

LAND LEASE AGREEMENT

This Land Lease Agreement (“Lease”) is entered into this ____ day of _____, 2021 between the Department of Parks and Recreation on behalf of the City of Saint Paul, a municipal corporation of the State of Minnesota (“LESSOR”), and Circus of the Star, a non-profit corporation organized and existing under the laws of the State of Minnesota and doing business as “Circus Juventas” (“LESSEE”), collectively (the “Parties.”)

WHEREAS, LESSOR is the owner of public park land known as Highland Park; and

WHEREAS, LESSEE has since 1997 leased a portion of the Highland Park property, as more particularly defined in Paragraph 2 (the “Leased Property”), to provide thousands of students and community members with the circus arts experience, and in 2001 LESSEE constructed and has since operated the “Big Top” facility (“Facility”) within the Leased Property; and

WHEREAS, LESSOR considers LESSEE’s continued operation of the Facility and use of the Leased Property to be a benefit to the Saint Paul community; and

WHEREAS, LESSEE has benefited from partnering with LESSOR and wishes for the relationship to continue;

NOW, THEREFORE, the Parties hereby mutually agree to the following terms and conditions as provided in this Lease:

1. PRIOR LEASES. All prior agreements between LESSOR and LESSEE with regard to LESSEE’S lease and/or use of the Leased Property, most particularly that certain 10-year “Second Lease Amendment to Land Lease Agreement,” effective November, 2010 and renewed for an additional 10-year term ending October 31, 2021, are hereby terminated with the commencement of this Lease.

2. LEASED PROPERTY, ADJACENT PROPERTY USAGE

- a. The real property to be leased by LESSEE lies generally south of Montreal Avenue and east of Edgumbe Road within Highland Park (“Leased Property”). The Leased Property is outlined with a red line on the attached Exhibit A.
- b. All other adjacent parklands other than those defined as the Leased Property remain under the sole control and jurisdiction of LESSOR and are not governed in any way, implied or otherwise, by the terms of this Lease, except for the Highland Picnic Pavilion parking lot, as noted in Paragraph 2.c.
- c. LESSEE may use the Highland Picnic Pavilion parking lot for its employees and customers. At no time shall this parking lot be used as an exclusive parking lot for LESSEE. The lot shall at all times be available for general public usage.
- d. LESSEE may reserve the Highland Picnic Pavilion for up to four weekends (Thursday, Friday, Saturday and Sunday) each calendar year to avoid parking conflicts during LESSEE’s Spring and Summer performance weekends. Only three (3) of the proposed

weekends will be granted between the first full weekend in May and the last full weekend in September. Proposed dates must be submitted in writing to LESSOR no later than December 15th of the preceding year for consideration and approval.

- e. If LESSEE requires on-street parking for any reason, LESSEE will work directly with the City of Saint Paul Public Works department to request and manage this process.

3. USE. The Leased Property is to be used by LESSEE for the purposes of operating and maintaining a fabric building, including office space, restrooms and meeting space, and a training and exhibition site for persons, particularly St. Paul youth, interested in learning to perform circus act skills, and for no other purpose without the prior written consent of LESSOR.

4. TERM

- a. **Effective.** This Lease will become effective on November 1, 2021 and continue through December 31, 2031 ("Initial Term") unless earlier terminated pursuant to Paragraph 10.

- b. **Renewal.** By mutual assent of LESSOR and LESSEE, this Lease may be renewed for one additional ten-year term ("Renewal Term") contingent upon LESSEE satisfying the following requirements during the Initial Term.

- i. Replace Facility exterior tent skin and HVAC system.

- ii. Work with Saint Paul Parks and Recreation Department to identify additional programming opportunities to Saint Paul youth that will serve an average of twenty-five (25) youth annually and award \$25,000.00 in scholarships annually.

- c. The Renewal Term shall be on the same terms and conditions as set forth in this Lease, except LESSOR and LESSEE shall meet and negotiate monthly rent for the Renewal Term prior to expiration of the Initial Term. Such rent shall not exceed one percent (1%) of the average monthly gross revenue generated by LESSEE during the last year of the Initial Term, except that in no event shall rent be lower than \$1,575 per month for the first year of the Renewal Term.

5. RENT

- a. LESSEE shall pay LESSOR the sum of one thousand one hundred twenty dollars (\$1,120) per month ("Rent") beginning November 1, 2021. Rent will increase 3.5% each January beginning in 2023 as provided in the rent schedule below. Rent shall be payable on the first day of each month to the City of Saint Paul at LESSOR's address specified in Paragraph 12 below.

Rent Commencement Month	Monthly Rent Amount
November 2021	\$ 1,120.00
January 2023	\$ 1,159.20
January 2024	\$ 1,199.77
January 2025	\$ 1,241.76
January 2026	\$ 1,285.23
January 2027	\$ 1,330.21
January 2028	\$ 1,376.77
January 2029	\$ 1,424.95
January 2030	\$ 1,474.83
January 2031	\$ 1,526.45

- b. If this Lease is terminated at a time other than on the last day of a month, Rent shall be pro-rated as of the date of termination, and, in the event of termination for any reason other than non-payment of Rent, all prepaid Rents shall be refunded to LESSEE.

6. RESPONSIBILITIES OF PARTIES

- a. LESSOR shall be responsible for:
- i. Upkeep of the Highland Park Picnic Pavilion parking lot, including snow plowing, sweeping, weeding and debris removal.
 - ii. Mowing and weeding of all areas adjacent to the Facility.
- b. LESSEE shall be responsible for:
- i. Keeping the Leased Property clean and free of litter.
 - ii. Picking up and storing trash, recycling, and compostables on a daily basis and arranging for at least weekly removal of same. LESSEE may choose to utilize LESSOR'S trash hauling services for the predominate rate.
 - iii. All repairs, maintenance and upkeep of the Leased Property, including but not limited to emergency repairs of any kind; routine maintenance and repair to keep the Leased Property safe and in compliance with applicable fire, health, building and other life-safety codes; and all repairs and maintenance needed to keep the

Facility and any other structures on the Leased Property in good condition, including (a) the exterior (including windows and doors) and interior structure of the Facility or other structures, (b) the roof or roofs, (c) the heating, ventilating and air conditioning systems therein, (d) all electrical, plumbing, lighting, mechanical systems, fire suppression equipment, i.e. fire sprinkler system; and (e) all grounds, fences and walkways within the Leased Property. The foregoing obligations shall bind the LESSEE regardless of the cause of the damage or condition necessitating the repair or maintenance.

- iv. Maintaining and clearing of snow and debris from all walkways from the Highland Park Picnic Pavilion parking lot to the Facility.
- v. All debts incurred by LESSEE as a result of its Facility and programs.
- vi. LESSEE shall adhere to a policy which allows Saint Paul residents to be given first priority in registering as new students and being accepted into classes to be held by LESSEE at the Facility.
- vii. Providing LESSOR annually, by March 1, with:
 1. A list of Circus Juventas board members including their addresses.
 2. A list of fees to be charged for classes and Facility use for the upcoming year.
 3. A year-end report showing percentage of Saint Paul residents served by the Facility versus non-residents in the previous calendar year.
 4. Copies of accident/incident reports from the previous year.
 5. A copy of the annual OSHA inspection report.
- viii. LESSEE may enter into agreements with other non-profit entities or individuals to provide recreation programming, or other programs which serve a public purpose. LESSOR reserves the right to approve such agreements in advance, such approval not to be unreasonably withheld.
- ix. LESSEE shall prepare and maintain electronic participant accident and incident report forms for any instance where accidents or incidents on or near the Facility result in emergency services being called to the Leased Property are reported to or witnessed by LESSEE representatives. LESSEE shall provide completed reports for such accidents or incidents to LESSOR within two (2) business days following such accident or incident by U.S. mail, fax or a PDF scan attached to an email. LESSEE shall provide all other accident or incident reports where emergency services were not called to LESSOR pursuant to Paragraph 6.b.vii.4. above.
- x. LESSEE shall develop and maintain up-to-date, Facility specific, Emergency Action Plans (EAP) and Safety Data Sheets (SDS), which must be updated

annually, and be consistent with City of Saint Paul plans. LESSEE must train Facility staff and volunteers on use of the EAP and SDS at least once a year.

c. Responsibilities of both Parties:

- i. LESSOR and LESSEE will conduct a compliance assessment of this Lease and site review annually. Any issues must be promptly remedied.

7. ALTERATIONS

- a. LESSEE will not make any alternations to the Leased Property without the written consent of LESSOR, such consent not to be unreasonably withheld. If LESSEE desires to make any such alterations, an accurate description shall first be submitted to and approved by LESSOR and such alterations shall be done by LESSEE at its own expense. LESSEE agrees that all alterations will be done in a workmanlike manner and in conformance with applicable building codes, that the structural integrity and building systems of the Facility or any other structures will not be impaired, and that no liens will attach to the Leased Property by reason thereof.

8. INSURANCE AND INDEMNIFICATION

- a. Insurance required. LESSEE is required to carry insurance of the kind and in the amounts shown below for the life of the Lease. Insurance certificates should state that LESSOR City of Saint Paul, its officials, employees, agents, and representatives are named as Additional Insureds for General Liability and Automobile Insurance.

- i. General or Business Liability Insurance

- \$1,500,000 per occurrence

- \$2,000,000 aggregate per project

- \$2,000,000 products/ completed operations total limit

- \$1,500,000 personal injury and advertising

- Policy must include an "all services, products, or completed operations" endorsement.

- ii. Automobile Insurance

- Bodily Injury \$ 750,000 per person

- \$ 1,000,000 per accident

- Property damage not less than \$50,000 per accident

- iii. Workers Compensation and Employer's Liability Insurance

1. Worker's Compensation per Minnesota Statute Employer's Liability shall have minimum limits of \$500,000 per accident; \$500,000 per employee; \$500,000 per disease policy limit.
2. If LESSEE is exempt from the requirement of carrying Workers Compensation, it shall be required to provide LESSOR with a completed "Certificate of Compliance" (State of Minnesota form MN LIC 04) verifying its number of employees and the reason for their exemption.

b. General Insurance Requirements

- i. The policy is to be written on an occurrence basis or as acceptable to LESSOR. The Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if the policy includes errors and omissions coverage.
- ii. LESSEE must not begin work under this Lease until a Certificate of Insurance covering all of the insurance required is submitted and approved. Insurance must remain in place for the duration of the Initial Term and any renewal terms.
- iii. LESSOR reserves the right to review LESSEE's insurance policies at any time to verify that LESSOR requirements have been met.
- iv. Nothing shall preclude LESSOR from requiring LESSEE to purchase and provide evidence of additional insurance if LESSOR's risk department determines it is necessary to protect the interests of the public.
- v. Satisfaction of policy and endorsement requirements for General Liability, Auto Insurance, and Liquor Liability, of "per occurrence" and "aggregate" limits can be met with an umbrella or excess policy with the same minimum monetary limits written on an occurrence basis, providing it is written by the same insurance carrier.

c. Indemnification. LESSEE shall defend and indemnify LESSOR and its officers, agents, and employees from all claims, actions or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property, including LESSOR, resulting from any act or omission by LESSEE or LESSEE'S employees or agents in carrying out the terms of this Lease.

d. Property Insurance. LESSEE is encouraged to carry property insurance on its own property for full replacement value for all losses.

9. RIGHT OF ENTRY. At all times during the term of this Lease, LESSOR retains ownership of the Leased Property and shall have the right, by itself, its agents and employees, to enter into and upon the Leased Property during reasonable business hours or, in the event of an emergency, at any time for any legitimate purpose.

10. TERMINATION; REMEDIES

- a. Termination by mutual consent. This Lease may be terminated at any time by mutual consent of the Parties.
- b. Termination for material breach. A party claiming a material breach by the other Party may elect to terminate this Lease by providing notice of such intent to terminate to the other party, stating the date upon which the termination will be effective. Other than the notice required in this section, no written notice is required for a Party to terminate this Lease for a claimed material breach unless failure to cure after notice is specifically listed as a component of the claimed material breach.
- c. Material breach by LESSEE defined. The following events will be deemed to be material breaches by LESSEE:
 - i. Failure to pay. In the event that LESSEE fails to make any payment due LESSOR as required under this Lease and the failure continues for a period of more than 30 days after receipt of written notice of such non-payment.
 - ii. Lapse in insurance. In the event LESSEE fails to continuously maintain proper insurance as required by the Lease and the lapse continues for a period of five days after receipt of written notice of such failure.
 - iii. Failure to obtain or maintain license. In the event that LESSEE fails to obtain any permit or license required to perform under this Lease, or such permits or licenses are suspended or revoked, or allowed to expire and such failure continues for a period of 15 days after receipt of written notice of such failure.
 - iv. Breach without cure. LESSEE breaches any obligation under this Lease and such breach continues for a period of 45 days or more after receipt of written notice of such breach.
 - v. Persistent or repeated breaches. LESSEE has a pattern of persistent and repeated breaches, whether or not such breaches have been cured.
 - vi. Bankruptcy. In the event that LESSEE files a voluntary petition in bankruptcy, insolvency or a petition for reorganization, or a receiver is appointed for a substantial portion of LESSEE's property, or an order or decree of bankruptcy, insolvency, or reorganization is issued.
- d. Material breach by LESSOR defined. The following events will be deemed to be material breaches by LESSOR:
 - vii. Breach without cure. In the event LESSOR breaches any obligation under this Lease and such breach continues for a period of 45 days or more after receipt of written notice of such failure.
 - viii. Persistent or repeated breaches. LESSOR has a pattern of persistent and repeated

breaches, whether or not such breaches have been cured.

- e. No waiver implied. In the event any provision contained in this Lease should be breached by either party and said breach thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- f. Remedies cumulative. No remedy herein conferred upon or reserved to either party under this Lease is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
- g. Minnesota law; severability; venue. This Lease shall be construed under the laws of the State of Minnesota; and if any provision or portion thereof, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent provided by law. Any litigation arising out of or relating to this Lease will be venued in the State of Minnesota Second Judicial District Court, Ramsey County.

11. NONDISCRIMINATION; MISCELLANEOUS PROVISIONS

- a. Nondiscrimination. LESSEE will not discriminate against any employee or applicant for employment for work under this Lease because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same. This provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising, layoff, or termination; rates of pay or their forms of compensation; and selection for training, including apprenticeship.

LESSEE will not discriminate against any person in the use of a public accommodation because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that customers and visitors are treated during their use without regard to the same.

- b. Each of the parties agrees to exercise good faith and fair dealing with the other in its respective exercise and performance of its rights and obligations under this Lease. Whenever the LESSOR's discretion, consent or approval is herein provided or required, it shall not be unreasonably exercised, withheld, or delayed.
- c. The Parties hereto acknowledge that, pursuant to Minn. Stat. §471 .191, subd. 4, this Lease on LESSOR'S public property will remain exempt from taxation. If at any time

during the term of this Lease LESSOR'S property becomes subject to taxation as a result of any activity engaged in on the Leased Property by LESSEE, regardless of whether the activity was permitted by LESSOR, payment of the resulting taxes on LESSOR'S property shall be the sole responsibility of LESSEE.

12. NOTICES. Any notice, statements, bills, or other communications required to be given under this Lease will be deemed to be duly delivered if in writing and delivered to the other party personally, sent by facsimile with confirmed delivery sheet, sent by electronic mail with confirmation of receipt, or sent by certified mail address to the other party with return-receipt postage prepaid as follows:

AS TO LESSOR:
Special Services Manager
City of Saint Paul
400 City Hall Annex
25 W. 4th Street
Saint Paul, MN 55102

AS TO LESSEE:
Circus Juventas
Mr. Dan Butler
1270 Montreal Ave.
Saint Paul, MN 55116

or to such other subsequent address as the Parties shall designate in writing. The time of giving such notice or communication shall be deemed to be the time when the same is actually delivered to the other party.

13. ASSIGNMENT. This Lease may not be assigned without the consent of the other party and any attempt to assign without such consent will render the Lease void.

14. RECORDS, DISSEMINATION OF INFORMATION. Until the expiration of six years after the furnishing of goods, supplies or services pursuant to this Lease, upon written request, LESSEE shall make available the books, documents, records, and accounting procedures at its offices at all reasonable times for inspection or audit by LESSOR, the State Auditor, or other duly authorized representative. LESSEE agrees to abide strictly by the statutes, rules and regulations of the Minnesota Government Data Practices Act, Statute Ch. 13, as well as any other applicable state or federal statutes, rules, or regulations.

15. COMPLIANCE WITH LAWS. It is the sole and exclusive responsibility of LESSEE in the use of the Leased Property to comply with all laws, rules, regulations, or ordinances imposed by any jurisdiction affecting the use to which the Leased Property is proposed to be put. Inability or failure by LESSEE to comply with any of said laws, rules, regulations, or ordinances will not relieve LESSEE of the obligation to pay the Rent provided herein.

16. LIENS. LESSEE shall not permit mechanics' liens or other liens to be filed or established or to remain against the Leased Property or Facility for labor, materials or services furnished in connection with any additions, modifications, repairs, renewals or replacements made to the

Leased Property, or for any other reason; provided that if LESSEE shall first notify LESSOR of its intention to do so and shall deposit in escrow with LESSOR a sum of money or a bond or irrevocable letter of credit acceptable to LESSOR equal to the amount of the claim of lien, LESSEE may in good faith contest any such claims or mechanic's or other liens filed or established and in such event may permit the items contested to remain undischarged and unsatisfied during the period of such contest. If, in the opinion of LESSOR, the nonpayment of any such items subjects the Leased Property to any loss or forfeiture, LESSOR may require LESSEE to use the escrow account to promptly pay all such unpaid items and if LESSEE fails to pay from the escrow account, LESSOR may pay and charge LESSEE as additional rent.

- 17. AMENDMENTS.** No amendments to this Lease shall be effective without being reduced to writing and executed by the Parties.
- 18. WAIVER.** Any fault of a party to assert any right under this Lease shall not constitute a waiver or a termination of that right, this Lease, or any of this Lease's provisions.
- 19. CAPTIONS AND HEADINGS.** The captions and headings used herein are intended only for the convenience of the reader and are not to be used in construing this Lease.
- 20. COUNTERPARTS.** The parties may sign this Lease in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
- 21. ELECTRONIC SIGNATURES.** The Parties agree that the electronic signature of a party to this Lease shall be as valid as an original signature of such party and shall be effective to bind such party to this Lease. The Parties further agree that any document (including this Lease and any attachments or exhibits to this Lease) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Lease.
- 22. ENTIRE AGREEMENT.** It is understood and agreed that the entire agreement under this Lease supersedes all oral agreements and negotiations between the Parties relating to the subject matters herein.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year in this Lease first above-written.

LESSOR: City of Saint Paul

Its Mayor

Its City Clerk

Its Director – Office of Financial Services

Its Director – Department of Parks and Recreation

Assistant City Attorney
Approved as to Form

LESSEE: Circus of the Star

Its Executive Director

Its Board Chair

EXHIBIT A

