

with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions.

7.7 Amendments. This Agreement may be amended from time to time in whole or in part by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any amendment to this Agreement which does not relate to the Term, uses other than those permitted by the Applicable Rules, provisions for reservation and dedication of land, changes to any condition set forth in the Master Development Plan, and which constitutes a Minor Change to the Project Approvals shall be reviewed at an administrative level without the necessity of approval by any City Board or Commission or the City Council. For purposes of this Section 7.7, a Minor Change shall include changes that (1) are consistent with the Applicable Rules, (2) do not involve a feature of the Project that was specifically addressed in or was the basis for a finding in the EIR, (3) do not involve a feature of the Project that was specifically addressed in or was a basis for conditions of approval for the Project, or that was a specific consideration by the City in the approval of the Project Approvals, or (4) do not expand the approved floor area or any outdoor activity area by more than 10,000 square feet over the life of the Project.

7.8 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof and as a burden thereon, and the burdens and benefits hereof shall bind and inure to the benefit of all assignees, transferees, and successors to the Parties hereto.

7.9 Implementation.

7.9.1 Processing. Upon satisfactory completion by Fuller of all required applications and payment of appropriate fees, the City and Fuller shall commence and diligently process all required steps necessary for the implementation of this Agreement and the implementation of the Master Development Plan in accordance with the terms of this Agreement. Fuller shall, in a timely manner, provide the City with all documents, plans, fees, and other information necessary for the City to carry out its processing obligations.

7.9.1.1 Timeframes and Staffing for Processing and Review. The City agrees that expeditious processing of Ministerial Permits and Approvals, Inspections, and any other approvals or actions required for the implementation of the Master Development Plan are critical to the implementation of the Project. The City and Fuller agree that all requests for Ministerial Permits and Approvals shall be reviewed and/or completed by the City as expeditiously as possible following the submittal of full and complete applications for such Ministerial Permits and Approvals. The City further agrees to expeditiously respond to requests for Inspections by Fuller.

7.9.2 Other Governmental Permits. Fuller shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project or implementation of the Master Development Plan. The City shall cooperate with Fuller in its endeavors to obtain such permits and approvals and shall, from time to time at the request of Fuller, attempt with due diligence

and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals, or services, provided such agreements are reasonable and not detrimental to the City. These agreements may include, but are not limited to, joint powers agreements under the provisions of the Joint Exercise of Powers Act (Government Code Section 6500, et seq.) or the provisions of other laws to create legally binding, enforceable agreements between such parties. To the extent allowed by law, Fuller shall be a party to any such agreement, or a third party beneficiary thereof, entitled to enforce for its benefit on behalf of the City, or in its own name, the rights of the City or Fuller thereunder or the duties and obligations of the parties thereto. Fuller shall reimburse the City for all costs and expenses incurred in connection with seeking and entering into any such agreement provided that Fuller has requested it. Fuller shall defend the City against any challenge by any person or entity to any such agreement, and shall reimburse the City for any costs and expenses incurred by the City in enforcing any such agreement. Any fees, assessments, or other amounts payable by the City thereunder shall be borne by Fuller, except where Fuller has notified the City in writing, prior to the City entering into such agreement, that it does not desire for the City to execute such agreement.

7.10 Relationship of the Parties. It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that Fuller is an independent party and not an agent of the City. Further, the City and Fuller hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing herein or in any document executed in connection herewith shall be construed as making the City and Fuller joint venturers or partners.

7.11 Dispute Resolution.

7.11.1 Dispute Resolution Proceedings. The Parties may agree to dispute resolution proceedings to fairly and expeditiously resolve disputes or questions of interpretation under this Agreement. These dispute resolution proceedings may include: (a) procedures developed by the City for expeditious interpretation of questions arising under development agreements; (b) non-binding arbitration as provided below; or (c) any other manner of dispute resolution which is agreed upon by the Parties.

7.11.2 Arbitration. Any dispute between the Parties that is to be resolved by arbitration shall be settled and decided by arbitration conducted by an arbitrator who must be a former judge of the Los Angeles County Superior Court or Appellate Justice of the Second District Court of Appeals or the California Supreme Court. This arbitrator shall be selected by mutual agreement of the Parties.

7.11.3 Arbitration Procedures. Upon appointment of the arbitrator, the matter shall be set for arbitration at a time not less than 30 nor more than 90 days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under the procedures set forth in the Code of Civil Procedure Section 638, et seq., or under such other procedures as are agreeable to both Parties, except that provisions of the California Code of Civil Procedure pertaining to discovery and the provisions of the California Evidence Code shall be applicable to such proceeding.

7.11.4 Extension of Agreement Term. The Term of this Agreement as set forth in Section 7.2 shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that such extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of such dispute resolution.

7.12 Cooperation In The Event Of Litigation. In the event of any Litigation instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the Master Development Plan, the Parties hereby agree to affirmatively cooperate in defending said action.

7.12.1 Coordination and Notice. In the event any Litigation should arise, the City shall notify Fuller in writing of such Litigation not later than five business days after service upon the City and shall transmit to Fuller any and all documents (including, without limitation, correspondence and pleadings) received by, or served upon, the City in connection with such Litigation. Upon receipt of such notice from the City, Fuller shall retain and appoint legal counsel ("Counsel" for purposes of this Section) with respect to the Litigation. The Parties acknowledge that Counsel will appear and represent Fuller in connection with such Litigation and such Counsel shall, at the request of the City Attorney, cooperate with the City Attorney and shall coordinate legal strategy and otherwise cooperate with the City in connection with the Litigation. The City Attorney or his or her designee shall appear on behalf of the City in any such Litigation and shall at all times retain final authority and control over all documents to be filed on the City's behalf and all actions to be taken by the City with respect to Litigation. The City shall cooperate with Counsel's defense of the Litigation, and shall make its records (other than documents privileged from disclosure) and personnel available to Counsel as may be reasonably requested by Counsel in connection with the Litigation.

7.12.2 Joint Defense. It is understood and agreed that Counsel shall represent Fuller and that the City shall not be considered the client of Counsel, nor Fuller the client of the City Attorney. Both Fuller and the City understand that the requirements of cooperation contained in this Agreement apply only as to matters reasonably necessary for the accomplishment of the defense of the Litigation, and shared information is intended to be, and must be, kept confidential.

7.13 Notices. Any notice or communication required hereunder between the City and Fuller must be in writing, and may be given either personally, by registered or certified mail, return receipt requested or by overnight courier. If given by registered or certified mail, the same shall be deemed to have been delivered and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or delivered by courier, a notice shall be deemed to have been delivered when received by the Party to whom it is addressed. Any Party hereto may at any time, by giving 10 days' written notice to the other Party hereto, designate any other address in substitution of the address, or any additional address, to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:

City of Pasadena
175 North Garfield Avenue
Pasadena, California 91109
Attn: Director of Planning and Development

with copies to:

City Attorney
City of Pasadena
215 North Marengo Avenue, Suite 100
Pasadena, California 91109

If to Fuller:

Fuller Theological Seminary
135 North Oakland Avenue
Pasadena, California 91182
Attn: Chief Financial Officer

with copies to:

Allen Matkins Leck Gamble Mallory & Natsis LLP
515 South Figueroa Street, Seventh Floor
Los Angeles, California 90071
Attn: Patrick A. Perry, Esq.

7.14 Estoppel Certificates. Either Party may, at any time, deliver written notice to the other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or, if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligation set forth in this Agreement or, if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within 30 days following the receipt thereof. Any third party including a Mortgagee shall be entitled to rely on such certificate.

7.15 Recordation. As provided in Government Code Section 65868.5, the Pasadena City Clerk shall record a copy of this Agreement with the Registrar-Recorder of Los Angeles County within 10 days following its execution by both Parties. Fuller shall provide the City Clerk with the fees for such recording prior to or at the time of such recording. To the extent that the Property consists of property leased to Fuller, this Agreement shall encumber only the leasehold interest and shall not constitute an encumbrance upon the estate in fee.

7.16 Constructive Notice And Acceptance. Every person who now or hereafter owns or acquires any right, title, interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether

or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

7.17 Severability. If any provisions, conditions, or covenants of this Agreement, or the application thereof to any circumstances of any Party, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

7.18 Time of The Essence. Time is of the essence for each provision of this Agreement of which time is an element.

7.19 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 and such waiver refers expressly to this Section. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of any right or remedy with respect to any other occurrence or event.

7.20 Third Party Beneficiaries. The only Parties to this Agreement are the City and Fuller and their successors in interest. There are no third party beneficiaries, and this Agreement is not intended, and shall not be construed to benefit or be enforceable by, any other person whatsoever.

7.21 Expedited Processing. Fuller and the City agree to cooperate in the expedited processing of any legal action seeking specific performance, declaratory relief or injunctive relief, to set court dates at the earliest practicable date(s) and not cause delay in the prosecution/defense of the action, provided that such cooperation shall not require any Party to waive any rights.

7.22 Entire Agreement. This Agreement and the documents, agreements and exhibits referenced herein or attached hereto set forth and contain the entire understanding and agreement of the Parties with respect to the rights and obligations contained herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements except as expressly referred to herein, and no testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement.

7.23 Legal Advice; Neutral Interpretation; Headings, and Table Of Contents. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question. The headings and table of contents used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

7.24 Counterparts. This Agreement is executed in __ duplicate originals, each of which is deemed to be an original. This Agreement, not counting the Cover Page and Table of

Contents, consists of __ pages and __ Exhibits which constitute the entire understanding and agreement of the Parties. The Exhibits are identified in the List of Exhibits, which is contained in the Table of Contents of this Agreement.

IN WITNESS WHEREOF, this Agreement was executed by the Parties hereto on the dates set forth below.

**CITY OF PASADENA, a political
subdivision of the State of California**

By: _____
Mayor, City of Pasadena

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

By: _____
Its: _____

By: _____
Its: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT “A”

Legal Description of the Property

[To Be Provided]

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

EXHIBIT “B”

Relevant Sections of Title 17: City of Pasadena Zoning Code

- **Article 3, Chapter 17.30**
- **Article 4**
- **Article 5**
- **Article 6**
- **Article 7**
- **Article 8**
- **Appendix A – Planned Development Districts, PD – 21: Montgomery Engineering**

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

EXHIBIT “C”
Master Development Plan
[To Be Provided]

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| 1. DEFINITIONS..... | 3 |
| 1.1 "Agreement" | 3 |
| 1.2 "Applicable Rules"..... | 3 |
| 1.3 "CEQA" | 3 |
| 1.4 "City" | 3 |
| 1.5 "City Council" | 3 |
| 1.6 "Counsel" | 3 |
| 1.7 "Fuller"..... | 3 |
| 1.8 "Development Agreement Act" | 3 |
| 1.9 "Development Agreement Ordinance" | 3 |
| 1.10 "Discretionary Action"..... | 3 |
| 1.11 "EIR" | 4 |
| 1.12 "Effective Date" | 4 |
| 1.13 "Event of Default"..... | 4 |
| 1.14 "Exactions" Project Approvals | 4 |
| 1.15 "Master Development Plan" | 4 |
| 1.16 "General Plan" | 4 |
| 1.17 "Inspections" | 4 |
| 1.18 "Litigation" | 4 |
| 1.19 "Master Development Plan" shall mean the Fuller Theological Seminary Master Development Plan | 4 |
| 1.20 "Ministerial Permits and Approvals" | 4 |
| 1.21 "Minor Change" | 4 |
| 1.22 "Mortgage" | 4 |

| | <u>Page</u> |
|--|-------------|
| 1.23 "Mortgagee" | 4 |
| 1.24 "Parties" | 5 |
| 1.25 "Party" | 5 |
| 1.26 "Plaintiff" | 5 |
| 1.27 "Planning Commission" | 5 |
| 1.28 "Planning Director" | 5 |
| 1.29 "PMC" | 5 |
| 1.30 "Project" Project Approvals | 5 |
| 1.31 "Project Approvals" | 5 |
| 1.32 "Property" | 5 |
| 1.33 "Reserved Powers" | 5 |
| 1.34 "Subsequent Development Approvals" | 5 |
| 1.35 "Term" | 5 |
| 1.36 "Uniform Codes" | 6 |
| 2. RECITALS OF PREMISES, PURPOSE AND INTENT | 6 |
| 2.1 State Enabling Statute | 6 |
| 2.2 City Procedures and Actions | 6 |
| 2.2.1 Planning Commission Action | 6 |
| 2.2.2 City Council Action | 7 |
| 2.3 Purpose of this Agreement | 7 |
| 2.3.1 Fuller Objectives | 7 |
| 2.3.2 Mutual Objectives | 7 |
| 2.4 Applicability of the Agreement | 7 |
| 3. AGREEMENT AND ASSURANCES | 7 |
| 3.1 Agreement and Assurances on the Part of Fuller | 7 |

| | <u>Page</u> |
|--|-------------|
| 3.1.1 Project Development..... | 8 |
| 3.1.2 Phasing of Development..... | 8 |
| 3.1.3 Impact Fees..... | 8 |
| 3.1.4 Public Parking..... | 8 |
| 3.2 Agreement and Assurances on the Part of the City | 8 |
| 3.2.1 Entitlement to Implement the Master Development Plan..... | 8 |
| 3.2.2 Nonapplication of Changes in Applicable Rules..... | 9 |
| 3.2.3 Agreed Changes and Other Reserved Powers | 9 |
| 3.2.4 Subsequent Development Review | 9 |
| 3.2.5 Moratoria..... | 9 |
| 3.2.6 Environmental Review..... | 9 |
| 3.2.7 Tentative Maps..... | 10 |
| 3.3 Acquisition of Additional Property..... | 10 |
| 4. ANNUAL REVIEW | 10 |
| 4.1 Annual Review..... | 10 |
| 4.2 Termination Or Modification Of Agreement..... | 10 |
| 5. DEFAULT PROVISIONS..... | 10 |
| 5.1 Default By Fuller | 11 |
| 5.1.1 Default..... | 11 |
| 5.1.2 Notice Of Default..... | 11 |
| 5.1.3 Failure To Cure Default Procedure..... | 11 |
| 5.2 Default By The City..... | 11 |
| 5.2.1 | 11 |
| 5.2.2 | 12 |
| 6. MORTGAGEE PROTECTIONS | 12 |

| | <u>Page</u> |
|--|-------------|
| 6.1 Mortgages, Deeds of Trust, Sales and Lease-Backs or Other Financing for Development | 12 |
| 6.2 Holder Not Obligated to Construct Improvements | 12 |
| 6.3 Notice of Default to Mortgagees; Right to Cure..... | 12 |
| 6.4 No Liability..... | 12 |
| 6.5 Amendment..... | 13 |
| 6.6 Condemnation or Insurance Proceeds..... | 13 |
| 6.7 Title by Foreclosure | 13 |
| 6.8 Modification of Article; Conflicts | 13 |
| 6.9 Delegation to Mortgagee..... | 13 |
| 6.10 No Obligation to Cure..... | 13 |
| 6.11 Separate Agreement | 13 |
| 6.12 Form of Notice | 14 |
| 7. GENERAL PROVISIONS | 14 |
| 7.1 Effective Date | 14 |
| 7.2 Term..... | 14 |
| 7.2.1 Basic Term..... | 14 |
| 7.2.2 Early Full Termination of Agreement..... | 15 |
| 7.3 Appeals To City Council | 15 |
| 7.4 Enforced Delay; Extension Of Time Of Performance | 15 |
| 7.5 Legal Action..... | 15 |
| 7.6 Applicable Law..... | 15 |
| 7.7 Amendments | 16 |
| 7.8 Covenants..... | 16 |
| 7.9 Implementation | 16 |

| | <u>Page</u> |
|--|-------------|
| 7.9.1 Processing | 16 |
| 7.9.2 Other Governmental Permits | 16 |
| 7.10 Relationship of the Parties | 17 |
| 7.11 Dispute Resolution..... | 17 |
| 7.11.1 Dispute Resolution Proceedings | 17 |
| 7.11.2 Arbitration | 17 |
| 7.11.3 Arbitration Procedures | 17 |
| 7.11.4 Extension of Agreement Term..... | 18 |
| 7.12 Cooperation In The Event Of Litigation..... | 18 |
| 7.12.1 Coordination and Notice | 18 |
| 7.12.2 Joint Defense..... | 18 |
| 7.13 Notices | 18 |
| 7.14 Estoppel Certificates | 19 |
| 7.15 Recordation..... | 19 |
| 7.16 Constructive Notice And Acceptance..... | 19 |
| 7.17 Severability | 20 |
| 7.18 Time of The Essence..... | 20 |
| 7.19 Waiver..... | 20 |
| 7.20 Third Party Beneficiaries | 20 |
| 7.21 Expedited Processing..... | 20 |
| 7.22 Entire Agreement..... | 20 |
| 7.23 Legal Advice; Neutral Interpretation; Headings, and Table Of Contents | 20 |
| 7.24 Counterparts..... | 20 |

LIST OF EXHIBITS

Exhibit "A" Legal Description of the Property

Exhibit "B" Relevant Sections of Title 17: City of Pasadena Zoning Code

Exhibit "C" Master Development Plan