

Community Garden Ad Hoc Committee Report

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September 29, 2015

Executive Summary

This Ad Hoc committee was formed to assess the need and resources regarding community gardens in Palo Alto. A demonstrated interest in community gardens was expressed in part by the PTOSR Master Plan survey results, as well as in communication with the Palo Alto Neighborhood Associations. Our three public community gardens have waiting lists much of the time. There is a clear deficit of gardens south of Embarcadero, as shown in this report. A great opportunity is available for additional public community garden space at the Ventura site.

Public Community Gardens

There are three community gardens in the City of Palo Alto. These gardens are listed on the City's website at:

<http://www.cityofpaloalto.org/gov/depts/csd/parks/gardens/default.asp>

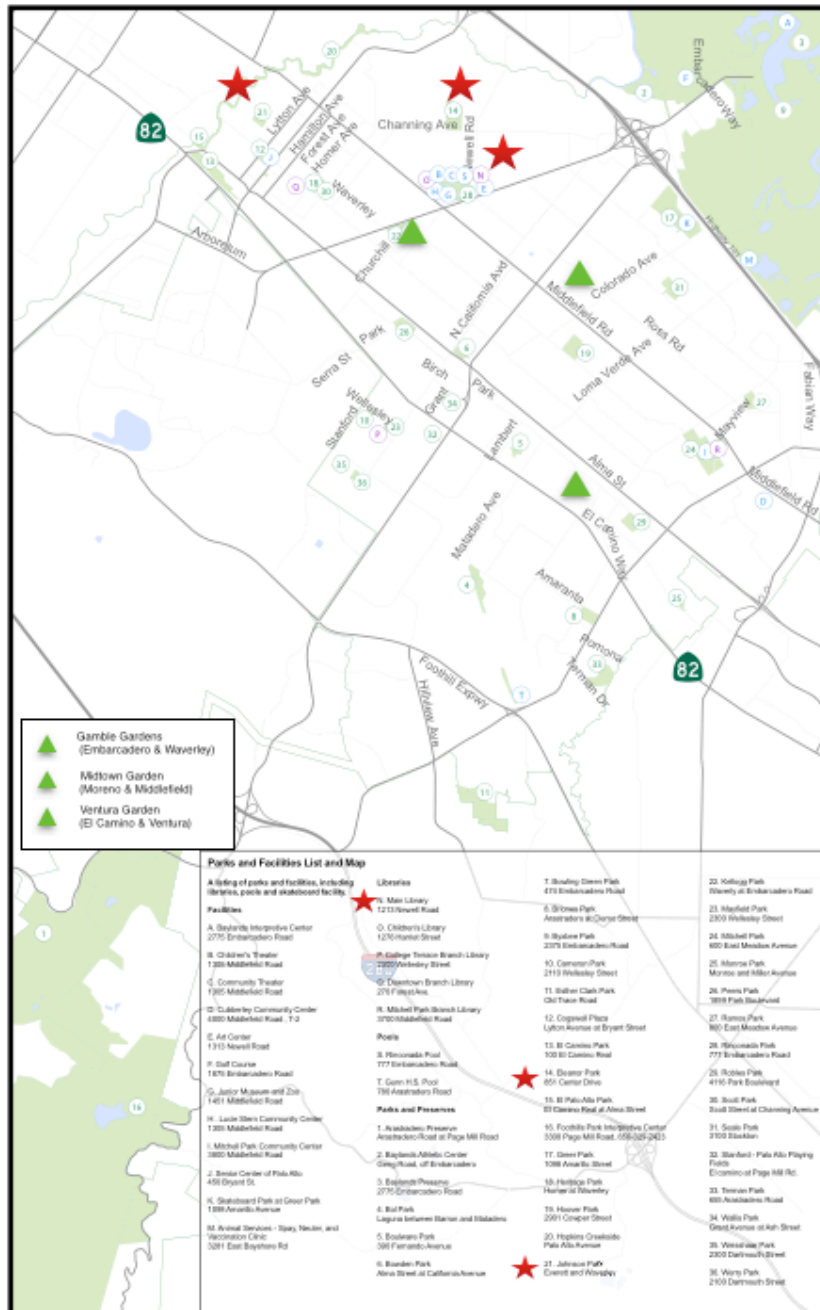
- 1) **Rinconada Garden** (formerly known as Main, behind library & art center)
- 2) **Eleanor Pardee Garden** (located in Pardee Park)
- 3) **Edith Johnson Garden** (located in Johnson Park)

Public/Private Partnership Gardens

There are three additional community gardens that are in partnership with the City and non-profit organizations:

1. **Gamble Gardens** - Gamble Gardens is a non-profit partner of the City that *"Seeks to create a community that supports and celebrates older adults."* While garden plots are not available for rent here, gardening classes are available to the community as a whole: <http://www.gamblegarden.org>
2. **Midtown Community Organic Garden** – The Midtown Garden is on privately-owned land and is under the fiscal sponsorship of Acterra, a non-profit City partner. It is managed under Acterra's own guidelines, not City guidelines. All plots are currently rented and a waiting list is maintained. More information is available at: <http://www.midtowngarden.org>
3. **Ventura Community Garden** – This garden is the primary subject of this report and is explained in detail below.

The three public community gardens are shown on the map below by red stars (★).
 The three public/private partnership gardens are indicated by green triangles (▲).
 Ventura Garden is the only garden on City-owned land south of Embarcadero Road.



Ventura Community Garden

Ventura Garden is located behind Keys Middle School, off Ventura Court, off Ventura Avenue & El Camino Real, shown between the grass field and the Keys Middle School Campus in the bottom third of the map image below:



A. History of Ventura Property and Garden

The Ventura property has been entirely owned by the City since 1981. The City leased the property to PACCC (Palo Alto Community Child Care, a non-profit child care partner of the City) starting that same year. The lease (**ATTACHMENT C** – included in the Commission packet as a separate document) was renewed most recently in August 2013 and is due to expire as of June 2016. The lease specifies the purpose of the Ventura property as park land, child care space, and community use.

The Ventura Neighborhood Association (VNA) initially requested use of this land for a community garden in an undated letter (**ATTACHMENT A**), presumed to be from 1993, based on communications with City staff. The City was not willing to fund or manage the garden, but authorized the neighborhood association to use the land if they funded it. The documentation of this authorization between the City and the neighborhood association is not available.

The neighborhood association proceeded to fund the creation of the garden, and it was expanded at some point. The garden is currently managed by PACCC. There is no documentation of the date PACCC started managing the garden. There is no information available on the web about the rules of the garden or how to rent a plot.

B. Ventura Garden Rules and Restrictions

The “Rules” section of the “Ventura Community Garden Application and Permit for Use” (**ATTACHMENT B**, provided by PACCC) states, “Reserved for Ventura Community residents only.” This is in contrast to the “Rules and Regulations” for the three public community gardens which are “designated for the use of Palo Alto residents only”, but are not restricted to any neighborhood.

C. Plot Rentals and Waiting List

The Ventura Garden has 43 plots in total, some of which are rented by people who do not live in the Ventura neighborhood. The garden is fully rented and there is a waiting list. The breakdown of plot rentals (provided by PACCC, as of July 2015) is:

- 2 - Sojourner Truth Child Development Center
(this is the only PACCC childcare center located at Ventura)
 - 10 - Country Day Little School
(private childcare center subletted by PACCC at Ventura)
 - 1 – Keys Middle School
(private school adjacent on Ventura property, unrelated to PACCC)
 - 1 – Mountain View resident
- Remainder of plots (about 29 plots) are rented by Palo Alto residents.

The various sizes of the plots at Ventura Gardens are unknown at this time. Not all plots are the same size. There is one extremely large garden plot that is 4-5 times larger than the other plots.

D. Land Use, Water, and Payment

PACCC manages the Ventura Garden and receives payment for the plots rented. The Ventura Garden fees and rules and regulations are not consistent with the City-managed community gardens.

Per the current lease (**ATTACHMENT C** – included in the Commission packet as a separate document), the City manages the open space at the Ventura site, the majority of which is used as a playing field. The lease specifies that the City is responsible for landscaping maintenance for all public spaces - this includes all open space, except for the fenced childcare playgrounds directly adjacent to the building (shown in the map in **EXHIBIT A** in the lease). The City maintains the major irrigation system (mainline).

PACCC historically paid the full water bill for the Ventura site to the City (this included water use for the building as well as for all open space). The City reimbursed PACCC 70% of that bill to cover the estimated cost of water for just the open space (excluding building water use), per the original lease.

Separate water meters were installed in 2014 for the open space, which includes the playing field and the Ventura garden. These meters were put into use for billing purposes as of August 2015, so as of that point, the City now pays for water for all open space (playing field and Ventura garden) and PACCC pays only for water for the buildings on the site.

E. Ventura Lease with PACCC

Key sections to note in the lease (**ATTACHMENT C** – included in the Commission packet as a separate document) are as follows, and have been highlighted by this Ad Hoc committee. The page numbers below refer to the 35-page lease document page numbers, not the page numbers of this report document.

- Page 3 of lease
 - ⇒ Purchase date of Ventura site (1981)
 - ⇒ Most recent date of lease agreement (August 2013)
 - ⇒ Purpose of lease (child care centers, offices, and community use)
- Page 4 of lease
 - ⇒ Terms of lease (3 years, current term 2013 – 2016)
 - ⇒ Early termination clause
- Pages 6 & 7 of lease
 - ⇒ Use of property (required uses and permitted uses)
- Page 9
 - ⇒ Utilities and Operating Expenses
 - ⇒ Provided by Lessee, Unmetered Water Service
- Page 15
 - ⇒ Assignment and Subletting
 - ⇒ City's Consent Required
- Page 27 of lease: EXHIBIT A
 - ⇒ Map of Ventura property
- Page 31 of lease: EXHIBIT C
 - ⇒ Guidelines for Site Usage, General Use
 - ⇒ Child Care, administration, community use rooms, subletting
 - ⇒ Open Space usage (for tenants and for City parks)
- Page 35 of lease: EXHIBIT D
 - ⇒ Approved sub-tenants

Recommendations

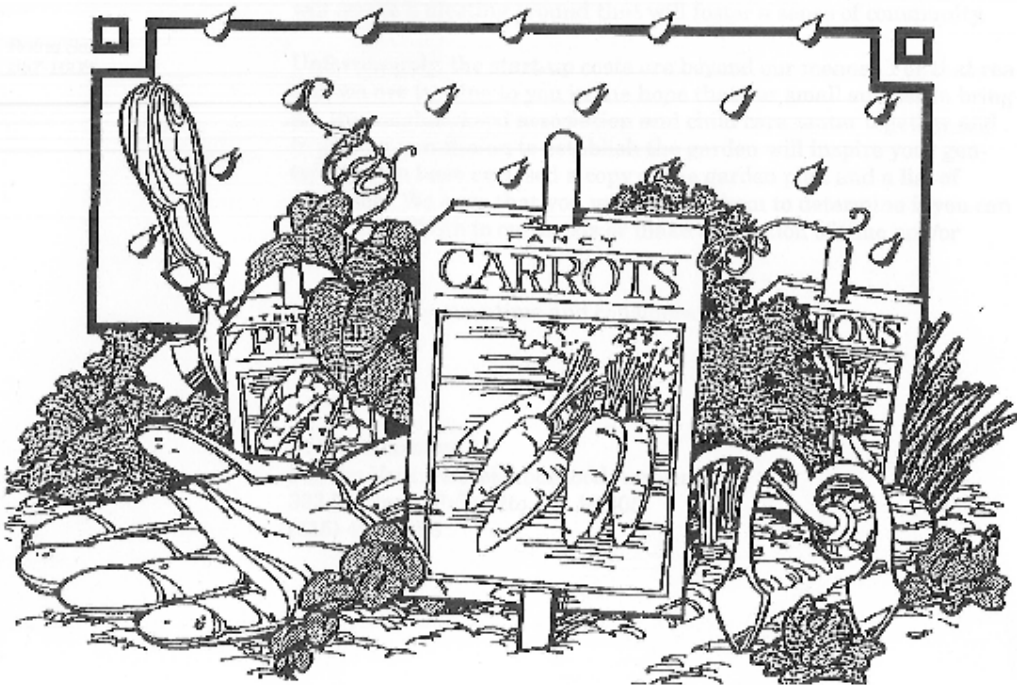
- 1) Request that Staff convert the Ventura Community Garden into the first public community garden in South Palo Alto, by taking the following steps:
 - a. Request a Staff report that includes a time-line for PACCC, another non-profit partner, or the City to assume management of the Ventura Community Garden under City regulations.
 - b. Determine the square footage of the existing garden plots at Ventura as part of bringing this garden under consistent City regulations.
 - c. Determine whether PACCC can assume management of the Ventura Community Garden under the same rules and regulations as the City's three existing public Community Gardens, with an accommodation for the PACCC and non-profit childcare centers at Ventura to retain rental of existing plots.
 - d. If PACCC cannot assume management of the Ventura Garden under City rules and regulations with these accommodations, request that the City investigate if another non-profit partner can assume this role.
 - e. If another non-profit City partner cannot be identified in this time-frame, request that the City assume management of the Ventura Community Garden. In order to do this, investigate web-based support improvements to garden management to relieve staff burden and improve efficiency. Consider providing additional resources to Staff (could be in the form of hourly support) as needed to manage this as a public community garden.
- 2) Add Ventura Garden to the City's website as a fourth public community garden. The City's web page can link to more info on the PACCC website if it is made available there.
- 3) Revise the Ventura lease to designate that the Ventura community garden is subject to the same fees and use conditions that govern city parks and open space.
- 4) Assess equity of public community gardens access for residents in South Palo Alto. Based on needs and demand for equitable garden access, determine suitable locations for establishing one or more additional Community Gardens in South Palo Alto.

Attachment A: Ventura Garden Land Request Letter

VENTURA
NEIGHBORHOOD
ASSOCIATION

presents

The VNA
Neighborhood
Garden



VENTURA
NEIGHBORHOOD
ASSOCIATION

THE CORE

Odile Ditsch-Bhadkamkar
493-8706

DeWitt Durham
493-0406

Linda Jackson
858-0542

Kristen Johnson
493-1636

Ratna Sarkar
857-1606

A request for aid from a community as wealthy as Palo Alto might seem strange, but there are areas that are less prosperous and, in this era of budgetary constraints, can expect no financial help from the city. Such is the case of the neighborhood in which we live and of the community garden we are establishing on a five thousand square foot patch of barren city land. Through the combined effort of our neighborhood association and the child care center that adjoins the land, we are creating a garden that goes beyond the usual individual plots that make up most community gardens.

Our garden will feature communal fruit trees, raspberry vines, and herb beds. It will have plots dedicated to gardening projects for the preschool children. Most importantly, it will attempt to bring together the young families, long-time residents, and day care children in Palo Alto's most racially- and economically-mixed neighborhood. Our hope is that, by providing a place for people to garden together, we will create a meeting ground that will foster a sense of community.

Unfortunately, the start-up costs are beyond our means. For that reason, we are turning to you in the hope that our small success in bringing the neighborhood association and child care center together and in getting permission to establish the garden will inspire your generosity. We have enclosed a copy of the garden plan and a list of expenses. We hope that you will review them to determine if you can either contribute to our needs or make a donation of time and/or equipment.

Thank you for your time and consideration.

DeWitt Durham
For the Ventura Neighborhood Association
393 Maclane, Palo Alto, CA 94305
(415) 493-0406

Equipment List for the Ventura Neighborhood Garden

A. Rototilling: 5hrs @ \$65/hr = \$ 325.00

B. Irrigation each site to have a 1/2" riser with faucet):

connection to city water source	provided by city	
10' lengths of Sched 40 PVC pipe 1 1/4"	40 @ \$ 1.49 =	\$ 59.60
1/2" risers, 24" long	36 @ \$ 1.24 =	\$ 44.64
1 1/4" to 1/2" T's, threaded on 1/2"	30 @ \$.74 =	\$ 22.20
1 1/4" to 1/2" 3-way corners, threaded on 1/2"	10 @ \$.90 =	\$ 9.00
1 1/4" slip joints, unthreaded	50 @ \$.27 =	\$ 13.50
1 1/4" elbows, unthreaded	10 @ \$.60 =	\$ 6.00
1 1/4" T's, unthreaded	10 @ \$.80 =	\$ 8.00
1/2" caps, threaded	36 @ \$.46 =	\$ 16.56
1/2" faucets	36 @ \$ 3.42 =	\$ 123.12
PVC Primer	2 @ \$ 2.38 =	\$ 4.76
PVC Cement	1 @ \$ 2.78 =	\$ 2.78
<u>tax</u>		\$ 22.49
Total		\$ 332.65

C. Raised Beds (each bed to be 3 1/2' x 15'):

2"x6"x16' con heart redwood boards	78 @ \$12.00 =	\$ 936.00
2 1/2" corner brackets (sets of 2)	120 @ \$ 2.62 =	\$ 157.20
<u>tax</u>		\$ 79.26
Total		\$1,172.46

D. Fence (4"x4" posts with 2"x4" cross pieces and chicken wire):

4"x4"x8' con heart redwood posts	28 @ \$ 7.36 =	\$ 206.08
2"x4"x8' con heart redwood boards	50 @ \$ 3.92 =	\$ 196.00
4' chicken wire	50' @ \$17.74 =	\$ 17.74
	150' @ \$44.65 =	\$ 44.65
4" hinges with screws	4 @ \$ 3.36 =	\$ 13.44
Quickcrete in 50# bags	28 @ \$ 5.94 =	\$ 166.32
staples		\$ 10.00
nails		\$ 3.70
wood preservative in gallon cans	10 @ \$10.97 =	\$ 109.70
<u>tax</u>		\$ 55.65
Total		\$ 823.28

E. Soil (for planter boxes) and Wood Chips (for paths):

planter box soil in cubic yards	105 @ \$21.00 =	\$2,205.00
wood chips in cubic yards	150	donated
<u>tax</u>		\$ 159.86
Total		\$2,364.86

Grand Total \$5,018.25

Attachment B: PACCC Ventura Garden Application

Ventura Community Garden Application and Permit for Use



Name of Gardener _____ Date of Application _____
Work/Mobile Phone _____ Home Phone _____
Billing Address _____
Street Address City State Zip
Email Address (optional) _____

Ventura Community Garden Rules

- Reserved for Ventura Community residents only.
- All rules pertaining to organic gardening must be followed.
- **No pesticides may be used.**
- Please do not plant trees or berries (except strawberries), as they will be invasive.
- Keep weeds from your plot(s) and the surrounding paths.
- Spread chips up to 6" inches around your plot(s).
- Place pulled weeds into compost. (Do not put tomato seeds into compost).
- Be certain to check water source. It must be turned off when you have finished your work.
- Help keep the garden clean by picking up garbage and discarding in garbage can.
- Cost: \$25 per plot, per year.

I have read and agree to adhere to the rules of the Ventura Community Garden.

Print Name _____

Signature _____

Authorized PACCC Agent _____	Title _____
Signature _____	Date _____
Plot(s) Assigned _____	

Green box highlighting added for
reference to this report.

LEASE AGREEMENT

**BETWEEN
CITY OF PALO ALTO
AND**

PALO ALTO COMMUNITY CHILD CARE- VENTURA

TABLE OF CONTENTS

LEASE PROVISIONS

1. PREMISES.....	4
2. TERM.....	4
3. RENT.	4
4. WAIVER OF RENT.....	5
5. USE OF PROPERTY.....	6
6. HAZARDOUS MATERIALS.....	7
7. UTILITIES AND OPERATING EXPENSES.....	9
8. TAXES.....	9
9. MAINTENANCE.....	10
10. CONSTRUCTION BY LESSEE.....	11
11. ALTERATIONS BY LESSEE.....	12
12. HOLD HARMLESS/INDEMNIFICATION.....	13
13. DAMAGE, DESTRUCTION AND TERMINATION.....	13
14. SIGNS.....	15
15. ASSIGNMENT AND SUBLETTING.....	15
16. DEFAULTS; REMEDIES.....	16
17. INTEREST ON PAST-DUE OBLIGATIONS.....	17
18. HOLDING OVER.....	17
19. CITY'S ACCESS.....	17
20. INSURANCE.....	18
21. RESERVATION OF AVIGATIONAL EASEMENT.....	19
22. EMINENT DOMAIN.....	19
23. POST-ACQUISITION TENANCY.....	20

24. DISPUTE RESOLUTION.	20
25. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY.	20
26. NON-DISCRIMINATION.	21
27. INDEPENDENT CONTRACTOR.	21
28. CONFLICT OF INTEREST.	21
29. MEMORANDUM OF LEASE.	21
30. ESTOPPEL CERTIFICATE.	21
31. LIENS.	22
32. VACATING.	22
33. ABANDONMENT.	22
34. NOTICES.	22
35. TIME.	23
36. AMENDMENTS.	23
37. SIGNING AUTHORITY.	23
38. CAPTIONS.	23
39. SURRENDER OF LEASE NOT MERGER.	23
40. LIMITATION OF LEASEHOLD.	20
41. INTEGRATED DOCUMENT.	24
42. WAIVER.	24
43. INTERPRETATIONS.	24
44. SEVERABILITY CLAUSE.	24
44. GOVERNING LAW.	24
46. VENUE.	24
47. COMPLIANCE WITH LAWS.	24
48. BROKERS.	25
49. ATTACHMENTS TO LEASE.	25

EXHIBITS

A DESCRIPTION OF SUBJECT PROPERTY	27
B STANDARD INSURANCE REQUIREMENTS.	28
C GUIDELINES FOR SITE USAGE	31

LEASE AGREEMENT

**BETWEEN
CITY OF PALO ALTO
AND**

PALO ALTO COMMUNITY CHILD CARE - VENTURA

This lease agreement (herein "Lease") is made and entered into this 10 day of August, 2013, by and between the City of Palo Alto, a California chartered municipal corporation (herein "City") and Palo Alto Community Child Care, a California non-profit Corporation (herein "Lessee"). City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Lease." The City Manager serves as Contract Administrator for this Lease on behalf of the City Council.

RECITALS

- A. These recitals are a substantive portion of this Lease.
- B. On January 9, 1981, City purchased the Ventura School site to provide a park, a child care center, and a community center for meetings.
- C. On February 10, 1981, City entered into a Lease with Lessee for the Ventura School site.
- D. On July 22, 1986, City entered into a five-year lease with Lessee for the continued use of the Ventura School site.
- E. On June 19, 2000, City entered into a ten-year lease for the purpose of continued use of the Ventura School site.
- F. On July 28, 2011, City entered into a two-year lease with Lessee for the continued use of the Ventura School site.
- G. City and Lessee desire to enter into a lease for the purpose of continuing to provide full-service community child care centers at the Ventura and administrative offices at the Ventura site.

Now, therefore, in consideration of these recitals and the following covenants, terms, and conditions, Lessee and City mutually agree as follows:

LEASE PROVISIONS

1. PREMISES.

City hereby leases to Lessee, certain real property located in the City of Palo Alto, County of Santa Clara, State of California, commonly known as, 3990 Ventura Court, the Ventura School site (herein the "Property") and more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Property consists of approximately Twenty-One Thousand (21,000) square feet of the former Ventura Elementary School Building set forth in Exhibit A attached hereto and incorporated herein by reference. Unless specifically provided, Lessee accepts the Property "as-is" on the date of execution of this Lease.

2. TERM.

2.1 Original Term. The term of this Lease shall be for Three (3) years, commencing on July 1, 2013 ("Delivery Date") and ending on June 30, 2016. Lessee shall, at the expiration of the term of this lease, or upon its earlier termination, surrender the Property in as good condition as it is now at the date of this lease. The Parties expect reasonable wear and tear.

2.2 Early Termination by City. If City in its sole discretion determines that it requires the Property for any public purpose, City may terminate this Lease upon one (1) year written notice.

3. RENT.

3.1 Base Rent. The rent to be paid by Lessee shall be in the amount of Three Hundred Ninety Thousand Six Hundred Thirty Six dollars (\$390,636.00), payable in monthly installments of Thirty One Thousand One Hundred Forty Nine dollars (\$32,553.00). City shall waive the Base Rent in accordance with Section 4 below. Rent shall be payable on the first day of each and every month commencing on the Delivery Date, at a place (or places) as may be designated in writing from time to time by City.

3.2 Annual Increase. During the Term of this Lease, the Base Rent shall be increased effective on each anniversary of the Delivery Date. The sum shall be adjusted annually resulting in a compound rate of increase. Lease payments are to be adjusted based on the State of California Department of Industrial Relations, Division of Labor Statistics and Research's Consumer Price Index, All Urban Consumers, All Items, San Francisco-Oakland-San Jose, California. The index for the quarter ending just prior to this lease date is established as the base index. Percentage and adjustments to the original lease payments shall be as indicated by percentage changes in said index.

3.3 Late Charge. Lessee acknowledges late payment of rent will cause City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. Therefore, if City does not receive any installment of rent due from Lessee within ten (10) days after the date such rent is due, Lessee shall pay to City an additional sum of five percent (5%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

3.4 Rent Payment Procedures. Lessee's obligation to pay rent shall commence upon the commencement of this Lease. If the term commences or terminates on a date other than the first of any month, monthly rent for the first and last month of this Lease shall be prorated based on a 30-day month. Rent payments shall be delivered to City's Revenue Collections Division, 250 Hamilton Avenue, PO Box 10250, Palo Alto, CA 94303. The designated place of payment may be changed at any time by City upon ten (10) days' written notice to Lessee. Lessee specifically agrees that acceptance of any late or incorrect rentals submitted by Lessee shall not constitute an acquiescence or waiver by City and shall not prevent City from enforcing Section 3.3 (Late Charge) or any other remedy provided in this Lease. Acceptance of rent shall not constitute approval of any unauthorized sublease or use, nor constitute a waiver of any non-monetary breach. Payments shall be effective upon receipt. City may apply any payment received from Lessee at any time against any obligation due and owing by Lessee under this Lease, regardless of any statement appearing on or referred to in any remittance from Lessee or any prior application of such payments.

3.6 Partial Payment. The receipt by City of a partial payment of any amount due to City endorsed as payment in full will be deemed to be a partial payment only. City may accept and deposit said check without prejudice to its right to recover the balance. Any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and/or satisfaction. Lessee's obligation (without prior notice or demands) to pay rent and all other amounts due hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment or reduction.

4. WAIVER OF RENT.

City shall waive the Base Rent as long as Lessee faithfully meets all conditions and provides all activities, public services and benefits as required by Exhibit C to the Lease (Guidelines for Site Usage) and the Annual Work Plan as set forth in Section 5.1.2 below. In the event that Lessee fails to adhere to the Site Guidelines as outlined in Exhibit C to the Lease and to meet all provisions of the Annual Work Plan, the rent waiver shall cease, and Lessee shall begin monthly rent payments in accordance with Sections 3.1, 3.2, 3.3, and 3.4 above. Monthly rental payments shall begin within 30 days of Lessee's receipt of City's written notification that Lessee is in violation of Guidelines for Site Usage and the provisions of the Annual Work Plan.

5. **USE OF PROPERTY.**

5.1 **Required Uses.** Throughout the term of this Lease, Lessee shall provide the following uses, services and activities ("Required Uses"):

5.1.1. The maintenance and operation of administrative offices, a community center and full-service child care centers and other programs from the Premises as set forth in Section 1 of Exhibit "C" (Guidelines for Site Usage) attached to and made a part hereof; and in accordance with the Annual Work Plan described in Section 5.1.2 below.

5.1.2. Within (sixty) 60 days after the date of execution of this Lease, and thereafter on or before July 1 of each year during the term of this Lease, Lessee shall submit to the City Manager, or designee, a proposed written Annual Work Plan for operation of the uses and services described in Section 5.1.1, including a description of Lessee's proposed activities on the Property. Lessee and the City Manager or designee, shall jointly review the work plan and jointly develop performance objectives and standards for Lessee's activities, including, but not limited to the child care, site usage and property management activities to be accomplished during the year. Commencing on July, 2011 and on or before July of each subsequent year of this Lease, Lessee and the City Manager, or designee, shall conduct a performance review addressing the activities that have been carried out on the Property during the past year, and conformance to the agreed upon performance objectives and standards. The performance review shall serve as a basis for consideration of the continued Waiver of Rent in accordance with Section 4 above. Lessee's failure to substantially conform to the agreed upon performance objectives and standards shall be grounds for the City to discontinue the Waiver of Rent as set forth in Section 4 above.

5.2 **Permitted Uses.** In addition to the Required Uses, Lessee may also use the Premises for the following uses: Additional services and uses which are ancillary to and compatible with the required services and uses set forth above and not in conflict with the uses surrounding the Premises. Premises may not be used for any other purposes without City's prior written consent, which consent may be withheld in the sole and absolute discretion of the City.

5.3 **Prohibited Uses.** Lessee shall not use Premises for any purpose not expressly permitted hereunder. Lessee shall not create, cause, maintain or permit any nuisance or waste in, on, or about the Premises, or permit or allow the Premises to be used for any unlawful or immoral purpose. Lessee shall not do or permit to be done anything in any manner which unreasonably disturbs the users of the City Property or the occupants of neighboring property. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odor, noise, vibration, power emission, or other item to emanate from the Premises. No materials or articles of any nature shall be stored outside upon any portion of the Premises. Lessee will not use Property in a manner that increases the risk of fire, cost of fire insurance or improvements thereon. No unreasonable sign or placard shall be painted,

inscribed or placed in or on said Property; and no tree or shrub thereon shall be destroyed or removed or other waste committed of said Property. No bicycles, motorcycles, automobiles or other mechanical means of transportation shall be placed or stored anywhere on the Property except for the garage or driveway. No repair, overhaul or modification of any motor vehicle shall take place on the Property or the street in front of said Property. Lessee, at his/her expense, shall keep the Property in as good condition as it was at the beginning of the terms hereof, except damage occasioned by ordinary wear and tear, and except damage to the roof, sidewalks and underground plumbing, which is not the fault of Lessee.

5.4 Condition, Use of Premises. City makes no warranty or representation of any kind concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties that Lessee has personally inspected the Premises, knows its condition, finds it fit for Lessee's intended use, accepts it as is, and has ascertained that it can be used exclusively for the limited purposes specified in Section 5.1.

6. HAZARDOUS MATERIALS.

6.1 Hazardous Materials Defined. The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) CERCLA or Superfund as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA, 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) Proposition 65, Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials, and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or

toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including without limitation: (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (ii) any petroleum products or fractions thereof; (iii) asbestos, (iv) polychlorinated biphenyls; (v) flammable explosives; (vi) urea formaldehyde; and, (vii) radioactive materials and waste.

6.2. Compliance with Laws. Lessee shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Premises or Project by Lessee, its agents, employees, contractors or invitees.

6.3 Termination of Lease. City shall have the right to terminate the Lease in City's sole and absolute discretion in the event that: (i) any anticipated use of the Premises by Lessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority, or Hazardous Materials Laws; (ii) Lessee has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Premises, if the contamination resulted from Lessee's action or use of the Premises; or (iii) Lessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on the Premises.

6.4 Assignment and Subletting. It shall not be unreasonable for City to withhold its consent to an assignment or subletting to such proposed assignee or sublessee if: (i) any anticipated use of the Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for any purpose; (ii) the proposed assignee or sublessee has been required by any prior landlord, lender, or governmental authority to take remedial action in connection with Hazardous Material contaminating a property, if the contamination resulted from such party's action or use of the property in question; or, (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material.

6.5 Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to City), protect, and hold Landlord harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including without limitation, diminution in value of the Premises, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact or marketing of the Premises and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person, or damage to any property whatsoever (including, without limitation, groundwater, sewer systems, and atmosphere), arising from, caused, or resulting, either prior to or during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under, or about the Premises by Lessee, Lessee's agents, employees, licensees, or invitees or at Lessee's

direction, of Hazardous Material, or by Lessee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. For purposes of the indemnity provided herein, any acts or omissions of Lessee or its employees, agents, customers, sublessees, assignees, contractors, or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee. Lessee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term.

6.6 City's Right to Perform Tests. At any time prior to the expiration of the Lease Term, City shall have the right to enter upon the Premises in order to conduct tests of water and soil.

7. UTILITIES AND OPERATING EXPENSES.

7.1 Provided by Lessee. Lessee shall fully and promptly pay for all expenses associated with the operation of the Property (excluding water supplied to the open field areas), including but not limited to the furnishing of gas, water, sewer, electricity, telephone service, garbage pickup and disposal, landscaping installation and maintenance inside the fenced play areas, and other public utilities, except for those utilities and services City is to furnish to Premises pursuant to Section 7.2 below.

7.2 Unmetered Water Service. Water service is currently not separately metered.. Therefore, City and Lessee agree that for the purposes of this paragraph, City's pro-rata share shall be 70% of the total water consumption and that City shall reimburse Lessee annually following receipt of Lessee's documented costs for the water utility at the site. Should City install separate water meters during the term of this Lease, City shall bill Lessee for its portion of water use.

8. TAXES.

8.1 Real Property Taxes Defined. The term "real property taxes" as used herein shall mean all taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to: (i) value, occupancy, use or possession of the Premises and/or the Improvements; (ii) any improvements, fixtures, equipment and other real or personal property of Lessee that are an integral part of the Premises; or, (iii) use of the Premises, Improvements public utilities or energy within the Premises. The term "real property taxes" shall also mean all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the premises and/or the Improvements, new or altered excise, transaction, sales, privilege, assessment, or other taxes

or charges now or hereafter imposed upon City as a result of this Lease, and all costs and fees (including attorneys' fees) incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the Premises. If any real property taxes are based upon property or rents unrelated to the Premises and/or the Improvements, then only that part of such tax that is fairly allocable to the Premises and/or the Improvements, as determined by City, on the basis of the assessor's worksheets or other available information, shall be included within the meaning of the term "real property taxes."

8.2 Payment of Real Property Taxes. Lessee shall pay Lessee's share of all real property taxes (as defined in Section 8.1 above) which become due and payable to City on or before the later of ten (10) days prior to the delinquency thereof or three (3) days after the date on which Lessee receives a copy of the tax bill and notice of City's determination hereunder. Lessee's liability to pay real property taxes shall be prorated on the basis of a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the Lease term at the commencement or expiration of the Lease.

8.3 Revenue and Taxation Code. Lessee specifically acknowledges it is familiar with section 107.6 of the California Revenue and Taxation Code. Lessee realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code section 107.6.

8.4 Personal Property Taxes. Lessee shall pay before delinquent, or if requested by City, reimburse City for, any and all taxes, fees, and assessments associated with the Property, the personal property contained in the premises and other taxes, fees, and assessments regarding any activities which take place at the Property. Lessee recognizes and understands in accepting this Lease that its interest therein may be subject to a possible possessory interest tax that City or County may impose on such interest and that such tax payment shall not reduce any rent due City hereunder and any such tax shall be the liability of and be paid by Lessee.

9. MAINTENANCE.

9.1 City and Lessee Responsibilities. Lessee at Lessee's expense, shall perform all maintenance and repairs, including but not limited to exterior and interior painting; flooring, plumbing and electrical fixtures, light switches, light fixtures, bulb and ballast replacement; broken and vandalized or damaged window replacement; re-keying and key copies (making sure to provide copies of all keys to City); interior and exterior pest control; and service and maintenance of landscaping within the fenced play yard areas, including asphalt blacktop areas (except for the parking lot), necessary to keep the Premises and all improvements thereto in first-class order, repair, and condition, and shall keep the Premises in a safe, clean, wholesome, and sanitary condition to the complete satisfaction of City, and in compliance with all applicable laws, throughout the term of this Lease. In addition, Lessee shall maintain, at Lessee's expense, all equipment, furnishings and trade fixtures upon the Premises required for the maintenance and operation of a first-class business of the type to be

conducted pursuant to this Lease.

City shall be responsible for the maintenance and repair of the building electrical and plumbing system fixtures/switches, heating, ventilation, main boilers, zone circulation pumps, roof repair and replacement, exterior structural repairs, landscaping maintenance of the large public turf area at the rear of the property, and asphalt maintenance of the parking lot.

9.2 Waiver of Civil Code. Lessee expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of sections 1941 and 1942 of the Civil Code of California, which would otherwise afford Lessee the right to make repairs at City's expense or to terminate this Lease because of City's failure to keep Premises in good order, condition and repair. Lessee further agrees that if and when any repairs, alterations, additions or betterments shall be made by Lessee as required by this paragraph, Lessee shall promptly pay for all labor done or materials furnished and shall keep the Premises free and clear of any lien or encumbrance of any kind whatsoever. If Lessee fails to make any repairs or perform any maintenance work for which Lessee is responsible within a reasonable time (as determined by the City Manager in the City Manager's sole discretion) after demand by the City, City shall have the right, but not the obligation, to make the repairs at Lessee's expense; within ten (10) days of receipt of a bill, Lessee shall reimburse City for the cost of such repairs, including a fifteen percent (15%) administrative overhead fee. The making of such repairs or performance of maintenance by City shall in no event be construed as a waiver of the duty of Lessee to make repairs or perform maintenance as provided in this Section.

10. CONSTRUCTION BY LESSEE.

10.1 Construction Standards. All design and construction performed by or on behalf of Lessee shall conform to the approved plans, specifications, construction and architectural standards approved by the City Council if required by the City of Palo Alto procedures or ordinance or otherwise by the City Manager. Once the work is begun, Lessee shall with reasonable diligence prosecute all construction to completion. All work shall be performed in a good and workmanlike manner, shall substantially comply with any plans and specifications approved by City and shall comply with all applicable governmental permits, laws, ordinances and regulations, and shall meet all other requirements contained in this Lease.

10.2 Ownership of Improvements. All improvements constructed, erected, or installed upon the Premises must be free and clear of all liens, claims, or liability for labor or material and shall become the property of City, at its election, upon expiration or earlier termination of this lease and upon City's election, shall remain upon the Premises upon termination of this Lease. Title to all equipment, furniture, furnishings, and trade fixtures placed by Lessee upon the Premises shall remain in Lessee, and replacements, substitutions and modifications thereof may be made by Lessee throughout the term of this Lease. Lessee may remove such fixtures and furnishings upon termination of this Lease if Lessee is not then in default under

this Lease, provided that Lessee shall repair to the satisfaction of City any damage to the Premises and improvements caused by such removal and provided that usual and customary lighting, plumbing and heating fixtures shall remain upon the Premises upon termination of this Lease.

10.3 Indemnity for Claims Arising Out of Construction. Lessee shall defend and indemnify City against all claims, liabilities, and losses of any type arising out of work performed on the Premises by Lessee, together with reasonable attorneys' fees and all costs and expenses reasonably incurred by City in negotiating, settling, defending or otherwise protecting against such claims.

10.4 Assurance of Completion. Prior to commencement of any construction or alteration expected to cost more than \$25,000, Lessee shall furnish the City Manager evidence that assures City that sufficient monies will be available to complete the proposed work. The amount of such assurance shall be at least the total estimated construction cost. Evidence of such assurance shall take one of the forms set out below and shall guarantee Lessee's full and faithful performance of all of the terms, covenants, and conditions of this Lease:

- A. Completion Bond;
- B. Performance, labor and material bonds, supplied by Lessee's contractor or contractors, provided the bonds are issued jointly to Lessee and City;
- C. Irrevocable letter of credit from a financial institution; or
- D. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and be acceptable to the City Manager. All bonds and letters of credit shall be in a form acceptable to the City Manager, and shall insure faithful and full observance and performance by Lessee of all of the terms, conditions, covenants, and agreements relating to the construction of improvements or alterations in accordance with this Lease.

10.5 Certificate of Inspection. Upon completion of construction of any building, Lessee shall submit to the City Manager a Certificate of Inspection, verifying that the construction was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction.

10.6 As Built Plans. Lessee shall provide the City Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the Premises upon completion of any: (i) new construction; (ii) structural alterations; or, (iii) non-structural alterations costing more than \$25,000.

11. ALTERATIONS BY LESSEE

Lessee shall not make any alterations or improvements to the Premises without obtaining the prior

written consent of the City Manager. Lessee may, at any time and at its sole expense, install and place business fixtures and equipment within the Premises, provided such fixtures and installation have been reviewed and approved by the City Manager.

12. HOLD HARMLESS/INDEMNIFICATION.

12.1 Indemnification. To the extent permitted by law, Lessee agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, agents, volunteers, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom for which City shall become legally liable arising from Lessee's negligent, reckless, or wrongful acts, errors, or omissions with respect to or in any way connected with this Lease. Lessee shall give City immediate notice of any claim or liability hereby indemnified against. This indemnity shall be in addition to the Hazardous Materials indemnity contained in this Lease and shall survive the expiration of or early termination of the Lease Term.

12.2 Waiver of Claims. Lessee waives any claims against City for injury to Lessee's business or any loss of income therefrom, for damage to Lessee's property, or for injury or death of any person in or about the Premises or the City Property, from any cause whatsoever, except to the extent caused by City's active negligence or willful misconduct.

13. DAMAGE, DESTRUCTION AND TERMINATION.

13.1 Nontermination and Nonabatement. Except as provided herein, no destruction or damage to the Premises by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Lessee to terminate this Lease. City and Lessee waive the provisions of any statutes which relate to termination of a lease when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

13.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, Acts of God, inability to obtain labor, inability to obtain materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Lessee (financial inability excepted), shall excuse the performance by Lessee for a period equal to the prevention, delay, or stoppage, except the obligations imposed with regard to rent to be paid by Lessee pursuant to this Lease. In the event any work performed by Lessee or Lessee's contractors results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Lessee of the provisions of this Lease.

13.3 Restoration of Premises by City.

13.3.1 Destruction Due to Risk Covered by Insurance. If, during the term, the Premises or the building in which the Premises are located are totally or

partially destroyed from a risk covered by the insurance described in Section 20 (Insurance), rendering the Premises or the building in which the Premises are located totally or partially inaccessible or unusable, City shall restore the Premises or the building in which the Premises are located to substantially the same condition as it was in immediately before destruction. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

If, during the term of this Lease, the loss to Premises or the building in which the Premises are located exceeds the proceeds from the insurance described in Section 20 (Insurance), City can elect to terminate this Lease by giving notice to Lessee within thirty (30) days after determining the cost of restoration will exceed the insurance proceeds. In the case of destruction to the Premises only, if City elects to terminate this Lease, Lessee, within thirty (3) days after receiving City's notice to terminate, can elect to pay to City, at the time Lessee notifies City of its election, the difference between the amount of insurance proceeds and the cost of restoration, in which case City shall restore the Premises. City shall give Lessee satisfactory evidence that all sums contributed by Tenant as provided in the paragraph have been expended by City in paying the cost of restoration.

If City elects to terminate this Lease and Lessee does not elect to contribute toward the cost of restoration as provided in this section, this Lease shall terminate.

13.3.2 Destruction Due to Risk Not Covered by Insurance. If, during the term, the Premises or the building in which the Premises are located are totally or partially destroyed from a risk covered by the insurance described in Section 20 (Insurance), rendering the Premises totally or partially inaccessible or unusable, City shall restore the Premises to substantially the same condition as it was in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

If the cost of restoration exceeds ten percent (10%) of the then replacement value of the Premises totally or partially destroyed, City can elect to terminate this Lease by giving notice to Lessee within sixty (60) days after determining the restoration cost and replacement value.

In the case of destruction to the Premises only, if City elects to terminate this Lease, Lessee, within thirty (30) days after receiving City's notice to terminate, can elect to pay to City at the time Lessee notifies City of its

election, the difference between ten percent (10%) of the then replacement value of the Premises and the actual cost of restoration, in which case City shall restore the Premises. City shall give Lessee satisfactory evidence that all sums contributed by Tenant as provided in the paragraph have been expended by City in paying the cost of restoration.

If City elects to terminate this Lease and Lessee cannot or does not elect to contribute toward the cost of restoration as provided in this section, this Lease shall terminate

13.3.3 Extent of City's Obligation to Restore. If City is required or elects to restore the Premises as provided in this section, City shall not be required to restore alterations made by Lessee, Lessee's improvements, Lessee's trade fixtures, and Lessee's personal property, such excluded items being the sole responsibility of Lessee to restore.

14. **SIGNS.**

Lessee shall not place, construct, maintain, or allow any signs upon the Premises without prior written consent of City.

15. **ASSIGNMENT AND SUBLETTING.**

15.1 City's Consent Required. Lessee shall not assign this lease, nor any interest therein, and shall not sublet or encumber the Property or any part thereof, nor any right or privilege appurtenant thereto, nor allow or permit any other person(s) to occupy or use the Property, or any portion thereof, without the prior written consent of City. A list of current subtenants approved by the City is attached as Exhibit D (List of Approved Subtenants). This Lease shall be binding upon any permitted assignee or successor of Lessee. Consent by City to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. No assignment, subletting, or encumbrance by Lessee shall release it from or in any way alter any of Lessee's obligations under this Lease. Lessee may have the Property delivered to a subsidiary company of Lessee, but such arrangement shall in no way alter Lessee's responsibilities hereunder with respect to the Property. Any assignment, subletting, encumbrances, occupation, or use contrary to the provisions of this Lease shall be void and shall constitute breach of this Lease. City may assign any of its rights hereunder without notice to Lessee.

15.2 No Release of Lessee. No subletting or assignment as approved by City shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations by Lessee hereunder. The acceptance of rent by City from any other person shall not be deemed to be a waiver by City of any provision hereof. In the event of default by any assignee of Lessee or any successor of Lessee in the performance of any of

the terms hereof, City may proceed directly against Lessee without the necessity of exhausting remedies against said assignee.

16. **DEFAULTS; REMEDIES.**

16.1 **Defaults.** The occurrence of any one or more of the following events shall constitute a material default, or breach of this Lease, by Lessee:

16.1.1 Abandonment of the Premises by Lessee as defined by California Civil Code section 1951.3;

16.1.2 Failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as provided in this Lease, where such failure shall continue for a period of ten (10) business days after written notice thereof from City to Lessee. In the event City serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph;

16.1.3 Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect where such failure shall continue for a period of thirty (30) days after written notice thereof from City to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

16.1.4 Making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

16.2 **Remedies.** In the event of any material default or breach by Lessee, City may at any time thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of such default or breach:

16.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises and Improvements to City. In such event, City shall be entitled to recover from Lessee all damages incurred by City by reason of Lessee's

default including but not limited to: the cost of recovering possession of the Premises and Improvements; expenses of reletting, including necessary renovation and alteration of the Premises and Improvements; reasonable attorneys' fees; the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease and 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 such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

16.2.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event, City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover rent and other payments as they become due hereunder.

16.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California. City shall have all remedies provided by law and equity.

16.3 No Relief from Forfeiture After Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present or future law, in the event Lessee is evicted or City otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by Lessee.

16.4 Disposition of Abandoned Personal Property. If the Lessee fails to remove any personal property belonging to Lessee from the Premises after forty-five (45) days of the expiration or termination of this Lease, such property shall at the option of City be deemed to have been transferred to City. City shall have the right to remove and to dispose of such property without liability to Lessee or to any person claiming under Lessee, and the City shall have no need to account for such property.

17. **INTEREST ON PAST-DUE OBLIGATIONS.**

Except as expressly provided herein, any amount due City when not paid when due shall bear interest at the lesser of ten percent (10%) per year or the maximum rate then allowable by law from the date due.

18. **HOLDING OVER.**

If Lessee remains in possession of the Premises or any part thereof after the expiration of the term or option term hereof, such occupancy shall be a tenancy from month to month with all the obligations of this Lease applicable to Lessee and at a monthly rental obligation of two (2) times the Base Rent in effect at the time of expiration. Nothing contained in this Lease shall give to Lessee the right to occupy the Property after the expiration of the term, or upon an earlier termination for breach.

19. **CITY'S ACCESS.**

19.1 Access for Inspection. City and City's agents shall have the right to enter the Premises at reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee, for the purpose of inspecting same, showing same to prospective purchasers, lenders or lessees, and making such alterations, repairs, improvements, or additions to the Premises as City may deem necessary. City may at any time place on or about the Premises any ordinary "For Sale" signs and City may at any time during the last one hundred twenty (120) days of the term hereof place on or about the Premises any ordinary "For Lease" signs, all without rebate of rent or liability to Lessee.

19.2 Security Measures. City shall have the right to require a reasonable security system, device, operation, or plan be installed and implemented to protect the Premises or the Improvements. Should City, in its sole discretion, require Lessee to install such a security system, Lessee agrees to bear the sole cost and expense of any security system, device, operation or plan and the installation and implementation thereof. Lessee shall obtain City's prior approval before installing, implementing or changing any City approved security system, device, operation or plan.

19.3 New Locks. Lessee may install new locks on all exterior doors. Lessee shall advise City of such action and shall provide City with keys to said locks. Lessee shall also deliver to City the old locks with keys. Upon termination, Lessee shall leave new locks that shall become the property of City.

20. INSURANCE.

Lessee's responsibility for the Property begins immediately upon delivery and Lessee, at its sole cost and expense, and at no cost to City, shall purchase and maintain in full force and effect during the entire term of this Lease insurance coverage in amounts and in a form acceptable to City as set forth in Exhibit B attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Lessee's employees, if any, and all vehicles operated on the Premises. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit B. Lessee also agrees to secure renter's liability insurance.

Lessee shall deposit with the City Manager, on or before the effective date of this Lease, certificates of insurance necessary to satisfy City that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefore on deposit with City during the entire term of this Lease. Should Lessee not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, City may purchase such insurance, on behalf of and at the expense of Lessee to provide six months of coverage.

City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the City's Risk Manager (or comparable official), the insurance provisions in this Lease do not provide adequate protection for City and for members of the public using the Premises, the City Manager may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the Risk Manager. City's

requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk that exists at the time a change in insurance is required.

The City Manager shall notify Lessee in writing of changes in the insurance requirements. If Lessee does not deposit copies of acceptable insurance policies with City incorporating such changes within sixty (60) days of receipt of such notice, or in the event Lessee fails to maintain in effect any required insurance coverage, Lessee shall be in default under this lease without further notice to Lessee. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Lease at the option of City.

The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding the policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Lease or with use or occupancy of the Premises.

21. **RESERVATION OF AVIGATIONAL EASEMENT.**

City hereby reserves for the use and benefits of the public, a right of avigation over the Premises for the passage of aircraft landing at, taking off, or operating from the adjacent airport operated by the County of Santa Clara. Lessee releases the City from all liability for noise, vibration, and any other related nuisance.

22. **EMINENT DOMAIN.**

22.1 If all or any part of the Premises (or the building in which the Premises are located) is condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the Premises by the condemning public entity.

22.2 If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this Lease, Lessee shall continue to be bound by the terms, covenants, and conditions of this Lease. However, the then monthly rent shall be reduced in proportion to the diminution in value of the Premises. If the condemnation of a part of the Premises substantially impairs the capacity of the remainder to be used for the purposes required by this Lease, Lessee may:

A. Terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or

B. Continue to occupy the remaining Premises and thereby continue to be bound by the terms, covenants and conditions of this Lease. If Lessee elects to continue in possession of the remainder of the Premises, the monthly rent shall be reduced in

proportion to the diminution in value of the Premises.

C. Lessee shall provide City with written notice advising City of Lessee's choice within thirty (30) days of possession of the part condemned by the condemning public entity.

22.3 City shall be entitled to and shall receive all compensation related to the condemnation, except that Lessee shall be entitled to: (a) that portion of the compensation which represents the value for the remainder of the Lease term of any Lessee-constructed improvements taken by the condemning public entity, which amount shall not exceed the actual cost of such improvements reduced in proportion to the relationship of the remaining Lease term to the original Lease term, using a straight line approach; and (b) any amount specifically designated as a moving allowance or as compensation for Lessee's personal property. Lessee shall have no claim against Landlord for the value of any unexpired term of this Lease.

23. **POST-ACQUISITION TENANCY.**

Lessee hereby acknowledges that Lessee was not an occupant of the Premises at the time the Premises were acquired by City. Lessee further understands and agrees that as a post-acquisition Lessee, Lessee is not eligible and furthermore waives all claims for relocation assistance and benefits under federal, state or local law.

24. **DISPUTE RESOLUTION.**

24.1 Unless otherwise mutually agreed to, any controversies between Lessee and City regarding the construction or application of this Lease, and claims arising out of this Lease or its breach shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

24.2 The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Lease.

24.3 The costs of mediation shall be borne by the Parties equally.

24.4 Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation arising out of any dispute related to this Lease, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

25. **NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY.**

No official or employee of City shall be personally liable for any default or liability under this agreement.

26. **NON-DISCRIMINATION.**

26.1 Non-discrimination in Lease Activities. Lessee agrees that in the performance of this Lease and in connection with all of the activities Lessee conducts on the Premises, it shall not discriminate against any employee or person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Lessee acknowledges that is familiar with the provisions set forth in Section 2.30.510 of the Palo Alto Municipal Code relating to nondiscrimination in employment and Section 9.73 of the Palo Alto Municipal Code relating to City policy against arbitrary discrimination.

26.2 Human Rights Policy. In connection with all activities that are conducted upon the Premises, Lessee agrees to accept and enforce the statements of policy set forth in Section 9.73.010 which provides: "It is the policy of the City of Palo Alto to affirm, support and protect the human rights of every person within its jurisdiction. These rights include, but are not limited to, equal economic, political, and educational opportunity; equal accommodations in all business establishments in the city; and equal service and protection by all public agencies of the city."

27. **INDEPENDENT CONTRACTOR.**

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of City.

28. **CONFLICT OF INTEREST.**

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement. Lessee warrants and covenants that no official or employee of City nor any business entity in which any official or employee of City is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to City. In the event that City determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of City, Lessee upon request of City shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Lease and City may terminate this Lease as a result of such violation.

29. **MEMORANDUM OF LEASE.**

Following execution of this Lease, either party, at its sole expense, shall be entitled to record a Memorandum of Lease in the official records of Santa Clara County. Upon termination or expiration of this Lease, Lessee shall execute and record a quitclaim deed as to its leasehold interest.

30. **ESTOPPEL CERTIFICATE.**

Lessee shall, from time to time, upon at least thirty (30) days prior written notice from City, execute, acknowledge and deliver to City a statement in writing: (i) certifying this Lease is unmodified and in

full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (ii) acknowledging that there are not to Lessee's knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrancer of the City Property.

31. **LIENS.**

Lessee agrees at its sole cost and expense to keep the Property free and clear of any and all claims, levies, liens, encumbrances or attachments.

32. **VACATING.**

Upon termination of the tenancy, Lessee shall completely vacate the Property, including the removal of any and all of its property. Before departure, Lessee shall return keys and personal property listed on the inventory to City in good, clean and sanitary condition, reasonable wear and tear excepted. Lessee shall allow City to inspect the Property to verify the condition of the Property and its contents.

33. **ABANDONMENT.**

Lessee's absence from the Property for three (3) consecutive days, without prior notice, during which time rent or other charges are delinquent, shall be deemed abandonment of the Property. Such abandonment will be deemed cause for immediate termination without notice. City shall thereupon be authorized to enter and take possession and to remove and dispose of the property of Lessee or its guests without any liability whatsoever to City.

34. **NOTICES.**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Palo Alto
Real Property Manager
250 Hamilton Avenue
Palo Alto, CA 94301
Facsimile: (650) 323-1741

And to Lessee addressed as follows:

Executive Director
Palo Alto Community Child Care
3990 Ventura Court
Palo Alto, CA 94306
Facsimile: (650)-493-0936

Notices may be served upon Lessee in person, by first class mail, or by certified mail whether or not said mailing is accepted by Lessee. If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday. These addresses shall be used for service of process.

35. **TIME.**

Time shall be of the essence in this Lease.

36. **AMENDMENTS.**

It is mutually agreed that no oral Leases have been entered into and that no alteration or variation of the terms of this Lease shall be valid unless made in writing and signed by the Parties to this Lease.

37. **SIGNING AUTHORITY.**

If this Lease is not signed by all Lessees named herein, the person actually signing warrants that he/she has the authority to sign for the others.

38. **CAPTIONS.**

The captions of the various sections, paragraphs and subparagraphs of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

39. **SURRENDER OF LEASE NOT MERGER.**

The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, terminate all or any existing subleases or subtenancies, or may, at the option of City, operate as an assignment of any and all such subleases or subtenancies.

40. **LIMITATION OF THE LEASEHOLD**

This Lease and the rights and privileges granted Lessee in and to the Premises are subject to all covenants, conditions, restrictions, and physical or legal encumbrances, including those which are set out in the December 3, 1980 Purchase Agreement (Purchase Agreement) between City and the Palo Alto Unified School District (PAUSD). Purchase Agreement conditions include the provision that PAUSD may reacquire the Premises upon one year written notice. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Lessee of rights in the Premises which exceed those owned.

41. **INTEGRATED DOCUMENT.**

This Lease, including any exhibits attached hereto, embodies the entire agreement between City and Lessee. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of City prior to execution of this Lease shall affect or modify any of the terms or obligations contained in any documents comprising this Lease. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City. All agreements with City are subject to approval of the City Council before City shall be bound thereby.

42. **WAIVER.**

Waiver by City of one or more conditions of performance or any breach of a condition under this Lease shall not be construed as a waiver of any other condition of performance or subsequent breaches. The subsequent acceptance by a Party of the performance of any obligation or duty by another Party shall not be deemed to be a waiver of any term or condition of this Lease. The exercise of any remedy, right, option or privilege hereunder by City shall not preclude City from exercising the same or any and all other remedies, rights, options and privileges hereunder and City's failure to exercise any remedy, right, option or privilege at law or equity, or otherwise which City may have, shall not be construed as a waiver.

43. **INTERPRETATIONS.**

In construing or interpreting this Lease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Lease shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.

44. **SEVERABILITY CLAUSE.**

If any provision of this Lease is held to be illegal, invalid or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Lease shall not be affected thereby.

45. **GOVERNING LAW.**

This Lease shall be governed and construed in accordance with the statutes and laws of the State of California.

46. **VENUE.**

In the event that suit shall be brought by any Party to this Lease, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara.

47. **COMPLIANCE WITH LAWS.**

The Parties hereto shall comply with all applicable laws, ordinances, codes and regulations of the

federal, state and local governments in the performance of their rights, duties and obligations under this Lease.

48. **BROKERS.**

Each party represents that it has not had dealings with any real estate broker, finder, or other person, with respect to this lease in any manner. Each Party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.

49. **ATTACHMENTS TO LEASE.**

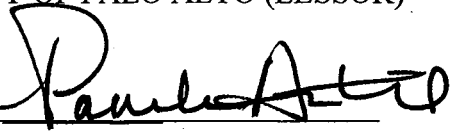
The following exhibits are attached to and made a part of this Agreement:

- ☐ "A" – Description of Subject Property
- ☐ "B" – Standard Insurance Requirements
- ☐ "C" – Guidelines for Site Usage
- ☐ "D" – Current City-Approved Subtenants

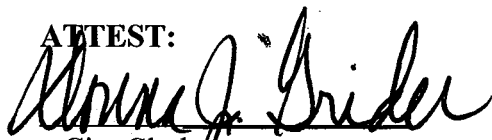
IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

CITY:

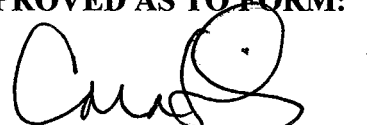
CITY OF PALO ALTO (LESSOR)


By: 
for City Manager or Designee

ATTEST:


City Clerk

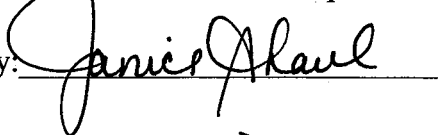
APPROVED AS TO FORM:

By: 
Senior Asst. City Attorney

By: 
Director, Community Services

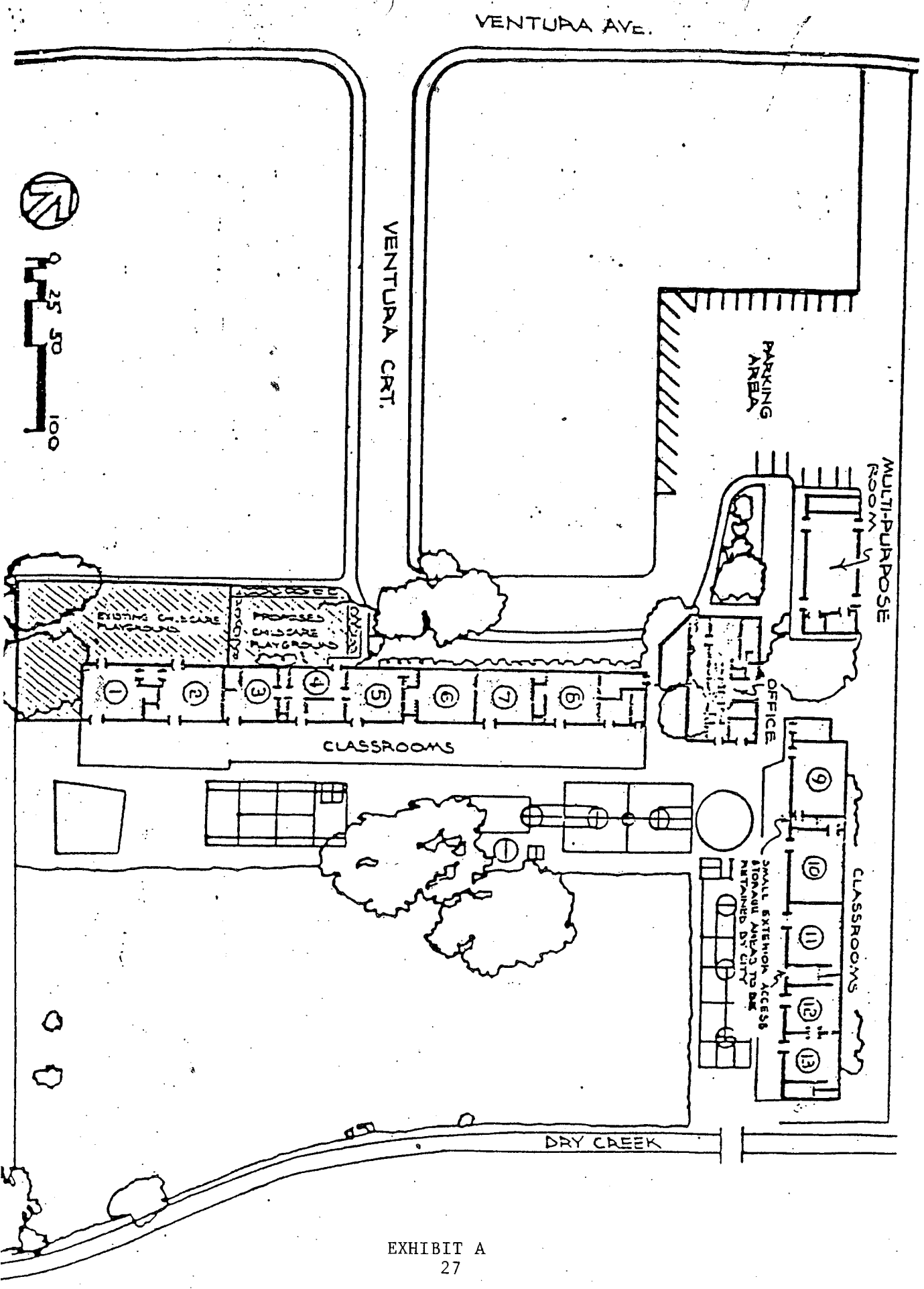
LESSEE:

PALO ALTO COMMUNITY CHILD CARE,
a California Non-Profit Corporation

By: 

Its: Executive Director

VENTURA SCHOOL SITE



**LEASE AGREEMENT
BY AND BETWEEN
CITY OF PALO ALTO, CALIFORNIA
AND
PALO ALTO COMMUNITY CHILD CARE- VENTURA**

EXHIBIT B

STANDARD INSURANCE REQUIREMENTS

Insurance Requirements for Lessee:

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Lease at its sole cost and expense. Such policies shall be maintained for the full term of this Lease and the related warranty period (if applicable). For purposes of the insurance policies required under this Lease, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Palo Alto, California, individually or collectively.

Coverages (RL 28.1A) S

Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
- 4) Property insurance against all risks of loss to any tenant improvements or betterments

The policy or policies of insurance maintained by Lessee shall provide the following limits and coverages:

<u>POLICY</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Commercial General Liability	\$1,000,000 per each occurrence for bodily injury, personal injury and property damage
(2) Automobile Liability Including Owned, Hired and	\$ 1,000,000 Combined Single Limit

Non-Owned Automobiles

(3) Workers' Compensation Employers Liability

Statutory
\$1,000,000 per accident for bodily injury or
disease

(4) Lessee's Property Insurance

Lessee shall procure and maintain property insurance coverage for:

- (a) all office furniture, trade fixture, office equipment, merchandise, and all other items of Lessee's property in, on, at, or about the premises and the building, include property installed by, for, or at the expense of Lessee;
- (b) all other improvements, betterments, alterations, and additions to the premises.

Lessee's property insurance must fulfill the following requirements:

- (a) it must be written on the broadest available "all risk" policy form or an equivalent form acceptable City of Palo Alto, including earthquake sprinkler leakage.
- (b) for no less than ninety percent (90%) of the full replacement cost (new without deduction for depreciation) of the covered items and property; and
- (c) the amounts of coverage must meet any coinsurance requirements of the policy or policies.

(RL 28.2)

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease.

Each insurance policy required by this Lease shall:

1. Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
2. Include a waiver of all rights of subrogation against the City and the members of the City Council and elective or appointive officers or employees, and each party shall

indemnify the other against any loss or expense including reasonable attorney fees, resulting from the failure to obtain such waiver.

3. Name the City of Palo Alto as a loss payee on the property policy.
4. Provide that the City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; premises owned, occupied or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
5. Provide that for any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
6. Provide that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
7. Provide that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
8. Lessee agrees to promptly pay to City as Additional Rent, upon demand, the amount of any increase in the rate of insurance on the Premises or on any other part of Building that results by reason of Lessee's act(s) or Lessee's permitting certain activities to take place.

Acceptability of Insurers

All insurance policies shall be issued by California-admitted carriers having current A.M. Best's ratings of no lower than A-:VII.

Exhibit C

GUIDELINES FOR SITE USAGE

I. General Use

- A. TENANT shall provide the following uses and services from and on the Ventura site:
1. TENANT shall provide a variety of child care services including but not limited to basic child care and a community resource room used jointly by TENANT, and the Community.
 2. TENANT shall provide programs necessary for basic child care services.
 3. A Cubicle in classroom 12 shall be used by the City's Police Department for use as a police substation at no cost to CITY. TENANT will not be liable for personal injuries occurring in connection with CITY's Police Department use except in the case of injuries resulting from TENANT'S negligence.
 4. TENANT shall occupy the school administration building and will use the space for the administration of PACCC center's city-wide and site management activities.
 5. The multipurpose room and a conference room located in the office building shall be available for short term rental use by community groups for special meetings as available. TENANT may charge and collect rent and/or user fees for this use. Such use shall be subject to rates and rules set forth in Attachments A and B of this Exhibit.
 6. TENANT shall coordinate the use and/or sublease of classrooms by other "non-profit" agencies and child care centers. Sublease shall be in conformance with clause IV (SUBLETTING). Short term rental or use shall be subject to the rental rates and rules set forth in Attachments A and B of this Exhibit.
7. Open space is divided into two types. Fenced off space attached to child care classes shall be used for the TENANT'S programs. Said space is shown cross-hatched and labeled on Exhibit A. All other open space is subject to the same use conditions that govern the use of City parks in this class or specified Park Use Regulation of the Municipal Code.

II. Additional Site Management – Ventura School Site

TENANT shall be responsible for general management of the Ventura School Site, including the following:

1. TENANT shall ensure that affiliate organizations occupy space in compliance with prescribed child care programming.
2. TENANT shall maintain in a master events calendar and a use calendar of available building space for public use.
3. TENANT shall ensure that use of the multipurpose room and other available classroom space will comply with City Facility Use conditions (see Attachments A & B of the Exhibit).
4. TENANT shall open locked rooms when scheduled for non-City sponsored activities and secure same seven days per week.
5. TENANT shall ensure that all subtenants maintain current certificates of insurance, in accordance with clause XV (INSURANCE) of this SUBLEASE and that all hourly users comply with insurance requirements in accordance with Attachments A & B of this Exhibit.

III. Security and Safety

1. TENANT shall maintain general security of the Premises.
2. Any violation of law shall be reported by TENANT as soon as possible to the proper authorities.
3. TENANT shall ensure all locks and safety systems are operating properly and shall provide City a master key to all doors on the premises.
4. TENANT shall secure the Premises on a daily basis including those special events and activities not sponsored by the City during weekday evenings and on weekends.

ATTACHMENT B OF EXHIBIT C

SPECIAL FACILITY RESTRICTIONS
Ventura School Site

NO SMOKING is permitted in the Multi-purpose room or in the class rooms

RENTAL FEE SCHEDULE – Per Hour

Multi-purpose Room	\$30/\$35
Classrooms	\$19/\$23
Damage and Cleaping Deposit	\$100-\$300 per rental

Rental Conditions

Reservations: Reservation Applications are accepted up to a year in advance on a first come, first served basis, with preference given to on-going, City and City-sponsored programs.

Applications for the Cubberley Community Center are accepted beginning in May of each year for the booking period of September of the current year through August of the following year.

Applications for Rinconada Wading Pool are accepted beginning in February annually for the April through September private pool party season.

Applications submitted less than thirty (30) days prior to an event date are subject to the approval of the Facility Manager, availability of space, availability of staff, current insurance, payment of total fees, and special conditions for facilities such as gymnasiums.

Application Submission: Before a reservation request can be accepted the rental application must be filled out and signed by an authorized person 21 years of age or older. Name must be consistent on all required documents. Residency verification will be required to qualify for any applicable Palo Alto resident discounts. No reservation is confirmed until the application has been approved and the reservation payment is paid in full. Approval is dependent upon intended use, availability, applicant's agreement to abide by the terms and conditions listed herein and any other conditions deemed necessary by the Facility Manager (as attached to the approved contract).

Insurance: All rentals require certificate of general liability insurance that names the City of Palo Alto as an additional insured in the minimum amount of one million dollars due thirty (30) days-before your event. Insurance must be provided by a carrier rated A, VII or higher by Best's Insurance Rating Service. Insurance may be available for purchase through the City of Palo Alto. Failure to provide or purchase insurance will result in the cancellation of the booking.

Fees & Charges: See fee schedule for rental rates. **A non-refundable reservation down payment** (at least one third of rental fees and charges) is due within ten days of permit approval, with the balance due thirty (30) days before the event. Failure to pay all rental charges and deposit prior to the rental date will result in a cancellation. A \$55.00 fee will be charged for late payments.

A) Non-profit Discount: Palo Alto-serving organizations submitting an IRS letter of non-profit 501(c) (3) status with their application for a facility rental may be eligible to receive a non-profit discount. No discount will be given if fees are charged by the renting organization or donations requested for the event.

B) Facility Staff: Facility staff is required if the activity is held outside the posted hours of the facility or if the nature of the event makes their presence necessary. The facility staff is on duty to assist the client and for facility safety. The Facility Manager will determine the number of staff required. In some cases, and at the permit holder's expense, the services of a professional security firm may be required based on the type of event and the number of participants. Permit holder is responsible for set-up, clean up, and take down of rooms. City facility staff will be on the premises at all times during rental period.

C) Cleaning and Damage Deposits/Overtime: A refundable cleaning/damage deposit of up to \$2,000 may be assessed. Cleaning and/or damage expense, extra staff time, extra room rental time including set up and clean up will be deducted from the cleaning/damage deposit. Permit holder will be signed out of the facility by the facility staff on duty. Any charges incurred to return the venue to its original condition, reasonable wear and tear excepted, will be deducted from the cleaning/damage deposit. This deposit may be forfeited for violations of ANY rental conditions named herein. Permit holder will be billed for damages in excess of the deposit. If no deposit was required permit holder will be billed for any damages, cleaning expenses and overtime.

D) Rental Time: Must include time for set up, decoration, take down and facility clean up. Rental times differ among facilities so please check when events must conclude. Any requests to modify dates, times, rooms, equipment, etc., to an existing contract must be made in writing fourteen (14) days prior to the event. Any fees incurred due to the amendment will be collected immediately. Deliveries and pickups cannot be outside the rental period, unless prior arrangements are made with the Facility Manager.

In respect for our neighbors, for events that have live or recorded music, the music must conclude by 11:00 p.m. on Fridays and Saturdays and by 9:00 p.m. Sunday through Thursday. Any exceptions require prior arrangements and approval of the Facility Manager.

E) Cancellations: Must be made in writing and received thirty (30) days before the event. **One third of rental fees and charges is non-refundable unless the City cancels the permit, wherein a full refund will be made. No refund is given if cancellation is less than thirty (30) days.** The City reserves the right to cancel an applicant's permit, if the City deems the facility not usable or unsafe due to natural causes, repair, renovation, or is deemed an unsuitable facility for the event by the City. Changes to previously approved permits may result in cancellation of the permit.

Special Conditions

A) Liquor Conditions: Sale or dispensing of distilled spirits at any rented City facility are strictly prohibited. The sale of beer and wine requires the Facility Manager's approval, liquor liability insurance, and a state license, which is the responsibility of the permit holder to obtain. No alcohol may be brought into the facility except that which is served by the permit holder. Based on the type of the event, the number of participants, the presence of minors at the event, and other criteria, the Facility Manager may require additional security deposits, the use of City-approved security officers, and other safeguards at events that sell or dispense alcoholic beverages (beer, wine and champagne).

No alcohol is permitted at Rinconada Pool.

If food/refreshments are to be sold a health permit is required and is the responsibility of the permit holder to obtain. Proof of the licenses must be on file with the appropriate Facility Manager fourteen (14) days before the event.

B) Sound Restrictions: Sound, as heard from outside the rented facility, cannot be greater than 15 dB above the local ambient noise level at a distance of 25 feet or more from the facility (PAMC 9.10.050). Sounds from an event must not interfere with any other scheduled events. Amplified sound is not permitted in the Art Center Sculpture Garden or Courtyard at any time. In order to protect the habitat of nesting swallows, amplified music is not permitted at the Baylands Interpretive Center mid-March through mid-September.

C) Equipment: Check with facility staff for availability and fees.

Permit Holder's Responsibilities: Returning the facility to its clean and tidy condition that was found at the beginning of the rental is the renter's responsibility. Unless otherwise specified the facility staff are not janitorial staff for the event. Spilled food or beverages must be cleaned up immediately. All equipment, decorations, food, beverages and trash must be removed and properly disposed of. The City is not responsible for any materials or equipment left by the renter after the event. No rice, confetti, birdseed, or other substances may be thrown in or around the facility. Decorations must be flame retardant and fastened in an approved manner. Lighted candles, incense and open flames may be permitted under special conditions. Check with the facility staff for particular facility rules. All City facilities prohibit smoking inside or outside (within 20 feet of a public entrance).

Posted parking rules must be observed and authorized parking stalls used.

Capacity limits must be adhered to, and are set by the Fire Marshal.

Exhibit D

CURRENT CITY APPROVED SUBTENANTS

Heffalump Coop Preschool

Country Day School