

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO A LEASE AGREEMENT WITH BALLET TENNESSEE FOR THE GROUND LEVEL WING OF THE JOHN A. PATTEN ARTS CENTER FOR A TERM BEGINNING JANUARY 1, 2013 THROUGH DECEMBER 31, 2013 AT THE RATE OF ONE THOUSAND FOUR HUNDRED DOLLARS (\$1,400.00) PER MONTH AND OTHER CONSIDERATIONS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Parks and Recreation be and is hereby authorized to enter into a Lease Agreement with Ballet Tennessee for the ground level wing of the John A. Patten Arts Center for a term beginning January 1, 2013 through December 31, 2013 at the rate of \$1,400.00 per month and other considerations.

Lessee and Lessor shall have the option to negotiate the extension of this Lease Agreement for one (1) additional year, commencing January 1, 2014 and ending December 31, 2014.

ADOPTED: _____, 2012.

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: October 31, 2012

Preparer: Wanda Eckstein

Department: Parks & Recreation

Brief Description of Purpose for Resolution/Ordinance:

Res./Ord. # _____ Council District # _____

A resolution is needed authorizing the Administrator of the Department of Parks & Recreation to enter into a Lease

Agreement with Ballet Tennessee for the ground level wing of the John A. Patten Arts Center for a term beginning

January 1, 2013 through December 31, 2013 at the rate of One Thousand Four Hundred (\$1,400.00) Dollars per month

and other considerations. Lessee and Lessor shall have the option to negotiate the extension of this

Lease Agreement for one (1) additional year, commencing January 1, 2014 and ending December 31, 2014.

Name of Vendor/Contractor/Grant, etc. _____

New Contract/Project? (Yes or No) _____

Total project cost \$ _____

Funds Budgeted? (YES or NO) _____

Total City of Chattanooga Portion \$ _____

Provide Fund _____

City Amount Funded \$ _____

Provide Cost Center _____

New City Funding Required \$ _____

Proposed Funding Source if not budgeted _____

City's Match Percentage % _____

Grant Period (if applicable) _____

List all other funding sources and amount for each contributor.

Amount(s)

Grantor(s)

\$ _____

\$ _____

\$ _____

Agency Grant Number _____

CFDA Number if known _____

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Approved by: _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

KOF

LEASE AGREEMENT

This LEASE AGREEMENT is executed as of the _____ day of December, 2012, by and between the CITY OF CHATTANOOGA (hereinafter referred to as "Lessor"), and Ballet Tennessee (hereinafter referred to as "Lessee"), to be effective for the term specified herein.

For the acknowledged consideration, Lessor leases to Lessee and Lessee rents from Lessor the following-described premises located in the City of Chattanooga, Hamilton County, Tennessee, to-wit:

The ground level wing of the John A. Patten Arts Center, 3202 Kelly's Ferry Road, Chattanooga, Tennessee as shown by the location map attached hereto and incorporated herein as Exhibit A.

The following stipulations are hereby declared to be a part of this Lease:

1. TERM. The term of this Lease shall be for a period commencing on January 1, 2013, and ending December 31, 2013. Lessor and/or Lessee may terminate this Lease at any time during its term upon providing sixty (60) days written notice to the other party of the intent to terminate. Lessee acknowledges that it is not entitled to any compensation in the event Lessor exercises its right to terminate this Lease, except for (a) reimbursement on an unused monthly prorated basis of any prepaid rental for the lease year in which the termination occurs, and (b) return of any movable furniture, fixtures and equipment purchased or provided by Lessee as allowed by Paragraph Nine (9) herein.

Lessee and Lessor shall have the option to negotiate the extension of this Lease agreement for one (1) additional year, commencing January 1, 2014 and ending December 31, 2014. This option may be exercised upon the mutual consent of the parties with the provision that Lessee shall give

written notice to the City at least sixty (60) days prior to the expiration of the original or renewed term of its intent to negotiate a renewal. During the additional term, all provisions and covenants of this Lease Agreement shall remain in full force and effect, with the exception that Lessor may increase the rent.

2. RENT. Lessee shall pay to Lessor and Lessor shall accept from Lessee as rental the amount of One Thousand Four Hundred (\$1,400.00) Dollars per month. As additional rent, Lessee shall keep and maintain the demised premises clean and in good repair and shall keep and maintain any improvements thereon clean and in good repair. In addition, Lessee agrees to provide at least five (5) full and five (5) partial scholarships to recreation center youth jointly identified by Lessor and Lessee. Scholarships will be awarded for dance instruction during the school year (September through May).

3. LATE PENALTY. The Lessee shall pay a late charge of ten percent (10%) of the amount of rent past due for any payment made after the fifth (5th) day of the month.

4. SECURITY DEPOSIT. The sum of Five Hundred and 00/100 (\$500.00) is hereby paid by Lessee, which is hereby acknowledged by Lessor, as security for the faithful performance by Lessee, the terms and conditions hereof. In the event Lessee faithfully complies with the terms and conditions of this Lease, the security deposit shall be refunded to Lessee without interest at the conclusion of the Lease agreement unless said deposit is applied as provided in this Section. It is expressly understood that Lessor may retain and apply said deposit or such part thereof as may be required as full or partial payment toward overdue rent or any other charges which shall remain unpaid, specifically including any damage resulting from Lessee's use of the premise. Lessee acknowledges receipt, in good condition, of the entire premises, including all of the appliances,

fixtures, furnishings, and appurtenances therein, and further agrees to return said premises and all fixtures, appliances and improvements therein in as good condition as received, including general cleanliness, upkeep and repair.

5. USE OF PREMISES. Lessee shall use these premises for no purpose other than for offices, meetings, storage, classrooms and dance education activities for Ballet Tennessee. In addition, the City of Chattanooga (“Lessor”) agrees to include Studio A (space inside large dance studio space) in the lease agreements to Baker Van Cura Ballet Center and Ballet Tennessee (“Lessee”) for no additional rent for the purpose of costume/scenery storage. All labor and materials costs for any cosmetic improvements such as painting and patching will be an expense of the lessee.

6. UTILITIES. Lessor shall pay all utilities, if any, on the premises during the term of this lease, specifically including electricity, heating and water.

7. REPAIRS, MAINTENANCE AND IMPROVEMENTS. Lessee accepts the leased premises in its present “as is” condition, and Lessor shall be under no duty to make structural or cosmetic changes to the premises. Lessee shall be responsible for all cosmetic renovations to the leased premises such as painting, installation of carpet, telephone(s), fax and computer line(s) and office equipment. If Lessee wishes to make any permanent structural changes to the leased premises, Lessee shall make a formal written proposal to the Administrator of the Department of Parks and Recreation, and said changes and work may not be commenced until Lessee has received written approval from the Administrator of the Department of Parks and Recreation. Lessee shall keep and maintain the leased premises and any improvements thereon in good order and repair, specifically including, but not limited to the air-conditioning window units. All such alterations, additions, or improvements made by Lessee, except movable furniture, fixtures and equipment put in at the

expense of the Lessee, shall inure to the benefit of Lessor and shall belong to Lessor absolutely as soon as made or installed. Lessee may remove at the termination of the Lease any movable furniture, fixtures or equipment purchases or provided by Lessee that may be moved without damage to the leased premises. Lessor shall have the right to make inspections of the leased premises at any reasonable time to insure compliance with this agreement.

8. DANCE EQUIPMENT. All dance equipment such as bars and mirrors, or add-on equipment specific to the dance studio space are and will remain the property of Ballet Tennessee during and after the term of the lease. At the expiration of the lease term or upon the termination of this lease agreement for any reason, the Lessee shall remove all dance equipment and personal property from the lease premises. Any dance equipment or personal property remaining upon the lease premises after the expiration or termination of this lease shall be treated by the Lessor as abandoned property and the Lessor may dispose of said property as it deems fit.

9. CASUALTY INSURANCE AND DAMAGE. Lessor shall be under no duty to carry any fire or casualty insurance which would cover the property of Lessee within the leased premises. If the premises are rendered totally or substantially untenable by fire or other casualty, this Lease, at the option of Lessor or Lessee, shall terminate.

10. INDEMNITY, LIABILITY, AND LIABILITY INSURANCE. Lessee assumes full responsibility for the supervision of all persons using the facilities during the aforesaid times. The Lessor shall not be responsible for any damage or injury that might be sustained by Lessee or any person using the premises at the aforesaid times under the auspices of Lessee, and the Lessee agrees to indemnify the Lessor and hold it harmless from any and all such loss, damages, or injury whatsoever as may be sustained or claimed by any person using the pool and appurtenant property

under the provisions of this Agreement.

Lessee shall conduct its activities on the premises subject to this Agreement so as not to endanger any persons or property therein. Lessee shall indemnify, save and hold harmless, and defend the Lessor, and all of its officers, agents, and employees from any and all claims resulting from losses, injuries, damages, and liabilities to persons or properties resulting, wholly or in part, from acts or omissions of the Lessee, including acts or omissions of its agents, officers, employees, guests, and/or patrons, to the full extent of its insurance coverage provided within this section. This section further requires Lessee to indemnify, save and hold harmless, and defend the Lessor, and all of its officers, agents, and employees, from any and all claims for injuries or damages resulting from Lessee's use of the premises.

Notwithstanding the foregoing, Lessee shall not be liable or held to indemnify on liability arising from any part of the premises which is under the control of, or is caused by, the act, omission, design, or construction by the Lessor. Lessee shall, at the Lessee's expense, purchase and maintain, for the benefit of the Lessor, a policy or policies of public liability and property damage insurance, issued in the name of the Lessee and naming the City of Chattanooga as an additional named insured, with limits not less than One Million and 00/100 (\$1,000,000.00) Dollars for injury to and/or death of any single person in a single occurrence, and not less than One Million and 00/100 (\$1,000,000.00) Dollars for injury to and death of more than one person in a single occurrence, and not less than One Million and 00/100 (\$1,000,000.00) Dollars for damage to property in a single occurrence. Said insurance policy shall include contractual liability coverage which shall recognize and include the indemnification provisions of this Agreement.

Said policy shall be approved by the City Attorney, which approval shall not be unreasonably withheld, which policy or policies shall be filed with the City Risk Manager before execution of this Agreement. Lessee shall, after securing approval by the City Attorney, file with the City Risk Manager a list of all insurance policies to be carried. Said insurance coverage must be maintained during the entire term life of this Agreement, plus any extension, and insurance policy shall contain a clause whereby the insurance company shall give written notice to the Administrator of the Department of Parks and Recreation or Mayor at least sixty (60) days prior to any cancellation or alteration of said policy. Any notice of cancellation or alteration of insurance policies during the term of this Agreement shall be considered as a default. Following notice of cancellation or alteration of any said insurance policy during the term of this Agreement and the failure of Lessee to cure such default, the Lessor may, upon the date of cancellation or alteration of said insurance policy, without further notice, terminate this Agreement, and Lessee shall immediately cease its operations and vacate the premises.

11. CAPITAL IMPROVEMENTS. Lessee shall notify the Administrator in writing in advance of any proposed expenditures on capital improvements and modifications to the property subject to this Lease Agreement, and no such expenditures shall be made, without the express written consent of the Administrator.

12. LESSORS USE OF PREMISES. It is expressly understood and agreed that the Department of Chattanooga Parks & Recreation can utilize the large performance studio (G) for public programs or classes which are suitable activities for the dance flooring. These programs will be scheduled at times that do not conflict with the schedule provided by Lessee. Both Lessee and

Lessor will operate in good faith to arrange a time which is mutually convenient to both parties for the use of premises as set forth in this provision.

13. ADDITIONAL LESSEE OBLIGATIONS. Lessee shall develop special programs for the city's recreational department, i.e. talent identification programs, special workshops or other programs appropriate for the public. The development of the special programs shall be a cooperative effort with the cultural arts section of the Department of Parks and Recreation.

Lessee shall also provide a copy of the tenants' reports and annual budget to the Administrator of the Department of Parks and Recreation within thirty (30) days of said budget approval.

14. WAIVER OF RIGHTS. Failure of the Lessor or Lessee to insist upon strict performance of any of these terms, conditions, and covenants herein contained shall not be deemed to be a waiver of any rights or remedies that either party may have, and said failure shall not be deemed a waiver or any subsequent breach in the terms, conditions, and covenants herein contained, except as may be expressly waived in writing.

15. BREACH OF CONTRACT. In the event of any breach of any of the terms or provisions of this agreement, Lessor shall, in addition to all other recourse, have the right to immediately terminate this agreement, to enter and obtain possession of the entire premises, and to remove and exclude all property of the Lessee therefrom. If it should become necessary for the Lessor to employ an attorney to assist any right or enforce any obligation under this agreement, or any of them, Lessor shall be entitled to recover, in addition to all other costs and expenses, the reasonable costs and charges of such attorney.

16. HOLDOVER PROVISION. If the Lessee remains in possession of the leased premises after the expiration of the term for which it is a lessee, and Lessee continues to pay the rent (as specified in Paragraph Two (2) of this agreement) and Lessor agrees to accept said rent, such possession shall be construed as creating a month-to-month tenancy and not as a renewal or extension of this lease; but such month-to-month tenancy shall not continue for more than one (1) year.

18. AUDIT. The City or its assign may audit all financial and related records (including digital) associated with the terms of the contract or agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Lessee. The City may further audit any Lessee records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest.

The Lessee shall at all times during the term of the contract or agreement and for a period of five years after the end of the contract, keep and maintain records of the work performed pursuant to this Contract or Agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Lessee. Documents shall be maintained by the Lessee necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Lessee shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Lessee.

Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The Lessee shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

17. ENTIRE AGREEMENT. This Lease Agreement contains all of the agreements between the parties herein and may not be modified in any manner unless by agreement in writing signed by the parties hereto or their respective successors in interest.

18. NOTICES. All notices and demands authorized or required to be given to Lessee hereunder may be served upon Lessee in person or by mail addressed to Ballet Tennessee at the leased premises. All notices and demands authorized are required to be given to Lessor hereunder may be served upon the Administrator of the Department of Parks and Recreations for the City of Chattanooga.

19. SEVERABILITY. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected thereby.

20. NON-DISCRIMINATION PROVISION. Lessee agrees to comply with all federal, state and local non-discrimination provisions that the City of Chattanooga is under a duty to comply with under federal, state or local law when utilizing this City facility. Lessee agrees not to discriminate against any participant on the basis of race, color, religion, sex, age or national origin.

Lessee further agrees to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.

EXECUTED the day and month above stated.

LESSOR:

CITY OF CHATTANOOGA, TENNESSEE
PARKS AND RECREATION DEPARTMENT

By: _____
LARRY ZEHNDER, ADMINISTRATOR

LESSEE:

BALLET TENNESSEE

By: _____

Printed Name: _____

Title: _____