

**AGREEMENT BY AND BETWEEN THE  
CITY OF CUPERTINO, CALIFORNIA  
AND PACIFIC AUTISM CENTER FOR EDUCATION**

This agreement (herein "AGREEMENT"), is made and entered into on this 23rd day of June, 1995 by and between the CITY OF CUPERTINO, CALIFORNIA, a municipal corporation (herein "CITY"), and PACIFIC AUTISM CENTER FOR EDUCATION, a non-profit housing developer (herein "CONTRACTOR") and assigns. CITY and CONTRACTOR may herein be referred to individually as a "Party" or collectively as "Parties".

**RECITALS**

The Parties agree as follows:

WHEREAS,

- A. CITY has received Community Development Block Grant funds (herein "CDBG") through a Joint Powers Agreement with the County of Santa Clara, which is an Urban County entitled to CDBG funds from the United States Department of Housing and Urban Development (herein "HUD"); and
- B. CITY has appropriated funds in an amount not to exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000), to be utilized during the time period between June 1, 1995 and May 31, 1995 (herein "Utilization Period") for the purpose of meeting the goals and objectives outlined in EXHIBIT A, SCOPE OF AFFORDABLE HOUSING PROJECT (herein "PROJECT"), attached hereto and incorporated herein by reference, primarily benefiting very low and low income Cupertino residents.

**AGREEMENT PROVISIONS**

In consideration of the following mutual covenants, agreements, and obligations, the Parties agree as follows:

1. DEFINITIONS

Whenever used in this AGREEMENT and its attachments, the terms below, when initially capitalized, shall have the following meanings:

- A. Affordability: Shall mean the length of time this AGREEMENT is in effect and rents are limited as described in EXHIBIT B, BUDGET, RENTS AND REIMBURSEMENT OF CITY LOAN, attached hereto and incorporated herein by reference. This period shall be for at least thirty (30) years after the Effective Date.
- B. Annual Income: Shall mean the income of all household members as defined in Federal regulations 24 CFR 570.3.

- C. Clients: Shall mean very low and low income households who reside in CDBG assisted Units and at Project Property, either at the time of occupancy or the Effective Date, whichever is later.
- D. Effective Date: Shall mean the date that CONTRACTOR takes title to Project Property. The first payment to CONTRACTOR by CITY may occur before this date.
- E. CDBG: Shall mean the federal regulations (24 CFR Part 570) governing the CDBG Program. These regulations include HUD memos and other correspondence explaining or otherwise commenting on CDBG regulations.
- F. CDBG Rent: Shall mean the maximum rents allowable by HUD for the CDBG Program. These rents will be periodically revised by CITY.
- G. Very Low Income Household: Shall mean a household whose Annual Income does not exceed 50% of the area median income, adjusted for household size, as determined and made available by HUD. CITY shall provide CONTRACTOR with a current schedule of income limits, adjusted for household size.
- H. Low Income Household: Shall mean a household whose Annual Income does not exceed 80% of the area median income, adjusted for household size, as determined and made available by HUD. CITY shall provide CONTRACTOR with a current schedule of income limits, adjusted for household size.
- I. OMB: Shall mean the Federal Office of Management and Budget.
- J. Project Property: Shall mean the two four-unit multi-family structures located at 7576 Kirwin Lane. Cupertino, California (APN 359-22-025).
- K. Conventional Loan: Shall mean the loan of funds to CONTRACTOR through Cupertino National Bank in the original principal amount of \$115,000.00 to be used to pay a portion of the acquisition costs, secured by a first deed of trust on the Project Property.
- L. County Loan: Shall mean the loan of funds to CONTRACTOR through the County of Santa Clara in the original principal amount of \$100,000 to be used to pay a portion of the acquisition costs, secured by a third deed of trust on the Project Property.
- M. Unit: Shall mean a dwelling unit occupied or available to be occupied by low and very low income clients.



- d) Verification and documentation of State of California Franchise Tax Board tax exempt status under Section 23701(d), Revenue and Taxation Code;
  - e) Names and addresses of current Board of Directors of CONTRACTOR;
  - f) A copy of the adopted personnel policies and procedures including an Affirmative Action Plan if staff exceeds fifteen (15) employees;
  - g) An organizational chart and staffing profile; and,
  - h) Any other documents required by HUD.
- 2) Report in writing any changes in the CONTRACTOR's Articles of Incorporation, Bylaws, tax exempt status and/or Board membership within thirty (30) calendar days to the CITY's PROGRAM MANAGER.
  - 3) Abide by the conflict of interest provisions OMB Circular A-110. These rules apply to any person currently being compensated by the CONTRACTOR for services rendered to it within the previous twelve (12) months, whether as a full or part time employee, officer, independent contractor or otherwise. Any such persons who have exercised or exercise any decision-making functions or responsibilities with respect to CITY's administration of CDBG or gain inside information with regard to that process, are prohibited from obtaining any financial interest or benefit for themselves or those with whom they have family or business ties during their tenure with CONTRACTOR and for one year thereafter.
  - 4) Include on the Board of Directors representation from a broad cross section of the community, including: those with expertise and interest in the CONTRACTOR's services, representatives from community organizations interested in CONTRACTOR'S services, and users of CONTRACTOR'S services.
  - 5) Open to the public all meetings of the Board of Directors, except meetings, or portions thereof, dealing with personnel or litigation matters or to instruct negotiators.
  - 6) Keep minutes, approved by the Board of Directors, of all regular and special meetings.
  - 7) Encourage public participation in planning and implementing services provided under this AGREEMENT.

- 8) Utilize minority and/or female owned businesses, vendors, suppliers, and CONTRACTOR's to the maximum extent feasible, for items funded under this AGREEMENT.

B. Assumption of Ownership of Project Property by CONTRACTOR:

Title to the Project Property shall be transferred to CONTRACTOR upon initial payment from CITY under this AGREEMENT. Title shall be transferred clear of all liens on said Project Property other than the conventional loan and county loan as described in EXHIBIT B. CITY investment in the PROJECT shall be secured by a Promissory Note (EXHIBIT E) and Deed of Trust (EXHIBIT F), attached hereto and incorporated herein by reference.

C. Project Performance of CONTRACTOR

During the Affordability Period, CONTRACTOR shall:

- 1) Submit to CITY all documentation required by CITY to assure compliance with CDBG Affordability Period requirements of the PROJECT as described in EXHIBIT A;
- 2) Beginning in 1996, pay to the CITY by the 15th of each month during the Affordability Period, an monthly mortgage payment as described in EXHIBIT B;
- 3) Submit to CITY by July 15 of each year an annual report, that:
  - a) Lists all vacancies that occurred in the designated CDBG and CITY Units during the previous fiscal year (defined herein as the period July 1 through the next June 30), as well as the demographics and Annual Income of the new tenants filling such vacancies, and,
  - b) Lists all current tenants in the designated CDBG Units with an update of their demographics, Annual Income and rent;
- 4) Collect all required data on new tenants of the designated CDBG and CITY Units. Such data shall be on forms approved by the CITY and shall be made available to CITY by CONTRACTOR for review during the monitoring process;
- 5) Cooperate with CITY staff conducting on-site inspection to determine compliance with the standards established by the Uniform Housing Code as adopted by CITY. CITY shall conduct such inspections during normal business hours after providing one (1) working day's prior notice;

- 6) Maintain all required insurance coverage as specified in EXHIBIT C, INSURANCE REQUIREMENTS, attached hereto and incorporated herein by reference;
- 7) Maintain the appearance of Project Property consistent with surrounding properties and undertake major repairs as necessary to maintain the habitability of the Project Property;
- 10) Assist CITY in notifying all tenants of their rights under the Uniform Relocation Assistance and Real Property Act of 1970, as amended, including noticing of any new tenants who move into Project Property during and after the escrow period. CITY shall provide CONTRACTOR with any and all written materials to be distributed to tenants regarding relocation assistance;
- 11) Include an acknowledgment of CITY funding and support on all appropriate PROJECT publicity and publications using words to the effect that services are funded by City of Cupertino; and,
- 12) Implement any changes required by CITY or HUD to maintain compliance with CDBG requirements and any other applicable statutes or regulations. CITY and CONTRACTOR will seek remedies to address any required changes that impact the financial viability of the PROJECT, including, but not limited to reduced installment payments on the mortgage described in EXHIBIT B.

D. Fiscal Responsibilities of CONTRACTOR:

CONTRACTOR shall:

- 1) Appoint and submit the name of a Fiscal Officer who shall be responsible for the financial and accounting activities of the CONTRACTOR, including the receipt and disbursement of CONTRACTOR funds;
- 2) Establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to review and approval by CITY and shall be consistent with the requirements of EXHIBIT B. Any CITY review of CONTRACTOR's accounting system shall be done during normal business hours after one (1) working day's prior written notice;
- 3) Document all costs by maintaining complete and accurate records of all financial transactions, including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements, and/or other official documentation evidencing in proper detail the nature and propriety of all charges;

- 4) Perform an independent fiscal audit at least every year, in conformance with the generally accepted standard accounting principles. Such audits must identify the total funds received and disbursed and funds granted and expended relating to this AGREEMENT. The costs for such audits shall be at CONTRACTOR's expense, unless otherwise provided for in this AGREEMENT. Copies of the completed audits must be provided to the CITY; and,
- 5) Be liable for any expenses charged to the PROJECT that are disallowed by CITY. Disallowed expenses shall be any that do not fall within the definition of Operating Expenses in EXHIBIT B. CITY shall notify CONTRACTOR, in writing, of any expense it intends to disallow and the reason(s) for the disallowance. CONTRACTOR shall have seven (7) working days from receipt of said notice of disallowance to appeal the CITY's decision. Said appeal shall be in writing and set forth CONTRACTOR's reasons for considering the expense in question allowable under the AGREEMENT. Upon receipt of said appeal, CITY shall have fourteen (14) working days to respond in writing. Said response shall state the final decision of CITY to allow or disallow, in whole in part, the expense(s) submitted for review, with the reasons for the CITY's decision.

E. Records, Reports and Audits of CONTRACTOR:

- 1) CONTRACTOR shall comply with all applicable federal Uniform Administrative Requirements as delineated in 24 CFR 570.502.
- 2) Establishment and Maintenance of Records: CONTRACTOR shall maintain records, including but not limited to books, financial records, supporting documents, statistical records, personnel, property and all other pertinent Records sufficient to reflect properly (a) all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred to perform this AGREEMENT, and (b) all other matters covered by this AGREEMENT.
- 3) Preservation of Records: CONTRACTOR shall preserve and make its records available during normal business hours upon one (1) working day's prior written notice from CITY:
  - a) Until the expiration of three (3) years from the anniversary of the Effective Date that immediately follows the activity that produced the record;
  - b) For such longer period, if any, as is required by applicable law; or

- c) If this AGREEMENT is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
- 4) Examination of Records and Facilities: At any time during normal business hours and as often as may be deemed necessary, with at least one working day notice by CITY, CONTRACTOR agrees that CITY, and/or any duly authorized representatives of CITY shall, until expiration of (a) three years after the conclusion of the Affordability Period, or (b) such longer period as may be prescribed by law, have access to and the right to examine its offices and facilities engaged in performance of this AGREEMENT and all its records with respect to all matters covered by this AGREEMENT, excepting those falling within the attorney-client privilege and those falling within the attorney work - product privilege, provided that in the event of a dispute regarding the applicability of the attorney work-product privilege to specific records, the Parties agree to submit the dispute to an impartial arbitrator agreeable to both Parties. Agreement regarding the arbitrator shall not be withheld unreasonably. Costs of such arbitration shall be divided equally between the Parties.

CONTRACTOR also agrees that the CITY, or any duly authorized representatives, have the right to audit examine and make excerpts or transcripts of and from, such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials and all other data relating to matters covered by this AGREEMENT. CONTRACTOR or its representatives shall be given access to and the cooperation of CITY, including all excerpts, transcripts and audits made during any examination of CONTRACTOR's records or facilities.

- 5) City Audits: The CITY may require an independent audit. Such audits may cover PROJECT compliance as well as fiscal matters regarding the operation of the PROJECT. CONTRACTOR will be notified at least one (1) working day in advance that an audit will be conducted. Cost of such audits will be borne by the CITY.

If CONTRACTOR chooses to respond to any audit finding, CONTRACTOR or its representative shall be given access to and the cooperation of CITY's auditors, including all working papers of said auditors. CONTRACTOR shall then have a reasonable time within which to review the audit and its findings, and have its responses included in the final audit report.

- F. Non-Religious Activity : In addition to, and not in substitution for, other provisions of this AGREEMENT regarding the provision of services with CDBG funds, the CONTRACTOR:



- 1) Agrees that, in connection with such services:
  - a) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
  - b) It will not discriminate against any person applying for housing on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
  - c) It will provide no religious instruction or counseling, conduct, no religious worship or services, engage in no religious proselytizing, and exert no other religious influence on or in the Project Property; and,
  - d) The common portion of the Project Property shall contain no sectarian or religious symbols or decorations.

4. CONTRACT COMPLIANCE:

A. Monitoring and Evaluation of PROJECT:

Evaluation of the PROJECT performance shall be the mutual responsibility of both Parties. CONTRACTOR shall furnish all tenant and service data, statements, records, information and reports necessary for PROGRAM MANAGER to monitor, review and evaluate the performance of CONTRACTOR with respect to the PROJECT and its components. CITY shall have the right to request the services of an outside agent to assist in any such evaluation. Such services shall be paid for by CITY.

B. Contract Noncompliance:

With receipt by CITY of any information that evidences a failure or deficiency by CONTRACTOR to comply with any provision of this AGREEMENT, the CITY shall have the right to require corrective action to enforce compliance with such provision. Corrective action shall be taken if any of the following, as examples only, occur:

- 1) If CONTRACTOR (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to CITY in connection with the PROJECT;
- 2) If there is pending litigation with respect to the performance by CONTRACTOR of any of its duties or obligations under this AGREEMENT which may materially jeopardize or adversely affect the undertaking of or the carrying out of the PROJECT;

- 3) If CONTRACTOR shall have taken any action pertaining to the PROJECT which requires CITY approval without having obtained such approval;
- 4) If CONTRACTOR is in material default under the provisions of this AGREEMENT;
- 5) If CONTRACTOR makes improper use of CDBG funds and PROJECT income;
- 6) If CONTRACTOR fails to comply with any of the terms and conditions of this AGREEMENT in such a manner as to constitute material breach thereof, or,
- 7) If CONTRACTOR submits to CITY any reports which are incorrect or incomplete in any material respect.

C. Corrective Action:

After all administrative remedies have been exhausted, CITY shall have the right to require the presence of any of CONTRACTOR'S officers at any hearing or meeting called for the purpose of considering corrective action within seven (7) working days of issuing such notice. CONTRACTOR will be informed of and have an opportunity to participate fully in corrective action deliberations.

Upon completion of corrective action deliberations, CITY shall notify CONTRACTOR, in writing, of any noncompliance and shall provide to CONTRACTOR a set of specific corrective action recommendations relative to PROJECT noncompliance and a timetable for implementing the specified corrective action recommendations; such timetable shall allow CONTRACTOR not less than seven (7) working days to comply with the specified corrective action recommendations. If CONTRACTOR wishes to appeal any finding of noncompliance, it shall have seven (7) working days from receipt of said notice of noncompliance to appeal the CITY's decision. Said appeal shall be in writing and set forth CONTRACTOR's reasons for considering the action or inaction cited by CITY as complying with the AGREEMENT. Upon receipt of said appeal, CITY shall have fourteen (14) working days to respond in writing. Said response shall state the final decision of CITY to require corrective action and the timetable for implementation. During this appeal process, CONTRACTOR shall make good faith effort to cure the noncompliance issues that are not in question.

Following implementation of the corrective actions, CONTRACTOR shall forward to CITY, within the time specified by CITY, any documentary evidence required by CITY to verify that the corrective actions have been taken. In the event CONTRACTOR does not implement the corrective action recommendations in accordance with the corrective action timetable, CITY may disallow all or part of the cost of the activity or action in noncompliance, provide notice of intent to terminate this AGREEMENT as specified in Section 14, and/or take other remedies that may be legally available.

5. OBLIGATIONS OF CITY

A. Contract Compliance:

CITY staff shall provide assistance to CONTRACTOR in connection with:

- 1) Obtaining conformity of the PROJECT with the CITY's policies and procedures and all CITY codes, ordinances, directives and laws; activities conducted by contractor(s).
- 2) Obtaining conformity of the PROJECT with CDBG requirements; and,
- 3) Review of AGREEMENT for compliance purposes and evaluating PROJECT based on annual reports received from CONTRACTOR and on-site monitoring of tenant and Project Property data.

B. Method of Payment:

CITY shall pay CONTRACTOR a total sum not to exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000). CITY shall make its initial payment of CDBG funds directly into an escrow account for acquisition of the Project Property, in a manner specified by the title company administering the transfer of title.

6. PROJECT INCOME

- A. All rents collected from PROJECT tenants during the Affordability Period shall be retained by the CONTRACTOR. These PROJECT rents shall be expended as described in EXHIBIT B.
- B. Rents collected that remain unspent at the conclusion of the Affordability Period shall be available to CONTRACTOR to use as described in EXHIBIT B.
- C. Rent received subsequent to the Affordability Period shall not be subject to this AGREEMENT.

7. DISCLOSURE OF CONFIDENTIAL TENANT INFORMATION

CITY agrees to maintain the confidentiality of any information regarding tenants or applicants for tenancy under this PROJECT, or their immediate families, pursuant to this AGREEMENT, which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors, or any other source. Without the written permission of the applicant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this AGREEMENT, and then only to persons having responsibilities under the AGREEMENT, including those furnishing services under the PROJECT through subcontracts.

8. ASSIGNABILITY AND INDEPENDENT CONTRACTOR REQUIREMENTS

- A. The relationship of CONTRACTOR to CITY is that of an independent contractor. CONTRACTOR has full rights to manage its employees and tenants subject to the requirements of the law. All persons employed by CONTRACTOR in connection with this AGREEMENT shall be employees of CONTRACTOR and not employees of CITY in any respect. CONTRACTOR shall be responsible for all employee benefits, including, but not limited to, statutory worker's compensation benefits.
- B. None of the work or services to be performed hereunder shall be delegated or subcontracted to third parties without prior written CITY approval, which approval shall not be unreasonably withheld.
- C. No subcontractor of CONTRACTOR will be recognized by CITY as having any employment relationship with CITY. For the protection of both CONTRACTOR and CITY, CONTRACTOR agrees that, prior to allowing subcontractor(s) to enter onto the Project Property to perform services, such subcontractor(s) shall be required to acquire, or show proof that he/she has purchased and is maintaining commercial general liability, automobile, and workers' compensation (if applicable) insurance policies, with coverage limits which meet or exceed the requirements for CONTRACTOR set forth in Exhibit C.

9. COMPLIANCE WITH LAW

- A. Compliance: CONTRACTOR shall become familiar and comply with and cause all its subCONTRACTOR's and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations, and decrees, including but not limited to, those federal rules and regulations outlined in EXHIBIT D, ASSURANCES, attached hereto and incorporated herein by reference.

B. Assurances: Failure of CONTRACTOR, in any manner, to observe and adhere to law as described herein or as amended shall in no way relieve CONTRACTOR of its responsibility to adhere to same and CONTRACTOR herein acknowledges this responsibility. CONTRACTOR shall hold CITY, its City council, officers, employees and boards and commissions harmless from CONTRACTOR's failure(s) to comply with any requirement imposed on CONTRACTOR by virtue of the utilization of CITY funds. CONTRACTOR shall reimburse CITY for any disallowed costs and/or penalties imposed on CITY because of CONTRACTOR's failure to comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees.

10. TERMS AND AMENDMENTS

Amendments to the terms and conditions of this AGREEMENT shall be requested in writing by the Party desiring such revision, and any such adjustment to this AGREEMENT shall be determined and effective only upon the mutual agreement in writing of the Parties hereto unless the amendments are made by HUD, in which case they will be adopted as ordered.

11. INTEGRATED DOCUMENT

This AGREEMENT embodies the agreement between CITY and CONTRACTOR and its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of CITY prior to execution of this AGREEMENT shall affect or modify any of the terms or obligations contained in any documents comprising this AGREEMENT. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

12. HOLD HARMLESS

CONTRACTOR hereby releases and agrees to protect, defend, hold harmless and indemnify CITY, its City Council, its officers, employees and elected officials, boards and commissions, from and against all claims, injury, liability, loss, cost and expense, or damage, however same may be caused, including all cost and reasonable attorney's fees in providing the defense to any claim arising therefrom, for any loss of or damage to property(real and/or personal) or for personal injury to or death of any person or persons arising out of, occurring by reason of, or in anyway connected with CONTRACTOR's PROJECT activities, or in consequence of Contractor's negligence or willful misconduct.

13. WHEN RIGHTS AND REMEDIES WAIVED

In no event shall any payment by CITY or any acceptance of payment by CONTRACTOR hereunder constitute or be construed to be a waiver by CITY or CONTRACTOR of any breach of covenants or conditions of this AGREEMENT or any default which may then exist on the part of CITY or CONTRACTOR, and the making of any such payment while any such breach or default exists shall in no way impair or prejudice any right or remedy available to CITY or CONTRACTOR with respect to such breach or default.

14. TERMINATION

A. Termination for Cause:

CITY may terminate this AGREEMENT for cause if

- 1) CONTRACTOR fails to comply with material existing conditions of the AGREEMENT; or,
- 2) CONTRACTOR refuses to accept any additional conditions that may be imposed by CITY or the Federal government, except those which would impose an undue financial burden on CONTRACTOR; or,
- 3) CONTRACTOR fails to implement required corrective actions in a timely and sufficient fashion.

Before terminating this AGREEMENT for cause, CITY shall provide notice to CONTRACTOR, in writing, of the reasons for termination. Upon receipt of such termination notice, CONTRACTOR shall have seven (7) working days to provide a written appeal of CITY's termination decision. Such written appeal shall state CONTRACTOR's reasons for considering the termination improper or invalid under the AGREEMENT. Upon receipt of such appeal, CITY shall have fourteen (14) working days to respond to the appeal, in writing, and make a final decision regarding its reasons for terminating the AGREEMENT.

B. Termination for Convenience:

CITY and CONTRACTOR may terminate or suspend this AGREEMENT in whole or in part when both Parties agree that the continuation of the PROJECT would not produce beneficial results commensurate with the further expenditure of funds. The two Parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

C. Upon Termination CONTRACTOR Shall:

- 1) Not incur new obligations and shall cancel as many outstanding obligations as possible; and,
- 2) Pay to the CITY any remaining principal plus interest on the CITY Loan.

D. Termination does not impair the CITY's right to subsequently require repayment by CONTRACTOR for disallowed costs or other adjustments determined by audit findings.

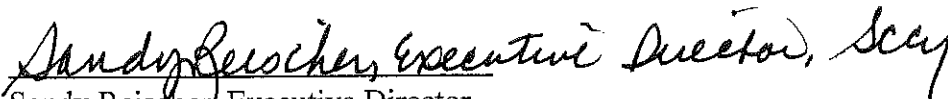


16. ENTIRE AGREEMENT

This AGREEMENT, consisting of 38 pages, contains the entire agreement between the CITY and CONTRACTOR respecting the matters herein set forth and supersedes any prior agreement between the CITY and CONTRACTOR respecting such matters.

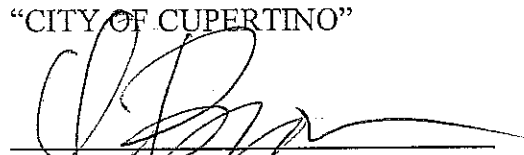
CONTRACTOR has executed this AGREEMENT on this 23rd day of June, 1995.

By: "PACIFIC AUTISM CENTER FOR EDUCATION"

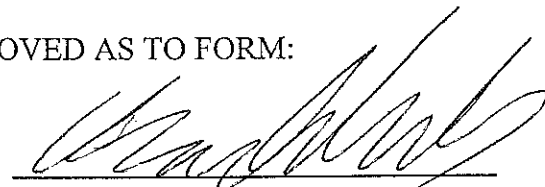
  
Sandy Reischer, Executive Director

CITY has executed this AGREEMENT on this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

By: "CITY OF CUPERTINO"

  
Don Brown, City Manager

APPROVED AS TO FORM:

  
Charles Kilian, City Attorney

ATTESTED BY:

  
Kim Smith, City Clerk



## EXHIBIT A

### PACIFIC AUTISM CENTER FOR EDUCATION 7576 KIRWIN LANE, CUPERTINO, CALIFORNIA

#### SCOPE OF AFFORDABLE HOUSING SERVICES

##### I. PURPOSE OF PROJECT

CONTRACTOR shall implement this AGREEMENT in accordance with the provisions of federal CDBG regulations as set forth in 24 CF Part 570, and all other rules and regulations pertaining thereto. All these elements shall be collectively called CDBG.

The purpose of this PROJECT is to provide affordable, safe housing for very low and low income autistic clients. The Project Property, 7576 Kirwin Lane, Cupertino, California, shall be used for this purpose for a period of thirty (30) years. During that period, the CITY investment shall be secured by a Deed of Trust and a Promissory Note. City funds will be used to assist in the acquisition of the Project Property by CONTRACTOR.

##### II. ACTIVITIES TO BE PERFORMED BY CONTRACTOR

- A. Except as specifically defined, restricted, or otherwise limited by the terms of this AGREEMENT, CONTRACTOR shall be considered owner and landlord of Project Property, with all of the rights and responsibilities normally associated with those terms.
- B. Client Selection Criteria: CONTRACTOR shall adopt written tenant selection criteria and submit same to CITY for approval prior to receiving funds for the Down payment from CITY. These criteria shall, at minimum:
  - 1. Be consistent with the purpose of providing affordable, safe housing for low income autistic clients;
  - 3. Be reasonably related to the purposes of the PROJECT and the applicant's ability to perform the obligations of the lease;
  - 4. Give prompt, written notice to any rejected applicant with grounds for rejection.
- C. Tenant Lease: CONTRACTOR shall adopt a standard tenant lease and submit same to CITY for approval prior to the Effective Date. This lease must be for not less than one year, unless reduced by mutual, written agreement of CONTRACTOR and Client. The lease must allow for rent increases as described in EXHIBIT B.

CONTRACTOR may not terminate the tenancy or refuse to renew the lease of a Client except for serious or repeated violations of the terms of the lease; violation of applicable federal, state, or local law; other good cause. Any termination or refuse to renew must be preceded by not less than 3 (3) calendar days by the CONTRACTOR's service of a written notice upon the Client specifying the grounds for the action.

- D. Maintenance: CONTRACTOR shall maintain the Project Property in compliance with all federal, state, and local housing quality standards and code requirements. CONTRACTOR shall cooperate with CITY staff conducting on-site inspections to determine compliance with this section.

In addition, CONTRACTOR must maintain the appearance of the Project Property consistent with surrounding properties and undertake major repairs as necessary to maintain the habitability of the Project Property.

- E. Rents: CONTRACTOR shall set rents as required in EXHIBIT B. As landlord, CONTRACTOR shall be responsible for the collection of all rents due. Failure of CONTRACTOR to collect rents due shall in no way reduce CONTRACTOR's obligation to repay the CITY Loan as described in EXHIBIT B.

### III. REPORTING REQUIREMENTS

- A. Corporate Documents: As specified in section 2, Paragraph A (2) of this AGREEMENT, CONTRACTOR shall report to CITY in writing within thirty (30) days of effective change in any one of the following documents: Articles of Incorporation, bylaws, tax-exempt Status, Board of Director membership, Personnel Policies and Procedures, Affirmative Action Plan, Organizational Chart and other documents that may be required to verify as the owner of the Project Property.

B. Budget, Revenue and Expenditure Documents

1. By August 15 of each year during the Affordability Period, CONTRACTOR shall submit to CITY a Statement of all revenues and expenses of the PROJECT during the succeeding fiscal year.

C. Tenant Incomes, Demographics and Rents

1. By March 15 of each year during the Affordability Period, CONTRACTOR shall submit to CITY a report of all tenants in CDBG and CITY Units current as of February of that same year. This report shall be submitted on forms provided by the CITY and shall include a list of current tenants with an update of their Annual Income and demographics.

2. CONTRACTOR shall maintain a list of all applicants rejected for tenancy in the Project Property with a statement of the reason for rejection and documentation that the applicant was properly notified of the reasons for the rejection. This list shall be available at CONTRACTOR's administrative office for CITY review at any time.
- D. Other Reporting Requirements: In order to comply with CDBG and other applicable federal, state, and local requirements and to efficiently monitor compliance with this AGREEMENT, CITY may require additional reporting elements from CONTRACTOR.

## EXHIBIT B

### PACIFIC AUTISM CENTER FOR EDUCATION 7576 KIRWIN LANE, CUPERTINO, CA 95014

#### BUDGET AND BASIS FOR REPAYMENT OF CITY LOAN

##### I. PROJECT FISCAL YEAR

- A. The PROJECT Fiscal Year shall run from July 1 to the next June 30 of each calendar year during the Affordability Period.

##### II. APPROPRIATION BUDGET

- A. The CITY appropriation of \$100,000 is from the CDBG funds. All these funds shall be used to assist the acquisition of Project Property. This appropriation of funds is provided as a secured loan to CONTRACTOR.
- B. Acquisition funds may be used for any expense normally related to the close of escrow. CITY shall make its payment of CDBG funds directly into the escrow account for purchase of the Project Property, in a matter designated by the title company administering the transfer of title.
- C. It is the CITY's intention that CONTRACTOR maintain and operate the Project Property in a self-supporting manner. To this end, CITY shall be under no obligation to provide additional funds to maintain and operate the Project Property.

##### III. PROJECT RENTS

- A. During the Affordability Period, CONTRACTOR may charge, depending on the type of unit, maximum rents as described below.
- B. Initial rents must be set at a level that does not trigger economic displacement under the Uniform Relocation Assistance and Real Property Act of 1970, as amended. This Act states that rents charged to existing tenants can only be increased to a level not to exceed 30% of the Annual Income of those tenants, less adjustments for utility payments.

##### IV. THE CITY LOAN

A. Terms of the Loan

1. The CITY Loan shall be evidenced by a Promissory Note, attached hereto as EXHIBIT E and incorporated herein by reference. The CITY Loan shall accrue interest at the rate of three percent (3%) compound interest. The principal balance and all accrued interest shall be due and payable on the earlier of:
  - a. Thirty (30) years from the Effective Date, unless extended under the conditions described below; or,
  - b. The date the Project Property or any portion thereof or interest therein is sold, transferred, assigned, leased (except for leases of individual Units pursuant to the terms of this AGREEMENT) or refinanced, without the prior written approval of CITY.
2. In addition, the CITY, at its option, may declare the CITY Loan due and payable if there is a Termination of this AGREEMENT and its attached exhibits, the Promissory Note and the Deed of Trust, attached hereto as EXHIBIT F and incorporated herein by reference.
3. Starting with the fiscal year beginning July 1, 1996, and throughout the term of the CITY Loan, CONTRACTOR shall repay the loan in monthly installments as provided below.
4. The Promissory Note evidencing the CITY Loan shall be secured by the Deed of Trust on the Project Property. Such Deed of Trust shall be recorded prior to any other interest in the Project Property (except the Deed of Trust securing the Cupertino National Bank conventional loan), and CONTRACTOR shall not place any inferior lien on the Project Property without the prior written consent of CITY, with the exception of County Loan.

B. Monthly Payments

1. CONTRACTOR shall make monthly installments on the CITY Loan in the amount ~~(\$421.60)~~.
2. The CITY Loan shall be due and payable as follows:
  - a. Commencing in 1996, CONTRACTOR installment payments shall be due the 15th of each month (herein the "Payment Date") of each year that an outstanding loan balance exists. A penalty of one percent (1%) of the payment shall be charged for every seven (7) calendar days, or part thereof, CITY receives payment after the Payment Date.

- c. Annually, not later than July 15, 1995 , CONTRACTOR shall submit to CITY a Statement of all revenues and expenses of the PROJECT during the preceding fiscal year.
- d. CONTRACTOR shall not be required to make loan payments greater than the remaining loan balance plus accrued interest.
- e. All loan payments made by CONTRACTOR to CITY shall be applied first to accrued interest, and then to reduce the principal balance owed. In the event that the amount of the loan payment is insufficient to pay the accrued interest, any unpaid interest shall be added to the CITY Loan balance. Interest will not be charged against any unpaid interest.
- f. The CITY Loan shall be due and payable immediately if an Event of Default, as described in the Promissory Note occurs.
- g. In the event of any sale, transfer, or refinancing prior to the time the CITY Loan is paid in full (whether or not approved by CITY), the proceeds of such sale, transfer or refinancing, less reasonable and normal costs of such transaction, shall be paid as follows:
  - 1. Repayment of the Conventional Loan; then,
  - 2. Repayment of the CITY Loan; then,
  - 3. Repayment of the County Loan; then,
  - 4. To CONTRACTOR.
- i. The CITY Loan shall be a nonrecourse loan and no judgment, or execution thereon, entered in any action, legal or equitable, on any note evidencing such loan or deed of trust securing such loan shall be enforced personally against CONTRACTOR or any principals of CONTRACTOR, but shall only be enforced against the Project Property.

## EXHIBIT C

PACIFIC AUTISM CENTER FOR EDUCATION  
7576 KIRWIN LANE, CUPERTINO, CA 95014

### INSURANCE REQUIREMENTS

#### Insurance Requirements for **CONTRACTOR**.

- A. **CONTRACTOR**, at its sole cost and expense and for the Effective Period of this AGREEMENT or any renewal thereof, shall purchase and maintain not less than the following minimum insurance coverage and limits of insurance which shall be maintained with insurers and under forms of policies satisfactory to **CITY**.
1. An EXTENDED BROAD FORM COMPREHENSIVE GENERAL LIABILITY INSURANCE POLICY covering Bodily Injury and Property Damage including an all risk property damage policy, with a combined single limit of at least Two Million Dollars (\$2,000,000) per occurrence providing the following coverages:
    - a) Premises operations
    - b) Independent **CONTRACTOR**'s
    - c) Broad Form Property Damage Endorsement
    - d) Personal Injury Endorsement
  2. A COMPREHENSIVE AUTOMOBILE POLICY with a minimum combined single limit of not less than One Million Dollars (\$1,000,000) for bodily injury and/or property damage, applicable to vehicles used in pursuit of any of the activities associated with this AGREEMENT and providing the following coverages (without deductibles) :
    - a) All owned vehicles
    - b) Employer's Non-ownership Liability
    - c) Hired Automobiles
  3. A WORKERS' COMPENSATION AND EMPLOYERS., LIABILITY POLICY (if required by State law) written in accordance with the laws of the State of California and providing the following coverages for any and all employees of **CONTRACTOR**:
    - a) Statutory Workers' Compensation Coverage A (statutory limit)

b) Employers' Liability Insurance - Coverage B. Not less than: one Million Dollars (\$1,000,000) each accident/Bodily Injury (BI), One Million Dollars (\$1,000,000) policy limit BI by disease, and One Million Dollars (\$1, 000, 000) each employee BI by Disease.

4. A FIRE AND CASUALTY INSURANCE POLICY with coverage amounts adequate to cover full replacement cost of Project Property in the event the Project Property is damaged or destroyed by causes or events such as, but not limited to: fire, wind, earthquake, flood, etc. Flood insurance shall be obtained only to the degree required by CDBG rules and regulations.

5. ENDORSEMENTS. All of the following clauses and endorsements, or similar provisions, are required to be made a part of each of the above required policies:

a) The City of Cupertino, and their respective officers, employees, agents and CONTRACTOR's are hereby added as additional named insured as respects all liabilities arising out of CONTRACTOR's performance of work under this AGREEMENT; and

b) This policy shall be considered primary insurance as respects to any other valid and collectible insurance the CITY may possess, including any self-insured retention the CITY may have, and any other insurance the CITY do possess shall be considered excess insurance only; and

c) No cancellation or non-renewal of this policy, or modification of the coverage afforded under the this endorsement, shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such modification or cancellation to the Community Development Department, CITY OF CUPERTINO, 10300 Torre Avenue, CUPERTINO, CALIFORNIA 95014.

B. PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION. A copy of the Certificate of Insurance and completed coverage verification shall be provided to CITY by each of the CONTRACTOR's insurance companies as evidence of the stipulated coverages within thirty (30) days of the effective date of this AGREEMENT. The Certificate(s) of Insurance and coverage verification shall be mailed to:

Community Development Department  
City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014



## EXHIBIT D

### PACIFIC AUTISM CENTER FOR EDUCATION 7576 KIRWIN LANE, CUPERTINO, CA 95014

#### ASSURANCES

The Recipient of CDBG monies hereby assures and certifies compliance with the regulations, policies, guidelines and requirements (including federal OMB Circulars No. A-87, A-102, A-110, and A-122), as they relate to the application, acceptance and use of Federal funds for this assisted project. Also the CONTRACTOR assures and certifies to the CITY that:

1. It possesses legal authority to make a grant or loan submission and to execute a community housing services program;
2. Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the corporation to submit the final statement and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the CONTRACTOR to act in connection with the submission of the final application and to provide such additional information as may be required;
3. The grant will be conducted and administered in compliance with:
  - a. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d et sea.);  
and
  - b. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601 et sea.);
4. It will affirmatively further fair housing.

**EXHIBIT E**

**PROMISSORY NOTE SECURED BY DEED OF TRUST**

**\$100,000.00 (ONE HUNDRED THOUSAND DOLLARS AND NO/100)**

Date: \_\_\_\_\_, 1995  
Cupertino, California

FOR VALUE RECEIVED, **PACIFIC AUTISM CENTER FOR EDUCATION**, a non-profit corporation organized and existing by virtue of the laws of the State of California (herein "CONTRACTOR") promises to pay to the order of the city of Cupertino, California, a chartered, municipal corporation (herein "CITY"), the sum of **ONE HUNDRED THOUSAND DOLLARS AND NO/100 (\$100,000.00)** at the Office of the Director of Finance of the city of Cupertino, 10300 Torre Avenue, Cupertino, CA 95014, or such other place as CITY may from time to time designate, with interest from this date until paid at the rate of three percent (3.0%) per annum on the unpaid balance.

This Promissory Note is made in connection with a certain "AGREEMENT BY AND BETWEEN THE CITY OF CUPERTINO, CALIFORNIA, AND PACIFIC AUTISM CENTER FOR EDUCATION, dated \_\_\_\_\_, 1995 (herein "CONTRACT") to acquire a single family residential property at 7576 Kirwin Lane, Cupertino, California (herein "Project Property") , and to provide affordable, housing for very low and low income autistic clients under the Community Development Block Grant Program. The CONTRACT provides that CONTRACTOR is the recipient of certain COMMUNITY DEVELOPMENT BLOCK GRANT funds (herein "CDBG") for the acquisition and rehabilitation of the Project Property, for the purpose of providing thirty (30) years of affordable, rental housing. Repayment of this Promissory Note shall be subject to the terms and conditions set forth in the CONTRACT.

This Note shall, at the option of CITY any time prior to thirty (30) years after transfer of title of Project Property to CONTRACTOR, become immediately due and payable upon: (a) failure of CONTRACTOR to complete rehabilitation work on Project Property by July 1, 1995; or (b) a change in the use of the Project Property without the prior written consent of CITY; or (c) the sale, transfer, lease or other disposition of the Project Property by CONTRACTOR without the prior written consent of CITY; or (d) failure of CONTRACTOR to file reports as required in EXHIBIT A of the CONTRACT; or (e) acceptance by CONTRACTOR of any tenants who do not meet the income limits set forth in EXHIBIT B of the CONTRACT; or (f) failure of CONTRACTOR to set Project Property rents as described in EXHIBIT B of the CONTRACT; or (g) failure of CONTRACTOR to make repayments of the City Loan as set forth in EXHIBIT B of the CONTRACT; or (h) any other material contract noncompliance with the CONTRACT and its exhibits.

The entire principal balance shall be considered paid in full if any of the contingencies set forth in (a), (b), (c), (d), (e), (f), (g), and (h) above have not occurred or have occurred but been cured any time prior to thirty (30) years after transfer of title of Project Property to CONTRACTOR.

CONTRACTOR, any endorser of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note hereby severally waive demand, presentment for payment, demand and protest, notice of protest, demand and or dishonor and non-payment and consent to any number of renewals or extensions of time hereof. Any such renewals or extensions may be made without notice to any of said parties and without affecting their liability. The pleading of any statute of limitations as a defense to any demand against the CONTRACTOR is expressly waived by CONTRACTOR.

This is a non-recourse note.

In the event of default under this Note, CONTRACTOR further promises to pay reasonable attorneys fees and costs and expenses incurred by the CITY in connection with any such default or any other action or other proceeding brought to enforce any of the provisions of this Note. The CITY's right to such fees shall not be limited to or by its representation by staff counsel, and such representation shall be valued at customary and reasonable rates for private sector legal services.

It is the intent of the Parties that the relationship evidenced by this Note shall be deemed to be one of debtor/creditor, and not of partnership or joint venture.

This Note may not be modified or amended except by an instrument in writing expressing such intention executed by the Parties sought to be bound thereby, which writing must be so firmly attached to this Note so as to become a permanent part thereof.

Any failure of the CITY or other holder to exercise any rights hereunder shall not constitute a waiver of such rights or of any other right under this Note.

This Note shall be governed by and construed in accordance with the laws of the State of California.

To the extent assignment is permitted, the terms of this Note shall apply to, inure to the benefit of, and bind all Parties thereto, their heirs, successors and assigns.

Executed by CONTRACTOR on the date first hereinabove written.

PACIFIC AUTISM CENTER FOR EDUCATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: 572 Dunholme Way Telephone: (408) 245-3400  
Sunnyvale, CA 94087 Facsimile: (408) 245-3449

**EXHIBIT F**

**Recording Requested by and  
When Recorded Mail to:**

THE CITY OF CUPERTINO  
Community Development Dept.  
10300 Torre Avenue  
Cupertino, CA 95014  
ATTN.: Vera Gil

**OFFICIAL BUSINESS: Document entitled to free recording per Government Code Section 6103**

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SPACE ABOVE THIS LINE  
FOR RECORDING USE

**DEED OF TRUST**

**Securing City Loan  
with Assignment of Rents**

This Deed of Trust is made this \_\_\_\_ day of June, 1995, by and between **PACIFIC AUTISM CENTER FOR EDUCATION**, a non-profit California corporation (herein "Contractor/Trustor"), Old Republic Title Company, a California corporation (herein "Trustee") , and **THE CITY OF CUPERTINO, CALIFORNIA**, a chartered, California municipal corporation, organized and existing in the County of Santa Clara under and by virtue of the laws of the State of California, (herein "City").

Contractor/Trustor grants, transfers and assigns to Trustee in trust, upon the trusts, covenants, conditions and agreements and for the uses and purposes hereinafter contained, with power of sale, and right of entry and possession all of its title and interest in that real property (herein "Project Property") in the City of Cupertino, Santa Clara County, State of California, described in Attachment I, attached hereto and incorporated herein by reference, together with City's interest in all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Project Property; and together with the following:

1. The rents, issues and profits thereof; and
2. All buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot-water boilers, stoves, ranges, elevators and motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantles, cabinets, refrigerating equipment and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty; and

3. All building materials and equipment now or hereafter delivered to said premises and intended to be installed therein; and
4. All plans, drawings, specifications, etc., and articles of personal property now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Project Property which are necessary to the completion and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner.

To have and to hold the property hereinbefore described (including the site and all appurtenances), all such property being referred to collectively herein as the "Project Property", to Trustee, its successors and assigns forever.

**FOR THE PURPOSE OF SECURING:**

1. Payment of indebtedness of Contractor/Trustor to the City in the principal sum of ONE HUNDRED THOUSAND DOLLARS AND NO/100 (\$100,000.00) or so much thereof as shall be advanced by City to Contractor/Trustor, (herein the "City Loan") , evidenced by a promissory note of same date herewith between Contractor/Trustor and City, together with all sums due thereunder including interest and other charges;
2. The performance of each agreement of Contractor/Trustor in this Deed of Trust and the City Loan Promissory Note (herein "Note");
3. The performance of each agreement of Contractor/Trustor under that certain "AGREEMENT BY AND BETWEEN THE CITY OF CUPERTINO, CALIFORNIA AND PACIFIC AUTISM CENTER FOR EDUCATION, dated \_\_\_\_\_ , 1995, to acquire residential property at 7576 Kirwin Lane, Cupertino, California 95014, and to provide affordable, rental housing for low income and very-low income households (herein "CONTRACT"), by and between Contractor/Trustor ("CORPORATION" therein) and City ("CITY" therein), on file in the office of City;
4. All extensions, amendments, modifications or renewals of the CONTRACT and Promissory Note, however evidenced, and additional advances evidenced by a note reciting that it is secured hereby.

**TO PROTECT THE SECURITY OF THIS DEED OF TRUST,  
CONTRACTOR/TRUSTOR COVENANTS AND AGREES:**

1. That it will pay the City Loan at the time and in the manner provided therein;
2. That it will not permit or suffer the use of any of the Project Property for any purpose other than the use for which the same was intended at the time this Deed of Trust was executed;
3. That the Note and the CONTRACT, including attached exhibits, are incorporated herein and made a part of this Deed of Trust. Upon default under the Note or this Deed of Trust or upon violation of the covenants contained in the CONTRACT, City, at its option, may declare the whole of the indebtedness secured hereby to be due and payable. Provided, however, that the CONTRACT shall only be effective until the issuance by city of a Certificate of Completion as therein provided;
4. That all rents, profits and income from the Property covered by this Deed of Trust are hereby assigned to City for the purpose of discharging the debt hereby secured. Permission is hereby given to Contractor/Trustor so long as no default exists hereunder, to collect such rents, profits and income, as specified in the CONTRACT and its attachments;
5. That upon default hereunder or under the Note or the CONTRACT, City shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Project Property described herein and operate same and collect the rents, profits and income therefrom;
6. That Contractor/Trustor will keep the Project Property including any improvements now existing or hereafter erected insured against loss by fire and such other hazards, casualties and contingencies as may be required in writing from time to time by City, and all such insurance shall be evidenced by standard fire and extended coverage insurance policy or policies. In no event shall the amounts of coverage be less than one hundred percent (100%) of the insurable value or not less than the unpaid balance of this Deed of Trust, whichever is more. (For purposes of this Deed of Trust insurable value shall mean the total replacement cost of the Project Property, including improvements.) Such policies shall be endorsed with standard mortgage clause with loss payable to City and certificates thereof together with copies of original policies shall be deposited with City;
7. To pay, at least 10 days before delinquency, any taxes and assessments affecting said Project Property when due, all encumbrances, charges and liens, with interest, on said Project Property or any part thereof which appear to be prior or superior hereto, all costs, fees and expenses of this Trust;

8. To keep said Project Property in good condition and repair, not to remove or demolish any buildings thereon; to complete or restore promptly and in good and workmanlike manner any building which may be damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor (unless contested in good faith if Contractor/Trustor provides security satisfactory to City that any amounts found to be due will be paid and no sale of the Project Property or other impairment of the security hereunder will occur) ; to comply with all laws affecting said Project Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said Project Property in violation of law and/or covenants, conditions and/or restrictions affecting said Project Property; not to permit or suffer any alteration of or addition to the buildings or improvements in or upon said Project Property without the written consent of City;
9. To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of City or Trustee, and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which City or Trustee may appear;
10. Should Contractor/Trustor fail to make any payment or do any act as herein provided, then City or Trustee, but without obligation so to do and without notice to or demand upon Contractor/Trustor and without releasing Contractor/Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. City or Trustee being authorized to enter upon said Project Property for such purposes, may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of City or Trustee; may pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, may pay necessary expenses, employ counsel, and pay his reasonable fees. Costs of such actions by City or Trustee shall be added to the principal sum included hereby;
11. City shall have the right to pay fire and other property insurance premiums when due should Contractor/Trustor fail to make any required premium payments. All such payments made by City shall be added to the principal sum secured hereby;
12. To pay immediately and without demand all sums so expended by City or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the Note;
13. That the City Loan advanced hereunder is to be used in the acquisition and rehabilitation of Project Property in accordance with the CONTRACT; and upon the failure of Contractor/Trustor to keep and perform all the covenants, conditions and restrictions of said CONTRACT, the principal sum and all interest and other charges provided for in the Note shall at the option of City become due and payable, anything contained herein to the contrary notwithstanding;

14. Contractor/Trustor further covenants that it will not voluntarily create, suffer or permit to be created against the Project Property, subject to this Deed of Trust, any lien or liens except as authorized by City and further that it will keep and maintain the Project Property free from the claims of all persons supplying labor or materials which will enter into the rehabilitation and repair of any and all buildings on the Project Property;
15. That any and all improvements made or about to be made upon the Project Property, and all plans and specifications, comply with all applicable municipal ordinances and regulations and all other regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office;
16. Contractor/Trustor herein agrees to pay to City or to the authorized loan servicing representative of City a charge not to exceed \$15.00 for providing a statement regarding the obligation secured by this Deed of Trust as provided by Section 2954, Article 2, Chapter 2, Title 14, Division 3 of the California Civil Code.

**IT IS MUTUALLY AGREED THAT:**

17. If the construction of any improvements as herein referred to shall not be carried on with reasonable diligence, or shall be discontinued at any time for any reason other than strikes or lockouts, City, after due notice to Contractor/Trustor or any subsequent owner, is hereby invested with full and complete authority to enter upon the Project Property, employ watchmen to protect such improvements from depredation or injury and to preserve and protect the personal property therein, and to continue any and all outstanding contracts for the rehabilitation and repair of said building or buildings, to make and enter into any contracts and obligations wherever necessary, either in its own name or in the name of Contractor/Trustor, and to pay and discharge all debts, obligations and liabilities incurred thereby. All such sums so advanced by City (exclusive of advances of the principal of the indebtedness secured hereby) shall be added to the principal of the indebtedness secured hereby and shall be secured by this Deed of Trust and shall be due and payable on demand with interest at the rate specified in the Note;
18. Should the Project Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, City shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said Project Property, are hereby assigned to City. After deducting therefrom all its expenses, including attorneys' fees, the balance of the proceeds shall be applied to the amount due under the Note secured hereby. No amount applied to the reduction of the principal shall relieve Contractor/Trustor from making additional payments as required by the Note;



19. Upon default by Contractor/Trustor in making any payments provided for herein or in the CONTRACT or Note secured hereby, and if such default is not made good within fifteen (15) days of the due date, or if Contractor/Trustor shall fail to perform any covenant or agreement in this Deed of Trust or the CONTRACT within thirty (30) days after written demand therefor by City (or, in the event that more than 30 days is reasonably required to cure such default, should Contractor/Trustor fail to promptly commence such cure, and diligently prosecute same to completion) , City may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale, and of written notice of default and of election to cause the Project Property to be sold, which notice Trustee shall cause to be duly filed for record and City may foreclose this Deed of Trust. City shall also deposit with Trustee this Deed of Trust, the Note and all documents evidencing costs secured hereby;
  
20. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Contractor/Trustor, shall sell said Project Property at the time and place fixed by it in said notice of sale,, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Project Property by public announcement at the time and place of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Contractor/Trustor, Trustee or city, may purchase at the sale. Trustee shall apply the proceeds of sale to payment of:
  - a. The expenses of such sale, together with the reasonable expenses of this trust including therein reasonable Trustee's fees or attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale;
  - b. The cost of any search and/or other evidence of title procured in connection with such sale and revenue stamps on Trustee's deed;
  - c. All sums expended under the terms hereof, not then repaid, with accrued interest at the rate specified in the Note;
  - d. All other sums then secured hereby; and
  - e. The remainder, if any, to the person or persons legally entitled thereto.

21. City may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by City, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee;
22. The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law;
23. Upon written request of City stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto";
24. The trust created hereby is irrecoverable by Contractor/Trustor;
25. This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "City" shall include not only the original City hereunder but also any future owner and holder including pledgees, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of each Contractor/Trustor hereunder are joint and several;
26. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which Contractor/Trustor, City, or Trustee shall be a party unless brought by Trustee;
27. The undersigned Contractor/Trustor requests that copies of any notice of default and of any notice of sale hereunder be mailed to it at 572 Dunholme Way, Sunnyvale, CA 94087.
28. Contractor/Trustor agrees at any time and from time to time upon receipt of a written request from City, to furnish to City detailed statement in writing of income, rents, profits, and operating expenses of the premises, and the names of the occupants and tenants in possession, together with the expiration dates of their leases and full information regarding all rental and occupancy agreements, and the rents provided for by such leases and rental and occupancy agreements, and such other information regarding the Project Property and their use as may be requested by City.

29. Transfer of Property by Contractor/Trustor. In order to induce City to make the loan secured hereby Contractor/Trustor agrees that in the event of any transfer of the Property without the prior written consent of City, City shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions. City may grant or deny such consent in its sole discretion and, if consent should be given, any such transfer shall be subject to this Deed of Trust, and any such transferee shall assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release Contractor/Trustor or any maker or guarantor of the Note from any liability thereunder without the prior written consent of City. As used herein, "transfer" includes the sale, agreement to sell, transfer or conveyance of the Property, or any portion thereof or interest therein, whether voluntary, involuntary, by operation of law or otherwise, the execution of any installment land sale contract or similar instrument affecting all or a portion of the Project Property, or the lease of all or substantially all of the Project Property. "Transfer" shall also include the transfer, assignment, hypothecation or conveyance of legal or beneficiary ownership of any interest in Contractor/Trustor or any conversion of Contractor/Trustor to an entity form other than that of Contractor/Trustor at the time of execution of the CONTRACT. "Transfer" shall not include the leasing of individual residential units,, or other rentable area on the Project Property, so long as Contractor/Trustor complies with the provisions of the Agreement relating to such leasing activity. In the event of any refinancing or partial refinancing (including any additional financing) , without the prior written consent of beneficiary (which consent City may grant or deny in its sole discretion), then the entire outstanding balance of the Note together with all accrued and unpaid interest, shall be repaid to the City at the time of each refinancing or partial refinancing. In no event shall the total loan-to-value ratio for all financing exceed ninety percent (90%), nor shall the City's proportion of the total encumbrances increase as a result of any refinancing or partial refinancing.
30. Contractor/Trustor shall permit City and its agents or representatives, to inspect the Project Property at any and all-reasonable times, with 24 hours advance notice. Inspections shall be conducted so as not to interfere with the tenants' use and enjoyment of the property.
31. The Note provided for herein shall be subject to the restrictions set forth in the CONTRACT and Contractor/Trustor hereby consents to such restrictions and agrees to be bound thereby. Such restrictions shall be in addition to and not in limitation of the rights of City expressly set forth in this Deed of Trust.
32. It is hereby expressly agreed and acknowledged by Contractor/Trustor and City that the City Loan and this Deed of Trust are subject and subordinate to and shall continue to be subject and subordinate to that certain first deed of trust on the Project Property in the amount of ONE HUNDRED THOUSAND DOLLARS AND NO/100 (\$100,000.00) executed by, dated in the Official Records of the Recorder of the County of Santa Clara, California, as File No \_\_\_\_\_.

33. Nothing herein shall be construed to subordinate the covenants, conditions and restrictions of the CONTRACT or the conditions of the CONTRACT not pertaining to repayment of the City Loan. This Deed of Trust shall not be subordinated to any other interest in the Project Property without the prior written consent of City.
34. For purposes of this Deed of Trust, "Hazardous Materials" mean and include any hazardous, toxic or dangerous waste, substance or material including, without limitation, flammable explosives, radioactive materials, asbestos, hazardous wastes, toxic substances and any materials or substances defined as hazardous materials, hazardous substances or toxic substances in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.) , the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) and those substances defined as hazardous wastes in 25117 of the California Health and Safety Code or as hazardous substances in 25316 of the California Health and Safety Code or in any regulations promulgated under either such law, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.
35. In addition to the general and specific representations, covenants and warranties set forth in the Deed of Trust or otherwise, Contractor/Trustor represents, covenants and warrants, with respect to Hazardous Materials, as follows:
- a. Neither Contractor/Trustor nor, to the best knowledge of Contractor/Trustor, any other person, has ever caused or permitted any Hazardous Materials to be manufactured, placed, held, located or disposed of on, under or at the Project Property or any part thereof, and neither the Project Property nor any part thereof, or any property adjacent thereto, has ever been used (whether by the Contractor/Trustor or, to the best knowledge of the Contractor/Trustor, by any other person) as a manufacturing site, dump site or storage site (whether permanent or temporary) for any Hazardous Materials;
  - b. Contractor/Trustor hereby agrees to indemnify City, its officers, employees, CONTRACTOR's and agents, and hold City, its officers, employees, CONTRACTOR's and agents harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against City, its officers, employees, CONTRACTOR's or agents for, with respect to, or as a direct or indirect result of, the presence or use, generation, storage, release, threatened release or disposal of Hazardous Materials on or under the Project Property or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials from the Project Property (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under CERCLA, any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute,

law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials) , regardless or whether or not caused by, or within the control of Contractor/Trustor.

- c. Contractor/Trustor has not received any Notice of:
    - (1) The happening of any event involving the use, spillage, discharge or cleanup of any Hazardous Materials ("Hazardous Discharge") affecting Contractor/Trustor or the Project Property; or
    - (2) Any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental, health or safety matter affecting Contractor/Trustor or the Project Property ("Environmental Complaint") from any person or entity, including, without limitation, the United States Environmental Protection Agency (EPA). If Contractor/Trustor receives any such notice after the date hereof, then Contractor/Trustor will give, within seven (7) business days thereafter, oral and written notice of same to city.
  - d. Without limitation of City's rights under this Deed of Trust, City shall have the right, but not the obligation, to enter onto the Project Property or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Materials or Environmental Complaint upon its receipt of any notice from any person or entity, including without limitation, the EPA, asserting the existence of any Hazardous Materials or any Environmental Complaint on or pertaining to the Project Property which, if true, could result in an order, suit or other action against Contractor/Trustor affecting any part of the Project Property by any governmental agency or otherwise, which, in the sole opinion of City, could jeopardize its security under this Deed of Trust. All reasonable costs and expenses incurred by City in the exercise of any such rights shall be secured by this Deed of Trust and shall be payable by Contractor/Trustor upon demand together with interest thereon at a rate equal to the highest rate payable under the note secured hereby.
  - e. The foregoing representation, covenants, indemnities and warranties shall be continuing and shall be true and correct for the period from the date hereof to the release of this Deed of Trust (whether by payment of the indebtedness secured hereby or foreclosure or action in lieu thereof), and these representations, covenants, indemnities and warranties shall survive such release.
36. A material violation of the terms, conditions or covenants of the CONTRACT, Note, or this Deed of Trust shall be an Event of Default (provided, however, that a material violation of the terms, conditions or covenants of the CONTRACT or Note shall only be an Event of Default under this Deed of Trust if such violation occurs before the issuance of a Certificate of Completion by City).

37. Upon the occurrence of an Event of Default as described in Section 35, Contractor/Trustor shall be obligated to repay the Note and City may, by action, suit or proceeding at law or in equity, sue for, and enforce payment of any and all amounts due by Contractor/Trustor pursuant to the terms of the Note and/or sue to enforce the performance of the obligations of Contractor/Trustor under the CONTRACT, subject to the terms and conditions of said agreement.
38. The Note secured by this Deed of Trust evidences a non-recourse only obligation of Contractor/Trustor.
39. All expenses (including reasonable attorneys' fees and costs and allowances) incurred in connection with an action to foreclose, or the exercise of any other remedy provided by this Deed of Trust, including the curing of any Event of Default,, shall be the responsibility of Contractor/Trustor.
40. Each successor owner of an interest in the Project Property other than through foreclosure or deed in lieu of foreclosure, shall take its interest subject to this Deed of Trust.

**PACIFIC AUTISM CENTER FOR EDUCATION**

By: \_\_\_\_\_

Title: \_\_\_\_\_

"Contractor/Trustor"