

**MEMORANDUM OF UNDERSTANDING AND LEASE AGREEMENT
(10808 CULVER BOULEVARD)**

This Memorandum of Understanding and Lease Agreement (hereinafter, "AGREEMENT") is made and entered into by and among the City of Culver City (hereinafter, the "CITY"), a California municipal corporation, and the Wende Museum, a California not-for-profit corporation (hereinafter, "WENDE").

This AGREEMENT shall become effective on the date of full execution and delivery of this Agreement.

SECTION 1. RECITALS

- A. CITY is the owner of the land and improvements located on Lots 14 through 30 inclusive, in Tract 9974, as recorded in Book 139, pages 1 and 2 of Maps, in the Office of the County Recorder of the County of Los Angeles, State of California.
- B. WENDE is a not-for-profit 501(c) 3 organization originally incorporated in 2002 to address the wholesale neglect and rampant destruction of Cold War material culture in Eastern Europe and the Soviet Union that followed the fall of the Berlin Wall in 1989.
- C. The parties acknowledge the SUBJECT PROPERTY, as a CITY-owned property, must be operated for the benefit of the general public.
- D. For several decades, the SUBJECT PROPERTY was leased from the CITY by the State Department of the Military (also known as the National Guard) for use as a National Guard Armory.
- E. WENDE has approached the City Council and the Culver City Community with a proposal to move their offices and collection to the SUBJECT PROPERTY and to expand the number of pieces in the collection open to the public in order to provide a public benefit and fulfill a service to the community by strengthening the cultural economy of the city.
- F. The City Council has directed the CITY MANAGER to enter into negotiations with WENDE with the intention of reaching agreement on the terms and conditions under which WENDE would lease the SUBJECT PROPERTY from CITY for the purposes of siting WENDE'S administrative offices and museum, which collection will be open to and benefit the general public

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 2. DEFINITIONS

- A. **AMORTIZABLE RENOVATION COSTS** – An amount agreed to by the CITY and WENDE used to calculate the EARLY CANCELLATION PENALTY. This amount is hereby agreed to be the actual eligible costs incurred to complete the WORK for labor and materials, including professional services such as architectural and design fees. This amount shall not include those costs for labor, materials or services donated or volunteered. Eligible costs are those costs substantiated by a paid invoice.
- B. **BUILDING NO. 1** – The improvements located on the LAND that had previously been used as office, training, and storage by the State of California, Department of the Military, as a National Guard Armory as more particularly described on Exhibit “A” hereto.
- C. **BUILDING NO. 2** – The improvements located on the LAND that include offices and storage areas as more particularly described on Exhibit “A” hereto.
- D. **CERTIFICATE OF OCCUPANCY** – The document(s) issued by a duly authorized officer of the CITY which indicates BUILDING NO. 1 and BUILDING NO. 2 comply with all applicable laws, rules, and regulations and may be safely occupied.
- E. **CITY MANAGER** - The duly appointed and acting City Manager of the City of Culver City, or his/her designee.
- F. **EARLY CANCELLATION PENALTY** – The amount required to be paid by the CITY in the event the CITY determines to terminate the LEASEHOLD INTEREST for reasons other than the default of WENDE prior to the expiration of the first 50 years of the FULL LEASE PERIOD.
- G. **FULL LEASE PERIOD** – A period of 75 years from the first day of the first month after the CERTIFICATE OF OCCUPANCY is issued.
- H. **LAND** – The land located on Lots 14 through 30 inclusive, in Tract 9974, as recorded in Book 139, pages 1 and 2 of Maps, in the Office of the County Recorder of the County of Los Angeles, State of California.
- I. **LEASEHOLD INTEREST** – The leasehold interest granted by this AGREEMENT

by CITY to WENDE for the purposes of siting and operating WENDE'S administrative offices and museum at the SUBJECT PROPERTY.

- J. **NOTICE TO PROCEED** – A written document released by the CITY to WENDE that provides WENDE permission by the CITY that WENDE may proceed with the WORK.
- K. **RENOVATION FUNDS** – The resources obtained by WENDE for the purposes of completing the WORK. **RENOVATION FUNDS** shall include monetary and in-kind donations (including donated, volunteered or discounted professional services, labor, and materials) to complete the WORK.
- L. **SUBJECT PROPERTY** – Collectively the LAND, BUILDING NO. 1, and BUILDING NO. 2, located at 10808 Culver Boulevard, Culver City, California.
- M. **WORK** – The entitlements, renovations, and repairs necessary for the issuance of a **CERTIFICATE OF OCCUPANCY** for BUILDING NO. 1 and BUILDING NO. 2 as administrative offices and museum, to be undertaken by WENDE under this **AGREEMENT** as listed on Exhibit B to this **AGREEMENT**, attached hereto and incorporated herein by this reference.
- N. **WORK COMPLETION PERIOD** – The time between the issuance of the **NOTICE TO PROCEED** and the **CERTIFICATE OF OCCUPANCY**. The **WORK COMPLETION PERIOD** shall initially be a period of twelve months from the first day after the **NOTICE TO PROCEED** is issued and may be extended under the provisions herein, which twelve month period (and any extension granted pursuant to Section 3.A.5. below) shall be extended on a day for day basis to the extent the WORK is delayed as a result of force majeure events. For purposes hereof, force majeure events shall be events beyond the reasonable control of WENDE including (i) strike, lockout or other labor or industrial disturbance, civil disturbance, future order claiming jurisdiction, act of a public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; and (ii) lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other similar industry wide cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives.

SECTION 3. MEMORANDUM OF UNDERSTANDING

- A. **WENDE's Rights, Duties and Responsibilities.**

1. In consideration of being granted the LEASEHOLD INTEREST, WENDE agrees to complete the WORK to the SUBJECT PROPERTY during the WORK COMPLETION PERIOD.
2. WENDE and their directors, officers, agents, employees, members and volunteers shall not have any possessory interest in the SUBJECT PROPERTY except for the LEASEHOLD INTEREST provided by Section 4 of this AGREEMENT and only if conditions precedent to the granting of such LEASEHOLD INTEREST have been satisfied.
3. WENDE shall maintain its charitable nonprofit status with the State of California and the Internal Revenue Service at all times during this AGREEMENT and comply with all federal, state and local laws pertaining to nonprofit corporations.
4. WENDE shall raise the RENOVATION FUNDS to complete the WORK listed on Exhibit B to this AGREEMENT to allow for a CERTIFICATE OF OCCUPANCY to be issued by the CITY for BUILDING NO. 1 and BUILDING NO. 2. At no time shall the CITY become obligated to provide funds for the WORK.
5. WENDE shall complete the items listed on Exhibit B to this AGREEMENT within the WORK COMPLETION PERIOD, as same may be extended; provided, however, that the City Manager or his/her designee shall, upon request of WENDE, extend the WORK COMPLETION PERIOD up to three additional periods of six months each so long as WENDE is using diligent, good faith efforts to complete the WORK and WENDE is not in default under this AGREEMENT. Such extension(s) must be in writing and signed by the City Manager or his/her designee.
6. WENDE shall design or cause to be designed the necessary WORK to the SUBJECT PROPERTY and shall submit any and all design proposals to the CITY and/or the CITY's designated representative for approval, approval shall be subject to Sections 3.B.2. and 3.B.3. below. Where required, such designs shall be completed by properly licensed and qualified individuals or firms.
7. Except as allowed in accordance with designs approved by the CITY, WENDE shall not alter the existing physical contours, features or improvements of the SUBJECT PROPERTY (interior and exterior) without first requesting and receiving the written approval from the CITY and/or the CITY's designated representative. The CITY shall provide a written

response within twenty (20) days after the presentation of any and all requests.

8. WENDE shall track and maintain fiscal accountability to all its donors for the RENOVATION FUNDS, and maintain records of financial transactions associated with donated materials and labor as legally obligated as a 501(c) 3 charitable organization.
9. WENDE shall notify the CITY and/or the CITY's designated representative in the case dangerous conditions are discovered at the SUBJECT PROPERTY.
10. With the CITY's advance consent, prior to commencement of the FULL LEASE PERIOD, WENDE may conduct fund raisers at the SUBJECT PROPERTY, provided that all required CITY permits and approvals are obtained. WENDE may utilize signs, including but not limited to signs, banners, flags or posters, during such events, provided they are in compliance with the Culver City Municipal Code. WENDE shall remove all such signs immediately upon conclusion of such events. The CITY, in its sole discretion, may limit the number of such events; provided, however, that WENDE shall have the right to conduct at least eight (8) events.
11. Other than the limited number of fund raisers referenced in Section 3.A.10. above, WENDE shall not have any rights to occupy or otherwise use the SUBJECT PROPERTY during the WORK COMPLETION PERIOD and, in no event, prior to the effective date of the LEASEHOLD INTEREST conveyed by Section 4 of this AGREEMENT.
12. Upon both the completion of the WORK and the issuance of the CERTIFICATE OF OCCUPANCY, WENDE acknowledges that the WORK shall become the property of the CITY. Other than the rights, responsibilities, and duties provided to WENDE under this AGREEMENT, WENDE shall have no claim for payment or reimbursement for the WORK.
13. WENDE acknowledges that WENDE shall be required to comply with all applicable CITY requirements, including, but not necessarily limited to, zoning entitlements (including appropriate analysis of parking and traffic), building permits, the provisions of Chapter 17.250 of the Culver City Municipal Code regarding Open Space District Requirements, and other items in compliance with the Culver City Municipal Code.
14. As consideration for satisfactory completion of conditions precedent set

forth in Section 4 of this AGREEMENT, the CITY shall grant to WENDE an exclusive leasehold interest in LAND, BUILDING NO. 1, and BUILDING NO. 2.

15. Contribution of Public Benefit: CITY has decided to enter into this AGREEMENT because establishment of the Museum provides a benefit to the general public. WENDE agrees to provide the following at the sole cost of WENDE:
 - A. Free Admission Days: WENDE shall provide at least one day per month where members of the public may gain admission to the Museum at no cost.
 - B. Outreach/Education Opportunities for the CCUSD: WENDE shall offer outreach/educational opportunities to the Culver City Unified School District a minimum of three times per year. Such opportunities may include: classroom presentations, special viewings of the WENDE collection.
 - C. Outreach/Education Opportunities for the CITY: WENDE shall offer outreach/educational opportunities to the CITY a minimum of six times per year. Such opportunities may include: classroom presentations, special viewings of the WENDE collection.
 - D. Coordination with other Existing and Future arts/Cultural Organizations: WENDE shall work cooperatively with other Culver City based arts and cultural organizations to promote the various cultural opportunities in Culver City available now, and in the future. As an illustration, collaboration opportunities may exist with the Culver City Historical Society, the Mayme Clayton Museum, and Sony Pictures Entertainment.
 - E. The requirements of this Paragraph may also be met with similar alternative contributions as mutually agreed to by WENDE and CITY subject to the approval of the CITY MANAGER.
16. Presentation of Collection at SUBJECT PROPERTY: Upon the effective date of the LEASEHOLD INTEREST, WENDE shall bring a sufficient number of pieces in their collection to the SUBJECT PROPERTY for purposes of display as part of the museum's operation. WENDE shall continue to maintain and keep the collection at the SUBJECT PROPERTY

during the FULL LEASE PERIOD to the reasonable satisfaction of the CITY MANAGER. Nothing in this Paragraph prevents WENDE from acquiring new pieces for the collection on display at the SUBJECT PROPERTY or rotating such parts of the collection on display as deemed appropriate by WENDE.

B. CITY's Rights, Duties and Responsibilities.

1. CITY shall retain title to the SUBJECT PROPERTY.
2. After discussion with WENDE, CITY shall review any and all proposals for the WORK and have the right to reject or amend such proposals at its sole discretion, which discretion shall be reasonably exercised by CITY.
3. After discussion with WENDE, CITY shall review any and all proposals to alter the existing physical contours, features, or improvements of the SUBJECT PROPERTY (interior and exterior) and have the right to reject or amend such proposals at its sole discretion, which discretion shall be reasonably exercised by CITY.
4. Upon request by WENDE, CITY shall provide all pertinent information necessary for WENDE to effectively fulfill its responsibilities under this AGREEMENT. WENDE shall allow at least seven (7) business days for any and all written responses from CITY, unless otherwise requested.
5. If CITY requires information from WENDE concerning issues related to the SUBJECT PROPERTY which may arise, CITY shall request such information, and allow at least seven (7) business days for any and all written responses from the WENDE, unless otherwise requested.
6. Upon satisfactory completion of the WORK by WENDE, the CITY shall issue the CERTIFICATE OF OCCUPANCY in accordance with the CITY's usual process for inspection of the WORK and finalization of all required permits.
7. CITY Contributions to Project: In return for the public benefit provided by WENDE through the operation of a Museum and Administrative Offices at the SUBJECT PROPERTY, including but not limited to the items contained in Section 3.A.15 hereof, CITY shall contribute the following non General Fund, one-time items to defray certain costs which otherwise would be incurred by WENDE during completion of the WORK and operation of the administrative offices and museum:

(a) Value of Leasehold Interest: Subject to the consideration payment by WENDE provided for in Section 4.D hereof, the CITY shall contribute the value of the LEASEHOLD INTEREST conveyed hereby in the SUBJECT PROPERTY.

(b) Sewer Facility Connection Fee.

(c) Art in Public Places Fee: The CITY and WENDE shall work cooperatively to integrate into the design elements for BUILDING NO. 1 and BUILDING NO. 2 that would qualify BUILDING NO. 1 and BUILDING NO. 2 as Art in Public Places in accordance with Chapter 15.06 of the Culver City Municipal Code such that the In-Lieu Fee equal to 1% of the total building valuation for the project is not required.

(d) VALUE OF PARKING: CITY and WENDE shall work diligently and in good faith to provide at least the minimum number of parking spaces required by the Culver City Municipal Code and other applicable Law. At any time prior to the issuance of Building Permits for the WORK, should the parking requirements be reasonably determined by either party to be infeasible, then either party may terminate this AGREEMENT by providing 30 days' notice.

SECTION 4. LEASEHOLD INTEREST

A. **Conditions Precedent.** This SECTION 4 shall become operative only after the full satisfaction of the following conditions precedent:

1. All WORK required of WENDE under this AGREEMENT has been successfully completed to the satisfaction of the CITY at the sole cost of WENDE; and
2. The CITY has issued a CERTIFICATE OF OCCUPANCY for BUILDING NO. 1 and BUILDING NO. 2.

B. **Premises Leased and Use Thereof.** CITY is fee simple owner of the SUBJECT PROPERTY. BUILDING NO. 1 and BUILDING NO. 2 have been occupied by the State of California – Department of the Military for several decades. CITY hereby agrees to grant an exclusive leasehold interest in BUILDING NO. 1 and BUILDING NO. 2 to WENDE for the purposes of housing administrative offices, collection archives, and operation of a museum that is open to the public and other activities associated with the operation of such a museum. No other uses of the SUBJECT PROPERTY shall be

permitted, except for ancillary uses approved in writing by the CITY MANAGER.

C. **Term of LEASEHOLD INTEREST.** Unless terminated as provided herein, the term of the LEASEHOLD INTEREST shall be for a period of **75 years** beginning on the first day of the first month after the issuance of the CERTIFICATE OF OCCUPANCY. At the conclusion of the FULL LEASE PERIOD, the LEASEHOLD INTEREST shall expire.

D. **Consideration for Lease.** In consideration of the LEASEHOLD INTEREST, WENDE shall, on or before the first day of the first month after the issuance of the CERTIFICATE OF OCCUPANCY and January 1st of each subsequent year this AGREEMENT remains in effect, pay CITY one dollar (\$1.00) per year.

E. **Assignment; Hypothecation.** The LEASEHOLD INTEREST provided hereby is for the specific benefit of WENDE and any attempt by WENDE to assign the benefits or burdens of the LEASEHOLD INTEREST, except as provided for herein, without prior written approval of CITY, is void and of no force or effect. WENDE shall not mortgage, pledge, or otherwise hypothecate BUILDING NO. 1 and/or BUILDING NO. 2 as security for the payment of any debt, for the purpose of securing funds for WENDE's use, and any such instrument shall be null and void. Such prohibition applies to the LEASEHOLD INTEREST conveyed to WENDE pursuant to this Section and the CITY's fee title to the SUBJECT PROPERTY. Nothing in this Paragraph shall prevent WENDE from licensing space on a short term basis to third parties.

F. **Destruction of Buildings.** If BUILDING NO. 1 and/or BUILDING NO. 2 is substantially destroyed by fire or other means, or by acts of nature, so as to make BUILDING NO. 1, BUILDING NO. 2 and/or LAND unusable, then either the CITY or WENDE may terminate the LEASEHOLD INTEREST. "Substantially destroyed" shall mean the cost of repair is more than fifty percent (50%) of replacement costs. CITY shall not exercise its right to terminate the LEASEHOLD INTEREST under this Section 4.F until the expiration of 60 calendar days from the date BUILDING NO. 1, BUILDING NO. 2 and/or LAND is substantially destroyed. During this period, WENDE shall have the option, at its sole cost and subject to insurance proceeds payable by the CITY, to notify CITY that WENDE has elected to restore BUILDING NO. 1, BUILDING NO. 2 and LAND to its condition prior to its substantial destruction, subject to the applicable building standards then prevailing, by giving CITY notice within said 60 calendar day period. In the case WENDE exercises its option under this Section 4.F, such restoration activities shall commence within six months from the date of substantial destruction and such restoration shall be complete no later than one year from the date of substantial destruction, subject to delays resulting from force majeure events. If BUILDING NO. 1 and/or BUILDING NO. 2 is partially destroyed by fire or other means, or by acts of nature but not substantially destroyed, WENDE may elect to either terminate the LEASEHOLD INTEREST or restore BUILDING NO. 1, BUILDING NO. 2 and LAND to

its condition prior to its destruction, subject to the applicable building standards then prevailing. If WENDE elects to restore, such restoration shall be at the sole cost of WENDE and subject to insurance proceeds payable by the CITY. CITY shall assign to WENDE an amount not to exceed the amount expended by WENDE on the cost of restoration from any insurance proceeds payable to CITY resulting from the casualty.

G. No Improvements. Except for the WORK made pursuant to this AGREEMENT, WENDE shall not make any improvements or alterations to BUILDING NO. 1 or BUILDING NO. 2 without prior approval from CITY, which approval shall not be unreasonably withheld; provided, that all costs incurred for any improvements or alterations whatsoever of BUILDING NO. 1 and/or BUILDING NO. 2 shall be the sole responsibility of WENDE. Once the CERTIFICATE OF OCCUPANCY for BUILDING NO. 1 and BUILDING NO. 2 is issued by the CITY, the state of BUILDING NO. 1 and BUILDING NO. 2 on that date shall become the "original condition" for purposes of the LEASEHOLD INTEREST. Subject to the receipt of prior approval from the CITY, which approval shall not be unreasonably withheld, WENDE shall have the right to build additional improvements on the LAND.

H. Periodic Closure of Subject Property. CITY shall have the right to temporarily close a portion or the entire SUBJECT PROPERTY to allow for maintenance as deemed necessary and shall provide notice of such closure to WENDE. In the event the CITY determines to close the SUBJECT PROPERTY due to an emergency, such notice shall be provided at a reasonable time after the emergency has been resolved. When the SUBJECT PROPERTY is closed pursuant to the terms of this Paragraph, WENDE agrees that it shall not be entitled to any compensation from CITY as a result of such closure.

I. No Obligation by City to Maintain Premises. City shall have no obligation or duty, whatsoever, to maintain, repair, or replace the SUBJECT PROPERTY or any of the improvements on the SUBJECT PROPERTY. WENDE shall properly maintain, in good order and repair (reasonable wear and tear and damage by casualty excepted), the LAND, BUILDING NO. 1, and BUILDING NO. 2 including the landscaping.

J. Payment of Property and Other Taxes. If any taxes are assessed based on the LEASEHOLD INTEREST or WENDE'S use of the SUBJECT PROPERTY, then WENDE shall be solely responsible for paying such taxes. CITY shall be responsible for all other taxes, if any.

K. Utilities. WENDE is responsible for and shall promptly pay when due the utility costs for the SUBJECT PROPERTY.

L. Right to Terminate the LEASEHOLD INTEREST. Either the CITY or WENDE may terminate the LEASEHOLD INTEREST, with or without cause, upon written notice to the other party; provided, that such termination shall be effective upon the 270th day after the date of the notice. Termination of the LEASEHOLD INTEREST is subject to the EARLY CANCELLATION PENALTY as set forth in Section 4.M. Notwithstanding the other provisions of this Paragraph, other than in the case WENDE is in default under this AGREEMENT, CITY shall not exercise its right to terminate the LEASEHOLD INTEREST during the first five years of the FULL LEASE TERM.

M. Early Cancellation Penalty. In recognition of the AMORTIZABLE RENOVATION COSTS invested in the SUBJECT PROPERTY by WENDE, if the CITY terminates the LEASEHOLD INTEREST during the first 50 years of the FULL LEASE TERM for reasons other than the default of WENDE, then the CITY shall pay to WENDE an amount equal to the following formula:

$$\text{EARLY CANCELLATION PENALTY} = \{(50 - \text{NUMBER OF YEARS SUBJECT PROPERTY OCCUPIED BY WENDE}) \div 50\} \times \text{AMORTIZABLE RENOVATION COSTS}\}.$$

For illustrative purposes only, if the AMORTIZABLE RENOVATION COSTS were \$50,000,000 and the CITY exercised its option to terminate the LEASEHOLD INTEREST in the 25th year WENDE has occupied the SUBJECT PROPERTY, the EARLY CANCELLATION PENALTY would be calculated as follows:

$$\text{EARLY CANCELLATION PENALTY} = \{(50-25) / 50\} \times \$50,000,000 = 25/50 \times \$50,000,000 = \$25,000,000.$$

If the CITY terminates the LEASEHOLD INTEREST on or after the first day of the 51st year of the FULL LEASE TERM, or if WENDE terminates the LEASEHOLD INTEREST at any time during the FULL LEASE TERM, then the EARLY CANCELLATION PENALTY shall not apply.

N. City Right to Enter Premises. CITY shall retain the right to enter the SUBJECT PROPERTY at any reasonable time for the purpose of inspecting the SUBJECT PROPERTY. Except in cases of emergency, in the case CITY wishes to exercise this RIGHT TO ENTER during times when the Museum is open for business and/or to the public, CITY shall provide reasonable notice to WENDE including an option for WENDE to be present.

O. Surrender Condition. Upon the expiration or earlier termination of this AGREEMENT, WENDE shall surrender the SUBJECT PROPERTY in good condition and repair, reasonable wear and tear and damage by casualty excepted. WENDE shall

remove its furniture, fixtures, equipment and other items of personal property in or upon the SUBJECT PROPERTY, but shall not be obligated to remove the WORK or any other alterations, improvements or additions in or to the SUBJECT PROPERTY.

P. Signage. WENDE shall have the right to signage on the SUBJECT PROPERTY in conformance with the Culver City Municipal Code.

SECTION 6. GENERAL PROVISIONS

A. Independent Contractor Status. WENDE, its respective directors, officers, agents, employees, members and volunteers, shall act in an independent capacity and not as officers, agents, representatives, or employees of the CITY.

B. Applicable Laws, Codes and Regulations. WENDE shall comply with all applicable Federal, State and local laws, codes and regulations.

C. Notices. Any notices, requests and demands made by the CITY and WENDE regarding the SUBJECT PROPERTY and this AGREEMENT shall be directed as follows:

To the CITY: City of Culver City
 City Manager
 9770 Culver Boulevard
 Culver City, CA 90232

To WENDE: Until the CERTIFICATE OF OCCUPANCY is issued
 The Wende Museum
 5741 Buckingham Parkway, Suite E
 Culver City, CA 90230
 Attn: Dr. Justinian Jampol

After the CERTIFICATE OF OCCUPANCY is issued
 The Wende Museum
 10808 Culver Boulevard
 Culver City, CA 90230
 Attn: Dr. Justinian Jampol

Either party may, on notice to the other, change their address for notices.

D. Modification of Agreement. This AGREEMENT may not be modified, nor may any of the terms, provisions or conditions be modified or waived or otherwise affected, except by a written amendment signed by all parties hereto.

E. Governing Law and Litigation Fees. The terms of this AGREEMENT shall be interpreted according to the laws of the State of California. If litigation arises out of this AGREEMENT, then the parties shall attempt to mediate the dispute, in good faith, prior to taking any other action. If mediation is unsuccessful, the parties may agree to arbitrate the dispute in accordance with the rules of the American Arbitration Association. If either party does not agree to arbitration or is unsatisfied with the results of the arbitration, then venue shall be in the Superior Court of Los Angeles County. In the event of legal action, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and costs and expenses actually incurred, in addition to any other relief the court deems just and proper. The parties agree to provide each other with ninety (90) days' written notice of intent to take legal action to enforce the terms and conditions, responsibilities and duties as outlined in this AGREEMENT, prior to the filing of any legal action.

F. Waiver. If at any time one party shall waive any term, provision or condition of this AGREEMENT, either before or after any breach thereof, no party shall thereafter be deemed to have consented to any future failure of full performance hereunder.

G. Integrated Agreement. This AGREEMENT represents the entire agreement between CITY and WENDE regarding the subject matters hereof, and all preliminary negotiations and agreements are deemed a part of this AGREEMENT. No verbal agreement or implied covenant shall be held to vary the provisions of this AGREEMENT. This AGREEMENT shall be binding upon and inure to the benefit of all parties to this AGREEMENT and their directors, officers, officials, agents, employees, former employees, members, volunteers, successors and assigns, and all persons or entities acting by, through, under or in concert with them, and any subsequent successors and assigns.

H. Severability. If any section, paragraph, sentence, clause, phrase or portion of this AGREEMENT is deemed invalid, then that invalidity shall not affect the validity of the remainder of this AGREEMENT.

I. Hold Harmless. Effective upon the issuance of the NOTICE TO PROCEED by the CITY, WENDE shall be responsible for any and all injuries to or death of any person, and for any and all damage to any and all real or personal property, including the SUBJECT PROPERTY, caused by or resulting from any acts, errors or omission of WENDE, its directors, officers, employees, agents, members, volunteers and invitees. WENDE shall defend, hold harmless and indemnify CITY, its officials, officers, employees, agents and volunteers, from any and all liability claims, including costs, for damages to real or personal property, or personal injury or death, resulting from WENDE, its directors', officers', employees', agents', members', volunteers' and invitees', acts, errors or omissions arising out of this AGREEMENT.

J. Insurance. Without limiting its obligations pursuant to Paragraph I above, WENDE shall submit one or more duly executed certificates of insurance for Comprehensive General Liability in the minimum amount of Two Million Dollars (\$2,000,000.00) single limit coverage (see insurance requirements attached as Exhibit C to this AGREEMENT and incorporated herein by reference). CITY shall be responsible for insuring the SUBJECT PROPERTY for the full replacement value thereof and for maintaining Comprehensive General Liability insurance. Without affecting any other rights or remedies, CITY and WENDE each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. CITY and WENDE agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against CITY or WENDE, as the case may be, so long as the insurance is not invalidated thereby.

K. Right to Terminate AGREEMENT. In the case the WORK is not completed by WENDE by the expiration of the WORK COMPLETION PERIOD, then WENDE shall be in default under this AGREEMENT. Should WENDE fail to cure such default, once notified of such default by CITY, within 90 days of such notice, then CITY may terminate this AGREEMENT provided that such termination shall not become effective until 270 days after the date of such termination is provided by CITY.

L. Insolvency/Bankruptcy, Cease to Exist, or Cessation of Use of SUBJECT PROPERTY: During the term of this AGREEMENT, in the case WENDE should become insolvent or bankrupt or cease to exist as a corporate entity, such would constitute a default under this AGREEMENT. Further, in the case WENDE ceases to use the SUBJECT PROPERTY for the purposes of a museum and administrative offices, such shall also constitute a default under this AGREEMENT. Should WENDE fail to cure such default, once notified of such default by CITY, within 90 days of such notice, then CITY may terminate this AGREEMENT provided that such termination shall not become effective until 270 days after the date of such termination is provided by CITY.

M. Effective Date. The effective date of this AGREEMENT is the date it is signed on behalf of the CITY and shall remain in full force and effect until amended or terminated as provided herein. The effective date of the LEASEHOLD INTEREST shall be the dates as set forth in Section 4 of this AGREEMENT. The indemnification and hold harmless provisions shall survive the termination of this AGREEMENT.

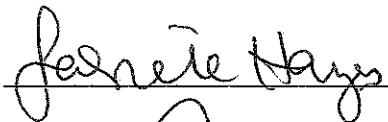
N. Default: If either party to this AGREEMENT has not timely and diligently performed any duty or responsibility imposed by this AGREEMENT, such shall

constitute a default under this AGREEMENT. The defaulting party shall have 90 calendar days from the date of receipt of the Notice of Default issued by the other party to cure said default. Failure to cure such default shall subject this AGREEMENT to cancelation should the other party hereto so elect. provided, that such termination shall be effective upon the 270th day after the date of the other party's election to cancel is received by the defaulting party.

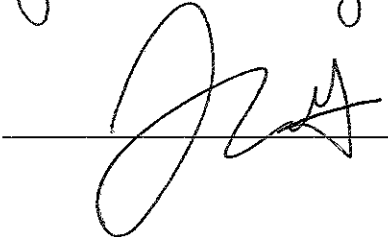
O. Future Cooperation: Nothing in this AGREEMENT prevents consideration by the parties hereto of further partnership and collaboration between the CITY and WENDE.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by and through their respective authorized officers, as of the date written herein below.

THE WENDE MUSEUM



Date: 12.03.12



Date: 12.03.12

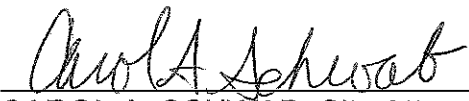
CITY OF CULVER CITY



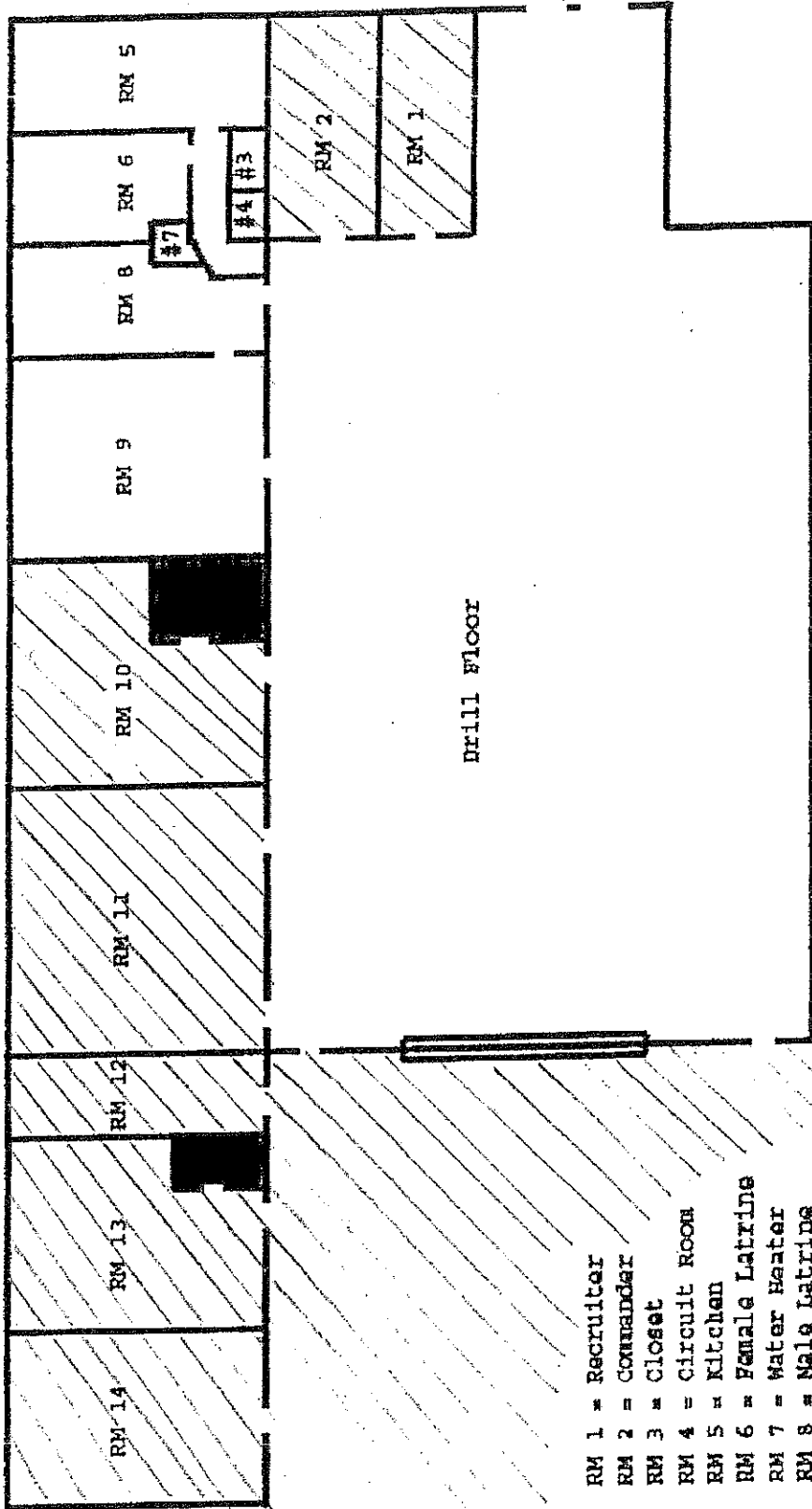
JOHN M. NACHBAR, City Manager

Date: 12-03-12

APPROVED AS TO FORM:



CAROL A. SCHWAB, City Attorney



- RM 1 = Recruiter
- RM 2 = Commander
- RM 3 = Closet
- RM 4 = Circuit Room
- RM 5 = Kitchen
- RM 6 = Female Latrine
- RM 7 = Water Heater
- RM 8 = Male Latrine
- RM 9 = Break/TNG ROOM
- RM 10 = Supply & Vault
- RM 11 = Orderly Room
- RM 12 = Janitor Closet
- RM 13 = Storage 1 & Vault
- RM 14 = Storage 2

AREAS OFF LIMITS TO ALL BUT NATIONAL GUARD PERSONNEL =



CULVER CITY
FLOOR PLAN

EXHIBIT A

EXHIBIT C

INSURANCE REQUIREMENTS

A. Policy Requirements.

WENDE shall submit duly executed certificates of insurance for the following:

1. An occurrence based Comprehensive General Liability ("CGL") policy, at least as broad as ISO Form CG 0001, in the minimum amount of Two Million Dollars (\$2,000,000) each occurrence, with not less than Two Million Dollars (\$2,000,000) in annual aggregate coverage.

The CGL Policy shall have the following requirements:

- a. The policy shall provide coverage for personal injury, bodily injury, death, accident and property damage and advertising injury, as those terms are understood in the context of a CGL policy. The coverage shall not be excess or contributing with respect to City's self-insurance or any pooled risk arrangements;
 - b. RESERVED
 - c. The policy shall include coverage for liability undertaken by contract covering, to the maximum extent permitted by law, WENDE's respective obligations to indemnify the Indemnitees as required under Section 6.1 of this Agreement;
 - d. The Policy shall not exclude coverage for Completed Operations Hazards or Athletic or Sports Participants; and
 - e. **The City of Culver City, members of its City Council, its boards and commissions, officers, agents, and employees will be named as an additional insureds** in an endorsement to the policy, which shall be provided to the City and approved by the City Attorney.
2. RESERVED
3. RESERVED
4. RESERVED

B. Additional Insurance Requirements.

1. All insurance listed in Paragraph A shall be issued by companies licensed to do business in the State of California, with a claims paying ability rating of "BBB" or better by S&P (and the equivalent by any other Rating Agency) and a rating of A:VII or better in the current Best's Insurance Reports;
2. WENDE shall provide City with at least thirty (30) days prior written notice of any modification, reduction or cancellation of any of the Policies required in Paragraph A, or a minimum of ten (10) days' notice for cancellation due to non-payment.
3. City may increase the scope or dollar amount of coverage required under any of the policies described above, or may require different or additional coverages, upon prior written notice.

C. Contractor and Subcontractor Insurance Requirements

1. WENDE shall ensure that any contractors, consultants, or any of their subcontractors/subconsultants retained or hired to perform the WORK shall maintain insurance coverage set forth in Section A.1 of Exhibit C of this Agreement, in addition to the following coverage:
 - a. Business Automobile Liability Insurance coverage in the amount of Two Million Dollars (\$2,000,000), providing coverage for use of mobile equipment (i.e. heavy mobile equipment or vehicles primarily for use in an off-road environment), to the extent that (1) such mobile equipment will be used within the City limits or on City business, and (2) coverage for mobile equipment is not otherwise covered by the CGL policy listed in subparagraph (a), above.
 - b. Professional/Negligent Acts, Errors and Omissions Insurance in the minimum amount of Two Million Dollars (\$2,000,000) per claim, and shall include coverage for separate "personal injury" alleged to have been committed in the course of rendering professional services, unless such coverage is provided by the CGL policy listed in subparagraph (a), above.
 - c. Workers' Compensation limits as required by the Labor Code of the State of California with Employers' Liability limits of Two Million Dollars (\$2,000,000.00) per accident, if the Agreement will have Contractor employees working within the City limits.
2. The City of Culver City, members of its City Council, its boards and commissions, officers, agents, and employees will be named as an additional insured in an endorsement to the policy, which shall be provided to the City and approved by the City Attorney.

3. The City may waive any or all of the requirements of this Section C if, in the sole determination of the City, the required insurance is not applicable to a specific contractor, consultant, subcontractor, or subconsultant.