

**Council Meeting: August 27, 2013**

SUBJECT: Discussion and Possible Action Regarding Request from Sunnyvale Community Services for Forgiveness of Approximately \$525,000 in Outstanding Community Development Block Grant (CDBG) Loan Debt

BACKGROUND

Sunnyvale Community Services (SCS) is a non-profit emergency services agency that has provided food and emergency assistance to lower-income Sunnyvale residents, including seniors, families with children, disabled people, and homeless people, since 1970.

In 2003, the City provided a loan of \$400,000 in Community Development Block Grant (CDBG) funds to SCS to acquire a property located at 725 Kifer Road to serve as the agency's base of operations, with warehouse and office space for food distribution and emergency assistance consultations. This loan was provided at three percent simple annual interest for a thirty-five year term, with all payments of principal and interest deferred for the first fifteen years. Beginning in 2018, the loan requires fully amortized monthly payments of \$3,217 in principal and interest to be paid through April 2038, when the balance will be paid off in full. In addition to these terms, ongoing CDBG regulations apply to the property until the sooner of: five years after the loan term ends, or the proportional CDBG share of the current fair market value of the property at time of sale or disposal (the "reversion of assets" requirement) is paid in full. The outstanding balance on this loan will be \$524,603 as of August 30, 2013, including the original \$400,000 in principal, plus \$124,603 in interest accrued through that date. The CDBG share of the property value is approximately 17%.

In April 2013, SCS wrote to the City asking it to forgive the CDBG loan in full to allow SCS to sell its property and buy a larger property for sale nearby that would better meet its current facility needs for more food storage space and a larger, more functional parking lot. The need for a larger facility is due to the increased level of demand for the safety net services that SCS provides, and to some changes to driveway access caused by a new owner of the adjacent property. The letter also requested three other items of assistance, including additional CDBG funding of up to \$1.5 million toward the new property. Since April, SCS has conducted a facility needs analysis and the results of that analysis are discussed in the attached letter dated June 26, 2013 (Attachment A), which also includes the letter SCS sent in April. In the June letter, SCS focused its request on forgiveness of the current CDBG loan, rather than the

other three items listed in the April letter. Based recent trends of decreasing federal appropriations for CDBG, it is unlikely that the City could provide \$1.5 million in CDBG funding to any project at one time in the foreseeable future. SCS has already begun to address the other two items requested, which included help seeking replacement sites and private fundraising efforts.

EXISTING POLICY

Housing Element of the General Plan, Goal E, Policy 5.6:

Support local service providers that offer facilities and support services to homeless individuals and families, and persons at risk of homelessness.

2010-2015 HUD Consolidated Plan, Goal C:

Community Development - Objective: Support provision of essential human services, particularly for special needs populations.

CEQA REVIEW

The requested loan forgiveness would not have an environmental impact and is exempt from review under the California Environmental Quality Act (CEQA).

DISCUSSION

Staff has prepared this report so that Council may consider the request to forgive the debt accrued to date under the City's 2003 CDBG loan to SCS.

Reasons for Request

SCS has noted its reasons in detail in the attached letters. They include: to resolve functional shortcomings of its parking lot and driveways, and to obtain a facility with more warehouse space that can accommodate commercial refrigeration units which are more energy-efficient than the refrigerators currently used, in order to better serve their low-income families, seniors, and other clients.

The SCS letter also notes that SCS could make an offer and/or close escrow on another property more quickly if it had no debt on its current property (i.e., being "cash ready"). Unfortunately, the City cannot remove the CDBG lien entirely or waive the "reversion of assets" payment due to the CDBG fund upon sale of the property, as explained below. However, SCS could purchase a slightly higher-priced property if it did not have to repay all of the principal and interest accrued under the City loan upon sale, to the extent that debt exceeds the reversion of assets payment. SCS is currently working with developers and real estate experts to identify potential sites with adequate interior space and access to parking. Real estate experts have informed the agency that the current SCS facility is marketable.

CDBG Requirements

There are several CDBG regulations that apply to the property due to the use of CDBG funds for part of its acquisition cost. The City must ensure that these requirements are met, whether the current debt is forgiven or paid off in full. If

the City fails to do so, it could be faced with sanctions and/or be required to repay the U.S. Treasury using non-HUD funds for any compensation due to the CDBG fund, as determined by HUD. The primary requirements of concern, explained below, include:

- Use restrictions
- Reversion of Assets
- Program Income

Use Restrictions: CDBG regulations require the current facility to continue being used for the purpose described in Section 2.02 of the CDBG loan agreement between the City and SCS (Attachment B) for the duration of the term of use restrictions stated in the agreement, plus an additional five years. The use was described as: providing offices, a meeting room and warehouse space for distribution of food and emergency assistance to low-income families and seniors facing temporary financial crises, through April 2038. Due to the additional five years required by CDBG, the property is in effect bound to this use until 2043.

There are two ways this requirement could be met if SCS wished to sell its current property before the end of the term: a) the CDBG debt (principal and interest accrued to date) as set forth in the loan agreement could be repaid in full, or, at a minimum, any amount due under the reversion of assets and/or program income requirements described below must be repaid; or b) with prior City approval, the use restrictions could be removed from the current property upon sale and recorded against the replacement property purchased or obtained by SCS, and any amount repaid to the City under the reversion of assets requirement could be re-loaned to SCS toward purchase of the new property if needed. Staff has discussed Option B with SCS and it has agreed that would be an acceptable option. In that case, staff would work with SCS and the escrow office to record a new use restriction and new deed of trust, if needed, on the new property concurrently with close of escrow. Option A, repayment of the entire CDBG debt, is less favorable to SCS as it would decrease its purchasing power when seeking a replacement facility.

The current request from SCS is that the CDBG debt be forgiven now, whether or not it sells the property and buys a replacement facility. In that case, the current use restriction on the property would have to remain in place even after the debt is forgiven, until either the end of the term and five-year CDBG period (2043) or sale of the property; whichever occurs first. If the property were sold prior to 2043, Option B would have to be implemented at that time. Therefore the existing lien on the property would have to remain on title, even if the current loan balance was reduced to \$0, in order to comply with CDBG regulations. If the City failed to do this, it could be liable for reimbursement of certain amounts owed the CDBG fund, using non-HUD funds.

Reversion of Assets: This term refers to a CDBG requirement that any real property acquired or improved with more than \$25,000 in CDBG funds is either:

- Used to meet one of the three National Objectives of the CDBG program (such as the use described in the loan agreement) until five years after the end of the loan term (i.e., until 2043), or for such longer period of time as determined to be appropriate by the City; or
- Disposed of in a manner that results in the City being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. This reimbursement is not required after five years.

For example, if the expenditure of non-CDBG funds for the property acquisition and initial improvements was equal to 83% of the total cost, and the CDBG share was 17%, then 17% of the fair market value of the property at the time of sale or other transfer would have to be paid back to the City's CDBG fund if the property were sold before 2043. This payment to the City would constitute CDBG program income, subject to CDBG regulations for the expenditure of program income. In this example, if the property were sold or swapped in the near future for its current estimated market value of approximately \$2.1 million, the reversion of assets payment owed to the CDBG fund would be \$357,000. If the property sold for a higher amount, such as \$2.5 million, the required payment would be \$425,000. This payment cannot be waived or forgiven by the City if the property is sold any time before April 2043. However, once repaid to the City, the City could use this program income to make a new loan to SCS toward the purchase of a new property, or to make a grant to SCS for any other eligible CDBG activity. It is important to note that the reversion of assets requirement is not in addition to payment of the city debt: payment of the outstanding loan balance upon sale would also satisfy the reversion of assets requirement, assuming the loan balance is at least equal to the reversion of assets amount then due.

Program Income: This is defined as gross income directly generated by the City, its borrowers or grantees, from the use of CDBG funds, and may include fees from operation of CDBG programs, any income generated from properties acquired with CDBG funds, such as rental income or sales proceeds, and interest accrued on CDBG funds. In the case of the SCS property acquisition, the amount due from SCS under reversion of assets requirement, when repaid to the City, will constitute program income for the City. When the City receives program income from any source, it must deposit this income into the CDBG fund and use it within a reasonable time frame for future CDBG activities, such as providing financing for SCS acquisition of a replacement facility, or for any other CDBG-eligible activity. All CDBG loans receivable are currently projected to be available in future years to fund future CDBG activities.

FISCAL IMPACT

If forgiven this month, such an action would result in a reduction of approximately \$525,000 in projected long-term revenues ("program income") to the CDBG fund. If forgiven at a later date, the loss in projected revenues would increase as interest continues to accrue on the loan each month. If the loan was paid off under the current 20-year payment schedule set forth in the loan terms, the City would receive \$38,604 annually in loan payments to the CDBG fund for twenty years, between 2018 and 2038. This payment plan provides a total of \$772,080, of which \$400,000 would be the original principal and \$372,080 would be accrued interest.

As CDBG program income must be spent on other CDBG-eligible activities, such as human services, capital projects, housing acquisition and rehabilitation, this loss of projected revenue will reduce the amount of funding available for such activities in the future. This is of particular concern due to the continually shrinking federal appropriations for annual CDBG entitlement grants, which means that in recent years, program income has become an increasingly larger part of the City's funding stream for future community development activities serving lower income residents, such as human services, affordable housing, and homelessness prevention activities.

Additionally, this loan forgiveness request may prompt similar requests from other CDBG or HOME borrowers which, if granted, could have further fiscal implications. To date, the City has not forgiven any of its prior CDBG loans. The City has 19 outstanding CDBG or HOME loans on similar facilities, including a food bank, various shelters, and special needs housing projects. These loans have a cumulative outstanding balance of nearly \$2.2 million, including slightly over \$400,000 in interest accrued to date. This is a significant source of potential future program income, given the shrinking size of the annual entitlement grants and the possibility that the City could lose its HOME entitlement status in the future based on current federal proposals.

In response to concerns about potential fiscal impacts of the SCS loan forgiveness, SCS has noted that its services save money by preventing its clients from becoming homeless, hungry, and/or requiring other costly public services; and that if the loan was forgiven now, it could use the funds it currently has to set aside for the future loan payments to assist additional clients in need.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

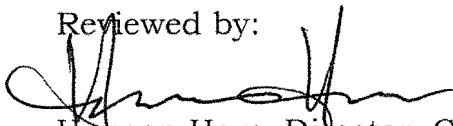
ALTERNATIVES

1. Forgive the debt now, including principal and interest accrued to date (\$525,000) as requested, leaving the City's use restriction and reversion of assets requirements in place on the property until transferred to a replacement property or until 2043, whichever occurs first.
2. Agree to forgive the debt at a later date when the property is to be sold, leaving the City's current use restrictions in place on the property until transferred to replacement property or until 2043, whichever occurs first.
3. Agree to forgive a certain percentage of the debt each year until it is reduced to zero at the end of the loan term.
4. Agree to defer all payments of principal and interest until the end of the loan term (2038) with possible adjustments to loan terms (e.g. reduce interest rate and/or forgive interest accrued).
5. Approve a variation of those listed above, as long as all applicable CDBG requirements are met.
6. No action.

RECOMMENDATION

Staff recommends Council select an alternative from the list above at Council discretion. It is legal to forgive the current CDBG loan balance so long as the City ensures that the CDBG reversion of assets and use restriction requirements are met. If needed, staff would work with the City Attorney to amend the loan documents to memorialize any alternative Council approves.

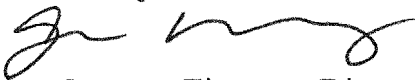
Reviewed by:



Hanson Hom, Director, Community Development

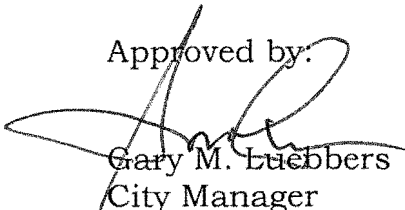
Prepared by: Katrina L. Ardina, Housing Analyst
Suzanne Isé, Housing Officer

Reviewed by:



Grace Leung, Finance Director

Approved by:



Gary M. Luebbers
City Manager

Attachments

- A. Sunnyvale Community Services Letters to City Manager - April 19 and June 26, 2013
- B. CDBG Loan Agreement

ATTACHMENT A

Sunnyvale Community Services Letters to City Manager – April 19 and June, 2013



Sunnyvale Community Services

725 Kifer Road, Sunnyvale, CA 94086 408.738.4321

Working to Prevent Homelessness and Hunger

June 26, 2013

Mr. Gary Luebbbers
City Manager
City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086

Re: April 19th request on Facilities for Sunnyvale Community Services

Dear Mr. Luebbbers,

This is a follow-up to our letter on April 19th with requests to the City of Sunnyvale in support of our mission to prevent homelessness and hunger. We wanted to inform the City staff and the members of the City Council on our current facilities status and our research on options for future needs. *A copy of the original request on April 19, 2013 is attached.*

Since April 19th, our board and staff have worked with the Sunnyvale Department of Public Safety and our volunteers to explore ways to handle the parking and traffic flow issues we face at our current site. We have done extensive tests of alternative procedures to deal with our traffic flows and parking, and the anticipated issues after the neighboring buildings are occupied. We have consulted with commercial real estate developers for their insights on interior and exterior space utilization. We have also reached out to the current owners of our neighboring buildings to discuss options for parking, easement and drive-through access on our shared and adjacent properties. Furthermore, the board and volunteers have done preliminary research on our agency's future facilities needs to meet the growing demands for safety net services in Sunnyvale.

The hot market for commercial real estate in Sunnyvale means that acquiring new facilities with larger space and better traffic flows will be challenging. At the same time, expert opinion is that it will be difficult for traffic and parking issues to be easily resolved in our current location. Our conclusions are that we must work in earnest with our current and future neighbors to mitigate traffic and parking issues, while at the same time being fiscally prepared for future facilities options.

Therefore, our requests to the City of Sunnyvale are both timely and important for City residents who directly benefit from our services, as well the City as a whole, which benefits when safety net services are in place for low-income families and seniors.

In reviewing our requests to the City on April 19th, we hope that the City will be able to immediately consider the first item, which will allow our agency to have full equity in our current property, and financial flexibility when future facilities and resources become available. Specifically, we are requesting the City to immediately address **"Forgiveness" of our \$400,000 CDBG mortgage and \$120,000 accrued interest since 2003**. This will increase the agency's building equity to \$2,059,750.

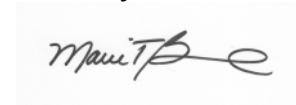
Knowing that our building is fully paid for, with relief from the interest payments, will give our agency greater financial means to focus on our mission and explore facilities options for the future.

In the long term, we hope to engage the City in a dialog about how we can partner together to ensure that the Safety Net in Sunnyvale remains strong into the future.

For over thirty years, the City of Sunnyvale housed our agency at City-owned facilities, most recently at 810 West McKinley, at costs equal to \$75,000 per year. Sunnyvale Community Services has operated at our separately owned location at 725 Kifer Road since 2003, saving the City \$750,000 in costs for over the past decade. We hope that the value of Sunnyvale Community Services to our community and our partnership with the City of Sunnyvale can continue.

Thank you for your consideration of this request. Please let me or any of the members of the Board of Directors of Sunnyvale Community Services know if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Marie Bernard", with a stylized flourish at the end.

Marie Bernard
Executive Director

cc: Mayor Anthony Spitaleri
Members of the City Council

encl.: Letter to Gary Luebbbers dated April 19, 2013



Sunnyvale Community Services

725 Kifer Road, Sunnyvale, CA 94086 (408) 738-4321

Working to Prevent Homelessness and Hunger

April 19, 2013

Mr. Gary Luebbers
City Manager
City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086

Re: Facilities for Sunnyvale Community Services

Dear Mr. Luebbers,

We are writing to inform the City of Sunnyvale of the expanding need for building and parking facilities for Sunnyvale Community Services, and to make specific requests to the City to support our mission to prevent homelessness and hunger in our community.

As you know, for 43 years Sunnyvale Community Services (SCS) has worked to help those in need in Sunnyvale. Over the years, SCS has grown as the City's core safety-net agency; helping 6,981 low-income Sunnyvale residents in 2012 with financial aid, food, and other in-kind assistance; and offering office and meeting space to other agencies.

When we moved to our present location in 2003, it was hard to imagine the current scale and scope of our current services. Now, in 2013, we find ourselves in the position of serving unprecedented numbers of individuals and families each day, requiring more volunteers to distribute record amounts of food and in-kind donations from the community. Sadly our building's current facilities are inadequate, and parking is often unsafe.

Our history

In our 43-year history in Sunnyvale, SCS has had many homes. When we first opened our doors in 1970, our agency operated out of a closet at St. Thomas Episcopal Church, and depended on local businesses to donate space for the annual Community Christmas Center, where low-income families are able to obtain food and gifts for their family. Starting in the 1980's, SCS was hosted for many years by the City of Sunnyvale in offices at 810 West McKinley Avenue. Whatever SCS received had to be distributed right away. Retailers at the Town Center donated warehouse space for the monthly food distributions. At that time, the City's in-kind donation of building space and maintenance was valued at \$75,000 per year.

Community Development Block Grant Funding

When the City of Sunnyvale stopped leasing the West McKinley property from the school district, it meant that SCS was on the move again. Thanks to a generous donation of land from Advanced Micro Devices Corporation and a bridge loan from the City, SCS was able to purchase a building with 11,770 square feet of warehouse and office space at 725 Kifer Road, our current location. Several businesses and individuals donated in-kind services and

materials for the new building. After repayment of the bridge loan, the City of Sunnyvale granted SCS a 30-year mortgage of \$400,000 through Community Development Block Grant (CDBG) funds, with 3% simple interest accruing starting in 2003 and principal payments to begin in 2018. The loan was made with CDBG funds, which are limited to use for low-income, senior, or handicapped individuals. The loan also calls for the principal balance to be paid if SCS ever sells the property.

The AMD donation and City mortgage enabled the agency to afford to move in 2003, and then later sell the donated property to repay the bridge loan. The larger space allowed SCS to grow in scale to respond to the expanding need for food and financial aid. In the ten years since our move, the City has saved **\$750,000** in donated rent and maintenance costs from the West McKinley property.

Our partnership with the City to serve low-income families and seniors in Sunnyvale has grown over the decades. In 2009, SCS was awarded the City's contract to distribute all \$495,000 in stimulus package funding to prevent families from being evicted from their homes in Sunnyvale. In partnership with the City, SCS was recognized as the first agency in the nation to distribute these one-time HPRP (Homelessness Prevention and Rapid Re-Housing Program) stimulus funds, keeping families and seniors housed during the economic recession and keeping money in circulation in Sunnyvale. In 2012, we again partnered with the City as the lead agency for using \$220,000 in CDBG funds for the "Works First Sunnyvale" program in collaboration with Downtown Streets Team.

SCS has now grown to be one of the largest food distribution centers in Santa Clara County, and we are seeing record numbers of Sunnyvale residents coming to our agency every day in need of support. Our current facility on Kifer Road is now barely large enough to store non-perishable foods and holiday gifts. This space has been an essential part of our ability to expand the volume of food and other services given to low-income families. In an effort to provide our clients with the convenience of having as many services as possible at one location, we allow other nonprofits and agencies to use the SCS conference room and offices at no charge, whenever space is available, but due to expanding need, space availability is now impacted.

Bursting at the seams

Because the need for food and financial aid has swelled so dramatically in the past several years, our facility's space and parking are no longer adequate. Parking and traffic flow is one of the biggest complaints we get from clients as well as from our army of over 800 volunteers, without whom we could not provide the services that we do. Our small parking lot has only 34 spaces, and it dead-ends at our back fence. Three parking spots are now taken up by an outdoor shed and storage containers as a result of our ballooning storage needs. Trucks from Second Harvest Food Bank and Specialty Solid Waste have had to back into our parking lot, blocking parking spaces. DGW Auction House, our neighbors across the street, graciously allows SCS volunteers to park in their spaces, helping to relieve parking but requiring people to cross mid-block across Kifer Road. Our annual holiday auction was moved to the Sunnyvale Elks Lodge in 2012 due to lack of building space and chronic parking issues.

In October 2011, we began weekly produce distributions in partnership with Second Harvest Food Bank. We started with 330 families coming on our inaugural Monday, and set a record of 803 families in February, 2013. We now have six days or more per month with a high volume of traffic, with an average of 100 families per hour coming on a typical food day. Our backpack distribution each August is our single busiest day of the year, when over 1,100 filled backpacks are given out. During the month of December, our Community Christmas Center is humming day and night with volunteers and clients.

On the move again?

In July, 2011, the neighboring buildings owned by Maxim Integrated were sold to Lane Partners, a real estate investment firm who have converted the surrounding buildings into Class A office space. We reviewed our property lines with Lane Partners, who acknowledged that SCS owns 8 feet of their property lot behind us, and they allowed temporary "drive-thru" capacity through the neighboring property while it is under construction. We are grateful for this temporary access. However, once the buildings are leased or sold, we have been informed that the property gate will be closed and drive-thru capacity will not continue. We forecast that the adjacent buildings will be occupied by January, 2014 or sooner. When the drive-thru ends, there will be serious traffic issues on Kifer Road and on our property six days a month and daily during the month of December, affecting not only our own agency but also the businesses around us.

By the end of 2013, we forecast that the current interior space and parking will no longer be adequate. The growth in produce and other perishable foods requires more efficient refrigeration and freezer capacity. Our 26 separate refrigerators/freezers are not energy-efficient, with high utility payments. We are out of capacity to offer other agencies office and meeting space, and now we must use storage units on our parking lot year-round.

The SCS board and staff are working with developers and real estate experts to identify potential sites with adequate interior space and access to parking that will enable safe and efficient distributions. Professional real estate experts estimate that SCS needs approximately 20,000 square feet of space with at least 80 parking spaces and good on-site traffic flow.

Current Equity Estimate

- The current value of our building is approximately \$2,059,750 @ \$175/sq.ft.
- The current CDBG mortgage and interest through April 30th totals \$520,592
- SCS equity in our Kifer Road building equals **\$1,539,158**
- Real estate experts inform us that our current building is marketable.

Estimated Costs for adequate space and parking

- Estimated costs of 20,000 square feet of space with parking: \$4,000,000.
- Estimated cost of improvements and moving to new site: \$500,000 (assuming that many firms donate services and materials at cost).
- **Total costs: \$4,500,000 minus \$1,539,158 = a net of \$2,960,842**

The SCS board and staff are prepared to conduct a capital campaign to raise funds for this needed move. It is anticipated that our capacity for fund raising will be **\$1,000,000**, or greater, with some of that funding in pledges over three years. That leaves a deficit of **\$1,960,842**.

Our Requests:

This move is a unique event in our City. The board and staff of SCS are requesting the following support from the City of Sunnyvale in order to ensure the agency remains able to serve the most needy in our City for decades to come:

1. "Forgiveness" of our \$400,000 CDBG mortgage and \$120,592 accrued interest since 2003. This will increase the agency's building equity to \$2,059,750.
2. Additional financial support, up to \$1,500,000, from CDBG funding to match the agency's fundraising efforts of \$1,000,000.
3. Assistance in identifying potential new building sites with more interior space and adequate parking and traffic flow.
4. Encouragement of business and community donations of \$1,000,000 in financial donations as well as in-kind donations of labor and materials.

It should be noted that CDBG funds can only be used for programs that assist low-income, senior citizens, and disabled persons. As the core safety net agency in Sunnyvale, we are uniquely serving City residents who meet those criteria, and SCS would pledge that any CDBG funds that the City makes available would continue to be used for these individuals.

Thank you for your generous ongoing support of our agency's mission to serve low-income Sunnyvale residents. This year, we are pleased to honor the City of Sunnyvale at our annual Volunteer and Donor Recognition Event on May 9th, in recognition of decades of financial support and staff volunteerism to improve the lives of those in need in our City. We are grateful for all you do on our behalf and we appreciate your kind attention to the above stated urgent issues as we work together to plan for our future here in Sunnyvale.

Sincerely,



Marie Bernard
Executive Director

cc: Mayor Anthony Spitaleri

ATTACHMENT B

CDBG Loan Agreement

First American Title
#521856

DOCUMENT: 16972135



Pages: 29
ATTACHMENT 1
Fees.... * No Fees
Taxes...
Copies...
AMT PAID

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Sunnyvale
Housing Officer
P.O. Box 3707
Sunnyvale, CA 94088-3707

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
First American Title Company

RDE # 006
4/17/2003
8:00 AM

No fee for recording pursuant to
Government Code Section 27383

**LOAN AGREEMENT FOR THE PROVISION OF
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**

**FOR SUNNYVALE COMMUNITY SERVICES
AT 725 KIFER ROAD, SUNNYVALE**

This Loan Agreement (the "Agreement") is entered into APRIL 15, 2003 by and between the City of Sunnyvale (the "City"), and Sunnyvale Community Services, a California nonprofit public benefit corporation (hereinafter referred to as the "Borrower"), on the basis of the following representations, terms and conditions of the parties.

RECITALS

A. The City has received Community Development Block Grant (CDBG) funds from the United States Department of Housing and Urban Development ("HUD").

B. Borrower has requested a loan from CDBG Funds for the purpose of acquiring real property located at 725 Kifer Road, City of Sunnyvale, County of Santa Clara (the "Property") as set forth in greater detail in the legal description attached hereto as Exhibit A, and for use as providing comprehensive emergency services for the next thirty-five years (the "Project").

C. On May 8, 2001 the City Council of the City of Sunnyvale approved the City's contribution of \$400,000.00 in CDBG funds for the project, to SUNNYVALE COMMUNITY SERVICES, a California 501 (c)(3) nonprofit public benefit corporation.

ARTICLE I. LOAN OF CDBG FUNDS

Section 1.01 Loan of funds. Subject to satisfaction of the funding conditions set forth in Section 1.03 below, the City agrees to lend Borrower the amount of Four Hundred Thousand Dollars (\$400,000.00) in CDBG funds (known as the "Loan") for purposes of acquiring the Project.

Borrower shall be additionally liable for repayment of any disbursed Loan proceeds subsequently determined to constitute disallowed costs. Disallowed costs may be identified through audits, monitoring or other sources. The City of Sunnyvale shall make the final determination of disallowed costs subject to provisions of applicable CDBG regulations.

Section 1.02 Loan Repayment.

a. Loan Amount. All amounts disbursed under the Agreement up to Four Hundred Thousand Dollars (\$400,000.00) shall be deemed to be part of the Loan Amount. The Loan Amount shall bear simple interest at three percent (3%) per annum on the unpaid principal balance. The Loan Amount and interest shall be deferred for fifteen years until May 1, 2018. The monthly installment payments for the period beginning on May 1, 2018 through April 1, 2038 will be \$3,217.00 per month. Upon completion of the loan term, as indicated in the Promissory Note (Exhibit B), the full balance of the principal and interest due shall be paid.

b. Early Repayment. Notwithstanding the provisions of subsection a., the unpaid principal balance of the Loan together with any unpaid interest due thereon shall be due and payable in full upon: 1. a refinancing, sale, transfer or other disposition of the Property or the Project or any portion thereof; or 2. the declaration by the City of a default under this Agreement pursuant to Section 3.02 below (as more fully provided in the Promissory Note).

Section 1.03 Conditions of Funding. The obligation of the City to disburse Loan proceeds under this Agreement is subject to the following conditions:

a. Borrower shall provide to the City a mortgage title insurance policy in the amount of the Loan, \$400,000.00, which provides that, as of the closing Date of Escrow (defined in subsection b. below), the Property is free of encumbrances and other exceptions to title except those approved in writing by the City. The City of Sunnyvale shall be named as a beneficiary on the mortgage title insurance policy.

b. Escrow instructions (the "Escrow Instructions") acceptable to the parties shall be / have been delivered to and accepted by the title company. The Escrow Instructions shall be consistent with the terms of this Agreement and shall provide, among other matters, that on the date selected by the parties (the "Closing Date"):

1. The Note shall be executed by Borrower and delivered to the City;
2. The Deed of Trust (defined in subsection d below) shall be recorded in the records of the County of Santa Clara;
3. The Loan Agreement, shall be recorded in the records of the County of Santa Clara.

c. The Promissory Note, substantially in the form set forth in the attached Exhibit

B, shall be executed by Borrower and delivered in accordance with the Escrow Instructions.

d. The Deed of Trust, substantially in the form of the attached Exhibit C, shall be executed and recorded in the official records of the County of Santa Clara.

e. Any approval of this Agreement, the Note, the Deed of Trust, or the encumbrances of the Property contemplated by this Agreement that is required under the Loan documents shall be delivered to the City, and any certification required by the City with respect to the procurement of any such approval shall be delivered by Borrower to the City.

f. Borrower shall provide the City with a corporate resolution approving and authorizing execution of this Agreement and all documents contemplated hereby and with such other documentation required by the City regarding Borrower's corporate status and authority to enter into this transaction.

g. Borrower shall provide the City with certificates of insurance and bonds, in form and with insurers admitted in California and acceptable to the City, evidencing compliance with the insurance requirements of Section 2.07 on or prior to Close of Escrow, and upon demand by City at any time subsequent. If requested by the City, Borrower shall also provide complete copies of the required insurance policies and bonds.

h. The closing contemplated by this Section and the Escrow Instructions shall occur within thirty (30) days of the date of execution of this Agreement, unless the parties agree to a different closing date in writing.

ARTICLE II. DEVELOPMENT AND OPERATION OF THE PROJECT

Section 2.01 Acceptance of Obligations. In consideration of the Loan to be provided hereunder, Borrower agrees to and accepts the restrictions, obligations and conditions contained in this Agreement, the Note, and the Deed of Trust, including without limitation, the project requirements set forth in Section 2.04 below.

Section 2.02 Development and Operation of Project. Borrower shall acquire the Property, and operate and maintain the Project thereon for the purpose of providing offices, a board and community meeting room, warehouse space, that will allow storage of food and distribution and emergency assistance services that will prevent homelessness and hunger for low-income families and seniors facing temporary financial and personal crises until April 30, 2038. Borrower shall at all times maintain in full force and effect all licenses required by the State of California or other applicable licensing authority to operate and manage the Property and the Project.

Section 2.03 CDBG Requirements. Borrower shall comply with all applicable laws and regulations governing the use of CDBG funds, including but not limited to:

- a. Environment and Historic Preservation. 24 CFR Part 58 that prescribes procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4361) and the additional laws and authorities listed at 24 CFR Section 58.5.
- b. Applicability of OMB Circulars. The policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-122, and A-133 as they relate to the acceptance and use of CDBG Funds.
- c. Lead-Based Paint. The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR Part 35.
- d. Displacement, Relocation and Acquisition. The requirements of the Uniform Relocation Assistance and the requirements of 49 CFR Part 24, Subpart B.
- e. Section 504 of the Rehabilitation Act of 1973. The requirements of Section 504 of the Rehabilitation Act of 1973. Section 504 imposes requirements to ensure that "qualified individuals with handicaps" have access to programs and activities that receive federal funds.
- f. Affirmative Marketing. The requirements of the City of Sunnyvale's affirmative marketing plan as contained in the City of Sunnyvale's HUD approved Consolidated Plan.
- g. Davis-Bacon Act. Any portion of this loan designated for construction shall be in conformance with the Davis-Bacon Act. The Davis-Bacon Act provides that prevailing wage requirements be included in the construction contract. The City shall monitor all construction disbursements to ensure compliance with the Davis-Bacon Act.
- h. Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1978, as amended, 12 U.S.C. 1701, requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. The Borrower agrees to include the following language in all subcontracts executed under this Agreement:

The work to be performed under this agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project.

i. HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the use of CDBG funds, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

In the event HUD formally amends, waives, or repeals any HUD administrative regulation previously applicable to Borrower performance under this Agreement, the City expressly reserves the right to, upon giving notice to HUD and Borrower, require performance of Borrower as though the regulation was not amended, waived or repealed, subject only to written and binding direction or instruction from HUD.

Section 2.04 Project Requirements.

a. Successor Rules. In the event HUD ceases to provide definitions, determinations and calculations under the CDBG Program related to Income Eligible Households or Annual Income, or both, the provisions of this Section shall be performed in accordance with definitions, determinations and calculations related to such matters as established by the City with a view toward establishing such definitions, determinations and calculations in a manner consistent, as nearly as possible, with those formerly promulgated by HUD under the HOME Program.

b. Intended Use. This property must be used for the purpose of providing comprehensive emergency assistance for a period of thirty-five (35) years, unless otherwise approved by the City of Sunnyvale, and its use must thereby comply with Housing and Urban Development (HUD), CDBG Regulatory citation Section 570.503, and continue to meet one of the national objectives in Section 570.208 as stipulated in the Loan Agreement.

Section 2.05 Corporate Status. At all times during the term of this Agreement, Borrower shall maintain its corporate existence and shall comply with all provisions of the California Non-Profit Borrower Law (Corporations Code Section 5000, et. seq.). Borrower shall immediately report to the City any changes, subsequent to the date of this agreement, including, without limitations, in Borrower's Articles of Incorporation, Bylaws, Board of Directors, personnel policies and procedures, affirmative action plan, or tax exempt status.

Section 2.06 Records and Audits.

a. Maintenance of Records. Borrower shall maintain all records necessary to meet CDBG requirements, including but not limited to books, financial records, supporting documents, statistical records, personnel, property and all other pertinent records sufficient to reflect properly all expenditures under this Agreement, and all other matters covered by this Agreement.

Borrower shall preserve and make available its records related to receipt and use of Loan proceeds until the expiration of five years from the date of the final disbursement

of Loan proceeds, or for such longer period, if any, as is required by law. Borrower shall preserve and make available its records related to project requirements as described in Section 2.04 b. until the expiration of five years from the end of the calendar year to which such records pertain, or for such longer period, if any, as is required by law. 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 five years from the date of any resulting final settlement.

b. Annual Audit. Each year in which the Loan balance is outstanding, pursuant to this Agreement, Borrower shall cause to be prepared an independent fiscal audit conducted in accordance with generally accepted accounting principles, which audit shall identify cashflows and project operating expenses. Upon completion, Borrower shall provide the City with a copy of each such annual independent fiscal audit.

c. Examination of Records and Facilities. At any time during normal business hours with reasonable notice and as often as may be deemed necessary, Borrower agrees that HUD and the City, or any duly authorized representatives, shall have access to and the right to examine its plants, offices and facilities engaged in performance of this Agreement and all its records with respect to all matter covered by this Agreement. Borrower also agrees that HUD and the City, or any duly authorized representatives, shall 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.

d. City Audits. The City requires an independent audit of matters covered by this Agreement. Such audits may cover program compliance as well as fiscal matters. Borrower shall be notified in advance that an audit will be conducted. Borrower shall be afforded an opportunity to respond to any audit findings, and have the responses included in the final audit report. Cost of such audits shall be borne by the City.

Section 2.07 Insurance.

a. Borrower shall maintain, throughout the term of this Agreement, bonds and insurance issued by an insurance company approved by the City, in amounts as follows:

1. Workers' Compensation Insurance to the extent required by law, including Employers' Liability coverage, with limits not less than \$500,000 each accident and otherwise in accordance with California law;

2. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Contractors, Broadform Property Damage, Products and Completed Operations;

3. Comprehensive Automobile Liability Insurance with limits not less than

\$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable; provided, however, that if Borrower does not own or lease vehicles in its own name, and does not borrow or hire vehicles for purposes of this Agreement, then no automobile insurance shall be required and both parties to this Agreement shall initial this provision signifying same;

4. Property insurance covering all real and personal (non-expendable) property leased or purchased in whole or in part with Loan Proceeds, in a form appropriate for the nature of such property, covering all risks of loss, excluding earthquake and flood, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City, naming City as Loss Payee, as its interest may appear; and

5. Blanket Fidelity Bond covering all officers and employees, for loss of Loan proceeds caused by dishonesty, in amount not less than funds advanced pursuant to this Agreement, naming City as Loss Payee, as its interest may appear.

a. Should any of the required insurance be provided under a claims-made form, Borrower shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of the term of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigations or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be two times the occurrence limits specified above.

b. In the event Borrower engages in activities with respect to the Property and the Project not contemplated by this Agreement, prior approval of such activity shall be conditioned upon procuring whatever additional insurance the City deems necessary; provided, however, that acquisition of such insurance does not assure City approval of such new activities.

c. Comprehensive General Liability, Comprehensive Automobile Liability and Property Insurance policies shall be endorsed to name the City of Sunnyvale, its officers, agents, employees and members of the City Council as additional insured.

d. All policies and bonds shall be endorsed to provide thirty (30) days prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the City pursuant to Section 4.01 below.

e. Upon the City's request at any time during the term of this Agreement, Borrower shall provide certificates of insurance and bonds, in form and with insurers acceptable to the City, evidencing compliance with the requirements of this Section, and shall provide complete copies of such insurance policies and bonds upon request.

ARTICLE III. DEFAULT AND REMEDIES

Section 3.01 Event of Default. Failure by either party to timely perform any material term or provision of this Agreement, the Note, or the Deed of Trust shall be considered an Event of Default by that party under this Agreement.

Section 3.02 Default by Borrower. Upon occurrence of an Event of Default by Borrower, the City shall give written notice thereof to Borrower in the manner provided in section 4.01. If such Event of Default is not corrected to the satisfaction of the City within thirty (30) days after the date such notice is received by Borrower or within such further time as the City determines is necessary to correct the Event of Default, the City may, without further notice, declare this Agreement, secured by the Deeds of Trust, in default, declare all sums due under the Notes immediately due and payable, and proceed with any and all remedies available under the Deed of Trust, or any other remedies available under rules of law or equity. Borrower shall not be required to pay and discharge any such tax, assessment, charge or levy so long as a. the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and b. Borrower maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.02 in accordance with generally accepted accounting principles.

Section 3.03 Default by City. Upon occurrence of any Event of Default by the City, Borrower may give written notice thereof to the City in the manner provided in Section 4.01. If such Event of Default is not corrected to the satisfaction of Borrower within thirty (30) days after such notice is received by the City or within such further time as Borrower determines is necessary to correct the Event of Default, Borrower may, without further notice, declare this Agreement in default and proceed with any remedies available under rules of law or equity.

Section 3.04 Non-Waiver of Default. Failure or delay in giving notice of any Event of Default shall not constitute a waiver of any Event of Default, nor shall it change the time of such Event or Default. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

ARTICLE IV. GENERAL PROVISIONS

Section 4.01 Notices. Any notice, tender, or delivery to be given hereunder by either party to the other may be effected by personal delivery in writing or by first class mail. Mailed notices shall be addressed as set forth below. Each party may change its address by written notice in accordance with this section.

To City: Housing Officer
 City of Sunnyvale
 P.O. Box 3707
 Sunnyvale, CA 94088-3707

To Borrower: Executive Director
 Sunnyvale Community Services
 810 W. McKinley Avenue
 Sunnyvale, CA 94088

Section 4.02 Assignment. Borrower acknowledges and agrees that the Loan is being provided in consideration of the special experience, skill and ability of Borrower to operate and maintain the Project in a manner that will achieve the City's objective to provide comprehensive emergency services for lower income households and seniors. Consequently, Borrower shall not permit any voluntary transfer, assignment or encumbrance of this Agreement or Borrower's interest in the Property and the Project, or permit a lease or sublease of all or part of the Property or the Project, other than to occupants of the Project in accordance with the requirements of Section 2.04 above, without first obtaining the City's written consent as evidenced by the signature of any two of the following: City Manager, City Attorney, Director of Finance, Director of Community Development, Housing Officer. Any transfer, assignment, encumbrance, or lease without the City's consent shall be voidable and, at the City's election, shall constitute a breach of this Agreement. No consent to any assignment, encumbrance or lease shall constitute a further waiver of the provisions of this Section.

Section 4.03 Non-Discrimination. In addition to observing any other CDBG requirements related to non-discrimination, Borrower shall assure, in connection with the performance of this Agreement, that no person shall be subject to discrimination because of race, religion, ethnic background, gender, sexual preference, or handicap status.

Section 4.04 Independent Contractor; No Third Party Beneficiaries.

a. Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee or principal and agent between the City and Borrower or Corporation's agents or employees, and Borrower shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Borrower has the right to exercise full control and supervision of the services and the Project and full control of employment, direction, compensation and discharge of all persons assisting it in the performance of services hereunder. Borrower acknowledges and agrees to be solely responsible for all matters relating to payment of its employees, including compliance with Workers Compensation, Social Security, income tax, withholding and all other laws and regulations governing such matters. Borrower shall be solely responsible for its own acts and those of its agents and employees during the term of this Agreement.

b. Nothing contained in this Agreement shall create or justify any claim against the City by any third person with whom Borrower may have employed or contracted or may employ or contract relative to the acquisition of the Property, the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services related to this Agreement.

Section 4.05 Indemnification.

a. Borrower shall take all responsibility for its work, and shall bear all losses and damages directly resulting to it, to any of its contractors or subcontractors, or to the City, its officers, representatives, agents and employees, on account of any act, error or omission of Borrower in the performance of this Agreement.

b. Borrower agrees to indemnify, to assume the defense of (if requested) and to hold harmless the City, its officers, representatives, agents and employees from every claim, loss, damage, injury, expense, including reasonable attorney's fees, judgment and direct or vicarious liability of every kind, nature and description arising in whole or in part from the Borrower's performance of this Agreement, except where such claim, loss, damage, injury, expense, judgment or vicarious liability is caused solely, exclusively and directly by the negligence or willful misconduct of City, its officers, representatives, agents, and employees. The aforementioned indemnity shall extend to, but shall not be limited to Borrower's breach of contract, faulty workmanship or any negligent or intentional misconduct whatsoever by Borrower. Insurance coverage required under this Agreement does not relieve Borrower or its subcontractors, consultants or both, from liability under this Section.

c. Each party to this Loan Agreement was represented by counsel in the negotiation and execution of this Loan Agreement. The parties are aware of the provisions set forth in California Civil Code Section 1717 and intend this paragraph of the Loan Agreement to meet said statutory requirements so the reference to attorneys fees herein above and elsewhere herein shall not apply outside of the indemnification context found in this paragraph.

Section 4.06 Covenants Running With Land. The intended use provision in Section 2.04 (b) of this Agreement shall constitute a covenant which shall run with the land for the period specified therein and be binding upon Borrower and Borrower's successors and assigns, and all parties having or acquiring any right, title, interest in whatever form, including but not limited to leasehold interests, in or to any part of the property. Any attempt to transfer title or any interest therein in violation of this covenant shall be void.

Section 4.07 Term. The term of this Agreement shall commence upon the date of this Agreement and shall continue for thirty-five (35) years or the date of final repayment of all principal and interest due under the Note, whichever of these events occurs first.

Section 4.08 Entire Agreement. This Agreement contains the entire agreement

between the City and Borrower with respect to the subject matter hereof. No written or oral agreements with any officer, agent or employee of the City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement.

Section 4.09 Amendments. The City and Borrower reserve the right to amend this Agreement by mutual consent. It is understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms of this Agreement, unless made in writing between the parties shall be binding on either of the parties.

Section 4.10 Continued Validity. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

Section 4.11 Captions. The captions of this Agreement are for convenience of reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Agreement.


Section 4.13 Exhibits. All exhibits attached and referred to in this Agreement are incorporated in this Agreement by this reference as if set forth fully herein. These include:

- Exhibit A: Legal Description of Property
- Exhibit B: Promissory Note
- Exhibit C: Deed of Trust

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF SUNNYVALE
A California municipal corporation

By:



Annabel Yurutucu
Housing Officer

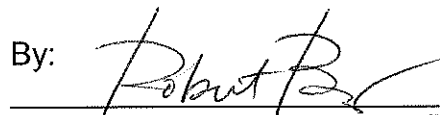
Sunnyvale Community Services
A California nonprofit public benefit
Corporation

By:



Nancy Tivol
Executive Director

By:



Approved as to form, Robert Boco, Deputy City
Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

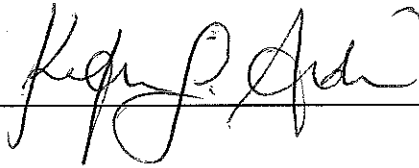
STATE OF CALIFORNIA
COUNTY OF Santa Clara

On April 14, 2003, before me, Katrina L. Ardina, Notary Public

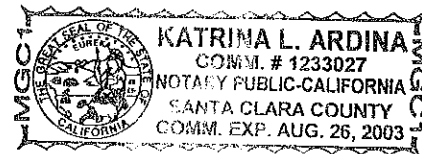
Personally appeared Annabel Yurutucu Personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



(This area is for official notarial seal.)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

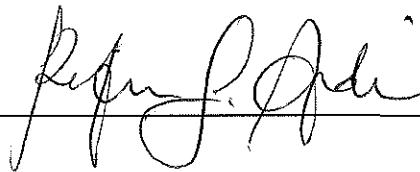
STATE OF CALIFORNIA
COUNTY OF Santa Clara

On April 14, 2003, before me, Katrina L. Ardina, Notary Public

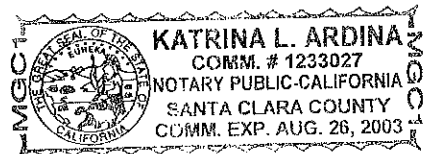
Personally appeared Robert Boco Personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



(This area is for official notarial seal.)



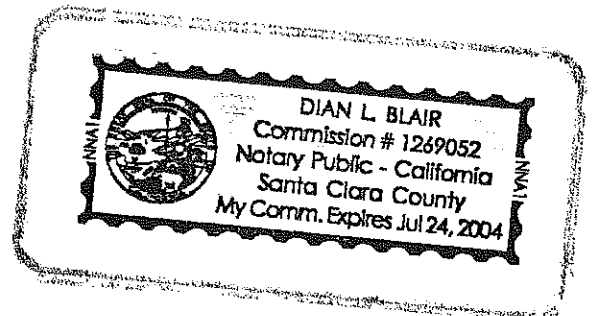
NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA }ss
COUNTY OF Santa Clara }

On **April 15, 2003**, before me, **Dian L. Blair**, a Notary Public in and for said State, personally appeared **Nancy Tivol**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature 



(This area for official notarial seal)

OPTIONAL:

DESCRIPTION OF ATTACHED DOCUMENT

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel 2, as shown upon that certain Map entitled, "Parcel Map being a portion of Parcel A & B of the Map filed in Book 222 of Maps, at page 47, Santa Clara County Records", which map filed for record in the office of the Recorder of the County of Santa Clara, State of California, on October 22, 1969 in Book 260 of Maps, at page 48.

APN: 205-44-005

EXHIBIT "B"

**CITY OF SUNNYVALE
COMMUNITY DEVELOPMENT BLOCK GRANT LOAN
PROMISSORY NOTE**

Sunnyvale Community Services-725 Kifer Road, Sunnyvale, CA

\$400,000.00**April 15, 2003**

FOR VALUE RECEIVED, the undersigned, SUNNYVALE COMMUNITY SERVICES, a California nonprofit benefit corporation, ("Borrower"), promises to pay to the CITY OF SUNNYVALE, a California municipal corporation ("City"), the principal sum of Four Hundred Thousand Dollars (\$400,000.00), together with simple interest from April 15, 2003 at the rate of three percent (3.0%) per annum on the unpaid principal balance.

This Note is for the funding for the acquisition of that certain real property (the "Property") located at 725 Kifer Road, City of Sunnyvale, County of Santa Clara, State of California and is secured by a Deed of Trust of even date herewith, with Borrower as Trustor, the City as Trustee, and the City as Beneficiary. Borrower and City have also executed a Loan Agreement dated of even date herewith.

Principal and interest on this Note shall be due and payable over a term of thirty-five (35) years as follows:

1. **Interest**

Interest shall accrue at the rate of three percent (3%) per annum beginning on April 15, 2003 ("Commencement Date"). Interest shall be calculated on the unpaid principal balance and based on the actual number of days in the year.

2. **Term/Payment**

2.1 The term of this Note shall be from the date of this Note ("Note Date") until thirty-five (35) years thereafter ("Maturity Date") which date is May 1, 2038.

2.2 The Note shall be paid as follows:

Monthly payments are due by the 1st of each month. Installment payments shall be deferred for fifteen (15) years until May 1, 2018. The monthly payments for the period beginning on May 1, 2018 through April 1, 2038 will be \$3,217.00 per month. The balance of all unpaid principal and any accrued interest shall be due in full on the Maturity date, which is May 1, 2038.

3. **Acceleration of Obligation**

All unpaid principal and interest then outstanding shall, at the option of the City, be immediately due and payable if during the term of this Note there occurs any of the following:

- (a) Default or breach by Borrower of any covenant or provision required under the terms of the Note, Loan Agreement or the Deed of Trust after the expiration of notice and cure periods as provided in the Loan Agreement;
- (b) Sale, transfer, hypothecation, assignment or encumbrance by Borrower of the Property, or any interest therein, except as provided under the terms of the Note, Loan Agreement or the Deed of Trust;

5. **Intended Use**

The Property must be used for the purpose of providing comprehensive emergency assistance for a period of thirty-five (35) years, unless otherwise approved by the City of Sunnyvale, and its use must thereby comply with Housing and Urban Development (HUD), CDBG Regulatory citation Section 570.503, and continue to meet one of the national objectives in Section 570.208 as stipulated in the Loan Agreement.

6. **Prepayment**

There is no prepayment penalty.

7. **Amendments**

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.

8. **Governing Law**

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

9. **Conflict**

If there is any conflict between the terms of this Note and the Deed of Trust the terms of this Note shall prevail.

The Borrower understands that one of the conditions of the loan with the City is that the Project will be monitored annually by the City of Sunnyvale to certify that it continues to be in compliance with the intended use provision in Section 5 of this Note. The Borrower also understands that it will provide an Annual Report to the Beneficiary in January of each year. This report will provide a summary of the total number of days of operation of the facility and be certified by the board of directors of the agency as a true and correct report of the operation of the Project. It will include total number of days of operation for the last two or more years, and provide detailed explanations should any reduction in services occur that exceed 10% of the prior year

Payment shall be made in lawful money of the United States. Should default occur, and action instituted on this Note, the Borrower promises to pay such sum as the court may fix as attorney's fees. This Note is secured by a Deed of Trust.

Executed by Borrower on 4/15/03 (Date)

Borrower:

Sunnyvale Community Services,
A Non Profit Corporation

By: Nancy Tivol
Nancy Tivol, Executive Director

First American Title
#521856

EXHIBIT "C"

RECORDING REQUESTED BY

CITY OF SUNNYVALE
Record at No Fee per Government
Code Section 6103

AND WHEN RECORDED MAIL TO

Housing Division
City of Sunnyvale
P.O. Box 3707
Sunnyvale, CA 94088-3707

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN # 205-44-005

DEED OF TRUST WITH ASSIGNMENT OF RENTS
Community Development Block Grant Funds

THIS DEED OF TRUST is made as of April 15, 2003 between Sunnyvale Community Services (SCS), a California nonprofit public benefit corporation ("Trustor"), whose address is 810 W. McKinley Avenue, and the CITY OF SUNNYVALE, a municipal corporation of the State of California ("Trustee" and "Beneficiary"), whose address is 456 West Olive Avenue, P.O. Box 3707, Sunnyvale, California, 94088-3707.

TRUSTOR HEREBY irrevocably grants, transfers and assigns to Trustee City of Sunnyvale 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 all that certain real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Legal Description of Property is attached hereto as Exhibit A

(hereinafter the "Property"), together with Trustor's interest in all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Property; and together with the rents, issues and profits thereof; and all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, 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 all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein; and 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 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 "Property", to Trustee, its successors and assigns forever.

A. FOR THE PURPOSE OF SECURING:

1. Payment of indebtedness evidenced by a Promissory Note ("Note") executed by Trustor of even date herewith, in the principal sum of Four Hundred Thousand Dollars (\$400,000.00), and any renewal, extension, or modification of the Note, together with all sums due thereunder including interest and other charges;

2. The performance of each agreement and covenant of Trustor in this Deed of Trust for the Provision of Community Development Block Grant (CDBG) Funds for the Sunnyvale Community Services project for the acquisition of real property for the purpose of providing offices, a board and community meeting room, warehouse space, that will allow storage of food and distribution and emergency assistance services that will prevent homelessness and hunger for low-income families and seniors facing temporary financial and personal crises, at 725 Kifer Road, Sunnyvale, California, by and between Trustor and Beneficiary.

B. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES:

1. Promissory Note. That it will pay the sums due as evidenced by the Promissory Note at the time and in the manner provided therein;

2. Intended Use. That it will not permit or suffer the use of any of the Property for any purpose other than to operate the facility by providing comprehensive emergency assistance for a period of thirty-five (35) years, unless otherwise approved by the City of Sunnyvale, and thereby comply with Housing and Urban Development (HUD), CDBG Regulatory citation Section 570.503, and thereby continue to meet one of the national objectives in Section 570.208;

3. Maintenance and Repair. To keep the Property in good condition and repair; not to remove or demolish any buildings on the property; to complete or restore promptly and in good and workmanlike manner any building that may be constructed, damaged, or destroyed on the Property, subject to a right to contest; to pay when due all claims for labor performed and materials furnished for the Property; to comply with all

laws affecting the property including all applicable provisions of the Sunnyvale Municipal Code and relevant ordinances and regulations including those requiring any alterations or improvements to be made on the Property and, except as expressly set forth to the contrary in the Agreement, to comply with and satisfy all terms and conditions of the Loan Agreement; not to commit or permit waste of the property; not to commit, suffer, or permit any act upon the property in violation of law; and to cultivate, irrigate, fertilize, fumigate, prune, and do all other acts that from the character or use of the Property may be reasonably necessary.

4. Fire Insurance. To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. Notwithstanding anything contained in any of the documents evidencing the loan from Beneficiary to Trustor, unless Beneficiary and Trustor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damages, provided Trustor determines that such restoration or repair is economically feasible and there is no default continuing beyond the expiration of all applicable cure periods. If Trustor determines that such restoration or repair is not economically feasible or if a default exists after expiration of all applicable cure periods, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. In the event funds for such work are insufficient, Beneficiary may, at its option, advance such additional funds as may be necessary to allow the Property to be repaired or restored, and may add the amount thereof to the principal balance of the Note hereby secured. If the Property is abandoned by Trustor, or if Trustor fails to respond to Beneficiary within 30 days from the date notice is mailed by Beneficiary to Trustor that the insurance carrier offers to settle a claim for insurance benefits, Beneficiary is authorized to collect and apply the insurance proceeds at Beneficiary's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

5. Defense of Security. To appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary, or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

6. Payment of Liens and Taxes. Trustor covenants that it will not voluntarily create, suffer or permit to be created against the Property, subject to this Deed of Trust, any lien or liens except as authorized by Beneficiary and further that it will keep and maintain the Property free from the claims of all persons supplying labor or materials.

Trustor shall pay, or cause to be paid prior to delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate proceedings, and (b) Trustor maintains reserves adequate to pay any

liabilities contested in accordance with generally accepted accounting principles.

In the event that Trustor shall fail to pay any of the foregoing items required, Beneficiary may (but shall be under no obligation to) pay same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay any such item within seven (7) business days of the earlier of the receipt or mailing of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted under Section 1(2) of Article XV of the California Constitution.

Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing 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. Beneficiary or Trustee being authorized to enter upon said 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 Beneficiary 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 reasonable attorney's fees.

7. Reimbursement of Costs. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, under permission given under this Deed of Trust, with interest from date of expenditure at the rate specified in the Promissory Note, and to pay any reasonable amount demanded by Beneficiary (up to the maximum allowed by law at the time of the demand) for any statement regarding the obligation secured by this Deed of Trust.

8. Assignment of Rents, Profits and Income. That all rents, profits and income from the Property covered by this Deed of Trust are hereby assigned to Beneficiary for the purpose of discharging the debt hereby secured. Permission is hereby given to Trustor so long as no default exists hereunder, to collect such rents, profits, and income. That upon default hereunder or under the Loan Agreement, and after the expiration of notice and cure periods, Beneficiary shall be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession and protect the Property described herein and operate same and collect the rents, profits and income therefrom.

9. Nondiscrimination. That Trustor shall not discriminate against or deny services to any client or prospective client on the basis of race, color, religious creed, national origin, ancestry, disability, medical condition, marital status, sex, age, or any other basis as to which discrimination is prohibited by state or federal law.

C. IT IS MUTUALLY AGREED BY THE PARTIES THAT:

1. The proceeds of any award or claim for damages, direct or consequential, in connection with a total condemnation or taking of the Property, shall be applied to the

sums secured by this Deed of Trust, with the excess, if any, paid to Trustor, unless Trustor and Beneficiary otherwise agree in writing. In the event of a partial condemnation or taking, the proceeds shall be applied to the restoration or repair of the Property, provided Trustor determines that such restoration or repair is economically feasible and there is no default continuing after the expiration of all applicable cure periods. If Trustor determines that such restoration or repair is not economically feasible or if a default exists after expiration of all applicable cure periods, the condemnation proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Trustor. In the event funds for such work are insufficient, Beneficiary may, at its option, advance such additional funds as may be necessary to allow the Property to be repaired or restored, and may add the amount thereof to the principal balance of the Note hereby secured. If the Property is abandoned by Trustor, or if Trustor fails to respond to Beneficiary within 30 days from the date notice that the condemning authority intends to settle the condemnation action is mailed by Beneficiary to Trustor, Beneficiary is authorized to collect and apply the condemnation proceeds at Beneficiary's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

2. That upon default by Trustor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder, and after the expiration of all applicable notice and cure periods provided in the Note, Beneficiary 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 said property to be sold, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said note and all documents evidencing expenditures secured hereby.

3. 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 Trustor, shall sell said 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 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 Trustor, Trustee or Beneficiary, 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 Promissory Note;

d. All other sums then secured hereby; and

e. The remainder, if any, to the person or persons legally entitled thereto.

5. Beneficiary 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 Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

6. 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.

7. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Promissory 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";

8. The trust created hereby is irrevocable by Trustor.

9. 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 "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder including pledgee, of the Promissory 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 Trustor hereunder are joint and several;

10. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made of 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 any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee;

11. The undersigned Trustor requests that copies of any notice of default and of any notice of sale hereunder be mailed to it at 725 Kifer Road, Sunnyvale, CA 94086

12. Trustor agrees to provide an Annual Report to the Beneficiary in January of each year. This report will provide a summary of the total number of days of operation of the facility and be certified by the board of directors of the agency as a true and correct report of the operation of the Trustor. It will include total number of days of operation for the last two or more years, and provide detailed explanations should any reduction in services occur that exceed 10% of the prior year. Trustor further agrees that upon default or upon reconveyance of title pursuant to the terms of the Promissory Note secured by this Deed of Trust, Trustor shall furnish a full accounting of the income, and operating expenses of the premises, and such other information regarding the Property and its use as may be requested by Beneficiary.

13. Transfer of Property by Trustor. Should the anticipated services provided to the community through the operation of the facility and operations be terminated by the Trustor, the Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. Any transfer of the property is subject to the prior written approval of the Beneficiary. Transfers to a 501(c) (3) non-profit corporation able to fully carry out the functions and services provided by the Trustor may be considered.

Beneficiary 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 Trustor or any maker or guarantor of the Promissory Note from any liability thereunder without the prior written consent of Beneficiary. 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 Property, or the lease of all or substantially all of the Property. "Transfer" shall also include the transfer, assignment, hypothecation or conveyance of legal or beneficiary ownership of any interest in Trustor or any conversion of Trustor to an entity form other than that of Trustor at the time of execution of the Promissory Note.

14. In the event that Trustor seeks to refinance all or any part of the outstanding loans, Beneficiary reserves the right to require that Trustor renders the entire outstanding balance of the Promissory Note, together with all accrued and unpaid interest, immediately due and payable at the time of the refinancing or partial refinancing. Any refinancing or partial refinancing (including any additional financing), by Trustor, without notification of Beneficiary, shall render the entire outstanding balance of the Promissory Note, together with all accrued and unpaid interest, immediately due and payable at the time of the refinancing or partial refinancing.

15. Trustor shall permit Beneficiary and its agents or representatives, to inspect

the Property at any and all reasonable times, upon reasonable notice. Inspections shall be conducted so as not to interfere with the tenants' use and enjoyment of the property.

16. The Promissory Note provided for herein shall be subject to the restrictions set forth in the Agreement and 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 Beneficiary expressly set forth in this Deed of Trust.

17. Beneficiary hereby agrees that this Deed of Trust and the Promissory Note shall be subordinate to the following other encumbrance(s).

- a. A Deed of Trust securing from the City of Sunnyvale in the amount of \$1,755,000 for acquisition of the property.

Beneficiary specifically acknowledges and agrees that the liability of Trustor and its successors and assigns for any default or breach under this Deed of Trust or the Note shall be limited to and satisfied out of the Property, and that nothing herein shall create personal liability on the part of Trustor or its successors or assigns hereunder.

18. Among others, the following events after notice and expiration of applicable cure periods shall be an Event of Default:

- a. Failure of Trustor to pay, when due, principal and interest and any other sums or charges on the Notes, in accordance with the provisions set forth in the Notes;

- b. A substantive violation of the terms, conditions or covenants of the Agreement, or this Deed of Trust.

19. Upon the occurrence of an Event of Default as described in Section 18, Trustor shall be obligated to repay the Notes and Beneficiary may, by action, suit or proceeding at law or in equity, sue for, and enforce payment of any and all amounts due by Trustor pursuant to the terms of the Note and/or sue to enforce the performance of the obligations of Trustor under the Agreement, subject to the terms and conditions of said agreements.

20. The Note secured by this Deed of Trust evidences a non-recourse only obligation of Trustor.

21. 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 Trustor.

IN WITNESS WHEREOF, the TRUSTOR has hereunto executed this deed of trust the day and year first above written.

TRUSTOR: Sunnyvale Community Services
By: Sunnyvale Community Services,

A California nonprofit public benefit corporation

By: Nancy Tivol
By it's Executive Director, Nancy Tivol

STATE OF CALIFORNIA
Public, personally appeared
COUNTY OF SANTA CLARA

On 4-15-03 before me, Dian L. Blair, Notary

Nancy Tivol

personally known to me (or proved to me on the basis of satisfactory evidence) to the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Signature] (Seal)
NOTARY PUBLIC SIGNATURE



EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Parcel 2, as shown upon that certain Map entitled, "Parcel Map being a portion of Parcel A & B of the Map filed in Book 222 of Maps, at page 47, Santa Clara County Records", which map filed for record in the office of the Recorder of the County of Santa Clara, State of California, on October 22, 1969 in Book 260 of Maps, at page 48.

APN: 205-44-005