

April 21, 2008

Keith Klein  
City of Dayton  
Office of Economic Development  
101 W. Third St.  
Dayton, OH 45402

Dear Mr. Klein:

The Dayton Circus Creative Collective is a non-profit arts organization incorporated in the State of Ohio dedicated to making downtown Dayton a place that "attracts and retains creative people and fosters the creativity inherent in everyone." In addition to the many multimedia events we have been hosting downtown over the past year and a half, we would like to provide physical venues to showcase Daytonians' creativity.

I am writing today to request assistance from the City of Dayton in developing an outdoor venue for our group's endeavors. We believe that the City-owned property at the corner of Fourth Street and Wayne Avenue is a critical connecting point between the emerging Cannery and Oregon Arts Districts. We would like to help beautify and enliven this piece of land through gardening, outdoor paintings and sculpture, and musical performance. Our garden elements include both landscaping to bring beauty to the vacant land, as well as raised beds open to the public for vegetable cultivation. The attached initial concept plan outlines our ultimate vision, although, given the grassroots nature of our organization, it should be noted that this vision is likely to develop incrementally with each growing season.

Thank you for your assistance in drafting the lease for this property at such an affordable rate. We understand that this is potentially developable land and we are subject to the terms of the lease. If you should have further questions, please do not hesitate to contact me at extension 3863.

Thank you,

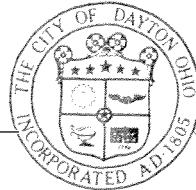


Kate Ervin  
Vice Chair, Board of Trustees  
The Dayton Circus

**CITY OF DAYTON, OHIO**

CITY MANAGER'S OFFICE

OFFICE OF ECONOMIC DEVELOPMENT



CITY HALL • 101 WEST THIRD STREET

P.O. BOX 22 • DAYTON, OHIO 45401

937 333-3600 • FAX 937 333-4298

937 333-3634 • FAX 937 333-4266

[www.cityofdayton.org](http://www.cityofdayton.org)

December 20, 2010

Lisa Helm, Garden Station Manager  
Dayton Circus  
c/o Mark Jeffers, Treasurer  
122 La Belle Street  
Dayton, Ohio 45403

Re: Garden Station

Ms. Helm and Mr. Jeffers,

Thank you for your letter dated December 1, 2010 regarding Garden Station. We wish to congratulate you for your success in launching and sustaining this project, particularly in today's difficult economic environment. This letter hereby acknowledges and approves your request to renew your 2008 lease with the City for another five year period, ending December 31, 2015.

Please keep in mind that the City reserves the right to terminate the lease, in the event that the property is needed for a future development project. Otherwise, we trust that you will continue to use the property for the benefit of your organization and the greater Dayton community. If extended again in 2015, the lease will continue until the expiration date of December 31, 2020.

We appreciate your ongoing effort to support the arts and urban agriculture in Dayton. This project is an excellent example of how individuals can step forward to help revitalize otherwise vacant land. Please feel free to contact me at 333-3812 if you have any questions or concerns.

Sincerely,

Keith Klein, Senior Development Specialist  
Office of Economic Development

C: Timothy Downs, Deputy Director

**LEASE AGREEMENT**  
Fourth and Wayne Development Site

THIS LEASE AGREEMENT ("Lease") is entered into as of this 24th day of June, 2008, by and between the CITY OF DAYTON, OHIO ("City") and THE DAYTON CIRCUS ("Developer"), an Ohio non-profit corporation with an office for conducting business located at 1001 E. 2nd Street, #3465, Dayton, Ohio 45402.

**RECITALS**

WHEREAS, the City is the owner of record of certain undeveloped real estate at the corner of Fourth Street and Wayne Avenue; and

WHEREAS, the Developer is a participant in the arts community within the City of Dayton and is working to promote and enhance the arts in Dayton; and

WHEREAS, the Developer desires to lease said property from the City, and the City desires to lease said property to the Developer, pursuant to the provisions of this Lease for the construction and operation of a community garden and performance space with associated improvements and amenities; and

WHEREAS, the proposed community garden will serve a public purpose by creating an attractive greenspace, promoting community development, and providing a downtown amenity, which will be available for use by the artists and citizens of Dayton; and

NOW, THEREFORE, in consideration of the premises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the City and the Developer hereby agree as follows:

**WITNESSETH:**

1. **LEASED PREMISES.** The City hereby leases to the Developer, and the Developer hereby leases from the City, the real estate known as the "Fourth and Wayne Property," together with all the improvements thereon and appurtenances thereto, being hereinafter called the "Premises" and more particularly described in the attached Exhibit A.

2. **TERM.** The term of this Lease shall commence on the date of execution (the "Commencement Date") and expire on December 31, 2010 (the "initial term"). The Lease shall automatically renew for two (2) consecutive five (5) year terms upon written request from the Developer, terminating December 31, 2020, unless this Lease shall sooner terminate as hereinafter provided.

3. **CONSIDERATION.** The Developer shall pay the City, at such place as the City may from time to time designate, as consideration for the Premises the sum of ten dollars (\$10.00) per year. The first such payment for the year 2008 shall be due and payable upon the Commencement Date. All subsequent annual payments shall become due and payable on January 1 each year until the termination of the Lease.

\$100.00 06/25/08 11:16:39  
LEAS-08-045692 0011  
Montgomery County  
Willis E. Blackshear Recorder

4. **USE OF PREMISES.** The Premises are to be used and occupied primarily for the construction and operation of a community garden and performance space, as well as associated fencing, landscaping, and related amenities, and for such other purposes as may be incidental thereto (the “Permitted Uses”), as shown in the site plan identified as “Exhibit B” or substantially similar thereto. The Premises shall be available to the public at reasonable times, according to the hours of operation to be established by the Developer.

5. **DELIVERY OF PREMISES.** On the Commencement Date, the City shall deliver the Premises to Developer. The City makes no representations or warranties of any kind, expressed or implied, as to the condition of the Premises, and Developer accepts the Premises “as is”. The Developer may utilize the Premises at its own risk.

6. **MAINTENANCE, REPAIRS, AND REPLACEMENTS.** The Developer, at its expense, shall maintain the Premises in the same or better condition as exists on the Commencement Date. The Developer shall be responsible for day-to-day maintenance of the Premises. The Developer shall keep the Premises in good and clean condition at all times, and, at the request of the City, remedy any conditions that the City reasonably determines are detrimental to the Premises or which create violations of applicable health, safety or other regulatory laws, rules or regulations.

The Developer, at its expense, shall maintain the Premises and be responsible for all damage caused on or to the Premises, including damage caused by the actions or negligence of the Developer’s employees, agents, visitors or anyone else coming onto the Premises as a result of the Developer’s occupancy. Should damage occur to the Premises during the term of this Lease, the Developer agrees to restore the Premises within thirty (30) days to substantially the same condition they were in prior to the damage. Should any available insurance proceeds be insufficient for restoration, the Developer shall provide all necessary additional funds for restoration. The Developer shall retain any excess insurance proceeds.

7. **ALTERATIONS AND IMPROVEMENTS.** Developer may make any additions, improvements, and modifications (collectively, “Alterations”) to the Premises reasonably necessary for the Permitted Uses. All Alterations shall be made at Developer’s sole risk, expense and liability in a good and workmanlike manner and in compliance with all applicable laws, statutes and ordinances, free and clear of mechanics’ or other liens. Such improvements not removed prior to termination of the Lease shall become the property of the City upon termination of the Lease, unless otherwise agreed to in writing by both parties. The City is not liable for any personal property left on the Premises at any time.

8. **EARLY TERMINATION.** The Developer recognizes that the Premises constitute a development parcel that is intended for new construction of a commercial and/or residential building. In the event that the City accepts a bona fide offer from an unaffiliated third party to purchase and develop the Premises for such purposes, the City shall promptly give written notice thereof to Developer. The Developer shall have thirty (30) days from receipt of such notice to vacate the Premises, including any improvements and/or personal property that may be located on the Premises. The City may extend this period upon request by the Developer, if such an extension will not hinder the sale of the property. The Lease shall be terminated upon conveyance of the Premises to such third party. The City reserves the right to negotiate an alternate proposal that would be acceptable to all parties concerned.

9. INSURANCE. During the term of this Lease, the Developer, at the Developer's sole cost and expense, shall maintain in full force and effect a primary policy of comprehensive general liability insurance with respect to the Premises and name the City as additional insured. Such policy shall: (i) have limits of liability of not less than \$1,000,000 per occurrence; (ii) be written as an "occurrence" policy; (iii) have a deductible of no more than \$50,000 per occurrence; (iv) include broad form property damage coverages; (v) protect the insured against all liability arising in connection with this Lease which would customarily be insured against; (vi) provide that the coverage may not be terminated without at least thirty (30) days prior written notice to the additional insured. The Developer shall keep the City furnished at all times with a current certificate of such insurance. The City reserves the right to require annual adjustments to the policy limits to adjust for inflation.

10. TAXES. The City shall pay all real estate taxes (if applicable) and assessments (general and special) levied against the Premises and becoming due and payable during the term of this Lease, and shall be responsible for the timely remitting all such taxes and assessments to the appropriate taxing authorities.

11. UTILITIES. Developer shall be responsible for payment of all charges against the Premises for gas, electricity, telephone, water, trash disposal and any other services furnished to the Premises during the term of this Lease, and shall put such services in its own name.

12. INDEMNIFICATION. To the extent allowed by law, the Developer agrees to indemnify and hold harmless the City and its officers, directors, agents, employees, invitees and licensees (collectively, "City Parties") from and against all liability, claims, suits, demands, damages, judgments, costs, interest and expenses (including reasonable attorneys' fees for the defense thereof), arising from the conduct or management of the Developer's business on the Premises, or from any breach on the part of the Developer of any conditions of this Lease, or from any act or omission of the Developer, its agents, Developers, employees, subtenants, invitees, or licensees with respect to the Premises. In case of any action or proceeding brought against the City Parties by reason of any such claim, the Developer, upon notice from the City, covenants to defend such action or proceeding by counsel reasonably acceptable to the City.

13. DEFAULT. If the Developer shall breach any provision of this Lease and fail to cure such breach within thirty (30) days after receiving written notice from the City of such breach, (unless such breach cannot reasonably be cured within such 30-day period, in which case the Developer shall be in breach if it has not promptly commenced a cure and diligently pursued and completed the cure within the additional time reasonably required to complete such cure), then the City has the right to re-enter the Premises and exercise any remedies set forth in this Lease or available at law, including, without limitation, terminating this Lease. Should the City at any time terminate this Lease for any breach, in addition to any other remedy it may have, it may recover from the Developer all damages it may incur, including all reasonable attorneys' fees and expenses. The City shall have the right to cure any breach of this Lease by the Developer, at the Developer's sole cost and expense, and the Developer shall reimburse the City for the cost of such cure immediately upon demand by the City.

14. TERMINATION. Except as described above, this instrument may only be terminated upon written agreement duly executed by the City and the Developer and recorded in Montgomery County, Ohio. Upon the expiration or other termination of this Lease for any

reason, the Developer shall remove all of its personal property from the Premises, and shall surrender the Premises to the City in good condition and repair. Upon termination of the Lease for any reason prior to December 31, 2020 the City shall record a Notice of Termination in the Deed Records of Montgomery County, Ohio.

15. LIENS. The Developer shall promptly pay when due the entire cost of all work done to the Premises on behalf of or at the request of the Developer, and shall keep the Premises free of liens for labor or materials provided on behalf of or at the request of the Developer. Should mechanics', materialmen's or other lien be filed against the Premises by reason of the acts of the Developer, the Developer shall cause the lien to be canceled and discharged of record by bond or otherwise within thirty (30) days of receiving notice of such lien. The Developer may not pledge, mortgage or otherwise encumber this Lease or the Developer's leasehold interest in the Premises hereunder without the prior written consent of the City.

16. **NONWAIVER.** Failure of either party to exercise its rights under the terms of this Lease on any occasion shall not be construed as a waiver of any requirement of this Lease or a waiver of such party's rights with respect to any subsequent or continued breach by the other party of any covenant contained in this Lease. All remedies herein provided shall be in addition to and not in substitution for any remedies otherwise available to the non-breaching party.

17. NOTICES. All notices hereunder shall be in writing and either (a) mailed by certified or registered mail, first class prepaid and return receipt requested, (b) sent by recognized overnight delivery service, as follows:

If to the City: The City of Dayton, Ohio  
Office of Economic Development  
101 W. Third Street  
Dayton, Ohio 45401

And if to the Developer: The Dayton Circus  
c/o Laurana Wong  
1001 E. 2nd St #3465  
Dayton Ohio 45402

Notices shall be effective upon receipt; provided, however, that a notice received after normal business hours will not be deemed received until the next business day. Changes of address by either party shall be effective if notice thereof is given to the other party in accordance with this Section.

18. AMENDMENT. No amendment, modification or alteration of the terms of this Lease shall be binding unless in writing and duly executed by the duly authorized representative of the City and the Developer, respectively.

19. RECORDATION. The City shall record this Lease in Montgomery County, Ohio. The Developer shall pay to the City, on the Commencement Date, the costs of recording said Lease. Either party, at the request of the other, shall forthwith execute a recordable "Memorandum of Lease" containing the dates of commencement and expiration of the term of this Lease.

20. ATTORNEYS' FEES. In any lawsuit between the parties regarding this Lease, the prevailing party shall be entitled to recover its attorneys' fees from the other party.

21. GENERAL PROVISIONS.

A. Governing Law And Venue. This Leaes is governed by and construed in accordance with the laws of the State of Ohio without giving effect to the principles thereof relating to conflicts or choice of laws, and is deemed to be executed in Dayton, Ohio. Any suit regarding this Lease must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

In the event any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. The lessees under this Lease shall be jointly and severally liable under this Lease.

B. Third Party Rights. Nothing in this Lease shall be construed to give any rights or benefits to anyone other than the City and the Developer.

C. Assignment. Neither the City nor the Developer may assign any rights or duties under this Lease without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Lease. Nothing contained in this Article will prevent the Developer from employing independent contractors, associates, and subcontractors to assist in the performance of the services.

D. Waiver. A waiver by either the City or the Developer of any breach of this Lease shall be in writing. Such a waiver will be effective only in the specific instance and for the specific purpose for which it is given and will not affect the waiving party's rights with respect to any other or further breach.

E. Integration. This Lease represents the entire and integrated agreement between the City and the Developer. This Lease supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Lease.

F. Acceptance. All work must conform to all applicable local, state, and federal regulations. Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to final acceptance of the work, shall be corrected or removed immediately and completed or replaced in an acceptable manner at the Developer's expense. The Developer is also responsible for any work completed that is not authorized in writing by the City.

G. Political Contributions. Developer affirms and certifies that it complies with Ohio Revised Code 3517.13 limiting political contributions.

H. Binding Effect. This Lease shall apply and inure to the benefit of, and be binding upon, the City and Developer and their respective successors and permitted assigns.

22. COUNTERPARTS. This instrument may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which, when taken together, will constitute one and the same Lease.

IN WITNESS WHEREOF, the City and Developer have executed this Lease as of the day, month and year first above written.

**THE CITY OF DAYTON, OHIO**

Kathy Dier

Witness

By: SDickstein

Its: Asst. City Manager

**THE DAYTON CIRCUS**

Keill Blei

Witness

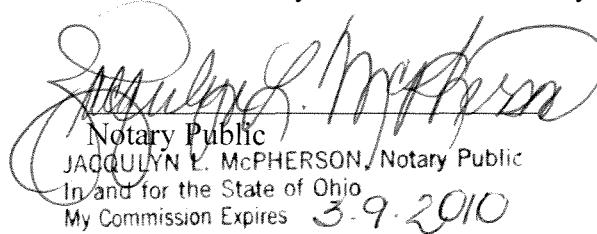
By: Jamie W

Its: Chair

STATE OF OHIO )  
 )  
 )ss:  
COUNTY OF MONTGOMERY )

BE IT REMEMBERED, that on this 18<sup>th</sup> day of June, 2008, before me the subscriber, a Notary Public in and for said county, personally came the above named Shelly Dickstein, the Asst. City Manager of the City of Dayton, Ohio, who acknowledged the signing of the foregoing to be her voluntary act and deed as such officer.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the date last aforesaid.

  
Notary Public  
JACQUELYN L. MCPHERSON, Notary Public  
In and for the State of Ohio  
My Commission Expires 3-9-2010

STATE OF OHIO )  
 )ss:  
COUNTY OF MONTGOMERY )

BE IT REMEMBERED, that on this 21 day of May, 2008, before me the subscriber, a Notary Public in and for said county, personally came the above named LauraNa Wong, the Chair of The Dayton Circus, who acknowledged the signing of the foregoing to be her voluntary act and deed as such officer.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the date last aforesaid.



**PATRICIA A. OLIVER, Notary Public**  
In and for the State of Ohio  
My Commission Expires Sept. 7, 2018

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## Notary Public

APPROVED AS TO FORM  
AND CORRECTNESS:

APPROVED BY THE COMMISSION  
OF THE CITY OF DAYTON, OHIO:

June 4, 2008

Min./Bk. 110 Pg.

Rachelle Lavender  
Clerk of the Commission  
*[Signature]*

**EXHIBIT A**  
**Property Description**

EXHIBIT "A"

**Legal Description:**

Situate in the City of Dayton, County of Montgomery and State of Ohio, and being all of Lots Numbered 4874, 4875, 4878, 4877, 4878, part of Lot Numbered 4879, part of Lots Numbered 2670, 2671, 2672, 2673, 2674, 2675 and part of Out Lot Numbered 3, and vacated alleys and streets, more particularly described according to a plan of survey made by Miami Engineering Co., Engineers-Surveyors, Dayton, Ohio, dated September 23, 1974, as follows:

Beginning at an iron pin in the north right-of-way line of East Fourth Street, said iron pin being North 74 degrees 02 minutes East, a distance of 10.75 feet from the southwest corner of said Lot 4879; thence South 74 degrees 02 minutes West, along the north right-of-way line of East Fourth Street, a distance of 96.61 feet to an iron pin; thence continuing westerly along the north right-of-way line of East Fourth Street, on a curve to the left having a radius of 520.14 feet, the chord of which bears South 65 degrees 10 minutes 21 seconds West for a length of 160.24 feet, a distance of 160.88 feet, measured on the arc, to an iron pin; thence continuing along the northerly line of East Fourth Street, South 48 degrees 15 minutes 45 seconds West, a distance of 221.58 feet to a railroad spike; thence on a curve to the right having a radius of 25.00 feet, the chord of which bears North 86 degrees 59 minutes 54 seconds West for a length of 35.48 feet a distance of 39.45 feet, measured on the arc, to a railroad spike; thence along the east right-of-way line of Wayne Avenue, North 41 degrees 47 minutes 04 seconds West a distance of 90.73 feet to a concrete retaining wall; thence North 44 degrees 48 minutes 44 seconds East along the south face of the concrete retaining wall a distance of 184.38 feet to a point; thence continuing along the south face of the concrete retaining wall North 44 degrees 48 minutes 15 seconds East a distance of 200.00 feet to a point; thence continuing along the south face of the concrete retaining wall, North 44 degrees 51 minutes 15 seconds East a distance of 200.01 feet to a point; thence continuing along the south face of the concrete retaining wall, North 44 degrees 45 minutes 15 seconds East, a distance of 23.43 feet to a point; thence South 15 degrees 20 minutes 00 seconds East, a distance of 268.85 feet to an iron pin and place of beginning. Containing 1.9775 acres, more or less.

Parcel ID No: R72-6-3-20,21,22,23,24,25 and R72-6-4-1,17,18,19,20,21,25,30

**Exhibit B**  
Site Plan

KEY TO FEATURES

- A EVERGREEN SCREEN
- B STOAGE
- C SUNFLOWER BORDER CLUSTERS
- D ORGANIC TERRAIN GROUNDS
- E EVERGREEN TREE
- F PORTO-LAET AREA
- G EXISTING VEGETATION
- H VEHICULAR TRAFFIC BARRIER POSTS
- I HANDICAP ACCESSIBLE RAISED BED GARDEN
- J COMMUNITY TOOL STORAGE
- K LASAGNA GARDEN AREA
- L GARDEN EXPANSION AREA
- M LABYRINTH
- N URBAN PRairie / WILDFLOWER AREA
- O WATER SOURCE
- P REST/SHADE SHELTER
- Q STRIP COMPOST AREA
- R RAISED BED AREA
- S PAVED AREA FOR FOOT & WHEELCHAIR TRAFFIC
- T LAWN CHAIRS PICNIC / PLAY AREA
- U ELLSWORTH STEEL RAIL
- V MARTIN HOUSE
- W WILDLIFE FEEDING STATION
- X ADDITIONAL SHRUBS/FLOWER PLANTINGS
- Y AUDIENCE AREA / EMERGENCY ACCESS

PRELIMINARY SITE DEVELOPMENT  
GROW CREATIVE  
ART PARK / COMMUNITY GARDEN

SCALE 1 IN = 50 FT

NORTH

