

Attachment E

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
515 South Figueroa Street, Seventh Floor
Los Angeles, California 90071-3398

Attention: Patrick A. Perry, Esq.

Exempt from filing fees pursuant
to Government Code § 61-031

(Space above for Recorder's use)

DEVELOPMENT AGREEMENT

by and between

**THE CITY OF PASADENA,
a California municipal corporation**

and

**FULLER THEOLOGICAL SEMINARY,
a California nonprofit corporation**

DRAFT – For Discussion Purposes (10/9/06)

Development Agreement by and between the City of Pasadena and Fuller Theological Seminary

This Development Agreement ("**Agreement**") is made and entered into this ____ day of _____, 2006, by and between the CITY OF PASADENA, a municipal corporation ("**City**"), and FULLER THEOLOGICAL SEMINARY, a California nonprofit corporation ("**Fuller**"), pursuant to the authority of Article 2.5, Chapter 4, Division 1, Title 7 (Section 65864, *et seq.* of the Government Code) relating to Development Agreements. The City and Fuller are hereinafter sometimes referred to individually as a "**Party**" and jointly as the "**Parties**."

RECITALS

1. In order to strengthen the public land use planning process, to encourage private participation in the process, to reduce the economic risk of development and to reduce the waste of resources, the Legislature has adopted the Development Agreement Act (Section 65864, *et seq.* of the Government Code). Pursuant to the Development Agreement Act, the City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.

2. The City has adopted rules and regulations for consideration of development agreements pursuant to the Development Agreement Act, which are set forth at Chapter 17.66 of the Pasadena Municipal Code (the "Development Agreement Procedures"). This Agreement has been processed, considered and executed in accordance with the Development Agreement Act, and the City's Development Agreement Procedures.

3. Fuller is the present owner of the real property described in Exhibit "A" hereto (the "**Property**") that is the subject of this Agreement. In order to provide certainty and render development of the Property more feasible in light of the large amount of capital investment necessary to implement the Master Development Plan and the extended planning horizon necessary to coordinate a project of this magnitude and complexity, Fuller requires assurance from the City, with respect to the Property, that the Master Development Plan and other City permits and approvals shall, to the extent specified herein, not be changed or supplemented with inconsistent burdens and exactions. This Agreement will eliminate uncertainty in the planning process and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Property and generally serve the purposes for which development agreements are authorized pursuant to the Development Agreement Act.

4. In implementation of the promulgated State policy to promote private participation in comprehensive planning and to strengthen the public planning process and reduce the economic risk of development, the City deems the implementation of this Agreement to be in the public's best interest and intends that adoption of this Agreement be considered an exercise of the City's police powers to regulate the development of the Property during the term of this Agreement.

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5. Development of the Property in accordance with this Agreement will provide substantial benefits to the City, including without limitation certain fees, and public improvements, and will further important policies and goals of the City. Fuller is an internationally recognized nondenominational theological seminary that has occupied its present location in the heart of Pasadena since 1953. Fuller offers graduate level instruction in theology, psychology, and intercultural studies to a highly diverse student population that currently numbers more than 1,900 students, and which is expected to increase to approximately 2,000 students by 2007. The proposed expansion of campus facilities will further Fuller's educational mission and enhance Pasadena's prestige as a center of world renowned cultural and educational institutions. In connection with the proposed expansion of its campus facilities, Fuller will continue to make positive contributions to the Pasadena community through educational programs designed to encourage students and faculty to volunteer services to local organizations such as congregations, hospitals, mental health clinics, public schools, youth organizations, homeless centers, and others. Fuller also provides an important forum for interfaith dialog to promote peaceful interaction and greater understanding between people of different faiths. In addition, Fuller serves as a resource to the community through a variety of ongoing workshops, lectures, seminars, and special events open to the public. Among other benefits, the proposed expansion of campus facilities will result in the development of approximately 520 new units of below market rate student housing and more than 64,000 square feet of new publicly accessible open space in the shadow of City Hall.

6. All of the requirements of the California Environmental Quality Act (Public Resources Code §§ 21000 *et seq.*) ("CEQA") have been met with respect to the Master Development Plan and this Agreement, and the City has previously reviewed, considered, and certified the Environmental Impact Report (SCH No. 2005041163) ("EIR") [adopted a Statement of Overriding Considerations,] and adopted Findings and a Mitigation Monitoring and Reporting Plan applicable thereto.

7. The City has approved the Master Development Plan for the Property pursuant to applicable City ordinances and regulations. Development of the Property pursuant to the terms and conditions of this Agreement, the Project Approvals, and the EIR will provide for orderly growth and development consistent with the City's General Plan, Zoning Code, and other development policies and programs.

8. On September 27, 2006, the City Planning Commission, designated by the City as the Planning Agency for purposes of Development Agreement review pursuant to Government Code Section 65867, held a duly noticed public hearing on Fuller's application for this Agreement and recommended that the City Council approve this Agreement.

9. On _____, the City Council held a duly noticed public hearing on Fuller's application for this Agreement and by Ordinance No. _____ (the "Development Agreement Ordinance") approved this Agreement. The Development Agreement shall become effective on the date on which the Development Agreement Ordinance becomes effective (the "Effective Date").

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, and in consideration of the premises and mutual promises and covenants

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contained herein, and other valuable consideration the receipt and adequacy of which the Parties hereby acknowledge, the Parties hereto agree as follows:

1. DEFINITIONS.

Each capitalized reference in this Agreement to any of the following terms shall have the meaning set forth below:

1.1 "Agreement" means this Development Agreement between Fuller and the City.

1.2 "Applicable Rules" means the generally applicable rules, regulations, ordinances and officially adopted policies of the City in force as of the Effective Date of this Agreement. Notwithstanding the language of this Section or any other language in this Agreement, Applicable Rules shall mean and include this Agreement, the Master Development Plan and relevant sections of the Pasadena Municipal Code, Title 17, including Chapter 17.30, and the Central District Specific Plan, which are listed in Exhibit "B" attached hereto.

1.3 "CEQA" means the California Environmental Quality Act (Cal. Pub. Res. Code Sections 21000-21178) and the State CEQA Guidelines (Cal. Code Regs., Title 14, Sections 15000 et seq.).

1.4 "City" means the City of Pasadena, a municipal corporation of the State of California exercising municipal home rule powers pursuant to a charter approved and issued by the State of California.

1.5 "City Council" means the City Council of the City, the legislative body of the City pursuant to Section 65867 of the California Government Code.

1.6 "Counsel" shall mean the counsel retained by Fuller to represent Fuller and to assist the City in connection with any Litigation.

1.7 "Fuller" means Fuller Theological Seminary, a California nonprofit corporation.

1.8 "Development Agreement Act" means Article 2.5 of Chapter 4 of Division I of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

1.9 "Development Agreement Ordinance" means Ordinance No. ___ adopted by the City Council on _____, approving this Agreement. This Agreement shall constitute a part of the Development Agreement Ordinance as if incorporated therein in full.

1.10 "Discretionary Action" means an action which requires the exercise of judgment, deliberation or a decision on the part of the City and/or any City Agency in the process of approving or disapproving a particular activity, as distinguished from an activity, including issuance of ministerial permits and approvals, which merely requires the City and/or any City Agency to determine whether there has been compliance with statutes, ordinances or regulations.

1.11 "EIR" means the Final Environmental Impact Report for the Project certified by the City in accordance with the requirements of CEQA.

1.12 "Effective Date" shall have the meaning set forth in Section 7.1 below.

1.13 "Event of Default" shall mean any failure or unreasonable delay by either Party to perform any term, provision, condition or obligation of this Agreement.

1.14 "Exactions" means all exactions that will or may be imposed by the City as a condition of developing the Project, including but not limited to fees, in-lieu payments, or other monetary payments, requirements for acquisition, dedication or reservation of land, obligations to construct on-site or off-site public and private improvements called for in connection with the development of the Project under this Agreement, the Project Approvals, and the Applicable Rules, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, impositions made under other Applicable Rules, or the City's General Plan.

1.15 "General Plan" means the General Plan of the City.

1.16 "Inspections" means all field inspections and reviews by City officials during the course of construction of the Project and the processing of certificates of occupancy (permanent or temporary).

1.17 "Litigation" shall mean any lawsuit (including any cross-action) filed against the City and/or Fuller to the extent such lawsuit challenges the validity, implementation or enforcement of, or seeks any other remedy directly relating to, all or any part of this Agreement.

1.18 "Master Development Plan" shall mean the Fuller Theological Seminary Master Development Plan approved by the City on or before the Effective Date, and as subsequently amended, clarified, corrected, or modified, as set forth in Exhibit ___ hereto.

1.19 "Ministerial Permits and Approvals" means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City in order for Fuller to implement the Master Development Plan. Ministerial Permits and Approvals shall not include any Discretionary Actions.

1.20 "Minor Change" shall have the meaning set forth in Section 7.7 below.

1.21 "Mortgage" means any mortgage, deed of trust, pledge, encumbrance, sale leaseback, or other security interest granted to a lender not affiliated with Fuller, made in good faith and for fair value, encumbering all or any part of the Property or Fuller's interest in this Agreement, given by Fuller for the purpose of obtaining financing for the acquisition of the Property or any portion thereof, or the construction of any improvements thereon.

1.22 "Mortgagee" means any mortgagee, beneficiary under any deed of trust, and/or, with respect to any parcel which is the subject of a sale-leaseback transaction, the person acquiring fee title under a Mortgage.

1.23 "**Parties**" means collectively Fuller and the City.

1.24 "**Party**" means any one of Fuller or the City.

1.25 "**Plaintiff**" means any party seeking relief or compensation through Litigation whether as plaintiff, petitioner, cross-complainant or otherwise.

1.26 "**Planning Commission**" means the Planning Commission of the City and the planning agency of the City pursuant to Section 65867 of the California Government Code.

1.27 "**Planning and Development Director**" means the Planning and Development Director for the City.

1.28 "**PMC**" means the Pasadena Municipal Code.

1.29 "**Project**" means the proposed development of the Property in accordance with the Project Approvals.

1.30 "**Project Approvals**" means all City approvals, entitlements and permits required for the development of the Project including, but not limited to, the Master Development Plan and Subsequent Development Approvals.

1.31 "**Property**" means that certain real property which is owned by Fuller, or over which Fuller holds a right of first refusal for purchase, as of the Effective Date, and which is contemplated to be developed pursuant to the Master Development Plan. The Property is described more particularly in the legal description attached hereto as Exhibit A.

1.32 "**Reserved Powers**" means the rights and authority excepted from this Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date that may be in conflict with the Applicable Rules, but: (1) prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety (2) are Uniform Codes, local building codes or local fire codes; (3) are necessary to comply with state and federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; or (4) are agreed to or consented to by Fuller.

1.33 "**Subsequent Development Approvals**" means all Discretionary Actions and Ministerial Permits and Approvals issued by the City after the Effective Date of this Agreement, including, without limitation, tentative and final tract maps, parcel maps, lot line adjustments, street vacations, variances, conditional use permits, design review, grading and construction permits, encroachment permits, certificates of occupancy, and other approvals reasonably necessary to implement the Project.

1.34 "**Term**" means the applicable period of time during which this Agreement shall be in effect and shall bind the City and Fuller, as described in Section 7.2 below.

1.35 "Uniform Codes" means those building, electrical, mechanical, fire and other similar regulations of a City-wide scope which are based on recommendations of a multi-state professional organization and become applicable throughout the City, such as, but not limited to, the Uniform Building Code, the Uniform Electrical Code, the Uniform Mechanical Code, or the Uniform Fire Code (including those amendments to the promulgated uniform codes which reflect local modification to implement the published recommendations of the multi-state organization and which are applicable City-wide).

2. RECITALS OF PREMISES, PURPOSE AND INTENT.

2.1 State Enabling Statute. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act, which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

"The Legislature finds and declares that:

"(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

"(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties.

2.2 City Procedures and Actions.

2.2.1 Planning Commission Action. Government Code Section 65867 and the City's implementing procedures for development agreements require that a public hearing be held by the City Planning Commission on a proposed development agreement prior to its consideration by the City Council. The Planning Commission on September 27, 2006, after appropriate environmental review, recommended certification of the EIR, approval of the proposed Master Development Plan, and approval of this Agreement.

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2.2.2 City Council Action. The City Council on _____, after conducting a duly-noticed public hearing, certified the EIR, conditionally approved the Master Development Plan, and adopted Ordinance No. _____, to become effective thirty days from publication, approving this Agreement, found that its provisions are consistent with the City's General Plan and any applicable Specific Plan, and authorized the execution of this Agreement.

2.3 Purpose of this Agreement.

2.3.1 Fuller Objectives. In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, Fuller wishes to obtain reasonable assurances with respect to its ability to implement the Master Development Plan in accordance with the Applicable Rules and subject to the terms of this Agreement and the City's Reserved Powers. In the absence of this Agreement, Fuller would have no assurance that it can implement the Master Development Plan as set forth in this Agreement. This Agreement, therefore, is necessary to assure Fuller that during the Term of this Agreement, Fuller will not be subjected to different rules, regulations, ordinances or official policies or delays which are not permitted by this Agreement, the Applicable Rules, or the Reserved Powers.

2.3.2 Mutual Objectives. Implementation of the Master Development Plan in accordance with this Agreement will promote the orderly development and operation of the Project in accordance with the objectives set forth in the General Plan. Moreover, a development agreement for the Master Development Plan will eliminate uncertainty in planning for and securing the orderly development and operation of the Project, thereby achieving the goals and purposes for which the Development Agreement Act was enacted. The Parties believe that such orderly implementation will provide many public benefits to the City through the imposition of development standards and requirements under the provisions and conditions of this Agreement, including without limitation, increased tax revenues and job creation. Additionally, although implementation of this Agreement may restrain the City's land use or other relevant police powers, the Agreement provides the City with sufficient reserved powers during the Term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to the City, Fuller will receive assurance that the Master Development Plan may be implemented during the Term of this Agreement in accordance with the Applicable Rules subject to the terms and conditions of this Agreement and the Reserved Powers.

2.4 Applicability of the Agreement. This Agreement does not: (1) grant density, intensity or uses in excess of that otherwise established in the Applicable Rules; (2) eliminate future Discretionary Actions otherwise required; or (3) amend the City's General Plan.

3. AGREEMENT AND ASSURANCES.

3.1 Agreement and Assurances on the Part of Fuller. In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the premises, purposes and intentions set forth in Section 2 of this Agreement, Fuller hereby agrees as follows:

3.1.1 Project Development. Fuller agrees that it will use its best efforts, in accordance with its own business judgment and taking into account market conditions and economic considerations, to develop the Project in accordance with the terms and conditions of this Agreement and the Applicable Rules.

3.1.2 Phasing of Development. The Parties acknowledge that Fuller cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not all within the control of Fuller, such as philanthropic giving and interest rates. Because the California Supreme Court held in Pardee Construction Company v. City of Camarillo, 37 Cal.3d 465 (1987), that the failure of the parties therein to provide for the timing of development permitted a later adopted initiative restricting the timing of development and controlling the parties' agreement, it is the intent of Fuller and the City to hereby acknowledge and provide for the right of Fuller to develop the Project in such order and at such rate and times as Fuller deems appropriate within the exercise of its sole business judgment. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement. Fuller will use its best efforts, in accordance with its own business judgment and taking into consideration philanthropic giving, interest rates and other economic factors influencing its business decision, to commence or to continue development, and to develop the Project in accordance with the provisions and conditions of this Agreement and with the Applicable Rules.

3.1.3 Impact Fees. Fuller agrees that this Agreement shall not limit any current or future impact fees, linkage fees, development fees, exaction, assessments or fair share charges or other similar fees or charges imposed by the City, or by other governmental entities and which the City is required to collect or assess pursuant to applicable law (e.g., school district impact fees pursuant to Government Code Section 65995).

3.1.4 Public Parking. Fuller shall make its parking facilities available for parking by members of the general public at a reasonable cost during those times that such parking facilities are not required for use by Fuller's faculty, staff, students, and guests.

3.1.5 Affordable Housing Units. All of the net new dwelling units constructed pursuant to the Master Development Plan shall be affordable units as defined by and in compliance with the Applicable Rules (particularly Municipal Code section 17.42.040), or as agreed to by the parties, and are reserved for use by Fuller.

3.2 Agreement and Assurances on the Part of the City. In consideration for Fuller's entering into this Agreement, and as an inducement for Fuller to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the purposes and intentions set forth in Section 2 of this Agreement, the City hereby agrees during the Term as follows:

3.2.1 Entitlement to Implement the Master Development Plan. During the Term of this Agreement, Fuller has the vested right to develop the Project in accordance with the Master Development Plan, subject to the terms and conditions of this Agreement, the Applicable Rules, and the Reserved Powers.

3.2.2 Nonapplication of Changes in Applicable Rules. Any change in, or addition to, the Applicable Rules, including, without limitation, any change in the General Plan, zoning ordinance adopted or becoming effective after the Effective Date, including, without limitation, any such change by means of ordinance, City Charter amendment, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the Mayor, City Council, Planning Commission or City Agency, or by the electorate (excluding the referendum contemplated by Government Code Section 65867.5), as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict with the Applicable Rules or this Agreement, shall not be applied to the Project unless such changes represent an exercise of the City's Reserved Powers or are otherwise expressly allowed by this Agreement.

3.2.3 Agreed Changes and Other Reserved Powers. This Agreement shall not preclude application to the Project of rules, regulations, ordinances and officially adopted plans and policies in conflict with the Applicable Rules where such additional rules, regulations, ordinances and officially adopted plans and policies (i) are mutually agreed to in writing by Fuller and the City in accordance with the requirements of Section 7.7 of this Agreement, or (ii) result from the Reserved Powers.

3.2.4 Subsequent Development Review. The City shall not require Fuller to obtain any approvals or permits for the implementation of the Master Development Plan in accordance with this Agreement other than those permits or approvals which are required by the Applicable Rules or the Reserved Powers. Moreover, the City hereby agrees that it will not unreasonably withhold or unreasonably condition any approvals or permits for the implementation of the Master Development Plan which must be issued by the City, provided that Fuller reasonably and satisfactorily complies with all City-wide standard procedures and policies of the City for processing any such approvals or permits and pays any applicable fees. No change to the Master Development Plan which is consistent with the Applicable Rules shall require an amendment of this Agreement, and in the event any such change is approved, the references in this Agreement to the Master Development Plan shall be deemed to refer to the Master Development Plan as so changed. To the extent permitted by the Applicable Rules, including the standard appeal and review procedures, Fuller's applications for any changes to the Master Development Plan shall be reviewed at an administrative level without the necessity of approval by any City Board or Commission or the City Council.

3.2.5 Moratoria. In the event an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, or otherwise, which relates to the implementation of the Master Development Plan, the City agrees that such ordinance, resolution or other measure shall not alter the terms of this Agreement, unless such changes are adopted pursuant to the City's exercise of its Reserved Powers or other applicable provision of this Agreement.

3.2.6 Environmental Review. The City has conducted extensive environmental review of the Project and has certified the EIR pursuant to the requirements of CEQA. Consistent with the provisions of Section 3.2.4, the City agrees to use its good faith efforts to consult with Fuller regarding any approvals necessary for the implementation of the

Master Development Plan to avoid any unnecessary or unreasonable delays due to requirements for additional documentation pursuant to CEQA.

3.2.7 Tentative Maps.

3.2.7.1 Term. The term of any tentative subdivision map filed in connection with the Project shall, at a minimum, be co-extensive with the Term of this Agreement; provided that, in addition, the City shall extend all such maps to the fullest extent allowed under the applicable provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or the PMC.

3.2.7.2 Vesting Tentative Maps. If any tentative or final subdivision map approved in connection with the development of the Project is a vesting map under the Subdivision Map Act and the PMC, and if this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable insofar as it grants a vested right to Fuller to develop the Project, then the rights and protections afforded to Fuller under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement. Vesting tentative subdivision maps approved by the City for the Project may be recorded in phases.

3.3 Acquisition of Additional Property. Property acquired by Fuller after the Effective Date which is contemplated to be developed pursuant to the Master Development Plan shall be subject to this Agreement upon acquisition thereof, provided that Fuller shall provide to the City (i) notice pursuant to Section 7.14 of this Agreement of the acquisition of such property by Fuller, and (ii) evidence of Fuller's legal or equitable interest in such property. Such property shall thereafter be deemed the Property for all purposes hereunder. Fuller is in no way obligated under this Agreement to acquire or attempt to acquire any property owned by third parties, and in the event that Fuller does not acquire any particular property owned by third parties, Fuller shall have no rights or obligations under the terms of this Agreement with respect to such property.

4. ANNUAL REVIEW.

4.1 Annual Review. During the Term of this Agreement, the City shall initiate and conduct an Annual Review of Fuller's compliance with this Agreement. Such Annual Review shall be limited in scope to determining Fuller's good faith compliance with the provisions of this Agreement as provided in the Development Agreement Act.

4.2 Termination Or Modification Of Agreement. In the event the City Council determines on the basis of substantial evidence that Fuller has not complied in good faith with the terms of this Agreement, and that such non-compliance has not been cured, following written notice thereof to Fuller, within the time period specified in Section 5.1.2 below, the City may terminate this Agreement. Notwithstanding any other provision of this Agreement, the City shall not have any right to modify this Agreement without the consent of Fuller.

5. DEFAULT PROVISIONS.

5.1 Default By Fuller.

5.1.1 Default. In addition to the Annual Review process set forth in Section 4, in the event that Fuller does not perform its obligations under this Agreement in a timely manner, the City shall have all rights and remedies provided for in this Agreement, which shall include compelling the specific performance of the obligations of Fuller under this Agreement, or modification or termination of this Agreement, provided that the City has first complied with the procedure in Section 5.1.2; provided that the City shall have no right to monetary damages under this Agreement as a result of any default by Fuller. Notwithstanding the foregoing or any other limitation in this Agreement, the City is not restricted from imposing administrative, civil, or criminal penalties or fines for violation of its Municipal Code by Fuller.

5.1.2 Notice Of Default. With respect to a default pursuant to this Agreement, the City, through the Planning and Development Director, shall submit to Fuller, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 7.14, identifying with specificity those obligations of Fuller which have not been performed. Upon receipt of the notice of default, Fuller shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than 60 days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Fuller shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

5.1.3 Failure To Cure Default Procedure. If after the cure period has elapsed, the Planning and Development Director finds and determines that Fuller, or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Fuller, or its successors, transferees and/or assignees, as the case may be, has not cured the default pursuant to this Section, and that the City shall terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, Fuller and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City Council in accordance with Section 7.3. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity.

5.2 Default By The City.

5.2.1 Default. In the event the City does not accept, process, or render a decision on necessary development permits, entitlements, or other land use or building approvals for the implementation of the Master Development Plan as provided in this Agreement upon compliance with the requirements therefore, or as otherwise agreed to by the Parties, or the City otherwise defaults under the provisions of this Agreement, Fuller shall have those rights and remedies provided herein or by applicable law, which shall include Section 7.5 compelling the specific performance of the City's obligations under this Agreement provided that Fuller has first

complied with the procedures in Section 5.2.2. The Parties agree that specific performance is the preferred remedy. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses the City may otherwise have with respect to claims for monetary damages and all rights and remedies available at law or in equity.

5.2.2 Notice of Default. Fuller shall first submit to the City a written notice of default in the manner prescribed in Section 7.14 stating with specificity those obligations of the City which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than 60 days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City shall continuously and diligently pursue such remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City has cured the default, the Parties shall submit the matter to arbitration pursuant to Section 7.12 of this Agreement.

6. MORTGAGEE PROTECTIONS.

6.1 Mortgages, Deeds of Trust, Sales and Lease-Backs or Other Financing for Development. Fuller shall have the same right to encumber Fuller's right, title and interest in, to and under this Agreement and the Property that Fuller would have absent this Agreement, pursuant to one or more Mortgages.

6.2 Holder Not Obligated to Construct Improvements. No Mortgagee shall in any way be obligated by the provisions of this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion. Notwithstanding the foregoing, no provision of this Agreement shall be deemed to construe, permit, or authorize any such Mortgagee to devote the Property to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement. Neither entering into this Agreement nor a breach of this Agreement shall defeat, reduce or render invalid the lien of any Mortgage or deed of trust on the Property or any portion thereof made in good faith and for value.

6.3 Notice of Default to Mortgagees; Right to Cure. Whenever the City shall deliver any notice or demand to Fuller with respect to any breach or default by Fuller under this Agreement, the City shall at the same time deliver to each Mortgagee a copy of such notice or demand. Each such Mortgagee shall (insofar as the rights of the City are concerned) have the right at its option within one year after the receipt of such notice to cure or remedy, or to commence to cure or remedy, any such default and to add the cost thereof to the indebtedness secured by the Mortgage held by such Mortgagee.

6.4 No Liability. No Mortgagee shall have any personal liability beyond its interest in any portion of the Property acquired by it through enforcement of its Mortgage for the performance or payment of any covenant, liability, warranty or obligation hereunder, and the City agrees that it shall look solely to the interests of such Mortgagee in such portion of the Property for payment or discharge of any such covenant, liability, warranty or obligation.

6.5 Amendment. This Agreement shall not, without the prior written consent of all Mortgagees holding Mortgages on any of the Property, be amended so as to (i) terminate this Agreement prior to the expiration of the Term hereof, or (ii) change any provision of this Agreement which, by its terms is specifically for the benefit of Mortgagees or specifically confers rights on Mortgagees. No amendment to this Agreement made without the consent of any Mortgagee shall be binding upon it or its successors in interest should it become a party hereto.

6.6 Condemnation or Insurance Proceeds. Nothing in this Agreement shall impair the rights of any Mortgagee, pursuant to its Mortgage, to receive proceeds which are otherwise payable to Fuller granting such Mortgage.

6.7 Title by Foreclosure. Except as otherwise set forth herein, all of the provisions contained in this Agreement shall be binding on and for the benefit of any person who acquires title to the Property or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or expiration or other involuntary transfer under a Mortgage.

6.8 Modification of Article; Conflicts. The City hereby agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision which may reasonably be requested by any proposed Mortgagee for the purpose of implementing the Mortgagee protection provisions contained in this Agreement and allowing such Mortgagee reasonable means to protect or preserve the lien and security interest of the Mortgage hereunder as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or ratings agencies) in connection with any such financing. The City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment; provided, however, that any such amendment shall not in any way materially adversely affect any rights of either Party under this Agreement. If there is any conflict between this Section 6 and any other provision contained in this Agreement, this Section 6 shall control.

6.9 Delegation to Mortgagee. Fuller may delegate irrevocably to any Mortgagee the non-exclusive authority to exercise any or all of Fuller's rights hereunder, but no such delegation shall be binding upon the City unless and until either Fuller or such Mortgagee shall give to the City a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Mortgage itself, in which case service upon the City of an executed counterpart or conformed copy of said Mortgage, together with written notice specifying the provisions therein which delegates such authority to said Mortgagee, shall be sufficient to give the City notice of such delegation.

6.10 No Obligation to Cure. Nothing herein contained shall require any Mortgagee to cure any default of Fuller referred to above.

6.11 Separate Agreement. The City shall, upon request, execute, acknowledge and deliver to each Mortgagee requesting same, an agreement prepared at the sole cost and expense of Fuller, in form satisfactory to such Mortgagee, between the City and the Mortgagee, agreeing to all of the provisions hereof.

6.12 No Subordination of Affordable Housing Covenant. Fuller has assumed certain obligations to construct affordable housing pursuant to City's Affordable Housing Incentives and Enforcement Ordinance (Pasadena Municipal Code Section 17.42 et seq.) by providing a minimum of 15 percent of all residential units as affordable to low and moderate-income households and to maintain that housing as affordable pursuant to an Affordable Housing Agreement that shall be entered into by and between Fuller and the City as a covenant running with the land against Fuller's real property. The Inclusionary Housing Agreement shall be recorded in first position, superior to other liens and encumbrances, except for (i) liens to secure payment of real estate taxes and assessments, not delinquent; and (ii) non monetary matters affecting the title which, in the discretion of the Assistant City Manager, do not unreasonably impact the security of the Inclusionary Housing Agreement. All other terms of this Agreement notwithstanding, in no event shall Fuller's obligations to construct and maintain affordable housing pursuant to the Inclusionary Housing Agreement be subject to amendment; subordination or modification in any way or to any extent other than by the prior express written agreement of the City.

6.13 Form of Notice. Any Mortgagee shall be entitled to receive the notices required to be delivered to it hereunder provided that such Mortgagee shall have delivered to each Party a notice substantially in the following form:

The undersigned, whose address is _____, does hereby certify that it is the Mortgagee (as such term is defined in that certain Development Agreement dated as of _____, 200_ between _____ and the City of _____ [the "Development Agreement"]) of the parcel of land described on Exhibit "A" attached hereto, which parcel is owned by _____, a party to the Development Agreement (the "Party"). In the event that any notice shall be given of a default of the Party under the Development Agreement, a copy thereof shall be delivered to the undersigned who shall have the rights of a Mortgagee to cure the same, as specified in the Development Agreement. Failure to deliver a copy of such notice shall in no way affect the validity of the notice to the Party, but no such notice shall be effective as it relates to the rights of the undersigned under the Development Agreement with respect to the Mortgage, including the commencement of any cure periods applicable to the undersigned, until actually received by the undersigned.

7. GENERAL PROVISIONS.

7.1 Effective Date. This Agreement shall be effective upon the date on which the Development Agreement Ordinance becomes effective, as attested by the City Clerk of the City.

7.2 Term.

7.2.1 Basic Term. The Term of this Agreement shall commence on the Effective Date and shall extend for a period of 20 years, unless said Term is otherwise terminated, modified, or extended by circumstances set forth in this Agreement or by mutual consent of the Parties hereto. Following the expiration of the Term, this Agreement shall terminate and be of no further force and effect. The Term shall be subject to extension pursuant to Section 7.4.

7.2.2 Early Full Termination of Agreement. This Agreement is terminable: (i) by mutual written consent of the Parties, or (ii) by either Party following an uncured default by the other Party under this Agreement, subject to the procedures and limitations set forth in this Agreement.

7.3 Appeals To City Council. Where an appeal by Fuller to the City Council from a finding and/or determination of the Planning and Development Director or Planning Commission is created by this Agreement, such appeal shall be taken, if at all, within 20 days after the delivery of notice in accordance with Section 7.14 of such finding and/or determination to Fuller or its successors, transferees, and/or assignees, as the case may be. The City Council shall use its best efforts to act upon the finding and/or determination of the Planning and Development Director or Planning Commission within 80 days after such delivery of notice in accordance with Section 7.14, or within such additional period as may be agreed upon by Fuller and the City Council. Failure of the City Council to act upon the finding and/or determination of the Planning and Development Director or Planning Commission within 120 days after delivery of notice in accordance with Section 7.14, or within such additional period as may be agreed upon by Fuller and the City Council, shall be deemed an affirmance of the finding and/or determination.

7.4 Enforced Delay; Extension Of Time Of Performance. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: war; insurrection; strikes; walk-outs; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs such as the Annual Review); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the City's Reserved Powers; or similar bases for excused performance which is not within the reasonable control of the Party to be excused. If written notice of such delay is given to either Party within 30 days of the commencement of such delay, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon; in the event no such notice is given, such claim of delay from that cause shall be deemed waived and no extension shall be granted on that basis.

7.5 Legal Action. Subject to the limitation on remedies imposed by this Agreement, either Party may, in addition to any other rights and remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, enforce by specific performance the obligations and rights of the Parties hereto or seek declaratory relief with respect to its rights, obligations or interpretations of this Agreement or pursue other remedies under applicable law.

7.6 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions brought by any Party