stand alone building, Stanford may use this remaining Replacement Square Footage to increase FAR of a development on another site by up to 25% of the amount otherwise allowed, but such development shall not otherwise be treated as vested under this Agreement or otherwise subject to the terms of this Agreement. If the FAR of the Designated Project does not exceed the increased FAR allowed by this Section for the Designated Site, the City shall process the application. If it does exceed the allowable FAR, the City shall permit Stanford to amend the application to reduce the Designated Project to a size that does not exceed the allowable FAR, and, if Stanford does not do so, the City may reject the application.

#### 6.3.4. Utility and Storm Drain Connections.

Unless prohibited by a moratorium lawfully adopted by another governmental agency, or by action taken by City in accordance with Sections 7 or 8, or by state or federal law, City shall allow Stanford to connect the Designated Projects to the City's sanitary sewers, storm drains, water service, gas service and electrical service in accordance with its generally applicable rules in effect at the time of application for service and shall issue all permits and authorization necessary for such connection and service. A moratorium shall not prevent the issuance of discretionary or ministerial approvals for the Designated Project, provided that City shall not be required to allow any connections or provide any services barred by the moratorium.

#### 6.3.5. Waste Treatment Capacity.

Subject to any limitation imposed by state or federal law, in the event of a moratorium preventing or limiting sanitary sewer connections, Stanford shall have priority for sanitary sewer treatment capacity for the Designated Projects over other unbuilt commercial development. Stanford shall not have priority over any residential, utility, governmental (including schools), or community service uses such as private hospitals and day care facilities. Stanford shall have priority over new commercial space, including but not limited to retail, office, and industrial space; provided that Stanford must begin construction on the space for which it will make use of

its priority rights within twelve months after connection capacity becomes available and diligently pursue construction until completion to retain its priority. This priority applies to “domestic waste” and not “industrial waste.”

#### 6.3.6. Storm Drain Capacity.

Subject to any limitation imposed by state or federal law, in the event of a moratorium preventing or limiting discharge or increased runoff to storm drains, Stanford shall have priority for use of storm drains for the Designated Projects over other unbuilt commercial development. Stanford shall not have priority over any residential, utility, governmental (including schools), or community service uses such as private hospitals and day care facilities. Stanford shall have priority over new commercial development, including but not limited to retail, office, and industrial space; provided that Stanford must begin construction on the space for which it will make use of its priority rights within twelve months after connection capacity becomes available and diligently pursue construction until completion to retain its priority.

#### 6.3.7. Dedication of Property for Public Purposes.

No dedication of any interest in land, whether on-site or off-site, for park, recreation, or open space, shall be required as a condition of a Designated Project. Provided, nothing in this Section 6.3.7 limits, enlarges, or restricts those dedications or impositions that may be required by state or federal law and nothing in this Agreement shall be deemed to allow dedications that are contrary to, or prohibited by state or federal law or constitutions. Any required dedications shall be applied on a nondiscriminatory basis, shall not unreasonably interfere with or burden development of the Designated Site and shall be related to the context of the development of the Designated Site.

#### 6.3.8. Improvement Requirements.

Improvement requirements for a Designated Project shall be applied on a non-discriminatory basis, shall not unreasonably interfere with or burden development on the Designated Site, and shall be related to the context of development of the Designated Site. The context shall include for the Designated Site the onsite implementation of Policy L-43 and Program L-44 of the Comprehensive Plan. The City shall not impose any additional measures to mitigate the traffic impacts of the Designated Projects except as provided in this Agreement and the environmental impact report prepared on this Agreement.

#### 6.3.9. Limitation on Design Review.

Stanford has the vested right to develop, construct and use all of its Replacement Square Footage under the Modified 2003 Rules. The provisions of this Section 6.3.9 shall apply to each architectural review process undertaken and Architectural Review Approval granted with regard to a Designated Project. Notwithstanding Section 16.48.120 (c) and other sections of the Palo Alto Municipal Code as set forth in the 2003 Rules, that authorize the City to impose requirements on development that are stricter than those set forth in a zoning district (“architectural review discretion”), and in order to carry out this Agreement, when reviewing Designated Projects the City shall exercise its architectural review discretion in a manner that does not reduce the square footage otherwise allowable on a Site except as may be required by

the Modified 2003 Rules, including requirements for setbacks from roads, creeks, and residential areas; the City's engineering review of ingress and egress to a site and of parking, pedestrian, bicycle, and motor vehicle circulation on it; the preservation of trees as required by the Modified 2003 Rules; and the location of utilities. City shall require a reduction in the size of the project because of these matters only in accordance with an applicable law the application of which requires the reduction and then only if there is no other feasible way to achieve City's objectives in which case the reduction shall be the minimum necessary to do so. The City may require that all or some of the parking on a Site be placed underground in order to accommodate the permitted FAR, including the 25% bonus, but only to implement the creek protection policies and programs described in Section 8.3 below; provided City may not require more than one level of underground parking or underground parking outside of footprint of the proposed building. The City shall not require landscaping, design, materials, finishes, or building methods which are substantially more expensive (after adjusting for inflation) than those generally used in the Research Park in the ten year period prior to the determination. Stanford shall have the burden of establishing the greater expense.

#### 6.3.10. Development Impact Fees.

City shall not require Stanford to pay Development Impact Fees for any of the Designated Projects.

#### 6.4. Vested Right to Build Housing.

##### 6.4.1. Right to Build 250 Units.

City grants to Stanford the vested right to build 250 Dwelling Units on the Housing Sites in accordance with the provisions of this Agreement. Except as set forth in this Agreement, City shall not impose any condition or regulation regarding the timing or phasing of construction of the Housing. City shall permit construction of each Housing project subject only to Stanford obtaining Architectural Review Approval and required building permits, complying with the conditions of the Architectural Review Approval, paying all required fees, taxes, and assessments, and otherwise proceeding in compliance with this Agreement. City shall permit occupancy and use of each Dwelling Unit in each Housing project upon Stanford's compliance with said permits and applicable conditions of this Agreement and issuance of a certificate of occupancy as required by section 16.04.120 of the Municipal Code as set forth in the 2003 Rules.

##### 6.4.2. Environmental Conditions.

Prior to filing an application for development of a Housing Site, Stanford shall obtain a Phase 1 environmental report for the Housing Site. If appropriate, based on the Phase 1 report, Stanford shall undertake a Phase 2 sampling plan. If the Phase 2 sampling results show evidence of soil or groundwater contamination at levels that may require corrective action or the implementation of engineering controls, site use restrictions or deed restrictions ("Controls"), Stanford shall prepare a work plan for corrective action and/or Controls ("Work Plan") and a risk assessment to identify acceptable cleanup goals for the intended use of the Housing Site. Stanford shall submit the Work Plan and risk assessment to DTSC, the Regional Water Quality Control Board, or any other environmental regulatory agency with jurisdiction, at Stanford's

election (“the Oversight Agency”) for review and approval. Stanford shall undertake any corrective measures and/or implement any Controls deemed necessary by the Oversight Agency to reduce any risk identified as unacceptable based upon that analysis and review. If the measures or Controls for any Housing Site are not economically, technically or physically feasible or if they or the conditions expected to exist after remediation substantially affect the marketability of the units or materially impact the ability to develop the Housing Site or materially increase the exposure of Stanford to claims or liability (an “*Infeasible Site*”), Stanford shall construct the Housing on the remaining Housing Sites in accordance with the housing development standards in Section 6.4.4 or identify a substitute for the Infeasible Site within the Research Park (a “*substitute Site*”). The parties shall amend this Agreement as necessary (a) to permit Housing to be constructed on the substitute Site and to extend the Term for a reasonable time, if necessary, to permit construction on the substitute Site, taking into account the term of any then-existing lease of the substitute Site, or (b) to extend the dates specified in Section 5.4 taking into account the term of the ground leases of the remaining Housing Sites. Stanford shall have the right to relocate any Existing Square Footage displaced by construction on the substitute Site, which, for all purposes, shall be Replacement Square Footage the use of which shall be governed by the terms of this Agreement, as later amended pursuant to this Section, provided that the Replacement Square Footage under this Agreement shall not exceed 300,000 square feet. Stanford shall have the right to replace the Existing Square Footage on any Infeasible Site and to use such replacement for any of the uses set forth in the 2003 Rules for such Site, but it shall not be included in the 300,000 square feet limit for Replacement Square Footage in this Agreement or otherwise be subject to the terms of this Agreement.

#### 6.4.3. Other Conditions.

With respect to each Housing Site, Stanford shall obtain a site-specific circulation analysis for review by the City’s Traffic Engineer; shall implement any conditions imposed by the City based on that analysis and review that are permitted by this Agreement and otherwise lawful; and shall comply with the applicable provisions of the Subdivision Map Act. The analysis shall include only an analysis of the number and locations of curb cuts and the connections of on-Site streets and drives to the public street system. Nothing in this Agreement shall preclude the City from requiring additional mitigation for the traffic or circulation impacts of any Housing project when proposed on a substitute Site under Section 6.4.2 or of the use or replacement of the Existing Square Footage on any Infeasible Site under Section 6.4.2, if changed circumstances or new information indicate that such impacts will be significant and are not adequately mitigated by anything required in this Agreement or in the environmental impact report prepared on this Agreement.

#### 6.4.4. Housing Development Standards; Site Development Regulations.

The site development regulations for the LM District (sections 18.60.050 and 18.60.070 of the Municipal Code as set forth in the 2003 Rules) shall not apply to the Housing. Instead, Stanford may elect to develop the whole of the El Camino Sites or the whole of the California Sites (a) under the site development regulations of the following zoning districts as set out in the 2003 Rules: RM-15 for the California Sites, and RM-40 for the El Camino Sites; or (b) pursuant to Subsequent Rules, provided that the residential density shall not exceed 15 units per acre for the California Sites and 40 units per acre for the El Camino Sites; or (c) under the site

development regulations of the following zoning districts as set out in the Modified 2003 Rules: the AS1 Alternative Development Standards for the El Camino Sites and the AS2 Alternative Development Standards for the California Sites in Chapter 18.62 attached as Exhibit D hereto; or (d) under a PC zoning district under the conditions, terms, restrictions, and requirements set out in Section 6.4.11 of this Agreement. Stanford may make separate elections for the El Camino Sites and the California Sites. Once Stanford has elected to proceed with new development under one of the options set out above, that option shall apply to all development on the El Camino Sites or the California Sites, as the case may be. For any substitute Site selected pursuant to Section 6.4.2 above, Stanford may elect to develop the whole of each substitute Site (a) pursuant to new housing development standards mutually agreed between the Parties, (b) under the site development regulations of the applicable zoning district for the substitute Site as set out in the Modified 2003 Rules, (c) pursuant to the Subsequent Rules, or (d) under a PC zoning district under the conditions, terms, restrictions, and requirements set out in Section 6.4.11 of this Agreement. In the sale or rental of the Housing, Stanford shall not discriminate against households with children or on the basis of the age of renters or buyers.

#### 6.4.5. Utility and Storm Drain Connections.

Unless prohibited by a moratorium lawfully adopted by another governmental agency, or by action taken by City in accordance with Sections 7 or 8, or by state or federal law, City shall allow Stanford to connect the Housing to the City's sanitary sewers, storm drains, water service, gas service and electrical service in accordance with its generally applicable rules in effect at the time of application for service and shall issue all permits and authorization necessary for such connection and service. A moratorium shall not prevent the issuance of discretionary or ministerial approvals for the Housing, provided that City shall not be required to allow any connections or provide any services barred by the moratorium.

#### 6.4.6. Waste Treatment Capacity.

Subject to any limitation imposed by state or federal law, in the event of a moratorium preventing or limiting sanitary sewer connections, Stanford shall have priority for sanitary sewer treatment capacity for the Housing over unbuilt non-residential development; provided, Stanford shall not have priority over any utility, governmental (including schools), or community service uses such as private hospitals and day care facilities. In the event of such a moratorium, Stanford must begin construction on the space for which it will make use of its priority rights within twelve months after connection capacity becomes available and diligently pursue construction until completion to retain its priority. This priority applies to "domestic waste" and not "industrial waste."

#### 6.4.7. Storm Drain Capacity.

Subject to any limitation imposed by state or federal law, in the event of a moratorium preventing or limiting discharge or increased runoff to storm drains, Stanford shall have priority for use of storm drains for the Housing over unbuilt non-residential development; provided, Stanford shall not have priority over any utility, governmental (including schools), or community service uses such as private hospitals and day care facilities. In the event of such a moratorium, Stanford must begin construction on the space for which it will make use of its priority rights

within twelve months after connection capacity becomes available and diligently pursue construction until completion to retain its priority.

#### 6.4.8. Dedication of Property for Public Purposes.

No dedication of any interest in land, whether on-site or off-site, for park, recreation, or open space, shall be required as a condition of a project for the construction of Housing. Provided, nothing in this Section 6.4.8 limits, enlarges, or restricts those dedications or impositions that may be required by state or federal law and nothing in this Agreement shall be deemed to allow dedications that are contrary to, or prohibited by state or federal law or constitutions. Any required dedications shall be applied on a nondiscriminatory basis, shall not unreasonably interfere with or burden development of the Housing and shall be related to the context of the development of the Housing Site.

#### 6.4.9. Improvement Requirements.

Improvement requirements for a Housing project shall be applied on a non-discriminatory basis, shall not unreasonably interfere with or burden development of the Housing, and shall be related to the context of development of the Housing on a Housing Site. The context shall include for the Housing Site the onsite implementation of Policy L-43 and Program L-44 of the Comprehensive Plan. The City shall not impose any additional measures to mitigate the traffic impacts of the Housing, except that the City (a) shall be entitled to impose generally applicable, lawful Development Impact Fees, including those relating to traffic impacts, under Sections 8.5 and 8.6 below, (b) may impose additional mitigation for the traffic or circulation impacts of any Housing project on a substitute Site under the terms of Section 6.4.3 above, and (c) may impose any other mitigation related to traffic otherwise provided in this Agreement and the environmental impact report prepared on this agreement.

#### 6.4.10. Limitation on Design Review.

Stanford has the vested right to develop, construct and use the Housing under the Modified 2003 Rules. Prior to the issuance of building permits for any of the Housing, Stanford shall obtain Architectural Review Approval. The provisions of this Section 6.4.10 shall apply to each architectural review process undertaken and each Architectural Review Approval granted with regard to any of the Housing and to any commercial space in a building containing Housing on the El Camino Sites. For Housing proposed for development under the AS1 or AS2 Alternative Development Standards in Exhibit D hereto and for substitute Sites proposed for development under housing development standards mutually agreed upon pursuant to Section 6.4.4, City shall limit its architectural review process and Architectural Review Approval (a) to a determination whether the Housing complies with such standards; (b) to approval of lighting, noise levels, landscaping and of the exterior materials and finishes of the buildings and other structures; and (c) to approval of massing, roof forms, and the site plan. The City's authority for the approval of massing, roof forms and the site plan (a) shall not apply to the El Camino Sites if proposed for development under the AS1 Standards in Exhibit D hereto, and (b) with respect to the California Sites, if proposed for development under the AS2 Standards in Exhibit D, shall be limited to the California Avenue edge of the California Sites, and then only to the extent that the projects submitted for approval do not already approximate the horizontal rhythm of building-to-

sideyard setback and façade areas of California Avenue residential properties located across the street from, or in the vicinity of the California Sites. If Stanford elects to develop Housing under any standards other than AS1 or AS2 in Exhibit D, the above-described limitations on Architectural Review Approval shall not apply, unless the parties mutually agree on housing development standards for such Housing that includes these limitations. The City shall not require landscaping, design, materials, finishes, or building methods which are substantially more expensive (after adjusting for inflation) than those generally used for similar housing projects in the City in the ten year period prior to the Architectural Review Approval. Stanford shall have the burden of establishing that the expense is greater.

The City shall not deny an application for approval of Housing or directly or indirectly reduce or increase the number of units of Housing proposed, so long as the Housing conforms to the applicable development standards set forth in Section 6.4.4 above and the other terms of this Agreement. However, City may require a reduction in the number of units of the project in accordance with the requirements of this Agreement or a state or federal law (other than CEQA), the application of which requires the reduction, but only if there is no other feasible way to comply with this Agreement or the law, in which case the reduction shall be the minimum necessary to do so. Also, City may condition its approval in a manner consistent with this Agreement. For Housing proposed for development under the AS1 or AS2 Alternative Development Standards in Exhibit D hereto and for substitute Sites proposed for development under housing development standards mutually agreed upon pursuant to Section 6.4.4, (a) Stanford may build attached or detached units or a mixture thereof and may determine, in its discretion, the type, size, location, floor plan, and configuration of the Housing, so long as the Housing complies with such standards and the other terms of this Agreement, and (b) except as provided in this Agreement, City shall not impose any condition or regulation regarding the location of the Housing or any portion of it.

#### 6.4.11. Planned Community Standards.

Stanford also may develop some or all of the Housing Sites, or portions thereof, under a Planned Community District if approved by the City Council. The benefits conferred by this Agreement shall be deemed conclusively to satisfy the requirements of section 18.68.060(b) of the Municipal Code included in the 2003 Rules. City shall exercise its best efforts to process any such application expeditiously. The City shall have the discretion to set the terms of the PC Zoning consistent with the terms of this Agreement.

#### 6.5. No Reduction in Research Park FAR.

Prior to 2011, the City shall not reduce the maximum permitted Floor Area Ratio for any portion of the Research Park from that set forth in the Modified 2003 Rules. The City retains the right to alter permitted uses of such floor area, except with regard to the Housing and Designated Projects. The City also retains the right to reduce the square footage of any individual additional development proposed in the Research Park (beyond that for which vested rights have been granted under this Agreement).



6.6. Full Mitigation of GUP Community Service Impacts.

The Mayfield Lease shall constitute full satisfaction of Condition of Approval P.8 of the General Use Permit. The City further waives any right it may have to require other mitigation of impacts of development in the County under the General Use Permit on community services in Palo Alto, including park and recreation, cultural arts, child care, and library facilities and programs. “Community services” do not include police, fire, or emergency medical services. Nothing herein contained shall prevent City from proposing that the County require additional mitigation of impacts that may result from development by Stanford in addition to that authorized or contemplated by the General Use Permit, whether by amendment of the General Use Permit or by the grant of other entitlements after the Effective Date. City shall not advocate enforcement of said condition in any way that is inconsistent with this Section 6.6. The City does not waive such rights as it may have to advocate that Stanford provide additional community services on its own campus to address the needs of those who live and work there, or to require provision of childcare and other facilities in connection with other Stanford development within the City.

6.7. No Moratoria and/or Growth Limitation Ordinances; No Phasing or Timing of Development.

Stanford may develop all or any portion of the Designated Projects, and may develop the Housing in such order and sequence as Stanford shall determine in its discretion, except for Stanford’s phasing and timing obligations with respect to Housing provided in Sections 5.4 and 6.1.5 above. Neither the right to develop nor the timing of development shall be affected or limited by a phasing schedule, growth control ordinance, moratorium, or suspension of development rights, whether adopted by the City Council or a vote of the citizens through the initiative process except to the extent imposed by this Agreement, supervening federal or state law, order, rule or regulation or a Subsequent Applicable Rule that controls pursuant to Sections 7 or 8.

6.8. Subsequent Rules.

Subsequent Rules that conflict with the vested rights granted under this Agreement are applicable to Stanford’s vested development rights under this Agreement only under the circumstances described in Section 7 below. Section 8 below describes the Subsequent Rules that are expressly made applicable to the subject matter of this Agreement. This limitation applies to changes made by ordinance, initiative, referendum, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the Mayor, City Council, Planning Commission or any other board, commission or department of City, or any officer or employee thereof, or by the electorate.

6.9. Cooperation and Implementation.

The City shall cooperate with Stanford to implement this Agreement. Such cooperation shall include, but without limitation, diligent processing of applications for approval of development on the Housing Sites and on the Designated Sites that comply with the Modified 2003 Rules, the Subsequent Approvals, and the Subsequent Applicable Rules.

#### 6.10. Subsequent Discretionary Approvals.

City shall permit Stanford to construct, carry out, complete, occupy and use the development vested by this Agreement subject to any express conditions precedent to any such action contained in this Agreement and otherwise subject to the terms of the Agreement. City shall not deny or unreasonably delay any Discretionary Action or Subsequent Approval that is necessary or desirable to the exercise of the rights vested in Stanford by this Agreement, including, but not limited to, construction, occupancy and use of the vested development. Any conditions, terms, restrictions, and requirements for subsequent discretionary actions imposed or required by City, including those provided for herein, shall not prevent development of the land for the uses and to the density or intensity of development set forth in the Agreement. Except as provided in Section 7 or 8 below, City shall not apply any Subsequent Rule that creates a requirement for any additional subsequent Discretionary Action or Subsequent Approval, other than ministerial approval, applicable to the Designated Projects or the Housing or Housing Sites.

#### 6.11. Entitlement to Develop.

By this Agreement City has granted to Stanford the vested right to develop the Designated Projects, and the Housing to the extent and in the manner provided in this Agreement. City hereby finds that development to be consistent with the Comprehensive Plan and the Zoning Ordinance, as amended to include the AS1 and AS2 zoning districts set forth in Exhibit D. City shall not apply to the Designated Projects, or the Housing any change in the Modified 2003 Rules (including, without limitation, any change in any applicable Comprehensive, General or Specific Plan, zoning, subdivision ordinance or regulation) adopted or effective after the Effective Date, that would conflict in any way with the vested rights of Stanford, except as provided in Sections 7 and 8 below.

#### 7. Exceptions.

To the extent Subsequent Rules (including a moratorium otherwise lawfully adopted by City) conflict with the Modified 2003 Rules, they may be applied to Housing, Housing Sites, Designated Sites and Designated Projects without Stanford's consent only (i) if City determines that application of such Subsequent Rules is necessary to protect against conditions that create a substantial and demonstrable risk to the physical health or safety of residents or users of the Site to which the Subsequent Rules apply or the affected surrounding region; or (ii) if such Subsequent Rules are mandated or required by supervening federal, state or regional statute or regulation.

#### 8. Exclusions.

##### 8.1. Sewer Facilities.

This Agreement does not affect Stanford's obligation, if any, to pay for or construct needed improvements in the sewer collection system prior to connection to the sanitary sewers, or its obligation to meet federal, state and local discharge limits and requirements.

## 8.2. Storm Drains and Runoff.

This Agreement does not affect Stanford's obligation, if any, to pay for or construct needed improvements in the storm drain system. Neither does it affect Stanford's obligations to meet federal, state and local requirements with respect to limiting both the amount and contaminant load of runoff from any Site. In cases where the City's storm drain system downstream of a proposed land development project is handling flows at (or in excess) of its peak capacities, Stanford is required to either 1) design the land development project to maintain or reduce the current peak flow rate, or 2) upgrade the appropriate downstream City storm drain lines as part of the land development project.

## 8.3. Creek Protection, Restoration, and Enhancement.

This Agreement does not limit City's discretion to implement Comprehensive Plan creek protection policies and programs, including but not limited to Program N-7, even if this reduces the FAR that could otherwise be constructed on a Designated Site or requires the use of one level of parking that is subterranean and located under buildings. Provided, any Subsequent Rule that requires a riparian open-space setback area in excess of one hundred feet from the actual top of bank of a creek shall not be a Subsequent Applicable Rule when applied beyond the one hundred foot protection zone; and provided further that in applying said policies City shall measure setbacks from the actual top of the bank of the creek rather than from any theoretical or calculated top of bank. On the Creek Sites shown as such on Exhibit A, no increase of FAR shall be permitted unless the full 100-foot setback can be achieved.

## 8.4. Subsequent Applicable Rules.

All development under this Agreement shall be subject to the Subsequent Applicable Rules.

## 8.5. Dedications, Exactions, Mitigations and Reservations.

Except as provided in Section 6 herein, Stanford shall, in conjunction with development in the Research Park, pay the processing and Development Impact Fees, make the dedications, and construct the public improvements required to be paid, dedicated and constructed under the Subsequent Rules.

## 8.6. No Effect on Right to Tax, Assess, or Levy Fees or Charges.

Except as expressly provided herein, this Agreement does not limit the power and right of the City to impose taxes, levy assessments, or require the payment of fees and charges by Stanford or any other entity in the City. All fees, charges, taxes and assessments permitted by this Agreement, and as modified from time to time, are Subsequent Applicable Rules.

## 8.7. No Limit on Right of City to Adopt and Modify Uniform Codes.

This Agreement does not limit the right of the City, to the extent permitted by state law, to adopt Building, Plumbing, Electrical, Fire and similar uniform codes, and to adopt local

modifications of those codes, from time to time. Those codes, as modified from time to time, are Subsequent Applicable Rules.

8.8. No Limit on Power of City to Adopt and Apply Rules Governing Provision and Use of Utility Services.

This Agreement does not limit the power and right of the City to adopt and amend from time to time rules and procedures governing the provision and use of utility services provided by the City. These rules, as modified from time to time, are Subsequent Applicable Rules. If there is any conflict between such Rules and Sections 6.3.4 through 6.3.6 or 6.4.5 through 6.4.7 of this Agreement, the latter shall control.

8.9. Retained Right to Discretionary Design Review of Stanford Projects.

Except as provided in Section 6 above, City retains its right to discretionary design review of projects in the Research Park.

8.10. California Environmental Quality Act Compliance.

The City has prepared and certified an EIR and has imposed, or has agreed to impose certain mitigation measures in a resolution adopted prior to the execution of this Agreement. Stanford shall perform those mitigation measures when and where applicable, regardless of whether they are referenced in this Agreement, or correspond to any measures or obligations set forth herein. Because this Agreement and the EIR are intended to mitigate all impacts which can feasibly be mitigated, City shall not impose on the Designated Projects or Housing projects, as a condition to Architectural Review Approval or any Subsequent Approval or Discretionary Action, any additional mitigation measures under CEQA except measures that City is required to impose by other state, regional or federal law or authorized to impose by this Agreement. This Agreement does not limit the City's duty to comply with the provisions of the California Environmental Quality Act and the associated Guidelines, and to comply with the provisions of its own local CEQA procedures, as they may be amended from time to time, that comply with the provisions of section 21082 of CEQA. However, the City shall not undertake additional environmental review under CEQA unless required to do so by CEQA. In the event that any such further environmental review is required for a Subsequent Approval or other Discretionary Action, it shall be in accordance with Sections 15162-15164 of the CEQA Guidelines, and the scope of analysis and evaluation shall be as required by CEQA. The limitations in this section shall not apply to the City's environmental review or imposition of mitigation measures under CEQA for any substitute Site selected pursuant to Section 6.4.2, or for any use or replacement of the Existing Square Footage on any Infeasible Site under Section 6.4.2 to the extent that the resulting impacts of the Housing Sites in which the Infeasible Site is located, are greater than reviewed in the EIR.

8.11. No General Limitation on Future Exercise of Police Power.

The City retains its right to exercise its general police power except when such exercise would conflict with the vested rights granted under this Agreement. The police powers so retained and enforceable under this Agreement shall include, but are not limited to, the

enactment of regulations concerning the disposition of construction and demolition materials that apply generally to the City.

9. Right to Propose Additional Development Within Stanford Research Park.

Stanford may apply for approval of development in the Research Park in addition to the rights vested by this Agreement, including housing, replacement of existing Gross Floor Area and construction of additional Gross Floor Area. City shall process and decide any such application pursuant to the Subsequent Rules. Nothing herein shall be construed to limit the exercise of discretion by City in reviewing and approving any such application.

10. Periodic Review of Compliance; Special Review.

The Director of Planning and Community Environment (the “Director”) shall review this Agreement at least every twelve months, at which time Stanford shall demonstrate good faith compliance with the terms of this Agreement. In this review, the Director may rely on information in addition to that provided in the annual report by Stanford required in Section 10.1 below. In addition the City Council may order a special review of compliance with this Agreement at any time. The matter may proceed directly to hearing before the Planning Commission and City Council under the procedures in Section 8 of Resolution 6597. Such review shall not postpone or delay processing, hearing or determination of any application by Stanford, and this Agreement shall continue in full force and effect during such review.

10.1. Annual Report.

Stanford shall, within thirty days after each anniversary of the Effective Date, commencing with the first anniversary that occurs at least twelve months after the adoption of the ordinance approving and authorizing this Agreement, submit a brief written report to the City on building activity in the Research Park that for the previous year, (i) lists the additional square footage approved and/or built in the Research Park by Site; (ii) lists any changes in Site boundaries and provides a map indicating the changes, which need not be a surveyed map; (iii) lists the Replacement Square Footage built and Associated Square Footage used during the previous year and since the Effective Date; and (iv) lists applications for additional square footage signed and authorized by Stanford, by Site, with the quantity of new square footage for each.

10.2. Director’s Response and Recommendation.

Within sixty days after receiving Stanford’s report, the Director shall make a preliminary determination, based upon substantial evidence, whether Stanford has complied with the Agreement in good faith or whether the failure of the City to terminate or modify the Agreement would place the residents of the territory subject to the Agreement, or the residents of the City, or both, in a condition dangerous to their health or safety (hereinafter referred to as “threat to health or safety”), or both. The Director also shall specify any disagreement with the information provided in accordance with Section 10.1 above. The Director shall, within the same time period, deliver to Stanford a copy of his or her proposed determination, with a summary of the substantial evidence upon which the determination is based. Failure of the Director to act within sixty days after delivery of Stanford’s annual report shall be deemed a finding by the City that

Stanford has complied in good faith with the Agreement. No such failure shall be deemed a waiver of (1) City's right to conduct such a review at the next anniversary of the Effective Date, (2) any violation of the Agreement that continues after such date, or (3) City's right to enforce this Agreement for any such violation.

### 10.3. Hearings.

If the Director determines that such non-compliance or threat to health or safety exists, the Planning Commission and City Council shall hold hearings on the matter as provided in Section 8 of Resolution 6597. Stanford shall be provided with notice of any such hearing and an opportunity to be heard on the matters set forth in the notice. The burden of proof on the issues shall be on Stanford. The decisions of the City shall be based upon substantial evidence in the record.

### 10.4. Default; Notice; Cure.

10.4.1. If the City Council makes a finding that Stanford has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice to Stanford describing: (a) such failure to comply with the terms and conditions of this Agreement (referred to herein as a "Default"), (b) whether the Default can be cured, (c) the actions, if any, required by Stanford to cure such Default, and (d) the time period within which such Default must be cured. If the Default can be cured, Stanford shall have at least 45 days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such 45-day period but can be cured within one (1) year, Stanford 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 45 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 the periodic or special review, the City Council may modify or terminate this Agreement as provided in Section 11.

10.4.2. If the City Council determines that a threat to health or safety exists, it may modify or suspend this Agreement as provided in Section 11.

### 10.5. Failure to Cure Default.

If Stanford fails to cure a Default within the time period set forth in Section 10.4, the City Council may modify or terminate this Agreement as provided in Section 11.

## 11. Proceeding Upon Modification or Termination.

### 11.1. Notice to Stanford.

If, upon a finding of Default under Section 10.4 and the expiration of the cure period specified in Section 10.4 above or upon a finding that a threat to health or safety exists, City determines to proceed with modification or termination of this Agreement, City shall give written notice to Stanford of its intention so to do. The notice shall be given at least ten calendar days before the scheduled hearing and shall contain the time and place of the hearing; a statement as to whether or not City proposes to terminate or to modify the Agreement; and such

other information as is reasonably necessary to inform Stanford of the nature of the proceeding, and the grounds for the proposed action.

#### 11.2. Hearings on Modification or Termination.

At the time and place set for the hearing on modification or termination, Stanford shall be given an opportunity to be heard on the matters set forth in the notice under Section 11.1, including in the case of a Default whether it has been timely cured. The burden of proof on the issues shall be on Stanford. If the City Council finds, based upon substantial evidence, that any Default has not been timely cured or if it has previously determined that a threat to health and safety exists, the City Council may (a) terminate this Agreement, or (b) modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of City and to address the Default. The decision of the City Council shall be final and subject to review only by arbitration as provided in Section 14 below.

#### 11.3. Determination of Compliance.

If, at the conclusion of a periodic or special review, Stanford is found or deemed to be in compliance with this Agreement, City shall, upon request by Stanford, issue a determination of compliance (“the determination”) to Stanford stating that after the most recent periodic or special review and based upon the information known or made known to the Planning Director and City Council that: (1) this Agreement remains in effect, and (2) Stanford is not in Default. The determination shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the determination is issued after a periodic or special review and shall state the anticipated date of commencement of the next periodic review. Stanford may record the determination without cost or expense to City.

#### 12. Default by City.

If Stanford determines that City has failed to comply with any of the City’s obligations under this Agreement, Stanford may provide written notice to the City describing its contentions regarding (i) such failure to comply with the terms and conditions of this Agreement (referred to herein as a “City Default”), (ii) whether the City Default can be cured, (iii) the actions, if any, required of City to cure such City Default, and (iv) the time period within which such City Default must be cured. If the City Default can be cured, City shall have at least 45 days after the date of such notice to cure such Default, or in the event that such City Default cannot be cured within such 45 days period but can be cured within one year, City shall have commenced all actions necessary to cure such Default and shall be diligently proceeding to complete all such actions necessary to cure such Default within 45 days from the date of notice. If Stanford contends that the City Default cannot be cured or cannot be cured within one year, or if City fails to cure within the applicable cure period as provided in this Section 12, Stanford shall give notice to City of its contentions and either party may then proceed to arbitration.

13. Modification or Amendment by Mutual Agreement.

Subject to meeting the notice and hearing requirements of Section 65867 of the Development Agreement Act, this Agreement may be modified or amended from time to time by mutual consent of the Signatory Parties in accordance with the provisions of Section 65868 of the Development Agreement Act and City's Resolution No. 6597.

14. Remedies for Default.

14.1. Binding Arbitration.

Any dispute between the Parties concerning this Agreement shall be resolved by arbitration, including any claim that any Party is in default of this Agreement, or that such default cannot or has not been cured, or that this Agreement should be modified or terminated for breach or the existence of a threat to health and safety. The arbitration shall be final and binding between the Parties, and the order of the arbitrator may be enforced in the manner provided for enforcement of a judgment of a court of law pursuant to the applicable provisions of the California Code of Civil Procedure. The arbitration shall be conducted in accordance with the procedures set forth below.

14.1.1. Claim.

Any Party who has a claim (the "Demanding Party") hereunder to be resolved through arbitration shall state the claim (the "Claim") in writing. The Claim shall include (i) the item or matter in dispute, (ii) the Demanding Party's position, and (iii) a specific statement of the exact relief the Demanding Party requests. Claims shall not be filed until parties have followed the procedures for curing defaults set forth in Sections 10, 11, and 12.

14.1.2. Meet and Confer.

The Parties shall meet and confer no later than ten (10) days after the date of the Claim in an attempt to resolve the matter raised by the Claim. If they are unable to reach a resolution within twenty-one (21) days after the date of the Claim, then within ten (10) days thereafter, the Demanding Party shall (i) restate its Claim, (ii) amend the Claim, or (iii) withdraw the Claim. Failure on the part of the Demanding Party to withdraw or amend the Claim in writing shall constitute a restatement thereof.

14.1.3. Response.

If the Claim is not withdrawn within the ten (10) day period provided for in Section 14.1.2 above, the other party (the "Responding Party") shall, within fifteen (15) days after expiration of the ten (10) day period provided for in Section 14.1.2 above, prepare a response to the Claim (the "Response") specifying (i) the Responding Party's position on the Claim, and (ii) the exact relief the Responding Party requests.



#### 14.1.4. Arbitrator.

The matter or matters in dispute shall be submitted to the arbitrator (to be selected in the manner provided below) on the basis of the issues as framed by the Claim (as the same may have been amended pursuant to Section 14.1.2 above) and the Response. The arbitrator shall be a person who is a member of the State Bar or a retired California judge with at least five (5) years experience in alternative dispute resolution and with California land use, the California Environmental Quality Act (“CEQA”), and real property law. If the parties are unable to agree on the selection of an arbitrator within fourteen (14) days after the date of the Response, then either party shall have the right to apply for the appointment of a duly qualified person to act as arbitrator to the Presiding Judge of the Superior Court of the County of Santa Clara, State of California, and neither party shall have any right to object to the qualifications of said Judge to make such appointment. If the arbitrator resigns or refuses to serve, then a new arbitrator shall be appointed as herein provided.

#### 14.1.5. Proceedings.

As soon as convenient, but no later than thirty (30) days after appointment, the arbitrator shall meet with the parties to hear evidence and argument on the Claim and Response. The arbitrator shall not be bound by the Rules of Evidence in the conduct of such proceeding although the arbitrator shall take account of said rules in considering the weight of the evidence. The parties desire that the Arbitrator endeavor to conform to California law when making a decision; however, the failure to do so shall not be grounds for any court to overturn, reverse or modify the decision of the arbitrator which shall be final in the absence of any of the factors set out in sections 1284 and 1286.2 of the Code of Civil Procedure, as those sections now exist. In making a decision, the arbitrator may adopt (i) the relief requested in the Claim, or (ii) the relief requested in the Response, or (iii) fashion a different result.

#### 14.1.6. Arbitrator’s Fees and Costs.

Each party shall advance one-half (1/2) of any deposit required by the arbitrator and shall pay all of its own expenses and attorneys’ fees in connection with the arbitration. The arbitrator shall award to the prevailing party all reasonable expenses of arbitration, including costs and attorneys’, experts’ and consultants’ fees.

#### 14.1.7. Proceeding to Enforce.

The arbitrator appointed as provided herein shall have the power and is expressly authorized to make orders compelling compliance with the award, which orders may be confirmed and enforced as provided in Title 9, Chapter 4, Article 1, section 1285 et seq. of the Code of Civil Procedure. If any party fails to comply with an arbitration award, the other party may seek to compel compliance either by petitioning the arbitrator or pursuant to said Article 1, or both. The prevailing party in any such proceeding to compel compliance with or enforce the award shall be entitled, in addition to any other relief, to recover its reasonable attorneys’, experts’, and consultants’ fees and costs from the losing party as determined by the arbitrator or court in which said action or proceeding is pending. The arbitrator or court also shall award to the prevailing party money damages for all losses accruing as a result of, or proximately caused

by the other party's failure to comply with the arbitrator's award, or with any subsequent order or judgment or other process issued to compel compliance.

#### 14.2. Limitation of Parties' Liability for Damages.

Neither party shall have any liability in damages to the other during the Term of this Agreement or thereafter with respect to any acts that are alleged to have commenced or occurred during the term of this Agreement and that arise (or allegedly arise) by reason of the terms hereof, except as provided in Section 14.1.7 above with respect to a Party's willful failure to comply with an arbitration award and except in cases in which the arbitrator determines that the Party acted arbitrarily and capriciously or without any substantial evidence to support its action. This provision limits the relief that may be sought or awarded under the binding arbitration provisions of this section as well as any legal proceeding.

#### 14.3. Release of City.

Except as provided above in Sections 14.1.7 and 14.2, Stanford, for itself, its successor and assignees, releases City, its officers, agents and employees from any and all claims, demands, actions or suits for monetary damages, known or unknown, present or future, including but not limited to, any claim or liability, based or asserted, on Article I, Section 19 of the California Constitution, the Fifth and Fourteenth amendments of the United States Constitution, or any other law or ordinance that seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement, because of the terms of this Agreement, or because of the manner of implementation. Notwithstanding the foregoing, nothing in this Agreement shall preclude Stanford from asserting in arbitration, as provided herein, any claim, demand or action so long as Stanford does not seek money damages from City other than as provided above in Sections 14.1.7 and 14.2.

#### 14.4. Venue and Reference.

All legal and equitable actions and proceedings in connection with this Agreement which for any reason are not arbitrated pursuant to Section 14.1 shall be heard by a general reference from the Santa Clara County Superior Court pursuant to Code of Civil Procedure section 638, et seq. Stanford and City shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before the referee. If Stanford and City are unable to agree on a referee within ten (10) days of a written request to do so by either party hereto, either party may seek to have one appointed pursuant to Code of Civil Procedure section 640. The cost of such proceeding shall initially be borne equally by the parties, subject to final allocation pursuant to section 645.1. Any referee selected pursuant to this subsection shall be an attorney or retired judge and the Parties shall stipulate that the referee is a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution.

#### 15. Superseding State or Federal Law.

If any state or federal law or regulation enacted or adopted after the date of this Agreement shall prevent or preclude compliance with any of the provisions hereof, such provisions shall be modified or suspended only to the extent and for the time necessary to

achieve compliance with said law or regulation and the remaining provisions of this Agreement shall continue in full force and effect provided nothing contained herein shall preclude the contractual defenses of impossibility of performance or frustration of purpose to the extent recognized by California law. Upon repeal of said law or regulation or occurrence of other circumstances removing the effect thereof upon this Agreement, the provisions hereof shall be restored to their full original effect.

16. Notices.

All notices and other writings to be filed, delivered or served on the other Party and that are required or provided for under this Agreement shall be in writing and shall be delivered personally or by overnight courier service or sent by certified or registered mail, return receipt requested. Any notice shall be deemed to have been duly given and received upon receipt. Notices to the parties shall be addressed as follows:

City: City Manager  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, California 94301

With copies to: City Attorney  
City of Palo Alto, 8<sup>th</sup> Floor  
250 Hamilton Avenue  
Palo Alto, California 94301

Director of Planning and Community Environment  
City of Palo Alto, 5<sup>th</sup> Floor  
250 Hamilton Avenue  
Palo Alto, California 94301

Stanford: Stanford Management Company  
Managing Director, Real Estate  
2770 Sand Hill Road  
Menlo Park, California 94025

With a copy to: Office of the General Counsel  
Stanford University  
P. O. Box 20386  
Building 170, Main Quadrangle  
Stanford, California 94305

Any party may change its address for notice by giving ten (10) days notice of such change in the manner provided for in this paragraph.

17. Term of Agreement; Force Majeure.

17.1. Basic Term.

The term of this Agreement shall commence as of the Effective Date, and shall continue for twenty-five (25) years from the adoption of the Ordinance authorizing this Agreement or until earlier terminated by mutual consent of the parties or as otherwise provided by this Agreement. The City's adoption of the Alternative Development Standards (Chapter 18.62) in Exhibit D for Housing shall be a condition precedent to the effectiveness of this Agreement. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any outstanding obligation which was required to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement that has occurred prior to such termination or with respect to any obligations or rights that are specifically set forth as surviving this Agreement.

17.2. Extension for Default or Moratorium.

If a Party is deprived of a benefit under this Agreement as a result of a moratorium or a default by the other Party, then the first Party may elect to extend the Term of this Agreement with respect to that benefit for the duration of the moratorium or default.

17.3. Force Majeure.

Performance by either Party of an obligation hereunder shall be excused during any period of "Permitted Delay." Permitted Delay shall mean delay beyond the reasonable control of a Party including, without limitation, an inability to perform caused by (a) acts of God, including without limitation earthquakes, floods, fire, and other natural calamities, (b) civil commotion; (c) riots or terrorist acts; (d) strikes or other labor disputes; (e) shortages of materials or supplies; and (f) vandalism. A Party's financial inability to perform shall not be a ground for claiming a Permitted Delay. The Party claiming the Permitted Delay shall notify the other Party of its intent to claim a Permitted Delay, the specific grounds of the same and the anticipated period of the Permitted Delay within 10 business days after the occurrence of the conditions which establish the grounds for the claim. The period of Permitted Delay shall last not longer than the conditions preventing performance.

17.4. Limitation.

Notwithstanding the above, no extension or tolling of this Agreement shall extend City's covenant in Section 6.5 above not to decrease the Floor Area Ratio in the Research Park.

18. Assignment; Right to Assign.

18.1. Assignment of Interests, Rights and Obligations. Subject to the provisions of this Agreement, Stanford shall have the right to freely alienate, transfer, assign, lease, license and otherwise convey all or any portion of its real property, including Housing Sites and Designated Sites and improvements thereon (each, a "Transfer") (provided that no partial transfer shall be permitted to cause a violation of the Subdivision Map Act, Government Code Sections 66410, et seq.). Any portion so transferred is referred to herein as a "Transferred Site". Subject to the

conditions in this Section 18, in connection with any Transfer, Stanford may also assign all or any portion of its interests, rights or obligations applicable to such Transferred Site under this Agreement or under one or more Subsequent Approvals (an “Assignment”) to any third party to whom a Transfer of an interest or estate in a Site or any portion thereof is made (each, a “Transferee”). Except as otherwise expressly provided, as used in this Agreement, the terms “Stanford” and “City” shall include the party’s transferees, successors and assigns.

## 18.2. Transfer Agreements.

18.2.1. Written Agreement. In connection with an Assignment by Stanford of any obligations relating to Housing (other than an Assignment by Stanford to a Mortgagee as defined in Section 1.23 and addressed in Section 19, or to a Non-Assuming Transferee as defined in Section 18.2.3), Stanford and the Transferee shall enter into a written agreement in a form satisfactory to the City Attorney (an “Assignment Agreement”) regarding the respective interests, rights and obligations of Stanford and the Transferee under this Agreement and any included Subsequent Approvals. Stanford may at any time during the Term of this Agreement seek the City’s pre-approval of the form of Assignment Agreement, which approval shall remain in effect unless and until Stanford subsequently alters such form. The City’s approval of such form shall be deemed given if the City Attorney has not provided a written approval or objection within sixty (60) days of receiving the proposed form of the Assignment Agreement. Such Assignment Agreement shall provide that the Transferee expressly and unconditionally assumes all of the duties and obligations of Stanford applicable to the Transferred Site under this Agreement. Stanford shall notify the City in writing at least ten (10) days in advance of the Assignment, and concurrently with the Assignment shall provide City with an executed copy of the Assignment Agreement. Except as provided in Sections 5.5 and 18.2.2, the City’s consent shall not be required for any such Assignment.

18.2.2. Consent Required for Assignment of BMR Obligations. Notwithstanding the foregoing, the City’s prior written consent shall be required for any Assignment by Stanford of its obligations for Below Market Rate Units as provided in Section 5.5 above. The City’s consent shall be deemed given if the City has not provided a written consent or objection within sixty (60) days of receiving the notice and copy of the Assignment as provided above. Notwithstanding the failure of any Transferee to execute an Assignment Agreement in cases where the City’s consent is required, the burdens of this Agreement shall be binding upon such Transferee, but the benefits of this Agreement shall not inure to such Transferee until and unless such Assignment Agreement is executed and the City has given its consent.

18.2.3. Non-Assuming Transferees. No Assignment Agreement shall be required upon the Transfer to a third party of any Dwelling Unit. The third-party Transferee in such a transaction and its successors (each, a “Non-Assuming Transferee”) shall have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this Section shall exempt any Transferee or any property transferred to a Transferee from compliance with the Modified 2003 Rules and Subsequent Applicable Rules. Nothing in this Section shall excuse or release Stanford from its obligations under this Agreement.

18.3. Release of Stanford. No Assignment shall effect a release of Stanford from obligations under this Agreement or any Subsequent Approvals, unless Stanford is given a

release in writing by the City Council, which release will be provided by the City Council (except as provided below) upon the full satisfaction by Stanford of all of the following conditions: (i) Stanford is not then in default and default proceedings have not been commenced by City under this Agreement, (ii) Stanford has provided City with an executed Assignment Agreement, and (iii) the Transferee provides the City with security reasonably satisfactory to City to secure performance of its obligations under this Agreement. When Stanford has assigned its obligations under this Agreement to a Transferee and has been released from such obligations pursuant to this Section, no breach or default hereunder by either Stanford or the Transferee shall be attributed to the other. Stanford's obligations for BMR and other Housing shall not be subject to release by City under this Section 18.3.

19. Mortgagee Protection.

This Agreement shall not prevent or limit Stanford in any manner, at Stanford's sole discretion, from encumbering the Research Park or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Research Park. City acknowledges that the lenders providing such financing may require certain agreement interpretations and upon request, from time to time, City shall meet with Stanford and representatives of such lenders to consider any such request for interpretation. City shall not unreasonably withhold its consent to any such requested interpretation provided such interpretation is consistent with the intent and purposes of this Agreement. Any mortgagee of the property shall be entitled to the following rights and privileges:

19.1. No Impairment.

Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust on the Research Park made in good faith and for value.

19.2. Notice of Default by Stanford.

The mortgagee of any mortgage or deed of trust encumbering the Research Park, or any part thereof, which mortgagee, has submitted a request in writing to City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Stanford in the performance of Stanford's obligations under this Agreement.

19.3. Notice.

If City timely receives a request from a mortgagee requesting a copy of any notice of Default given to Stanford under the terms of this Agreement, City shall provide a copy of each such notice to the mortgagee within twenty (20) days of sending the notice of Default to Stanford. The mortgagee shall have the right, but not the obligation, to cure the Default during the remaining cure period allowed such party under this Agreement.

19.4. Mortgagee in Possession.

Any mortgagee that comes into possession of the Research Park, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall

take the Research Park, or part thereof, subject to the terms of this Agreement; provided, however, that in no event shall such mortgagee be liable for any defaults or monetary obligations of Stanford arising prior to acquisition of title by such mortgagee; and provided further, that in no event shall any such mortgagee or its successors or assigns be entitled to a building permit or occupancy certificate until all fees due under this Agreement (relating to the portion of the Research Park acquired by such mortgagee) have been paid to City and until any other Default has been cured.

20. Miscellaneous.

20.1. Effect of Recitals.

The Recitals are intended in part to paraphrase and summarize this Agreement, however, the terms, covenants and conditions of this Agreement are expressed with particularity in Section 1 et seq. (the “Terms”) and the rights and obligations of the Parties are to be determined by the terms and not by the Recitals. This Agreement shall be interpreted consistent with the intent expressed in Recital G. To the extent the other Recitals provide factual context for the Agreement, they may be considered when interpreting the Terms. To the extent the Recitals paraphrase or summarize the Agreement, or other documents, or the Terms they shall be ignored, and shall have no legal effect whatsoever.

20.2. Construction.

As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties. This Agreement has been reviewed and revised by legal counsel for each Signatory Party, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Each Signatory Party has consulted with counsel and determined that this Agreement accurately and completely reflects the agreement of the parties.

The captions of the sections and subsections of this Agreement are solely for the convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

20.3. Severability.

If any terms of this Agreement are determined to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected to the extent the remaining terms are not rendered impractical or impossible to perform taking into consideration the purposes of this Agreement.

20.4. Representation and Warranty of Title and Authority.

Stanford warrants and represents that it is the owner of the Mayfield Site and the Housing Sites specifically identified in Section 1.19, and that it is fully authorized to enter into a valid and binding lease of the Mayfield Site as provided herein.

20.5. Time.

Time is of the essence of this Agreement and of each and every term and condition hereof.

20.6. Waiver.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.

20.7. Governing State Law.

This Agreement shall be construed in accordance with the laws of the state of California.

20.8. Determination of Compliance.

At any time during the Term of this Agreement, any Party or its lender, may request any Party to this Agreement to confirm that to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults. Each Party shall provide such a determination to such lender or other Party within forty-five (45) business days of the request therefor. The failure of any Party to provide the requested determination within such forty-five (45) business day period shall constitute a confirmation that to the best of such Party's knowledge, no defaults exist under this Agreement. Request for such determinations shall be made in writing and as required by Section 16 above.

20.9. Entire Agreement.

This Agreement and the Mayfield Lease contain the entire understanding and agreement of the parties. There are no oral or written representations, understandings, undertakings, or agreements that are not contained or expressly referred to herein, and any such representations, understandings, or agreements are superseded by this Agreement. No evidence of any such representations, understandings, or agreements shall be admissible in any proceeding of any kind or nature relating to the terms or conditions of this Agreement, its interpretation, or breach.

20.10. No Third Party Beneficiaries.

This Agreement is made and entered into for the sole protection and benefit of the Signatory Parties and their successors and assigns, including mortgagees. No other person shall have any right of action based upon any provision of this Agreement.



20.11. Authority to Execute.

Each person executing this Agreement warrants and represents that he or she has the authority to bind the Signatory Party for which he or she is signing to the performance of its obligations hereunder.

20.12. Administrative Appeal.

Whenever in the Modified 2003 Rules or Subsequent Applicable Rules any requirement or action by Stanford is made subject to the approval or satisfaction, however expressed, of any entity other than City, such condition shall not be interpreted as providing the third party the right to make any final decision other than as may be authorized by law other than the Modified 2003 Rules or Subsequent Applicable Rules. Where a third party has no right authorized by law other than the Modified 2003 Rules or Subsequent Applicable Rules to make a final decision, a condition requiring approval or satisfaction of such third party, however expressed, shall mean that the third party shall provide, as appropriate, advice, consultation, a recommendation and/or an initial decision regarding the condition. The actual determination in such case will be made by the official or entity of City required or authorized to make such determination in accordance with the applicable provisions of the Palo Alto Municipal Code as set forth in the Modified 2003 Rules. Appeals from determinations made by City officials or entities shall be made in accordance with applicable provisions of the Palo Alto Municipal Code as set forth in the Modified 2003 Rules.

20.13. Exhibits.

The following exhibits to which reference is made in this Agreement are deemed incorporated herein in their entirety:

Exhibit A - Map of Research Park

Exhibit B - Selected 2003 Rules

Exhibit C - Below Market Rate Units

Exhibit D - Alternative Development Standards (Chapter 18.62)

Exhibit E - Mayfield Lease

If the recorder refuses to record any exhibit, the City Clerk may replace it with a single sheet bearing the exhibit identification letter, stating the title of the exhibit, the reason it is not being recorded, and that the original, certified by the City Clerk, is in the possession of the City Clerk and will be reattached to the original when it is returned by the recorder to the City Clerk.

20.14. Signature Pages.

For convenience, the Signatory Parties may execute and acknowledge this Agreement on separate signature pages, which, when attached hereto, shall constitute one complete agreement.

20.15. Precedence.

If any conflict or inconsistency arises between this Agreement and the 2003 Rules or the Subsequent Rules, the provisions of this Agreement shall have precedence and shall control over the conflicting or inconsistent provisions of the 2003 Rules or Subsequent Rules.

20.16. Recordation.

Whenever recordation is required or may be required by either party, City shall be responsible for recordation. If City fails to record a document when required, Stanford may, but is not obligated to, record the document and by doing so Stanford does not assume the duties or obligations of City established by this Section or the Development Agreement Act nor does it waive any right it may have to compel City to properly perform its duties and obligations. The failure of City to record or to properly record this Agreement or any other document as provided herein shall not affect or limit in any way Stanford's rights to enforce this Agreement and to rely upon it.

20.17. Referendum.

City shall not submit the Ordinance approving this Agreement to a referendum by action of the City Council on its own motion without Stanford's consent. If the Ordinance or this Agreement is the subject of a referendum, or if litigation is commenced seeking to rescind the City's decision to enter into this Agreement or to declare it void, Stanford shall have the right to terminate this Agreement and the Mayfield Lease by written notice to the City no later than thirty (30) days after the event that gives Stanford the right to terminate, or such later time allowed in writing by the City Manager. The Parties may also by mutual agreement suspend performance of all or part of the obligations in this Agreement pending the outcome of any such referendum or litigation.

20.18. Mayfield Lease.

City would not have entered into this Agreement but for the benefits it will obtain under the Mayfield Lease. City shall have the right to terminate this Agreement (a) if Stanford fails to execute the Mayfield Lease within thirty-five (35) days after execution of this Agreement by the Signatory Parties, (b) if Stanford elects to terminate the Lease under Section 20.17, or (c) if there is a breach of Stanford's warranty in Section 20.4 above that deprives City of the benefit of the Mayfield Lease. In the event that City decides to terminate the Agreement, City shall provide written notice of such to Stanford no later than thirty (30) days after the event that gives City the right to terminate. If Stanford encounters problems or conditions in the construction of the athletic fields that are commercially infeasible to correct and that make the Mayfield Site infeasible for such development or use as defined herein, Stanford's performance of its covenant to construct the fields and dedicate them to the City shall be excused, and Stanford shall provide written notice of such to City, in which case City may terminate this Agreement by written notice to Stanford, delivered no later than 30 days after receipt of the notice from Stanford of such problems or conditions, and in which City promises to reimburse Stanford for one-half of the costs of design, engineering, and construction incurred prior to encountering such problems or conditions no later than sixty (60) days after receiving a properly supported invoice for the

same. Any such termination or modification by City pursuant to this Section 20.18 shall not deprive Stanford of its vested rights to construct and use Replacement Square Footage to replace any Existing Square Footage previously demolished pursuant to this Agreement. If the City terminates this Agreement pursuant to this Section 20.18, Stanford shall have the right to terminate the Mayfield Lease by written notice to City no later than thirty (30) days after the event that gives Stanford the right to terminate.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the day and year first above written.

**ATTEST:**

**CITY OF PALO ALTO**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

**APPROVED AS TO FORM:**

**STANFORD**

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
City Manager

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Director of Planning and  
Community Environment

**EXHIBIT B**  
**SELECTED 2003 RULES**

1. Palo Alto Municipal Code, including all ordinances through Ordinance No. 4791.
2. 1998-2010 Palo Alto Comprehensive Plan.
3. All codified and uncodified ordinances through Ordinance No. 4422.
4. Ordinance 4799 (Stormwater Pollution Prevention) and implementing language titled "Pollution Prevention Language for Construction Contracts".
5. Ordinance 4826 (Streamlining Planning Procedures).
6. Ordinance 4830 (Adding Chapter 5.24, Construction and Demolition waste).
7. All resolutions through Resolution No. 8304.
8. Tree Technical Manual
9. El Camino Real Design Guidelines, adopted by the Architectural Review Board, June 6, 2002.
10. Below Market Rate (BMR) Housing policies
  - a. Program H-36 of the Housing Element of the Comprehensive Plan as adopted by Council on 12/2/02 and certified by the State on 5/23/03
  - b. Summary of City of Palo Alto Below Market Rate (BMR) Housing Program (dated March 2003)
  - c. Standards for BMR Units (dated May 2003)
  - d. BMR Ownership Deed Restrictions (dated 8/93; still in use as of 2003)
  - e. BMR Ownership Program Housing Price Guidelines (dated May 1, 2003):
    1. Cover memo
    2. 80 - 100% of Median Income Calculation Sheet
    3. 100 - 120% of Median Income Calculation Sheet
    4. Explanation and Instructions Regarding Annual Updating of BMR Prices for New Units

- f. Income Standards & Rent Limits - BMR Rental Program (dated 5/03)
  - g. BMR Rental Program: Standard regulatory agreement provisions (as of 2003)
  - h. BMR Ownership Program:
    - 1. Standard regulatory agreement provisions (as of 2003)
    - 2. Instructions for Sale of BMR Units (dated May 6, 2003)
    - 3. Summary of Interpretations of Cost-Based Pricing of BMR Units (dated December 2002)
11. Transportation policies applicable to the Project.
- a. Congestion Management program as adopted and as may be amended, by the Congestion Management Agency, a regional joint powers agency in Santa Clara County.
  - b. Santa Clara Valley Transportation Authority regulations governing transit stop design and placement.
  - c. City of Palo Alto specifications for design of traffic signals for signals under City jurisdiction.
  - d. Resolution No. 8372 (Bicycle Transportation Plan).
12. City of Palo Alto Standard Drawings and Specifications, Department of Public Works, 1992, as revised, including "Policy for Requiring Bike Lane Construction in the Stanford Research Park".

**Exhibit C**  
**BELOW MARKET RATE (BMR) HOUSING PROGRAM**

**Introduction**

This Exhibit C includes Exhibits C-1 through C-4, attached hereto and incorporated herein. Exhibit C is attached to, and incorporated in the Development Agreement addressing the Mayfield Site at the corner of Page Mill Road and El Camino Real in the City. References to Exhibit C include Exhibits C-1 through C-4. That Development Agreement, including Exhibit C, is sometimes referred to as "this Agreement." Unless otherwise provided in this Exhibit C, the definitions set forth in Section 1 of this Agreement also apply to this Exhibit C. Reference to the "General Requirements of Exhibit C, are to the first three pages of Exhibit C, including this Introduction.

This Agreement requires Stanford to build 250 new dwelling units on Housing Sites in the Stanford Research Park. Of these, twenty percent (20%), that is, fifty units, must comply with the City's Below Market Rate (BMR) Program, that implements Program H-36 of the Housing Element of the Comprehensive Plan of the Modified 2003 Rules (the "Program" or "BMR Program"). A copy of Program H-36 is attached as Exhibit C-1. These units are sometimes referred to as "BMR units." Units not in the Program are sometimes referred to as "market rate units." The overall objectives and the parameters of the Program are described in Exhibit C-1.

The Program is applied to individual housing development projects by project-specific agreements ("BMR Regulatory Agreements.") To satisfy its obligation to provide BMR units, Stanford may either (a) execute and deliver a BMR Regulatory Agreement providing for a 70 unit, 100% affordable project on El Camino Real, in the form attached as Exhibit C-3 and comply with the provisions of the attached Exhibit C-2 ("the 70 Unit BMR Alternative"); or (b) negotiate, execute and deliver project-specific agreements for 50 BMR units as provided in Exhibit C-4 and in the General Requirements of Exhibit C, (the "Basic BMR Alternative"). City shall accept Stanford's compliance with either as full compliance with the Program and the provisions of this Agreement relating to it.

**General Requirements**

1. Number of Required BMR Units

A. The first 250 dwelling units built on the Housing Sites shall include either:

i. Fifty BMR units comparable to other units built on the Housing Sites under the Basic BMR Alternative, or

ii. Seventy rental BMR units, on the El Camino Sites, in accordance with the terms and provisions of Exhibit C-2 and C-3 under the 70 Unit BMR Alternative.

B. For each market rate unit in excess of 200 units built on the Housing Sites, Stanford shall provide an additional 0.25 BMR unit. If the calculation of this requirement results in a fractional unit, a whole BMR unit shall be required for any fractional unit of one-half (0.5) or larger. If the fractional unit is less than one-half, this requirement may be satisfied by an in-lieu fee or an equivalent alternative as provided in Program H-36.

C. The BMR units described in paragraphs A and B above are sometimes referred to collectively as "Required BMR Units."

## 2. No Age Restrictions on Required BMR Units

In the sale or rental of Required BMR Units, neither Stanford nor its assignees shall discriminate against households with children or on the basis of the age of renters, buyers or occupants.

## 3. Satisfaction of BMR Requirement.

Stanford shall notify City if it intends to pursue the Basic BMR Alternative no later than the time it files its application for Architectural Review Approval for the first Housing project under this Agreement. After Stanford declares its intent, the parties shall negotiate in good faith to determine the terms and provisions of a BMR Regulatory Agreement that is consistent with the terms of this Exhibit C for the first Housing project. Unless an agreement for the 70 BMR Unit Alternative, in the form attached as Exhibit C-3, has previously been executed by Stanford, prior to the issuance of a building permit for each phase of the housing, Stanford shall execute a BMR Agreement applicable to that phase, in a form negotiated pursuant to Exhibit C-4 and the General Requirements of this Exhibit C.

If, and only if, Stanford elects the Basic BMR Alternative for the first Housing project and executes a BMR Regulatory Agreement in accordance with Exhibit C-4, it may thereafter use that Alternative for some or all of the subsequent Housing projects and, if it does, the Parties shall negotiate and execute one or more BMR Regulatory Agreements applicable to some or all of the subsequent Housing projects. Additionally, at any time, Stanford may execute an agreement in the form attached as Exhibit C-3, thereby satisfying its remaining BMR obligation by the 70 BMR Unit Alternative; provided all BMR units previously included in a Basic BMR Regulatory Agreement shall remain subject to the terms thereof. In any event, Stanford shall provide at least 50 units of inclusionary BMR housing or the 70 BMR Unit Alternative, in accordance with the terms hereof and of the applicable BMR Regulatory Agreements.

#### **4. Development Standards and Limitation on Design Review**

All provisions of Section 6.4 of the Development Agreement shall apply to the BMR units.



EXHIBIT C-1  
TEXT OF HOUSING ELEMENT PROGRAM H-36

**From: Housing Element of the City of Palo Alto**  
*Chapter 4 of the Comprehensive Plan*  
*Adopted December 2, 2002; Certified by the State on May 23, 2003*  
*[Page 23]*

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**PROGRAM H-36:**

*Implement the City's "Below Market Rate" (BMR) Program by requiring that at least 15 percent of all housing units in projects of five units or more, be provided at below market rates to very low-, low-, and moderate-income households. Projects on sites of five acres or larger must set aside 20 percent of all units as BMR units.*

The City of Palo Alto's BMR program is intended to increase the supply of for-sale housing and rental housing for individuals and families whose incomes are insufficient to afford market rate housing. Since the program was initiated in 1974, 152 for-sale units and 101 rental units have been created. Continued affordability of the units is a major goal of the program. Deed restrictions control the resale price and limit rent increases. Occupancy for BMR units is determined according to City Council guidelines. The Palo Alto Housing Corporation, under contract to the City, has administered the program since its inception. Since the current rates of production of affordable housing in Palo Alto are very low, the BMR program requirement is essential to meet the City's need for affordable housing.

**The Palo Alto Below Market Rate ("BMR") Program**

Developers of projects with five or more housing units must comply with Palo Alto's BMR requirements. The BMR program objective is to obtain actual housing units or buildable parcels within each development rather than off-site units or in-lieu payments. At least 15 percent of the housing units developed in a project involving fewer than five acres of land must be provided as BMR units. Projects involving the development of five or more acres must provide at least 20 percent of all units developed as BMR units. (Projects that cause the loss of existing rental housing may need to provide a 25 percent BMR component, see Program H-29.) The BMR units must be comparable to other units in the development. For an application to be determined complete, the developer must agree to one or a combination of the following requirements or equivalent alternatives that are acceptable to the City

**For-Sale Units:**

For projects with a 15 percent BMR component, the initial sales price for at least two-thirds of the BMR units must be affordable to a household making between 80 to 100 percent of the Santa Clara County median income, taking into consideration all housing expenses such as mortgage payment, taxes, insurance, and association dues. The initial sales prices of the remaining BMR units may be set at higher levels affordable to households earning between 100 to 120 percent of the County's median income. For projects with a 20 percent BMR component, three-fourths of the BMR units must be affordable to households in the 80 to 100 percent of median income range, and one-fourth

may be in the higher price range of between 100 to 120 percent of the County's median income. For projects with a 25 percent BMR component, four-fifths of the BMR units must be affordable to households in the 80 to 100 percent of median range, and one-fifth may be in the higher price range of between 100 and 120 percent of the County's median income. In all cases, the sales price should be sufficient to cover the estimated cost to the developer of constructing the BMR unit, including financing, but excluding land, marketing, off-site improvements, and profit.

If the City determines that on-site BMR units are not feasible, off-site units acceptable to the City, or vacant land determined to be suitable for affordable housing construction, may be provided instead. Off-site units should normally be new units, but the City may accept rehabilitated existing units when significant improvement in the City's housing stock is demonstrated.

In-Lieu Payments: If the City determines that no other alternative is feasible, a cash payment to the City's Housing Development Fund, in lieu of providing BMR units or land, may be accepted. The in-lieu payment for projects subject to the basic 15 percent BMR requirement shall be 7.5 percent of the greater of the actual sales price or fair market value of each unit. For projects subject to the 20 percent requirement, the rate is 10 percent; for projects with a 25 percent requirement, (as described in Program H-29 regarding the loss of rental housing), the rate is 12.5 percent.

#### **Rental Units:**

Developers of rental housing must provide the required percentage of BMR units at affordable rents for occupancy by very low (below 50% of the HUD median income) and low-income households (below 80% of median income). Occupancy, rents, rent increases and other provisions of the BMR rental program are governed by standards approved by the City Council and by project-specific recorded regulatory agreements. Initial rents for new BMR units are established annually by the City. After occupancy, initial rents may be adjusted annually by one-half of the Consumer Price Index Rent Residential or other comparable formula adopted by the City.

In-Lieu Payments: If the City determines that provision of BMR rental units on site is infeasible, it may accept a payment in lieu of such units to the City's Housing Development Fund. The annual payment shall be the difference between the initial affordable rent and the market rate rent of each required BMR unit. If a one-time in-lieu payment is accepted in full satisfaction of the project's BMR requirement, the payment shall be the appraised value of the housing project at market rate rents multiplied by the applicable fee rate. The fee rate is 7.5 percent for a project with a 15 percent BMR requirement, 10 percent for a project with a 20 percent BMR requirement and 12.5 percent for projects with a 25 percent BMR requirement.

Projects with a Condominium Map That Will Be Operated as Rental Housing:

No residential condominium map shall be approved without provision for the future sale of BMR ownership units or an equivalent alternative acceptable to the City, even though the project will be initially operated as rental housing.

**Open Space (OS) District Projects:**

The Open Space district sets a minimum lot size of ten acres. Projects of any acreage with fewer than 10 units or lots must provide a 15 percent BMR component. Projects with more than 10 units or lots must provide a 20 percent BMR component.

**Subdivision of Land to be Sold Without Development:**

Land that is subdivided into three or more lots and sold without construction of housing must transfer buildable parcel(s) equivalent to 15 percent (or other applicable BMR requirement percentage) of the development to the City or the City's designee. The buildable parcel(s) is to be used for the purpose of developing affordable housing units. The City may sell the buildable parcel(s) with the proceeds placed in the City's Housing Development Fund for future housing development. When the City determines that the transfer of land, or the construction of BMR units within the subdivision, is infeasible, a comparable in-lieu fee payment may be accepted by the City.

**Fractional Units:**

When the BMR requirement results in a fractional unit (for example: 16 units x 15% = 2.40 BMR units), an in-lieu payment to the City's Housing Development Fund may be made for the fractional unit (the 0.4 unit) instead of providing an actual BMR unit. The in-lieu fee percentage rate shall be same as that otherwise required for the project (7.5 percent, 10 percent, or 12.5 percent). The fee on for-sale projects will be paid upon the sale of each market unit in the project. For rental projects, the fee shall be paid prior to approval by the City of occupancy of the project.

Larger Projects of 30 or More Units: Projects with 30 or more units must provide a whole BMR unit for any fractional unit of one-half (0.50) or larger; an in-lieu fee may be paid, or equivalent alternatives provided, when the fractional unit is less than one-half.

**Adjustments, Waivers, Appeals of the BMR Requirement:**

Within fifteen days of entering into a BMR agreement with the City for a project, the developer may request a determination that the BMR requirement, taken together with any inclusionary housing incentives, as applied the project, would legally constitute the taking of property without just compensation under the Constitution of the United States or of the State of California. The burden of proof shall be upon the developer, who shall provide such information as is reasonably requested by the City, and the initial determination shall be made by the Director of Planning and Community Environment. The procedures for the determination shall generally be those described in Chapter 18.90 of the Palo Alto Municipal Code, including the right of appeal to the City Council under Chapter 18.93, or such other procedures as may be adopted in a future BMR ordinance. Notice of the hearing shall be given by publication but need not be sent to nearby

property owners. If the City determines that the application of the BMR requirement as applied to the project would constitute a taking of property without just compensation, then the BMR agreement for the project shall be modified, reduced or waived to the extent necessary to prevent such a taking.

## EXHIBIT C-2

### 70 BMR Unit Alternative

Stanford shall provide 70 BMR units in a separate 100% affordable project on the El Camino Sites or Extended El Camino Site as provided in this Exhibit C-2 and the BMR Regulatory Agreement in the form attached as Exhibit C-3, executed by Stanford (the "Project"). The Project shall consist of one or more buildings. All of these BMR units shall be rental housing and Stanford shall not apply for, and City shall not approve any condominium plan or subdivision map that would allow the sale of individual units during the term of affordability. The units must be affordable to low and very low-income households, as provided in the BMR Regulatory Agreement.

1. Timing: An application for Architectural Review Approval for the Project shall be filed no later than December 31, 2013. If additional Subsequent Approvals are required, Stanford shall diligently file applications for the additional approvals as soon as feasible after issuance of Architectural Review Approval. Stanford's obligation is conditioned upon City granting and approving all required Subsequent Approvals under the terms of this Agreement for the construction of the Project. Upon receipt of the Approval and all required Subsequent Approvals, including building permits, Stanford shall diligently prosecute construction to completion.

2. Site Location: The 70 rental units will be constructed on the El Camino Sites described in the BMR Regulatory Agreement. At its option, Stanford may elect to expand the Project to include the leasehold at the corner of El Camino Real and California Avenue, (commonly known as 505 California Avenue, Palo Alto; APN: 142-20-012), which would add about 0.75 acres to the Project site for a total area of about 2.5 acres; this larger, expanded site is called the "Extended El Camino Site". If Stanford makes this election, the form of Exhibit C-3, the BMR Regulatory Agreement, shall be modified to describe the Extended El Camino Site.

3. Required BMR Units: Stanford shall construct 70, 100% affordable, rental apartment units (the "Required BMR Units") in accordance with this Exhibit C-2 and the Development Agreement. The Required BMR Units shall include a mix of Low-Income and Very-Low Income units, as set forth below.

4. Priority for Palo Alto Workers and Residents; Stanford Workers Outside of City: To the extent permitted by law, priority for all BMR units shall be given to those eligible households with at least one household member who either lives or works within the city limits of the City of Palo Alto, provided, that for no more than 30% of the units, Stanford may give priority to households whose members neither work nor live in Palo Alto but which include at least one individual who is both (1) an employee of Stanford University and (2) not a student at the University.

Stanford shall inform the City every five years of the percentage of the units occupied by Stanford households. "Stanford households" are those with no adult member employed within the City of Palo Alto and at least one adult member employed by Stanford outside of the City of Palo Alto. Provided, households that initially qualified on the basis of a Palo Alto residential preference shall never be reclassified as Stanford households.

If a unit becomes vacant, Stanford may rent to a Stanford household if, and only if, by doing so the total number of Stanford households does not exceed 30% of the BMR Units.

5. Fee Exemptions; Payment: The only Development Impact Fees that the City shall charge and that Stanford shall pay for the Required BMR units shall be those included in the 2003 Rules at the amounts specified in those rules. The fees shall be paid for 50 of the Required BMR units and are waived for the remaining 20 BMR units. Because the fees vary with unit size, the total Development Impact Fees payable shall be five-sevenths of the total Development Impact Fees calculated for all seventy units.) As part of the project review fees, Stanford shall reimburse City for reasonable and actual expenses, including attorneys fees, incurred by City in reviewing and approving any modifications to the Regulatory Agreement or subordination and similar agreements requested by Stanford or its agents or assignees.

6. Alternative Standards Overlay District: The design and development standards of the AS1 Alternative Standards Overlay District shall apply to the Project.

7. BMR Regulatory Agreement: The City and Stanford shall execute a BMR Regulatory Agreement in the form attached hereto as Exhibit C-3.

8. Design Requirements: The Project shall include the following:

- The Project shall be designed to be suitable for large family rental housing and for occupancy by families with children.
- The required mix of unit types and minimum sizes are as follows:

<b>Unit Type</b>	<b>Number Required (Out of 70)</b>	<b>Minimum Interior Square Footage</b>
Studios	Not Allowed	Not applicable
1 Bedroom with one bathroom	48-units or fewer, the mix of one- and two-bedroom units to be determined after evaluation of a market study as described below	650 square feet
2 Bedrooms, with at least one and one-half bathrooms		950 square feet
3 Bedrooms with two full bathrooms	21-units or more	1,200 square feet
4 Bedrooms with two full bathrooms	No 4-bedroom units are required	1,350 square feet
Resident Manager	One Unit; Any Type (included as one of Required BMR Units)	No Restrictions

- The mix of one-and two-bedroom units shall be in proportion to the demand for such units established by an independent market study prepared at the time the project is submitted for approval. The market study shall take into consideration the housing needs of Palo Alto's low and very low income workforce, including commuters and persons who work in the Stanford Research Park, to determine the

appropriate mix of one- and two-bedroom units, but only to the extent permitted by California Tax Credit ("TCAC") guidelines, rules and procedures if they are applicable to the project.

- If Stanford applies for an allocation of low income housing tax credits, the City shall permit modifications of the unit mix in order to comply with TCAC Guidelines for large family projects in existence at the time that application for financing is made, if in the City's judgement these modifications do not substantially reduce the quality and quantity of BMR family housing provided by the Project.
- All living rooms shall be of sufficient size to include a sleeping space. Bedrooms shall be enclosed rooms with doors in order to provide privacy. Loft spaces shall not be counted as bedrooms. Bedrooms shall have at least 120 square feet of usable living space and adequate closet space for two persons.
- The Project shall provide appropriately sized interior common areas and outdoor play and recreational facilities suitable and available to all residents. The project shall include either a centralized laundry facility or a washer and dryer in each unit. All units shall have dishwashers.
- Interior specification shall be substantially equal to or better than those for the Oak Court project at 845 Ramona Street.

9. Inspection of BMR Units: Prior to occupancy of a BMR unit, the City, or its designee, shall inspect the BMR unit to determine that the unit meets the construction and finishing standards provided in this Development Agreement. If the standards have been met, the City Manager shall approve the acceptance of the BMR units into the program.

10. Use of Housing Subsidy and Financing Programs: Stanford may utilize any housing subsidy program and financing structure available in the future and the City shall cooperate if and when necessary. Stanford may not use any City funds, including but not limited to Housing Impact Fees, BMR In-lieu Fees, Community Development Block Grant funds, but specifically excluding funds provided by Stanford to the City for this project.

11. Option to Purchase Limited Partner Investor's Interest  
If a tax credit project is developed, Stanford shall obtain and exercise an option to purchase the investor limited partner's ownership interest in the project at the end of the initial 15-year tax credit compliance period. Notwithstanding the above,



Stanford is not required to exercise the option to purchase if the consideration for the purchase, including option payments, exceeds the sum of \$1.00 plus the assumption of outstanding debt on the project, and plus the limited partner's tax liability created by such sale.

12. Use of Tax Credit Program - Limited Agreement to Subordinate to TCAC/CDLAC Regulatory Agreements: The Parties intend that the requirements of this Agreement be compatible with the current standards and requirements for family housing assisted with the competitive nine percent Low Income Housing Tax Credit Program (administered by the California Tax Credit Allocation Committee (TCAC)) or for a project financed with a tax-exempt bond (administered by the California Debt Limit Allocation Committee (CDLAC)) combined with equity from the sale of tax credits under the four percent tax credit program. While Stanford is not required to utilize either of these programs to develop the Project, the Parties anticipate that one of them is likely to be used, if available, due to the subsidies provided.

Notwithstanding anything to the contrary in this Development Agreement or in any agreement in the form of Exhibit C-3, if the Project is to be developed with all of the Required BMR Units restricted under TCAC/CDLAC regulatory agreement(s), upon written request by Stanford, the City shall subordinate the BMR Regulatory Agreement to the regulatory agreements required by the TCAC/CDLAC programs, but only to the extent required, and only if such subordination does not (a) reduce the number of required units or other requirements of Section 8 of this Exhibit C-2 and Section 4.0 of Exhibit C-3; (b) reduce the term requirements set forth in Section 2.0 of Exhibit C-3; (c) make less restrictive the standards of Section 6.1 of Exhibit C-3; (d) modify the provisions of Sections 3.0 and 5.2 of Exhibit C-3 limiting age restrictions and providing certain preferences to those working and/or living in the City or working for Stanford outside of the City. Upon the City Attorney's advice that the proposed subordination preserves the City's rights as set forth above, the City Manager is authorized to execute any such subordination.

If the Project is subject to a TCAC/CDLAC regulatory agreement or agreements, then:

- BMR Regulatory Agreement. The BMR Regulatory Agreement shall remain in full force and effect for the remainder of its term should any other regulatory agreement affecting the Project terminate, for whatever reason.

- Rent Increases. The provisions of the applicable regulatory agreement and the TCAC regulations, if any are applicable, shall control increases in rents for the BMR units.
- Occupancy. Eligibility for occupancy of tax credit units shall be determined by the management agent for the property in accordance with TCAC regulations or the terms of the applicable regulatory agreement; subject to the Palo Alto/Stanford preferences as described above.
- Acceptance. Filing Form 8609 for a tax credit unit shall constitute the City's acceptance of a unit into the BMR program;
- Reporting. City shall accept copies of the records and reports required by TCAC or an applicable regulatory agreement for tax credit units in full satisfaction of City's requirements, if any, for reporting concerning the project. No additional reporting for these units shall be required by the City, except with respect to the Stanford/Palo Alto preference compliance.

13. Subordination to Other Housing Subsidy Program Regulatory Agreements: Notwithstanding anything to the contrary in this the Development Agreement or in any agreement in the form of Exhibit C-3, if the Project is to be developed with all of the Required BMR Units restricted under any other housing subsidy program's regulatory agreement, ("Other Programs"), or a combination thereof, upon written request by Stanford, the City shall subordinate the BMR Regulatory Agreement to the regulatory agreements required by the Other Programs, but only to the extent required, and subject to the limitations in Section 12 above for TCAC/CDLAC subordination, and in addition, only if such subordination does not authorize any increases in rent in excess of those set forth in Exhibit C-3.

14. Cooperation in Funding Applications:

- City Precedence. At the request of the City, Stanford shall defer any application for tax credits or a bond allocation awarded on a competitive basis for a maximum of two funding cycles (but not more than a total of twelve months) to avoid a competition with another housing project located within the City that is seeking funds in the same

competition. City shall extend the time for submission of the application for the Project set out in Section 1 of this Exhibit C-2 by a corresponding time period.

- City Support. In its capacity as the local reviewing agency for the tax credit program, the City shall support Stanford's applications for tax credits and bond allocations.

15. City's Subordination to Lenders:

City shall subordinate the BMR Regulatory Agreement to the lien of any deed of trust or mortgage of any lender (including any credit enhancer or guarantor and also including construction lenders as well as permanent lenders) for any project subject to a BMR Regulatory Agreement.

If a default delays initial occupancy of Required BMR Units or removes them from the market, then the term of the Regulatory Agreement with respect to those units shall be extended by an equal amount of time. Extension of the term of affordability is not the City's sole remedy in such event.

**Exhibit C-3  
(For 70 BMR Unit Alternative)**

This document is recorded for the benefit of the City of Palo Alto and is entitled to be recorded free of charge in accordance with Section 6103 of the Government Code

After Recordation, mail to:

OFFICE OF THE CITY ATTORNEY  
250 Hamilton Avenue  
Palo Alto, CA 94301

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**BELOW MARKET RATE HOUSING AGREEMENT  
BETWEEN STANFORD UNIVERSITY AND  
CITY OF PALO ALTO  
2450, 2470, and 2500 El Camino Real [and 505 California Avenue]  
Palo Alto, California  
A.P.N. Nos. 142-20-013, 142-20-014, 142-20-047[, and 142-20-012]**

*[Note: Include bracketed address and APN only if included in Project. If not used, delete brackets and inapplicable address and APN. Delete this Note.]*

THIS AGREEMENT, made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF PALO ALTO, a municipal corporation of the State of California, hereinafter referred to as "City", and THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California, hereinafter referred to as "Stanford";

**W I T N E S S E T H:**

WHEREAS, City and Stanford have entered into a Development Agreement that was recorded in the Official Records of Santa Clara County on \_\_\_\_\_, 200\_, as document number \_\_\_\_\_ (the "Development Agreement"); and

WHEREAS, Stanford is the owner of certain real property situated in the City of Palo Alto, County of Santa Clara, State of California, which is commonly described by street address and Assessor's parcel numbers as set forth in the title of this document, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference, (the "El Camino Sites"); and

WHEREAS, Stanford has chosen, under the terms of the Development Agreement, to satisfy its obligations under the Development Agreement and the provisions of the City of Palo Alto Below Market Rate ("BMR") Program (as then set forth in Program H-36 of the City of Palo Alto Housing Element) by providing 70 units of BMR housing on the El Camino Sites;

NOW, THEREFORE, the parties hereto mutually covenant and agree as follows:

**1.0 BMR COMMITMENT:** Stanford shall provide 70 units of BMR rental housing (the "BMR Units") on the El Camino Sites in accordance with the terms of this Agreement (the "project"). The project shall be constructed in accordance with Exhibit C-2 of the Development Agreement. Stanford shall operate and maintain the project as approved and constructed and in accordance with this Agreement. During the term of this Agreement, Stanford shall not subdivide or combine units without the approval of the City. City accepts the performance of this Agreement in full satisfaction of Stanford's obligations to provide BMR Units under the Development Agreement, including section 5.5 thereof, in connection with the construction of the 250 units of Housing required under the Development Agreement. All units shall be rented and occupied as provided herein.

**2.0 DURATION OF AGREEMENT TO PROVIDE BMR HOUSING:** This agreement shall be in effect for [fifty-nine (59) years] [fifty-five (55) years] from the first day of the calendar month immediately following the date of issuance of the first certificate of occupancy for the project, and thereafter this Agreement shall be of no force or effect and the rents charged shall no longer be regulated or controlled by City and Stanford shall no longer be required to maintain and operate the project in accordance with this Agreement, or the City's BMR Program.

**[Note: Use 55 year term only if all of the BMR Units are restricted units under a tax credit regulatory agreement with at**

***least a 55-year term. Delete brackets and inapplicable term. Delete this Note.]***

**3.0 AGE RESTRICTIONS PROHIBITED:** In the rental of BMR Units, neither Stanford nor its assignees shall discriminate against households with children or on the basis of the age of renters, or occupants.

**4.0 DISTRIBUTION OF BMR UNITS:** The Very Low-Income Units shall be proportionately distributed among the different unit types in the Project (by number of bedrooms) and by floor and location in the building(s). For example, if there are 30% one-bedroom units, 40% two-bedroom units and 30% three bedroom units, then the 14 required Very Low-Income Units would be distributed by unit type as follows (results are rounded):

- o 4 - One-bedroom units (30% of 14)
- o 6 - Two-bedroom units (40% of 14)
- o 4 - Three-bedroom units (30% of 14)

**5.0 HOUSEHOLD QUALIFICATION AND SELECTION; WAITING LIST:**

5.1 Qualifications. In order to be eligible to rent a BMR Unit, the prospective tenant must meet the qualifications regarding income, assets and minimum household size at the time of commencing occupancy and annually thereafter. The qualifications and related procedures are set forth in detail in Section 7.0 below.

5.2 Priority for Palo Alto Workers and Residents; Stanford Workers Outside of City. To the extent permitted by law, priority for all BMR units shall be given to those eligible households with at least one household member who either lives or works within the city limits of the City of Palo Alto, provided, that for no more than 30% of the units, Stanford may give priority to households whose members neither work nor live in Palo Alto but which include at least one individual who is both (1) an employee of Stanford University and (2) not a student at the University.

Stanford shall inform the City every five years of the percentage of the units occupied by Stanford households. "Stanford households" are those with no adult member employed within the City of Palo Alto and at least one adult member employed by Stanford outside of the City of Palo Alto. Provided, households that initially qualified on the basis of a Palo Alto

residential preference shall never be reclassified as Stanford households.

If a unit becomes vacant, Stanford may rent to a Stanford household if, and only if, by doing so the total number of Stanford households does not exceed 30% of the BMR Units.

5.3 Waiting List. Stanford shall maintain a waiting list or advertise vacancies for the BMR Units and provide information to prospective BMR applicants. Alternatively subject to the City's consent, Stanford may contract with a qualified organization such as the Palo Alto Housing Corporation to maintain a waiting list. Nevertheless, Stanford shall be solely responsible for the actual selection of BMR households, and may conduct Stanford's normal tenant screening process.

5.4 Information. Upon request by an interested person, Stanford shall provide information about the BMR rental program and the BMR Units, including the waiting list. Upon submittal of an application to rent a BMR Unit, Stanford shall provide to the applicant information regarding the conditions and restrictions applicable to occupancy of the BMR Units in the Project. Such information shall include: the Base Rents as herein defined applicable to new households, the rules for calculation of annual rent increases, minimum occupancy standards for BMR Units, the qualifying income, asset, and other limitations for initial and continued occupancy, the process to certify compliance with those limitations and the annual recertification process, the requirement to offer a one-year lease, the BMR waiting list procedures and Stanford's standards for household screening, and other relevant information. Penalties for a household's noncompliance with the BMR Program rules and requirements shall also be explained in the informational materials provided by Stanford.

**6.0 AFFORDABILITY AND OCCUPANCY STANDARDS; QUALIFYING INCOME LIMITS; RENTS.** All units shall be occupied and rented as follows:

6.1. Affordability Standards.

6.1.1 Very Low-Income Units. Fourteen (14) BMR Units shall be rented to qualified Very Low-Income Households (household income at or below 50 percent of the Area Median Income for Santa Clara County, as determined by the U.S. Department of Housing and Urban Development [sometimes the "AMI"]) at rents controlled by this Agreement.

6.1.2. Low-Income Units. The balance of the BMR Units constructed (except an unit to be occupied by a resident manager) shall be designated and rented to qualified Low-Income Households (household income at or below 60 percent of the AMI) at rents controlled by this Agreement.

6.1.3. Affordability Standards. The income limits used in this Section 6.1 and in Section 6.4 to establish maximum rents are summarized in the following table:

<b>AFFORDABILITY STANDARDS FOR BMR HOUSEHOLDS</b>		
<b>Designation of the BMR Unit</b>	<b>Affordability Standards at Household's First Occupancy</b>	<b>Affordability Standards at Annual Recertification</b>
Very Low-Income Unit	Equal to or less than 50% of Area Median Income	Equal to or less than 70% of Area Median Income
Low-Income Unit	Equal to or less than 60% of Area Median Income	Equal to or less than 84% of Area Median Income

6.1.4. Basic Qualifying Income Limits. The Affordability Standards assume a 4-person household. The Standard applicable to a particular BMR Unit is adjusted to reflect the size of the household occupying the BMR Unit; this adjusted Limit is sometimes referred to below as the "Basic Qualifying Income Limits." The Basic Qualifying Income Limits are used to determine the eligibility of a household for a BMR Unit. The following factors are applied to adjust the 4-person household Area Median Income to derive Basic Qualifying Income Limits for smaller and larger households.

1-person household:	70%
2-person household:	80%
3-person household:	90%
4-person household:	Base%
5-person household:	108%
6-person household:	116%
7-person household:	124%



8-person household: 132%

For households larger than 8-persons, the factors are increased by eight percent per additional person. All income limits are rounded to the nearest \$50.

6.1.4.1 Example. For example, assuming an AMI of \$80,000, the Affordability Standard for a Very Low-Income Unit would be \$40,000 [0.50 x \$80,000], but the Basic Qualifying Income Limit for a 2-person household would be \$32,000 [\$40,000 x 0.80]. In order to qualify to rent the Very Low-Income Unit, the income of the household could be no more than \$32,000.

6.1.5 Alternatives. In-lieu of compliance with the Basic Qualifying Income Limits established in Section 6.1, Stanford may elect to comply with income limits, established pursuant to a formula or method of calculation adopted by the City after the effective date of the Development Agreement and in effect at the time of the application for Architectural Review Approval for the Project, and generally applicable to 100% BMR rental housing projects in the City.

## 6.2 Initial Rents.

6.2.1. Calculation of Initial Rents. All of the Initial Base Rents for the BMR Units in a building shall be effective on the first day of occupancy of the first BMR Unit in the building to be occupied. The first day of a calendar month following said first day of occupancy shall be the "Start Date". The Initial Base Rents shall be calculated in accordance with this Section 6.2 based on the most current information reasonably available as of the first day of a calendar month after the issuance of the first building permit for the Project and preceding the Start Date that is chosen by Stanford ("Initial Calculation Date"). The Initial Base Rents shall include rents for each type of BMR Unit (One- bedroom, Two - bedroom, etc.) and income classification, as provided in sections 6.1.1 and 6.1.2. (Low-Income and Very Low-Income). The Initial Base Rents shall be 30% of the Basic Qualifying Income Limit for each type of unit, adjusted as necessary to reflect the assumed household size for that type of unit pursuant to section 6.2.3 below.

6.2.1.2 Example. The Initial Base Rent for a hypothetical Low-Income 2-bedroom unit would be \$1,080, derived as follows: AMI multiplied by the Low-Income percentage (§ 6.1.2) multiplied by the factor for assumed occupancy of 3 persons (§6.1.4 and § 6.2.3) x30% (§ 6.2.1) divided by 12 months or [ $\$80,000 \times 60\% \times 90\% \times 30\% \div 12 = \text{Rent.}$ ]

6.2.1.3. Example. The Initial Base Rent for a one bedroom Very Low-Income Unit using the assumed household size (1.5 persons) and an AMI of \$80,000 would be \$750 per month; i.e., thirty percent of the affordability standard (§ 6.2.1) multiplied by AMI, multiplied by the Very Low-Income percentage (§ 6.1.1) multiplied by the factor for assumed occupancy (§6.1.4 and § 6.2.3) divided by 12 months ( $30\% \times [\$80,000 \times 50\% \times 75\%] \div 12$ ).

6.2.2 Alternate Standard. If City subsequently adopts a different method for determining rents, generally applicable to Low-Income Households or Very Low-Income Households in other 100% affordable BMR rental housing projects, that permits a higher rent, Stanford may elect to use that method to set these rents.

6.2.3 Assumed Household Size for Calculation of Initial Base Rents. The following household size shall be assumed for each type of BMR Unit for purposes of calculating the Initial Base Rent:

<u>Unit Type</u>	<u>Assumed Household Size</u>
One-bedroom units	1.5-persons
Two-bedroom units	3-persons
Three-bedroom units	4.5-persons
Four-bedroom units	6-persons

6.3. Increases in Rents. The Rent for each BMR Unit shall be re-determined annually, in accordance with the procedure set forth in section 6.4 (including the cap on increases in section 6.4.6), and, after the required notice is given, the Rent charged to each household may be increased to the approved rent effective on the anniversary of the Start Date (the "Rent Adjustment Date") or at such later date as may be provided in the applicable rental agreement or lease. The

results of these re-determinations are referred to as the "Base Rents."

#### 6.4. Procedure for Re-determination of Rents.

6.4.1 Annual Increase in Base Rent. The re-determined Base Rent effective each Rent Adjustment Date shall be the sum of the previous Base Rent plus an increase equal to the increase in the CPI (defined below) for the applicable period (defined below) or the affordable rent re-determined in accordance with section 6.2, except using the current Calculation Date (defined below), whichever is less, but in no event less than the previous Base Rent.

6.4.1.1 CPI Defined. The "CPI" is the Consumer Price Index for All Urban Consumers - Rent Residential for the San Francisco, Oakland, San Jose area as published by the Bureau of Labor Statistics, or if that Index is no longer published by its successor or, if none, by another generally accepted index subject to approval by the City, which approval shall not be unreasonably withheld.

6.4.1.2 Applicable Period Defined. The "applicable period" is the period beginning with the preceding Calculation Date and ending with the current Calculation Date, which normally will be 12 months. For the initial year of any tenancy, the annual rent increase percentage shall be prorated, as necessary to account for the first applicable period being more or less than 12 months. For example, if the Initial Calculation Date is eight months before the current Calculation Date, and the CPI increase over that time period was 6%, the permissible increase would be 4% [ $8/12 \times 6\%$ ].

6.4.2 Proposed Base Rents. No later than 115 days prior to a Rent Adjustment Date, Stanford may submit to the Director of Planning and Community Environment (the "Director") a schedule showing proposed Base Rents calculated in accordance with this section 6.4. using the most current information reasonably available as of the first day of the calendar month immediately preceding the submission of the proposed rents, which shall be the "Calculation Date" used in the current re-determination of rents. The submission shall show for each type of BMR Unit in each affordability category, (a) the current Rent, (b) the applicable period, (c) the CPI increase during the

applicable period, (d) the rent that would result from an increase equal to the CPI increase, (e) the maximum affordable rent calculated as provided in section 6.2 as of the Calculation Date, and (f) the proposed re-determined Base Rent, being the lower of (d) and (e). The submission shall also include work papers showing the derivation and calculation of (b), (c) and (e).

6.4.3. City Action. If the Director does not approve or disapprove the proposed Base Rents within 45 days of receipt by City, the proposed rents shall be deemed approved. If the proposed rent for any type of BMR Unit is disapproved, the Director shall inform Stanford in writing of the reasons for its disapproval of the proposed rent and of the rent that City approves for that type of BMR Unit. Base Rents approved, deemed approved or approved in connection with a denial of a request for a higher rent are sometimes referred to below as "Approved Rent."

6.4.4 Appeal. In the event of a disapproval, Stanford may appeal the decision to the City Manager and also implement any lesser increase approved by the Director on the Rent Adjustment Date and shall become the new Base Rent, which shall not constitute a waiver of its right to appeal. The City Manager shall promptly render his decision on the appeal and Stanford may implement the decision upon thirty days written notice to the affected households, but in no event before the Rent Adjustment Date.

6.4.5 Approved Rent. The Approved Rent is the maximum rent that Stanford may charge for the 12-month period following the Rent Adjustment Date; provided Stanford must give each affected BMR household 60-day's written notice of the increase.

6.4.6 Limit on Rent Increase. Notwithstanding anything to the contrary in this Agreement, Stanford shall not increase the rent of an existing qualified very low- or low-income household by a percentage that exceeds the percentage increase in the certified gross income of the household in the applicable period, except that the annual increase shall never be less than one-half of the percentage increase in the CPI during the applicable period.

6.4.7 Example of Determination of Permitted Increase and New Base Rent. The following is a sample, hypothetical

calculation of an annual rent increase for a BMR Unit with a previous Base Rent of \$1,512 per month:

- A) The CPI available as of Calculation Date is:  
242.5
- B) Less the CPI on the preceding Calculation Date (one year earlier) is: 225.2
- C) The difference is: 17.3
- D)  $17.3 / 225.2 = .00768 = 7.7\%$ , the increase in CPI
- E) The new Base Rent will be \$1,628 [the previous Base Rent of \$1,512 plus an increase of 7.7%, rounded] assuming that amount does not exceed the affordable rent re-determined as provided in section 6.4.2(e).
- F) The Actual Rent charged to each household will be the new Base Rent, but not more than the previous Base rent increased by the percentage increase in the certified income of the household over the applicable period.
- G) Assuming a unit occupied by a household the income of which increased by 5.0% (which is less than the CPI increase) over the applicable period, the increase allowed would be 5% or \$76.00 [previous Base Rent of \$1,512.00 x 5.0% = \$76.00 (rounded).] and the new Base Rent for that unit would be \$1,588.00 (\$1,512 + \$76)

6.5 Rents After Vacancy. When a BMR Unit is vacated and rented to a new household, the rent to be paid by the new household shall be the then current Base Rent.

6.6 Charges Included in BMR Rent. Rent calculated in accordance with this section 6 is the total maximum monthly charge that may be paid by the household for occupancy of the BMR unit, including the value of utility services that are not separately metered to each unit, and of assigned parking and of storage lockers.

6.7. Rents After Re-certification. Rents also may be adjusted as a result of an annual recertification as provided in section 7.0 below.

6.8 Occupancy Standards; Household Size. The minimum household size for each unit type shall be:

<u>Unit Type</u>	<u>Minimum Household Size</u>
One-bedroom units	One-person
Two-bedroom units	Two-persons
Three-bedroom units	Three-persons
Four-bedroom units	Four-persons

Stanford may establish maximum household sizes for each unit type, which shall not be less than two persons per bedroom plus one person; e.g., for a 3-bedroom unit, a maximum of 7 persons.

## **7.0 REVIEW OF TENANT QUALIFICATIONS & INCOME CERTIFICATIONS.**

7.1 Qualifications. Applicants for BMR Units must meet qualifications regarding income, assets and minimum household size standards. The applicable residency and / or work location preferences must also be verified. Each existing BMR household must be recertified annually to verify that the household continues to meet the applicable qualifications in order to continue to be eligible to pay BMR rent and occupy a BMR Unit

7.2 Procedures. The procedures of the HUD Section 8 rental assistance program, or successor program, shall be followed in conducting the income certifications, except as modified by the City to meet the requirements of the BMR program. Stanford shall obtain the appropriate documentation from applicants and tenants, make its determinations of annual income and other qualifications and of each household's initial and continued eligibility for the BMR program prior to the execution (or renewal) of the rental agreement or lease for the BMR Unit. Stanford shall not permit a new BMR tenant to occupy a BMR Unit prior to completion and satisfaction of the qualification and income certification process and requirements.

7.3. Certified Households. If Stanford determines that a household remains eligible for the BMR Unit, the tenancy continues in accordance with the provisions of this Agreement and the applicable rental agreement or lease.

7.4. Households That Become Ineligible Because of Increased Household Income. If Stanford determines that a household's income at the time of the annual recertification exceeds the then-current Basic Qualifying Income Limits for recertification for a Low-Income Unit (calculated as set forth in sections 6.1.3 and 6.1.4), then the household is no longer eligible to continue to occupy a BMR Unit in the Project and the provisions of section 7.4.1 shall apply.

7.4.1 Notice. Stanford shall give the household written notice that the household is no longer eligible to occupy a BMR Unit in the project and that:

A) The rent will be increased to market rent in sixty (60) days; and

B) The household must vacate the BMR Unit within six (6) months of the date of the notice of ineligibility, or at the end of the term of the household's rental agreement or lease term, whichever is later.

7.4.2 Re-renting of BMR Unit. When the BMR Unit is vacated, Stanford shall rent the BMR Unit to a qualified household in accordance with this Agreement.

7.5 Re-designation of Very Low-Income Household as Low-Income and Household Related Rent Increase. If Stanford determines that the income of a household that is occupying a Very Low-Income Unit exceeds the then-current Basic Qualifying Income Limit for recertification for a Very Low-Income Household (calculated as set forth in sections 6.1.3 and 6.1.4), the household is no longer eligible to continue to pay a Very Low-Income rents in the project and the provisions of sections 7.5.1 and 7.5.2 shall apply.

7.5.1 Notice. Stanford shall give the household written notice that the household is no longer eligible to pay a Very Low-Income rents and that

A) Its tenancy is being reclassified as a Low-Income Household; and

B) The rent will be increased to the current Base Rent for a Low-Income BMR Unit in sixty (60) days;

7.5.2. Re-renting of Available Low-Income BMR Unit. Stanford shall designate and rent the next available vacant BMR Low-Income Unit of that type as a Very Low-Income Unit in accordance with this Agreement

7.6 Failure to Meet Minimum Household Size. If Stanford determines that an otherwise qualified BMR household no longer meets the minimum household size standard for the BMR Unit that it occupies (e.g., because one or more household members have established permanent residency at another location), the household will no longer be eligible to occupy a unit of the type then occupied and the provisions of section 7.6.1 apply.

7.6.1. Notice. In such case, Stanford shall give the household written notice that:

A) The household is no longer eligible to occupy the BMR Unit;

B) The household will be required (i) to move to the next available BMR Unit for which it qualifies under the household size standards within ten (10) days of receipt of written notice that the unit is available, **or** (ii) to vacate the project within sixty days of receipt of such notice; and

7.6.2. Re-renting of BMR Unit. Stanford shall rent the vacated BMR Unit to a qualified household in accordance with this Agreement.

**8.0 ANNUAL REPORT.** Stanford shall prepare and submit to the City, or the City's designee, an annual report in a form specified by City on the status of the BMR Units and compliance with the requirements of the Development Agreement and this Agreement. This report will recap all activity related to the provision of BMR Units for the year, identify corrective actions taken or ongoing to ensure compliance and finally, recap all rent increases and income limit adjustments implemented during the preceding calendar year.

**9.0 DECENNIAL REVIEW OF BMR REQUIREMENTS.** During the calendar year following the tenth (10) anniversary of the Start Date and every ten years thereafter, Stanford may request a review and modification of the terms, or amendment of this Agreement. City shall have sole discretion to accept or reject any and all requested modifications or amendments. The parties may amend



this Agreement only by a writing duly executed by both and recorded.

**10.0 COMPLIANCE WITH OTHER LAWS INCLUDING CITY'S ONE-YEAR LEASE LAW.** All applicable State and local laws and ordinances affecting the operation of rental housing apply to the operations of the BMR Units. Notwithstanding any language to the contrary in Section 9.68.020(d) of the Palo Alto Municipal Code, the provisions of PAMC Chapter 9.68, as set forth in the Modified 2003 Rules, including the requirement to offer each household a one-year lease, shall apply to the BMR Units.

**11.0 ENFORCEMENT.**

11.1 Responsibility. Stanford shall be solely responsible for enforcement of the terms of the tenancy, and the rental agreement or lease.

11.2 Enforcement of the BMR Rental Program and Penalties for Noncompliance. The City reserves the right to monitor and audit Stanford's compliance with this Agreement at any time. If non-compliance is evident, City may give Stanford written notice and an appropriate period of time to remedy any areas of non-compliance. If compliance, or evidence indicating appropriate action toward compliance, cannot be provided within six months to the satisfaction of the City, City reserves the right to perform, review or monitor any of the activities necessary to cure the non-compliance and ensure the satisfactory operation of the BMR rental program. City may contract with a third party to perform these tasks. Stanford shall reimburse City for the actual cost of City's (or its contractor's) time and overhead for as long as City must assume responsibility for these tasks.

**12.0 REQUIRED INCORPORATION IN RENTAL AGREEMENT OR LEASE.** Each lease or rental agreement for a BMR Unit shall require the household to cooperate in the annual re-certification and to provide information necessary to verify the continued eligibility of the household to reside in the BMR Unit. Each household shall be given a copy of this Agreement and shall be required to sign an acknowledgement of receipt of this information and of their understanding of these requirements.

**13.0 PROGRAM ADMINISTRATOR.** The Department of Planning and Community Development administers the BMR Program. Currently, the City's contract program administrator for the Program is the Palo Alto Housing Corporation. The City may assign any or all of

its administrative duties including review, approval and monitoring functions to a program administrator or other designee.

**14.0 RECORDS, MONITORING AND REPORTS.** Stanford shall maintain records, in a form satisfactory to the City, to demonstrate compliance with this BMR Regulatory Agreement.

**16. BINDING ON SUCCESSORS.** The terms, covenants and conditions of this shall run with the land and shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, contractors, and subcontractors of the parties.

**17. COSTS AND ATTORNEYS' FEES.** The prevailing party in any action or arbitration brought to enforce the terms of this or arising out of this may recover from the other party its reasonable costs and attorneys' fees expended in connection with such an action or arbitration.

**18. NOTICES.** Unless otherwise specified in this, notices hereunder shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To City: Office of the City Clerk  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 94301

Copy to: Director of Planning and Community  
Environment  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 94301

To Stanford: Stanford Management Company  
Attention: Managing Director,  
Real Estate  
2770 Sand Hill Road  
Menlo Park, CA 94025

Copy to: Office of the General Counsel  
105 Encinal Hall  
Stanford, CA 94305

The address of a party may be changed from time to time by written notice given to the other party in the manner set forth

herein. Notices given in the manner set forth herein shall be deemed received five days after deposit in the mail. Notices may also be delivered personally and if so, shall be deemed received upon delivery.

**19. INTERPRETATION:** This Agreement is intended to implement the Development Agreement and the Project Approvals, as defined therein, and it shall be construed accordingly.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first above written.

**APPROVED AS TO FORM:**

**CITY OF PALO ALTO**

\_\_\_\_\_  
Senior Asst. City Attorney

\_\_\_\_\_  
City Manager

**APPROVED:**

**THE BOARD OF TRUSTEES OF  
LELAND STANFORD JUNIOR  
UNIVERSITY**

\_\_\_\_\_  
Assistant City Manager

By: Stanford Management  
Company

\_\_\_\_\_  
Director of Planning  
and Community Environment

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its \_\_\_\_\_

A.P.N. Nos: 142-20-013  
              142-20-014  
              142-20-047  
              142-20-012

Taxpayer Identification No.  
\_\_\_\_\_

**EXHIBIT C-4**  
**LETTER AGREEMENT BETWEEN CITY OF PALO ALTO AND**  
**STANFORD UNIVERSITY (50 UNIT ALTERNATIVE)**

\_\_\_\_\_, 2005

William T. Phillips  
Managing Director, Real Estate  
Stanford Management Company  
2770 Sand Hill Road  
Menlo Park, California 94025

**SUBJECT: Below Market Rate (BMR) Agreement for City of Palo Alto/Stanford University Development Agreement Under the Basic BMR Alternative**

This letter summarizes the agreement under the Basic BMR Alternative between Stanford University and the Department of Planning and Community Environment regarding the satisfaction of the provisions of the City of Palo Alto's Below Market Rate (BMR) Program for the 250 units of housing required under the City of Palo Alto/Stanford University Development Agreement, ("the Housing") in two locations known as the El Camino Sites and the California Avenue Sites. Under the Basic BMR Alternative, 50 units of this housing are to be below market rate in accordance with the City's BMR Program, outlined in Program H-36 of the City's Comprehensive Plan (see Exhibit C-1) adopted by the City Council on December 2, 2002, and certified by the California Department of Housing and Community Development on May 23, 2003. The program requirements applicable to the Basic BMR Alternative are set forth in the Below Market Rate Program documents included in Exhibit B (Selected 2003 Rules) of the Development Agreement. Those program requirements are modified as set forth in this letter. No other BMR program requirements are applicable.

As part of a review and update of the BMR ownership and rental programs currently underway, the City intends to revise its ownership deed restrictions and possibly other BMR regulatory or enforcement documents. It is the intention of the City and Stanford that any one or more new regulations or policies of general application could, at Stanford's election, be applicable to the BMR portion of the Housing, provided that their application does not reduce the number, term, quality, or affordability of the BMR units in the Housing. For example: The affordability standard requiring that three-fourths of the BMR units within each phase, component, unit type and site must be sold at affordable prices to households with incomes from 80 to 100% of the area median income is not subject to change, however, if the City adopts a new policy to determine "affordable prices," Stanford could elect to be subject to the new policy in effect at the time it signs a regulatory agreement.

### Fifty BMR Units to Be Provided On Sites

Stanford shall provide a minimum of fifty BMR units, which shall be located on the El Camino Sites and California Sites and integrated into the market rate housing to be built under the terms of the Development Agreement. BMR units must, overall, be substantially comparable to the market rate units and included in all project components, including individual phases and various housing types developed in the project as a whole; the City reserves the right to accept a modification of this requirement that provides an equal or superior value to the BMR program. However, in no circumstances shall less than fifty BMR units be provided on site. Each design review application for any phase of units shall designate proposed BMR units on the site plans and shall include floor plans, room dimensions and square footages for both market rate and BMR units. The BMR Units shall be subject to the Director of Planning and Community Environment's review and approval.

### Regulatory Agreement

Since the type of housing for this project is unknown at this time, the terms of this agreement are general; when a specific housing development is proposed by Stanford University pursuant to the Development Agreement, the Director of Planning and Community Environment and Stanford University will negotiate a detailed regulatory agreement with specific development requirements for the BMR units which must be consistent with the terms of this letter agreement. A regulatory agreement shall be prepared in a form satisfactory to the City Attorney, executed by Stanford University and the City, and recorded against each property containing one or more BMR units prior to issuance of the first building permit for the relevant phase of Housing. Subject to the requirement that it be consistent with the terms of this letter agreement, the regulatory agreement shall be generally consistent with the BMR agreements entered into by the City between the years 2004 and 2013, taking into account the differences between this project and others regarding unit size, unit mix, unit quality, and the extent to which Stanford will be administering these BMR programs, subject to review and monitoring by the City.

### Term of Regulatory Agreement and/or Deed Restrictions

A 59-year term for the regulatory agreement is required and includes affordability covenants. For rental housing, the 59-year regulatory agreement shall be recorded against the property prior to the issuance of the first building permit and the contractual obligation shall run with the land. For ownership units, in order to maintain and enforce

the BMR restrictions, Stanford shall reserve a right of first refusal to purchase the leasehold, including the BMR unit, whenever it is offered for sale, sub-lease or assignment by the ground lessee. Stanford shall maintain records and provide reports for such units, in a form satisfactory to the City, to demonstrate compliance with the BMR program. This right of first refusal to purchase is in lieu of any City right of first refusal to purchase the remaining leasehold. Any BMR ownership units will be developed on land owned by Stanford University and leased under long-term ground leases. Stanford will provide initial lease terms and extensions for BMR units on terms provided in a written policy equally applicable to market rate and BMR units in the project, as amended from time to time, or, if there is no such policy, then on terms equal to the most favorable terms given to market rate units of Housing. The BMR deed restrictions recorded with any ownership BMR units will be extended to match any ground lease extensions that exceed the initial 59-year term.

#### BMR Unit Sales Prices

For ownership projects, the sales prices for BMR units shall be calculated and approved by the City based on Program H-36, which stipulates two different levels of affordability within the category of moderate income. Three-fourths of the BMR units within each phase, component, unit type and site must be sold at affordable prices to household with incomes from 80 to 100% of the area median income (AMI). The remaining one-fourth of the BMR units may be sold at sales prices affordable to households with incomes from 100 to 120% of AMI. Affordable sales prices shall be determined using the methodology described in the City's BMR Ownership Program Housing Price Guidelines (Exhibit B – Selected 2003 Rules). Provided, Stanford may use any methodology for setting sales prices approved by the City Council as a policy of general application as part of the Subsequent Rules in effect at the time the Regulatory Agreement is signed. In all cases, the sales price should be sufficient to cover the estimated cost to the developer of constructing the BMR unit, including financing, but excluding land, marketing, off-site improvements, and profit, as more particularly described in the 2003 Rules. Stanford shall cooperate with the City, the BMR unit buyers and the City's program administrator as necessary in the sale of the BMR units, following procedures in the Selected 2003 Rules. The BMR unit owners will have all rights of market rate owners including equal membership and voting rights in condominium or tenant associations.

### BMR Rents

The BMR rental program serves households at the very low (below 50%) and low-income (below 80%) levels. 25% of the BMR rental units must be occupied at affordable rents by very low income households with incomes less than 50% AMI; the remaining 75% of the rental units must be occupied at affordable rents by households with incomes less than 80% AMI. For the very low-income units, the initial rent for each unit type (studio, one-bedroom, two-bedroom and three-bedroom, etc.) shall not exceed the monthly rent for 50% of Area Median Income households as published by the California Tax Credit Allocation Committee (TCAC). Initial rents for each unit type for the low-income units shall be the lesser of:

- a) A rent equal to 80% of the monthly rent, as published by TCAC, (or a similar standard if TCAC no longer publishes rents,) for households at 100% of the area median income; or
- b) 80% of the market rate rent for a comparable unit.

Initial rents for BMR units shall be established as of the first day of a calendar month, chosen by Stanford, after the date of the issuance of the first building permit for the particular phase or project, but prior to the first occupancy of the unit. The BMR rent is the total maximum monthly charge that may be paid by the tenant for occupancy of the BMR unit, including parking spaces, storage lockers, and similar amenities. The rents may be adjusted annually to reflect the change in the Consumer Price Index (CPI) Rent Residential and shall not exceed an amount equal to one-half of the percentage increase in the CPI index. BMR rents may not be increased more than once in any 12-month period. Provided, Stanford has the right to use any BMR rental formula, and rental increase formula, approved by the City Council as a policy of general application as part of the Subsequent Rules in effect at the time the Regulatory Agreement is signed.

### Eligible Households

Applicants for purchase or rental BMR units must meet the BMR program's qualifications regarding income, assets and minimum household size standards as described in the applicable 2003 Rules. Stanford has the right to use any household eligibility standard approved by the City Council as a policy of general application as part of the Subsequent Rules in effect at the time the Regulatory Agreement is signed.

Priority for Palo Alto Workers and Residents; Stanford Workers Outside of City

Priority for all BMR units shall be given to those eligible households with at least one household member who either lives or works within the city limits of the City of Palo Alto, provided, that for no more than 30% of the units, Stanford may give priority to households whose members neither work nor live in Palo Alto but which include at least one individual who is both (1) an employee of Stanford University and (2) not a student at the University.

Stanford shall inform the City every five years of the percentage of the units occupied by Stanford households. "Stanford households" are those with no adult member employed within the City of Palo Alto and at least one adult member employed by Stanford outside of the City of Palo Alto. Provided, households that initially qualified on the basis of a Palo Alto residential preference shall never be reclassified as Stanford households.

If a unit becomes vacant, Stanford may rent to a Stanford household if, and only if, by doing so the total number of Stanford households does not exceed 30% of the BMR Units.

Subsequent Rules

Alternatively, Stanford may develop the BMR units under the "Subsequent Rules," i.e., all City ordinances, resolutions, rules, regulations, and official policies in effect at the time a City action is to be taken, as they would apply to housing had the Development Agreement not been adopted. However, the number of BMR units required shall not be changed from 50.

Please sign this letter where shown below and return to me, indicating that we have reached agreement regarding the standard application of the BMR Program to this project.

Sincerely,

Steve Emslie  
Director  
Planning and Community Environment



Stanford University agrees to comply with the above-described BMR Program requirements for development of 50 units to satisfy the BMR Program for the Required Housing as that term is defined in the Development Agreement between Stanford University and the City of Palo Alto dated \_\_\_\_\_.

\_\_\_\_\_  
William T. Phillips, Managing Director, Real Estate  
Stanford Management Company  
Stanford University

## EXHIBIT D

### ALTERNATIVE DEVELOPMENT STANDARDS (CHAPTER 18.62)

#### Chapter 18.62

#### ALTERNATIVE STANDARDS OVERLAY DISTRICT REGULATIONS

##### Sections:

18.62.010	Purpose
18.62.020	Definitions
18.62.030	Applicability
18.62.040	Relation of Optional Standards to the Underlying Zone
18.62.050	Alternative Standards Overlay District One (AS1): Housing and Mixed Use at El Camino Site
18.62.060	Alternative Standards Overlay District Two (AS2): Housing at Upper California Site
18.62.070	Alternative Standards Overlay District Three (AS3) Community Recreation at Mayfield Site

##### **18.62.010 Purpose**

The Alternative Standards Overlay Districts provide alternative development standards for specific sites in order to implement the terms of the 200\_ Development Agreement between the City of Palo Alto and Stanford University adopted by Ordinance No. \_\_\_\_\_. Unless otherwise specified in the Development Agreement, these standards are intended to be optional, rather than mandatory, for those sites. The provisions of this Chapter 18.62 shall be applied in a manner consistent with Stanford's rights under the Development agreement.

##### **18.62.020 Definitions**

Capitalized terms not otherwise defined in this Chapter 18.62 shall be those defined in either the Development Agreement or the 2003 Rules. As used in this chapter, the following definitions shall apply:

(a) "El Camino Site" means the combined leaseholds commonly known as 2450, 2470, and 2500 El Camino Real. "Extended El Camino Site" means the El Camino Site and the leasehold commonly known as 505 California Avenue.

(b) "Gross Area" means the total land area of a site without deductions for streets or easements.

(b) "Mayfield Site" means real property commonly known as 2650, 2700, and 2780 El Camino Real owned by Stanford University and leased to the city for community recreation purposes as provided in the Development Agreement.

(c) "Required Housing" means 250 units of housing that Stanford is required to build under the 200\_ Development Agreement.

(d) "Upper California Site" means the combined leaseholds commonly known as 1451, 1501, and 1601 California Avenue.

#### **18.62.030            Applicability**

These Alternative Standards Districts are only applicable to the sites identified in this Chapter 18.62. Under the terms of the Development Agreement, Stanford may choose to be subject to the AS1 District, or the AS2 District, or neither, or both. However, if Stanford chooses to have the AS2 District apply, it will be applicable to the entire Upper California Site. The AS1 District may be applied to either the entire El Camino Site or the entire Extended El Camino Site. If the AS1 District is initially applied to the El Camino Site, Stanford may later choose to have it apply to the Extended El Camino Site. The AS3 District applies to the Mayfield Site as a whole.

#### **18.62.040            Relation of Overlay District to Other Land Use Regulations**

At the time that application is made to the city for a discretionary review of a Required Housing project on land eligible for development under an AS Alternative Standards Overlay District, the applicant shall file a notice specifying whether it elects to be subject to the applicable Alternative Standards Overlay District. The applicant may rescind its choice of an Alternative Standards Overlay District at any time prior to the issuance of a building permit for construction of the approved project. Definitions and procedures for application of the Alternative Standards shall be those described in the Development Agreement as the Modified 2003 Rules.

#### **18.62.050            Alternative Standards Overlay District One (AS1): Housing and Mixed Use at El Camino Site**

The purpose of this overlay district is to accommodate the construction of a housing development adjacent to the Stanford Research Park that takes advantage of the site's location on El Camino Real and is compatible with the adjacent development. It may also include limited commercial uses. This district may be

applied to the El Camino Site or the Extended El Camino Site. The underlying zoning shall not apply if the applicant elects to be subject to the AS1 District.

**A. AS1 Alternative Development Standards**

<p>Permitted uses</p>	<p>Residential:</p> <p>a) multiple-family housing and accessory indoor and outdoor uses customarily incidental to it;</p> <p>b) non-profit or government social services supportive of residential use;</p> <p>c) child care center. In the sale or rental of Required Housing, neither Stanford nor its assignees shall discriminate against households with children or on the basis of the age of renters, buyers, or occupants.</p> <hr/> <p>Non-Residential:</p> <p>a) retail service;</p> <p>b) personal service;</p> <p>c) eating and drinking service including outdoor eating areas incidental to the interior use;</p> <p>d) child care center;</p> <p>e) live/work lofts.</p>
<p>Conditionally permitted uses</p>	<p>None</p>
<p>Site area and dimensions (minimum)</p>	<p>a) Minimum site to be developed is the El Camino Site.</p> <p>b) Site area and dimensions shall include that portion of the site subject to access easements existing as of June 10, 2003.</p>
<p>El Camino Real frontage</p>	<p>a) First floor residential uses</p>

shall be set back 13 to 17 feet from property line; a wall no more than four feet high may be placed behind the effective sidewalk to create privacy while maintaining a relationship with the street. Balconies, porches, stairways, and similar elements may extend up to eight feet into the setback. Cornices, eaves, fireplaces, and similar architectural features may extend up to four feet into the setback.

b) Non-residential uses and residential uses above commercial uses shall be set back a minimum of five feet from the property line.

c) No parking is permitted in the front setback area; structured parking shall not be visible to pedestrians from El Camino Real.

d) City may require a right in/right out driveway on El Camino Real.

e) A minimum 12-foot wide effective sidewalk, including the public sidewalk, shall be provided and maintained. At least 7 feet of this sidewalk shall be in the public right-of way, with the remainder to be provided on the El Camino Site (or Extended Site). If, however, the sidewalk provided in the public right-of-way is less than 7 feet, the required sidewalk shall be reduced by the same measure.

f) To the extent they do not currently exist, street trees shall be provided in the public sidewalk area; a second row of trees shall be provided in a residential setback area.

g) Primary pedestrian orientation for residential uses shall be

	<p>located on El Camino Real.</p> <p>h) Non-residential uses shall have entrances on El Camino Real or California Avenue (with Extended El Camino Site) or both.</p>
<p>California Avenue frontage (pertains only to Extended El Camino Site)</p>	<p>a) Commercial uses and residential uses which are above commercial uses have no minimum setback.</p> <p>b) Ground floor residential uses shall be set back a minimum of eight feet from the property line. Balconies, porches, stairways, and similar elements may extend up to six feet into the setback. Cornices, eaves, fireplaces, and similar architectural features may extend up to four feet into the setback.</p> <p>c) No surface parking is permitted along the California Avenue frontage, but a curbcut for access to the site is permitted in addition to the existing access easement curbcut.</p>
<p>Interior side setback</p>	<p>None</p>
<p>Rear setback</p>	<p>No structures, architectural features, building elements, or surface parking shall be permitted in the portion of the site subject to an access easement as of June 10, 2003. Completely below-grade construction may extend under the access easement, provided an underground easement does not prevent this construction.</p>
<p>Residential density (maximum)</p>	<p>50 dwelling units per acre of Gross Area, calculated on total site area irrespective of the portion that is</p>

	<p>devoted to commercial use. No additional density bonus for affordable housing is permitted.</p>
<p>Gross floor area</p>	<p>Gross floor area shall include all floors of any building measured to the outside surface of the stud walls, and including all of the following:</p> <ul style="list-style-type: none"> <li>- halls and stairways;</li> <li>- elevator shafts;</li> <li>- service and mechanical equipment areas;</li> <li>- basement, cellar and attic areas deemed by the director of planning and community environment to be usable;</li> <li>- any porches, arcades, balconies, courts, walkways, breezeways or similar features when located above the ground floor and used for required access; and</li> <li>- permanently roofed areas, either partially enclosed or unenclosed, building features used for sales, service, display, storage or similar uses.</li> </ul> <p>Gross floor area shall not include:</p> <ul style="list-style-type: none"> <li>- parking facilities accessory to permitted uses on the site, (excluding area used for storage, mechanical equipment, and other uses as noted above);</li> <li>- unroofed exterior areas accessible to the general public and not devoted to sales, service, display, storage or similar uses, including,</li> </ul>

	<p>but not limited to areas above podium parking;</p> <ul style="list-style-type: none"> <li>- roofed arcades, balconies, plazas, courts, walkways, porches, breezeways, porticos, and similar features that are 50% or less enclosed by exterior walls</li> <li>- areas designated for resource conservation such as trash compactors, recycling and thermal storage facilities.</li> </ul>
Floor area ratio (maximum) of gross floor area to Gross Area of site	<p>Mixed Use: 2.0 to 1  Residential 1.75 to 1  Non-residential 0.25 to 1, as part of mixed use development</p>
Site coverage (maximum)	One hundred percent of the site
Building height (maximum)	50 feet, measured pursuant to Section 18.04.030(b)(67) of the 2003 Rules.
Daylight plane	None required
Multiple family design guidelines	Chapter 18.28 of the 2003 Rules shall not apply.
<p>Parking</p> <p>Except as otherwise provided in this chapter, parking shall be governed by Chapter 18.83 of the 2003 Rules.</p>	<p>Residential:</p> <p>2- or more bedroom units: 2 spaces, 1 of which must be covered; the spaces may be tandem</p> <p>1-bedroom: 1.5 spaces, one of which must be covered</p> <p>Studio units: 1 covered space  Guest parking: 0.25 covered spaces per dwelling unit</p>



	<p>Non-residential: 1 space for each 200 square feet of gross floor area</p>
	<p>Bicycle parking and loading spaces: As required by Chapter 18.83.120 of the 2003 Rules.</p>
	<p>As part of Architectural Review of a project on the site, total required parking may be reduced by up to twenty percent by the Director upon a finding that the reduced parking will be adequate for the project.</p>
<p>Usable open space</p>	<p>a) Total: A minimum of twenty percent of the gross site area.</p> <p>b) Private: No minimum amount or dimensions. Private open space should be considered where feasible although it is not required for each dwelling unit nor is there a minimum size requirement when it is provided. Design of private open space is flexible and can include, but is not limited to: patios, decks, balconies and French balconies.</p> <p>c) Common: No minimum amount or dimensions.</p> <p>d) "Usable open space" is an outdoor or unenclosed space located on the ground or roof of a structure, or the top of podium parking, or a balcony, deck, porch, patio or terrace, designed and accessible for outdoor living, recreation, pedestrian access, landscaping, or a required yard. It does not include parking areas, (whether covered or</p>

	<p>uncovered,) driveways, roads, or utility or service areas.</p> <p>e) The Site may include open space areas with an Ldn in excess of 60 dB, but they shall not be counted towards required common or private "usable open space" unless they are sited, designed, and constructed to reduce the maximum Ldn to 60 dB.</p>
Signs	Commercial signs shall be permitted in accordance with the South El Camino Real Design Guidelines
<p>Architectural Review.</p> <p>City shall limit its architectural review as provided in Section 6.4.10 of the Development Agreement. The South El Camino Real Design Guidelines approved by the Architectural Review Board on June 6, 2002 are the only applicable local design standards for this site.</p>	

**B. AS1 Alternative Base Zoning Standards**

At the applicant's option, the El Camino Site in its entirety, or the Extended El Camino Site, may be developed in compliance with the RM-40 High Density Multiple Family Residential District, (including Chapter 18.28) under the 2003 Rules as more particularly described in the Development Agreement.

**C. Zoning if Alternative Site Needed**

If, after a building permit has been issued for the construction of an approved project under the AS1 Overlay District on the El Camino Site, it is determined to be an Infeasible Site because of environmental contamination, then, under the conditions and in the manner described in Section 6.4.2 of the Development Agreement, Stanford may have the AS1 Overlay District removed from its lands and the previous zoning restored.

**18.62.060 Alternative Standards Overlay District Two (AS2):  
Housing on Upper California Site**

The purpose of this overlay district is to accommodate single or multiple family housing, or both, on the Upper California Site

that benefits from its proximity to an employment center and benefits from its proximity to an employment center and is compatible both with the College Terrace neighborhood across California Avenue, the adjacent office/research uses to the south and south-east, and Stanford University's residential neighborhood to the northwest. Stanford may develop the Upper California Site in phases. The underlying zoning on the Upper California Site, LM Limited Industrial/Research Park with a fifty-foot L Landscape Combining District on the California Avenue frontage, does not apply to the Upper California Site if the property owner elects to proceed under the AS2 standards.

Stanford shall be allowed to develop any portion of the Required Housing on the Upper California Site in such order and sequence as Stanford shall determine, except for Stanford's phasing and timing obligations with respect to Required Housing under the Development Agreement. It is anticipated that at times during the construction of the Required Housing, portions of the Upper California Site will be occupied with pre-existing limited industrial/research park non-residential buildings. These buildings will remain legal uses and complying facilities until dates set forth below. Upon completion of the Required Housing developments, the Upper California Site shall be exclusively residential, with child care centers a permitted use, unless Stanford needs to provide a substitute Site for all or a portion of the Upper California Site, as provided in the Development Agreement.

**A. AS2 Alternative Development Standards**

**1. Continuing Standards:**

These continuing standards apply to the Upper California Site as a whole. The Upper California Site housing shall at all times during its development, and subsequently, be in compliance with the continuing standards.

Permitted Uses	<p>a) Single-family, two-family, and multiple family residential uses and indoor and outdoor accessory uses customarily incidental to those uses. In the sale or rental of Required Housing, neither Stanford nor its assignees shall discriminate against households with children or on the basis of the age of renters, buyers, or occupants.</p> <p>b) child care center</p>
Conditionally permitted uses	None
Below-market-rate housing	Below-market-rate units shall be provided on- or off-site as provided in the Development Agreement.
Site area, width, and depth Per individual dwelling unit, two-family unit, multiple-family residential project or individual development phase	No minimum
California Avenue frontage setback (minimum)	<p>20 feet from the property line.</p> <p>a) No building element or architectural feature (excluding landscape features,) may extend or project into the setback.</p> <p>b) No parking may be located in the setback area.</p> <p>c) No frontage roads are permitted in the setback area, but roads and</p>

	driveways generally perpendicular to California Avenue are permitted.
Upper California Site perimeter side and rear setback (applied to entire Upper California Site's outer envelope)	10 feet a) No structures or parking areas are permitted in the setback area. b) No perimeter roads or driveways are permitted in the setback area.
Interior setbacks	None. (Minimum setbacks established by Title 24 of the California Code of Regulations, Parts 1 through 9, as adopted and modified by the City of Palo Alto on a uniform basis, shall apply.)
Building height	a) California Avenue frontage: 30 feet within 100 feet of property line, measured from grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the height of the peak or highest ridge line of a pitched or hipped roof directly above point on grade from which height is being measured. b) Balance of Upper California Site: 50 feet, measured from grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the average height of the highest gable of a pitched or hipped roof. c) The height of a stepped or terraced building is the maximum height of any segment of the building. d) "Grade" shall mean the adjacent ground elevation of the finish or existing grade as of December 1, 2004, whichever is lower. Existing grade as of December 1, 2004 is presumed to be as shown on grading plans and spot elevation surveys on file with the

	City as of that date.
Daylight plane	None required
Multiple family design guidelines	Chapter 18.28 shall not apply.
Parking  Except as otherwise provided in this chapter, parking shall be governed by Chapter 18.83 of the 2003 Rules.	<p>2 or more bedrooms - 2.0 spaces, one of which shall be covered, which may be tandem</p> <p>1 bedroom - 1.5 spaces, one of which shall be covered</p> <p>Studio unit - 1 covered space</p> <p>Guest parking - 0.25 spaces per unit.</p> <p>Guest parking shall be clearly marked as reserved for guests and shall be in an area provided for guests with unrestricted access to guest parking.</p>
	Bicycle parking and loading spaces: as required by Chapter 18.83.120 of the 2003 Rules
Streets	Interior streets may be public or private. If private, they shall be subject to a public access easement for vehicles and pedestrians.
Orientation for buildings along California Avenue	Buildings along California Avenue shall approximate the horizontal rhythm of building-to-side yard setback and facade areas of California Avenue residential properties located across the street from, or in the vicinity of the Upper California Site. At the applicant's election, some or all buildings along California Avenue may be two stories.

Architectural review	City shall limit its architectural review as provided in Section 6.4.10 of the Development Agreement. No adopted local design guidelines apply to this site.
Commercial Buildings on Upper California Site on June 10, 2003	All non-residential uses shall cease and all non-residential structures be removed no later than 24 months following all Subsequent Approvals, (as defined in the Development Agreement) for all Required Housing on the Upper California Site. After that time, the Upper California Site shall be exclusively residential, with child care centers as a permitted use, unless Stanford needs to provide substitute Site for all or a portion of the Upper California Site as provided in the Development Agreement. Until that time, those non-residential structures in existence on June 10, 2003 shall be treated as permitted structures and may be used for any use permitted under the LM Limited Industrial/Research Park District under the 2003 Rules.

## 2. Phased Standards:

These phased standards apply to the Upper California Site as a whole. Required Housing may be developed in phases on portions of the Upper California Site; individual phases need not meet the phased standards. For example, an individual phase could have a residential density of thirty dwelling units per acre and no open space. However, when all Required Housing on the Upper California Site is complete, and after, the Upper California Site shall conform to all the phased standards. In addition, for each phase, Stanford shall demonstrate that sufficient land remains on the Upper California Site to permit it to meet the Phased Standards upon completion of the Required Housing.

Upper California Site area	16.96 acres
Residential density (maximum)	15 dwelling units per acre of Gross Area. No additional density bonus for affordable housing is permitted.
Gross floor area	<p>Gross floor area shall include all floors of any building measured to the outside surface of the stud walls, and including all of the following:</p> <ul style="list-style-type: none"> <li>- halls and stairways;</li> <li>- elevator shafts;</li> <li>- service and mechanical equipment areas;</li> <li>- covered parking when located partially or completely above ground;</li> <li>- basement, cellar and attic areas deemed by the director of planning and community environment to be usable;</li> <li>- open porches, arcades, balconies, courts, walkways, breezeways or similar features when located above the ground floor and used for required access; and</li> <li>- all roofed porches, arcades, balconies, porticos, breezeways or similar features when located above the ground floor; and</li> <li>- permanently roofed, but either partially enclosed or unenclosed, building features used for storage or similar uses.</li> </ul> <p>Gross floor area shall not include:</p> <ul style="list-style-type: none"> <li>- parking that is completely underground (excluding area used for storage, mechanical equipment, and other uses as noted above);</li> </ul>



	<ul style="list-style-type: none"> <li>- unroofed exterior areas accessible to the general public, including, but not limited to areas above podium parking;</li> <li>- roofed arcades, balconies, plazas, courts, walkways, porches, breezeways, porticos, and similar features that are 50% or less enclosed by exterior walls and located on the ground floor</li> <li>- areas designated for resource conservation such as trash compactors, recycling and thermal storage facilities.</li> </ul>
<p>Floor area ratio (maximum) of gross floor area to Gross Area of site</p>	<p>The ratio of gross floor area to the Upper California Site Area shall be 0.75 to 1.</p>
<p>Upper California Site coverage (maximum)</p>	<p>40% of the Gross Area of the Upper California Site. Site coverage is that portion of a site that is covered by permanent, usable buildings or structures, excluding landscape features, fountains, planters, sculptures, open play equipment, uncovered sports courts, and similar elements.</p>
<p>Usable open space (minimum)</p>	<p>Total: 25% of the Gross Area of the Upper California Site  Private: No minimum  Common: 10% of the Gross Area of the Upper California Site</p> <p>"Usable open space" is an outdoor or unenclosed space located on the ground or roof of a structure, or on the top of podium parking, or a balcony, deck, porch, patio or terrace, designed and accessible for outdoor living, recreation, pedestrian access, or landscaping, including those portions of the required California Avenue and perimeter setbacks not used for roads or driveways.</p> <p>"Usable open space" does not include</p>

	covered or uncovered parking areas, roads, driveways, or utility or service areas.
Commercial Buildings on Upper California Site on June 10, 2003	All non-residential uses shall cease and all non-residential structures be removed no later than 24 months following all Subsequent Approvals, (as defined in the Development Agreement) for all Required Housing on the Upper California Site. After that time, the Upper California Site shall be exclusively residential, with child care centers as a permitted use, unless Stanford needs to provide Substitute Site for all or a portion of the Upper California Site as provided in the Development Agreement. Until that time, those non-residential structures in existence on June 10, 2003 shall be treated as permitted structures and may be used for any use permitted under the LM Limited Industrial/Research Park District under the 2003 Rules.

**B. AS2 Alternative Base Zoning Standards**

At the applicant's option, the Upper California Site, in its entirety, may be developed in compliance with the RM-15 Low Density Multiple Family Residential District, subject to the L Landscape Combining District, both as defined in the 2003 Rules. Provided, no conditional use permit shall be required for up to four public or private streets crossing the Landscape Combining District to provide access to the Upper California Site. All non-residential uses shall cease and all non-residential structures be removed no later than 24 months following all Subsequent Approvals, (as defined in the Development Agreement) for all Required Housing. After that time, the Upper California Site shall be exclusively residential, with child care centers as a permitted use, unless Stanford needs to provide Substitute Site for all or a portion of the Upper California Site as provided in the Development Agreement. Until that time, those non-residential structures in existence on June 10, 2003 shall be treated as permitted structures and may be used for any use permitted under the LM Limited Industrial/Research Park District under the 2003 Rules.

### **C. Zoning if Alternative Site Needed**

If, after a building permit for construction of an approved project under the AS2 Overlay District has been issued for any part of the Upper California Site, it is determined to be an Infeasible Site because of environmental contamination, then, under the conditions and in the manner described in Section 6.4.2 of the Development Agreement, Stanford may have the AS2 Overlay District removed from its lands and the previous zoning restored.

**18.62.070            Alternative Standards Overlay District Three (AS3):  
Community Soccer Fields at the Mayfield Site**

The purpose of this overlay district is to accommodate the development and use of a community soccer complex on land leased to the City of Palo Alto by Stanford University at the corner of El Camino Real and Page Mill Road on parcels commonly known as 2650, 2700, and 2780 El Camino Real. The land was redistricted from RM (D) Multiple Family Residential to PF Public Facilities in connection with its acquisition for a period of fifty-one years by the City.

<b>Modified Development Standard</b>	
Height	Lighting standards up to seventy feet high are permitted
Fencing	Ball-control fencing up to fourteen (14) feet in height is permitted on the site.