

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

**Members of the Council:**

**SUBJECT: City Manager – Authorize First Amendment to Lease for Knowledge Learning Corporation to use of a portion of Greenwood Park.  
Expenditure: None**

**RECOMMENDATION**

Recommendation of the City Manager that the City Council approve First Amendment to Lease by and between the City of Torrance (City) and Knowledge Learning Corporation for a portion of certain real property located at 1520 Greenwood within Greenwood Park.

**Funding**

The City will receive annual revenue of \$71,815.44 for the first year of the Lease with a minimum 3%, maximum 5% increase each year thereafter for the Lease term.

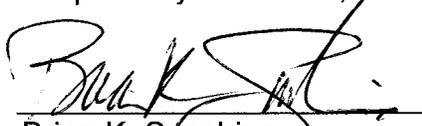
**BACKGROUND/ ANALYSIS**

The City and Lessee originally entered into a Lease in May of 2000. The Lease term was for 5 years with an Option to Lease for an additional five years. The current term of the Lease expires on December 31, 2009 and the Lessee wishes to extend the Lease for five years.

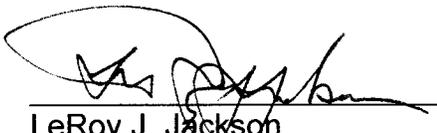
The rental area is for 4,990 square feet of building and 6,300 square feet of play-yard area. The Lease rate reflects a 10% decrease from the current rent due to the current economic conditions; the reduction in rent has been balanced with the Lessee taking on more of the day-to-day maintenance costs and agreeing to close the facility between Christmas and New Year each year to allow for City staff to utilize contractors where necessary to engage in larger maintenance activities on the site not within the Lessee's responsibility.

The Lease Amendment also contains a guaranteed inflator based on the Consumer Price Index with a minimum annual increase of 3% and a cap at 5%.

Respectfully submitted,

  
By Brian K. Sunshine  
Assistant to the City Manager

CONCUR:

  
LeRoy J. Jackson  
City Manager

Attachments:

- A) First Amendment to Lease
- B) Council Item of May 9, 2000 – original Lease



**FIRST AMENDMENT TO LEASE**

THIS First Amendment to Lease ("First Amendment") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009 ("Effective Date"), by and between CITY OF TORRANCE, a municipal corporation ("Landlord") and KNOWLEDGE LEARNING CORPORATION, a Delaware corporation ("Tenant").

**RECITALS**

**WHEREAS**, Tenant and Children's Discovery Centers of America, Inc. ("CDCA") entered into a Lease dated May 9, 2000 ("Lease"), for the premises commonly known as 1520 Greenwood Avenue, Torrance, California ("Premises"); and

**WHEREAS**, CDCA changed its name to Knowledge Learning Corporation by Certificate of Amendment of Certificate of Incorporation dated May 5, 2003; and

**WHEREAS**, Landlord and Tenant executed a Option Exercise Letter dated as of October 11, 2004; and

**WHEREAS**, the Lease is set to expire on December 31, 2009, and Landlord and Tenant desire to modify the terms of the Lease and extend the Lease term.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, the parties agree as follows:

**AGREEMENT**

1. **Extension of Term.** Landlord and Tenant hereby extend the term for a period of five (5) years commencing January 1, 2010, and ending December 31, 2014 (the "Extension Term").
2. **Base Rent.** Annual base rent for the period from January 1, 2010, through December 31, 2010 shall be \$71,815.44 per annum, payable at \$5,984.62 per month ("Annual Base Rent"). Beginning January 1, 2011, Annual Base Rent shall be adjusted effective each January 1 ("Adjustment Date") an amount that is not less than 3% nor more than 5% of the prior year's Annual Base Rent, based on the change, if any, in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index ("CPI") for All Items-All Urban Consumers (base year 1982-84 = 100) for the U.S. City Average, ("Index") as follows:

The adjustment to Annual Base Rent shall be determined using the Index published nearest to the date four (4) months prior to the Commencement Date described in Section 2.01 of the Lease as the "Beginning Index." The Index published nearest to the date four (4) months prior to the applicable Adjustment Date shall be the

“Adjustment Date Index.” On each Adjustment Date (the first day of January each year) during the term of this Lease, including all option or extension periods, the adjustment to Rent shall be calculated by multiplying the Annual Base Rent by a fraction, the numerator of which fraction is the applicable Adjustment Date Index and the denominator of which fraction is the Beginning Index. The amount of the adjustment shall be the difference between the amount so determined and the prior year’s Annual Base Rent, which sum shall be added to the prior year’s Annual Base Rent to arrive at the ensuing year’s Rent. If the Index has changed so that the base year differs from that used in this section, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term hereof, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index has not been discontinued or revised.

Notwithstanding the above, however, the Rent for the applicable Adjustment Date and until the next Adjustment Date shall be the amount determined in accordance with the above formula but in no event shall it be less than 3% nor more than 5% of the prior year’s Annual Base Rent.

3. **Maintenance and Repair of Premises: Obligations.** Section 10 of the Lease is hereby deleted and replaced by the following:

“Tenant shall, at Tenant’s sole cost and expense, decorate and perform routine maintenance of the Premises to include all internal Premises maintenance, internal Premises painting, and plumbing inside the interior of the Premises. City shall be responsible for repairing, maintaining, and replacing all equipment or facilities serving the Premises, such as plumbing outside the interior wall of the Premises, heating, air conditioning, ventilating, electrical, lighting facilities, fire hydrants, exterior walls, foundations, roofs, windows, doors, plate glass, skylights, landscaping driveways, parking lots, fences, retaining walls, signs sidewalks and parkways located in, on, about, or adjacent to the Premises in good order, condition and repair, and in compliance with all governmental laws, rules and regulations, so long as Tenant has not by its negligence caused the damage.

Tenant agrees to close its business operation at the Premises from December 26 through January 1 each year (“Annual Closure Period”) to allow Landlord to do major repairs or replacements to the Premises provided Landlord gives Tenant written notice not later than October 27 each year of its intent to perform such repairs or replacements during such Annual Closure Period. In the event Tenant does not receive such notice as set forth above, Tenant may remain open for business during the Annual Closure Period in Tenant’s sole discretion.”

4. **Landlord's Title and Authority.** Landlord hereby represents and warrants as follows: (i) Landlord has fee simple title to the Premises; (ii) Landlord has full right, power and authority to execute, deliver and perform this First Amendment, and all required action and approvals therefor have been duly taken and obtained; and (iii) this First Amendment is and shall be binding upon and enforceable against Landlord in accordance with its terms and will not result in a breach of or constitute a default of any instrument or agreement to which Landlord or the Premises is subject or bound. The individual executing this First Amendment on behalf of Landlord represents and warrants that he is duly authorized to do so and to bind himself as Landlord hereto.

5. **Notice.** Any notice given pursuant to the Lease shall be in writing addressed to the recipient at the address shown below, as such address may have been changed by written notice. Notice shall be (a) mailed by certified or registered mail with return receipt requested, postage prepaid, (b) delivered in person or by nationally recognized overnight courier, or (c) sent by facsimile machine. Any notice (a) sent by mail, in person or by courier shall be deemed given when delivery is first attempted, and (b) sent by facsimile shall be deemed given when receipt has been confirmed either electronically or otherwise. Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

If to Landlord:	City of Torrance Attn: City Clerk 3031 Torrance Boulevard Torrance, CA 90503 Fax: 310-618-5891
If to Landlord Copy To:	City of Torrance Attn: Brian Sunshine 3031 Torrance Blvd. Torrance, CA 90503 Fax: 310-618-5891
If to Tenant:	Knowledge Learning Corporation Attn: Real Estate Dept. 650 NE Holladay Street, Suite 1400 Portland, OR 97232 Fax: 503-872-1447

6. **Conflict in Terms.** All other terms and conditions set forth in the Lease are hereby ratified and shall remain the same and the Lease continues to be in full force and effect. To the extent that any provision of this First Amendment conflicts with the Lease as previously amended, the terms of this First Amendment shall control.

7. **Counterparts; and Facsimile/Electronic Signatures.** This First Amendment may be executed in counterparts and shall be effective when all parties have signed a copy and a fully

executed copy has been delivered to Tenant. Such counterparts taken together shall constitute one and the same agreement. It is agreed that a facsimile or electronic signature shall evidence and constitute valid execution of the First Amendment and shall be binding on the signing party. At the request of either party, the parties will confirm facsimile or electronically transmitted signatures by signing an original document.

8. **Ambiguity.** All provisions of this First Amendment have been negotiated by both parties at arm's length and neither party shall be deemed the scrivener of this First Amendment. This First Amendment shall not be construed for or against either party by reason of the authorship or alleged authorship of any provision hereof.

9. **Joint and Several Liability.** If Landlord consists of more than one person or entity, each such person or entity agrees to be jointly and severally liable for Landlord's obligations under the Lease.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date indicated below.

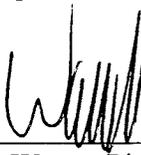
**LANDLORD:**

**TENANT:**

**CITY OF TORRANCE,**  
a municipal corporation

**KNOWLEDGE LEARNING CORPORATION,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: Frank Scotto  
Mayor

By:  \_\_\_\_\_  
Name: Wayne Pipes  
Vice President, Facilities & Development

Date: \_\_\_\_\_

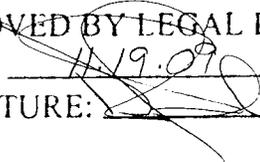
Date: 11-19-09

**ATTEST:**

**APPROVED AS TO FORM:**  
**JOHN L. FELLOWS III**

\_\_\_\_\_  
Sue Herbers, City Clerk

By: \_\_\_\_\_  
Deputy City Attorney

APPROVED BY LEGAL DEPARTMENT  
DATE: 11-19-09  
SIGNATURE: 

Council Meeting of  
May 9, 2000

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

**Members of the Council:**

**SUBJECT:** Lease Agreement with Children's Discovery Centers (CDC) for  
Property Located at 1520 Greenwood Avenue  
Expenditure: N/A

**RECOMMENDATION**

A recommendation of the Land Management Team for the City Council to:

- ◆ authorize the Mayor to execute and the City Clerk to attest to a Lease Agreement by and between the City of Torrance (City) and Children's Discovery Centers (CDC) for the lease of City-owned property located at 1520 Greenwood Avenue

**Funding**

Execution of the lease will produce \$30,000 in rent through December 31, 2001, and \$60,000 annually for the term of the lease plus C.P.I. adjustments.

**BACKGROUND**

The City and CDC entered into an agreement on December 20, 1993, to manage, maintain and operate a child care center, City Kids, at Greenwood Park for infant and pre-school age children. The original agreement was set to expire in November 1998, and was extended for six months. The contract was again set to expire in June 1999, and was again extended to December 1999. The contract was extended again in December 1999, for an additional three months so that City staff and representatives of CDC could reach an agreement on lease terms.

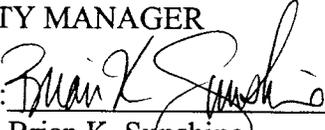
**ANALYSIS**

The lease before Your Honorable Body will transition the agreement from a City pilot program into a business agreement for space rental. The area to be leased at Greenwood Park includes 4990 square feet of building, and 6300 square feet of play-yard area. Lease terms are \$3,000 per month from May 1, 2000 through December 31, 2001. Rent will increase to \$5,000 per month in January 2001, and that amount will be maintained through the life of the

lease. The rent has annual C.P.I. adjustments as justified. The term of the lease is 5 years with one five-year option.

Respectfully submitted,

LeROY J. JACKSON  
CITY MANAGER

By:   
Brian K. Sunshine  
Chair, Land Management Team

CONCUR:

  
Gene Barnett  
Parks and Recreation Director

  
LeRoy J. Jackson  
City Manager  
for  
Attachment: Lease

**LEASE**

**between**

**CITY OF TORRANCE,**

**a municipal corporation,**

**Landlord**

**and**

**CHILDREN DISCOVERY CENTERS OF AMERICA, INC.,**

**a Delaware corporation,**

**Tenant**



**TABLE OF CONTENTS**

LEASE .....	4
1. PREMISES .....	4
2. TERM .....	4
2.1 Commencement and Duration of Term .....	4
2.2 Renewal Period .....	4
3. RENT .....	5
3.1 Rent .....	5
3.1a Lease Initiation Fee .....	5
3.1b Adjustment .....	5
3.2 Additional Rent .....	6
4. USE AND OCCUPANCY .....	6
5. PARK AREA .....	6
6. TAXES .....	6
6.1 Definition of Real Property Taxes .....	6
6.2 Tenant's Right to Contest .....	6
6.3 Personal Property and Other Taxes .....	7
6.4 Possessory Interest Taxes .....	7
7. INSURANCE .....	7
8. INDEMNITY .....	8
9. ALTERATIONS .....	8
10. MAINTENANCE AND REPAIR OF PREMISES: OBLIGATIONS .....	9
11. NOTICES REGARDING CONSTRUCTION; MECHANICS LIENS .....	9
12. LANDLORD'S RIGHT TO INSPECT .....	9
13. CERTAIN REPRESENTATIONS AND WARRANTIES .....	9
13.1 Certain Landlord Warranties .....	9
13.2 Certain Tenant Warranties .....	10
14. ASSIGNMENT AND SUBLETTING .....	10

15.	TENANT'S DEFAULT; REMEDIES.....	11
16.	LANDLORD'S DEFAULT; REMEDIES.....	13
17.	REMEDIES SHALL BE CUMULATIVE .....	13
18.	ENVIRONMENTAL RESPONSIBILITY .....	13
	18.1 Tenant's Responsibilities .....	13
	18.2 Definition of "Hazardous or Toxic Material" .....	13
19.	ATTORNEYS' FEES .....	14
20.	NOTICES .....	14
21.	WAIVER .....	15
22.	RELATIONSHIP OF PARTIES .....	15
23.	GOVERNING LAW .....	15
24.	ESTOPPEL CERTIFICATES.....	15
25.	UTILITIES .....	16
26.	GENDER AND INTERPRETATION OF TERMS AND PROVISIONS .....	16
27.	COVENANTS TO BIND SUCCESSORS .....	16
28.	ENTIRE AGREEMENT .....	16
29.	SURRENDER OF PREMISES.....	16
30.	ARTICLE HEADINGS.....	17
31.	SEVERABILITY .....	17
32.	BROKERS .....	17
33.	FINANCIAL INFORMATION .....	17
34.	UNAVOIDABLE DELAYS .....	18
35.	EXHIBITS.....	18
36.	AUTHORITY TO EXECUTE.....	18

## LEASE

THIS LEASE, dated this 9th day of May, 2000, by and between CITY OF TORRANCE, a municipal corporation (hereinafter called "City"), and CHILDREN'S DISCOVERY CENTERS OF AMERICA, INC., a Delaware corporation (hereinafter called "Tenant"):

For and in consideration of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, City hereby demises and leases to Tenant and Tenant hereby leases from City the premises hereinafter described for the period, at the rental and subject to and upon the terms and conditions set forth in the following Articles:

### 1. PREMISES.

City hereby leases exclusively to Tenant, and Tenant hereby leases from City, subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease, the following (which are referred to throughout this Lease as the "Premises"): The Premises are described as that certain real property which was subject to the "Agreement for Infant and Child Care Services" originally entered into by City and Tenant on December 20, 1993, together with any and all easements, rights and privileges granted herein or now or hereinafter belonging or appurtenant to such real property; and together with the building and any other improvements at any time attached to or incorporated into the Premises, whether by City or Tenant, as hereinafter provided. A copy of which is attached as Exhibit "A"

### 2. TERM.

2.1 Commencement and Duration of Term. The words "Term" and "Lease Term" as used herein shall mean the initial term of this Lease and all extension renewals thereof. The "Initial Term" of this Lease shall mean the period beginning on January 1, 2000 (hereinafter called the "Commencement Date"). The initial term shall be for five (5) years and expire on December 31, 2004.

2.2 Renewal Period. City hereby grants Tenant the option to extend the term of this Lease for one (1) additional period of five (5) years (hereinafter called the "Renewal Period"), commencing upon the termination date of the Initial Term, upon the following terms and conditions:

(a) that Tenant shall not be in default, at the time it exercises its option to extend, under any of the terms, covenants, conditions, provisions, or agreements of this Lease.

(b) that Tenant shall exercise its option to extend by notifying City, in writing, of its election to exercise such option on or before six (6) months prior to the end of the then unexpired Term, otherwise said option shall be null and void.

(c) that such Renewal Period shall be upon the same terms, covenants, conditions, provisions and agreements as in this Lease, except that the Rent payable during each Renewal Period shall be as specified in Article 3.

3. **RENT.**

3.1 **Rent.** Tenant shall pay to City Rent for the Premises in the following amounts:

3.1a **Lease Initiation Fee.** In addition to the rent set forth in this Paragraph 3, Lessee will pay City a one-time lease Initiation Fee of \$6,000 due upon execution of this Lease.

<b>Rental Period</b>	<b>Monthly Base Rent</b>
Lease Year 1 May 1, 2000 – December 31, 2000	\$3,000 per month
Lease Years 2 – 5 January 1, 2001 – December 31, 2004	\$5,000 per month*
Option Period	\$5,000 per month*

\*Plus applicable rent adjusted by C.P.I. as addressed in 3.1b

3.1b **Adjustment.** The Minimum Monthly Rent will be adjusted annually in proportion to the percentage increase, if any, in the Consumer Price Index, All Urban Consumer (1982-4=100) for the Los Angeles Anaheim Riverside (the "Index") issued by the United States Bureau of Labor Statistics, Department of Labor, between the Index published for the month which occurs two months prior to the first month of the Term of this Lease (the "Base Index"), and the Index published for the same month of the year in which each adjustment to the Minimum Monthly Rent is to be made; provided that, in no event shall Minimum Monthly Rent be decreased as a result of the application of this paragraph.

Rent for any partial month following the Commencement Date except for any initial partial month shall be prorated based on a thirty (30) day month. All rent and other monies payable under this Lease shall be paid in lawful money of the United States at the office of the City set forth in Article 24 below, or at such other place or places as may from time to time be designated in writing by City.

3.2 **Additional Rent.** Whenever under the terms of this Lease any sum of money is required to be paid by Tenant in addition to the Rent (“Additional Rent”), whether or not such sum is herein designated as “rent,” such sum shall nevertheless be deemed to constitute rent for all purposes of the private agreement between City and Tenant hereunder.

#### 4. **USE AND OCCUPANCY.**

Tenant shall use the Premises for the purpose of operating a preschool, daycare, or other educational facility, except those uses prohibited by restrictions of record. Tenant shall not do anything or suffer anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation, or requirement now in force or which may hereafter be enacted or promulgated. At its sole cost and expense, Tenant shall promptly comply with all such governmental measures. Should any standard or regulation now or hereafter be imposed on City or Tenant by a state, federal, or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords, or tenants, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations.

#### 5. **PARK AREA.**

Tenant acknowledges that Premises are located in Greenwood Park and that City shall be responsible for assuring the maintenance, operation, repair and replacement of the Park.

#### 6. **TAXES.**

6.1 **Definition of Real Property Taxes.** In addition to the rent reserved herein and all of the other covenants on the part of Tenant to be performed, Tenant shall pay on or prior to the due date thereof all real estate taxes on the Premises and such improvements as may be located thereon which shall include taxes paid upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent (“Real Property Taxes”).

6.2 **Tenant’s Right to Contest.** Tenant may, at its option, contest any Real Property Taxes against the Premises and attempt to obtain a reduction in the assessed valuation upon the Premises for the purpose of reducing any such tax assessment. Without expense or liability to City, City shall cooperate with Tenant and execute any document which may be reasonably necessary and proper for any proceeding.

6.3 **Personal Property and Other Taxes.** Tenant shall pay, before delinquency, all property and other taxes and assessments on the furniture, equipment and other property of Tenant which may be at any time situated on or installed in the Tenant's building, and upon improvements to the Premises made or installed by Tenant subsequent to the Commencement Date.

6.4 **Possessory Interest Taxes.** This lease may create a taxable possessory interest. Tenant will pay any possessory interest tax or assessment that may be levied as a result of Tenant's possessory interest leasehold. Possessory interest means any interest described in Section 107 of the California Revenue and Taxation Code, or its successor statute. This section is deemed to comply with Section 107.6 of the same code.

## 7. **INSURANCE.**

7.1 The Tenant must maintain at its sole expense the following insurance, which shall be full coverage not subject to self-insurance provisions.

(1) Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:

(a) Primary Bodily Injury with limits of at least \$1,000,000 per person \$2,000,000 per occurrence and;

(b) Primary Property Damage with limits of at least \$1,000,000 occurrence, or

(c) Combined single limits of at least \$3,000,000 per occurrence.

(2) General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of at least \$5,000,000 per occurrence. This coverage must not exclude sexual abuse coverage.

(3) Workers' Compensation with limits as required by the State of California and Employer's Liability with limits of at least \$1,000,000.

7.2 The insurance provided by Lessee will be primary and non-contributory.

7.3 The City of Torrance, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

7.4 Tenant shall provide certificates of insurance and, or endorsements to the City Clerk/ Purchasing Agent of the City of Torrance before commencement of work.

7.5 Each insurance policy required by this clause shall contain a provision that

no termination, cancellation or change of coverage can be made without 30 days notice to the City.

**Sufficiency Of Insurers And Sureties:**

Insurance required by this contact/purchase order will be satisfactory only if issued by companies rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category of a VII or better, unless these requirements are modified or waived by the City Risk Manager.

**8. INDEMNITY.**

Tenant will indemnify, defend, and hold harmless City, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence.

The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of Tenant, its officers, employees, agents, subcontractors or vendors. It is further agreed, Tenant's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of City, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of City, its officers, employees or agents. In the event of any dispute between Tenant and City, as to whether liability arises from the sole negligence of the City or its officers, employees, agents, subcontractors or vendors, Tenant will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Tenant will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

**9. ALTERATIONS.**

Tenant shall not make any structural alterations or additions to the Tenant's building without first procuring City's written consent, which consent shall not be unreasonably withheld or delayed. All alterations, additions and improvements made by Tenant to or upon the Tenant's building, except light fixtures, signs, electrical equipment, cases, counters or other removable trade fixtures, shall at once, when made or installed, be deemed to have attached to the realty and to have become the property of City. Tenant shall have the right to make nonstructural alterations and additions to Tenant's building without City's consent, so long as such alterations, additions and decorations are required by the licensing agency (state or local).

**10. MAINTENANCE AND REPAIR OF PREMISES: OBLIGATIONS.**

Tenant shall, at Tenant's sole cost and expense, decorate and perform routine maintenance of the Premises. City shall be responsible for repairing, maintaining, and replacing all equipment or facilities serving the Premises, such as plumbing, heating, air conditioning, ventilating, electrical, lighting facilities, fire hydrants, fixtures, walls (interior and exterior), foundations, ceilings, roofs, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, about, or adjacent to the Premises in good order, condition and repair, and in compliance with all governmental laws, rules and regulations, so long as Tenant has not by its negligence caused the damage.

**11. NOTICES REGARDING CONSTRUCTION; MECHANICS LIENS.**

Before commencing any work or construction of any structural alterations, additions, replacements or substantial repairs in or about the Premises, Tenant shall notify City and obtain its approval of the intended work and expected date of commencement thereof. City shall have the right at any time to post and maintain on the Premises such notices as City deems necessary to protect the Premises and City from mechanics liens, materialman's liens, or any other liens. Tenant shall keep the Premises free from any liens or encumbrances arising out of the work performed, materials furnished, or obligations incurred by or on behalf of Tenant, and shall protect, defend, indemnify and hold City and the Premises harmless from and against any claims, liabilities, judgments or costs (including without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. Tenant shall remove any such lien or encumbrance by bond or otherwise within five (5) days after notice by City, and if Tenant shall fail to do so, City may expend the amount necessary to remove such lien or encumbrance, without being responsible for the validity thereof. The amount so paid shall be deemed additional rent under this Lease payable upon demand, without limitation as to other remedies available to City under this Lease.

**12. LANDLORD'S RIGHT TO INSPECT.**

Upon reasonable notice (except in case of emergency), City and its agents shall have access to the Premises during normal business hours for the purpose of (i) examining the same and to ascertain if they are in good repair, (ii) showing the Premises to current or prospective purchasers or mortgagees, or (iii) during the final twelve (12) months of the Lease Term only, showing the Premises to prospective tenants.

**13. CERTAIN REPRESENTATIONS AND WARRANTIES.**

**13.1 Certain Landlord Warranties.** City represents and warrants that:

City is a municipal corporation or other form of legal entity, City has been duly formed, is validly existing and has full power and authority to execute and deliver this Lease and

perform its obligations hereunder for the Initial Term and the Renewal Period; any resolution or other action necessary to authorize this Lease has been duly taken by City and the person or persons executing this Lease for City have been duly authorized to do so; and

The execution and delivery of this Lease and the performance by City of its obligations hereunder are not and shall not be prohibited by or cause a breach of, and the provisions hereof do not conflict with, any other agreement, mortgage, contract or other instrument or document to which City is a party or by which it or any of its property is bound.

13.2 **Certain Tenant Warranties.** Tenant represents and warrants that:

Tenant has been duly formed, is validly existing and has full power and authority to execute and deliver this Lease and perform its obligations hereunder for the Initial Term and the Renewal Period; any resolution or other action necessary to authorize this Lease has been duly taken by Tenant and the person or persons executing this Lease for Tenant have been duly authorized to do so; and

The execution and delivery of this Lease and the performance by Tenant of its obligations hereunder are not and shall not be prohibited by or cause a breach of, and the provisions hereof do not conflict with, any other agreement, mortgage, contract or other instrument or document to which Tenant is a party or by which it or any of its property is bound.

14. **ASSIGNMENT AND SUBLETTING.**

Tenant shall not assign this Lease ("Assignment"), or sublet the Premises or any portion thereof ("Sublease") without City's prior written consent. Notwithstanding any other provision hereof to the contrary, the following transfers shall not constitute an Assignment or Sublease and shall not require the consent of City: (a) Any transfer of Tenant's stock, partnership or membership interest if Tenant's net worth does not decrease as a result of that transfer or if the transfer is made in connection with an initial public offering Tenant's stock, partnership or membership interests; or (b) Any transfer to an "affiliate" (as defined below), provided that City receives written notice of the transfer, Tenant promptly supplies City with any documents or information reasonably requested by City regarding such transfer, transferee or such initial public offering, such transfer is not a subterfuge by Tenant to avoid its obligation under this Lease, and, if the transfer is an assignment, that the transferee assumes in writing all of Tenant's obligations under the Lease. An "affiliate" means any entity that: (i) controls, or is controlled by, Tenant; (ii) is the transferee, or results from the transfer, of all or substantially all of Tenant's assets or stock; or (iii) results from the merger or consolidation of Tenant with another entity. "Control" means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of an entity or possession of the right to vote more than fifty percent (50%) in the voting interest in the ordinary direction of the entity's affairs. In connection with the transfer of this Lease, (1) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (2) such consent (if required) shall not be deemed consent to any further transfer by either Tenant or a transferee, (3) Tenant shall deliver to City, promptly after execution, an original executed copy of all documentation pertaining to the transfer in form reasonably acceptable to City, and

(4) no transfer relating to this Lease or agreement entered into with respect thereto, whether with or without City's consent, shall relieve Tenant from any liability under this Lease.

**15. TENANT'S DEFAULT; REMEDIES.**

(a) It is expressly agreed that in the event that:

(i) Tenant shall fail, neglect or refuse to pay any installment of rent within ten (10) days after the date such rent or other monetary obligation is due, without further notice from City; or

(ii) Any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy act shall be filed by or against Tenant, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare Tenant insolvent or unable to pay Tenant's debts, or upon the appointment of a receiver in liquidation or otherwise for Tenant and the same shall not be dismissed or discharged within thirty (30) days after notice thereof in writing given to Tenant by City; or

(iii) Tenant shall fail, neglect or refuse to keep and perform any of the other covenants, conditions, stipulations or agreements herein contained and covenanted and agreed to be kept and performed by it, and such default shall continue for a period of more than ten (10) days after notice thereof in writing given to Tenant by City; provided, however, that if the cause for giving such notice involves the making of repairs or other matters reasonably requiring a longer period of time than the period of such notice, Tenant shall be deemed to have complied with such notice so long as it has commenced to comply with said notice within the period set forth in the notice and is diligently prosecuting compliance with said notice, or has taken proper steps or proceedings, under the circumstances, to prevent the seizure, destruction, alteration or other interference with said Premises by reason of noncompliance with the requirements of any law or ordinance or with the rules, regulations, or directions of any governmental authority as the case may be and thereafter diligently prosecutes such compliance to completion; or

(iv) Tenant makes any assignment of its property for the benefit of creditors or should the Premises be taken under a levy of execution or attachment in an action against Tenant and such levy, attachment or assignment is not dismissed and discharged within thirty (30) days after written notice thereof to Tenant by City; then

(b) City has the following remedies in addition to all other rights and remedies provided by law or equity, to which City may resort cumulatively or in the alternative:

(i) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to City, and if Tenant fails to do so, City may, without prejudice to any other remedy which he may have for possession or arrearage in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof without breaching the peace. Additionally, in such

event City shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate City for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, but in no case include costs beyond restoring Tenant's building to the condition at the time of delivery of possession of Tenant's building to Tenant, reasonable attorneys' fees, and that portion of the leasing commission paid by City applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the prior sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percentage point (1%). Efforts by City shall not waive City's right to recover damages under this paragraph. City shall use its reasonable efforts to relet the Premises if termination of this Lease is obtained through the provisional remedy of unlawful detainer, City shall have the right to recover in such proceeding the unpaid rent and damages as are City to mitigate damages caused by Tenant's default or breach of this Lease recoverable therein, or City may reserve therein the right to recover all or any part thereof in a separate suit for such rent and/or damages. City shall be entitled to recover the unamortized portion of the brokerage commissions paid by City under this Lease;

(ii) Enter upon and take possession of the Premises without terminating this Lease and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof without breaching the peace, and, City shall use its reasonable efforts to relet the Premises on commercially reasonable terms and receive the rent therefor; and Tenant agrees to pay to City on demand any deficiency on a monthly basis that may arise by reason of such reletting. City shall be entitled to recover the unamortized portion of the brokerage commissions paid by City under this Lease; and

(iii) Enter upon the Premises without breaching the peace, and do whatever Tenant is obligated to do under the terms of this Lease, in which case Tenant shall reimburse City on demand for any reasonable expenses which City may incur in thus effecting compliance with Tenant's obligations under this Lease plus interest at the highest legal rate from the date of any expenditure until City has been paid for same.

(c) If Tenant shall fail to pay, when the same is due and payable, any Rent, Additional Rent, or other charges, then Tenant shall pay to City a late charge equal to ten percent (10%) of the overdue amount. The late charge shall be deemed additional rent and the right to require it shall be in addition to all of City's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting City's remedies in any manner. In addition to the late charge described above, any rent, additional rent, or other amounts owing hereunder which are not paid when the same are due and payable shall bear interest at

NationsBank, or its successor in interest, prime rate plus two percent (2%) from the date due to the date of payment, but in no event greater than the maximum rate permitted by applicable law.

**16. LANDLORD'S DEFAULTS; REMEDIES.**

City's failure to perform any of its obligations under this Lease shall constitute a default by City under the Lease if the failure continues for thirty (30) days after written notice of the failure from Tenant to City. If the required performance cannot be completed within thirty (30) days, City's failure to perform shall constitute a default under the Lease unless City undertakes to cure the failure within thirty (30) days and diligently and continuously attempts to complete this cure as soon as reasonably possible.

**17. REMEDIES SHALL BE CUMULATIVE.**

All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by either party of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

**18. ENVIRONMENTAL RESPONSIBILITY.**

18.1 **Tenant's Responsibilities.** Tenant shall not sell, use, store or release into the environment in or around the Premises any hazardous or toxic substance or waste, except Tenant may sell, use and store goods held in inventory for retail sale or used in connection with Tenant's services in accordance with applicable law. Tenant shall defend, indemnify and hold harmless City from and against any claims, demands, losses, costs, expenses or liabilities caused by any breach by Tenant of this obligation.

18.2 **Definition of "Hazardous or Toxic Material."** As used in this Article, the term "Hazardous Material" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, or any state or local government authority having jurisdiction over the Premises. Hazardous Material includes: (i) Any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code sections 9601-9675); (ii) "Hazardous waste", as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code sections 6901-6992k); (iii) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material now or hereafter in effect); (iv) Petroleum products; (v) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Codes sections 2011-2297g-4; (vi) Asbestos in any form or condition; and (vii) Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs. As used in this paragraph, the term "Environmental Laws" shall mean all local, state, or federal laws, statutes, ordinances, rules, or regulations relating to the regulation of Hazardous Materials.

**19. ATTORNEYS' FEES.**

In the event suit is brought to enforce or interpret any part of this Lease, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, a reasonable attorneys' fees and costs to be fixed by the court.

**20. NOTICES.**

Whenever under this Lease a provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other, it shall be in writing sent by registered mail or certified mail, return receipt requested, with postage prepaid, or a nationally recognized overnight courier (which maintains signed receipts of deliveries) or by facsimile with confirmation of receipt, addressed to City or Tenant as follows:

**If to CITY:**

**CITY OF TORRANCE**  
Attn: City Clerk  
3031 Torrance Boulevard  
Torrance, CA 90503  
Fax 310-618-2931

With a copy to:  
**CITY OF TORRANCE**  
Attn: City Manager  
3031 Torrance Boulevard  
Torrance, CA 90503

**If to TENANT:**

**CHILDREN'S DISCOVERY CENTERS OF AMERICA, INC.**  
Attn: President and Chief Operating Officer  
4340 Redwood Highway, Building B  
San Rafael, CA 94903-2121  
Fax 415-444-1664

With a copy to:

**CHILDREN'S DISCOVERY CENTERS OF AMERICA, INC.**  
Attn: General Counsel  
4340 Redwood Highway, Building B  
San Rafael, CA 94903-2121  
Fax 415-444-1664

Either party may by like notice at any time and from time to time designate a different address to which notices shall be sent. Notices to City or Tenant shall be deemed received and effective the fifth (5th) day after deposit of same in the United States mail or the day after deposit with such overnight courier or upon confirmation of receipt by facsimile.

**21. WAIVER.**

One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of subsequent breach of the same covenant, term or condition. The consent or approval of either party to or of any act or omission requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act or omission.

**22. RELATIONSHIP OF PARTIES.**

Nothing contained in this Lease shall be deemed or construed to create the relationship of principal and agent or to create a partnership or joint venture or any association whatsoever as between City and Tenant, it being expressly understood and agreed that neither the method of computation of rent nor any other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between City and Tenant other than the relationship of landlord and tenant.

**23. GOVERNING LAW**

The laws of the State of California shall govern the validity, performance and enforcement of this Lease. Jurisdiction of any litigation arising from this lease will be in Los Angeles County, California.

**24. ESTOPPEL CERTIFICATES.**

At any time and from time to time, each party agrees upon request in writing from the other party to execute, acknowledge, and deliver, within thirty (30) days thereafter, to the other party an estoppel certificate, or such other form as may be required by any prospective mortgagee or purchaser of the Premises, which, as submitted by City, shall indicate therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by City or City's mortgagee or prospective mortgagee. An estoppel certificate, as submitted by Tenant, shall be modified to address that Tenant is submitting the same to City for City's execution. It is understood and agreed that any such statement may be relied upon by any prospective purchaser of the fee or any leasehold, or the mortgagee, beneficiary or grantee of any security or interest, or any assignee thereof, under any mortgage or deed of trust or otherwise now or hereafter made covering the fee or any leasehold interest in the Premises or the real property covered by this Lease.

**25. UTILITIES.**

Tenant agrees, at its own expense, to contract directly and pay for all water, sewer, electric current and other forms of power, and all other similar utilities used by Tenant on the Premises from and after the Commencement Date. In the event that at City's option, any utilities are furnished by City, or are submetered by City, then and in that event the rates charged Tenant shall not exceed those of the local public utility company as if its services were furnished directly to Tenant.

**26. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.**

As used in this Lease and whenever required by the context thereof, each number, both singular or plural, shall include all numbers, and each gender shall include all genders. City and Tenant as used in this Lease or any other instrument referred to in or made a part of this Lease shall likewise include both the singular and the plural, a corporation, copartnership, individual or person acting in any fiduciary capacity as executor, administrator, trustee or in any other representative capacity, as the case may be.

**27. COVENANTS TO BIND SUCCESSORS.**

The terms and agreements as contained in this Lease shall apply to, run in favor of and shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives and assigns and successors in interest of both the City and the Tenant.

**28. ENTIRE AGREEMENT.**

It is understood that there are no oral agreements or representations between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, agreements or representations and understandings, if any, between the parties hereto with respect to the subject matter thereof.

**29. SURRENDER OF PREMISES.**

Tenant shall, upon termination of this Lease, whether by lapse of time or otherwise, surrender to City the Premises, together with all replacements thereto, in good order, condition and repair, except for ordinary wear and tear and loss by fire or other casualty. Tenant shall have the right to remove its trade fixtures, equipment, furniture and other personal property at the end of the term if not in default under this Lease and at the time of such removal shall repair any damage caused by such removal. If Tenant holds over after the expiration of the Lease Term or earlier termination thereof, with or without the express or implied consent of City, City in its sole discretion, may treat such holdover tenancy as a month-to-month tenancy subject to all the terms and conditions of this Lease provided herein except rent shall be a sum equal to one hundred fifty percent (150%) of the rent most recently paid by Tenant to City. Nothing

contained in this Article 29 shall be construed as consent by City to any holding over by Tenant, and City expressly reserves the right to require Tenant to surrender possession of the Premises to City, as provided in this Lease, upon the expiration or other termination of this Lease. The provisions of this Article 29 shall not be deemed to limit or constitute a waiver of any other rights or remedies of City provided herein or at law. If Tenant fails to surrender the Premises upon termination or expiration of this Lease, in addition to any other liabilities to City accruing therefrom, Tenant shall protect, defend, indemnify and hold City harmless from all loss, costs, (including reasonable attorneys' fees) and liability resulting from such failure, including without limitation the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender and any lost profits to City resulting therefrom.

**30. ARTICLE HEADINGS.**

The article titles herein are for convenience only and do not define, limit or construe the contents of such articles.

**31. SEVERABILITY.**

Each paragraph, subparagraph, sentence, clause, phrase and word of this Lease shall be deemed severable; and in the event that any of the same shall for any reason be held invalid by any court, such decision shall not affect the validity of the remaining part or portion of this Lease.

**32. BROKERS.**

City and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiations of this Lease and that they know of no real estate broker or agent who is entitled to a commission in connection with this Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Brokers, occurring by, through, or under the indemnifying party.

**33. FINANCIAL INFORMATION.**

Within ten (10) days of the receipt by Tenant of City's request and an executed "confidentiality agreement", but not more than quarterly, Tenant will provide City with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant.

**34. UNAVOIDABLE DELAYS.**

If either party shall be prevented or delayed from punctually performing any obligations or satisfying any condition under this Lease by any strike, lockout, labor dispute, unavailability of labor or materials, act of God, unusually inclement weather, unusual governmental restriction, regulation or control, enemy or hostile governmental action, civil commotion, insurrection, sabotage, fire or other casualty, or any condition caused by the other party, then the time to perform such obligation to satisfy such condition shall be extended on a day-for-day basis for the period of the delay caused by such event; provided, however, that the party claiming the benefit of this Article shall, as a condition thereto, give notice to the other party in writing within ten (10) days of the incident specifying with particularity the nature thereof, the reason therefor, the date and time such incident occurred and a reasonable estimate of the period that such incident will delay the fulfillment of obligations contained herein. Failure to give such notice within the specified time shall render such delay invalid in extending the time for performing the obligations hereunder. This Article shall not apply to the inability to pay any sum of money due hereunder or the failure to perform any other obligation due to the lack of money or inability to raise capital or borrow for any purpose.

**35. EXHIBITS.**

All exhibits identified in this Lease are incorporated into the Lease by this reference.

**36. AUTHORITY TO EXECUTE.**

The person(s) executing this Lease on behalf of Tenant warrant that (i) Tenant is duly organized and existing; (ii) they are duly authorized to execute this Lease on behalf of the Tenant; (iii) by so executing this Lease, Tenant 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 Tenant is bound.

//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//  
//

IN WITNESS WHEREOF, the parties have executed this Agreement and it has become effective as of the day and year first written above.

**“CITY”**

**CITY OF TORRANCE**, a municipal corporation

By: \_\_\_\_\_  
Dee Hardison  
Its: Mayor

**“TENANT”**

**CHILDREN’S DISCOVERY CENTERS OF AMERICA, INC.**, a Delaware corporation

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

ATTEST:

\_\_\_\_\_  
Sue Herbers, City Clerk

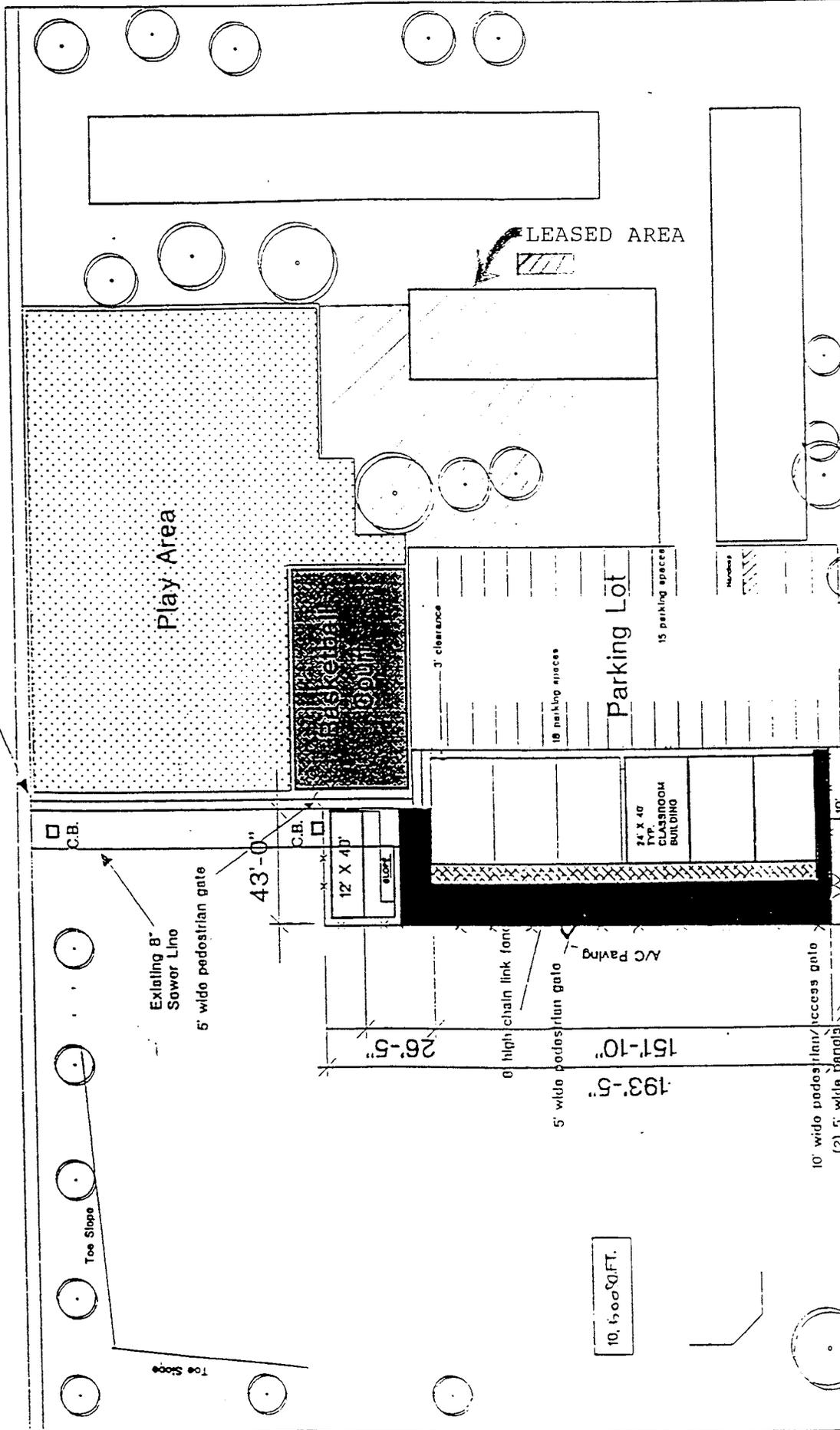
APPROVED AS TO FORM:

John L. Fellows III  
City Attorney

By: \_\_\_\_\_  
Heather K. Whitham  
Deputy City Attorney

Existing sidewalk

FERN AVENUE



GREENWOOD CHILD CARE CENTER  
TORRANCE UNIFIED SCHOOL DISTRICT C 5.5

GREENWOOD AVENUE

0.5 25 100 FEET  
1 10 50

