

RESOLUTION NO. 30955

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A LEASE WITH THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA, IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE USE OF APPROXIMATELY NINETEEN THOUSAND TWO HUNDRED NINETY-SIX (19,296) SQUARE FEET OF SPACE AT 301 N. HOLTZCLAW AVENUE, IDENTIFIED AS TAX MAP NO. 146G-A-001, FOR THE FOUR (4) YEAR TERM OF FEBRUARY 16, 2021, THROUGH FEBRUARY 15, 2025, FOR USE AS AN INDOOR SOFTBALL FACILITY, FOR THE ANNUAL RENT OF ONE DOLLAR (\$1.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor or his designee to enter into a Lease with the University of Tennessee at Chattanooga, in substantially the form attached, for the use of approximately 19,296 square feet of space at 301 N. Holtzclaw Avenue, identified as Tax Map No. 146G-A-001, for the four (4) year term of February 16, 2021, through February 15, 2025, for use as an indoor softball facility, for the annual rent of one dollar (\$1.00).

ADOPTED: November 30, 2021

/mem

LEASE

THIS LEASE AGREEMENT (the “Lease”) is made between the City of Chattanooga, Tennessee, a municipal corporation (“Lessor”), and THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA, an incorporated, educational institution of the State of Tennessee, whose address is 615 McCallie Avenue, Chattanooga, Tennessee 37402 (“Lessee”).

RECITALS

WHEREAS, this Lease shall be contingent upon review and approval by the Chattanooga City Council; and

WHEREAS, Lessor and Lessee both have the appropriate approvals and authority to enter into this Lease; and

WHEREAS, Lessee proposes to operate programs for its softball practice, training and physical conditioning, as well as shared use by other public educational groups under the direction and scheduling of Lessee’s facility manager; and

WHEREAS, Lessor agrees to lease to Lessee a portion of the property located at 301 N. Holtzclaw Avenue, Chattanooga, Hamilton County, Tennessee; and

NOW, THEREFORE, in consideration of the faithful performance of the terms, covenants, and conditions and the mutual obligations of the parties as set forth herein, the parties agree as follows:

SECTION 1. Leased Premises. Lessor hereby leases to Lessee a portion of the property located at 301 N. Holtzclaw Avenue, Chattanooga, Hamilton County, Tennessee as more particularly described in **Exhibit “A,”** attached hereto and incorporated by reference and identified as a portion of Tax Map No. 146G-A-001 (the “Leased Premises”)

SECTION 2. No Warranty – Acceptance of Current “AS IS” Condition. Lessee acknowledges that Lessor makes no guarantee, representation or warranty regarding the physical or environmental condition of the Leased Premises, and Lessee expressly disclaims any and all obligations and liability to Lessor regarding any defects or structural damage which presently exists on the Leased Premises. Lessee is currently in possession of the Leased Premises and does hereby accept the Leased Premises in its **“AS-IS-WHERE-IS,” WITH ALL FAULTS** condition and Lessee assumes all risks associated with the physical and environmental condition of the Leased Premises, regardless of the cause or date of origin of such condition, and releases all rights or claims against Lessor relating to such condition or for any costs of remediation or cure of any physical or environmental condition.

SECTION 3. Utilization of Leased Premises. Lessee may utilize the Leased Premises for the purpose of operating programs for its softball practice, training and physical conditioning, as well as shared use by other public educational groups under the direction and scheduling of its facility manager. The Lessor’s recreation programming and the Reviving Baseball in Inner Cities shall be allowed access to the Leased Premises based on availability. Specifically, for consideration of reduced utilities charged by Lessor, Lessee hereby agrees to allow Lessor the option to use the Leased Premises for Lessor’s programs during the following months of each year during the term of this Lease:

- May
- June
- July
- August
- Last two weeks of November
- First two weeks of December

Lessee shall not utilize the Leased Premises for any other purposes without the express written approval of Lessor, which hereby designates its Mayor as its agent for this purpose. Any third parties engaging in activities on the Leased Premises must be approved by Lessor and shall

maintain commercial general liability insurance, a combined single limit of not less than One Million and No/100 Dollars (\$1,000,000) per occurrence for property damage and bodily injury and Two Million and No/100 Dollars (\$2,000,000) general aggregate at such third party's sole expense. Lessor shall be named as an additional insured on the liability policy. Any third party engaging in activities on the Leased Premises shall provide Lessor evidence of coverage by a signed certificate of insurance that shows the coverage to be in effect prior to engaging in activities on the Leased Premises. Lessor shall be provided with a thirty (30) days written notice prior to cancellation of any insurance policy.

SECTION 4. Consideration.

- (a) The primary consideration of this Lease shall be the agreement by Lessee to operate the above described program(s) on the Leased Premises during the term of this Lease.
- (b) Lessee shall also remit to Lessor ten percent (10%) of the gross revenues received from the rental of the Leased Premises to outside groups. At the end of each calendar year during the term of this Lease, Lessee will submit to Lessor an accounting of the gross revenues received from rental of the Leased Premises and shall submit by December 31 of each year to Lessor payment of the aforementioned rental fees.

SECTION 5. Term. The term of this Lease shall commence on February 16, 2021 (the "Commencement Date"), shall be for a term of four (4) years. Either party may terminate this Lease at any time upon giving the other party written notice of its intention to terminate, and the notice shall be received at least sixty (60) days prior to the termination date.

SECTION 6. Lease Payments. Lessee shall, during the term of this Lease, pay to Lessor the net annual rent of One Dollar (\$1.00) per year with the first annual payment due on the

Commencement Date of this Lease and subsequent annual payments due on the anniversary date of the Commencement Date of this Lease.

SECTION 7. Improvements.

- (a) Lessee agrees that no improvements, additions, or alterations (“Improvements”) shall be made to the Leased Premises without obtaining Lessor’s written approval. If Lessee desires to make Improvements to the Leased Premises, it shall be required to submit a detailed description of the Improvements to be made to Lessor (the “Lessee’s Plan”). The Lessee’s Plan shall be subject to Lessor’s written approval. Lessor’s approval of Lessee’s Plan shall in no event, unless expressly set forth in such approval, be deemed to create any obligations on the part of the Lessor to do any work or make the Improvements or to authorize Lessee to make any further additions, improvements, or alterations to the Leased Premises. In the event Lessor approves Lessee’s Plan, the parties shall execute an amendment to this Lease setting forth the obligations of the Lessee with respect to the construction of Improvements in accordance with Lessee’s Plan, which shall be attached as an exhibit to the lease amendment.
- (b) All contractors, if any, must be licensed and shall comply with all requirements of the State of Tennessee Contractors Licensing Act. All contractors, subcontractors, and professionals involved in the Improvements of the Leased Premises must be approved in writing by the Lessor.
- (c) All contracts entered into by Lessee relating to the Leased Premises or the Improvements or the use of Leased Premises shall contain the following statement:

“This agreement/contract shall in no way bind the City of Chattanooga, Tennessee, its officials or employees, nor obligate it for any costs or expenses whatsoever under this agreement/contract, or which are in any manner connected with the subject matter of this agreement/contract.”

SECTION 8. Alterations. Except as expressly provided in this Lease, Lessee shall not make any alterations, improvements, or additions to the Leased Premises without the prior, express, and written consent of the Lessor. All such alterations, replacements, changes, additions and improvements that may be made, erected, installed, or affixed on or in the Leased Premises during the term of this Lease shall be, and shall be deemed to be, part of the realty and the sole and absolute property of Lessor.

SECTION 9. Ownership of Improvements. All Improvements erected or placed on the Leased Premises shall remain on and shall not be removed from the Leased Premises. At the expiration or earlier termination of this Lease, all such Improvements shall be the sole property of Lessor.

SECTION 10. Insurance.

- (a) Lessor shall insure, at Lessor's sole expense, the building on the Leased Premises against the risk of fire. Lessee shall insure, at its sole expense, all its personal property located on the Leased Premises. Lessor shall not be responsible for damage or loss of property of Lessee kept or stored on the Leased Premises.
- (b) With written approval from the Lessor, an exception to the requirement that Lessee procure and maintain Commercial General Liability Insurance on the Leased Premises will be allowed if the Lessee is self-insured under the Tennessee Claims Commission Act, T.C.A. section 9-8-301 et seq., which covers certain tort liability for actual damages up to \$300,000 per claimant and \$1,000,000 per occurrence, as may be amended from time to time.
- (c) Lessee agrees to comply with all then applicable state and federal Workers' Compensation laws.

(d) All contractors, if any, hired or used by Lessee are required to provide Builder's Risk Insurance.

SECTION 11. Third Party Claims. Lessee, as a material part of the consideration to be rendered to Lessor, hereby waives all claims against Lessor for injuries or damage for any cause arising at any time to persons in or about said Leased Premises where said injuries or damage occurs as a result of the use of the Leased Premises by Lessee or from the failure of Lessee to keep the Leased Premises in good condition and repair as herein provided. Any rights or claims against Lessee or its, officials, officers, representatives, agents or employees shall be heard and determined by the Tennessee Claims Commission in the manner prescribed by law. Damages recoverable against Lessee shall be limited to claims paid by the Claims Commission pursuant to T.C.A. Section 9-8-301 *et seq.*

SECTION 12. Operational Costs. Lessee agrees to be responsible for all operational costs of the Leased Premises, including without limitation costs of employees, utilities, materials, supplies, equipment and maintenance of the Leased Premises.

SECTION 13. Termination and Holding Over. Upon termination of this Lease at the expiration of the term hereof, Lessee shall surrender the Leased Premises to Lessor in as good condition as received, ordinary wear and tear and damage by fire or other casualty excepted. Lessee covenants to Lessor that it shall vacate the Leased Premises on or before thirty-one (31) days following the expiration of the term hereof, including removal of all personnel and property.

SECTION 14. Quiet Possession. Lessor covenants to keep the Lessee in quiet possession of the Leased Premises during the term of this Lease.

SECTION 15. Illegal Activities. Lessee shall not engage in or allow illegal activities on the Leased Premises nor allow alcoholic beverages to be sold or consumed on the Leased Premises.

SECTION 16. Assignment. Lessee shall not assign or transfer this Lease or any interest herein nor sublease the Leased Premises or part thereof to anyone. Further, neither this Lease nor any interest herein shall be subject to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or receivership unless a receivership is sought by Lessor.

SECTION 17. Laws and Ordinances. Lessee covenants to comply with all state, county, and city laws and ordinances, including those regarding nuisances insofar as the Leased Premises are concerned, and that the Lessee will not by any act of its agents or officers render the Lessor liable therefor.

SECTION 18. Discrimination Prohibited. Lessee covenants to comply with all federal, county, and city laws and ordinances in regard to discrimination due to handicap, age, race, color, religion, sex, national origin, or any other classification protected by said laws.

SECTION 19. Possession. If the Lease should at any time become void or forfeited, no demand shall be necessary to a recovery of possession of the Leased Premises, and the Lessor shall be entitled to immediate possession.

SECTION 20. Attorney's Fee for Right to Recover Possession. Should the Lessor at any time rightly seek to recover possession of the Leased Premises, and be obstructed or resisted therein, and any litigation thereon ensues, the Lessee shall be bound to pay the Lessor a reasonable attorney's fee.

SECTION 21. Repairs and Maintenance.

- (a) Lessee shall repair and maintain the Leased Premises inside in good order, condition, and repair (including any such replacement and restoration as is required for that purpose) without limitation, interior painting, all plate glass, windows, doors, hardware, plumbing lines and fixtures, gas pipes, electric wiring, electric fixtures and equipment, light fixtures, bulbs, heating, ventilating, and air

conditioning systems, sprinkler systems, walls, floors, floor coverings, ceilings, and all machinery, equipment, and facilities forming a part of the Leased Premises. Lessee shall make good or pay at the end of this Lease for any necessary repairs. Lessor shall keep and maintain the exterior of the Leased Premises, including roof and structural portions of the building, walkways and driveways, in good order and repair during the term of the Lease.

- (b) The Lessor shall not be held liable for the cost of any repairs made by or through the Lessee, unless there is an express written agreement to the contrary between the parties, or unless the repair involves any appliance or fixture which is provided by the Lessor and which is covered by a warranty, guaranty, or other similar instrument running to the Lessor, and then only to the extent covered by said warranty or guaranty.
- (c) Except for emergency situations, the Lessee shall not make any repairs upon appliances which have been provided by the Lessor or upon any fixtures, including, but not limited to, the kitchen and bathroom facilities without first obtaining express written consent of the Lessor.

SECTION 22. Right to Enter. The Lessor shall have the right to enter into and upon said Leased Premises or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs, additions, or alterations as may be necessary for the safety, comfort, and preservation thereof.

SECTION 23. Utilities. The Lessee shall be responsible for payment of its pro-rata share of forty-eight percent (48%) of all utility services, which shall be reimbursed monthly to the Lessor following Lessor's delivery of an invoice to the Lessee, which shall not exceed \$4,203 per month or \$33,625 annually. The invoice shall include the cost for electricity, water, and gas unless such

utility services are individually metered by Lessee. Lessee shall pay its monthly pro-rata share within thirty (30) days following its receipt of an invoice from Lessor. It shall be a breach of the Lease to fail to keep such payments current.

SECTION 24. Destruction, Damage or Condemnation of Property.

- (a) If because of fire, the elements, or an act of God, the Leased Premises is either destroyed, damaged or so rendered as to be wholly or partially unfit for occupancy, or if in the judgment of Lessor, the damage resulting cannot be repaired within sixty (60) days from such damage, then at the option of Lessor to be exercised by giving written notice to Lessee within sixty (60) days following the date of such damage, this Lease shall terminate on the date of such election. Upon receipt of notice, Lessee shall immediately surrender the Leased Premises to Lessor. If the Leased Premises is not rendered wholly or partially unfit for occupancy and Lessor can repair the Leased Premises within the time provided for above, Lessor shall repair such damage within a reasonable time after written notice to Lessor of such damage. Under no circumstances shall Lessor be liable to Lessee, or its agents, employees, invitees, licensees, contractors or assignees for inconvenience, annoyance, loss of profits, expenses, or any other type of injury or damage resulting from the repair of any such damage, or from any repair, modification, arranging, rearranging of any portion of the Leased Premises or any part of all of the Leased Premises or termination of this Lease as provided above. Lessee, its vendors, agents, employees, invitees, licensees, contractors or assignees shall assume the risk of any and all damage to its personal property in or on the Leased Premises and from any casualty whatsoever.

- (b) If all or any part of the Leased Premises is taken for any public or quasi-public use by eminent domain or by private purchase in lieu thereof, this Lease shall terminate at the option of Lessor or Lessee on the date that the condemning authority actually takes possession of the part condemned. In no event shall Lessee, its vendors, agents, employees, invitees, licensees, contractors or assignees have any right or claim to any part of any award made to or received by Lessor for such taking or against Lessor or the condemning authority for the value of any unexpired term of this Lease.

SECTION 25. Defaults. The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:

- (a) Abandonment of the Leased Premises, except for causes of *force majeure* (i.e. acts of God, strikes, civil disturbances, wars, explosions, pandemics, epidemics or acts beyond the reasonable control of Lessee);
- (b) Any attempted assignment, transfer, or sublease in violation of Section 17 above;
- (c) The appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Leased Premises or the attachment, execution or other judicial seizure of substantially all of Lessee's assets located on the Leased Premises or of Lessee's interest in this Lease, or where Lessee becomes a "debtor" as defined in any bankruptcy laws;
- (d) Failure to operate the programs as outlined in Section 3 above.
- (e) Engaging in or allowing illegal activities to be conducted on the Leased Premises;
and
- (f) Failure to perform any term, covenant, or condition of this Lease, other than those set forth in subparagraphs A-E above, shall not constitute a default unless such

breach is not cured within twenty (20) days after receipt by Lessee of written notice from the Lessor specifying such breach. If the Lessor determines that the default cannot be reasonably cured within such twenty-day (20) period, Lessee shall still not be in default if Lessee begins to cure the same within such twenty-day (20) period and diligently pursues such cure to completion. Failure to cure an event of default that may reasonably be cured within such twenty-day (20) period shall be deemed a default in the performance of the covenants, agreements, or conditions on the part of Lessee. In such event, Lessor, after written notice to Lessee, in the manner specified in Section 32 hereof, may terminate the Lease immediately. The Lessor shall have the right to re-enter or repossess the Leased Premises and dispose and remove therefrom Lessee or other occupants thereof and their effects in a lawful manner without being liable for any prosecution thereof.

SECTION 26. Remedies. The parties' remedies hereunder are not exclusive but cumulative to other remedies provided by law or in equity in the event of default.

SECTION 27. Surrender of Leased Premises on Termination. Lessee shall peaceably deliver possession of the Leased Premises to Lessor on the date of expiration or termination of this Lease, whatever the reason for termination. Lessor shall have the right to re-enter and take possession of the Leased Premises on the date termination becomes effective without further notice of any kind and without instituting summary or regular legal proceedings.

SECTION 28. No Waiver. Any waiver by the parties of any default or breach of any one or more of the terms, conditions, or covenants of this Lease shall be in writing and shall not be construed to be a waiver of any subsequent or other breach or default of the same or of any other term, covenant, or condition of this Lease. No delay, failure, or omission of Lessor to re-enter the Leased Premises, to insist on strict enforcement of any term, covenant, or condition, or

to exercise any right, privilege or option arising from any breach or default shall impair any such right, privilege or option or be construed as a waiver of or acquiescence in such breach of default.

SECTION 29. Abandoned Property. If Lessee abandons the Leased Premises or is dispossessed thereof by process or law or otherwise, Lessee shall be deemed to have abandoned any personal property belonging to Lessee left on the Leased Premises forty-five (45) days after the date of abandonment or dispossession, and title to said personal property shall be deemed to have been transferred to Lessor. Lessor shall have the right to remove and to dispose of said personal property without liability therefor to Lessee or to any person claiming under Lessee, and shall not need to account for its disposal.

SECTION 30. Right of Access. Lessor shall have the right of access to the Leased Premises at all reasonable times.

SECTION 31. Notices. All notices and other communications given hereunder by the parties shall be in writing and shall be delivered personally or by mail, postage prepaid, and the date of any notice by certified mail shall be deemed the date of certification thereof delivered by or addressed to the parties as follows:

Lessor:
CITY OF CHATTANOOGA, TENNESSEE
Real Property Office
101 East 11th Street, Suite G-4
Chattanooga, TN 37402

With a copy to:
Office of the City Attorney
100 E. 11th St., Ste. 200
Chattanooga, TN 37402

Lessee:
UNIVERSITY OF TENNESSEE, ON BEHALF
OF ITS CHATTANOOGA CAMPUS
Dr. Richard L. Brown
Vice Chancellor for Finance & Operations
615 McCallie Avenue
Chattanooga, Tennessee 37404

With a copy to:
The University of Tennessee
301 Andy Holt Tower
Knoxville, TN 37996

SECTION 32. Miscellaneous Provisions.

32.1 Applicable Law. This Lease shall be construed and interpreted pursuant to the laws of the State of Tennessee. Should there be any provision thereof to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforcement of the remaining provisions shall not be affected, but shall continue in full force and effect. Any disputes between the parties and/or default by Lessee may only be submitted to a court of competent jurisdiction in Hamilton County, Tennessee, and the prevailing party shall be entitled to recover all costs, expenses, and legal fees in defending such legal action.

32.2 Severability. If any term, covenant, or condition of this Lease is found to be invalid, void, ineffective, or unenforceable for any reason, the remaining terms, covenants, and conditions shall remain in full force and effect.

32.3 Entire Agreement. This Lease represents and constitutes the entire understanding between the parties and supersedes all other agreements and communications between the parties, whether oral or written, concerning the subject matter herein. Any amendment to this Lease must be in writing and signed by the parties hereto and adopted in the same fashion as this Lease.

32.4 Binding Effect. The terms and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs and personal and legal representatives.

32.5 Headings. Section headings are for convenience of reference only and shall not limit or otherwise affect the meanings of this Lease.

[Signatures on the following pages]

IN WITNESS WHEREOF, the parties have executed this Lease on the ____ day of _____, 202____, at Chattanooga, Hamilton County, Tennessee.

LESSOR:

CITY OF CHATTANOOGA, TENNESSEE

BY: _____
JERMAINE E. FREEMAN
Senior Advisor for Economic Opportunity

Date: _____

LESSEE:

THE UNIVERSITY OF TENNESSEE

BY: _____
Printed Name: _____
Date: _____

STATE OF TENNESSEE
APPROVED AS TO FORM AND LEGALITY

BY: _____
Printed Name: _____
Date: _____

EXHIBIT A
"Leased Premises"
(HEAVILY OUTLINED AREA)

