MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF PALO ALTO AND
SIMON PROPERTY GROUP FOR REIMBURSEMENT
OF DEVELOPMENT AGREEMENT COSTS

This Memorandum of Understanding regarding Reimbursement of Development Agreement Costs ("Reimbursement Agreement") is made and entered into the 19th day of December, 2006, by and between the City of Palo Alto ("City") and Simon Property Group, a Delaware corporation ("Simon").

RECITALS:

A. Simon intends to submit an application for a Development Agreement to add approximately 240,000 square feet of retail and to construct a 120 room hotel at the Stanford Shopping Center ("Proposal");

B. On December 11, 2006, the City Council of the City of Palo Alto conducted a Study Session regarding Simon’s Proposal.

C. The Proposal will require various City entitlements which will take substantial time to process. To create more certainty in the entitlement process and to promote comprehensive planning, Simon proposed entering into a Development Agreement with the City;

D. On December 18, 2006, the City Council directed the City Manager and the City Attorney, with assistance from the Director of Planning and Community Development and the Director of Administrative Services, (collectively “City Staff”) to begin preliminary discussions with Simon regarding its Proposal;

E. On December 18, 2006, the City Council further directed City Staff to negotiate a Reimbursement Agreement with Simon to recoup certain costs associated with Simon’s Proposal;

F. City Council Resolution No 6597 authorizes the City to enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of property within the City or within the City’s sphere of influence;
G. City Council Resolution No. 6597 requires the applicant for a Development Agreement to pay the fee prescribed by the municipal fee schedule;

H. The 2006-07 Planning Department Fee Schedule is attached hereto as Exhibit A and incorporated into this Reimbursement Agreement by reference;

I. The parties desire to begin preliminary work and discussions regarding certain preliminary matters before Simon files a formal Development Agreement Application without the City incurring out of pocket or staff costs in connection with such work; and

J. The parties wish to memorialize their agreement for Simon’s reimbursement to the City of certain costs.

NOW, THEREFORE, the parties agree as follows:

1. Simon shall reimburse the City for the following listed costs reasonably incurred by the City after December 18, 2006 in connection with the City’s review and consideration of Simon’s Proposal:

   (a) reasonable fees and expenses charged by the consultant or consultants retained by the City to assist in the preparation of the Environmental Impact Report (“EIR”) evaluating the Proposal and the separate proposal for expansion of the Stanford Medical Center, and for studies or analyses prepared for or used in the EIR, including but not limited to the Citywide Traffic Study, shall be paid by Stanford in accordance with the Reimbursement Agreement between the City of Palo Alto and Stanford, dated December 19, 2006;

   (b) reasonable fees and expenses charged by the consultant or consultants retained by the City to conduct economic and/or housing needs analyses of the Proposal, whether or not such analyses are utilized in the EIR;

   (c) reasonable fees and expenses charged by the consultant or consultants retained by the City to peer review the key retail or hotel planning standards pertaining to the Proposal;

   (d) reasonable fees and expenses charged by outside legal counsel retained by the City in relation to the Proposal;
(e) reasonable fees and expenses charged by the consultant or consultants retained by the City to provide planning services in connection with the Proposal;

(f) documented reasonably incurred City staff, including but not limited to in-house legal staff, time and expenses incurred in connection with the Proposal; and

(g) the reasonable costs of any other materials or services provided to City by other third parties in connection with the Proposal (collectively “Reimbursable Costs”).

In each instance where a consultant is to be retained by the City to perform work for which the City will seek reimbursement under this Agreement, the City shall provide Simon with a scope of work and budget for the consultant’s services and expenses prior to commencement of work by the consultant, and the City shall meet and confer within five (5) business days of presentation of the documentation with Simon to attempt in good faith to reach agreement upon the amount of Reimbursable Costs that will be incurred by the consultant. Further, before the City decides to expand the consultant’s scope of work to increase the amount paid to the consultant beyond the budgeted amount, the City shall provide Simon with the revised scope of work and/or revised budget for the consultant’s services and expenses, and the City shall meet and confer within five (5) business days of presentation of the documentation with Simon to attempt in good faith to reach agreement on the amount of any additional Reimbursable Costs that will be incurred by the consultant.

2. Any consultants, attorneys or other third parties hired by the City to assist in the Proposal shall be directed solely by the City. Simon shall not direct, influence or control their work or conclusions in any way.

3. The Reimbursable Costs shall be paid in accordance with the terms of this Reimbursement Agreement and the City of Palo Alto Planning Department Fee Schedule attached hereto as Exhibit A and as amended by City Council from time to time.

4. Should Simon determine, in its sole discretion, that the amounts for which City claims reimbursement under this Agreement are unreasonable, it may cancel this Memorandum upon
fifteen (15) calendar days written notice to City after which it shall no longer be obligated to reimburse City for any subsequently incurred costs. If Simon cancels this Memorandum, City may, in its discretion, stop work on the Proposal, including any applications filed in connection therewith, which shall toll all applicable time periods governing City’s processing, consideration or action upon any such applications until such time as the parties have resolved their differences. Further in the event of cancellation under this paragraph, Simon shall not assert any claim under the Permit Streamlining Act. If for any reason Simon decides not to proceed with the Proposal, it shall promptly notify the City in writing and the City, its consultants, and their subconsultants and its outside counsel immediately shall cease performing work in connection with the Proposal. In the event of such cancellation, Simon shall not under any circumstances be responsible for Reimbursable Costs incurred after thirty (30) days following the cancellation notice, except that Simon shall be responsible for any Reimbursable Costs charged by third parties under fixed price existing contracts.

5. The City shall bill Simon for the Reimbursable Costs on a monthly basis by providing documentation to Simon that is sufficiently detailed to enable Simon to review the reasonableness of the costs incurred and to determine whether the costs are consistent with the scope of work and budget for each consultant. The City shall use its best efforts to submit documentation of any amounts described in paragraph 1(f) to Simon no later than the last day of the month following the month in which the costs are incurred. Simon shall pay reasonable Reimbursable Costs within 30 days of its receipt of the invoices and documentation described in this paragraph.

6. Simon shall make a deposit of $150,000.00 within 10 days of execution of this Reimbursement Agreement. The funds shall be deposited in a segregated interest bearing account and the funds so deposited and the interest earned thereon shall be credited to the initial Reimbursable Costs, as such become due as provided in this Reimbursement Agreement.

7. All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows, except that any documentation or invoices sent pursuant to paragraphs 1 and 5 may be delivered by facsimile or U.S. mail to Simon and any payments sent pursuant to paragraphs 5 and 6 may be delivered by U.S. Mail to the City:
To City:  
Director Of Planning
and Community Environment
City of Palo Alto
250 Hamilton Avenue
Palo Alto, CA 94301
(650) 329-2154 Facsimile

To Simon:  
Executive Vice President -
Development
115 West Washington Street
Indianapolis, IN 46204

8. This document represents the entire and
integrated agreement between the City and Simon regarding
reimbursement of the Reimbursable Costs and supersedes all prior
negotiations, representation, or agreements, either written or
oral between the parties on this subject. This document may be
amended only by written instrument, signed by the City Manager
on behalf of the City and Executive Vice President - Development
on behalf of Simon. This Reimbursement Agreement shall be
governed by the laws of the State of California.

IN WITNESS WHEREOF, CITY and Simon have executed this
Reimbursement Agreement on the day and year written above.

CITY OF PALO ALTO

By: ____________________________
City Manager

APPROVED AS TO FORM:

Senior Asst. City Attorney

APPROVED:

__________________________
Director of Planning and
Community Environment

SIMON PROPERTY GROUP

By: ____________________________
Arthur W. Spellmeyer III
Its: Executive Vice President
- Development
EXHIBIT A