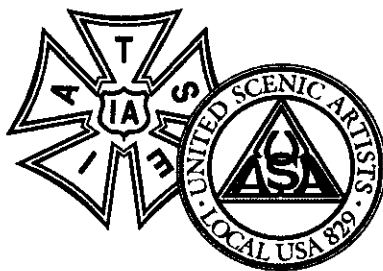


Agreement

Between

UNITED SCENIC ARTISTS, LOCAL 829



and

**BALLET THEATRE FOUNDATION, INC.
(AMERICAN BALLET THEATRE)**

September 1, 2005 to August 31, 2008

BALLET THEATRE FOUNDATION, INC. – UNITED SCENIC ARTISTS, LOCAL USA 829

2005 – 2008 AGREEMENT

AGREEMENT made as of this 1st day of November, 2005, by and between United Scenic Artists, Local USA 829 (hereinafter “Union”) for and on behalf of its members, and Ballet Theatre Foundation, Inc. (American Ballet Theatre) (hereinafter “Company”).

WITNESSETH

WHEREAS, the Ballet Company recognizes the Union as the only Union representing its Designers, Design Supervisor, Assistant Designers and Artist Employees, and agrees to deal collectively only with this Union, specifically with such representatives of the Union as the said Union may elect or appoint:

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the parties do hereby agree as follows:

I RECOGNITION

The Employer recognizes the Union as the exclusive bargaining agent for such Employees as are covered by this Agreement subject to the provisions of Section 9(2) of the Labor Management Relations Act of 1947 as amended. The Union makes this agreement on behalf of such employees under its jurisdiction, the majority of whom have designated the Union as their exclusive bargaining agent for purposes of collective bargaining.

II UNION SHOP

Except as noted below, during the term of this Agreement the Employer will employ in the positions covered by the Agreement, and maintain in its employ in such positions only such persons as are members of the Union in good standing or shall make applications for membership in the Union on or before the thirtieth (30th) day following either the date of hiring or the date of execution of this Agreement, whichever is later; provided, however, that nothing in this paragraph shall be construed to require the Company to cease employing or refrain from employing any such person if the Company has reasonable grounds for believing that:

- A. Membership in the Union was not available to him/her on terms and conditions generally applicable to other members, or
- B. Membership in the Union was denied or terminated for reasons other than his/her failure to render the periodic dues and the initiation fees uniformly required by the Union as a condition of acquiring or retaining membership.

III MINIMUM RATES

Effective September 1, 2005, and each year of this Agreement thereafter, Designers in all categories employed by the Company shall be paid not less than the following rates:

All Minimum Rates and Royalties are retroactive to September 1, 2005 and are effective upon the signing of this agreement. Pension and welfare contributions are effective upon the signing of this agreement.

Ballet Theatre Foundation, Inc. – United Scenic Artists, Local USA 829 2005– 2008 Agreement

	<u>9-1-05 to 8-31-06</u>	<u>9-1-06 to 8-31-07</u>	<u>9-1-07 to 8-31-08</u>
	2%	3%	3%
A. Scenic Design			
1. 1st Set	\$7104.00	\$7317.00	\$7537.00
2nd Set	2086.00	2149.00	2213.00
3rd thru 6th	1562.00 ea.	1609.00 ea.	1657.00 ea.
Thereafter	1391.00 ea.	1433.00 ea.	1476.00 ea.
2. Unit Set	\$7110.00	\$7324.00	\$7544.00
Next 9 phases	1562.00 ea.	1609.00 ea.	1657.00 ea.
Thereafter	871.00 ea.	897.00 ea.	924.00 ea.
3. Scenic Element— 1/3rd of an Evening	\$1254.00	\$1291.00	\$1330.00
B. Costume Design			
1. Full Length Ballet			
1-10 Designs	\$5394.00 min.	\$5556.00 min.	\$5722.00 min.
11-25 Designs	238.00 ea.	245.00 ea.	252.00 ea.
26-50 Designs	163.00 ea.	168.00 ea.	173.00 ea.
51-plus Designs	93.00 ea.	96.00 ea.	99.00 ea.
Repeats	72.00 ea.	75.00 ea.	77.00 ea.
2. Contemporary— 1/3rd of an Evening			
1-10 Designs	\$3136.00 min.	\$3230.00 min.	\$3326.00 min.
11-50 Designs	93.00 ea.	96.00 ea.	98.00 ea.
3 Pas de Deux and Pas de Trois	\$1254.00	\$1291.00	\$1330.00
4. Period Ballet— 1/3rd of an evening			
1-10 Designs	\$3887.00	\$4004.00	\$4124.00
11-25 Designs	238.00 ea.	245.00 ea.	252.00 ea.
26-50 Designs	163.00 ea.	168.00 ea.	173.00 ea.
51-plus	93.00 ea.	96.00 ea.	98.00 ea.
C. Lighting Design			
1. a. Full Length Ballet	\$5738.00	\$5910.00	\$6087.00
b. More than 1/3 but less than full	\$3825.00	\$3940.00	\$4058.00
c. 1/3 of an evening	\$1915.00	\$1972.00	\$2031.00
2. Classical Pas des Deux and Pas des Trois	\$1305.00	\$1344.00	\$1384.00

Ballet Theatre Foundation, Inc. – United Scenic Artists, Local USA 829 2005– 2008 Agreement

The classical Pas des Deux and Pas des Trois lighting rates shall apply for cases where no more than three dancers are used, where no scenery other than the Employer’s basic setup of sky drops and/or velours is used, where the choreography is either a re-staging of older choreography or new choreography to existing music from the classical repertory such as the Sylvia pas des deux from Delibes *Sylvia* or Tchaikovsky pas des deux to music from *Swan Lake*. Where pas des deux or pas des trois rates apply, no royalty fee shall be paid.

2-i) Unit Set. (Full length) - the applicable rate or 1/2 of Scenic Design fee, whichever is higher.

2-ii) Bare Stage. (more than 1/3 less than full) - 25% higher than the applicable rate set forth in subparagraph C(1)(b) above. If a repertory set-up is necessary, a contract shall be negotiated with the Union.

D. Daily Rate

If the original scenery, costumes or lighting is subsequently used by the Employer and additional work is required of the Designer to make the scenery, costumes or lighting available for such subsequent use, the Designer shall receive a daily payment as follows:

<u>9-1-05 to</u> <u>8-31-06</u>	<u>9-1-06 to</u> <u>8-31-07</u>	<u>9-1-07 to</u> <u>8-31-08</u>
\$346.00	\$356.00	\$367.00

Prior to the commencement of such work, the Designer and Employer shall agree upon a reasonable number of days required to perform the work.

E. Royalty

Designer royalties shall be paid for original designs created specifically for the Employer on or after July 1, 1978, for subsequent use in the repertory by that Company but only on the following conditions:

- 1) In the event a ballet is introduced on or before December 31 of any year, no royalty shall be due until September 1 of the following year provided the ballet is performed during said following year. In the event a ballet is introduced on or after January 1 of any year, no royalty shall be due until September 1 of the succeeding year provided the ballet is performed during said succeeding year.
- 2) With respect to individual agreements executed between July 1, 1983 and June 30, 1985, the royalty shall be 7% of the minimum fee set forth in this Agreement with a maximum of \$500.00 per design category in any given year up to five years of royalty payments whereupon no further royalty payments shall be due. With respect to individual agreements executed between July 1, 1985 and June 30, 1987 the royalty shall be 8% of the minimum fee set forth in this Agreement with a maximum of \$500.00 per design category in any given year up to five years of royalty payments whereupon no further royalty shall be due.

With respect to individual agreements executed between July 1, 1987 through June 30, 1991, the royalty shall be 8% of the minimum fee set forth in this Agreement with a maximum of \$750.00 per design category in any given year up to five years of royalty payments whereupon no further royalty payments shall be due.

With respect to individual agreements executed between July 1, 1991 through August 31, 1995 the royalty shall be 9% of the minimum fee set forth in this agreement with a maximum of \$850.00 per

Ballet Theatre Foundation, Inc. – United Scenic Artists, Local USA 829 2005– 2008 Agreement

design category in any given year up to five years of royalty payments whereupon no further royalty payments shall be due.

With respect to individual agreements executed between September 1, 1995 through August 31, 1996, the royalty shall be 11% of the minimum fee set forth in this Agreement with a maximum of \$1,000.00 per design category in any given year up to five years of royalty payments whereupon no further royalty payments shall be due.

With respect to individual agreements executed between September 1, 1996 through August 31, 2001, the royalty shall be 12% of the minimum fee set forth in this Agreement with a maximum of \$1,000.00 per design category in any given year up to five years of royalty payments whereupon no further royalty payments shall be due.

- 3) Only one royalty payment shall be due per theatrical year (Labor Day to Labor Day) regardless of the number of times the particular ballet may be performed by the Employer during said year.
- 4) Notwithstanding the above, no royalty shall be due to a supervisory Designer. Nor shall any royalty be due for a lighting design for a pas des deux or a pas des trois, meeting the criteria of Section III (C) (2) hereof.

F. Assistants (per week) all categories:

<u>9-1-05 to</u> <u>8-31-06</u>	<u>9-1-06 to</u> <u>8-31-07</u>	<u>9-1-07 to</u> <u>8-31-08</u>
\$1023.44	\$1054.14	\$1085.77

If an Assistant is engaged for less than a full week (five work days) he/she will be paid at a daily rate of 1/5 the weekly. Assistants shall be engaged by the Company or its Authorized Representative at the request of the Designer, subject to the approval of the Company, which approval shall not be unreasonably withheld.

IV PENSION AND WELFARE

In order to provide certain pension and welfare benefits to persons employed under this Agreement, the Employer shall make benefits contributions on behalf of each and every person employed hereunder in an aggregate amount of fifteen percent (15%) of the employee’s gross wages, effective for all productions having a first, public performance on or after September 1, 2005. Thereafter, the contribution rate shall be sixteen percent (16%) effective September 1, 2006, and seventeen percent (17%) effective September 1, 2007.

To provide pension benefits, six percent (6%) of the aggregate amount [seven percent (7%) effective September 1, 2007] shall be apportioned to the United Scenic Artists Pension Fund. To provide welfare benefits, nine percent (9%) [ten percent (10%) effective September 1, 2006] shall be apportioned to the United Scenic Artists Welfare Fund. Except as may be otherwise provided for in this Agreement, the Employer shall remit the aggregate amount in a single check made payable to the United Scenic Artists Pension and Welfare Funds.

If required in order for the fringe benefits contributions made by the Employer pursuant to this Agreement to be accepted by the respective funds, the Employer hereby agrees to be bound by each of the respective trust agreements and declarations of trusts of the several funds including the United Scenic Artists Pension Fund and the United Scenic Artists Welfare Fund. The Employer hereby agrees even as if said trust agreements and declarations of trust were attached hereto in their entirety.

The Employer hereby accepts the current, sitting trustees of each of the said funds and those trustees’ authority to act on behalf of the Employer in the direction of their respective fund. The Employer hereby

Ballet Theatre Foundation, Inc. – United Scenic Artists, Local USA 829 2005– 2008 Agreement
agrees to execute such fund documents as may be necessary for the Employer’s participation in the funds as provided for in this Agreement.

V TRAVEL

Designers and Assistant Designers required to travel out-of-town for the company will be provided with transportation, hotel rooms and per diems at least as good as those provided for the Company’s dancers.

VI CREDITS

The designers shall receive billing in the performance program, on the page with the title of the work they designed, on the same line and in the customary order of the Company’s program format. No other credits shall appear on that line.

VII CONTRACT PROCEDURE

A. All individual agreements must be signed and filed in triplicate with the Union for approval after the Company and the Designer have executed same. The Designer shall refrain from commencing any work whatsoever until said agreement has been approved in writing by the Union. No agreement between a Designer and the Company shall become binding or effective for any purpose nor shall the Designer be bound or liable thereunder until the said agreement has been so approved in writing by the Union. This paragraph shall apply only to persons who are members of the Union or who have initiated the Union application procedure, at the time of the execution of the individual agreement.

It is recognized that the standard practice of preliminary discussions between a Designer and a Company prior to employment relating to the possibility of employment do not constitute a violation of this Agreement. The full contract fee, minus all applicable payroll and withholding taxes, made payable to “United Scenic Artists”, shall accompany each contract when first filed with the Union before any such contract will be approved by the Union.

The applicable Pension and Welfare payment, made payable to “United Scenic Artists, Pension and Welfare Funds”, shall also accompany each contract before any such contract will be approved by the Union.

B. In the event the Designer is not a member of the Union and has applied for membership therein, the Union (1) will not withhold approval of the agreement on the grounds of said Designer’s non-membership, (2) will approve the agreement where the provisions of this Agreement are adhered to, and (3) will be deemed to have approved the agreement unless the Company receives written notice to the contrary within ten (10) days after the filing thereof.

VIII ALTERATIONS OF DESIGNS

Except in emergency circumstances, the Company or its Authorized Representative shall not alter or permit anyone to alter or make substitution for the settings, properties, costumes, lighting plots or lighting cues after the official New York Opening without the Designer’s consent.

“Emergency” circumstances shall be defined as one in which there has been irreparable damage to, or loss of, any materials which materials are to be replaced as soon as reasonably practicable. It shall further be defined as one

Ballet Theatre Foundation, Inc. – United Scenic Artists, Local USA 829 2005– 2008 Agreement

in which one dancer has been substituted for a dancer for whom a costume was fitted at such time that is impossible to make appropriate alterations in the original costume.

IX IMPORTATION

- A. Importation, whether domestic or foreign, of scenery or scenic designs, lighting or lighting designs, or costumes or costume designs shall be permitted.
- B. If the right of importation is exercised by the Company, but the production is not already being designed by a member of United Scenic Artists Local 829, the Company agrees to employ a Supervisory Designer at not less than the defined rate.

X SUPERVISORY DESIGNER

- A. It is the policy and practice of the Company to hire only Designers who possess professional quality in the respective design categories. The Company will hire a Supervisory Designer who possesses professional quality in a specific design category, when the Artistic Director of the Company has chosen an Artist for any design assignment who is not a member of USA Local 829, but whose unique artistic perspective in the opinion of the Company's Artistic Director, will bring the necessary collaborative elements to the production. When Supervisory Designers are employed, they shall receive billing as such. The rate of the Supervisory Designer shall be negotiated at the time of engagement, but in no event shall the fee be less than one half (½) of the minimum fee otherwise applicable.
- B. The Company will utilize only professionals to execute all designs and to engage in all major maintenance and touch-up of designs.
- C. It is not the intent of this clause to limit the range of the Company's artistic creativity with respect to designs or their execution or maintenance.

XI NOTICE OF SEASON

The Company or its Authorized Representative shall file with the Union not less than thirty (30) days prior to the opening of each New York Season a list of all new productions and revivals to be produced during said Season, provided the identity and structure of the Ballets are known at that time. If such identities and structure are not known at that time, notice shall be given as soon as reasonably practicable.

XII UNION CONTRACTS

- A. Union Lighting Design contracts must be filed at the Union office for all new Ballets of any kind or size.
- B. Union Set Design contracts must be filed at the Union office for all productions other than "bare stage productions".
- C. Union Costume Design Contracts must be filed at the Union office for all productions other than "no costume productions".

Ballet Theatre Foundation, Inc. – United Scenic Artists, Local USA 829 2005– 2008 Agreement

D. Definitions

- 1) “Bare stage production” shall be defined as the use of a plain cyc. borders, and/or legs only.
- 2) “No costume production” shall be defined as the use of leotards and tee shirts of stock colors only, provided only one color (or black and white) is used for any performance.

XIII OWNERSHIP AND REUSE OF DESIGNS

It is agreed that the designs and concepts of designs of scenery, costumes and lighting plots are and remain the property of the Designer. The Company shall not have the right to assign, sell, lease, license or give any such design or concept to any other production company without first negotiating with the designer for such use. Such negotiation shall result in a supplementary contract with the Designer, which contract must be filed with and approved by the Union. In no event shall the agreed-upon fee to be paid to the Designer be less than one-half (1/2) of the original contract fee. It is the intent and essence of this paragraph that the actual, physical scenery, costumes and/or lighting plot be considered the design and design concept, and as such, no subsequent use of such scenery, costumes or lighting plots is permitted without compliance hereto. This paragraph shall not apply to television which shall be covered separately in paragraph XIV.

XIV TELEVISION

- A. Where the designs in this Agreement and/or any setting or parts of settings, costume or part of costumes, or lighting are used for reproduction for television broadcasting (whether live, filmed or any other process) the Company shall pay to the Union on behalf of the Designer the following in full consideration for such use:
- B. For any single use in any closed-circuit television or subscription television (whether by closed-circuit or air broadcast) the amount of the Designer’s fee for those designs actually used shall be negotiated on a case-by case basis; in commercial (free air Broadcast) television, fifty (50%) percent of the Designer’s original design rate for those designs actually used; and in non-commercial (free air Broadcast, such as PBS), thirty-five (35%) percent of the Designer’s original design rate for those designs actually used. The television rights granted under this provision are limited to a single broadcast and no rights are granted beyond this initial broadcast (except for PBS when the broadcast rights shall be limited to one week following the initial broadcast and except for the Dance in America series on PBS when the broadcast rights shall permit broadcasts within a one-week period in each of three years following the initial broadcast) nor is any right granted herein to reproduce and television broadcast or showing by means of kinescope, film, electronic tape or other means, except upon written agreement with the Designer and upon payment of the monies for each broadcast as provided herein. If used for promotional purposes and no one connected with the production is paid (other than dancers at the applicable dancers’ union minimum), no payment shall be made to the Designer.

XV LIABILITY

- A. Designer and Assistants are responsible for the visual aspects of the production only, and it is understood that most specifications relate solely to the appearance of the setting, costumes and/or lighting and not to matters of safety. The Designers agree to make prompt correcting alterations at any time during the use of the production to any specification found to be incompatible with proper safety precautions whether for appearance or for structural reasons.
- B. The Company will indemnify, defend, save and hold the Designer, his heirs, executors, administrators and assigns harmless from and against any and all liability, charges, costs, expenses, claims and/or other loss,

Ballet Theatre Foundation, Inc. – United Scenic Artists, Local USA 829 2005– 2008 Agreement
including reasonable attorney fees, whatsoever which they may suffer by reason of the designs furnished hereunder.

C. Insurance

The Company agrees to carry comprehensive general liability insurance applicable to any claims that might arise due to any work performed under this Agreement. The Designers and the Union are to be provided with the details of such insurance.

XVI ARBITRATION

- A. In the event that a grievance, controversy, complaint or any dispute of any nature arising from the application of any of the terms and conditions of this Agreement cannot be settled by representatives of the Union and the Company, the matter shall be submitted to an arbitrator. If the parties cannot agree on an arbitrator within three (3) days, the American Arbitration Association shall submit a list of arbitrators to the parties pursuant to the then applicable rules of the Association for Voluntary Labor Arbitration. The essence and spirit of this paragraph is to provide for expeditious arbitration. It is understood that an arbitrable dispute may arise at such time that the Company is on tour. In that event, the arbitration hearing shall be conducted as soon as possible after Company has returned to New York City.
- B. The decision of the arbitrator(s) shall be final and binding on all parties and shall be fully enforceable. The arbitrator(s) shall not have the power to amend, modify, alter or subtract from this Agreement. The arbitration shall be conducted in accordance with the Voluntary Labor Arbitration rules of the American Arbitration Association.

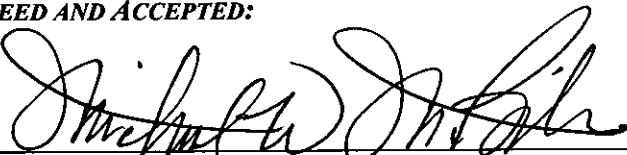
XVII TERM

The terms and conditions of this Agreement shall be in full force and effect from September 1, 2005 until August 31, 2008.

XVIII ALTERATIONS

No part or provision of this Agreement may be altered, changed, modified or amended in any way without the express written, and signed consent of the party against whom the change, alteration, modification or amendment is sought.

AGREED AND ACCEPTED:

By: 
for United Scenic Artists, Local USA 829

AGREED AND ACCEPTED:

By: 
for Ballet Theatre Foundation, Inc.

Date: 10/11/06

Date: 10-16-07

David Lansky
Director of Production and Operations