Council Meeting of
November 17, 2009

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: City Manager – Authorize Third Amendment to Lease for Torrance Unified School District (TUSD) use of a portion of Greenwood Park.
Expenditure: None

RECOMMENDATION

Recommendation of the City Manager that the City Council approve Third Amendment to Lease by and between the City of Torrance (City) and the Torrance Unified School District (TUSD) for a portion of certain real property located at 1520 Greenwood within Greenwood Park.

Funding

The City will receive an annual lease payment of $15,747 for the first year of the Lease with a 3% increase each year thereafter for the Lease term.

BACKGROUND/ ANALYSIS

In 1997, TUSD approached the City to lease a portion of the Greenwood Park site for three years (August 1, 1997 to July 31, 2000) to accommodate the class size reduction program that was mandated by the State of California. The request was made to assist with class size reduction at Fern Elementary School, which is adjacent to Greenwood Park. Council approved this request.

In 2000, TUSD requested a continuation of the Lease agreement for a two-year period (August 1, 2000 to July 31, 2002) to allow planning time to develop class size reduction projects at Fern Elementary. This request was approved by Council, and a new Lease agreement was drafted and signed by the City and TUSD.

TUSD requested to continue leasing the Greenwood Park site in August 2002 for three additional years for the period August 1, 2002 to July 31, 2005.

In August of 2005, TUSD requested to continue leasing the Greenwood Park site for up to three (3) additional years for the period August 1, 2005 to July 31, 2008 and a Second Amendment to Lease was approved by the City Council. The Second Amendment has expired and TUSD wishes to extend the Agreement an additional three years.

The Third Amendment to Lease provides for initial annual rent of $15,747 with annual CPI adjustments of 3%.

Respectfully submitted,

By Brian K. Sunshine
Assistant to the City Manager

CONCUR:

LeRoy J. Jackson
City Manager

Attachments:
A) Third Amendment to Lease
B) Second Amendment to Lease
C) Amendment to Lease dated August 1, 2002
D) Original Lease dated August 1, 2000

Attachment A

THIRD AMENDMENT TO LEASE

This Third Amendment to Lease is made and entered into as of November 17, 2009, with an Effective Date of August 1, 2008 by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and the TORRANCE UNIFIED SCHOOL DISTRICT ("DISTRICT").

RECITALS:

A. CITY and DISTRICT entered into a Lease on August 1, 2000, whereby the CITY Leased to DISTRICT a portion of certain real property known as Greenwood Elementary School.

B. CITY and DISTRICT entered into a First Amendment to Lease on August 1, 2002 extending the term of Lease to July 31, 2005.

C. CITY and DISTRICT entered into a Second Amendment to Lease on August 1, 2006 and that Amendment expired on July 31, 2008.

D. CITY and District wish to extend the Lease for three additional years retroactive to August 1, 2008.

E. CITY and DISTRICT are satisfied with the terms and conditions of that Lease and First Amendment to Lease and desire to extend the Lease for an additional three-year term.

AGREEMENT:

1. Section 2.1 of that section titled, "AGREEMENT," is amended to read in its entirety as follows:

   "2. TERM
   2.1

   The term of this Lease shall be for three years commencing on August 1, 2008, (commencement date) and ending on July 31, 2011, unless sooner terminated pursuant to any provision of this Lease.

2. Section 3.1 of that Section titled "AGREEMENT" is amended to read in its entirety as follows:

3. Rent.

3.1 Rent. District will pay to CITY the sum of $15,747.00 for the first year rental under this Amendment to Lease of the Premises ("Rent") commencing August 1, 2008. Rent will be paid quarterly in installments of one-fourth of the annual rent, in advance, on the first day of each quarter, commencing on the Commencement Date.

3. In all other aspects, the Lease dated August 1, 2000, between CITY and DISTRICT is ratified and reaffirmed and is in full force and effect.

TORRANCE UNIFIED SCHOOL DISTRICT

By: _____
Its:

CITY OF TORRANCE

By:_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

John L. Fellows III
City Attorney

By:_____
Patrick Sullivan
Assistant City Attorney

Attachment B

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease is made and entered into as of August 2, 2005, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and the TORRANCE UNIFIED SCHOOL DISTRICT ("DISTRICT").

RECITALS:

A. CITY and DISTRICT entered into a Lease on August 1, 2000, whereby the CITY Leased to DISTRICT a portion of certain real property known as Greenwood Elementary School.

B. CITY and DISTRICT entered into a First Amendment to Lease on August 1, 2002 extending the term of Lease to July 31, 2005.

C. CITY and DISTRICT are satisfied with the terms and conditions of that Lease and First Amendment to Lease and desire to extend the Lease for an additional three-year term.

AGREEMENT:

1. Section 2.1 of that section titled, "AGREEMENT," is amended to read in its entirety as follows:

   "2. TERM
   2.1

   The term of this Lease shall be for three years commencing on August 1, 2005, (commencement date) and ending on July 31, 2008, unless sooner terminated pursuant to any provision of this Lease.

2. Section 3.1 of that Section titled "AGREEMENT" is amended to read in its entirety as follows:

   3. Rent.

3.1 Rent. District will pay to CITY the sum of $14,844.00 for the first year rental under this Amendment to Lease of the Premises ("Rent") commencing August 1, 2005. Rent will be paid quarterly in installments of one-fourth of the annual rent, in advance, on the first day of each quarter, commencing on the Commencement Date.

3. In all other aspects, the Lease dated August 1, 2000, between CITY and DISTRICT is ratified and reaffirmed and is in full force and effect.

TORRANCE UNIFIED SCHOOL DISTRICT

By: _____
Its:

CITY OF TORRANCE

By:_____
Dan Walker, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

John L. Fellows III
City Attorney

By:_____
Ronald T. Pohl
Assistant City Attorney

Attachment C

AMENDMENT TO LEASE

This Amendment to Lease is made and entered into as of August 1, 2002, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and the TORRANCE UNIFIED SCHOOL DISTRICT ("DISTRICT").

RECITALS:

A. CITY and DISTRICT entered into a Lease on August 1, 2000, whereby the CITY Leased to DISTRICT a portion of certain real property known as Greenwood Elementary School.

B. CITY and DISTRICT are satisfied with the terms and conditions of that Lease and desire to extend the Lease for an additional three-year term.

AGREEMENT:

1. Section 2.1 of that section titled, "AGREEMENT," is amended to read in its entirety as follows:

   "2. TERM
   2.1

   The term of this Lease shall be for three years commencing on August 1, 2002, (commencement date) and ending on July 31, 2005, unless sooner terminated pursuant to any provision of this Lease.

2. Section 3.1 of that Section titled "AGREEMENT" is amended to read in its entirety as follows:

   3. Rent.

3.1 Rent. District will pay to CITY the sum of $13,992.00 for the first year rental under this Amendment to Lease of the Premises ("Rent") commencing August 1, 2002. Rent will be paid quarterly in installments of one-fourth of the annual rent, in advance, on the first day of each quarter, commencing on the Commencement Date.

C2000-155

[5901-1]

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3. In all other aspects, the Lease dated August 1, 2000, between CITY and DISTRICT is ratified and reaffirmed and is in full force and effect.

TORRANCE UNIFIED SCHOOL DISTRICT

By: _____
Its: CBO

CITY OF TORRANCE

By: _____
Dan Walker, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

John L. Fellows III
City Attorney

By: _____
Ronald T. Pohl
Assistant City Attorney

Attachment D

LEASE AGREEMENT

This Lease, is made and entered into as of August 1, 2000, by and between the Torrance Unified School District ("District") and the City of Torrance ("City").

RECITALS:

1. City is the owner of certain real property situated in the City of Torrance commonly known as the Greenwood Elementary School.

2. The Greenwood School property was sold by District to City pursuant to an agreement between the parties dated February 1, 1986 ("1986 Agreement").

3. Since the sale in 1986, City has used the property for public recreation, open space and community purposes.

4. The District is in need of additional land on which to place modular classrooms to accommodate the Class Size Reduction Program at the adjacent Fern Elementary School.

5. The City and District entered into a Lease on July 15, 1997, to accommodate the Class Size Reduction Program.

6. The Lease will expire on July 31, 2000 and the District desires to enter into a new Lease.

AGREEMENT:

1. Premises. City leases to District and District leases from City a portion of that certain real property situated in the City of Torrance, County of Los Angeles, State of California, commonly known as Greenwood Elementary School as depicted on Exhibit A ("Premises").

2. Term.

2.1 The term of this Lease will be for two years commencing on August 1, 2000 ("Commencement Date") and ending on July 31, 2002, unless sooner terminated pursuant to any provision of this Lease.

2.2 District may terminate this lease at any time upon sixty days notice pursuant to paragraph 18.1.

C2000-156

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3. Rent.

3.1 Rent. District will pay to City the sum of $13,188.00 for the first year rental of the Premises ("Rent"). Rent will be paid quarterly in installments of one-fourth of the annual rent, in advance, on the first day of each quarter, commencing on the Commencement Date.

3.2 Rent Adjustments. The amount of the annual Rent will be increased as of the annual anniversary of the Commencement Date. The annual increase will be three percent.

4. Acceptance of Facilities.

(a) By execution of this Agreement, it is understood that District has entered into this Lease upon the basis of its personal inspection of the Premises and with full awareness of the conditions and character of the Premises, and without reliance upon any representations as to the condition or character of the Premises which may have been made by representatives of City.

5. Use of the Premises. The Premises will be used for the purpose of an educational program and for uses normally incident to the conduct of such business. No other use or sub-lease will be permitted or entered into by the District.

6. Prohibited Uses. District will not do or permit anything to be done in or about the Premises nor bring or keep anything on the Premises which will in any way increase the existing rate of or affect any fire or other insurance upon the Premises.

7. Compliance with Law. District will, at District's expense, comply with all applicable statutes, ordinances, rules, regulations, orders, restrictions of record, and requirements in effect during the term or any extension of the term of this Lease regulating the use by District of the Premises. District will not use nor permit the Premises to be used in any manner that will tend to create waste or a nuisance.

District will be responsible for obtaining, at its expense, all necessary permits and approvals from appropriate governmental agencies for its intended use of the Premises.

8. Maintenance

8.1. Building Maintenance. It will be the obligation of District to maintain and repair all structures placed or erected on the Premises by District.

8.2 Interior Maintenance. District agrees to be responsible for all interior maintenance, and to keep the facilities in good order, condition and repair. District

will, at its expense, provide custodial services including all janitorial services and supplies necessary to maintain the buildings in a clean, safe and attractive condition.

8.3 City's Rights. If District fails to perform District's obligations under this Paragraph 8, City may, at its option (but will not be required to) enter upon the Premises, after ten days prior written notice to District, and put the same in good order, condition and repair. District will reimburse City for the costs of any such work.

8.4. Landscaping. Maintenance of the landscaping on the Premises will be the obligation of District and will be subject to approval by City.

9. Utilities. District will be responsible for all utility costs, including telephone, water, sewer, electrical and gas, during the term of this Lease.

City approves the connection by District to the existing sewer, water and electrical lines. A separate meter for electrical and water service will be established. District will pay for costs of such hookups and meters.

10. Alterations or Additions. District will make no electrical, structural or mechanical alterations on the Premises without the prior written consent of City. City, however, will not unreasonably withhold its consent as long as the alterations meet all applicable legal requirements including those imposed by the State of California on school buildings. District will not construct or locate any structures on the Premises without the prior written consent of City. Prior to the commencement of any construction, the plans will be submitted to the City for review and comment.

(a) District will remove any and all alterations, improvements or additions at the expiration of the term, or earlier termination, and restore the Premises to its condition as of July 15, 1997.

(b) It will be the obligation of the District to obtain all necessary permits and approvals from appropriate governmental entities for any such new construction or alterations.

11. Insurance.

11.1 Liability Insurance. District will, at District's expense, obtain and keep in force during the term of this Lease a policy of Combined Single Limit, Bodily Injury and Property Damage Insurance insuring City and District against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance will be a combined single limit policy in an amount not less than $5,000,000. The policy will contain cross liability endorsements and will insure performance by District of the indemnity provisions of Section 12. The limits of the insurance will not,

however, limit the liability of District. If District fails to procure and maintain the insurance required under this Lease, City may, but will not be required to, procure and maintain the same, but at the expense of District. City will be named as an additional insured. The insurance required under this Lease will be primary and will not be cancelable or subject to reduction of coverage or other modifications except after ten days prior written notice to City.

City understands and agrees that District may fulfill the requirements of this Section 11.1 by self-insurance or by a Joint Powers Agreement with other school districts such as ASCIP.

11.2 Property Insurance.

City will obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, in the amount of the full replacement value, as the same may exist from time to time, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (all risk) and sprinkler leakage.

It will be the responsibility of District to provide appropriate personal property insurance for all its property on the Premises.

12. Indemnity. District will indemnify and hold harmless City from and against any and all claims arising from District's use of Premises, or from the conduct of District's business or from any activity, work or things done, permitted or suffered by District in or about the Premises or elsewhere, including but not limited to, claims arising from or related to structures or improvements placed on the Premises by District, and will further indemnify and hold harmless City from and against any and all claims arising from any breach or default in the performance of any obligation on District's part to be performed under the terms of this Lease, or arising from any negligence of the District, or any sub-District, or any of District's costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against City by reason of any such claim, District, upon notice from City, will defend the same at District's expense by counsel satisfactory to City.

13. Entry by City. City reserves and will at any and all times have the right to inspect the Premises and to post notices of non-responsibility.

14. Defaults; Remedies.

14.1 Defaults. The occurrence of any one or more of the following events will constitute a material default and breach of this Lease by District:

(a) The vacating or abandonment of the Premises by District.
(b) The willful failure by District to observe or perform any of

the covenants, conditions or provisions of this Lease to be observed or performed by District, where such failure continues for a period of 5 days after written notice from City to District; provided, however, that if the nature of District's default is such that more than 5 days are reasonably required for its cure, then District will not be deemed to be in default if District commenced such cure within the 5-day period and thereafter diligently pursues such cure to completion.

14.2 Remedies. In the event of any material default or breach by District, City may at any time thereafter, with or without notice or demand and without limiting City in the exercise of any right or remedy which City may have by reason of such default or breach:

(a) Terminate District's right to possession of the Premises by any lawful means, in which case this Lease will terminate and District will immediately surrender possession of the Premises to City. In such event City will be entitled to recover from District all damages incurred by City by reason of District's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises and reasonable attorney's fees, the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that District proves could be reasonably avoided.

(b) Maintain District's right to possession in which case this Lease will continue in effect whether or not District will have abandoned the Premises. In such event City will be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover the rent as it becomes due.

(c) Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California.

15. Late Charges. District acknowledges that late payment by District to City of rent and other sums due under this Lease will cause City to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on City by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from District is not be received by City within ten days after such amount is due, District will pay to City a late charge equal to 6% of the overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by District. Acceptance of this late charge by City will in no event constitute a waiver of District's default with respect to such overdue amount, nor prevent City from exercising any of the other rights and remedies granted .

16. Assignment and Sub-Lease. No assignment or sub-lease of this Lease or of the Premises or any portion of the Premises will be valid.

17. Surrender. On the last day of the term of this Lease, or any sooner termination, District will surrender the Premises to City in the same condition as of July 15, 1997, broom clean, ordinary wear and tear excepted, provided, however, at the option of City, this requirement may be waived. District will repair any damage to the Premises occasioned by the removal of District's structures, furnishings and equipment.

18. Miscellaneous.

18.1 Notices. All notices, requests, demands, or other communications under this Lease will be in writing. Notice will be sufficiently given for all purposes as follows:

(a) Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

(b) First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

(c) Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

(d) Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

(e) Facsimile transmission. When sent by fax to the last number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

(f) Addresses for purpose of giving notice are as follows:

City
City Clerk
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90509-2970
Fax: 310-618-2931

District
Mr. Kevin Condon
Chief Business Officer
Torrance Unified School District
2335 Plaza Del Amo
Torrance, CA 90501
Fax: (310) 533-4258

Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Lease.

18.2 Severability. The validity of any provision of this Lease as determined by a court of competent jurisdiction will in no way affect the validity of any other provision of this Lease.

18.3 Time of Essence. Time is of the essence.

18.4 Captions. Provision and paragraph captions are not a part of this Lease.

18.5 Waivers. No waiver by City of any provision of this Lease will be deemed a waiver of any other provision of this Lease or of any subsequent breach by District of the same or any other provision. City's consent to or approval of any act will not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by District. The acceptance of rent by City will not be a waiver of any preceding breach by District of any provisions of this Lease, other than the failure of District to pay the particular rent so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent.

18.6 Holding Over. If District remains in possession of the Premises or any part of the Premises after the expiration of the term of this Lease without the express written consent of City, such occupancy will be a tenancy from month-to-month at a rental in the amount of one-twelfth (1/12th) of the last annual rental plus all other charges payable under this Lease, and upon all of the terms applicable to a month-to-month tenancy.

18.7 Cumulative Remedies. No remedy or election under this Lease will be deemed exclusive but will, wherever possible, be cumulative with all other remedies at law or in equity.

18.8 Quiet Possession. Upon District's paying the fixed rent reserved under this Lease and observing and performing all of the covenants, conditions and provisions on District's part to be observed and performed under this Lease, District will have quiet possession of the Premises for the entire term of this Lease subject to all of the provisions of this Lease.

18.9 1986 Agreement. The 1986 Agreement provides that the City will keep and maintain the Greenwood School property for open space, playground and recreation purposes (Section 4) and that in the event the City decides to sell or otherwise dispose of the Greenwood School Property or use it for other than open space, playground or recreation purposes, the District has the right of first refusal to repurchase the Greenwood School Property (Section 5(d)). The City and District agree that the use of a portion of Greenwood School Property by the District pursuant to this Lease Agreement will not

constitute a use of the Greenwood School Property in violation of the provisions of Section 4 and/or Section 5(d) of the 1986 Agreement and the District will have no additional rights to the Greenwood School Property other than those set forth in this Lease.

18.10. District's authority to Execute. The person executing this Lease on behalf of the District warrants that (i) the District is duly organized and existing; (ii) they are duly authorized to execute this Lease on behalf of District; (iii) by so executing this Lease, the District is formally bound to the provisions of this Lease; and (iv) the entering into this Lease does not violate any provision of any other Lease to which the District is bound.

TORRANCE UNIFIED SCHOOL DISTRICT

By: _____
Its: CBO

CITY OF TORRANCE

By: _____
Dee Hardison, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

John L. Fellows III
City Attorney

By: _____
Heather K. Whitham
Deputy City Attorney

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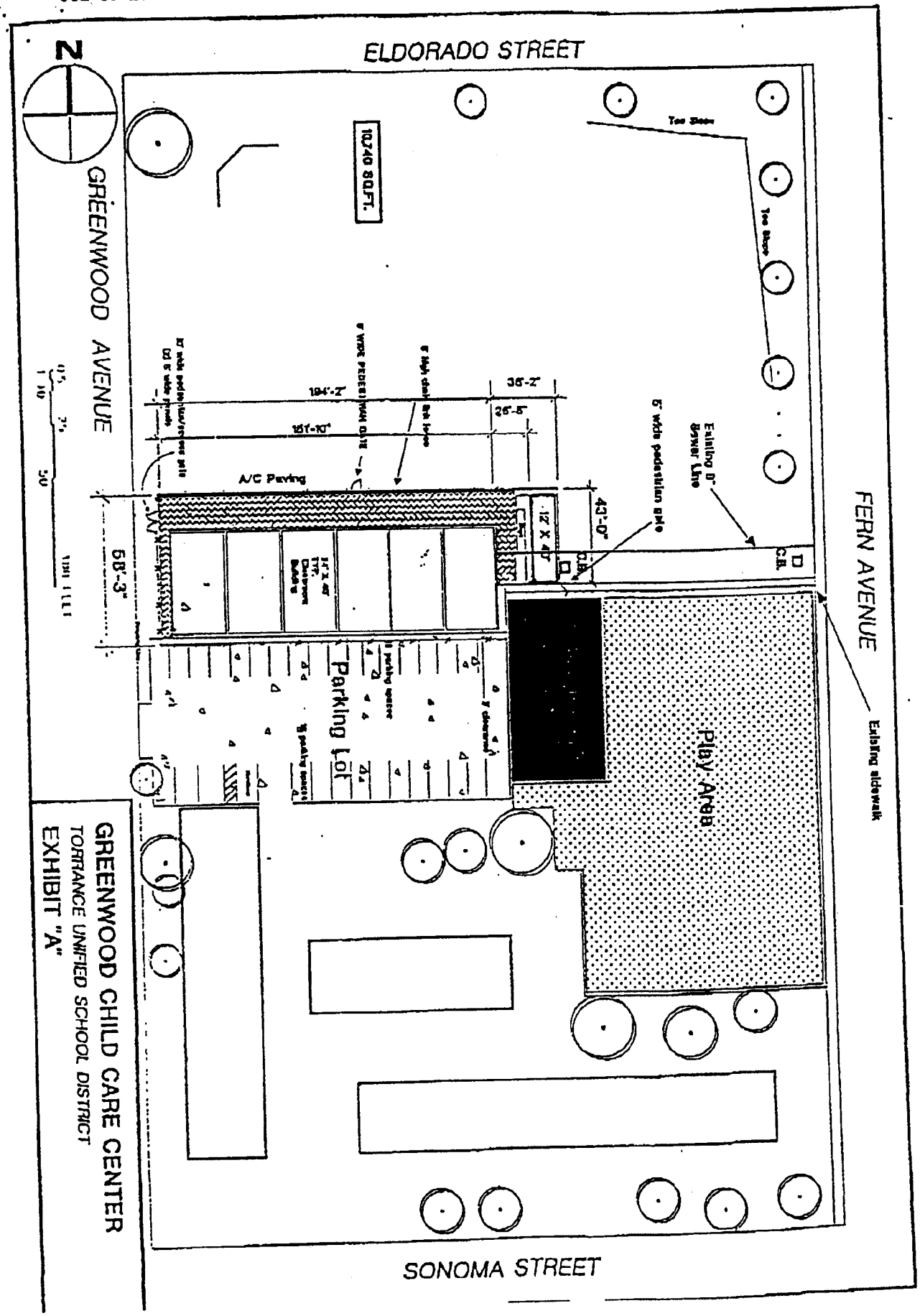

GREENWOOD CHILD CARE CENTER
TORRANCE UNIFIED SCHOOL DISTRICT
EXHIBIT "A"

(A)