

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Settlement Agreement"), dated as of the date the last party signs this agreement (the "Effective Date") is entered into by and among Pacific Autism Center for Education ("PACE") and the City of Cupertino (the "City"). PACE and the City are sometimes referred to as a "Party" or collectively referred to as the "Parties."

RECITALS

A. On or about June 23, 1995, PACE and the City entered into that certain Agreement By and Between the City of Cupertino, California and Pacific Autism Center for Education (the "Agreement") under which the City agreed to loan funds to PACE for the purpose of providing affordable, safe housing for very-low and low-income autistic clients at 7576 Kirwin Lane, Cupertino, California 95014 (the "Property") for a period defined in Section 1.A of the Agreement, defining "Affordability," as follows: "This period shall be for at least thirty (30) years after the Effective Date." (the "Affordability Covenant" or "Affordability Period").

B. Performance under the Agreement was secured by a Deed of Trust made June 23, 1995 and recorded on June 27, 1995 as Document No. 12928912 in the Office of the Recorder for Santa Clara County (the "Deed").

C. The Deed secured the acquiring of the Property and providing affordable, rental housing for low-income and very-low-income households during the Affordability Period.

D. PACE contends that it has paid back in full all loan amounts due under the Agreement.

E. In or around June 2023, before reaching 30 years of providing the Affordability Period, PACE closed the home it was operating under the Property.

F. PACE contends that it was operating the home at the Property at a significant deficit and that it was no longer able to operate the home in a manner that produced beneficial results commensurate with the expenditure of funds and, as such, had a contractual basis to terminate the Agreement.

G. PACE wishes to sell the Property and believes that the City reconveying the Deed to PACE will facilitate such sale.

H. On October 9, 2023, PACE filed a Complaint in the Superior Court of California, County of Santa Clara, Case No. 23CV423995 (the "Action"), naming the City of Cupertino as the only named Defendant and alleging Breach of Written Contract

and demanding Specific Performance and Declaratory Relief, including that the City reconvey the Deed to PACE.

I. The City denies all allegations in the Complaint, including but not limited to the allegation that PACE has a contractual basis to terminate the Agreement or has satisfied or is otherwise excused from its obligations, such as providing the full 30-year Affordability Period, under the Agreement.

J. The Parties wish to resolve their dispute to avoid further litigation, to allow PACE to move forward with the sale of the Property, and to maximize the City's ability to provide affordable housing for its residents.

Now therefore, with reference to the foregoing recitals, which are incorporated into this Settlement Agreement, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. Council Authorization; Settlement Payment

Within twenty-one (21) calendar days of the execution of this Settlement Agreement, the City Council shall consider authorizing the City Manager to reconvey the Deed to PACE free and clear of any obligation to provide affordable housing for the remainder of the Affordability Period. If the City Council authorizes the City Manager to reconvey the Deed, PACE shall deliver a cashier's check to the City of Cupertino in the amount of Fifty Thousand Dollars (\$50,000) (the "Settlement Payment") no later than seven (7) calendar days after the City Council votes to authorize the reconveyance. If the City Council declines to authorize the reconveyance of the Deed to PACE, this Settlement Agreement shall become null and void; provided, however, that nothing herein shall preclude the Parties from negotiating an extension of the deadline for the City Council to act under this Section.

2. Reconveyance of Deed of Trust

Within seven (7) calendar days of receipt of the Settlement Payment, the City shall reconvey the Deed to PACE. PACE may record this reconveyance in the Office of the Recorder for Santa Clara County.

3. Request for Dismissal with Prejudice

Within seven (7) calendar days of the City reconveying the Deed to PACE, PACE must file a request for dismissal with prejudice of the entire Action and serve that request on all counsel for the City in the Action.

4. Each Party to Bear Own Attorneys' Fees and Costs

The Parties understand and agree that each Party shall bear its own attorneys' fees and costs incurred, and hereby waive and release each other from any claims for attorneys' fees and/or costs incurred in connection with the Agreement, including without limitation

communications between counsel for the City and PACE, as well as attorneys' fees related to any asserted issues alleged by PACE about the Property. These asserted issues for which each Party shall bear its own attorneys' fees and costs include, but are not limited to, any allegations regarding the following: the Agreement, the Property, and/or the Action.

5. Evidence Code Section 1152

The terms of this Settlement Agreement are subject to Evidence Code section 1152 and shall not be admissible in any legal proceeding.

6. Mutual Waiver and Release

The City and each of its partners, representatives, members, officers, directors, managers, employees, agents, contractors, affiliates, successors, assigns, creditors, heirs, executors, and administrators, hereby release and forever discharge PACE, and each of its members, officers, managers, employees, agents, contractors, affiliates, successors, assigns, creditors, attorneys, heirs, executors, and administrators, from any and all claims for damages, equitable relief, actions for a writ of mandate, demands, causes of action, damages, liabilities, and obligations, of whatever description or nature, arising out of, directly or indirectly, or relating in any manner to the Agreement, the Property, and/or the Action, including without limitation any current or future claims arising out of, directly or indirectly, or relating in any manner to the Agreement, the Property, and/or the Action.

PACE, and each of its members, officers, managers, employees, agents, contractors, affiliates, successors, assigns, creditors, attorneys, heirs, executors, and administrators will release and forever discharge the City, and each of its partners, representatives, members, officers, directors, managers, employees, agents, contractors, affiliates, successors, assigns, creditors, heirs, executors, and administrators, from any and all claims for damages, equitable relief, actions for a writ of mandate, demands, causes of action, damages, liabilities, and obligations, of whatever description or nature, arising out of, directly or indirectly, or relating in any manner to the Agreement, the Property, and/or the Action, including without limitation any current or future claims arising out of, directly or indirectly, or relating in any manner to the Agreement, the Property, and/or the Action.

The Parties intend this Settlement Agreement to be and to constitute a full general release and to constitute a full and final accord and satisfaction extending to all claims arising out of or relating to the Lease. Accordingly, the City and PACE, by signing this Settlement Agreement, agree and warrant that they have read, understood, and expressly releases and waives the provisions of California Civil Code Section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties acknowledge that by signing this Settlement Agreement they are knowingly waiving the provisions of Section 1542.

Initials: The City: CDJ

PACE: _____

7. No Admission of Liability

Nothing contained herein shall be construed as an admission or acknowledgment of any fact, legal issue, claim or defense on the part of any Party; any such interpretation of this Settlement Agreement is hereby expressly disclaimed.

8. Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Settlement Agreement. Signatures provided by facsimile shall have the same force and effect as original signatures.

9. Notices

All notices, demands, or other communications which this Settlement Agreement contemplates or authorizes shall be in writing and shall be personally delivered, faxed, or mailed to the respective Party as follows:

If to the City:

Attn: Christopher Jensen
City Attorney's Office
10300 Torre Avenue
Cupertino, CA 95014

With Copies to:

Celia W. Lee
Goldfarb & Lipman LLP
1300 Clay Street, Eleventh Floor
Oakland, CA. 94612

If to PACE:

Kurt Ohlfs
Pacific Autism Center for Education
1880 Pruneridge Ave
Santa Clara, CA 95050

With Copies to:

Anthony F. Ventura
Ventura Hersey & Muller LLP
1506 Hamilton Ave.
San Jose, CA 95125

Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address.

The Parties acknowledge that by signing this Settlement Agreement they are knowingly waiving the provisions of Section 1542.

Initials: The City: _____

PACE: 

7. No Admission of Liability

Nothing contained herein shall be construed as an admission or acknowledgment of any fact, legal issue, claim or defense on the part of any Party; any such interpretation of this Settlement Agreement is hereby expressly disclaimed.

8. Counterparts

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Settlement Agreement. Signatures provided by facsimile shall have the same force and effect as original signatures.

9. Notices

All notices, demands, or other communications which this Settlement Agreement contemplates or authorizes shall be in writing and shall be personally delivered, faxed, or mailed to the respective Party as follows:

If to the City:

Attn: Christopher Jensen
City Attorney's Office
10300 Torre Avenue
Cupertino, CA 95014

With Copies to:

Celia W. Lee
Goldfarb & Lipman LLP
1300 Clay Street, Eleventh Floor
Oakland, CA. 94612

If to PACE:

Kurt Ohlfs
Pacific Autism Center for Education
1880 Pruneridge Ave
Santa Clara, CA 95050

With Copies to:

Anthony F. Ventura
Ventura Hersey & Muller LLP
1506 Hamilton Ave.
San Jose, CA 95125

Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address.

10. Headings

The heading titles for each section of this Settlement Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Settlement Agreement.

11. Severability

If any term of this Settlement Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Settlement Agreement shall be construed as not containing that term, and the remainder of this Settlement Agreement shall remain in full force and effect; provided, however, this section shall not be applied to the extent that it would result in a frustration of the Parties' intent under this Settlement Agreement.

12. Each Party's Role in Drafting the Settlement Agreement

Each Party to this Settlement Agreement has had an opportunity to review the Settlement Agreement, confer with legal counsel regarding the meaning of the Settlement Agreement, and negotiate revisions to the Settlement Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 to interpret any uncertainty in the meaning of the Settlement Agreement.

13. Governing Law; Venue

This Settlement Agreement shall be governed by the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be heard and filed in a court of competent jurisdiction in the County of Santa Clara.

14. Integration and Modifications

This Settlement Agreement contains all the representations and the entire agreement and understanding among the Parties with respect to the subject matter hereof, and supersedes all prior understandings, agreements (whether written, verbal, implied, or otherwise) and communications with respect thereto. None of the terms hereof shall be amended, waived, or otherwise modified except by written instrument duly executed by the Parties.

15. No Third-Party Beneficiaries

Nothing in this Settlement Agreement, whether express or implied, is intended: (i) to confer any rights, benefits, or remedies under or by reason of this Settlement Agreement on any person or entity other than the Parties and their respective successors and permitted assigns; (ii) to relieve, terminate, or discharge any obligation or liability of any person or entity not a party to this Settlement Agreement to any Party hereto; or (iii) to give any third person or entity any right of subrogation or action against any party.

16. Cooperation in Challenge to Settlement Agreement

The Parties shall mutually cooperate with each other in any litigation, administrative action, or other proceeding brought by a third party or parties challenging this Settlement Agreement.

17. Binding on Successors

This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties and the Parties' successors, administrators, managers, assigns, and employees, and shall be binding upon and shall inure to the benefit of the Parties' officers and agents acting in their official capacity.

18. Authority to Enter into Settlement Agreement

Each Party covenants and represents that it is fully authorized to enter into this Settlement Agreement and to carry out the obligations provided for herein. Each signatory to this Settlement Agreement represents and covenants that the signatory possesses the necessary capacity and authority to sign and enter into this Settlement Agreement and to bind the Party on whose behalf they are a signatory.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties do hereby agree to the full performance of the terms set forth herein.

City of Cupertino

By: Christopher Jensen

Name: Christopher Jensen

Its: City Attorney

Dated: Jun 4, 2024

APPROVED AS TO FORM:



Celia W. Lee
GOLDFARB & LIPMAN LLP
Attorney for City of Cupertino

Pacific Autism Center for Education

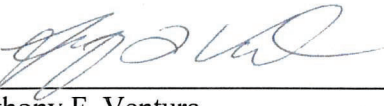
By:  _____

Name: Kurt Ohlfs

Its: PACE Executive Director

Dated: 5/31/24

APPROVED AS TO FORM:

 _____

Anthony F. Ventura
Ventura Hersey & Muller LLP
Attorney for Pacific Autism Center for
Education






Settlement Agreement - PACE

Final Audit Report

2024-06-04

Created:	2024-06-04
By:	Araceli Alejandre (aracelia@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA5eTMW69O-mrBgyRr7McktZPL6F6rSDXI

"Settlement Agreement - PACE" History

-  Document created by Araceli Alejandre (aracelia@cupertino.org)
2024-06-04 - 5:55:01 PM GMT - IP address: 64.165.34.3
-  Document emailed to Christopher Jensen (christopherj@cupertino.org) for signature
2024-06-04 - 5:56:43 PM GMT
-  Email viewed by Christopher Jensen (christopherj@cupertino.org)
2024-06-04 - 5:57:17 PM GMT - IP address: 104.47.73.126
-  Document e-signed by Christopher Jensen (christopherj@cupertino.org)
Signature Date: 2024-06-04 - 5:57:48 PM GMT - Time Source: server- IP address: 64.165.34.3
-  Agreement completed.
2024-06-04 - 5:57:48 PM GMT



Powered by
Adobe
Acrobat Sign