

EXCLUSIVE NEGOTIATING AND CONFIDENTIALITY AGREEMENT

THIS EXCLUSIVE NEGOTIATING AND CONFIDENTIALITY AGREEMENT (this "**Agreement**") is effective as of this 26th day of December, 2024 (the "**Effective Date**") by and between Actors Fund Housing Development Corporation, a New York not-for-profit corporation ("**AFHDC**") and the City of Culver City, a charter city of the State of California (the "**City**"). AFHDC and City are sometimes referred to singularly as a "**Party**" or collectively as the "**Parties**."

RECITALS

A. City and AFHDC each share a strong track record of working to build communities, strengthen neighborhoods, and share the desire to address the pressing need for affordable housing in Culver City.

B. City owns fee title to that certain real property, comprising approximately 1.13 acres, located in Culver City, California, with assessor parcel numbers 4209-027-905, 4209-029-900, 4209-029-923, 4209-029-924 & 4209-029-925 (the "**Property**").

C. AFHDC has previously delivered to City a request for an exclusive negotiating agreement, dated December 6, 2023 (the "**Letter Request**"), pursuant to which AFHDC described the potential development of a mixed-use, multi-story building or buildings (the "**Building**"), and related improvements, with affordable housing for families and artists on the upper floors, along with ground floor arts-focused community commercial space (collectively referred to as the "**Project**").

D. Based on what is currently known, AFHDC anticipates that the affordable housing component of the Project will be 100% affordable (with no market rate units), targeting households which earn between 30% and 80% of area median income, comprising approximately 70-80 units, with resident services as required by funding sources. It is further anticipated that, subject to fair housing laws, the affordable housing component would be marketed to low income arts workers and underserved groups, including members of the disabled, LGBTQ+ and BIPOC communities.

E. The Project may be financed through a variety of funding sources, including subsidies, fee waivers, incentives, soft loans, and/or grants from City or other governmental authorities (including without limitation the California Housing Finance Agency, the California Department of Housing and Community Development, the U.S. Department of Housing and Urban Development), project based vouchers, low income housing tax credit allocation from the California Tax Credit Allocation Committee, bond volume allocation from the California Debt Limited Allocation Committee, New Markets Tax Credit allocation, institutional debt, equity, private donors, including, without limitation the Glorja Kaufman Vision Fund (each a "**Project Funding Source**" and collectively "**Project Funding Sources**")

F. The Project will advance the following joint objectives of AFHDC and City: (i) increase the much needed affordable housing stock in Culver City; (ii) foster diverse and vibrant communities that thrive on creativity and inclusivity; and (iii) positively impact Culver City and its creative economy through the creation of jobs, the provision of affordable housing targeting arts workers, and arts-focused community space.

G. The Parties wish to enter into this Agreement to negotiate and collaborate on an exclusive basis with respect to (i) solidifying the Parties' joint vision for the development of the Project and to establish a clear set of Project goals and objectives; (ii) conducting initial Project due diligence and feasibility studies (including analysis of affordable housing options, community commercial space options, and any required parking for all uses, Project-related or otherwise); (iii) developing a conceptual site plan and entitlement path for the Project as a whole; (iv) developing a deal structure for the Project that includes the long-term ground lease of the Property to AFHDC (or affiliate(s)) for the development of the Project, including consideration or potential modification of existing parking leases related to the Property; (v) identifying and applying for Project Funding Sources; and (vi) negotiating the terms of the Lease Agreement(s), the terms for development and construction of the Building and related improvements proposed by AFHDC, and any other transaction documents that may be required to consummate the ground leasing of the Property from City to AFHDC (or affiliate(s)) and the development, use, and maintenance of the Project.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Agreement to Exclusive Negotiations.**

1.1 **Period of Negotiation.** The negotiation period shall commence on the Effective Date and shall end on the earlier to occur of either (i) the date the Parties enter into the Lease Agreement(s), or (ii) one (1) year from execution of this ENA, unless otherwise extended by written agreement of the Parties (the "**Negotiation Period**").

1.2 **Termination.** Except for terms that explicitly survive termination, this Agreement shall automatically terminate at the end of the Negotiation Period (as may be extended), and each Party shall be released from all rights and obligations under this Agreement.

1.3 **Exclusivity.** City agrees to negotiate exclusively with AFHDC and its affiliates regarding the Project or any other development of the Property, and any and all other, transfers, sales, leases, assignments or similar transactions related to the Property (collectively, "**Transfers**"), with the exception of the Existing Lease Discussions (defined in Section 1.3.1). During the Negotiation Period, City will not: (i) solicit or accept any offers related to any Transfers; (ii) enter into any letters of intent, term sheets, memoranda of agreement, purchase and sale agreement, lease, or similar agreements related to any Transfers; (iii) enter into any listing agreement or undertake any discussions or negotiations with any other individual or entity with respect to any Transfers, provided that City may handle inquiries about the Property in a discrete manner, without mention of AFHDC or its potential role with respect to the Property in accordance with this Agreement; (iv) allow or encourage any other individual or entity to undertake due diligence activities with respect to any Transfers or the condition of the Property; or (v) provide any other individual or entity any of the Property Materials (defined in Section 4).

1.3.1 **Existing Lease Discussions.** Notwithstanding Section 1.3, (i) City, and AFHDC each shall be permitted to engage in discussions with the current tenant (the "Existing Tenant") under that certain Lease between the Culver City Redevelopment Agency and Hampshire National, Inc., for Parking Rights, dated January 7th, 1985, as the same has been amended and/or

assigned (the "Existing Lease") regarding the potential modification of the Existing Lease as part of the development of the Project, and (ii) City shall be permitted to engage in communication relating to and administration of the Existing Lease with the Existing Tenant, in the ordinary course of business, including as to the Property, the Lease, and/or Existing Tenant's use of the Property, provided the same does not involve communication or negotiations relating to development of the Property by the Existing Tenant.

1.4 Communications; No Agreement for Lease. During the Negotiation Period, City and AFHDC shall communicate with each other in good faith and in such communications shall follow reasonable negotiation practices, including participating in meetings, telephone conversations and correspondence. The Parties acknowledge and agree, however, that despite the good faith of both Parties, it is possible that no agreement for lease of the Property may be reached during the Negotiation Period and it is explicitly agreed that either Party may elect not to enter into any further agreement whatsoever at its sole and absolute discretion.

1.5 AFHDC Obligations During the Negotiation Period. During the Negotiation Period, AFHDC shall use diligent good faith efforts to complete the following tasks:

1.5.1 Review the Property Materials and conduct initial due diligence including the preparation of a Phase I environmental assessment and geotechnical studies.

1.5.2 Develop and conduct a community engagement plan.

1.5.3 Engage a design team to prepare conceptual designs for the Project and its components. These designs may reasonably differ from the descriptions of the Project set forth in the recitals of this Agreement. AFHDC shall advise City in this selection.

1.5.4 Assess the scope of necessary Approvals (defined in Section 7.1) for the Project.

1.5.5 Identify and apply for Project Funding Sources.

1.5.6 Identify, in collaboration with City, a potential location for the improvements comprising the Project and their supporting parking, if any, and determine the number of units, square footage and/or other rough description of the Building and overall Project so that a pro forma may be produced of Project.

1.6 City Obligations During the Negotiation Period. During the Negotiation Period, City shall use diligent good faith efforts to complete the following tasks:

1.6.1 Collaborate with AFHDC in the preparation and development of the conceptual design of the Project.

1.6.2 Timely delivery of the Property Materials to assist AFHDC with its due diligence activities.

1.6.3 Respond on a timely basis to all reasonable inquiries and submittals by AFHDC.

1.6.4 Cooperate with AFHDC in submitting applications for Project Funding Sources, including providing, to the extent reasonably possible, any non-confidential documentation or agreements required by any government entities in connection with the financing applications.

1.7 AFHDC and City Joint Obligations During the Negotiation Period. During the Negotiation Period, the Parties shall use diligent good faith efforts to complete the following tasks:

1.7.1 Solidify and expand the Project goals and objectives as initially set forth in the Letter Request and establish a joint vision for the development of the Project.

1.7.2 Negotiate and finalize any potential commitments from City for any Project Funding Sources to be provided City. Nothing herein commits or requires City to commit any Project Funding Sources.

1.7.3 Negotiate in good faith the terms of the Lease Agreement and any other agreements or documents the Parties may deem necessary or appropriate for the development of the Project and/or any Transfers.

1.7.4 Attend joint meetings with key Project stakeholders, as needed.

2. **Due Diligence; Property Access.**

2.1 The Parties recognize and acknowledge that a full determination of the feasibility of the Project has not occurred and that further analysis of the feasibility of the Project is required given the proposed funding sources for the Project, the ownership structures, federal and state environmental requirements and/or other governmental approval requirements. During the Negotiation Period, AFHDC shall review the Property Materials and undertake any physical inspections of the Property it deems necessary or advisable (the "**Inspection Period**"). Any Lease Agreement(s) entered into prior to the expiration of the Inspection Period shall, if requested by AFHDC, provide for AFHDC's (or its affiliate(s)') continuing right to review Property Materials and undertake physical inspections and accept the Property and proceed, or disapprove of the Property and terminate the Lease Agreement(s).

2.2 Subject to the conditions set forth in this Agreement, during the Inspection Period, AFHDC and its (affiliate(s)), agents, consultants and representatives (the "**AFHDC Parties**") shall have reasonable access to and may enter upon the Property during the days and times approved by City for the purpose of conducting inspections and tests on the Property that AFHDC deems necessary or appropriate in connection with its due diligence of the Property, including without limitation, borings, the taking of any samples and performing invasive Phase II environmental testing. City shall use commercially reasonable efforts to cooperate with AFHDC's efforts to conduct any such inspections or tests. In conducting any inspections, investigations or tests, the AFHDC Parties shall: (i) provide City with a certificate of insurance evidencing that the party performing such inspections or tests has in place, at a minimum, comprehensive general liability insurance with coverage of one million dollars (\$1,000,000) combined single limit for personal injury and property damage per occurrence;(ii) not unreasonably disturb City and its tenants, board members, employees, contractors, guests, and other occupants of the Property (the

"City Parties"); (iii) not unreasonably interfere with the operation and maintenance of the Property; (iv) not permit any liens for work performed or by the AFHDC Parties to attach to the Property; and (v) promptly repair any damage to the Property resulting from the AFHDC Parties' entry on the Property to a substantially similar condition as existed before such entry and the causation of such damage.

2.3 Prior to any testing or inspection, whether or not reasonably expected to interfere with the usage of the Property, or any portion thereof, by the City Parties, AFHDC shall provide City at least one (1) week's written or e-mailed notice and have received City's written or emailed consent before conducting any such inspection or testing. AFHDC shall indemnify and hold the City Parties harmless from and against any and all liens, claims, damages, liabilities, and expenses (including reasonable attorneys' fees and costs) ("**Losses**") resulting all or in part from the AFHDC Parties' entry onto the Property pursuant to this Agreement; provided, however, that AFHDC shall not be liable to City for any Losses regarding (i) any matters merely discovered by AFHDC (e.g., latent environmental contamination) in the course of such inspections or tests or entry on the Property; (ii) any Losses that are solely attributable to the negligent action or inaction of City; or (iii) consequential, special or punitive damages or any other sums in excess of City's actual compensatory damages. AFHDC's obligations under this Section 2 shall survive the termination or expiration of this Agreement, but shall be superseded by any indemnification provisions in the Lease Agreement(s) between City and AFHDC related to AFHDC's activities on City Property.

3. **Lease Agreement.** The Parties agree to negotiate in good faith the terms of a long term ground lease, with City as lessor and AFHDC (or its permitted assign hereunder) as lessee, for the development of the Project thereon (such ground lease, together with any related documents deemed necessary or desirable by both Parties to be executed and delivered concurrently with the ground lease, the "**Lease Agreement(s)**"). The parties acknowledge and agree that (i) the term of the Lease Agreement(s) will be ninety-nine (99) years in duration, in order to make the Project financeable, (ii) rent under the Lease Agreement(s) will be one dollar (\$1.00) per year, and (ii) the Lease Agreement(s) may, by their terms reference and require the concurrent execution and delivery of other agreements or documents by and among two or more of the Parties (and/or their affiliates), as necessary or desirable for the development of the Project and/or any Transfers (as referenced in Section 1.8.3. above).

4. **Delivery of Property Materials.** City shall make available to AFHDC the documents and information in City's possession or control relating to title, survey, and property condition (including without limitation environmental or geotechnical condition) of the Property and any existing agreements that may impact the development of the Property (including the Existing Lease, parking covenants, any environmental covenants, deed restrictions or indemnity agreements) (collectively, the "**Property Materials**"); provided, however, City shall have no obligation to provide any records, correspondence, studies or materials that are (i) subject to attorney-client or other privilege or (ii) relate to City's financial analysis or were created for or are part of its internal analysis and strategizing. City shall make available to AFHDC those Property Materials to which City has immediate access within five (5) business days after the Effective Date, and shall make available to AFHDC any additional Property Materials with City's possession or control as promptly thereafter as reasonably feasible. During the Inspection Period, City shall promptly provide to AFHDC any additional information related to title, survey or property

condition of the Property coming into City's possession or control or discovered, produced or received by City after the Effective Date, subject to the same limitations of the preceding sentence.

5. **No Obligation to Enter Into any Agreement or Transaction Document.**

5.1 Notwithstanding anything herein to the contrary, no Party shall (i) have any obligation to enter into any agreement, (ii) consummate any transaction with the other Party pursuant to any agreement, or (iii) be bound by any agreement unless and until any such agreement or document is fully executed and delivered by the Parties. The Parties acknowledge and agree that neither Party is bound to enter into any agreement and that either Party may elect not to enter into any agreement at such Parties' sole and absolute discretion.

5.2 By entering into this Agreement, City is not approving, committing to, or agreeing to undertake: (a) the Project or any development; (b) disposition, sale, or lease of Property to AFHDC; or (c) any other acts or activities requiring the subsequent independent exercise of discretion by City.

6. **Confidentiality.**

6.1 **Non-Disclosure.** Each Party represents and warrants that prior to the Effective Date hereof it has not disclosed any of the terms, conditions, obligations, or matters contained in this Agreement and the transactions contemplated herein, except as permitted by the next succeeding sentence, or by Section 6.2. Each Party covenants and agrees (and agrees to cause its Representatives as defined below in this Section 6.1) not to disclose (i) any information of a confidential or proprietary nature provided by or on behalf of AFHDC to City or by or on behalf of City to AFHDC regarding the Property or the transactions contemplated herein, (ii) any information, document, study, analysis, or material of any kind contained in the Property Materials, (iii) any information, knowledge or understanding conveyed by one Party or its Representatives in any form of communication, including oral, to the other Party or its Representatives, or (iv) any information, material, test results, studies, or analysis obtained by AFHDC or its Representatives through entry on City Property and the performance of any test or due diligence activities thereon (collectively, the "**Confidential Information**"), except to City's or AFHDC's respective directors, officers, employees, advisors, agents, affiliates, accountants, brokers, insurance agents, prospective lenders, prospective investors consultants, and attorneys (collectively, "**Representatives**") as necessary to evaluate the Project and the transactions contemplated herein, or with the prior written consent of the other Party.

6.2 **Required Disclosure.** In the event that any Party shall receive a request to disclose any Confidential Information under a subpoena or order issued by a court or by another governmental authority, such Party shall (i) promptly notify the other Party of the existence, terms and circumstances surrounding such a request, (ii) consult with such other Party regarding the advisability of taking steps to resist or narrow such request, (iii) if disclosure of such Confidential Information is required or deemed advisable, furnish only such portion of the Confidential Information as such Party is advised by counsel is legally required or advisable to be disclosed, and (iv) if disclosure is required or deemed advisable, reasonably cooperate at no cost to such cooperating Party in any attempt it may make to obtain an order or other assurance that confidential treatment will be accorded such Confidential Information, as the case may be, that is disclosed.

6.3 Exclusions. Confidential Information shall not include and this Section 6 shall not apply to any information that (i) was in the public domain at the time of its disclosure other than as a result of a violation of this Agreement, (ii) enters the public domain through no fault of the Party receiving the information or of its Representatives, (iii) was or is communicated to the Party receiving the information or to its Representatives by a third party who did not breach or is not in breach of any obligation of confidentiality to the other Party as a result of such communication or (iv) the City is required to disclose in order to comply with the California Public Records Act (Government Code § 7920.000 et seq). Notwithstanding any other terms of this Agreement, in connection with due diligence, City and AFHDC shall be entitled to contact potential partners, and any government entity, including without limitation, City staff and elected officials, during the Negotiation Period to discuss the proposed use and development of the Property; provided, however, such discussions shall not include any Confidential Information referenced in Section 6.1 (iii) or (v), and the parties will make the best effort to inform each other of such communications.

6.4 Publicity. The Parties agree to coordinate all public communication relating to the transactions contemplated by this Agreement and the Project. Neither Party shall issue any statements, news releases, respond to any media inquiries, or otherwise make any statements regarding contemplated transaction or the Project without the prior written approval of the other Party and such approval shall not be unreasonably withheld. This restriction and advance authorization includes written and verbal communications to community groups, individual stakeholders and the media. To the extent that the provisions of this Section 6.4 related to Confidential Information conflict from the provisions set forth in Sections 6.1 through 6.3, the provisions of Sections 6.1 through 6.3 shall prevail.

6.5 Remedies. Each Party acknowledges that in the event of any breach of this Section 6, the other Party, whose Confidential Information is subject to improper disclosure, could not be made whole by monetary damages. Any Party whose Confidential Information is subject to improper disclosure under the terms of this Agreement shall, in addition to any other remedy to which it may be entitled in law or in equity (but subject to the limitations on any such remedies expressly provided for in this Agreement), be entitled to an injunction to prevent breaches of this Section 6, and to an order compelling specific performance hereof.

6.6 Survival. The provisions of this Section 6 shall survive expiration or termination of this Agreement until the earlier to occur of (i) five (5) years from the Effective Date and (ii) the execution of any definitive agreements by the Parties.

7. Governmental Approvals and Entitlements.

7.1 Required Approvals. The Parties acknowledge that certain approvals will be required from City and other governmental agencies to allow development of the Project. These anticipated approvals (the "**Approvals**") may include, without limitation, land use entitlements, a vesting tentative tract map, a shared parking covenant and agreement, and compliance with the California Environmental Quality Act ("**CEQA**"). The Parties agree that AFHDC shall not file any applications for entitlements or building permits, or record any tract map or other instruments with respect to the Property without first obtaining written consent from City which shall not be unreasonably withheld conditioned or delayed. From and after execution of the Lease

Agreement(s) the applicable notice and coordination provisions regarding Approvals shall supersede and control over this Section 7. Each Party agrees in good faith to keep the other Party informed regarding any communications with City or other governmental authorities about the Project.

8. **No Assignment.** Neither this Agreement nor any portion hereof or any rights hereunder may be assigned, either voluntarily or involuntarily, by AFHDC without the prior written approval of City at City's sole and absolute discretion. Notwithstanding the foregoing, AFHDC may assign this Agreement with City's written approval (which shall not be unreasonably delayed, conditioned or withheld) to a legal entity which is controlled by, under common control with or controls AFHDC.

9. **Authority to Contract.** AFHDC and City each represent and warrant that it has full power and authority to enter into this Agreement, that the execution and delivery of this Agreement by such Party violates no law, ordinance, statute or regulation applicable to it, and that this Agreement is a valid and binding obligation of such Party, enforceable against such Party in accordance with its terms. Upon request by a Party, the other Party shall furnish to the requesting Party documentation (e.g., board resolution) evidencing said Party's authority to enter into this Agreement and demonstrating that all necessary approvals required to be bound hereby have been obtained and are in full force and effect.

10. **Termination, Default and Remedies.**

10.1 **Right to Terminate.** In addition to any other right of termination set forth in this Agreement, either Party may terminate this Agreement upon thirty (30) days' prior written notice to the other Party, if such terminating Party in good faith determines any of the following: (i) a successful consummation of the transactions contemplated hereby are not likely, (ii) the Project is not feasible (including, without limitation an actual or likely inability to obtain entitlements and environmental clearances in a commercially reasonable manner as necessary for the development and operation of the Project, or due to the discovery of unknown conditions or circumstances which adversely impact the cost or timeline for developing the Project), (iii) the Project is not capable of being financed in a commercially reasonable manner, or (iv) the Project is not likely to be developed and constructed in a timely manner.

10.2 **Breach.** The occurrence of any one or more of the following events shall constitute a breach under this Agreement (each a "**Breach**"):

10.2.1 The failure of a Party to perform any obligation, or to comply with any covenant, restriction, term, or condition of this Agreement; or

10.2.2 Any material representation or warranty made by a Party proves to be false or misleading in any material respect at the time made.

10.3 **Default.** A Breach shall become a default under this Agreement (each a "**Default**") if the Party committing the Breach fails to cure the Breach within twenty (20) business days after receipt of written notice ("**Cure Notice**") thereof from the aggrieved Party specifying such Breach in reasonable detail, delivered in accordance with the provisions of this Agreement; provided, however, where such Breach could not reasonably be cured within such twenty (20)

business day period, such reasonable additional time as is reasonably necessary to promptly and diligently complete the cure, provided that the breaching Party promptly commences to cure such Breach after receiving the Cure Notice and thereafter diligently and continuously pursues completion of such cure.

10.4 Remedies. If any Default occurs, the non-defaulting Party shall have the right, but not the obligation, to avail itself of any one or more of the following remedies:

10.4.1 The non-defaulting Party may, at its sole election, terminate this Agreement upon not less than five (5) business days prior written notice of termination provided to the defaulting Party.

10.4.2 Unless otherwise provided herein, in addition to the foregoing, the non-defaulting Party may exercise any right or remedy it has under this Agreement, or which is otherwise available at law or in equity or by statute. All rights, privileges and elections or remedies of the Parties are cumulative and not alternative to the extent permitted by law (including suit for damages) or in equity. Without limiting the foregoing, AFHDC may bring an action for specific performance to enforce City's obligation to negotiate exclusively with AFHDC during the term of this Agreement, as required hereunder.

11. **No Commitment to Any Project; Independent Judgment.**

11.1 No Commitment to Any Project. The Parties acknowledge and agree that City: (a) has not committed to, authorized or approved the development of the Project or any other proposed improvements on the Property; (b) retains the absolute sole discretion to impose conditions as be necessary to comply with CEQA; and (c) is not precluded from rejecting the Project, or from weighing the economic, legal, social, technological, or other benefits of the Project against its unavoidable environmental risks when determining whether to approve the Proposed Project. Further, the Parties acknowledge and agree that no activities that would constitute a project under CEQA, including the Project, may be commenced until necessary findings and consideration of the appropriate documentation under CEQA are considered by the City and feasible mitigation measures and alternatives to the Project, including the "no project" alternative, required in connection with CEQA, may be adopted by the City.

11.2 Independent Judgment. City will exercise independent judgment and analysis in connection with any required environmental reviews or determinations under CEQA for the Project, shall have final discretion over the scope and content of any document prepared under CEQA and shall have final discretion over the extent of any studies, tests, evaluations, reviews or other technical analyses. Any consultants retained for the purpose of preparing CEQA documentation shall reasonably comply with any directions from City with respect thereto.

12. **No Third-Party Beneficiaries.** None of the terms or provisions of this Agreement are intended to benefit any person or entity other than City or AFHDC. No Affiliate or joint venturer or partner of AFHDC has any rights pursuant to this Agreement, unless and until such rights are created by a permitted assignment hereunder.

13. **Notices.** All notices under this Agreement shall be delivered by personal delivery, by a reputable same-day or overnight courier service, or by mailing in the U.S. mail by prepaid certified mail, or by electronic transmission provided the sender received written confirmation of receipt of the transmission and delivers the original of such transmission to the other Party within one (1) business day thereafter by one of the other means described herein. Notices shall be directed to the respective Parties as follows:

If to City:

The City of Culver City
Attn: City Manager
9770 Culver Boulevard
Culver City, CA 90232
Email: john.nachbar@culvercity.org

With a Copy to:

City Attorney's Office
Attn: City Attorney
9770 Culver Boulevard
Culver City, CA 90232
Email: city.attorney@culvercity.org

If to AFHDC:

Actors Fund Housing Development Corporation
Attn: Daniel Arnow
729 Seventh Avenue, 10th Floor
New York, NY 10019
Email: darnow@entertainmentcommunity.org

With a Copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP
633 West Fifth Street, Suite 5880
Los Angeles, CA 90071
Attention: Robert Cowan
Email: rcowan@bocarsly.com

A Party may change the address for delivery of notices to it as such Party may from time to time designate in writing to the other Party by a written notice conforming to the requirements of this Section. Notices delivered by personal delivery, or same-day or overnight courier service, or electronic transmission, shall be effective upon receipt (provided that any emailed notices received after 5:00 p.m. on a business day shall not be deemed received until 8:30 a.m. the next business day following deposit with the United States Postal Service.

14. **General Rules of Interpretation.** Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the paragraphs and sections of this Agreement are for convenience only and do not define or limit any terms or provisions. As used in this Agreement, the word "includes or "including" means including without limitation, the word "or" is not exclusive and the words "herein," "hereof," "hereto" and hereunder refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (i) to articles, paragraphs, sections and exhibits mean the articles, paragraphs, sections and exhibits which are part of this Agreement as amended, supplemented or modified from time to time to the extent permitted by the provisions thereof and by this Agreement, (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented or modified from time to time to the extent permitted by the provisions thereof and by this Agreement, and (iii) to a statute means such statute as amended, supplemented or replaced from time to time. The exhibits which are attached to this Agreement are made a part of this Agreement.

15. **Governing Law.** This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the laws of the State of California.

16. **Severability.** If any portion of this Agreement is held invalid or inoperative, the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative.

17. **Waiver.** The failure by any Party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such Party's right to enforce against the other Party the same or any other such term or provision in the future.

18. **Entirety and Amendments.** This Agreement constitutes the entire agreement and understanding of the Parties hereto relating to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter hereof. This Agreement may be amended or supplemented only by an instrument in writing executed by the Party against whom enforcement is sought. All exhibits attached hereto are incorporated herein by this reference for all purposes.

19. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20. **Attorneys' Fees.** In the event of any controversy, claim or dispute between the Parties affecting or relating to the purposes or subject matter of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable expenses, including reasonable attorneys' and accountants' fees, including in any bankruptcy or appellate proceeding.

21. **Costs and Expenses.** Each Party shall be responsible for its owns costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each Party's obligations under this Agreement, except as specifically provided in this Agreement.

22. **No Association Between AFHDC and City.** The Parties in no way intend for this Agreement alone to give rise to or create any relationship of partnership, joint venture, or any other form of association of any kind or nature between AFHDC and City.

23. **Definitive Documents to Supersede this Agreement.** The definitive documents entered into by the Parties, if any, including, without limitation any Lease Agreement(s) shall supersede and control over this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

Actors Fund Housing Development Corporation,
a New York not-for-profit corporation

By: _____
Name: Daniel Arnow
Title: Executive Director

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

The City of Culver City,
a charter city of the State of California

By: _____
Name: John M. Nachbar
Title: City Manager

Approved as to Form:

By: _____
Heather Baker, City Attorney