

ALLEN

DYER

DOPPELT

MILBRATH &

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April 16, 2014

**BY HAND DELIVERY**

David P. Hopstetter, Esq.  
Assistant City Attorney  
City of Orlando  
400 S. Orange Avenue  
Orlando, FL 32801

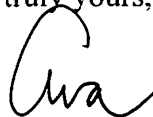
Re: Lease between Orlando Ballet, Inc. and City of Orlando for  
610 N. Lake Formosa Drive, Orlando, Florida 32803

Dear David:

I'm enclosing three original copies of the Lease between the Orlando Ballet, Inc. and the City of Orlando for 610 N. Lake Formosa Drive, Orlando, Florida 32803. I've signed all three copies. When the lease is fully executed, can you please forward us a fully executed original?

Thank you for your exceptional work on this project. We look forward to a long and fruitful relationship with the City.

Very truly yours,



Ava K. Doppelt  
Chair, Orlando Ballet, Inc.

**Orlando Office (Main)**  
255 South Orange Ave.  
Suite 1401  
Orlando, FL 32801  
Mail To: P.O. Box 3791  
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David P. Hopstetter, Esq.  
City of Orlando  
April 16, 2014  
Page 2

cc: Ms. Laurie Botts  
Ms. Rebecca Sutton  
Mr. Frank Billingsley  
Ms. Cassandra Lafser  
Mr. Ronald Legler  
Ms. Katherine Fabian  
Mr. Jose Fajardo  
Ms. Heidi Zerivitz  
Rosemary O'Shea, Esq.

## **ORLANDO BALLET LEASE**

**THIS ORLANDO BALLET LEASE** (the "Lease") has been executed to become effective as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **CITY OF ORLANDO, FLORIDA**, a Florida municipal corporation, whose mailing address is 400 South Orange Avenue, Orlando, FL 32801 (the "Landlord" also sometimes herein referred to as the "City"), and the **ORLANDO BALLET, INC.**, a Florida corporation not for profit, whose mailing address is 415 East Princeton Avenue, Orlando, FL 32803 ("Tenant").

### **RECITALS**

A. Landlord owns the land and improvements thereon ("Center") located at 610 N. Lake Formosa Drive, Orlando, Florida 32803 in the Orlando Loch Haven Park ("Park")

B. Tenant, as the resident professional ballet company, is in need of a facility within which to operate a professional ballet company and school and provide related educational opportunities for the benefit of the residents of the City of Orlando.

C. Tenant has requested Landlord to lease to Tenant a portion of 610 N. Lake Formosa Drive as more specifically described in **Exhibit "A"** attached hereto and made a part hereof.

D. Landlord is willing to lease the Center to Tenant at a nominal charge so long as Tenant provides on a constant and continuing basis the benefits to the City of Orlando as outlined herein.

E. The parties also recognize the need for an outdoor forum for providing ballet performances and social events for community residents, such as a place to hold weddings and other outdoor events. For this reason the parties hope to utilize the City's lot adjacent to the east side of the Premises where through a cooperative agreement between the parties, either party will host or otherwise sponsor such activities. In the near future the parties intend to enter into such an agreement, whereby Tenant may construct the necessary improvements and jointly manage with the City such activities at that location.

**NOW, THEREFORE**, in consideration of the covenants herein made and the acts to be performed by the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, Landlord leases to Tenant and Tenant leases from Landlord the Center on the following terms and conditions:

### **ARTICLE 1. DEFINITIONS**

**Section 1.01 Definitions.** The terms defined in this **Article 1** shall have the following meanings in this Lease:

“Alterations” means any improvements made to the Facilities under the conditions set forth in **Section 8.02** hereof.

“Authorized Ancillary Uses” means any of the ancillary uses authorized by Landlord for Tenant’s use of the Center, as described in **Section 6.06**, not within the Intended Use.

“Center” means the Premises and Facilities.

“Due Diligence Period” means the seventy-five (75) day period starting on the Lease Commencement Date during which Tenant may perform such inspections and other due diligence investigations at the Center as Tenant deems appropriate, including environmental, zoning and other matters related to Tenant’s intended renovations and construction of new improvements pursuant to **Section 2.06**.

“Facilities” means the building located on the Premises and fixtures contained therein, the parking lots east and west of the building, and all other improvements currently constructed or to be constructed in the future on the Premises.

“First-Class or First-Class Condition” means the standard to which the Facilities shall be altered or additions constructed, reflecting the level of design quality contained in the conceptual drawings attached hereto and made a part hereof as **Exhibit “B”**. Additionally, the building materials, fixtures, design and systems generally shall always be modern, current and updated from time to time in a manner similar to that of other adequately funded professional ballet facilities reasonably selected by Landlord. Should Tenant elect not to make improvements to the Facilities as authorized pursuant to Tenant’s Due Diligence rights set forth in **Section 2.06**, Tenant shall submit an alternative maintenance standard for Landlord’s approval, which shall not be unreasonably withheld.

“Force Majeure” means a cause beyond the reasonable control of a party, which makes it impossible for that party to timely perform its obligations under this Lease, including but not be limited to Acts of God and as further described in **Section 18.02**.

“Green Space” means the Premises, less and except that area: (i) within two (2) feet of the exterior walls of the building on the Premises plus the area the building occupies, (ii) within two (2) feet of the exterior walls of any Parks Board-approved improvements plus the area the improvements occupy; and (iii) fenced-in and connected to the building at the rear of the building as shown on **Exhibit “C”**.

“Hazardous Substances” means any hazardous or toxic substances, material, or waste which is or becomes regulated by any governmental authority as more particularly described in **Section 8.04**.

“Intended Use” means the use for which Tenant is authorized to engage in at the Center as specifically defined in **Section 6.01**.

“Landlord Event of Default” means any of those events described in **Section 11.03** hereof, whereby Landlord has failed to honor the requirements of the Lease, after any applicable notice from Tenant and opportunity to cure, which remains uncorrected.

“Landlord Termination Date” means the date the Lease will terminate, as a result of Landlord’s election due to a Tenant Event of Default, as provided in **Section 11.02**.

“Lease” means this agreement conveying to Tenant possession of the Center for a term of years under the terms and conditions set forth herein.

“Lease Commencement Date” means the date on which the Term commences, as described in **Section 2.01** hereof.

“Lease Expiration Date” means the date on which the Term expires as described in **Section 2.01** hereof.

“Lender” means a federal or state bank or trust company, insurance company, pension fund or trust, credit union or similar lending institution authorized to make leasehold mortgage loans in the State of Florida.

“Lender Undertaking” means a Lender’s written undertaking delivered to and in favor of Landlord, whereby Lender agrees to cure a Tenant Event of Default, which cannot practicably be cured, without Lender’s taking possession of the Center, as further described in **Section 15.03 (c) (i)** hereof.

“Minimum Performance Requirements” means the minimum number of activities or programs each year Tenant is required to complete in a professional manner, as specifically listed in **Section 6.02**.

“Mortgage” means any mortgage, deed of trust and/or assignment of leases given as security for an indebtedness of Tenant, encumbering the Lease, securing a loan advanced solely for the purpose of enabling Tenant to fulfill its responsibilities and obligations of this Lease, as further described in **Article 15** hereof.

“Option Exercise Period” means the time period described in **Section 3.02** within which Tenant may exercise its Options to Renew.

“Options to Renew” means Tenant’s options to renew this Lease as provided in **Article 3**.

“Park” means Loch Haven Park, Orlando, Florida.

“Parks Board” means the City’s Parks and Recreation Board.

“Plans and Specifications” means, collectively, the Plans and Specifications for any additions to renew or remodel the Center or for construction of additional improvements to be used for the Intended Use, as further described in part in **Section 8.02 (c)** hereof.

“Premises” means the real property owned by Landlord as more specifically described in **Exhibit “A”** hereto, upon which the Facilities are located.

“Rent” means the payments to be made by Tenant to Landlord pursuant to **Article 4** hereof, as well as all other payments to be made by Tenant pursuant to Tenant’s net lease

obligations, as more specifically described therein.

“Restrictions” means those restrictions on title encumbering the Center as described in **Section 2.01**.

“Restoration” means the restoration, repair, replacement, rebuilding or alteration of the Facilities following a casualty or a partial taking (including, without limitation, the cost of all temporary repairs for the protection of the Facilities pending the completion of permanent restoration, repair, replacement, rebuilding or alteration), to a complete architectural unit of as nearly as possible the same value, condition and character that existed immediately prior to such casualty or taking, to the extent permissible under applicable law, including without limitation, all zoning and use requirements and regulations.

“Special Benefit Programs” generally means programs designed for and offered to City of Orlando residents, which shall include discounts and free performance benefits to residents of the City as further described in **Section 6.01**.

“Taxes” means all ad valorem, leasehold, sales and personal property taxes, assessments and other governmental charges related to the Center and that otherwise arise or are incurred for or during the Term, as further described in **Section 5.02** hereof.

“Tenant Event of Default” means any of those events described in **Section 11.01** hereof, whereby Tenant has failed to honor the requirements of the Lease, after any applicable notice from Landlord and opportunity to cure, which remains uncorrected.

“Tenant Termination Date” means the date the Lease will terminate, as a result of Tenant’s election due to a Landlord Event of Default, as provided in **Section 11.04**.

“Term” means the period of time beginning on the Lease Commencement Date and ending on the Lease Expiration Date or earlier termination as a result of actions taken as authorized herein, or as may be extended pursuant to the Options to Renew.

“Unsuitable for its Intended Use” means with regard to any casualty loss or condemnation of the Center, a state or condition of the Premises and Facilities such that, in the good faith judgment of Tenant, reasonably exercised and evidenced by the resolution of the board of directors or other governing body of Tenant, due to casualty damage or loss through condemnation, the Premises and Facilities cannot function as an integrated unit for the Intended Use consistent with standards applicable to a well maintained and operated Ballet performance company and school.

## **ARTICLE 2. CONVEYANCE & POSSESSION**

**Section 2.01 Conveyance and Term.** In consideration of Tenant’s agreement to provide the services to the City of Orlando as described in the Intended Use provisions contained in **Article 6**, the payment of nominal Rent and Tenant’s other promises and covenants set forth in this Lease, Landlord hereby leases to Tenant and Tenant accepts and leases from Landlord, the Center, subject to any and all encumbrances, conditions, covenants, easements, restrictions, right-of-ways, and all other matters of any nature affecting the Center (in each case whether or not of

record), such matters as may be disclosed by an inspection or survey, and all zoning, land use, subdivision, and all other laws, rules, regulations and judicial or administrative orders now or hereafter applicable to the Center or any part thereof or any use or occupancy thereof (herein collectively called "Restrictions"). The term of this Lease shall be for fifty (50) years (the "Term"), unless sooner terminated in accordance with other provisions of this Lease, commencing at 12:01 a.m. on \_\_\_\_\_, 20\_\_ (the "Lease Commencement Date") and ending at 11:59 p.m. on \_\_\_\_\_, 20\_\_ (the "Lease Expiration Date"). Tenant shall have the right to renew the Lease in accordance with the Options to Renew set forth in **Article 3**.

Based upon best information and belief, the parties acknowledge that Lake Formosa and its submerged lands are owned by the State of Florida; however, Landlord has no objection to Tenant's applying to the State for the use of part of the lake to construct improvements, such as a dock, which will allow Tenant to engage in the Intended Use on the Lake. Should Tenant do so, Tenant shall be solely responsible for the maintenance, operation, safety and care of that property and shall hold harmless and indemnify Landlord from and against any claim, penalty, loss, damage, charge, liability or expense (including, without limitation, reasonable attorney's fees, both at trial and on any appeal or up to any settlement), threatened, sustained or incurred by reason of, directly or indirectly, (a) the death or loss of or damage or injury to person or property resulting from or caused by or claimed to have resulted from or been caused by: (i) the construction, use, operation, condition or lack of repair of Tenant's improvements on the lake at any time or times, (ii) use of Tenant's improvements on the lake by anyone, and (iii) any act or thing done or omitted to be done by Tenant, its agents, employee, servants, invitees, or, without limitation, any other person or persons other than Landlord or its employees.

Landlord hereby reserves the following rights with respect to the leasehold interest granted Tenant in this Lease:

- (a) A nonexclusive easement for use of the Green Space by the general public for access, ingress and egress and quiet peaceful passive recreational use, while viewing and enjoying the Park and Lake Formosa. The public's right to use the Green Space shall be subject and inferior to Tenant's right to use the Green Space to conduct special events, so long as such activities are coordinated in advance and approved by the Parks Board. The right of the general public to use any trails, bike paths or sidewalks on the Premises shall be co-equal to Tenant's right to use them.
- (b) Approval or denial in Landlord's sole and absolute discretion regarding the construction or installation of any additional fencing around or on the Premises.
- (c) For ninety (90) days following the Lease Commencement Date Landlord will continue in joint possession of the Center with Tenant, solely to the extent necessary to implement, manage and otherwise facilitate all events previously scheduled at the Center by Landlord. During that time period, Landlord will retain all revenues generated from such events. At this same time Tenant shall otherwise have possession and control of the Center with all privileges, responsibilities and obligations, including but not limited to arranging and paying for all utilities, to the same extent as if Landlord were not in possession of the

Center for any reason. Tenant shall complete its renovations/inspections during the time of joint possession in such a manner so as not to disrupt any scheduled events.

- (d) Beginning on ninety-first day after the Lease Commencement Date, Tenant shall assume management and control of all then yet to be performed special events listed on **Exhibit "D"** attached hereto and made a part hereof and any additional contracts entered into subsequent to the date of this Lease to be performed subsequent to Tenant's taking over management of such events ("Event Contracts"). On the "turn over" date, the Events Contracts and the fees to be paid pursuant to such contracts shall be assigned by Landlord to Tenant.

**Section 2.02 Tenant Parking.** Tenant shall have exclusive possession and control of the parking lots on the Premises, except as otherwise provided herein. The parking lots are an amenity of the Park to the extent that they shall be preserved or re-constructed as part of any Tenant construction-expansion plan, except when approved by Landlord for the reasonable improvement/expansion needs of Tenant, such approval not to be unreasonably withheld. Tenant shall make arrangements with the Orlando Science Center for use of the Science Center Parking Garage for any additional Tenant parking needs.

From time to time, occupants in the Park hold special events causing the need for overflow parking, which may entail from time to time use of Tenant's parking lots. Upon forty-five (45) days' prior notice to Tenant and Tenant's approval, at such times, parking in Tenant's parking lots shall be on a first-come first-served basis. On terms generally available to all entities located in the Park and payment by Tenant of the usual and customary fees charged for use of such facilities, Tenant shall have nonexclusive access to parking in the Park for special events. All special events which "spill over" into the Park must be coordinated with and approved by the Parks' Board a minimum of forty-five (45) days in advance. Parking coordination is necessary for any uses scheduled for the Center that would have an impact on the green spaces of the Park or which will likely require use of more than Tenant's normal on-site parking areas. Tenant agrees to abide by the current "Guidelines For Special Events For Use of Loch Haven Park" as amended from time to time, applicable to all tenants within the Park.

**Section 2.03 Possession and Right of Entry.** Commencing on the Lease Commencement Date, subject to Tenant's faithful performance of Tenant's covenants and conditions herein contained and further subject to Landlord's reserved right of joint possession for ninety (90) days as provided in **Section 2.01**, Landlord has delivered to Tenant possession of the Center subject to the Restrictions on the Premises in effect on the Lease Commencement Date. Upon at least ten (10) days written notice, Landlord shall have the right, but not the obligation at any time and from time to time to inspect the Center to verify Tenant's compliance with the terms and conditions of this Lease.

**Section 2.04 Ownership of Center and Peaceful Enjoyment.** Landlord represents and warrants that it has full right, authority and power to lease the Center to Tenant for the Term. So long as Tenant shall abide by the terms of the Lease, Tenant shall be entitled to quiet, undisturbed and continued possession of the Center free and clear of any claims against Landlord



and all persons claiming through Landlord for the Term, except to the extent otherwise provided herein.

**Section 2.05 "As Is" Condition of Center.** Subject to Tenant's right to modify its construction obligations set forth in **Section 2.06**, Tenant acknowledges receipt and delivery of possession of the Center. Tenant has examined and otherwise has full and complete knowledge of the condition of the Center and has found the same to be satisfactory for its purposes hereunder. Tenant is leasing the Center "AS IS" in its present condition. Tenant waives any claim or action against Landlord in respect of the condition of the Center. LANDLORD MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN RESPECT OF THE CENTER, OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE OR OTHERWISE, AS TO THE QUALITY OF THE MATERIALS OR WORKMANSHIP THEREIN, LATENT OR PATENT, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY TENANT. TENANT ACKNOWLEDGES THAT IT HAS INSPECTED THE CENTER AND IS SATISFACTORY TO TENANT IN ALL RESPECTS.

Without limiting the foregoing, Tenant acknowledges and agrees that neither Landlord, nor any brokers, agents, employees or representatives of Landlord have made any representations or warranties on which Tenant is relying as to matters concerning either the Premises or Facilities including, without limitation, the land, improvements, development rights, taxes, bonds, permissible uses, covenants, conditions and restrictions, water or water rights, riparian rights, topography, utilities, zoning, soil, subsoil, the purposes for which either the Premises or Facilities are to be used, drainage, environmental or building laws, rules or regulations or any other representations or warranties of any nature whatsoever, and Tenant hereby assumes all risks relating to any of the foregoing and to all matters relating to the use and occupancy of the Premises and Facilities, whether known or unknown, or foreseeable or unforeseeable.

**Section 2.06 Tenant Due Diligence Period.** Tenant shall have a Due Diligence Period of seventy-five (75) days starting on the Lease Commencement Date within which to investigate all conditions at the Center, for the purpose of determining whether the Center is suitable for the Alterations and other improvements Tenant has agreed to make in **Article 7** of this Lease. In the event Tenant determines that it is not appropriate to proceed with such work, Tenant may elect not to make such improvements by delivering written notice thereof to Landlord prior to expiration of the Due Diligence Period. Notwithstanding this right, Tenant shall under no circumstances be relieved of the maintenance and repair obligations imposed in this Lease, including those related to the right to exercise options to renew this Lease. Tenant's right to terminate such obligations shall not also include a right to terminate this Lease.

Should Tenant fail to deliver to Landlord prior to expiration of the Due Diligence Period written notification that it will not renovate or construct the improvements described in **Article 7**, the right to terminate such obligations shall be forever waived and of no further force or effect. Should Tenant timely deliver to Landlord written notice that Tenant will not renovate and construct the improvements, Landlord shall have the right in its sole and absolute discretion to terminate this Lease within one (1) year after Landlord's receipt of such notification, without liability or obligation to Tenant for any reason.

### **ARTICLE 3. OPTIONS TO RENEW**

**Section 3.01 Renewal Options.** Tenant shall have two (2) Options to Renew this Lease on the terms and conditions contained in this Article. Should Tenant timely exercise the first Option to Renew, the Term of the Lease shall be extended for twenty-five (25) years ("First Renewal Term"). Should the parties have extended the Term of the Lease for the period of the first Renewal Term, Tenant may timely exercise the second Option to Renew the Term of the Lease, for an additional twenty-four (24) years ("Second Renewal Term").

**Section 3.02 Option Exercise Period.** The time period within which Tenant may exercise an Option to Renew this Lease shall begin one (1) year immediately prior to expiration of the Term (or the extended Term, if Tenant has previously exercised the first Option to Renew), and end six (6) months prior to the Lease Expiration Date (or extended term Lease Expiration Date, as the case may be) ("Option Exercise Period"). Each Option to Renew may be exercised only so long as Tenant is not in default under the Lease and is current in all Lease obligations during the Option Exercise Period. Should Tenant not meet those conditions while the Option Exercise Period is running, the Option Exercise Period shall still expire at the end of that time period. TIME IS OF THE ESSENCE.

**Section 3.03 Manner of Exercise of Option.** In order to exercise each Option to Renew, Tenant must provide Landlord written notice of its intent to exercise the Option to Renew delivered to Landlord during the Option Exercise Period. Tenant must also deliver to Landlord at the same time a building inspection report issued by a license commercial building contractor acceptable to Landlord in its reasonable discretion, certifying that as of the date of Tenant's written notice of intent to renew, all buildings on the Premises: (1) have a remaining useful life of at least twenty-five (25) years, (2) are in First-Class Condition, and (3) able to be used for the Intended Use.

**Section 3.04 Other Renewal Terms and Conditions.** All terms and conditions of the Lease shall remain the same not only during the original Term of the Lease, but also the First and Second Renewal Terms, except for the Lease Expiration Dates.

### **ARTICLE 4. RENT**

**Section 4.01 Rent.** In consideration of the aforesaid demise and lease of the Center, Tenant agrees to pay Landlord or other third parties as applicable, rent during the Term as provided in this Article 4.

**Section 4.02 Annual Rent.** Tenant shall pay as annual rent the amount of One and No/100 Dollars (\$1.00) in advance for the entire initial term of this Lease, plus any applicable tax, all of which shall be paid on the Lease Commencement Date. Tenant shall pay such additional Rent from time to time as further provided in this Article and Article 5.

It is the purpose and intent of Landlord and Tenant and they agree that Rent payable hereunder shall be absolutely net to Landlord so that this Lease shall yield to Landlord the Rent specified, free of any charges, assessments, or impositions of any kind charged, assessed, or imposed on or against the Center, and without abatement, counterclaim, deduction, defense,

deferment or setoff by the Tenant.

**Section 4.03 Form of Payment.** All payments of rent and other sums required to be made to Landlord shall be in lawful money of the United States of America and shall be paid to Landlord at the City, 7<sup>th</sup> Floor, City Hall, 400 South Orange Avenue, Orlando, Florida 32801, Attention: Real Estate Division Manager, or to such other person and/or at such other place as provided in this Lease or as Landlord may designate in writing from time to time.

**Section 4.04 Late Payments.** In the event Tenant fails to pay any installment of rent or other sums due Landlord within fifteen (15) days after such installment or payment is due, Tenant shall, upon demand, pay Landlord a late charge of Fifty and No/100 Dollars (\$50.00) or five percent (5%) of the payment due, whichever is greater. Such late charge is to defray the administrative cost, inconvenience and other expenses, which Landlord will incur on account of such delinquency. Furthermore, any rent or other sum due under this Lease not paid when due shall bear interest at the highest rate allowed by law hereafter until such time as payment thereof is made.

**Section 4.05 General.** The term "Rent" when used in this Lease shall include the Annual Rent and for purposes of enforcement of this Lease all other sums required to be paid by Tenant under its "net lease" obligations, including but not limited to its obligation to pay all sums as described in **Article 5** and any other provision of this Lease. All Rent due Landlord shall be paid to Landlord without demand, setoff, or deduction whatsoever, except as specifically provided in this Lease, at Landlord's address listed in **Section 4.03** hereof, or at such other place as called for under the terms of this Lease. In addition, Tenant shall pay directly to third parties all sums of Rent required under **Article 5** from time to time as set forth in **Article 5**. Tenant's agreement to pay Rent is a covenant independent of Landlord's obligations under this Lease.

## **ARTICLE 5. PAYMENT OF EXPENSES AND OBLIGATIONS**

**Section 5.01 Net Lease.** This is a net lease in that Tenant is responsible for paying all expenses and obligations of the Premises and Facilities now or hereafter related thereto, which come due or are incurred during the Term. Landlord shall not be expected or required to pay any such charge, assessment or imposition, or be under any obligation or liability hereunder except as herein expressly set forth. All costs, expenses and obligations of any kind relating to the maintenance and operation of the Center, including all alterations, repairs and replacements as herein provided, which may arise or become due during the Term shall be paid by Tenant. The Landlord shall be indemnified and saved harmless by Tenant from and against such costs, expenses and obligations.

### **Section 5.02 Payment of Taxes.**

(a) In a timely manner, Tenant will pay to all applicable taxing authorities or Landlord as required by law, when due all ad valorem, sales and personal property taxes, assessments and other governmental charges that are related to the Premises or Facilities and that otherwise arise or are incurred for or during the Term ("Taxes"). Landlord agrees to reasonably cooperate with Tenant in seeking exemptions from tax obligations in accordance with Tenant's 501(c)(3) tax exempt status. If during the Term the methods of taxation are altered causing any

of the taxes or charges to be measured based on the Premises or Facilities and to be imposed on Landlord, Tenant shall also pay such taxes in a timely manner.

(b) Tenant shall have the right to contest the validity or the amount of any Taxes by such appellate or other proceedings as may be appropriate in the jurisdiction, and may, if applicable, defer payment of such obligations if payment would operate as a bar to such contest, and, if applicable, pay same under protest, or take such other steps as Tenant may deem appropriate, provided, however, that Tenant indemnifies and holds harmless Landlord from any expense (including reasonable attorney's fees for trial, appellate, bankruptcy and administrative proceedings) or liability arising out of such contest and pursues such contest in good faith with due diligence, posting any bond or security required by law in connection with such contest, giving Landlord written notice of its intention to contest, and taking no action which shall cause or allow the institution of any foreclosure proceedings or similar action against the Premises. Landlord shall cooperate in the institution and prosecution of any such proceedings initiated by Tenant and shall execute any documents which Landlord may reasonably be required to execute and shall make any appearances, which Landlord may reasonably be required to make in connection with such proceedings. Tenant shall be entitled to receive all refunds from the taxing authorities attributable to the Premises and Facilities for any period for which Tenant has paid Taxes, after deducting therefrom payment of all of Landlord's and Tenant's expenses incurred in any such proceeding in which a refund is paid. If no refund shall be secured in any such proceeding, the party instituting the proceeding shall bear the entire cost, or if Landlord institutes the proceeding at Tenant's request, Tenant shall bear the entire cost.

(c) In the future during the Term should a new or otherwise modified tax be imposed on, or for the use of or otherwise related to the Premises or Facilities, Tenant shall also pay such taxes when due to either the appropriate taxing authority or Landlord as required by law.

(d) Tenant shall pay and discharge, when due, all taxes assessed during the Term against any leasehold interest or personal property of any kind owned by or placed on the Premises by Tenant.

(e) Except for Taxes, nothing shall require Tenant to pay or reimburse Landlord for the payment of (i) any tax imposed upon the sale of all or a part of the Center by Landlord or (ii) any tax, assessment, charge or levy imposed or levied upon or assessed against any property of Landlord other than the Center or any income to, or business activity of, Landlord not in connection with the Center. Nothing herein shall require Tenant to pay or reimburse Landlord for the payment of any tax if Tenant's payment of such tax or reimbursement of Landlord for the payment of such tax would violate any applicable law.

(f) Tenant shall deliver to Landlord official receipts that show payment of all taxes and any other charges required in this Article 5 or notice that Tenant is contesting such tax or is exempt from such taxes to the same address where notices are to be delivered in accordance with this Lease. Tenant shall pay every tax or other charge required under this Article and deliver receipts for payments thereof to Landlord or notice of contest or exemption at least thirty (30) days prior to the date they would otherwise become delinquent.

(g) Should Tenant fail, refuse or neglect to pay any tax or other charges under this Article, Landlord may pay them unless Tenant has provided notice it is contesting such tax or is exempt from such tax. On Landlord's demand, Tenant will repay Landlord all amounts Landlord has paid, plus expenses and attorneys' fees reasonably incurred in connection with such payments, plus interest on all amounts at the highest rate allowed by law. On the day Landlord demands repayment or reimbursement from Tenant, Landlord is entitled to collect or enforce these payments in the same manner as a payment of Rent. Landlord's election to pay the taxes will not act as a waiver of Tenant's default.

**Section 5.03 Utilities and Other Related Fees.** Tenant shall be liable for and pay directly all charges, rents and fees (together with any applicable taxes or assessments thereon) when due for water, gas, electricity, air conditioning, heat, sewer, refuse collection, stormwater fees, telephone, satellite and cable television and any other utility charges or similar items in connection with the use or occupancy of the Premises and Facilities during the Term (collectively, the "Utility Charges"). Tenant shall be responsible for one hundred percent (100%) of the Utility Charges for the Center. Landlord shall not be responsible or liable in any way whatsoever for the impairment, interruption, stoppage, or other interference with any utility services to the Center. In any event no interruption, termination or cessation of utility services to the Center shall relieve Tenant of its duties and obligations pursuant to this Lease, including, without limitation, its obligation to pay all Rent as and when the same shall be due hereunder provided, however, any such interruption which interferes with Tenant's Intended Use for sixty (60) consecutive days through no fault of Tenant shall entitle Tenant to terminate this Lease upon written notice to Landlord with no further obligations hereunder of either party to the other.

**Section 5.04 Other Charges, Costs or Expenses.** If in the future any other type, kind or the extent of any other charges, costs or expenses of any kind or nature should arise related to the use and occupancy of the Premises or Facilities, Tenant shall be solely responsible for payment thereof, it being the express intent of the parties that Tenant shall be responsible for all such items except to the extent specifically limited in this Article, the same as if Tenant were the sole owner of the Premises.

## **ARTICLE 6. USE OF CENTER**

**Section 6.01 Intended Use of Center.** Tenant shall operate a professional ballet company and ballet school on the Premises, providing ballet and other similar forms of dance as Tenant deems appropriate generally described as follows:

- (a) Tenant shall use the Center for housing its professional ballet company, for ballet rehearsals and performances and to operate its dance school, donor receptions and fund-raising events, administrative offices, rehearsal studios, costume preparation, stage props preparation and storage and the operation of gift shops, food and beverage facilities, ticket offices and other activities associated with or incidental to a professional dance company and the operation of a professional dance program and dance school. Storage of costumes, props and other items needed for

performances not then currently in use shall be stored in an appropriate off-site warehouse facility.

(b) Tenant shall continue to provide educational programs, which include the following:

1. Dance training and other programs for under-privileged youth and children with disabilities.
2. Master classes targeting dance students currently enrolled in Orange County Public Schools.
3. Adult dance classes for fitness, technique and ballet education.
4. National initiatives with other professional dance companies such as the American Ballet Theatre to introduce dance to the various diverse populations of the City of Orlando.
5. Lecture series/chat-backs using local, national and international experts in the field of dance and movement.
6. Free performances for the public.
7. Movement classes targeting senior citizens and other groups as well as instruction for all groups in other forms of dance, movement and expression.
8. Low cost use of the Center for community groups and non-profits to include event, rehearsal or performance space.
9. Free community open house events that include performances, rehearsals, classes, lectures, etc.
10. Exhibitions, tours, lectures, and dance-related classes for the general public as well as other uses normally and customarily engaged in by dance schools.
11. Special Benefit Programs, which shall generally mean programs designed for and offered to City of Orlando residents, which shall include discounts and free performance benefits to residents of the City.

**Section 6.02 Minimum Performance Requirements.** While it is contemplated that Tenant will over time make certain improvements and additions to the Center, including but not limited to those described in **Article 7**, the parties acknowledge that this obligation does not constitute the main reason Landlord is willing to enter into this Lease. Landlord has agreed to lease the Center to Tenant to provide residents of the City of Orlando continuing access to

professional ballet performances and schools as well as to keep the Center open to the public for rental for social events, weddings, reunions, etc. Tenant's substantial services in fulfilling the Minimum Performance Requirements set forth herein would be commensurate with the payment of fair market rent for use of the Center in a commercial enterprise. Tenant shall maintain throughout the Term of this Lease and any extensions thereof, the following minimum number of activities or programs each year to be provided in a professional manner, as Tenant's Minimum Performance Requirements, under this Lease:

- (a) The Orlando Ballet School will maintain at a minimum a total of two hundred fifty (250) active students each year, to be further detailed in the Annual Program Plan.
- (b) Tenant's Professional Company shall produce six (6) performances annually, three (3) of which will be presented in the Dr. Phillip's Performing Arts Center.
- (c) Tenant will hold at least six (6) "community outreach programs" as described in Section 6.01 (b) 9-12 to be specified in the Annual Program Plan.
- (d) Maintain a minimum of two (2) Special Benefit Programs each year.
- (e) Tenant shall hold a minimum of two (2) city-wide open houses each year to be further defined in the Annual Program Plan to encourage participation by Loch Haven Park Community Arts neighbors, city residents and neighbors.

Either party shall have the right to request changes to the Minimum Performance Requirements, which shall not be granted unless the other party agrees. Should both agree, the modification shall be made only after amendment to this Lease approved by each party's governing board. Failure to fulfill the Minimum Performance Requirements either in any consecutive three (3) years or in three (3) years out of any seven (7) years shall be a default under this Lease, without further notice and opportunity to cure.

**Section 6.03 Annual Program Plan Requirements.** The parties acknowledge and agree that an essential requirement for the continuation of this Lease is that Tenant must be and remain a substantial contributor to the betterment of the City of Orlando throughout the entire term of this Lease. Each year Tenant shall meet with the Real Estate Division Manager of the City for the purpose of outlining the program that Tenant shall adhere to during the following year ("Annual Program Plan"). The Annual Program Plan shall contain Tenant's specific goals, performances, classes and other activities to be held at the Center and otherwise in the City, all in compliance with the Intended Use. Final approval of the Annual Program Plan must be granted upon verification that it fulfills all of the Minimum Performance Requirements listed **Section 6.02** hereof. Upon City's approval of the Annual Program Plan, Tenant agrees to abide by and fulfill all requirements contained therein in a timely manner, unless otherwise consented to in writing by the Real Estate Division Manager.

**Section 6.04 Intended Use Reporting Requirements.** On a biannual basis or as otherwise reasonably required by Landlord, Tenant shall provide written reports to Landlord documenting the activities conducted at the Center by Tenant and all third-parties. The reports shall include but not necessarily be limited to (i) a schedule of all regular and special events, and exhibits held on the Premises, (ii) the number of visitors to the Center and (iii) number of classes and number of students in each class also documenting the number of City of Orlando residents. The reports shall also evidence that with regard to all special and community outreach classes, preference has been given to residents of the City of Orlando wherever possible.

**Section 6.05 Additional Center Use Requirements.** Tenant shall fulfill the following additional obligations under this Lease:

(a) Include in the entrance area in current and future main building at the Center, recognition of the City's contribution to the Orlando Ballet, in form and content approved by Landlord.

(b) Provide at the Center a historical display about the Center.

(c) Install on the exterior of the Facilities an entry plaque in recognition of the City's contribution to the Orlando Ballet in form and content approved by Landlord.

(d) Provide recognition of the City for its contribution to the Tenant's program, in its ballet programs distributing at performances, and whenever other sponsors are recognized in oral presentations at ballet performances. In addition at any time advertisements, such as handbills or other communications, list sponsors of the Ballet, the City will be recognized as a major sponsor.

(e) Offer not less than ten (10) scholarships each year based on Tenant's customary criteria to residents of the City of Orlando to attend Tenant's ballet school before scholarships are offered to the general public.

(f) Whenever Tenant has excess tickets available for any of its performances, it will work with Landlord's designated representative to distribute at least fifty percent (50%) of them (or some other percentage acceptable to Landlord) to seniors or youth who are residents that might otherwise not be able to attend such events.

**Section 6.06 Authorized Ancillary Uses.** While not included within the scope of the Intended Use, without further consent from Landlord, Tenant may use or allow third parties to use the Center for a fee pursuant to a written agreement for the following purposes: business meetings, seminars, meetings of nonprofit 501 (c) (3) organizations, speaking engagements, award ceremonies, weddings, fundraising events, cocktail receptions, dinner meetings or parties, and events of similar scope. Tenant shall require all third-party users of the Center to have liability insurance covering their events, which names the City as an additional insured. Tenant shall maintain on file copies of the certificates of insurance meeting these requirements and provide copies to Landlord upon request



**Section 6.07 Other Center Use Covenants and Restrictions.** Tenant shall use the Center in compliance with the following additional use restrictions:

(a) Tenant shall, at its sole cost and expense, comply with all of the requirements of any insurance board, association, organization or company necessary for the maintenance of insurance, as herein provided, covering the Center, fixtures, equipment and all personal property of Tenant used at the Center for conducting business therein. Tenant shall not commit or suffer to be committed any waste of the Center nor shall Tenant cause or permit any nuisance thereon or therein.

(b) Tenant shall procure and maintain all permits, licenses and approvals, and pay all Taxes, fees and other charges required for the transaction of its business at the Center, and otherwise use the Center in compliance with all applicable laws, rules, regulations and codes of federal, state, county, municipal and all other regulatory authorities.

(c) Tenant will not suffer any act to be done or condition to exist at the Center, or any part thereof, or any article to be brought thereon which may be dangerous unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private. Tenant shall take reasonable actions to minimize labor disputes relating to its actions and to prevent any work stoppage, picketing, labor disruption or dispute, or any interference with the business of Landlord or any tenant or occupant in the Park or with the rights and privileges of any customer or other person(s) lawfully in and upon the Park, nor cause any impairment or reduction of the good will of the Park. Tenant agrees not to permit the accumulation (unless in concealed containers) or burning of any rubbish or garbage in, on or about any part of the Premises and to keep it free from insects, rodents and other pests and vermin. All garbage shall be maintained in a manner so that canisters are not visible from adjacent parcels, roads or the lake. Tenant shall cause and pay for all garbage or rubbish collection or disposal from the Premises. Tenant shall not use sidewalks, parking lots, or any other space on or off the Premises for display, sale, storage or any other similar undertaking without the prior consent of Tenant in each instance, which shall not be unreasonably withheld. Tenant shall not use for any purpose all or any portion of the roof or exterior walls of the Facilities unless specifically authorized in this Lease and in any event, no such equipment shall be visible from street level or the lake. Other than Tenant's ticket sales, gift shop sales, donor events, donor solicitation and fundraising events, Tenant shall not permit solicitation of business at the Center nor shall Tenant permit distribution of any handbills or other advertising matter on automobiles parked on the Premises except with Landlord's prior written consent in each instance.

(d) Tenant agrees not to place any signs or other structures or obstructions on the roof of the Facilities and shall not operate any outdoor loudspeaker or other device which can be heard from adjacent parcels or roads, except in the case of special events as authorized in accordance with "Guidelines For Special Events For Use of Loch Haven Park" as amended from time to time.

Notwithstanding the foregoing, at such times as Tenant should elect to hold any outdoor events at the Center, Tenant shall be authorized to provide outdoor music, live or recorded, at events such as but not limited to outdoor dance performances, wedding receptions, dance festivals, donor receptions, and fundraisers subject to the approval of the Parks Board and any applicable noise ordinances. Tenant shall not place or install outside or on the exterior of the buildings on the Premises any items which have not been approved by the Parks Board.

(e) Tenant will be responsible for procuring and maintaining all of its signage at the Center identifying the Center as the location of the Orlando Ballet including the name and phone number of someone to contact in the event of emergency. All signs and graphics must conform to applicable City Code sections. Since the Center is public property owned by Landlord, political campaign signs are prohibited on the Premises pursuant to Section 64.252, City Code. Signage shall also conform to the style of other signs within the Park and must be approved by the Parks Board as well as Landlord.

(f) Tenant shall obey and observe (and compel its officers, employees, contractors, licensees, invitees, and all others doing business with it, to obey and observe) all reasonable rules and regulations established by Landlord from time to time, so long as they are uniformly applied throughout the Park, provided Tenant has received written notice thereof, for the conduct of Tenant and/or for the welfare of Landlord, neighbors, adjoining parcels, or other parcels in the Park.

(g) Tenant shall take sole responsibility for protecting the Center and all property and persons located on the Premises from theft and robbery, and shall keep all doors, windows and transoms securely fastened when not in use.

(h) Tenant may serve alcoholic beverages, subject to compliance with applicable state beverage laws and local zoning regulations, and provided that the sale of such alcoholic beverages is ancillary to the Intended Use or an Authorized Ancillary Use. The sale of alcoholic beverages, package or otherwise, for off-Premises consumption is strictly prohibited. Tenant shall take such steps as necessary to prohibit its customers from removing alcoholic beverages Tenant has sold at the Center and agrees to report any violations of this requirement to police officials as soon as Tenant becomes aware that any customers have left the Center with alcohol purchased on the Premises. Tenant shall require that all staff including management involved in the service of alcoholic beverages complete an Alcohol Awareness Training Program that complies with State of Florida guidelines.

(i) No use shall be made or permitted to be made of the Center, nor shall Tenant sell or permit to be kept, used or sold in or about the Center any article which may be prohibited by law or fire underwriter's regulations. Tenant shall neither suffer nor permit the Center or any portion thereof to be used in a manner that (1) might reasonably tend to impair Landlord's (or Tenant's, as the case may be) title to the Premises and Facilities or to any portion thereof, or

(2) may reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises and Facilities or any portion thereof, except as necessary in the ordinary and prudent operation of the Facilities on the Premises.

Tenant shall hold harmless and indemnify Landlord from and against any claim, penalty, loss, damage, charge, liability or expense (including, without limitation, reasonable attorneys' fees) threatened, incurred or imposed for any act or omission in violation of Tenant's covenants and obligations under this **Article 6** or by reason of any action or proceeding which may be brought against Landlord or the Premises in connection with the foregoing.

NOTWITHSTANDING THE FOREGOING, TENANT SHALL NOT USE THE CENTER FOR ANY OTHER BUSINESS OR PURPOSE WHATSOEVER WITHOUT THE PRIOR WRITTEN CONSENT OF THE LANDLORD, WHICH MAY BE WITHHELD IN ITS SOLE AND ABSOLUTE DISCRETION.

**Section 6.08 City Event Programs.** Subject to availability, up to six (6) times per year at the Center, at no cost to Landlord, Landlord shall have exclusive use of the Center at such times as Landlord may determine, not in conflict with any previously Tenant-scheduled activities. Such events shall be determined by Landlord upon reasonable notice to Tenant.

## **ARTICLE 7. TENANT MISSION & COVENANTS**

Tenant makes the following representations and warranties to and covenants with Landlord at all times while this Lease is in effect:

- (a) To keep its primary mission and focus dedicated to the advancement of professional ballet dance as presently promoted and advanced by the American Ballet Theatre located in New York, New York ("ABT"),
- (b) To retain its ballet school standing as an ABT Certified School. Should ABT at any time fail to exist during the Term of this Lease or discontinue its certification program, the parties shall agree upon a replacement equivalent standard or certification program with which Tenant will comply,
- (c) To provide in writing on an annual basis the names and contact information for the president, and the names of all members of the board of directors,
- (d) To maintain its status as a nonprofit entity recognized by the U.S. Internal Revenue Service as a 501 (c) 3 entity,
- (e) To use the Center solely for the Intended Use and Authorized Ancillary Uses as described in **Article 6** hereof, and
- (f) To commence construction of renovations and additions to the Facilities so that within seven (7) years the Facilities will contain approximately twenty-two thousand (22,000) square feet of heated and cooled area for engaging in the Intended Use.

## **ARTICLE 8**

### **MAINTENCE, REPAIRS & EXPANSION OF CENTER**

**Section 8.01 Maintenance and Repairs.** Tenant shall be responsible, at its sole cost and expense, for all maintenance and repairs of the Center including but not limited to the following:

(a) Maintaining the Center, both interior and exterior, as well as its signage, and the sidewalks and lighting on the Premises in First-Class Condition, good order and repair with reasonable promptness, and make all necessary and appropriate repairs, replacements, and improvements thereto of every kind and nature, whether ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing (concealed or otherwise), or required by any governmental agency having jurisdiction over the Center. Tenant will not take or omit to take any action, the taking or omission of which might materially impair the value or the usefulness of the Center or any part thereof for the Intended Use.

(b) Disconnecting the existing irrigation system, at the Premises boundary line, from Landlord's irrigation system serving other properties, and sealing Landlord's line at that location. Tenant will make such modifications as necessary to operate the system on the Premises independent of Landlord's irrigation system.

**Section 8.02 Construction of Additions to and Alterations and Renovations of Facilities.** Additions, Alterations and renovations to the Facilities shall be completed in the following manner:

(a) Alterations Without Consent -- Tenant, at its sole cost and expense, shall have the right to make Alterations without Landlord's consent, provided (i) Tenant shall not then be delinquent in the performance of any of Tenant's obligations under this Lease, (ii) such alterations are not visible from the exterior of the Facilities, (iii) they do not collectively exceed a total of One Hundred Thousand Dollars (\$100,000) in any twelve (12)-month period and (iv) Tenant obtains all required governmental permits and approvals. In those instances where consent is required, Landlord's prior written consent shall not be unreasonably withheld, conditioned or delayed, so long as the modifications will result in Facilities, which are in strict compliance with all applicable terms of this Lease.

(b) Additions and Replacements -- If Tenant determines to construct additional or replacement Facilities or make any changes to the exterior of the existing improvements or move any of the exterior boundaries, Tenant shall be responsible for all design, permit and construction costs, impact fees, permit fees and all other charges associated therewith. Landlord shall have the right to approve every aspect of and each step in creating such improvements, with

relation to site planning, permitting, site development and building construction, in the manner provided in this **Section 8.02**.

(c) **Plans and Specifications** -- Prior to commencing any construction other than Alterations authorized to be undertaken without Landlord's consent, Tenant shall submit two (2) sets of the Plans and Specifications, or revisions thereto as applicable to Landlord's Real Estate Division Manager and the Parks Board. If rejected, the Real Estate Division Manager and the Parks Board shall specify in writing to Tenant each reason for rejection. Landlord and the Parks Board shall have thirty (30) days from receipt to review the Plans and Specifications and notify Tenant in writing of approval or rejection. Tenant shall submit for approval the Plans and Specifications in the early design phases and as each phase progresses before moving to the next stage in the development of the final Plans and Specifications. Tenant shall promptly make changes to the Plans and Specifications reasonably required by Landlord and the Parks Board and resubmit them for review and approval. The Real Estate Division Manager and the Parks Board shall have thirty (30) days to review such resubmitted plans and approve or specify in writing the reason for rejection. All modifications to the Center must result in improvements, which will meet the standards necessary for engaging in the Intended Use and comply with the requirements of the Parks Board as to consistency with the character of the Park and its Master Plan, as may be revised from time to time. Should the construction or modification be of such a nature that an extensive review of the work is not necessary as determined by both parties, they shall revise the approval process in a manner mutually acceptable to both parties.

(d) **Landlord's Review as Owner & Not Regulatory Authority** -- Landlord's review (and approval or denial) of the Plans and Specifications pursuant to this Section, is based upon its ownership of the Center and this Lease, and not upon Landlord's functioning as a governmental or regulatory body. In addition to any of the requirements of this Lease necessary for the operation or modification of, or improvements to the Facilities, Tenant shall submit all required applications, documents, drawings, plans, specifications, etc., to, and obtain all required licenses(s), permit(s), and approval(s), from the appropriate governmental or regulatory authority having jurisdiction thereof, including, but not limited to, the City of Orlando acting in its governmental or regulatory capacity. After final approval of the Plans and Specifications, material changes may be made only upon the written consent of Landlord and the Parks Board, in their reasonable discretion. Landlord shall respond to any such request within thirty (30) days.

(e) **Manner of Construction** -- Tenant covenants and agrees that it will construct all improvements and alterations in a good and workmanlike manner and First-Class Condition in accordance with the approved Plans and Specifications and this Lease, so that the improvements can be utilized for the Intended Use or authorized Ancillary Uses. To the extent legally possible, Tenant will comply with the requirements of the City's MWBE Program requirements.

Tenant will inform its contractor and all subcontractors that the Center is City-owned property, on which construction liens cannot be placed. To the extent it is legally capable of doing so without the joinder of any third parties, Landlord agrees that it shall grant temporary construction easements over other portions of the Park as reasonably requested and necessary to construct any Alteration or improvement.

(f) Construction Bonds -- Tenant shall require its contractor to provide a performance bond and a labor and material payment bond each in an amount not less than the aggregate construction cost of the improvements to be made to the Facilities, less amounts covered by any subcontractor bonds, provided that one hundred percent (100%) of the construction cost of the improvements to the Facilities is bonded in the aggregate. The construction bonds must also be submitted to and approved by Landlord prior to commencement of construction. Landlord shall not unreasonably withhold consent and shall respond to such request within thirty (30) days. To be acceptable as surety for performance bonds and labor and material payment bonds, a surety company shall:

1. have a currently valid certificate of authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida;
2. be named in the most recent listing of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 by the U.S. Department of the Treasury;
3. be in full compliance with the provisions of the Florida Insurance Code; and
4. have at least an "A-" financial strength rating in accordance with the most current A.M. Best Company ratings.

If the surety on any bond furnished by the contractor is declared bankrupt or becomes insolvent or if its assets are acquired by regulatory agencies or if liquidation proceedings begin or its license to do business in the State of Florida is terminated or it ceases to meet the requirements hereof, Tenant shall require the contractor to substitute an acceptable surety and provide performance and labor and material payment bonds to Landlord within ten (10) business days of obtaining actual knowledge of the occurrence of such event(s).

(g) Contractor & Architect Requirements -- Tenant shall require its contractor, as general contractor for construction of and restoration or renovation to obtain general liability, builder's risk, automobile liability and worker's compensation insurance coverage in amounts as reasonably required by Landlord. Landlord shall be named "additional insured" on all policies, where allowable under law. Tenant shall require the architect/engineer of record, if any, to have professional liability insurance in an amount reasonably required by Landlord.

Any such approval shall be granted or denied in writing with specificity within thirty (30) days.

(h) Documentation -- For Landlord's approval prior to commencement of construction, Tenant shall provide such other documentation as it reasonably requires to document compliance with this **Section 8.02**.

(i) Construction Liens -- Tenant shall satisfy or otherwise bond off any claims of lien filed against its leasehold estate, the Premises and Facilities promptly upon any such filing.

(j) As-built Documentation -- Tenant shall maintain a complete set of "as built" structural, mechanical and similar plans and specifications with respect to any improvements it may make to the Center and an "as built" survey showing the location of all such additions to the improvements on the Premises and shall, upon written request of Landlord, deliver a copy thereof to Landlord, at no cost to Landlord. Tenant shall also deliver to Landlord, upon written request of Landlord and at no cost to Landlord, a copy of any and all other reports which Tenant may have related to the Center, including, but not limited to, environmental surveys and assessments.

(k) Construction Warranties -- Tenant shall require the Contractor to warrant the work to be free of defects of workmanship and materials for a period of one (1) year following the date of substantial completion of construction. Landlord shall be made a third-party beneficiary of Tenant's agreements with the Contractor.

(l) City Approvals -- Landlord will facilitate to the extent legally permissible, approvals for any construction at the Center, but it is expected that all such work will require the approval of at least the Parks Board, Municipal Planning Board, and City Permitting.

**Section 8.03    Prohibition Against Encumbrances.** Except for encumbrance of Tenant's interest in this Lease, Tenant shall not mortgage, grant a security interest in, or otherwise encumber the Center or any present or future Facilities constructed, installed or otherwise placed on the Premises. Further, Tenant shall not allow any liens to be placed against the Premises or Facilities; however, should that occur, Tenant shall bond off or otherwise take such steps as necessary to remove all such liens within thirty (30) days after becoming aware of their existence and at the same time provide Landlord evidence establishing that such liens have been removed. Likewise, Tenant shall not accept any grants which require encumbrance of the Center. Tenant agrees to inform its contractor(s), which shall be required to inform all subcontractors that the Center is City-owned property, on which construction liens cannot be placed.

**Section 8.04    Hazardous Substances.** The parties agree that the following will govern the subject of any "Hazardous Substances" at the Center:

(a) Tenant shall not cause or permit any "Hazardous Substances" (as herein defined) to be brought, kept or used in or about the Center by any of its subtenants, agents, employees, contractors, or invitees, except in quantities limited to the minimum extent necessary for the use, operation or maintenance of the Center for Tenant to engage in the Intended Use. Tenant shall store, use and dispose of such materials in compliance with all applicable federal, state and local laws, including, without limitation, Applicable Environmental Law (as herein defined). If the presence of any Hazardous Substances on, in or under the ground at the Center caused or permitted by Tenant or its subtenants, agents, employees, contractors or invitees results in any contamination of Premises or any other property, Tenant shall promptly take all actions, at its sole expense, as necessary to return the affected area to the condition existing prior to the introduction of any such Hazardous Substances, including, without limitation, any investigation or monitoring of site conditions or any clean up, remediation, response, removal, encapsulation, containment or restoration work required because of the presence of any such Hazardous Substances on, in or under the Premises or such other property or any release or suspected release or threat of release of any such Hazardous Substances into the air, soil, surface water or ground water (collectively, the "Remedial Work"). Tenant ("Responsible Party") shall obtain all necessary licenses, manifests, permits and approvals to perform the Remedial Work. Such Responsible Party shall perform all Remedial Work and dispose of all waste generated by the Remedial Work in accordance with all Applicable Environmental Law.

(b) The Responsible Party shall indemnify, save harmless and defend Landlord and such party's elected and appointed officials, officers, agents and employees ("Indemnified Parties") from and against any and all claims (including, without limitation, third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses (including, without limitation, diminution in value of the Premises and sums paid in settlement of claims, attorney's fees, consultant fees, expert fees and any fees and expenses incurred in enforcing this indemnity) incurred by, sought from or asserted directly or indirectly against the Indemnified Parties during or after the Term as a result of the presence of any Hazardous Substances on, in or under the Premises or surrounding land or any release of any Hazardous Substances into the air, soil, surface water or ground water, which Hazardous Substances were brought, kept or used in or about the Premises or the surrounding land by the Responsible Party, its tenants, agents, employees, contractors or invitees, or as a result of a breach by the Responsible Party of its obligations under **Section 8.04 (a)** above. The Responsible Party shall assume, pursuant to the foregoing indemnity, all liabilities and responsibilities which are assessed against the Indemnified Parties in any action described under this **Section 8.04 (b)**. The Responsible Party shall promptly provide to the Indemnified Parties copies of all communications, filings or other writings, photographs or materials given to or received from any person, entity or agency in connection with any cleanup or Remedial Work conducted by the Responsible Party, and shall notify the Indemnified Parties of, and permit the Indemnified Parties' representative to attend any meetings or oral communications relating thereto.

(c) As used herein, the term "Hazardous Substances" means any hazardous or toxic substances, materials, or wastes which are or become regulated by any local governmental authority, the State of Florida or the United States Government, including, without limitation, (i) any substances, chemicals or waste that are or shall be listed or defined as hazardous, toxic or



dangerous under Applicable Environmental Law, (ii) any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state or local governmental authority pursuant to any environmental, health and safety or similar law, code, ordinance, rule regulation, order or decree and which may or could pose a hazard to the health and safety of occupants or users of the Premises or any part hereof, any adjoining property or cause damage to the environment, (iii) any petroleum products, (iv) pcbs, (v) leaded paint, and (vi) asbestos. As used herein, the term "Applicable Environmental Law" shall include the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § § 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § § 6901, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § § 1251 et seq., the Clean Air Act, 42 U.S.C. § § 7401, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § § 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. § § 300f through 300j-26, as such Acts have been or are hereafter amended from time to time; any so called Superfund or Superlien law; and any other federal, state and local statute, law ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or any time hereafter be in effect.

(d) The obligations of Tenant and the indemnities set forth in this **Section 8.04** shall survive the termination or expiration of this Lease.

## **ARTICLE 9. INSURANCE**

**Section 9.01 Insurance by Tenant.** At its own expense Tenant shall procure and maintain throughout the Term the types and amounts of insurance conforming to the minimum requirements set forth herein. The insurers providing coverage as required herein must be either (1) authorized by a subsisting certificate of authority issued by the Department of Financial Services of the State of Florida or (2) an eligible surplus lines insurer under Florida Statutes. All insurance policies shall be primary and issued by companies with a Financial Rating of "A-" or better and a Financial Size Category of "Class V" or higher according to the most current edition of Best's Insurance Reports. Tenant shall not begin any activity or work or be open for business under this Lease until the required insurance is in force and evidence of insurance acceptable to Landlord has been provided to, and approved by Landlord. Tenant shall fulfill its insurance obligations and provide the insurance policies listed as follows:

- A. **Compliance.** As evidence of compliance with the insurance required herein, Tenant shall furnish Landlord with a fully completed satisfactory Certificate of Insurance evidencing all coverages required herein, and a copy of the actual additional insured endorsement as issued on the Commercial General Liability Insurance, signed by an authorized representative of the insurer(s) verifying inclusion of Landlord and Landlord's elected and appointed officials, officers, agents and employees as Additional Insureds in the Commercial General Liability coverage.

Tenant shall attempt to obtain from its insurance carrier an agreement to notify Landlord in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) calendar days prior to the effective date of said

action. Until such insurance is no longer required by this Agreement, Tenant shall provide Landlord with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

- B. Property Insurance. Property insurance covering the Facilities, in an amount at least equal to 100% of replacement value with a “deductible” of up to Fifty Thousand Dollars (\$50,000), and with stipulated amount full replacement cost or agreed valuation endorsement, but in no event in an amount which would make Landlord a co-insurer of any loss, without any deduction for physical depreciation of the Facilities. Such “full replacement cost” shall be determined at Tenant’s sole cost and expense from time to time (but not more frequently than once in any twenty-four (24) calendar months) at the request of Landlord, by an appraiser, engineer, architect or contractor designated by Tenant and approved in writing by Landlord (such approval not to be unreasonably withheld) or if not designated by Tenant within twenty (20) days of request, then designated by Landlord. No omission on the part of Landlord to request any such determination shall relieve Tenant of any of its obligations under this Article. Such policy shall insure against loss or damage by (i) fire, lightning, windstorm, hail, explosion, riot, civil commotion, damage from aircraft and vehicles, and smoke damage, and (ii) such other risks as are customarily covered with respect to improvements similar to the Facilities in the vicinity of the Premises determined by Landlord in good faith. Such coverage shall provide for a full waiver of (i) subrogation by the insurer as to any and all claims against Landlord, and its agents, employees, contractors, and tenants, and (ii) all defenses based upon acts of the insureds or the existence of co-insurance. Landlord and Tenant, at the sole cost and expense of Tenant, shall cooperate in adjusting and settling any loss with the insurer under such policy. The amount of any deductible or portion of any loss not covered by said insurance policy shall be paid by Tenant to cover the first costs incurred in repairing or restoring any such loss prior to the distribution of any insurance proceeds.
- C. Workers’ Compensation Insurance. Workers’ Compensation/Employers’ Liability - Such insurance shall be no more restrictive than that provided by the Standard Workers’ Compensation Policy as filed for use in Florida by the National Council on Compensation Insurance, in form acceptable to Landlord in its reasonable discretion. In addition to coverage for the Florida Workers’ Compensation Act, where appropriate, coverage is to be included for the Federal Employer’s Liability Act and any other applicable Federal or State law. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be as follows:

Part One: “Statutory”

Part Two:

\$100,000	(Each Accident)
\$100,000	(Disease-Policy Limit)
\$100,000	(Disease-Each Employee)

- D. Commercial General Liability Insurance. Such insurance shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida, in form acceptable to Landlord, in its reasonable discretion. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- Mold, fungus, or bacteria
- Terrorism
- Sexual molestation

Landlord and Landlord's elected and appointed officials, officers, agents and employees shall be included as "Additional Insureds" on a form no more restrictive than ISO Form CG 20 11 (Additional Insured - Owners, Lessees, or Tenants). The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

General Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Damage to Premises Rented to You	\$100,000
Medical Expense (any one person)	\$Nil

- E. Automobile Liability. Such insurance for vehicles titled in Tenant's name shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01), in form acceptable to Landlord in its reasonable discretion, including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the work. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Occurrence Bodily Injury and Property Damage Liability Combined  
\$1,000,000.

The aggregate limit for such Liability Coverage shall not be less than \$1,000,000.

- F. Subrogation. Landlord and Tenant each expressly, knowingly, and voluntarily waives and releases any claims that each may have against the other or the other's officials, officers, employees, agents, or contractors who shall have executed a waiver similar to this one for damage to its properties and loss of business as a result of the acts or omissions of the other party or the other party's officials, officers, employees, agents, or contractors (specifically including the negligence of either party or its officials, officers, employees, agents, or contractors and the intentional misconduct of the officials, officers, employees, agents, or contractors of either party), to the extent any such claims are covered (without regard to losses not compensated as a result of such things as coinsurance adjustments or deductibles) by the workers compensation and property insurance described in

this Lease, or other property insurance that either party may carry at the time of an occurrence. Landlord and Tenant shall each obtain and keep in full force and effect at all times thereafter a waiver of subrogation from its insurers concerning the workers compensation and property insurance maintained by it for the Premises. This section shall not apply to claims for personal injury or wrongful death.

- G. Coverage Adjustments. Landlord and Tenant shall meet on the business day closest to every fifth (5<sup>th</sup>) anniversary of the Lease Commencement Date to revise the amounts of insurance coverage set forth under this section. The parties agree that any revision to the amounts of coverage set forth in this section shall reflect the standard and customary insurance coverage for a facility similar in size and operation to the Facilities on the Premises.
- H. General Conditions. The insurance provided by Tenant shall apply on a primary basis. Any insurance, or self-insurance, maintained by Landlord shall be excess of, and shall not contribute with, the insurance provided by Tenant.

Except as otherwise specifically authorized in this Lease, or for which prior written approval has been obtained hereunder, the insurance maintained by Tenant shall apply on a first dollar basis without application of a deductible or self-insured retention. Under limited circumstances, Landlord may permit the application of a deductible or permit Tenant to self-insure, in whole or in part, one or more of the insurance coverages required by this Lease. Tenant shall pay on behalf of Landlord or Landlord's elected and appointed officials, officers, agents and employees any deductible or self-insured retention applicable to a claim against Landlord or Landlord's elected and appointed officials, officers, agents and employees. Tenant shall be solely responsible for the risk of loss to and maintaining insurance for any and all real property, equipment or personal property belonging Tenant.

Compliance with these insurance requirements shall not limit the liability of Tenant. Any remedy provided to Landlord by the insurance provided by Tenant shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of Tenant) available to Landlord under this Lease or otherwise.

If Tenant shall fail to comply with these insurance requirements, Landlord shall have the right, but not the obligation, in addition to all other rights and remedies available to Landlord at law, in equity, and under this Lease, to procure, at Tenant's sole cost and expense, the insurance required by this Lease.

Neither approval nor failure to disapprove insurance furnished by Tenant shall relieve Tenant from responsibility to provide insurance as required by this Lease.

Certificates of Insurance must be completed as follows:

1. Certificate Holder

City of Orlando, Florida  
Attn: Real Estate Manager  
400 S. Orange Avenue  
Orlando, FL 32801

2. Additional Insured for General Liability

City of Orlando, Florida, its elected and appointed officials, officers, agents and employees

**Section 9.02 Landlord's Right to Obtain Insurance.** If Tenant fails to obtain insurance coverage or fails to provide certificates and endorsements as required by this Lease, Landlord may, at its option, obtain such insurance for Tenant. Tenant shall pay, as Additional Rent, the reasonable cost thereof together with a twenty-five percent (25%) service charge, even if Tenant later produces evidence that it had insurance in effect at all times. The failure to provide the evidence of insurance in the manner required in this Lease shall be sufficient basis for Landlord to obtain the required insurance coverage and charge Tenant as authorized herein.

**Section 9.03 Tenant's Risk.** To the maximum extent this Lease may be made effective according to law, Tenant agrees to use and occupy the Premises and Facilities at Tenant's own risk, and Landlord shall have no responsibility or liability for any loss or damage to the Premises, Facilities, Tenant's Personal Property, or other personal property of Tenant, or for any loss or damage resulting to Tenant or those claiming by, through, or under Tenant, for any reason including but not limited to breaking, bursting, stopping, or leaking of water, gas, sewer, or steam pipes. The terms of this Section shall be applicable regarding all matters, transactions and things occurring from and after the execution of this Lease and until the end of the Term, and during such further period as Tenant may use or be in occupancy of any part of the Premises and Facilities.

**Section 9.04 Injury Caused By Third Parties.** To the maximum extent this Lease may be made effective according to law, Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through, or under Tenant, for any loss or damage that may be occasioned by or through the actions or omissions of persons using, occupying, or visiting the Premises and Facilities.

## **ARTICLE 10. DAMAGE OR DESTRUCTION**

**Section 10.01 Casualty Damage.** If, during the Term, the Facilities are destroyed or damaged in whole or in part by fire, windstorm or any other casualty whatsoever, Tenant shall give Landlord immediate notice thereof and shall repair, reconstruct or replace the Facilities, or the portion thereof so destroyed or damaged (whichever is reasonably required) to a condition as good as or better than the condition existing immediately prior to such occurrence, but in every event Tenant shall complete whatever work as is necessary for Tenant to maintain the Premises and Facilities in such a condition as will enable Tenant to engage in the Intended Use.

**Section 10.02 Property Insurance Proceeds Account.** Proceeds paid for casualty damage by any property insurance shall be deposited in a joint escrow account of Tenant and Landlord in a bank located in Orange County, Florida, concerning which Landlord will pay all

reasonable escrow fees. The terms governing the escrow account and disbursements shall require at a minimum that the funds must be used to pay for the work as it progresses and may be released on the requisition of the Contractor and a certificate of the architect or other third party acceptable to Landlord and Tenant who supervises the work. The proceeds of the property insurance shall be applied solely to such repair, reconstruction or replacement of the damaged Facilities until paid in full.

**Section 10.03 Lease Cancellation.** Tenant shall not be entitled to surrender possession of the Center, to terminate this Lease or to cause any rebate or reduction in the Rent, because of damage or destruction to the Facilities by fire, windstorm, or any other casualty. If the Lease is canceled for Tenant's default at any time while any obligation remains outstanding from an insurance company to pay for such damage, the claim against the insurance company will be deemed immediately to be the absolute and unconditional property of Landlord.

**Section 10.04 Damage Near End of Term.** Notwithstanding any other provisions of this Lease to the contrary, if damage to or destruction of the Facilities rendering it unsuitable for the Intended Use occurs during the last thirty-six (36) months of the Term or extended term as the case may be or if at any time the damage or destruction renders the Center unusable for the Intended Use and reasonable estimates of the time for repair exceed six (6) months, Tenant shall have the right to terminate this Lease by giving notice to Landlord within thirty (30) days after the date of damage or destruction, whereupon all accrued Rent shall be paid immediately, and this Lease shall automatically terminate five (5) days after the date of such notice. Notwithstanding the foregoing, Tenant may not elect to terminate this Lease pursuant to the preceding sentence if such termination would constitute a default under a Tenant Mortgage, or if Restoration is otherwise required by a Tenant Mortgage, in which case Tenant shall complete the Restoration in accordance with the terms of this Section.

If this Lease is canceled for any reason, other than Landlord's Default at any time while any casualty claim is pending or could be made against an insurance company for losses related to the Premises and Facilities, the entitlement to the insurance proceeds will be deemed automatically and unconditionally assigned to Landlord immediately prior to cancellation of this Lease, without compensation to Tenant.

## **ARTICLE 11. DEFAULT**

**Section 11.01 Default by Tenant.** Each of the following shall be an event of default and shall constitute a Tenant default of this Lease ("Tenant Event of Default"):

(a) Tenant fails to comply with the insurance requirements contained herein, and if such failure to pay or comply with the insurance requirements shall continue for ten (10) days after Landlord shall have delivered to Tenant a Notice of Tenant Event of Default;

(b) Tenant fails to engage in the Intended Use on the Premises for a period of more than thirty (30) consecutive days.

(c) Tenant fails to fulfill the Minimum Performance Requirements in excess of the time allowed in **Section 6.02**.

(d) Tenant allows the Center to be used for any purpose not authorized as the Intended Use or an Authorized Ancillary Use.

(e) Tenant fails to timely file its form 990 or equivalent reporting forms or schedules, as required by the Internal Revenue Service of the United States of America ("I.R.S.).

(f) Tenant fails to maintain its status as a Florida corporation not for profit recognized as a 501 (c) 3 organization in good standing with the I.R.S.

(g) Whenever Tenant shall do, or permit anything to be done, whether by action or inaction, contrary to any covenant or agreement on the part of Tenant herein contained or contrary to any of Tenant's obligations under this Lease, or shall fail in the keeping or performance of any of Tenant's obligations under this Lease, and Tenant shall fail to remedy the same within thirty (30) days (or such shorter time period specifically provided herein) after Landlord shall have given Tenant a Notice of Tenant Event of Default;

(h) Whenever an involuntary petition shall be filed against Tenant under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import, or a receiver for Tenant or for the property of Tenant shall be appointed with or without the acquiescence of Tenant, or Tenant rejects this Lease in any bankruptcy, insolvency, reorganization, or arrangement proceedings under the Bankruptcy Code or any State insolvency law, or Tenant, before the expiration of the Term, and without the written consent of Landlord, vacates the Premises or the leasehold estate granted to Tenant by this Lease is taken on execution or other legal process or whenever this Lease or the estate hereby granted or the unexpired balance of the Term would, by operation of law or otherwise, except for this provision, devolve upon or pass to any person, firm, limited liability company or corporation other than Tenant, any corporation or limited liability company in which Tenant may be duly merged, converted or consolidated under statutory procedure, and such situation under "h" of this listing shall continue and shall remain undischarged or unstayed for an aggregate period of sixty (60) days (whether or not consecutive) or shall not be remedied by Tenant within sixty (60) days;

(i) Whenever Tenant shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by Tenant under the reorganization provisions of the United States Bankruptcy Act or under the provisions of any law of like import, or whenever a petition shall be filed by Tenant under the arrangement provisions of the United States Bankruptcy Act or under the provisions of any law of like import.

**Section 11.02 Remedies of Landlord.** Upon the occurrence of any of Tenant Event of Default, which is not cured within any applicable cure period, Landlord's remedies shall be limited to the following:

(a) Landlord may deliver to Tenant a notice of Landlord's intent to end the Term on a day not less than thirty (30) days after Tenant's receipt of such notice (the "Landlord Termination Date"), and this Lease and the term and estate hereby granted shall expire and terminate upon the Landlord Termination Date as fully and completely and with the same force and effect as if the day so specified were the Lease Expiration Date, and all rights of Tenant

under this Lease shall expire and terminate and the Center and all fixtures, equipment and Tenant personal property contained therein shall automatically on the Landlord Termination Date become the sole property of Landlord, without further compensation to Tenant, or in the alternative at the direction of the Landlord, Tenant shall remove whatever property from the Center as Landlord so directs Tenant in writing, at Tenant's sole cost and expense, expeditiously and continuously until complete;

(b) Institute proceedings for injunctive relief and/or specific performance as necessary to enforce the terms and conditions of this Lease; or

(c) Pursue any other remedy available at law or in equity.

**Section 11.03 Default by Landlord.** The occurrence any of the events by or caused by Landlord as listed in this section shall be an event of default ("Landlord Event of Default") hereunder and shall constitute a breach of this Lease if not remedied within the cure period so provided. A Landlord Event of Default occurs whenever Landlord shall do, or permit anything to be done, whether by action or inaction, contrary to any material covenant or agreement on the part of Landlord herein contained or contrary to any of Landlord's obligations under this Lease, or shall fail in the keeping or performance of any of Landlord's obligations under this Lease, which Landlord fails to remedy within thirty (30) days after Tenant has given Landlord written notice specifying the same.

**Section 11.04 Remedies of Tenant.** Upon the occurrence of a Landlord Event of Default, which is not cured within any applicable cure period, Tenant's remedies shall be limited to the following:

(a) Tenant may give to Landlord a notice of Tenant's intent to end the Term on a day not less than thirty (30) days after Landlord's receipt of such notice (the "Tenant Termination Date"), and this Lease and the term and estate hereby granted shall expire and terminate upon the Tenant Termination Date as fully and completely and with the same force and effect as if the day so specified were the Lease Expiration Date, and all rights of the parties under this Lease shall expire and terminate; or

(b) Institute proceedings for injunctive relief and/or specific performance as necessary to enforce the terms and conditions of this Lease.

All actions for damages or other types of relief not otherwise specifically allowed hereunder are waived and shall be unavailable to Tenant under this Lease.

**Section 11.05 Extended Cure Periods.** In the event of a nonmonetary default of a nature that cannot reasonably be cured within the time period stated in this Lease, so long as the party, which has failed to properly perform under this Lease, has diligently commenced curing the problem and continues in an expeditious manner until the default is cured, the party shall be given such additional time; provided however, should the additional time needed be due to financial constraints such grace period shall not be extended for that reason. In no event shall the extended cure period exceed one hundred twenty (120) days. If under the particular circumstances allowance of a cure period or delivery of notice would prejudice or endanger the



rights and estate of the other party, the party, which is in compliance with this Lease, may pursue any remedy authorized pursuant to this Lease without delay. Further, should there be a default, which results in threat of imminent danger, loss of property or criminal actions, the time for curing the default shall not be extended for any reason.

**Section 11.06 Presumption of Abandonment.** It shall be conclusively presumed that Tenant has abandoned the Center if Tenant fails to engage in the Intended Use on the Premises for thirty (30) consecutive days. In the event of an abandonment, which shall be deemed a default even if Tenant is current in all other obligations under the Lease, Landlord shall have the right to immediately retake possession of the Center and exercise the same rights available to Landlord the same as available for any other Tenant default under this Lease, subject to the notice and cure provisions of **Section 11.01 (g)**.

## **ARTICLE 12. INDEMNIFICATION**

Tenant shall hold harmless and indemnify Landlord from and against any claim, penalty, loss, damage, charge, liability or expense (including, without limitation, reasonable attorneys' fees, both at trial and on any appeal or up to any settlement), threatened, sustained or incurred by reason of, directly or indirectly, (a) the death or loss of or damage or injury to person or property resulting from or caused by or claimed to have resulted from or been caused by: (i) the construction, use, operation, condition or lack of repair of the Center, or any personal property at any time or times, or (ii) any act or thing done or omitted to be done by Tenant, its agents, employee, servants, invitees, or, without limitation, any other person or persons other than Landlord or its employees; or (b) any failure on the part of Tenant to perform or comply with any of Tenant's covenants, obligations or liabilities hereunder; or (c) any storage, handling or disposal of any flammable explosives, hazardous or toxic substances on or from the Premises, or any leakage or contamination attributable to any underground tanks or other equipment whether formerly situated on the Premises or to be placed on the Premises by or at the direction of Tenant.

## **ARTICLE 13. EXPIRATION OF LEASE**

**Section 13.01 Tenant's Duty to Deliver Possession.** At the end of the Term, Tenant shall peacefully deliver up to Landlord possession of the Premises and Facilities in good condition and state of repair, reasonable wear and tear excepted, and all Facilities constructed thereon shall become the property of Landlord, at no cost to Landlord, free and clear of the claims of all persons and parties whomsoever, or in the alternative at Landlord's direction, Tenant shall restore the Premises to its unimproved state or as otherwise directed by Landlord to Tenant.

**Section 13.02 Holding Over.** If Tenant should hold over after expiration of the Term, Tenant shall be liable for double the fair rental value of the Premises as such is reasonably determined by Landlord's appraiser at the time of expiration of the Term or early termination thereof, to the extent allowed by law in effect at that time.

## **ARTICLE 14. CONDEMNATION**

**Section 14.01 Effect of Condemnation.** If all or a substantial part of the Premises is taken by the exercise of the power of eminent domain, this Lease shall terminate as of the date possession is taken by the condemnor, and prepaid rent or unpaid rent, and all other amounts due pursuant to the provision of this Lease shall be prorated accordingly. The entire compensation award attributable to that part of the Center taken shall belong to Landlord except to the extent set forth in **Section 14.02**. Tenant shall have the right to claim and recover from the condemning authority, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of any condemnation and for or on account of any cost or loss to which Tenant might be put in removing or relocating Tenant's business, furniture, fixtures and equipment. If less than a substantial part of the Premises is taken such that Tenant can still engage in the Intended Use on the Premises, this Lease shall not terminate and there shall be no change in any of the obligations Tenant is required to fulfill under the terms of the Lease.

**Section 14.02 Assignment of Tenant's Interest in the Leasehold Estate and Reimbursement for Tenant's Improvements to the Facilities.** For condemnation purposes, Tenant does hereby irrevocably assign to Landlord all of Tenant's right, title and interest in the leasehold estate evidence by this Lease, so that the total value thereof shall be paid solely to Landlord. Tenant hereby irrevocably waives any right it may have to make a separate claim in the condemnation proceedings for the value of the leasehold estate, due to the fact that Tenant is paying only nominal Rent for the leasehold estate. Should there be a condemnation, Tenant shall be entitled to the payment from Landlord determined in the manner set forth in **Section 14.04**.

Upon Landlord's receipt of the award for the leasehold estate, separate from the condemnation proceedings, the parties will employ an appraiser acceptable to both, which shall determine solely the depreciated value of any real property improvements Tenant has incorporated into the Premises. The Landlord shall then reasonably determine, based on commercially reasonable criteria, the equitable amount from the award that Landlord will pay to Tenant for the depreciated value of such improvements.

**Section 14.03 Cooperation in Making Claims.** Landlord and Tenant shall, in connection with any eminent domain proceedings, cooperate in making all claims for damages and defending the Premises and Facilities in the condemnation proceedings.

**Section 14.04 Total Taking and Taking in the Event the Premises Become No Longer Suitable for the Intended Use.** If all of the Premises and Facilities is taken by the exercise of the power of eminent domain or by actions of a governmental entity that constitute inverse condemnation of the Premises, or by a purchase in lieu of condemnation or if Tenant determines that the Premises will become Unsuitable for the Intended Use, this Lease shall terminate as of the date the Premises are taken by the condemnor, and prepaid rent or unpaid rent, and all other amounts due pursuant to the provision of this Lease shall be prorated accordingly. The entire compensation amount attributable to the Center shall include the value of the fee interest, the leasehold estate and all severance damages not only for the fee interest but also for the leasehold estate, which shall be paid exclusively to Landlord; provided however, Tenant shall be entitled to payment from Landlord to the extent as provided in this Section.

Tenant shall be entitled to and receive the depreciated value of the Facilities and Tenant's Personal Property and any other personal property of Tenant taken in the condemnation, to the extent they were paid for by Tenant. Utilizing a state-certified MAI appraiser approved by Landlord and Tenant, Tenant shall obtain an appraisal of the Facilities, Tenant's Personal Property and any other personal property of Tenant taken in the condemnation proceeding, with the value prorated over the remaining useful life of the assets taking into account the remaining term of the Lease and the right of Landlord to become owner such property unencumbered upon expiration of the Lease. Landlord and Tenant agree that the valuation opinion of the appraiser shall represent the amount of the award attributable to Tenant under this subsection. If the parties cannot agree on an appraiser, each shall select one and the two selected shall select a third who shall be the appraiser to complete the appraisal. The remaining amount paid for such property shall belong to Landlord.

Tenant shall also have the right to claim and recover from the condemning authority, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of any condemnation and for or on account of any cost or loss to which Tenant might be put in removing or relocating Tenant's business, furniture, fixtures and equipment, but not for any other loss.

**Section 14.05 Condemnation Award in the Event of Taking of Less than Substantial Part.**

(a) In the case of a taking of a portion, but less than all, of the Premises and Facilities, Tenant shall determine, in Tenant's reasonable discretion, whether the remaining Premises and Facilities after Restoration referred to in (c) below: (i) will become Unsuitable for the Intended Use and (ii) will allow Tenant to complete the Restoration for an amount not to exceed the proceeds from the taking.

If Tenant determines that the Premises continue to be suitable for the Intended Use, but Tenant cannot complete the Restoration for an amount that is less than or equal to the proceeds from the taking, then and in such event Tenant may elect to terminate this Lease as of the Vesting Date and Rent shall be apportioned and paid to the date of termination and no other claim or demand of any kind shall be made by Landlord against Tenant by reason of such termination; provided however, if there are at least thirty-six (36) months remaining in the Term, Landlord may agree to pay the excess Restoration expenses in which case this Lease shall not terminate and Tenant shall undertake the Restoration of the Premises and Facilities in accordance with the terms of (c), below.

(b) In the case of a taking of less than all of the Premises and Facilities, if this Lease is not terminated in accordance with the provisions of (a) above, this Lease shall continue in full force and effect as to the remaining portion of the Premises and Facilities without any reduction in Rent. No such partial taking shall operate as or be deemed an eviction of Tenant from that portion of the Premises and Facilities not affected by such partial taking or in any way terminate, diminish, suspend, abate or impair the obligation of Tenant to observe and perform fully all the covenants of this Lease on the part of Tenant to be performed with respect to the remainder of the Premises and Facilities unaffected by the partial taking. In such an event Restoration shall proceed in the manner provided in (c) below.

(c) In the case of a taking of less than all of the Premises and Facilities, if this Lease is not terminated in accordance with the provisions of **Section 14.05 (a)** above, Tenant shall commence and proceed with reasonable diligence to complete the Restoration, and immediately deposit the condemnation proceeds in an escrow account for the Restoration to be completed in the manner provided in **Section 8.02**; provided, however, if Landlord elects, Landlord shall in the event the award of the condemnation proceeds is not sufficient to complete the Restoration, Landlord shall deposit the additional amount needed to complete the Restoration in the escrow account, and such funds shall be available to Tenant to be utilized for Restoration of the Premises and Facilities. Landlord shall be entitled to receive and retain the remainder of any award not needed to complete the Restoration.

**Section 14.06 No Rent Reduction.** In case of a taking of less than all of the Premises and Facilities, if this Lease is not terminated, the Rent shall not be reduced in any manner.

## **ARTICLE 15. LENDER MORTGAGES**

### **Section 15.01 Right to Mortgage.**

(a) Provided Tenant is not in default under this Lease, Tenant shall have and is hereby given the right to mortgage on one or more occasions (including any renewal, modification, extension or refinancing) the leasehold estate created under this Lease and assign the rents from any subleases, without the consent of Landlord, but no such mortgage or assignment shall release or discharge Tenant from any of its duties and obligations hereunder, and no such mortgage shall attach to or encumber the fee estate, Landlord's reversionary interest or any other interest of Landlord in the Premises.

Any such mortgage shall be granted solely to a Lender and shall expressly state that the fee interest in the Premises shall not be encumbered or otherwise secure any indebtedness of Tenant. Landlord shall not be required to join in any mortgage.

(b) Tenant may grant mortgages, which secure those loans providing financing solely for personal property of Tenant used to operate the Premises for the Intended Use and construction of improvements to the Center along with usual and customary expenses related solely to the Center further limited as follows:

- (1) Expenses incurred in connection therewith.
- (2) Costs for any new construction, restorations, additions, and remodeling, including site preparation, site investigation, off-site improvements, temporary improvements, maintenance of off-site improvements, test borings, pilings, filling, compacting, dredging, excavation, and demolition.
- (3) Costs for construction, future demolition, reconstruction, or alteration of buildings, structures, and improvements.
- (4) Allowances to be paid to subtenants as required by their respective subleases.
- (5) Any customary and reasonably related professional fees and disbursements, including those of attorneys, architects, brokers, surveyors, and engineers.
- (6) Contractors' overhead and profit.

- (7) Fees, charges, and expenses of Tenant related solely to the Premises and Facilities.
- (8) Commitment fees and other charges for such mortgage loans.
- (9) Interest charges for construction loans, taxes, costs, expenses and other Tenant obligations described in this Lease before the consummation of Tenant's loan that will be secured by a permanent mortgage on the leasehold estate and/or Facilities.

**Section 15.02 Mortgage Loan Limitations.** At no time may Tenant place mortgage liens on the leasehold estate of the Lease securing loans totaling in excess of seventy per cent (70%) of the fair market value of the leasehold estate, Facilities and personal property of Tenant used in the operation of the business to be conducted on the Premises and in the Facilities. All mortgage liens to be placed against the leasehold estate shall be subject to the consent by Landlord, which shall not be unreasonably withheld or delayed. Further, all mortgages on the leasehold estate must be satisfied and extinguished at least three (3) years prior to the end of the Term, whether the original Term or as extended by the exercise of an Option to Renew.

**Section 15.03 Lender Protections.** Landlord hereby covenants with each Lender holding a mortgage on the Lease as follows:

(a) **Notices.** If Tenant shall mortgage and encumber its interest in the leasehold estate with a Lender, Tenant or Lender shall give Landlord prompt notice of such Mortgage and furnish Landlord with complete and correct copies of the Mortgage and all promissory notes and other written obligations secured thereby, together with the name and address of the Lender (the "Lender Notice"). If Landlord sends to Tenant a Notice of a Tenant Event of Default or Tenant commits a Tenant Event of Default of the type whereby no notice is a required condition precedent to Landlord's exercise of its remedies under this Lease, Landlord shall send each Lender which has provided Landlord a Lender Notice, a notice to Lender (herein "Notice to Lender"), setting forth any Tenant Event of Default, which Landlord chooses not to waive, by registered or certified mail, return receipt requested, at the address theretofore designated by the Lender in its Lender Notice. No Tenant Event of Default shall be binding upon or affect the Lender unless a Notice to Lender shall be given to the Lender pursuant to this Section. In the case of an assignment of a Mortgage or change in address of a Lender, the assignee or Lender, by sending a Lender Notice to Landlord, may change the address to which a Notice to Lender is to be sent. Landlord shall not be bound to recognize any assignment of a mortgage unless and until Landlord shall be given a Lender Notice, along with a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Lender hereunder with respect to the assigned mortgage. If the mortgage is held by more than one person, corporation or other entity, no provision of this Lease requiring Landlord to give a Notice to Lender or copies thereof to the Lender shall be binding upon Landlord unless and until all of said holders shall deliver to Landlord a Lender Notice, which designates one of their number to receive all such Notices to Lender.

(b) **Performance of Covenants.** The Lender shall have the right to perform any term, covenant or condition and to remedy any Tenant Event of Default hereunder within the time periods specified in subparagraph (c) next below, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant; provided, however, that Lender shall not thereby or hereby be subrogated to the rights of Tenant.

(c) **Default by Tenant.** In the event of a Tenant Event of Default, which Landlord does not waive, Landlord will not object to Lender's entering the Premises and Tenant's Facilities to seek to cure a default and such entrance shall not be deemed to give Lender possession. Upon the occurrence of a Tenant Event of Default that relates to Tenant's failure to pay rent or other sums due by the applicable due date, or Tenant's failure to comply with the insurance requirements in **Article 9** hereof, Landlord agrees not to terminate this Lease unless and until Landlord provides a Notice to Lender, and the Lender shall have failed to cure such Tenant Event of Default within the same cure time period as Tenant has, which shall commence running upon Landlord's delivery to the Lender of such notice. Upon the occurrence of a Tenant Event of Default that relates to Tenant's failure to perform or observe a non-monetary or non-insurance term, covenant, or condition to be performed by it hereunder, Landlord agrees not to terminate this Lease unless and until Landlord provides a Notice to Lender and the Lender shall have failed to cure the Tenant Event of Default within the same cure time period as Tenant has, which shall commence running upon Landlord's delivery to Lender of such notice; provided, however, if such Tenant Event of Default cannot practicably be cured by the Lender without taking possession of the Premises, or if such Tenant Event of Default is not susceptible of being cured by the Lender, then Landlord shall not terminate this Lease, accelerate the Rent, or otherwise interfere with Lender's possession and quiet enjoyment of the leasehold estate created hereby if and so long as:

(i) In the case of a Tenant Event of Default which cannot practicably be cured by the Lender without taking possession of the Premises (with the burden of proof being on the Lender), the Lender has delivered to Landlord, prior to the date on which Landlord shall be entitled to give notice of lease termination, a written undertaking wherein the Lender agrees that it will cure all Tenant Events of Default and timely pay all past due Rent and any Additional Rent as it comes due (the "Lender Undertaking"). In that event the Lender must thereafter provide Landlord on a monthly basis documentation evidencing it is expeditiously complying with and substantially fulfilling the Lender Undertaking. Furthermore, the Lender shall upon obtaining possession, diligently cure such Tenant Event of Default, but in no event shall the Lender have more than ninety (90) calendar days after obtaining possession of the Premises to cure such Tenant Event of Default; or

(ii) In the case of a Tenant Event of Default which Lender cannot cure (for example, the insolvency of Tenant or the assignment of Tenant's interest in this Lease contrary to the applicable provisions hereof), the Lender agrees in writing delivered to Landlord, to timely pay all past due Rent and Additional Rent as it comes due, prior to the date on which Landlord shall be entitled to give notice of lease termination, and expeditiously institutes foreclosure proceedings and diligently prosecutes the same to completion. In that event Tenant must thereafter provide Landlord on a monthly basis documentation evidencing that it is diligently fulfilling all Rent obligations and proceeding with appropriate legal actions (unless in the meantime it shall acquire Tenant's leasehold estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure) and, upon such completion of foreclosure or acquisition and the Lender's curing any and all other Tenant Events of Default (in accordance with the other terms of this Article, if any), such Tenant Event of Default shall be deemed to have been cured.

The Lender shall not be required to obtain possession or to continue in possession of the Premises, as Lender pursuant to subsection (i) above, or to continue to prosecute foreclosure proceedings pursuant to subsection (ii) above in order to obtain the forbearance referenced above, if such Tenant Event of Default shall be cured by Tenant to Landlord's sole satisfaction. Nothing herein shall preclude Landlord from exercising any of its rights or remedies with respect to any other Tenant Event of Default during any period of such forbearance, but in such event the Lender shall have all of its rights provided for herein. If the Lender, its nominee, or a purchaser in a foreclosure sale, shall acquire title to Tenant's interest hereunder and shall cure all Tenant Events of Default which are susceptible of being cured by the Lender or by said purchaser, as the case may be, and reasonable evidence of cure is provided to Landlord by the Lender or by the purchaser, as the case may be, then prior Tenant Events of Default which are not susceptible of being cured by the Lender or by the purchaser shall no longer be deemed Tenant Events of Default hereunder, so long as from that time forward the new tenant is able to fulfill all terms and conditions of the Lease strictly in accordance with the terms of this Lease.

(d) **Foreclosure.** Foreclosure of any Mortgage, or any sale thereunder, or any conveyance of the leasehold estate hereunder from Tenant to any Lender (or its designee) or any third-party purchaser through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall be considered a permitted sale or transfer of the leasehold estate and shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease, and upon Landlord's being provided notice of such foreclosure, sale or conveyance, Landlord shall recognize the Lender (or such designee) or such third party purchaser as Tenant hereunder, so long as the Rent is then current and the Premises and Facilities continue to conform to the Intended Use and the use to be made of the Premises and Facilities shall likewise conform to the Intended Use requirements of this Lease. In such event, Landlord shall cooperate to the extent reasonably practical (at no out-of-pocket cost to Landlord) with taking such action as may be necessary to evict Tenant from the Premises and Facilities. If any Lender (or its nominee) or other third party shall acquire Tenant's interest as a result of any foreclosure or assignment in lieu of foreclosure under any mortgage, or by means of a deed in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, such lender (or its nominee) or such other third party purchaser shall thereafter have the right to further assign or transfer Tenant's interest to an assignee upon obtaining Landlord's written consent with respect thereto, which consent shall not be unreasonably withheld, conditioned or delayed. Upon such acquisition of Tenant's interest as described above by Lender (or its nominee) or such other third party purchaser, Landlord agrees to consider, in its sole and absolute discretion, the execution and delivery of a new lease of the Premises and Facilities to such party, upon the written request by such party given to Landlord not later than thirty (30) calendar days after such party's acquisition of Tenant's interest. Such new lease shall be the same in form and content to the provisions of this Lease, except with respect to the parties thereto, the term thereof (which shall be co-extensive with the remaining term or renewal term, if applicable, hereof), and the elimination of any requirements which have been fulfilled by Tenant prior thereto, and such new lease shall have priority equal to the priority of this Lease. Upon execution and delivery of such new lease, Landlord shall cooperate with the new tenant, at the sole expense of the new tenant, in taking such action as may be necessary to cancel and discharge this Lease.

(e) **Lender Loss Payable.** Landlord agrees that the name of each Lender may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried

solely by Tenant under this Lease on condition that the insurance proceeds are to be applied in the manner specified herein, provided, however, that the Lender may provide in its Mortgage a manner for the disposition of that portion of the proceeds, if any, payable directly to Tenant, so long as those provisions are not inconsistent with the provisions of the Lease. Lender shall have the right to participate with Landlord in the adjustment of losses with any insurance company with respect to any damage or destruction of the Premises and Facilities.

(f) **No Obligation to Cure.** Nothing herein contained shall require any Lender to enter into a new lease pursuant to this Section, or to cure any default of Tenant referred to above. Any entry on the Premises and Facilities to cure a default shall not be deemed to give Lender possession.

(g) **No Personal Liability.** In the event any Lender becomes Tenant under this Lease, the Lender shall be personally liable for the obligations of Tenant under this Lease only for the period of time that the Lender remains the actual holder of Tenant's interest and occupies the Premises and Facilities, and only to the extent provided in this Lease or such new lease. No Lender shall have any personal liability beyond its interest in the Premises and Facilities for the performance or payment of any covenant, liability, warranty or obligation hereunder or under any new lease, new agreement or other agreement entered into in connection herewith, or this Lease.

(h) **Material Notices.** Landlord shall give every Lender which has provided Landlord a Lender Notice, of any condemnation proceedings promptly after Landlord has received notice of the same or of any pending adjustment of insurance claims promptly after Landlord has received notice of the same, as each may relate to the Premises or Facilities and such Lender shall have the right to intervene therein and become a party to such proceedings. Landlord does hereby consent to such intervention. In the event that any Lender shall not elect to intervene or become a party to the proceedings, such Lender shall receive notice and a copy of any award or decision made in connection therewith.

(i) **No Merger.** If the leasehold estate and the fee estate are ever commonly held, they shall remain separate and distinct estates (and not merge) without Lender's written consent

## **ARTICLE 16. NOTICE PROVISIONS**

Any notice required or permitted to be given under this Lease shall be in writing and delivered by hand, by nationally recognized overnight air courier service (such as Federal Express) or by United States Postal Service, registered or certified mail, return receipt requested, in each case addressed to the respective party at the party's notice address. A notice shall be deemed to have been delivered and received on the earlier of the date actually received (by whatever means sent, including means not authorized by this article) or on the date of transmittal by telecopier, or the first (1st) business day after having been delivered to a nationally recognized overnight air courier service for "next business day" delivery, or on the third (3rd) business day after having been deposited with the United States Postal Service registered or certified mail, return receipt requested. If any communication is returned to the addressor because it is refused, unclaimed, or the addressee has moved, or is otherwise not delivered or deliverable through no fault of the addressor, effective notice shall still be deemed to have been given. Addresses for delivery of notice shall be as follows:



LANDLORD: Real Estate Manager  
City of Orlando  
400 South Orange Avenue, 7th Floor  
Orlando, Florida 32801  
Telephone: (407) 246-2653  
Facsimile: (407) 246-3129

and

City Attorney's Office  
City of Orlando  
400 South Orange Avenue, 3<sup>rd</sup> Floor  
Orlando, Florida 32801  
Attention: City Attorney  
Telephone: (407) 246-2341  
Facsimile: (407) 246-2854

TENANT: Orlando Ballet, Inc.  
610 N. Lake Formosa Drive,  
Orlando, Florida 32803  
Attention: President

From time to time, either party may change its addresses for notice purposes by written notice to the other at the addresses set forth herein or as previously duly advised in writing given in accordance with this section.

## ARTICLE 17.

### **ASSIGNMENT, SUBLEASING, SALE OR OTHER TRANSFER**

**Section 17.01. Transfer of Interest.** Tenant shall not assign or sublet Tenant's interest in the Lease, except under the following terms and conditions:

(a) **Assignment.**

(1) Tenant shall not assign this Lease, any part thereof or interest therein, or permit the same to be assigned or otherwise transferred, voluntarily or involuntarily, by operation of law or otherwise, except with the express prior written consent of Landlord, which may be withheld in its sole and absolute discretion or as otherwise specifically authorized herein.

(2) Upon Landlord's approval of an assignment of this Lease by Tenant, Tenant shall be relieved from its obligations hereunder if and only if the assignee has sufficient experience and expertise in the operation of ballet schools, classes and production of ballet theatrical performances, and sufficient assets to cover any loss Landlord may incur as a result of a failure to fulfill the terms and conditions of this Lease.

(3) Tenant shall pay the reasonable costs and expenses of Landlord in connection with the granting or withholding by Landlord of its consent to any assignment, including, without limitation, reasonable attorneys' fees. If Landlord shall at any time consent to one or more assignments or transfers, it shall not thereafter be precluded from withholding its consent to any one or more additional assignments or transfers.

(b) Subleases. Except as otherwise authorized herein, Tenant is strictly prohibited from subletting all or any portion of the Center without the prior written consent of the Landlord, which may be withheld by the Landlord in its sole and absolute discretion. In order for Landlord to consider consenting to a sublease, the sublease shall be limited to solely authorize the sublessee to engage in either the Intended Use or an Authorized Ancillary Use, requiring compliance with all other provisions of this Lease. Each sublease shall contain a provision satisfactory to Landlord requiring the subtenant, at the option of Landlord, to attorn to Landlord and make all subsequent payments to Landlord and perform its other obligations under such sublease, if Tenant defaults under this Lease. In the event of a termination of this Lease, no sublease shall be binding upon Landlord whether or not Landlord shall have approved the sublease and the subtenant. Tenant shall pay all reasonable costs and expenses, if any, incurred by Landlord in connection with the consent to any sublease, including, without limitation, reasonable attorneys' fees. Subleases shall be on a temporary basis for periods of no more than thirty (30) days, except in those instances approved in writing by Landlord in its sole and absolute discretion.

(c) The foregoing restrictions on assignment, sublease or other transfer shall not be deemed to prohibit Tenant from entering into short-term agreements for use of the Center or any parts thereof for periods of no more than thirty (30) days, without written approval of Landlord, for the Intended Use and any Authorized Ancillary Use.

**Section 17.02 Conveyance by Landlord.** Landlord may assign this Lease to any purchaser of the Center. If Landlord or any successor owner of the Center elects to convey the Center to any third party, the third party shall expressly assume all obligations of Landlord hereunder arising or accruing from and after the date of such conveyance or transfer, and Landlord or such successor owner, as the case may be, shall thereupon be released from all liabilities and obligations under this Lease arising or accruing from and after the date of such conveyance or other transfer of the Center. All liabilities and obligations arising thereafter shall be the sole responsibility of the new owner.

## **ARTICLE 18. MISCELLANEOUS**

**Section 18.01. Estoppel Certificates.** Within twenty (20) business days after request in writing by either party, the other party will furnish a written statement in form and substance reasonably acceptable to the non-requesting party, duly acknowledging the fact that (a) this Lease is in full force and effect, (b) rents payable hereunder are current, (c) there are no uncured defaults hereunder by Landlord or Tenant, if that be the case, and if not, such additional information concerning the default and such other matters as reasonably requested. Failure of either party to deliver such estoppel certificate within such twenty (20) day period shall entitle the requesting party to conclusively presume that the Lease is in good standing without default, which statement or representation may be relied upon as being true and correct by any prospective purchaser or mortgagee.

**Section 18.02 Force Majeure.** The parties shall use reasonable diligence to ultimately accomplish the purpose of this Lease but shall not be liable to each other, or their successors or assigns, for breach of contract, including damages, costs, and attorney's fees (including costs or attorney's fees on appeal) as a result of such breach, or otherwise for failure to timely perform its obligations under this Lease occasioned by any cause beyond the reasonable control and without the fault of the parties. Such causes may include but shall not be limited to Acts of God, acts of terrorism or of the public enemy, acts of other governments (including regulatory entities or courts) in their sovereign or contractual capacity, fires, hurricanes, tornadoes, floods, epidemics, quarantines, restrictions, strikes, substantial shortages of building materials within the Orlando Metropolitan Area, or failure or breakdown of transmission of other facilities ("Force Majeure"). Notwithstanding anything herein to the contrary, if either Landlord or Tenant is delayed, hindered or prevented in or from performing its respective obligations under this Lease by any occurrence or event of Force Majeure, then the period for such performance shall be extended for the period that such performance is delayed, hindered or prevented, and the party delayed, hindered or prevented in or from performing shall not be deemed in breach hereunder to the extent of the delay.

**Section 18.03 Modification.** The terms and conditions of this Lease shall not be amended in any manner except by a written instrument, duly executed by the parties, their successors or assigns.

**Section 18.04 Parks Board Rules.** Tenant agrees to abide by all rules, regulations and decisions of the Parks Board, including but not limited to those related to the construction design of any alterations, modifications or additions to the Facilities, coordinating special events in the Park and provisions for shared parking.

**Section 18.05 Tenant Board Membership.** Tenant shall include the Mayor of the City or his/her designee on its board of directors, with voting rights the same as all other voting board members.

**Section 18.06 Waiver; Remedies Cumulative.** Failure on the part of Landlord or Tenant to complain of any act or failure to act on the part of the other in a timely manner shall not be a waiver of any respective rights hereunder; however, the foregoing shall not apply to provisions of this Lease, where a right of either party is dependent upon notice to be given within a specified period. Further, no waiver at any time of any of the provisions hereof by Landlord or Tenant shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. No payment by Tenant, or acceptance by Landlord, of a lesser amount than shall be due from Tenant to Landlord shall be treated otherwise than as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

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 a party or not, shall be deemed to be in exclusion of any other, and any two or more or all of such rights and remedies may be exercised at the same time.

**Section 18.07 Authority.** Each signatory to this Lease on behalf of the party for whom it is executing this Lease represents and warrants to all other signatories and parties executing this Lease that such signatory is duly authorized to execute and deliver this Lease on behalf of such entity and that no other person or organization is required to join in or sign this Lease, in order to bind the party on whose behalf such person(s) signs this document. If requested by any party, the requested party agrees to deliver to all others evidence of such authority satisfactory to all others. Each party represents and warrants to the other that the execution and performance of this Lease by each party has been duly authorized by all applicable laws and regulations and all necessary corporate/company action, and this Lease constitutes the valid and binding obligation of such party, enforceable in accordance with its terms.

**Section 18.08 Time of Essence.** TIME IS OF THE ESSENCE with respect to the requirements of each and every section of this Lease. The provisions hereof shall be deemed incorporated by reference into each section of this Lease.

**Section 18.09 Headings.** The division of this Lease into parts, the article headings and subheadings herein are inserted only for convenience of reference and shall in no way define, limit or prescribe the scope or intent of any provisions of this Lease.

**Section 18.10 Interest.** Any amount due hereunder and not paid before becoming delinquent shall bear interest at the highest rate allowed by law from the due date until paid. Payment of such interest shall not excuse or cure any default under this Lease.

**Section 18.11 Florida Law.** This Lease, and all terms hereunder shall be construed consistent with the laws of the State of Florida. Any dispute resulting in litigation hereunder shall be resolved in court proceedings instituted in the courts of Orange County, Florida and in no other jurisdiction.

**Section 18.12 Partial Invalidity.** If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term, covenant or condition to persons and circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Lease shall be valid and shall be enforced to the fullest extent permitted by law.

**Section 18.13 Construction of Language.** The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant. Each party has participated extensively in the negotiations concerning drafting of this Lease, and each has been represented by legal counsel.

**Section 18.14 Further Documents.** Landlord and Tenant will, whenever and as often as it shall be reasonably requested so to do by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered any and all such further confirmation, instruments of further assurance, and any and all such further instruments and documents as may

be reasonably necessary, expedient or proper, in order to evidence or complete any and all transactions or to accomplish any and all matters and things provided in this Lease.

**Section 18.15 Recording of Lease.** Landlord and Tenant agree that neither this Lease nor a copy hereof shall be recorded in the Public Records of Orange County, Florida, but the parties may record a memorandum of this Lease in the form as provided in **Exhibit "E"** attached.

**Section 18.16 Business Day.** Should any due date hereunder fall on a Saturday, Sunday or legal holiday, such due date shall be the first business day following such Saturday, Sunday or legal holiday.

**Section 18.17 Radon.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**Section 18.18 Parties Bound by Lease.** Except as may be herein provided, this Lease and all of the covenants, conditions and restrictions herein shall inure to the benefit of and be binding upon the parties hereto, their respective legal representatives, successors and assigns.

**Section 18.19 Liability Limits.** The City of Orlando is a Florida municipal corporation whose limits of liability are set forth in Section 768.28, Florida Statutes, and nothing herein shall be construed to extend the limits of liability of Landlord beyond that provided in Section 768.28, Florida Statutes. Nothing herein is intended as a waiver of Landlord's sovereign immunity under Section 768.28, Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, all of Landlord's obligations under this Lease are limited to the payment of no more than the amount limitation per person and in the aggregate contained in Section 768.28, Florida Statutes, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein.

**Section 18.20 Landlord's Exculpation.** Anything to the contrary contained in this Lease notwithstanding, Landlord's elected and appointed officials, officers, agents, employees, representatives, successors and assigns, shall have absolutely no corporate or personal liability with respect to the performance of any of the terms, covenants, conditions and provisions of this Lease. Such exculpation of liability shall be absolute and without exception whatsoever.

**Section 18.21 Integration.** This Lease shall constitute the entire agreement of the parties concerning the matters covered herein. All prior understandings and agreements between the parties concerning those matters, including all preliminary negotiations, letters of intent, and similar documents are merged into this Lease, which alone fully and completely expresses their understanding. No person, firm or entity has at any time had any authority from Landlord to make any representations or promises not stated herein on its behalf, and Tenant expressly agrees that if any such representations or promises have been made by Landlord or others, Tenant waives all rights to rely on them.

**Section 18.22 Alterations Required by Law.** If any alterations, additions, improvements, repairs or renewals shall be required in or to either the Premises or Facilities or any part thereof by any laws, ordinances, or regulations, or by any restrictions, the same shall be done by and the cost thereof borne by Tenant.

**Section 18.23 Attorneys' Fees.** The prevailing party in any litigation arising out of or in any manner relating to this Agreement shall be entitled to recover from the other party reasonable attorneys' fees and costs for all pre-litigation, trial, appellate and bankruptcy proceedings, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**Section 18.24 Brokers.** Landlord and Tenant hereby acknowledge, represent and warrant to each other that no broker or finder has been employed by either Landlord or Tenant in connection with the transaction referred to in this Lease who is seeking a commission. Each party hereto agrees to be solely responsible for any amounts allegedly owed arising out of any agreement, arrangement or understanding alleged to have been made by such party, or on its behalf, with any broker or finder in connection with this Lease or the transaction contemplated hereby. Notwithstanding anything to the contrary contained herein, this section shall survive the expiration or any termination of this Lease.

**Section 18.25 Public Relations.** Landlord shall have the right to approve all press releases and other statements to the newspapers, radio, television, and other media made by Tenant, relating to this transaction, the occupancy of the Facilities, and present and future leasing transactions in connection with the Facilities.

**Section 18.26 Waiver of Jury Trial.** Each party hereby irrevocably waives any and all rights it may have to demand that any action, proceeding or counterclaim arising out of or in any way related to this lease or the relationship of the parties be tried by jury. This waiver extends to any and all rights to demand a trial by jury arising from any source, including but not limited to the Constitution of the United States, the constitution of any state, common law or any applicable statute or regulation. Each party hereby acknowledges that it is knowingly and voluntarily waiving the right to demand trial by jury.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals the day and year on the dates set forth below.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES OF  
PARTIES APPEAR ON FOLLOWING PAGES.)**

**CITY OF ORLANDO, FLORIDA, a Florida  
municipal corporation**

ATTEST:

By: \_\_\_\_\_  
Alana C. Brenner, City Clerk

By: \_\_\_\_\_  
Mayor/Mayor Pro Tem

Executed on \_\_\_\_\_, 20\_\_

WITNESSES:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Approved As To Form And Legality For The  
Use And Reliance Of The City  
Of Orlando, Florida, Only.

\_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Assistant City Attorney

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and Alana C. Brenner, the Mayor/Mayor Pro Tem and City Clerk, respectively, of the City of Orlando, a Florida municipal corporation, on behalf of the corporation. They are personally known to me to be the persons described herein and who produced the identification as set forth below.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Print Notary Name

My Commission Expires: \_\_\_\_\_

AFFIX NOTARY STAMP

Commission No.: \_\_\_\_\_

☐ Personally known, or

☐ Produced Identification

Type of Identification Produced  
\_\_\_\_\_

WITNESSES:

By: [Signature]  
Print Name: Stephanie D. Simmons

By: [Signature]  
Print Name: Kena Hobson

ORLANDO BALLET, INC., a Florida  
corporation not for profit

By: [Signature]  
Print Name: AVA K. DOPPELT  
As its President

Executed on APRIL 16, 2014

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 16th day of April, 2014, by Ava K. Doppelt, as President of Orlando Ballet, Inc., a Florida corporation not for profit, on behalf of the corporation. He/She is known to me to personally ~~or produced the identification as set forth below.~~

[Signature]  
Signature of Notary Public



Print Notary Name \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
AFFIX NOTARY STAMP

☒ Personally known, or  
☐ Produced Identification  
Type of Identification Produced \_\_\_\_\_



**EXHIBIT "A"**

**Landlord Real Property Legal Description**

**(See next page)**

**EXHIBIT "B"**

**(Conceptual Drawings of Facilities)**

**EXHIBIT "C"**

**(Green Space-Fence Location)**

**EXHIBIT "D"**

**(List of Events Contracts)**

**EXHIBIT "E"**

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** is executed to become effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **CITY OF ORLANDO, FLORIDA**, a municipal corporation existing under the laws of the State of Florida ("**Landlord**"), whose mailing address is 400 South Orange Avenue, Orlando, Florida 32801, and **ORLANDO BALLET, INC.**, a Florida corporation not for profit ("**Tenant**"), whose mailing address is \_\_\_\_\_ Street, Orlando, Florida 328\_\_\_\_.

Landlord has granted, demised and leased the Premises described below to Tenant pursuant to the following terms:

1. Date of Lease: \_\_\_\_\_, 2014
2. Description of Premises:

See Exhibit A attached hereto

3. Date of Term Commencement: \_\_\_\_\_, 2014.
4. Initial Lease Term: 50 years.
5. Options to Extend:   25 years for First Extension  
                              24 years for Second Extension

The purpose of this Memorandum of Lease is to give notice of the Lease and of the rights created thereby, all of which are hereby confirmed.

[execution signatures on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the dates set forth.

**CITY OF ORLANDO, FLORIDA a Florida  
municipal corporation**

ATTEST:

By: \_\_\_\_\_  
Alana C. Brenner, City Clerk

By: \_\_\_\_\_  
Mayor/ProTem

WITNESSES:

Executed on \_\_\_\_\_, 2014

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

APPROVED AS TO FORM AND  
LEGALITY FOR THE USE AND  
RELIANCE OF THE CITY OF ORLANDO,  
FLORIDA, ONLY.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_, 2014

\_\_\_\_\_  
Assistant City Attorney

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ and Alana C. Brenner, the Mayor/Mayor Pro Tem and City Clerk, respectively of the City of Orlando, Florida, a Florida municipal corporation, and who executed the foregoing on behalf of the corporation. They are personally known to me to be the persons described herein and who produced the identification as set forth below.

AFFIX NOTARY STAMP

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Print Notary Name

My Commission Expires: \_\_\_\_\_

Commission No.: \_\_\_\_\_

☐ Personally known, or

☐ Produced Identification

Type of Identification Produced  
\_\_\_\_\_

WITNESSES:

Stephanie D. Simmons  
Print Name: Stephanie D. Simmons

Kena Hobson  
Print Name: Kena Hobson

ORLANDO BALLET, INC., a Florida  
corporation not for profit

By: Ava K. Doppelt  
Print Name: AVA K. DOPPELT  
As its President

Executed on APRIL 16, 2014

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 16th day of April, 2014 by Ava K. Doppelt as President of Orlando Ballet, Inc., a Florida corporation not for profit, on behalf of the corporation. He/She is personally known to me ~~or who has produced the identification set forth below.~~

Melissa Graziano Hill  
Signature of Notary Public

AFFIX NOTARY STAMP



Print Notary Name  
My Commission Expires: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
☒ Personally known, or  
☐ Produced Identification  
Type of Identification Produced \_\_\_\_\_

**EXHIBIT "A"**  
**(Legal Description of Premises)**