

6/3/2009

56-R-09

A RESOLUTION

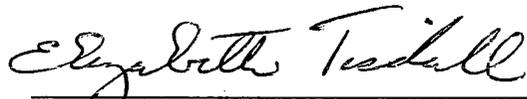
**Authorizing the City Manager to
Sign a Parking Lease Agreement with Mark Howes, D.V.M.,
owner of Berglund Animal Hospital located at
2515 Gross Point Road, Evanston, Illinois**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE
CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

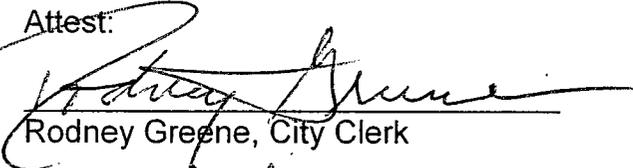
SECTION 1: That the City Manager is hereby authorized and directed to sign the Parking Lease with Mark Howes, D.V.M., attached hereto and made a part hereof as Exhibit A.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional terms and conditions of the agreement as may be determined to be in the best interests of the City.

SECTION 3: That this Resolution 56-R-09 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: July 13, 2009

Exhibit A

Parking Lease Agreement

PARKING LEASE

This Parking Lease (the "Lease" or "Agreement"), dated this 17 day of August, 2009, is entered by and between the City of Evanston, an Illinois municipal corporation ("Landlord") and Mark Howes, D.V.M. ("Tenant").

RECITALS

WHEREAS, Tenant is the fee owner of the property legally described in Exhibit A, attached hereto and incorporated herein, and commonly known as 2515 Gross Point Road, Evanston, Illinois, 60201 (the "Property"); and

WHEREAS, Tenant currently owns and operates Berglund Animal Hospital (the "Animal Hospital") on the Property; and

WHEREAS, Tenant is required to satisfy certain off-street parking requirements in connection with the Animal Hospital pursuant to Subsection 6-16-2-1(B)(2) of Title 6 of the Evanston City Code, 1979, as amended (the "Zoning Ordinance"); and

WHEREAS, Landlord is the fee owner of property shown in the site plan attached hereto and incorporated herein as Exhibit B, and operates said property as a parking lot (the "Parking Lot"); and

WHEREAS, Tenant is desirous of leasing the Parking Lot from Landlord and Landlord is desirous of leasing the Parking Lot to Tenant for the purpose of parking automobiles in accordance with the terms and conditions of this Agreement.

AGREEMENT

1. *Demise.* Landlord, for and in consideration of the covenants and agreements set forth herein, does hereby lease to Tenant and Tenant hereby leases from Landlord the Parking Lot as described above pursuant to the terms and conditions set forth below. Notwithstanding the foregoing, this Lease is limited to the surface portion of the property described in Exhibit B and the improvements constituting the Parking Lot, and Tenant shall have no right, title and interest in and to any utilities, facilities, or other structures below the surface of the Parking Lot.

2. *Use.* During the hours of operation of the Animal Hospital or other establishment operated by Tenant on the Property, provided such establishment constitutes a legal use of the Property under Subsection 6-10-4-2 or Subsection 6-10-4-3 of the Zoning Ordinance, Tenant shall have the exclusive right to use the Parking Lot to provide off-street parking as required by the Zoning Ordinance to its customers, invitees, and employees. Said off-street parking shall consist of eight (8) parking stalls, including one (1) handicapped parking stall. At all other times, Tenant may permit the general public to park on the Parking Lot. Landlord reserves the right to access the Parking Lot to repair or maintain any utilities, facilities, or other structures below the surface of the Parking Lot and to inspect the Parking Lot at any time.

3. *Term.* The initial term of this Lease shall begin on the Commencement Date and continue for ten (10) years (the "Initial Term"). At the conclusion of the Initial Term, this Lease shall automatically extend for one successive ten (10) year term unless either party gives written notice to the other party at least three hundred sixty five (365) days prior to the end of the Initial Term. If Tenant ceases to operate an establishment on the Property constituting a legal use under Subsections 6-10-4-2 and 6-10-4-3 of the Zoning Ordinance (other than closures during remodeling or reconstruction), this Lease, at Landlord's election, shall terminate immediately.

4. *Rent.* The annual rent for the Parking Lot shall be \$2,400.00, payable on the Commencement Date and, thereafter, on the anniversary of the Commencement Date.

5. *Alternative Parking.* If a casualty to the Parking Lot prevents Tenant from using the Parking Lot as described in this Lease, then in such event (or any other event that might otherwise constitute an event of force majeure), Landlord shall provide parking in a garage or surface lot within one thousand (1,000) feet of the Property or at such other location reasonably agreed to by Tenant (the "Alternative Parking").

6. *Maintenance.* All repairs, maintenance or improvements to the Parking Lot shall be the obligation of the Tenant.

7. *Indemnity and Insurance.* Tenant shall hold Landlord harmless, indemnify, and defend Landlord from and against all claims, damages or causes of action on account of damages to property and injuries to persons or loss of life occurring on the Parking Lot, unless caused by the acts or omission of Landlord,

its employees, agents, or contractors. Tenant shall maintain, with respect to the Parking Lot, public liability insurance with limits of not less than \$2,000,000 for injury or death from one accident and \$100,000 property damage insurance, insuring Tenant (and naming Landlord as an additional insured) against injury to persons or damage to property as herein provided. All such insurance may be carried under blanket or umbrella policies covering the Parking Lot and any other branches or facilities of Tenant and/or its affiliates. As to Tenant's responsibilities under this Article, such policies shall be primary and without contribution from any liability policies of Landlord and a certificate evidencing such insurance shall be delivered to Landlord not less than 15 days prior to the expiration date of the expiring certificate previously furnished pursuant to this Section. Certificates evidencing all such insurance shall be delivered by Tenant to Landlord prior to the Commencement Date and thereafter within 24 hours upon Landlord's request. Failure to provide adequate insurance and confirmation that insurance required by this Lease is in effect will result in Tenant default and Landlord shall have the right to terminate this Lease effective immediately. Tenant will provide to Landlord all contact information pertaining to the insurance coverage provided by Tenant on the Commencement Date. Landlord reserves the right to review and make reasonable and customary changes to the types and terms of Tenant insurance requirements annually on the anniversary of the Commencement Date.

8. *Assignment and Subletting.* Tenant shall not assign this Lease, sublet the Parking Lot, mortgage or otherwise encumber its interest herein, except that Tenant may assign this Lease to a successor-in-title to the Property with Landlord's written consent. Such consent shall not be unreasonably withheld. Tenant may also assign or pledge its interest in this Lease for collateral purposes to the lenders from time to time holding mortgages secured by the Property, and upon Tenant's default under such mortgage, Landlord will not unreasonably withhold its consent to the assumption of this Lease by such lenders or their designees from and after the date such lenders foreclose or take possession of the Property; provided, that as a condition of Landlord's allowing the successor tenant to attorn to Landlord, the successor tenant shall pay all past due rental under this Lease to Landlord and agree to make legal use of the Property under Subsection 6-10-4-2 or Subsection 6-10-4-3 of the Zoning Ordinance. If Tenant provides Landlord with the names and addresses of such lenders, Landlord shall provide copies of notices of default to such lenders whenever Landlord gives notice of any default to Tenant.

9. *Tenant Default.* If Tenant fails to observe or perform any of the covenants of Tenant under this Lease (an "Event of Default") and such failure is not cured within forty-five (45) days after Landlord notifies Tenant thereof in writing, then Tenant shall be in default; provided, however, if such failure cannot reasonably be cured within said forty-five (45) day period, no Event of Default shall be deemed to exist so long as Tenant commences and prosecutes curing such default within said forty-five (45) day period, and diligently continues to prosecute the same to completion.

10. *Landlord Remedies.* Upon the occurrence of an Event of Default, Landlord shall have the following rights and remedies:

(a) Landlord may, at its option, at any time after fifteen (15) days' written notice to Tenant, recover from Tenant Landlord's damages caused by such default together with all other sums payable to Landlord hereunder, including reasonable attorneys' fees, costs and expenses;

(b) Landlord may, at its option, but shall not be obligated to, take such action as appropriate to correct or remedy such default (including performing or causing to be performed any of Tenant's obligations hereunder) and all sums expended by Landlord in doing so shall be payable from Tenant to Landlord upon demand; and

(c) Landlord shall, in addition to the rights and remedies provided hereunder, have the right to invoke any right or remedy allowed at law or in equity or by statute or otherwise.

11. *Damages and Jury Trial.* Anything in this Lease to the contrary notwithstanding, Tenant hereby waives any right to consequential damages and any right to trial by jury in connection with any dispute involving this Lease.

12. *Subordination, Nondisturbance & Attornment.* Tenant hereby subordinates this Lease to the lien of any bonds, mortgages, or similar financial instruments now or hereafter placed upon Landlord's interest in the Property.

13. *Waivers.* Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other

provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, such consent or approval shall not be effective unless in writing signed by the party whose consent or approval is required and such party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.

14. *Notices.* All notices herein required shall be in writing and shall be served on the parties, either personally or mailed by certified or registered mail, return receipt requested, or by expedited messenger, and all such notices shall be deemed received on receipt or, if delivery is refused, upon the date of attempted delivery addressed as follows:

If to Landlord: City of Evanston
 Parking Services
 2100 Ridge Avenue
 Evanston, Illinois 60201
 Attn: Rickey Voss

With a copy to: City of Evanston
 Law Department
 2100 Ridge Avenue
 Evanston, Illinois 60201

If to Tenant: Berglund Animal Hospital
 2515 Gross Point Road
 Evanston, Illinois 60201
 Attn: Dr. Mark Howes

With a copy to: Cohen, Salk & Huvard, P.C.
 630 Dundee Road, Suite 120
 Northbrook, Illinois 60062
 Attn: Bruce K. Huvard

Either party may, by written notice to the other party, change its notice address set forth above. Facsimile transmission is not an authorized means of notice under this Lease.

15. *Miscellaneous.*

A. *Headings.* The headings of paragraphs herein are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any provision of this Lease.

B. *Estoppel Certificates.* Tenant agrees that at any time and from time to time, upon not less than ten (10) days' prior written notice from Landlord, that it will execute, acknowledge and deliver to Landlord a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications) and the date to which the rent and other charges and obligations hereunder have been paid in advance, if any, as well as any other matters customarily contained in tenant estoppel certificates.

C. *Governing Law.* This Lease will be governed and construed according to the laws of the State of Illinois.

D. *Severability.* If any provision of this Lease shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision shall be valid and enforceable to the fullest extent permitted by law.

E. *Condition of the Premises.* Tenant's occupancy of the Parking Lot after the Commencement Date shall constitute an acknowledgement by Tenant that the Parking Lot was, on the Commencement Date, in good order and satisfactory condition.

F. *Modification.* This Lease shall not be modified in any way except by a writing executed by both Parties. The parties agree that if there exists a latent or patent ambiguity in this Lease, such ambiguity shall not be construed against either party regardless of which party has drafted the provisions of this Lease.

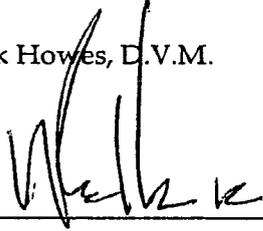
G. *Recordation.* This Lease shall not be recorded, but Landlord shall not unreasonably withhold its consent to recording a memorandum of this Lease, if requested by Tenant's lender in order to obtain an endorsement from an

Illinois title insurance company insuring such lender's leasehold mortgage interest in the leasehold created by this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first written above by their respective officers thereunto duly authorized.

TENANT:

Mark Howes, D.V.M.

By: 
Name: Mark Howes, D.V.M.

LANDLORD:

City of Evanston, an Illinois
municipal corporation

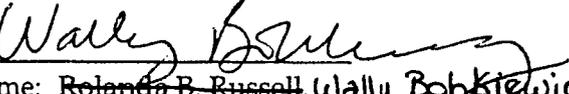
By: 
Name: ~~Rolanda B. Russell~~ Wally Bobkiewicz
Title: ~~Interim~~ City Manager

EXHIBIT A

Legal Description of Property

LOTS 22 AND 23 IN HIGHLANDS TERMINAL, BEING A SUBDIVISION IN THE NORTHEAST FRACTIONAL 1/4 OF FRACTIONAL SECTION 10, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINS: 10-10-201-001-0000
10-10-201-002-0000

ADDRESS: 2515 GROSS POINT ROAD, EVANSTON, ILLINOIS 60201

EXHIBIT B

Site Plan

