

Date..... June 22, 2015.....

SETTING DATE OF HEARING FOR THE VACATION OF PARKLAND IN ASHWORTH PARK AND ADDENDUM AND AMENDMENT OF LEASE TO BERGMAN ACADEMY OF GREENWOOD BUILDING AT 100 45<sup>TH</sup> STREET IN ASHWORTH PARK

WHEREAS, on March 24, 2008, by Roll Call 08-515, the City entered into a Lease Agreement By and Between The Academy and the City of Des Moines, Iowa For The Greenwood Building at 100 45<sup>th</sup> Street, Des Moines, Iowa (“Lease Agreement”); and

WHEREAS, The Academy has changed its name to “Bergman Academy”; and

WHEREAS, the Lease Agreement provides for lease of 12,409 square feet on the main level of Greenwood Building to Bergman Academy and gives them the right to increase the leased premises area, and sets a lease payment for the lower level of the Greenwood Building in the event that Bergman Academy improves and occupies such space, with rent payments increasing annually at 3%, with a deduction of \$7,090.00 annually in consideration of their performance of maintenance of the Greenwood Building, for an initial term of 20 years with two renewal periods of 10 years, upon mutual agreement of the parties; and

WHEREAS, Bergman Academy has completed construction of improvements on the lower level of the Greenwood Building by constructing additional classrooms, a multi-purpose classroom, storage room and staff work rooms, resulting in improved additional square footage of 9646 square feet (“the Lower Level Improvements”); and

WHEREAS, the rental rate for the Greenwood Building, including use of such additional 9646 square feet comprising the Lower Level Improvements, is currently \$114,920.70 (\$108,293.48 with a \$7,090.00 credit for annual maintenance); and

WHEREAS, Bergman’s Academy’s architect has certified that such improvements were completed in substantial conformance with the plans and specifications submitted by the Tenant; and

WHEREAS, Bergman Academy desires to construct at its expense a two story addition to the Greenwood Building to add eight (8) classrooms to serve its growing student population, which will include an elevator to service the existing building and the addition, and to construct a free-standing gymnasium/multipurpose building, with an estimated cost of Four Million Seven Hundred and Seventy-Five Thousand Dollars (\$4,775,000) (“the Addition and Gymnasium Improvements”); and

WHEREAS, due to site elevations and limitations, the Addition and Gymnasium Improvements will require minimal changes to the boundaries of the Leased Premises, with the total area of the Leased Premises to remain the same; and

.....  
Date..... June 22, 2015

WHEREAS, Tenant desires to extend the initial term of the Lease Agreement until December 31, 2044; and

WHEREAS, a Lease Addendum and Amendment to Lease Agreement has been prepared, a copy of which is on file in the City Clerk’s Office, which provides for the lease of an additional 9,646 square feet on the lower level of the Greenwood Building to begin on August 1, 2012; for an additional annual rental fee of \$41,284.88 per year beginning on August 1, 2012, with a current total rental amount of \$114,920.70, with an annual rate increase of 1% beginning on August 1, 2020, for the Greenwood Building and leased premises at 100 45<sup>th</sup> Street, providing for the City’s acceptance of the Lower Level Improvements, grants Bergman Academy permission to construct the Addition and Gymnasium Improvements, extends the term of the Lease until December 31, 2044, and that the City will own such Improvements upon completion and acceptance by the City; and

WHEREAS, it is proposed that the area of the leased premises be amended to the following:

A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST 1/4 CORNER OF SAID SECTION 12; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 1341.05 FEET TO THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12 AND BEING ON THE WEST LINE OF LINDEN HEIGHTS, AN OFFICIAL PLAT; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4, A DISTANCE OF 660.00 FEET; THENCE SOUTH 00°13'12" WEST, 40.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°47'22" EAST, 76.81 FEET; THENCE SOUTH 51°55'41" EAST, 223.14 FEET; THENCE SOUTH 00°13'12" WEST, 78.09 FEET; THENCE SOUTH 14°01'20" WEST, 75.36 FEET; THENCE SOUTH 50°41'21" WEST, 60.46 FEET; THENCE NORTH 74°02'17" WEST, 98.27 FEET; THENCE NORTH 44°31'49" WEST, 133.25 FEET; THENCE NORTH 00°13'12" EAST, 205.37 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.38 ACRES (60,137 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

June 22, 2015

Date

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa:

1. That the City Council of the City of Des Moines shall consider adoption of an ordinance permanently vacating as parkland the below described .23 acres of real estate adjacent to the Greenwood Building/Bergman Academy in Ashworth Park at 100 45<sup>th</sup> Street:

AREA "A"

A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST 1/4 CORNER OF SAID SECTION 12; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 1341.05 FEET TO THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12 AND BEING ON THE WEST LINE OF LINDEN HEIGHTS, AN OFFICIAL PLAT; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4, A DISTANCE OF 660.00 FEET; THENCE SOUTH 00°13'12" WEST, 40.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°47'22" EAST, 76.81 FEET; THENCE SOUTH 51°55'41" EAST, 73.36 FEET; THENCE NORTH 89°46'48" WEST, 134.73 FEET; THENCE NORTH 00°13'12" EAST, 45.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.11 ACRES (4,760 S.F.).

AREA "B"

A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST 1/4 CORNER OF SAID SECTION 12; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 1341.05 FEET TO THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12 AND BEING ON THE WEST LINE OF LINDEN HEIGHTS, AN OFFICIAL PLAT; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4, A DISTANCE OF 660.00 FEET; THENCE SOUTH 00°13'12" WEST, 340.00 FEET; THENCE SOUTH 89°46'48" EAST, 93.81 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°46'48" EAST, 56.19 FEET; THENCE NORTH 50°41'21" EAST, 133.54 FEET; THENCE SOUTH 14°01'20" WEST, 75.36 FEET; THENCE SOUTH 50°41'21" WEST, 60.46 FEET; THENCE NORTH 74°02'17" WEST, 98.27 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.12 ACRES (5,114 S.F.).

June 22, 2015

Date

2. That if the City Council decides to vacate the above described parkland, the City of Des Moines proposes to lease such property and to adopt an Addendum and Amendment to Lease Agreement between the City and Bergman Academy to lease an additional 9,646 square feet in the lower level of the Greenwood Building at 100 45<sup>th</sup> Street for an additional annual rental fee of \$41,284.88 per year beginning on August 1, 2012, with a current total rental amount of \$114,920.70, with an annual rate increase of 1% beginning on August 1, 2020, for the Greenwood Building and leased premises, and providing for the City's acceptance of the lower level improvements constructed by Bergman Academy, granting Bergman Academy permission to construct an addition to the Greenwood Building and a free-standing gymnasium at an approximate cost to be paid by Bergman Academy of \$4,775,000, and extending the term of the Lease until December 31, 2044. In consideration of Bergman Academy paying for such improvements that the City will own upon their completion, no additional rent shall be paid to the City for such additional improved space.

3. That the area of the leased premises shall be changed to the following, which includes the above described parkland proposed to be vacated:

A PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M., CITY DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST 1/4 CORNER OF SAID SECTION 12; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 12, A DISTANCE OF 1341.05 FEET TO THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12 AND BEING ON THE WEST LINE OF LINDEN HEIGHTS, AN OFFICIAL PLAT; THENCE NORTH 89°46'48" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4 OF THE SOUTHEAST 1/4, A DISTANCE OF 660.00 FEET; THENCE SOUTH 00°13'12" WEST, 40.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°47'22" EAST, 76.81 FEET; THENCE SOUTH 51°55'41" EAST, 223.14 FEET; THENCE SOUTH 00°13'12" WEST, 78.09 FEET; THENCE SOUTH 14°01'20" WEST, 75.36 FEET; THENCE SOUTH 50°41'21" WEST, 60.46 FEET; THENCE NORTH 74°02'17" WEST, 98.27 FEET; THENCE NORTH 44°31'49" WEST, 133.25 FEET; THENCE NORTH 00°13'12" EAST, 205.37 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.38 ACRES (60,137 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

3. That the meeting of the City Council at which the adoption of said ordinance and the Addendum and Amendment of Lease Agreement for such real estate is to be considered shall be on July 13, 2015, said meeting to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

★ **Roll Call Number**

**Agenda Item Number**

14

June 22, 2015

Date.....

4. The City Clerk is authorized and directed to publish notice of the proposal and hearing in the form hereto attached not less than four or more than twenty days from the date of the hearing.

(Council Communication No. 15-351 )

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

\_\_\_\_\_  
Ann DiDonato  
Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE         |      |      |      |        |
| COLEMAN        |      |      |      |        |
| GATTO          |      |      |      |        |
| GRAY           |      |      |      |        |
| HENSLEY        |      |      |      |        |
| MAHAFFEY       |      |      |      |        |
| MOORE          |      |      |      |        |
| TOTAL          |      |      |      |        |

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
City Clerk