



## ARLINGTON COUNTY, VIRGINIA

### County Board Agenda Item Meeting of September 16, 2017

**DATE:** September 8, 2017

**SUBJECT:** Lease between the County Board of Arlington County, Virginia, as Landlord, and Dynamic Gymnastics, LLC, as Tenant, for the premises known as 1435 N. Quincy Street, Arlington, Virginia, being a portion of the property designated as RPC# 15-040-048.

#### C. M. RECOMMENDATIONS:

1. Approve the attached Lease (the "Lease") between the County Board of Arlington County, Virginia, as Landlord, and Dynamic Gymnastics, LLC ("Dynamic"), as Tenant, for the premises known as 1435 N. Quincy Street, Arlington, Virginia (the "Premises"), being a portion of the property designated as RPC# 15-040-048; and
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute the Lease, on behalf of the County Board, subject to approval as to form by the County Attorney.

**ISSUES:** There are no outstanding issues relating to approval of the Lease.

**SUMMARY:** Upon approval and execution of the attached Lease on behalf of the County Board, Dynamic Gymnastics, LLC would be allowed to occupy the Premises, subject to the terms and conditions of the Lease, as a tenant of the County. The Lease would commence only after closing of the acquisition of the Premises from the current owners. The term of the Lease would expire on May 31, 2018, if not sooner terminated. The Lease would allow Dynamic to occupy the Premises through the end of the 2017-2018 men's gymnastics season on May 31, 2018, to facilitate transition of Dynamic and its gymnastics programs into relocated Dynamic facilities.

**BACKGROUND:** Under the terms of the Option Agreement (the "Option Agreement") between the County Board and Cooper Quincy, L.L.C., Cooper Quincy No. 1, L.L.C. and Cooper Quincy No. 2, L.L.C. (the "Sellers") dated May 5, 2015, the Sellers granted the County Board the exclusive right and option to purchase the property known as 1425, 1429, 1435 and 1439 N. Quincy Street, Arlington County, Virginia, RPC#s 15-040-045, 15-040-046, 15-040-047

County Manager:

*mga/cgm*

County Attorney:

*[Signature]*

Staff: Tim O'Hora, DES-Real Estate

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and 15-040-048 (the “Property”) for a total purchase price of \$30 million. If the County timely exercises its option to purchase the Property, closing will occur on November 20, 2017, provided that the Sellers have met all conditions precedent to Purchaser’s obligations, and all obligations and requirements applicable to the Sellers under the terms of the Option Agreement. The County Manager has recommended, in a Board Report being concurrently considered by the County Board, that the County Board exercise its option to purchase the Property.

Paragraph 14 of the Option Agreement requires that, if the County Board exercises its option to purchase the Property, at closing, the Sellers must deliver possession of the Property to the County free of all occupancies and tenancies, unless such occupancy or tenancy is otherwise permitted by the Option Agreement or is agreed to by the County, in writing, prior to or at closing. The County has been approached by Dynamic, a current tenant of Sellers in one of the buildings on the Property, with a request to allow Dynamic to occupy the building known as 1435 N. Quincy Street, as a tenant, through the end of the 2017-2018 men’s gymnastics season on May 31, 2018. The requested approximately 6-month tenancy would help facilitate the transition of Dynamic and its program participants into relocated Dynamic facilities.

**DISCUSSION:** The attached Lease, if approved and executed on behalf of the County, would allow Dynamic to occupy the Premises, as a tenant of the County, after closing of the County’s acquisition of the Property through May 31, 2018. The following are the significant terms and conditions of the proposed Lease:

- Leased Premises: An approximately 15,743-square-foot, one-story warehouse building located at 1435 N. Quincy Street.
- Lease Term: The Lease term would be for a period commencing at closing of the County’s acquisition of the Property from the Sellers (whenever it occurs) and expire on May 31, 2018, with no extension rights. The Lease would be approved by the County Board, but not signed on behalf of the County Board, until the closing of acquisition of the property by the County Board.
- Security Deposit: \$18,460, payable on execution of the Lease.
- Rent: \$18,460/month, payable in advance on the 1<sup>st</sup> day of each month; the initial payment of rent will include rent for the first full month of the Lease Term and pro-rated rent from the Commencement Date to the 1<sup>st</sup> day of the first full month of the Lease Term.
- Real Estate Taxes: Real estate taxes attributed to the leased Premises will be directly assessed to, and be paid by, Dynamic.
- Condition of Premises: The Premises are leased to Dynamic in AS IS condition, with no representations or warranties by County;
- Utilities: Dynamic would be responsible for paying for all utilities (connection and service).
- Maintenance and repairs: Dynamic would be responsible for all maintenance and repairs to the leased Premises (County will have no responsibilities). If the HVAC, roof or other building element should fail during the Lease Term, Dynamic would be required to notify County of the failure and will have the option to: (a) continue to occupy the Premises in “as is” condition; (b) repair the building element, at Dynamic’s cost, and continue to

occupy the Premises; or (c) elect to immediately terminate the Lease, with no further obligation by either party to the other, by providing written notice of such election to the County.

- Extension/Holdover: No extension of the Lease term is permitted, with a penalty of 300% of the monthly rent for any holdover.
- Assignment/Sublease: Dynamic would have no right to assign or sublease the premises
- Remedies/Termination by Dynamic: Dynamic's only remedy for a County default would be termination of Lease.
- Personal Guarantee/Confession of Judgment: Thad Bingel and Kelly Bingel personally guarantee Dynamic's obligations under the Lease and signed a Confession of Judgment covering any default in the Lease obligations by Dynamic.

**PUBLIC ENGAGEMENT:** There has been no public engagement regarding the proposed Lease. The proposed Lease would just represent a form of status quo: a limited term (approximately 6 months) extension of the existing use of the Premises.

**FISCAL IMPACT:** The monthly rent payments and any other payments received by the County under the terms of the Lease would be deposited in the County's General Fund.

**IMPORTANT NOTICE**

**THIS INSTRUMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.**

**LEASE**

THIS LEASE (the "Lease") is made as of this 5<sup>th</sup> day of September 2017, by and between THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic ("Landlord"), and DYNAMIC GYMNASTICS, LLC, a Virginia limited liability company ("Tenant").

**RECITALS**

A. Landlord is the owner of that certain real property with improvements located thereon, situated in Arlington County, Virginia, and more particularly described as 1435 N. Quincy Street, Arlington, Virginia, and comprising an approximately 15,743 square-foot one-story warehouse building, as depicted on the attached Exhibit A (the "Premises"). The Premises is a portion of the real property identified as RPC No. 15-040-048 (the "Property").

B. Tenant desires to lease the Premises from Landlord pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION of the foregoing and the covenants and agreements of the parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party hereto, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord subject to the terms and conditions hereinafter set forth:

**ARTICLE 1**

**DEFINITIONS; MEANINGS**

**Section 1.01 Specific.** As used herein, the following terms have the following meanings:

"Applicable Laws" shall mean all federal, state and local laws, ordinances and regulations applicable to all or any portion of the Property, the Improvements and/or the transactions contemplated by the terms of this Lease, and all requirements of the Use Permit applicable to the Property.

"Commencement Date" shall mean the date that this Lease is executed and delivered on behalf of both Parties.

"Constructive Total Taking" shall have the meaning given it in Section 11.01(b).

"Environmental Laws" shall mean any and all federal, state or local statutes, laws, rules, regulations, ordinances, or codes pertaining to the environmental condition in effect and any judicial or administrative interpretation thereof specifically relating to the Property (including, but not limited to, any judicial or administrative order, consent decree or judgment relating to the environment or Hazardous Materials, or exposure to Hazardous Materials on the Property) including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986,

as amended, the Resource, Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, the Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, and the Toxic Substances Control Act, as amended.

*"Event of Default"* shall have the meaning given it in Section 14.01.

*"Expiration Date"* shall have the meaning given it in Article 2.

*"Hazardous Materials"* shall mean those substances described as such in any Environmental Laws.

*"Improvements"* whether Landlord's or Tenant's shall mean any buildings, structures, or other improvements, including without limitation, the foundations and footings thereof, now or hereafter located on the Property, title and ownership of all of which shall be in the Landlord. *"Improvements"* shall include, as part thereof, any and all fixtures, equipment and machinery of every kind and nature now or hereinafter used or procures for use in connection with the operation, use or occupancy of the Property, to the extent such fixtures, equipment and property constitute real property, but excluding all articles of personal property.

*"Landlord"* shall mean The County Board of Arlington County, Virginia and its successors and assigns as holder of fee simple interest in the Property.

*"Premises"* shall have the meaning given it in Recital A above.

*"Property"* shall have the meaning given it in Recital A above.

*"Rent"* shall have the meaning given it in Section 3.01.

*"Term"* shall have the meaning given it in Article 2.

*"Total Taking"* shall have the meaning given it in Section 11.01.

**Section 1.02. General.** Any other term to which meaning is expressly given in this Lease shall have such meaning.

**Section 1.03. Meaning of Words.** Except as provided in Section 1.02 above, the meaning of words in all parts of this Lease shall be construed simply, according to its fair meaning and not strictly for or against Landlord or Tenant.

**Section 1.04. Word Titles.** The word titles underlying the article and section designations contained herein are inserted solely for convenience and in no circumstances are they, or any of them, to be treated or construed as any part of this Lease.

**Section 1.05 Incorporation of Recitals.** The Recitals set forth above are hereby incorporated and made a part of this Lease.

## ARTICLE 2 TERM

The term of this Lease ("*Term*") shall commence on the Commencement Date and, unless sooner terminated under any other provision of this Lease, shall expire and terminate at 6:00 pm on May 31, 2018 ("*Expiration Date*"). Tenant has no right to extend the Term beyond the Expiration Date.

## ARTICLE 3 RENT

**Section 3.01. Base Rent.** As Base Rent, Tenant shall pay to Landlord during the Term of this Lease without deduction, set off or counterclaim, at Landlord's address as specified in Article 16 hereof, or such other place as directed from time to time by Landlord in writing, monthly installments of Eighteen Thousand Four Hundred and Sixty and <sup>Eighty</sup>/<sub>100</sub> Dollars (\$18,460.80), payable each month in advance, on or before the first day of each month commencing on the Commencement Date. If the Commencement Date, and therefore the obligation under this Lease to pay Base Rent hereunder, begins on a day other than the first day of a calendar month, then Base Rent from such date until the first day of the following calendar month shall be prorated at the rate of one-thirtieth (1/30) of Base Rent for each day of that month from and including the Commencement Date, payable in advance on the Commencement Date, as specified above. If the Commencement Date occurs on November 20, 2017, then the prorated Base Rent for the partial month of November 2017 shall be Six Thousand Seven Hundred Sixty-eight and <sup>Ninety-six</sup>/<sub>100</sub> Dollars (\$6,768.96). The Base Rent, together with the Additional Rent described in Section 3.02 hereof, shall cumulatively be referred to hereinafter as, "*Rent*."

**Section 3.02. Additional Rent; Other Charges.** Tenant shall be separately assessed, and shall be responsible to directly pay, , as Additional Rent, all Arlington County real estate taxes levied against the Property on account of the leasehold interest created by this Lease..

Tenant shall be solely liable for all taxes levied against personal property and trade fixtures placed by tenant on or in the Premises. If any taxes for which Tenant is liable under this Section are levied against Landlord or Landlord's property and Landlord elects to pay the same, or the assessed value of the Landlord's property is increased by inclusion of Tenant's personal property or trade fixtures on the Premises, and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord, upon Landlord's demand, as further Additional Rent, such taxes for which Tenant is primarily liable hereunder.

**Section 3.03. Late Fees.** All Rent and all other sums which may from time to time become due and payable by Tenant to Landlord under any of the provisions of this Lease shall, if not paid within five (5) business days after the due date, incur a late fee of Five Hundred Dollars (\$500.00), except for Rent charges covered in Section 3.01.

**Section 3.04. Security Deposit.** Tenant shall deposit with Landlord the sum of Eighteen Thousand Four Hundred and Sixty and <sup>Eighty</sup>/<sub>100</sub> Dollars (\$18,460.80) upon the execution of this Lease by Tenant, as a Security Deposit. Such Security Deposit shall be security for the payment

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and performance by Tenant of all Tenant's obligations, covenants, conditions and agreements under this Lease, and Landlord shall have the right, but shall not be obligated, to apply all or any portion of the Security Deposit to cure any default by Tenant, in which event Tenant shall be obligated to promptly deposit with Landlord the amount necessary to restore the Security Deposit to its original amount. In the event Tenant fails to perform its obligations under this Lease, said Security Deposit shall not be deemed liquidated damages and Landlord may apply the Security Deposit to reduce Landlord's damages, and such application of the Security Deposit shall not preclude Landlord from recovering from Tenant all additional damages incurred by Landlord. Tenant hereby waives any Applicable Laws requiring the placement of such monies in a separate escrow or interest-bearing account. In the event Tenant fully and faithfully complies with all terms, covenants, and conditions of this Lease, the Security Deposit shall be returned to Tenant within sixty (60) days following the expiration of the Term of this Lease and Tenant's surrender of the Premises in accordance with the terms of this Lease. Landlord shall deliver the Security Deposit to any purchaser or other successor or assignee of Landlord's interest in the Premises in the event that such interest is sold or otherwise transferred, and Landlord shall be discharged and released from all further liability with respect to the Security Deposit and Tenant agrees to look solely to the successor or other new Landlord for the return of the Security Deposit.

**Section 3.05. Absolute Net, Net, Net Lease.** This is an absolute net, net, net lease. Other than as otherwise expressly set forth in this Lease, all costs, expenses, liabilities, or other charges whatsoever with respect to the Premises and the operation, maintenance, repair, reconstruction, use or occupation of the Premises shall be the sole responsibility of and payable by Tenant. Landlord shall have no obligation to provide or perform any services or utilities of any type to the Premises, including without limitation, any maintenance, repair or replacement of the Premises or any part thereof.

#### **ARTICLE 4 USE OF PREMISES**

**Section 4.01. Use.** Gymnastics Facility Use Only. During the Term of this Lease, Tenant shall use the Premises solely as a gymnastics facility in compliance with all requirements of Applicable Laws, and for no other purposes.

**Section 4.02. No Unlawful, Dangerous or Noxious Use.** Tenant shall not use, or permit use of, the Premises, or any part thereof, for any unlawful purposes, or for any dangerous or noxious use.

**Section 4.03. Tenant Access.** Tenant shall have access to the Property and Premises 365 days per year; 24 hours per day.

**Section 4.04. Compliance with Applicable Laws.** Throughout the Term of this Lease, Tenant, at Tenant's sole cost and expense, with respect to Tenant's possession and use of the Premises shall:

- (a) materially and promptly comply with all Applicable Laws; and;

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(b) not (either with or without negligence) knowingly cause or permit Hazardous Materials on the Property, except any use thereof in the ordinary course of Tenant's use of the Premises and only in compliance with all applicable Environmental Laws. Notwithstanding the foregoing, if during the Term, Tenant allows Hazardous Materials on the Property in violation of this Lease, then to the extent required by the relevant or lead governmental enforcement agency, the Tenant shall diligently take the steps necessary to adopt a plan of remediation by a qualified environmental consultant with respect to any such Hazardous Materials and take prompt action for the containment of any such Hazardous Materials or the removal of any such Hazardous Materials in compliance with all applicable federal, state, and local regulations.

## **ARTICLE 5 INSURANCE; INDEMNIFICATION**

**5.01 Insurance Requirements.** Tenant shall maintain the following insurance coverage throughout the Term:

A. Broad form commercial general liability insurance with respect to the Premises, with bodily injury, property damage, cross liability, severability of interest, blanket contractual, and tenants legal liability coverage, and with limits of at least Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of at least Four Million Dollars (\$4,000,000.00). If Landlord reasonably determines that restaurant tenants entering into new leases of space in the business area in which the Property is located are ordinarily required by their landlords to maintain liability insurance policies with higher limits than those set forth in this subsection, then Landlord may raise the minimum coverage required by this section to the then- customary limits upon notice to Tenant, and Tenant shall obtain an insurance policy meeting the requirements of this section with the new required limits and submit evidence thereof to Landlord within thirty (30) days after receiving such notice.

B. Broad form property insurance covering all improvements (whether now existing or hereafter installed by Tenant or Landlord), stock in trade, fixtures, furniture, furnishings, removable floor coverings, trade equipment, signs, and all other decorations and personal property in the Premises for one hundred percent (100%) of their full replacement cost, naming Landlord as a loss payee thereon.

C. Workers' compensation insurance in at least the amounts required by law and employer's liability insurance with limits of at least One Million Dollars (\$1,000,000) per occurrence.

D. Commercial automobile liability insurance insuring all owned, non-owned, and hired vehicles used in the conduct of Tenant's business and operated or parked on or about the Property, with limits of at least One Million Dollars (\$1,000,000) per occurrence.

### **5.02 General Provisions with Respect to Tenant's Insurance.**

A. On or before the Effective Date, Tenant shall deliver to Landlord a certificate of insurance and endorsements evidencing the coverages required by this Lease. Before any required policy expires, Tenant shall deliver to Landlord a certificate of insurance and endorsements evidencing the renewal or replacement of the policy and Tenant's continued



maintenance of the required coverages. Upon Landlord's request from time to time, Tenant shall promptly deliver to Landlord a true copy of all required insurance policies, including all endorsements thereto. Any insurance that Tenant is required to maintain under this Lease may be carried under a blanket policy covering the Premises and other locations of Tenant's.

B. If Tenant fails to comply with any of the insurance requirements stated in this Lease, then, in addition to and not in lieu of any other available remedies, Landlord may obtain such insurance, and Tenant shall pay to Landlord, as Additional Rent, the premium cost thereof upon demand, plus a ten percent (10%) administrative fee.

C. All insurance policies that Tenant is required to maintain under this Lease must: (i) be issued by a company that is authorized to do business in the Commonwealth of Virginia, that has been approved in advance by Landlord in writing, and that has a rating equal to or exceeding A:VII from Best's Insurance Guide; (ii) be issued on an occurrence (not claims-made) basis; (iii) provide that such insurance is primary to any insurance available to, or carried by, Landlord and that Landlord's insurance shall be noncontributing thereto; (iv) contain a waiver of the insurer's right of subrogation against the Landlord Group; and (v) provide that the policy may not be suspended, voided, or reduced in coverage or in limits except after thirty (30) days' prior written notice to Landlord. No policy may be subject to a deductible exceeding the lesser of one percent (1%) of the policy's liability limits or Fifty Thousand Dollars (\$50,000.00). All liability policies that Tenant is required to maintain must add as additional insureds Landlord, Landlord's elected and appointed officials, Landlord's ground lessor (if any), Landlord's property manager (if any), the officers and employees of each of the foregoing, and any other persons or entities designated by Landlord upon notice to Tenant. The coverage limits applicable to the additional insureds shall be the full amount of the policy, but in no event less than the minimum coverage limits set forth in Section 5.01 above. Landlord may from time to time, in its sole discretion, approve any relaxation of the insurance requirements set forth in this Article 5, provided that any such approval may be made only in writing and that Landlord may at any time thereafter, in its sole discretion, upon at least thirty (30) days' notice, revoke any relaxation and require Tenant to maintain the full insurance coverage required by this Article 5.

**Section 5.03. Indemnification.** Tenant shall indemnify and save harmless Landlord and its elected and appointed officials and employees from any and all liability, damage, expense, cause of action, suits, claims, judgments and cost of defense arising from injury to person or personal property in and on the Premises, or upon any adjoining sidewalks or public areas of the Property, which arise out of the use and occupancy of the Premises or the act, failure to act or negligence of Tenant, its agents, contractors, employees, subtenants or licensees.

## **ARTICLE 6**

### **LANDLORD RIGHT TO PERFORM TENANT'S COVENANTS AND OBLIGATIONS**

**Section 6.01. Landlord Right to Perform Tenant's Obligations.** Tenant agrees that if Tenant, at any time, fails to pay any expense or any imposition, or to take out, pay for, maintain or deliver any of the insurance policies provided for herein, or fails to cause any lien to be discharged or fails to perform any other act on Tenant's part to be performed pursuant to the terms of this Lease, then Landlord, after providing five (5) days written notice to Tenant, may, but shall not be obligated to do so, without further notice or demand upon Tenant, and without

waiving or releasing Tenant from any obligations of Tenant set forth in this Lease: (a) pay any expense or imposition payable by Tenant; (b) take out, pay for and maintain any insurance policies; (c) discharge any lien; or (d) perform any other act on Tenant's part to be performed as provided in this Lease. All sums so paid by Landlord, and all necessary incidental costs and expenses incurred by Landlord in connection therewith, shall be payable to Landlord, with interest thereon at a rate of two percent (2%) above the lending prime rate reported by the Wall Street Journal, on demand or at the option of Landlord may be added to any Rent then due or thereafter becoming due under this Lease, and Tenant covenants to pay any such sum or sums with interest as aforesaid. All sums which may become payable to Landlord by Tenant as in this Article provided and all sums payable by Tenant for impositions, insurance premiums and all other charges or expenses of whatsoever nature which Tenant assumes or agrees to pay pursuant to this Lease, shall be deemed Rent hereunder and payable as aforesaid, and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the non-payment of any such sums by Tenant as in the case of default by Tenant in the payment of the Rent.

**Section 6.02. No Implied Waiver.** No provision of this Lease shall be deemed to have been waived by Landlord unless such a waiver be in writing signed by Landlord. The failure of Landlord to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease, shall not be construed as a waiver or a relinquishment thereof for the future. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Rent due under this Lease shall be deemed to be other than on account of the earliest Rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided by this Lease. No agreement to accept a surrender of this Lease shall be valid unless in writing signed by Landlord. The receipt by Landlord of Rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach.

## **ARTICLE 7**

### **CONDITION OF PREMISES; COVENANT TO MAINTAIN**

**Section 7.01. Condition of Property.** Tenant hereby accepts the Premises in its "AS IS," "WHERE IS" condition, with all faults, and acknowledges that Landlord has made no representations or warranties as to the Premises, its physical or environmental condition, its fitfulness for use for any particular purpose, its ability to be improved, its value, its compliance with Applicable Laws, the ability to obtain any permit or approval necessary for any use, repair or improvement of the Premises, or any other matter relating in any way to the Premises, the use of the Premises, or its surroundings. Tenant hereby acknowledges that it is already in occupancy of the Premises pursuant to a lease with the prior owner of the Property and that it accepts the current condition of the Premises as of the execution of this Lease. Tenant shall be fully responsible, at its sole cost and expense, for all matters relating to the use, repair and maintenance of the Premises and Improvements, and Landlord shall have no obligations related thereto. If the HVAC, roof or other building element should fail during the Term, Tenant will be required to notify Landlord of the failure and will have the option to: (a) continue to occupy the

Premises in "as is" condition; (b) repair the building element, at Tenant's cost, and continue to occupy the Premises; or (c) elect to immediately terminate this Lease, with no further obligation by either party to the other, by providing written notice of such election to Landlord.

**Section 7.02. Tenant to Maintain and Repair.** Tenant, at its sole expense, shall keep or cause to be kept the Premises and all parts thereof clean and in good productive condition, free of accumulations of rubbish and shall make all repairs necessary to maintain the Premises in a condition appropriate for its contemporary use; provided, that, in any event, Tenant shall make all repairs necessary to avoid any foreseeable danger of death or personal injury or structural damage or injury to the Improvements. Tenant shall not create, or permit to exist, nuisance on the Premises, or do or commit waste thereon. Landlord shall not be required to furnish any services or facilities, and Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the entire Premises during the Term.

**Section 7.03. Utilities.** Tenant shall pay all costs for utility connections and services provided to the Premises, and Landlord shall have no responsibility for utility connections or services.

**Section 7.04. Quiet Enjoyment.** Landlord hereby:

A. Represents, warrants and covenants and agrees that, at the time of the execution and delivery of this Lease by the parties hereto, it: (i) is the owner of the Premises and that it has not received any written notice of any claim or demand contesting or impairing its interests in the Premises; and (ii) has the full right, power and authority to enter into this Lease and thereby to lease the Premises; and

B. Warrants that Tenant will have quiet and peaceful possession of the Premises during the Term so long as all of Tenant's obligations hereunder are timely performed, except if and to the extent that such possession is terminated pursuant to any provision of this Lease.

**Section 7.05. Limitation on Liability.** Nothing in this Lease shall be deemed to impose on Landlord any liability on account of any act or failure to act by any person other than Landlord, Landlord's agents, representatives, board members, contractors, or employees.

## **ARTICLE 8**

### **LIMITATION OF LANDLORD'S LIABILITY**

**Section 8.01. Limitation of Landlord Liability.** The term "*Landlord*" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the fee interest of the Property, and in the event of any transfer or transfers of title to such fee interest, Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance from obligations on the part of Landlord contained in this Lease thereafter to be performed. The grantor or transferee shall expressly assume, subject to the limitations of this Article, all of the terms, covenants, and conditions in this Lease contained on the part of Landlord thereafter to be performed, it being intended hereby that the covenants and obligations contained in this Lease

on the part of Landlord, shall, subject as aforesaid, be binding on Landlord, its successors and assigns, only during and in respect to their respective successive periods of ownership.

**Section 8.02. Non-liability of Landlord.** Landlord shall not be liable to Tenant, or to Tenant's agents, servants, employees, customers, or invitees for any injury to person or damage to property caused by any act, omission, or neglect of Tenant, or Tenant's agents, servants, or employees, invitees, licensees or any other person entering the Premises under the invitation of Tenant or arising out of the use of the Premises by Tenant and the conduct of its business or out of a default by Tenant in the performance of its obligations hereunder.

## **ARTICLE 9 LANDLORD RIGHT OF ENTRY**

Landlord, and its authorized agents and representatives, shall, upon twenty-four (24) hours prior notice to Tenant, be entitled to enter into and upon any part of the Premises, at all reasonable hours and, in emergencies at all times, to perform inspections, repairs, testing and other investigations, including without limitation, testing and investigations regarding Landlord's planned re-development of the Property after the Expiration Date, and Tenant shall not be entitled to any abatement or reduction of Rent by reason thereof. Tenant agrees to cooperate with Landlord in the event of emergencies, including, without limitation, evacuation at Landlord's oral request, in the event of any situation reasonably deemed an emergency.

## **ARTICLE 10 DAMAGE TO OR DESTRUCTION OF THE PREMISES OR IMPROVEMENTS**

**Section 10.01. Scope.** For the purpose of this Article, a casualty includes fire, earthquake, flooding, impact, explosion, unusual weather, riot, civil disturbance or any other similar occurrence.

**Section 10.02. Effect on Tenant's Obligations.** Tenant's obligation to make payment of the Rent and all other charges on the part of Tenant to be paid, and to perform all other agreements on the part of Tenant to be performed, shall not be affected by any such damage to or destruction of the Improvements, except as hereinafter provided, and Tenant hereby waives, to the fullest extent permitted by Applicable Laws, any statute or law now or hereafter in effect, contrary to such obligations of the Tenant as herein set forth or which relieves Tenant therefrom.

**Section 10.03. Maintenance and Repair of Premises by Landlord.** Except as otherwise expressly provided herein, Landlord shall not be required to make any repairs to the Premises that are caused by the negligence of Tenant, its agents, guests or employees.

**Section 10.04. Casualty Damage.** If the Premises, or any part thereof, shall be damaged by fire or other casualty, Tenant shall give prompt written notice thereof to Landlord. In case the Improvements shall be so damaged that substantial alteration or reconstruction of the Improvements shall, in Landlord's reasonable opinion, be required as a result of such fire or other casualty; or in the event any mortgagee of Landlord's should require that the insurance proceeds payable as a result of a casualty be applied to the payment of the mortgage debt and not to reconstruction of the Improvements; or in the event of any material uninsured loss to the

Improvements, Landlord may, at its option, terminate this Lease by notifying Tenant, in writing, of such termination within ninety (90) days after the date of such damage.

Landlord shall not be liable to Tenant for the repair or replacement of any installation made by Tenant, except as otherwise provided for herein. Repairs or replacements of installations made by Tenant or of Tenant's furniture, fixtures, equipment and contents shall be made by Tenant at its sole cost. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such damage to repair, thereof, except that, subject to the provisions of the next sentence, Landlord shall allow Tenant a pro rata diminution of Rent during the time and based on the portion of the Premises that are damaged and unfit for occupancy.

**Section 10.05. Damages from Certain Causes.** Landlord shall not be liable to Tenant for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental body or authority, or by any other cause. Nor shall Landlord be liable for any damage or inconvenience which may arise through repair or alteration of any part of the Improvements or Premises. Except as set forth in Section 11.01 below, the causes of loss or damage set forth in this Section 10.05 shall not affect the continuation or validity of this Lease or Tenant's obligation to pay Rent hereunder.

**Section 10.06. Care of the Premises by Tenant.** Tenant agrees not to commit or allow any waste to be committed on any portion of the Premises, and at the Expiration Date or earlier termination of this Lease to deliver up the Premises to Landlord in as good condition as at the Commencement Date, ordinary wear and tear and casualty losses excepted.

## **ARTICLE 11 CONDEMNATION**

**Section 11.01.** If at any time during the Term of this Lease, there shall be a Total Taking or a Constructive Total Taking of the fee title to the Premises in condemnation proceedings or by right of eminent domain, this Lease shall terminate on the date of such taking and the Rent and other charges payable by Tenant hereunder shall be pro-rated to the date of such taking. For the purposes of this Article 11:

A. The term "*Total Taking*" shall mean a taking by the condemning authority of full ownership of the entire Premises;

B. The term "*Constructive Total Taking*" shall mean a taking of the fee title or other interest in the Premises of such scope that the untaken portion of the Premises, even after restoration, repair, replacement, replanting, or rebuilding, with all reasonable changes or alterations that are required, may not be used for the purposes that were intended by the Tenant under this Lease.

**Section 11.02.** If the whole or substantially the whole of the Improvements or the Premises is taken for any public or quasi-public use, by right of eminent domain, or otherwise, or is sold in lieu of condemnation, then this Lease shall terminate as of the date when the physical possession of the Improvements or the Premises is taken by the condemning authority. If less

than the whole or substantially the whole of the Improvements or the Premises are thus taken or sold, Landlord (whether or not the Premises are affected thereby) may terminate this Lease by giving written notice thereof to Tenant, in which event this Lease shall terminate as of the date when physical possession of such portion of the Improvements or Premises is taken by the condemning authority. Landlord shall be entitled to receive and retain all proceeds paid or payable in connection with any condemnation or taking.

## **ARTICLE 12**

### **CHANGES AND ALTERATIONS BY TENANT**

**Section 12.01. Repairs and Alterations by Tenant.** Tenant shall have the right, at any time, and from time to time, during the Term, to make such changes and alterations to the Improvements as may be reasonable necessary to permit Tenant to use the Premises, subject to Landlord's consent. Tenant shall furnish to Landlord a detailed plan of any changes, alterations and additions to the Improvements. Landlord agrees not to unreasonably withhold its approval to such changes or alterations, provided they are not structural in nature. Tenant shall be responsible for restoring the Premises to its original state, normal wear and tear excepted.

**Section 12.02. Landlord Consent Required.** Tenant agrees not to make, or permit to be made, any alterations to the Premises, without first obtaining the written consent of Landlord, which permission shall not be unreasonably withheld. Any and all alterations to the Premises shall become the property of Landlord upon the Expiration Date or earlier termination of this Lease except for movable equipment or furniture owned by Tenant. Landlord may, nonetheless, require Tenant to remove any and all Tenant fixtures, equipment and other Tenant improvements installed in the Premises, upon the Expiration Date or earlier termination of this Lease. In the event that Landlord so elects, and Tenant fails to remove such improvements, Landlord may remove such improvements at Tenant's cost, and Tenant shall pay Landlord, upon Landlord's demand, the cost of restoring the Premises.

**Section 12.03. Mechanic's Liens.** Tenant agrees to make all reasonable efforts to avoid the recordation of any mechanic's liens against the Property. Should a mechanic's lien be recorded against the Property, the Tenant will make all reasonable efforts to resolve the issue which led to the recordation of the mechanic's lien within ten (10) days of that recordation. Barring satisfactory resolution within that time period, Tenant will post a bond in the amount of the mechanic's lien.

## **ARTICLE 13**

### **ASSIGNMENT; TRANSFER**

Tenant hereby acknowledges that this Lease is one which is personal to Tenant and that Tenant shall not: (a) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises; (b) make or permit any voluntary or involuntary total or partial sale, lease, sublease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises, or Tenant's occupancy thereof, or (c) allow any person or party to sublease or occupy all or any portion of the Premises.

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**ARTICLE 14**  
**DEFAULT; BANKRUPTCY**

**Section 14.01. Tenant Events of Default.** It shall constitute a Tenant default hereunder, if one or more of the following events (each of which is herein called an "Event of Default") shall occur:

A. If Tenant fails to pay any Rent when due, and such failure to pay Rent continues for a period of ten (10) days after receipt of written notice thereof by Tenant from Landlord;

B. If Tenant fails to perform any other covenant or agreement on the part of Tenant to be performed hereunder, and such default continues for a period of thirty (30) days after receipt of written notice thereof by Tenant from Landlord; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within the thirty (30) day cure period and thereafter diligently pursues such cure to completion;

C. If Tenant makes a general assignment for the benefit of creditors, or admits, in writing, Tenant's inability to pay Tenant's debts as they become due or files a petition in bankruptcy, or is adjudicated a bankrupt or insolvent, or files a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, or dissolution under any present or future statute, law or regulation, or files an answer admitting or not contesting the material allegations or a petition against Tenant in any such proceeding, or seeks, consents to, or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant, or any material part of Tenant's properties; or

D. If, within sixty (60) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding has not been dismissed, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant, or of any material part of Tenant's properties, such appointment shall not have been vacated.

**Section 14.02. Landlord Remedies on Default.** After Landlord provides Tenant notice of any Event of Default, if such Event of Default has not been cured within the applicable cure period, this Lease shall be deemed terminated as of the occurrence of the Event of Default and expiration of the cure period, if any, and Landlord may, at any time thereafter, re-enter the Premises and take possession thereof from Tenant and Tenant shall have no further claim thereon or hereunder, and Landlord may recover from Tenant the following:

A. The amount of all unpaid Rent and other charges which had been earned by Landlord at the time of termination; and

B. Any other amount reasonably necessary to compensate Landlord for all detriment proximately caused by the failure of Tenant to perform its obligations under this Lease, or which in the ordinary course of things is likely to result therefrom.

**Section 14.03. Landlord Possession on Termination or Abandonment.** Landlord may take possession of the Premises at any time after Tenant abandons the Premises or after the

termination of this Lease. If Landlord takes possession of the Premises from Tenant, Landlord may, at its option, remove any of Tenant's personal property located on the Premises and store it in a public warehouse or elsewhere at the cost of and for account of Tenant.

**Section 14.04. Tenant Remedy on Landlord Default.** Tenant's sole and exclusive remedy for any Landlord breach of any covenant or agreement contained in, or associated with, this Lease shall be limited to termination or rescission of this Lease, and Tenant shall have no right to seek monetary damages or injunctive relief against Landlord.

**Section 14.05. Confession of Judgment.** THE TENANT HEREBY APPOINTS AND DESIGNATES THE COUNTY ATTORNEY OF ARLINGTON COUNTY, VIRGINIA, AS TENANT'S DULY CONSTITUTED ATTORNEY-IN-FACT, TO CONFESS JUDGMENT AGAINST TENANT, PURSUANT TO THE PROVISIONS OF SECTION 8.01-432 OF THE CODE OF VIRGINIA (1950), AS AMENDED, AFTER AN EVENT OF DEFAULT, IN ANY LAWSUIT OR ACTION BROUGHT AGAINST TENANT FOR THE ENFORCEMENT OF ANY RIGHTS OF THE LANDLORD UNDER THIS LEASE, TO WAIVE ISSUANCE OF PROCESS AND TRIAL BY JURY, AND, FROM TIME TO TIME, TO CONFESS JUDGMENT OR JUDGMENTS IN FAVOR OF THE LANDLORD AND AGAINST TENANT FOR ANY RENT, LATE CHARGES, INTEREST AND OTHER CHARGES, INCLUDING CHARGES FOR ANY HOLDOVER, DUE FROM TENANT TO LANDLORD UNDER THIS LEASE. SUCH JUDGMENT SHALL BE CONFESSED IN THE CIRCUIT COURT OF ARLINGTON COUNTY OR THE GENERAL DISTRICT COURT OF ARLINGTON COUNTY, VIRGINIA.

UPON LANDLORD'S REQUEST, TENANT: SHALL NAME SUCH ADDITIONAL OR ALTERNATIVE PERSONS DESIGNATED BY LANDLORD AS TENANT'S DULY CONSTITUTED ATTORNEY OR ATTORNEY-IN-FACT TO CONFESS JUDGMENT AGAINST TENANT IN ACCORDANCE WITH THE TERMS OF THIS LEASE. NO SINGLE EXERCISE OF THE POWER TO CONFESS JUDGMENT GRANTED IN THIS SECTION SHALL EXHAUST THE POWER, REGARDLESS OF WHETHER SUCH EXERCISE IS RULED INVALID, VOID OR VOIDABLE BY ANY COURT. THE POWER TO CONFESS JUDGMENT GRANTED IN THIS SECTION MAY BE EXERCISED FROM, TIME TO TIME, AS OFTEN AS THE LANDLORD UNDER THIS LEASE MAY ELECT. FURTHER, TENANT HEREBY WAIVES AND RELEASES ALL ERRORS AND ALL RIGHTS TO EXEMPTION, APPEAL, STAY OF EXECUTION, OR INQUISITION OR EXTENSION UPON ANY LEVY UPON REAL ESTATE OR PERSONAL PROPERTY TO WHICH TENANT MAY OTHERWISE BE ENTITLED UNDER THE LAWS OF THE COMMONWEALTH OF VIRGINIA OR ANY OTHER STATE WITHIN THE UNITED STATES NOW IN FORCE, OR WHICH MAY HEREAFTER BE PASSED. THIS POWER AND AUTHORIZATION MAY BE USED AND REUSED AND SHALL NOT BE EXHAUSTED BY USE. THE PROVISIONS OF THIS CONFESSION OF JUDGMENT SHALL BE EXERCISABLE BY LANDLORD ONLY FOLLOWING AN EVENT OF DEFAULT UNDER THIS LEASE OR A HOLDOVER BY TENANT.

## **ARTICLE 15**

### **CUMULATIVE REMEDIES: NO WAIVER**

**Section 15.01. Cumulative Remedies.** The specified remedies to which Landlord may resort under the terms of this Lease are cumulative and, unless otherwise specified, are not intended to be exclusive of any other remedies or means of redress to which Landlord may be lawfully entitled in case of any breach or threatened breach by Tenant of any provision of this Lease.

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**Section 15.02. No Waiver.** The failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant or option. A receipt by Landlord of any Rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord.

## **ARTICLE 16 NOTICES**

Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to Landlord or Tenant (a) shall be in writing, and (b) shall be deemed to have been provided on the earlier of: (a) (i) 48 hours after being sent as certified or registered mail in the United States mails, postage prepaid, return receipt requested, or (ii) the next business day after having been deposited (in time for delivery by such service on such business day) with Federal Express or another national courier service; or (b) (if such party's receipt thereof is acknowledged in writing) its having been given by hand or other actual delivery to such party. Addresses for notice:

To Landlord: The County Board of Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 302  
Arlington, VA 22201  
Attention: County Manager

With copies to: Arlington County Office of the County Attorney  
2100 Clarendon Boulevard, Suite 403  
Arlington, VA 22201  
Attention: County Attorney

And: Arlington County Real Estate Bureau  
2100 Clarendon Boulevard, Suite 800  
Arlington, VA 22201  
Attention: Real Estate Bureau Chief

To Tenant: Dynamic Gymnastics, LLC  
1435 N. Quincy Street  
Arlington, VA 22207  
Attn: Kelly Bingel

Any notice required or permitted to be given under this Lease shall be deemed given if provided in accordance with the foregoing paragraph of this Article 16 provided, however, that any party may change its address for notice purposes by timely notice to the other party.

## **ARTICLE 17 LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.**

Except to the extent: (a) expressly prohibited by Applicable Laws, (b) arising from actions by Landlord not related to its status as owner of the Premises, or (c) directly caused by the gross

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negligence or willful misconduct of Landlord or Landlord's agents, representatives, board members, contractors, or employees, Landlord shall not in any event whatsoever be liable for any injury or damage to Tenant or to any other Person happening on, in or about the Property and its appurtenances nor for any injury or damage to the Property or to any property belonging to Tenant or any other Person which may be caused by any fire or breakage, or by the use, misuse and abuse of the Improvements (including but not limited to, any of the common areas within the Improvements, equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or the streets and sidewalk area within the Property or which may arise from any other cause whatsoever. Landlord shall not be liable to Tenant or to any other Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any other Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises, or leakage of gasoline or oil from pipes, storage tanks, appliances, sewer or plumbing works therein, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody, or caused by any public or quasi-public work. Nothing herein shall be construed to limit or waive in any way the sovereign immunity of Landlord, its officers, agents or employees.

#### **ARTICLE 18**

#### **SURRENDER OF PREMISES AND IMPROVEMENTS**

**Section 18.01. Surrender.** Upon the expiration or earlier termination of the Term of this Lease, Landlord shall become the sole and absolute owner of all the Improvements, free of any interest of Tenant, without the execution of any further instrument or the payment of any further consideration. Tenant shall, on the last day of the Term, or upon the sooner termination of the Term, quit and surrender to Landlord the Premises and Improvements vacant, free of all equipment, furniture and other personal property, and in good order and condition, reasonable wear and tear excepted, and free and clear of all tenancy agreements, lettings, occupancies, liens and encumbrances other than those, if any, permitted in writing by Landlord, without any payment or allowance whatever by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Property on any such Expiration Date or earlier termination date. Tenant's obligation to observe and perform this covenant shall survive the expiration or earlier termination of the Term.

**Section 18.02. Removal of Personal Property.** On the last day of the Term or upon any earlier termination of this Lease or upon a re-entry by Landlord upon the Premises, Tenant, at its sole cost and expense, shall remove from the Property on or prior to such expiration, termination or re-entry, any personal property situated thereon which is not owned by Landlord, and shall repair any damage caused by such removal. Any property not so removed shall become the property of Landlord, and Landlord may cause such property to be removed from the Property and disposed of, but the cost of any such removal and disposition and of repairing any damage caused by such removal shall be borne by Tenant.

**ARTICLE 19**  
**GENERAL; MISCELLANEOUS**

**Section 19.01. Force Majeure.**

A. Subject to Section 19.01(b) below, any prevention, delay, nonperformance (other than nonperformance of an obligation to pay money to Landlord) or stoppage by Tenant due to any of the following causes shall be excused: any regulation, order, act, restriction or requirement or limitation imposed by any federal, state, municipal or foreign government or any department or agency thereof that was not in effect as of the date of this Lease, or civil or military authority; acts of God; acts or omissions of Landlord or its agents or employees; fire, explosion or floods; strikes, walkouts or inability to obtain materials; war, riots, sabotage or civil insurrection; or any other causes beyond the reasonable control of Tenant (but excluding delays of Tenant's contractors or subcontractors unless such delays arise from the bankruptcy or insolvency of Tenant's contractors or subcontractors).

B. No prevention, delay, or stoppage of performance shall be excused unless:

- (i) Tenant notifies Landlord within ten (10) days of such prevention, delay or stoppage that it is claiming excuse of its obligations under this Section 19.01; and
- (ii) Tenant diligently proceeds within thirty (30) days of the conclusion of such prevention, delay or stoppage to commence to cure the condition causing the prevention, delay or stoppage; and
- (iii) Tenant affects such cure within a reasonable time.

**Section 19.02. Signage.** Landlord agrees to allow Tenant, at Tenant's sole cost and expense, to place signage on the pylon sign on N. Quincy Street, directional signage, and signage on the Improvements. The size and design of such signs shall be mutually agreed upon by the Parties, and shall be subject to conformity with the Arlington County Zoning Ordinance.

**Section 19.03. Parking.** Tenant shall be entitled to the use of approximately 68 of the parking spaces located on the Property. Tenant agrees to indemnify Landlord, and hold Landlord harmless, from and against all claims for damage or destruction that may occur to any automobiles or other parked vehicles of the Tenant, or Tenant's guests or invitees, that are parked on Property during the Term of the Lease.

**Section 19.04. Effectiveness.** This Lease shall become effective on, and only on, its execution and delivery by each Party hereto and the approval required by Section 19.16 below.

**Section 19.05. Complete Understanding.** This Lease, including all exhibits attached hereto, represents the complete understanding between the parties hereto as to the subject matter hereof, the Improvements, the Premises, the equipment, or the rest of the Property, and the rights and obligations of the parties hereto as to the same, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements or agreements, either written or oral, between the parties hereto as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in this Lease. Neither party hereto has any right to

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rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein.

**Section 19.06. Waiver.** No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. Without limiting the generality of the foregoing, no action taken or not taken by Landlord under this Section or any other provision of this Lease (including but not limited to Landlord's acceptance of the payment of Rent after an Event of Default occurs) shall operate as a waiver of any right to be paid a late charge or of any other right or remedy which Landlord would otherwise have against Tenant on account of such Event of Default under this Lease or Applicable Laws (Tenant hereby acknowledging that, in the interest of maintenance of good relations between Landlord and Tenant, there may be instances in which Landlord chooses not immediately to exercise some or all of its rights if an Event of Default occurs).

**Section 19.07. Applicable Laws.** This Lease shall be given effect and construed by application of the law of the Commonwealth of Virginia without regard to its conflicts of laws principles, and Landlord and Tenant each irrevocably (a) agrees that any suit, action or other legal proceeding arising out of this Lease or any of the transactions contemplated hereby shall be brought in the Arlington County Circuit or the Arlington County General District Court; (b) consents to the jurisdiction of such court in any suit, action, or proceeding; and (c) waives any objection he or it may have to the laying of venue of any such suit, action or proceeding in such court.

**Section 19.08. Time of Essence.** Time shall be of the essence of this Lease, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the Party having such right or obligation shall have until 5:00 p.m. on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation.

**Section 19.09. Construction.** As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any Section, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Section, paragraph or subparagraph of this Lease. Landlord agrees that, when interpreting this Lease, there shall be no presumption against Landlord on account of the fact that Landlord is the party that caused the drafting of this Lease.

**Section 19.10. Exhibits.** Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

**Section 19.11. Severability.** No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a)

any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, Applicable Laws.

**Section 19.12. Preservation of Lease.** This Lease may be amended, modified, supplemented, changed, cancelled, or terminated only by instrument executed by the Parties hereto (or their successors or permitted assigns).

**Section 19.13. Role of Landlord/Landlord Decisions; No Waiver.** Tenant hereby acknowledges that Landlord has entered into this Lease in its role as landlord under this Lease and not as a Governing Authority. Accordingly, Landlord's execution of this Lease shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, including, without limitation, for the construction of the Improvements, or for any other governmental approval or consent required to be obtained by Tenant. Whenever in this Lease Landlord is required to join in, consent, give its approval, or otherwise act under this Lease, it is understood that such obligations are meant to apply to Landlord acting in its capacity as a landlord and not in its capacity as a Governing Authority. Further, Tenant hereby acknowledges that any and all decisions, determinations, consents, notifications or any other actions taken or to be taken by Landlord pursuant to this Lease, whether or not specifically contemplated hereunder, may be taken by the County Manager or by another Arlington County official or body pursuant to any means, mechanism or process as determined by Arlington County in its sole discretion, and Tenant shall have no right to question or challenge the propriety, authority or legality of any such Arlington County official or body, or means, mechanism or process by which any such decision, determination, consent, notification, or other action is taken or to be taken hereunder by Landlord; provided such decision, determination, consent, notification, or other action by Landlord is taken in accordance with all Applicable Laws, rules, regulations, ordinances, codes, procedures, processes and orders. Notwithstanding the foregoing, nothing in this Lease shall be construed to waive any of Landlord's powers, rights or obligations as a Governing Authority or local governing body, whether or not affecting the Premises or Improvements, including, but not limited to, its police power, right to grant or deny permits, right to collect taxes or other fees, or any other power, right or obligation whatsoever.

**Section 19.14. No Rights in Third Parties.** The Parties hereto mutually agree that no provision of this Lease shall create in the public, or in any person or entity other than those signing this Lease as parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party or authorized assignee hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Lease or otherwise.

**Section 19.15. No Indemnification or Hold Harmless.** Notwithstanding any other term or provision of this Lease to the contrary, Landlord shall have no obligation to explicitly or implicitly indemnify or hold harmless Tenant, or any third party or parties from any liability whatsoever.

**Section 19.16. Approval of Lease by Landlord.** This Lease shall not become effective unless and until the County Board approves this Lease. Such approval by the County Board shall be evidenced by the execution of this Lease, on behalf of the County Board, by a person

designated by the County Board. Upon the execution and delivery by Tenant of a Lease that is acceptable to the County Manager, he shall use reasonable efforts to promptly obtain the approval of the County Board to this Lease, consistent with the County process for the review and submission of documents to the County Board for consideration. If this Lease is not approved by the County Board as evidenced by the execution hereof, on behalf of the County Board, by a person designated by the County Board, then no liability whatsoever shall accrue to Landlord or Tenant, and Landlord and Tenant shall have no obligations whatsoever to each other hereunder.

**Section 19.17. Appropriation of Funds.** All of Landlord's obligations under this Lease that, to be performed, require an appropriation of funds, shall be fully subject to the appropriation of funds by The County Board of Arlington County, Virginia for the specific purpose of satisfying the obligations of Landlord hereunder.

**Section 19.18. No Waiver of Sovereign Immunity.** Notwithstanding any other provision of this Lease to the contrary, nothing in this Lease nor any action taken by Landlord or Tenant pursuant to this Lease nor any document which arises out of this Lease shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of Landlord or Tenant, or of its elected and appointed officials, officers and employees in its capacity as a Governing Authority.

**Section 19.19. Holdover.** If Tenant holds over in its possession of the Premises at the expiration or earlier termination of this Lease, such occupancy will be deemed a trespass by Tenant. During such holdover period, Tenant shall be bound by all the terms and conditions of this Lease and shall pay to the Landlord an amount equal to Three Hundred Percent (300%) of the Base Rent, plus any damages (including any consequential damages) that may be suffered or incurred by the Landlord. Notwithstanding the foregoing, it is understood and agreed that Tenant has no right to hold over in the Premises and that Landlord has the right to obtain possession of the Premises upon the expiration or earlier termination of this Lease without providing any notice to quit or other notice to Tenant.

**Section 19.20. Counterparts.** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease.

**Section 19.21. Broker and Agent.** Landlord and Tenant each represent and warrant one to another that neither of them has employed any broker in carrying on the negotiations, or had any dealings with any broker, relating to this Lease. Tenant shall indemnify and hold Landlord harmless, from and against any claim or claims for brokerage or other commission arising from or out of any breach of the foregoing representation and warranty by Tenant.

**Section 19.22. Waiver of Jury Trial.** Tenant hereby waives trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on or with respect to any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, Tenant's use or occupancy of the Premises, and/or any claim of injury or damage.

**Section 19.23. Enforcement of Lease.** In the event Landlord is required or elects to take or defend against legal action to enforce against Tenant the performance of Tenant's obligations

under this Lease or to defend Landlord's rights under this Lease, then Tenant shall immediately reimburse Landlord for all costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Landlord in its successful prosecution or defense of that legal action.

**Section 19.24. Lien for Rent.** In consideration of the mutual benefits arising under this Lease, Tenant hereby grants to Landlord a lien on all property of Tenant now or hereafter placed in or upon the Premises (except such part of any property as may be exchanged, replaced, or sold from time to time in the ordinary course of business operations or trade of Tenant), and such property shall be and remain subject to such lien of Landlord for payment of all rent and other sums agreed to be paid by Tenant herein. Said lien shall be in addition to and cumulative upon Landlord's liens provided by law. Said lien shall be second in priority to the rights of any landlord of, or the mortgagee of, any equipment or personal property under any equipment lease or mortgage, or the rights of the seller under any conditional sales contract. Tenant shall reimburse to Landlord, as additional rent, all costs and expenses, including reasonable attorneys' fees, which Landlord incurs by reason of or in connection with any request for subordination of Landlord's lien hereunder or enforcement of Landlord's rights hereunder, such costs and expenses to be due and payable within fifteen (15) days of receipt of a statement of such costs and expenses from Landlord.

**Section 19.25. Recordation.** Tenant shall not record this Lease or any memorandum thereof without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion. All fees, costs, taxes and expenses in connection with the filing and recording of this Lease or any memorandum thereof shall be the sole obligation of Tenant.

**Section 19.26. Deed of Lease.** If and to the extent required under Applicable Laws to make this Lease effective, this Lease shall constitute a deed of lease executed under seal.

**Section 19.27. OFAC Certification.** Tenant certifies that (a) it is not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation and is enforced or administered by the Office of Foreign Assets Control; and (b) it is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation. Tenant shall defend, indemnify and hold harmless Landlord against all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims, and demands, including reasonable attorneys' fees, arising out of any violation of or default in the covenants of this Section 19.27. The indemnification provisions of this Section 19.27 shall survive the expiration of the term of this Lease.

*[Signature appears on following page]*

IN WITNESS WHEREOF, each Party hereto has executed and sealed this Lease or caused it to be executed and sealed on its behalf by its duly authorized representatives, the day and year first above written.

Approved as to form:

\_\_\_\_\_  
County Attorney

**LANDLORD:**

**THE COUNTY BOARD OF ARLINGTON COUNTY,  
VIRGINIA, a body politic**

By: \_\_\_\_\_ (seal)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

**DYNAMIC GYMNASTICS, LLC, a Virginia limited liability  
company**

By: Kelly R Binger (seal)

Name: Kelly R Binger

Title: owner



**IMPORTANT NOTICE**

THIS INSTRUMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.

**PERSONAL GUARANTY OF LEASE AND CONFESSION OF JUDGMENT**

THIS PERSONAL GUARANTY OF LEASE AND CONFESSION OF JUDGMENT ("*Personal Guaranty*") is made and entered into as of this 5<sup>th</sup> day of September, 2017, by THADDEUS M. BINGEL and KELLY R. BINGEL, as guarantors ("*Guarantors*"), to and in favor of and for the benefit of THE COUNTY BOARD OF ARLINGTON COUNTY VIRGINIA, as landlord ("*Landlord*"). In consideration of Landlord entering into that certain lease ("*Lease*") dated on or about the date hereof, wherein Dynamic Gymnastics, LLC, a Virginia limited liability company, as Tenant, and Landlord as the landlord, and in consideration of Landlord leasing to Tenant the "*Premises*", known as 1435 N. Quincy Street, Arlington, Virginia, and comprising an approximately 15,743 square-foot one-story warehouse building, as described in the Lease, on the terms and conditions therein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Guarantors, jointly and severally, irrevocably and unconditionally guarantee to the said Landlord, its successors and assigns under said Lease, the full, faithful and punctual performance by Tenant of Tenant's covenants and agreements contained in said Lease, or any extension or renewal thereof, and agree that any forbearance, modifications, waivers, amendment, releases, postponements, either of payment or enforcement of any rights against any party, or release of any security shall not affect the undersigned Guarantors absolute and unconditional liability hereunder. The undersigned Guarantors waive notice of any of the foregoing changes. The undersigned hereby waives any and all defenses based on the law of suretyship. Demand, notice of default or of nonpayment are hereby waived and it is agreed that the said Landlord under the said Lease may proceed first against the Guarantors, without first proceeding against the said Tenant under the said Lease. If Landlord employs counsel to enforce this Guaranty, Guarantors will reimburse Landlord for all attorney's fees, costs and expenses incurred. This Personal Guaranty shall be binding upon the heirs, administrators, executors and assigns of the undersigned Guarantors.

**CONFESSION OF JUDGMENT.**

THE GUARANTORS HEREBY APPOINT AND DESIGNATE THE COUNTY ATTORNEY OF ARLINGTON COUNTY, VIRGINIA, AS GUARANTORS' DULY CONSTITUTED ATTORNEY-IN-FACT, TO CONFESS JUDGMENT AGAINST GUARANTORS, PURSUANT TO THE PROVISIONS OF THIS GUARANTY AND SECTION 8.01-432 OF THE CODE OF VIRGINIA (1950), AS AMENDED, AFTER AN EVENT OF DEFAULT UNDER THE LEASE, IN ANY LAWSUIT OR ACTION BROUGHT AGAINST TENANT FOR THE ENFORCEMENT OF ANY RIGHTS OF THE LANDLORD UNDER THE LEASE, TO WAIVE ISSUANCE OF PROCESS AND TRIAL BY JURY, AND, FROM TIME TO TIME, TO CONFESS JUDGMENT OR JUDGMENTS IN FAVOR OF THE LANDLORD AND AGAINST TENANT FOR ANY RENT, LATE CHARGES, INTEREST AND OTHER CHARGES, INCLUDING CHARGES FOR ANY HOLDOVER, DUE FROM TENANT TO LANDLORD UNDER THE LEASE. SUCH JUDGMENT SHALL BE CONFESSED IN THE CIRCUIT COURT OF ARLINGTON COUNTY OR THE ARLINGTON COUNTY GENERAL DISTRICT COURT.

KRB

UPON LANDLORD'S REQUEST, GUARANTORS SHALL NAME SUCH ADDITIONAL OR ALTERNATIVE PERSONS DESIGNATED BY LANDLORD AS GUARANTORS' DULY CONSTITUTED ATTORNEY OR ATTORNEY-IN-FACT TO CONFESS JUDGMENT AGAINST GUARANTORS' IN ACCORDANCE WITH THE TERMS OF THIS GUARANTY. NO SINGLE EXERCISE OF THE POWER TO CONFESS JUDGMENT GRANTED IN THIS SECTION SHALL EXHAUST THE POWER, REGARDLESS OF WHETHER SUCH EXERCISE IS RULED INVALID, VOID OR VOIDABLE BY ANY COURT. THE POWER TO CONFESS JUDGMENT GRANTED IN THIS SECTION MAY BE EXERCISED FROM, TIME TO TIME, AS OFTEN AS THE HOLDER OF THIS GUARANTY MAY ELECT. FURTHER, GUARANTORS HEREBY WAIVE AND RELEASE ALL ERRORS AND ALL RIGHTS TO EXEMPTION, APPEAL, STAY OF EXECUTION, OR INQUISITION OR EXTENSION UPON ANY LEVY UPON REAL ESTATE OR PERSONAL PROPERTY TO WHICH GUARANTORS MAY OTHERWISE BE ENTITLED UNDER THE LAWS OF THE COMMONWEALTH OF VIRGINIA OR ANY OTHER STATE WITHIN THE UNITED STATES NOW IN FORCE, OR WHICH MAY HEREAFTER BE PASSED. THIS POWER AND AUTHORIZATION MAY BE USED AND REUSED AND SHALL NOT BE EXHAUSTED BY USE. THE PROVISIONS OF THIS GUARANTY AND CONFESSION OF JUDGMENT SHALL BE EXERCISABLE BY LANDLORD ONLY FOLLOWING AN EVENT OF DEFAULT UNDER THE LEASE OR A HOLDOVER BY TENANT.

GUARANTORS:

Thaddeus M. Bingel

Thaddeus M. Bingel

District of Columbia

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Washington, to wit:

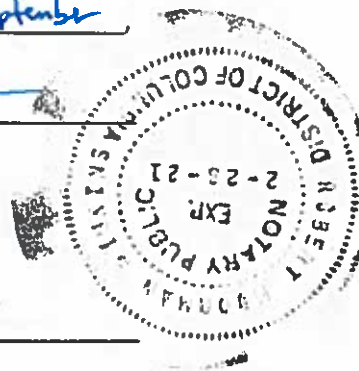
The forgoing instrument was acknowledged before me this 5 day of September 2017 by Thaddeus M. Bingel.

[Signature]

Notary Public

My Commission Expires: February 28, 2021

Registration No.: N/A



Kelly R. Bingel

Kelly R. Bingel

District of Columbia

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Washington, to wit:

The forgoing instrument was acknowledged before me this 5 day of September 2017 by Kelly R. Bingel.

[Signature]

Notary Public

My Commission Expires: February 28, 2021

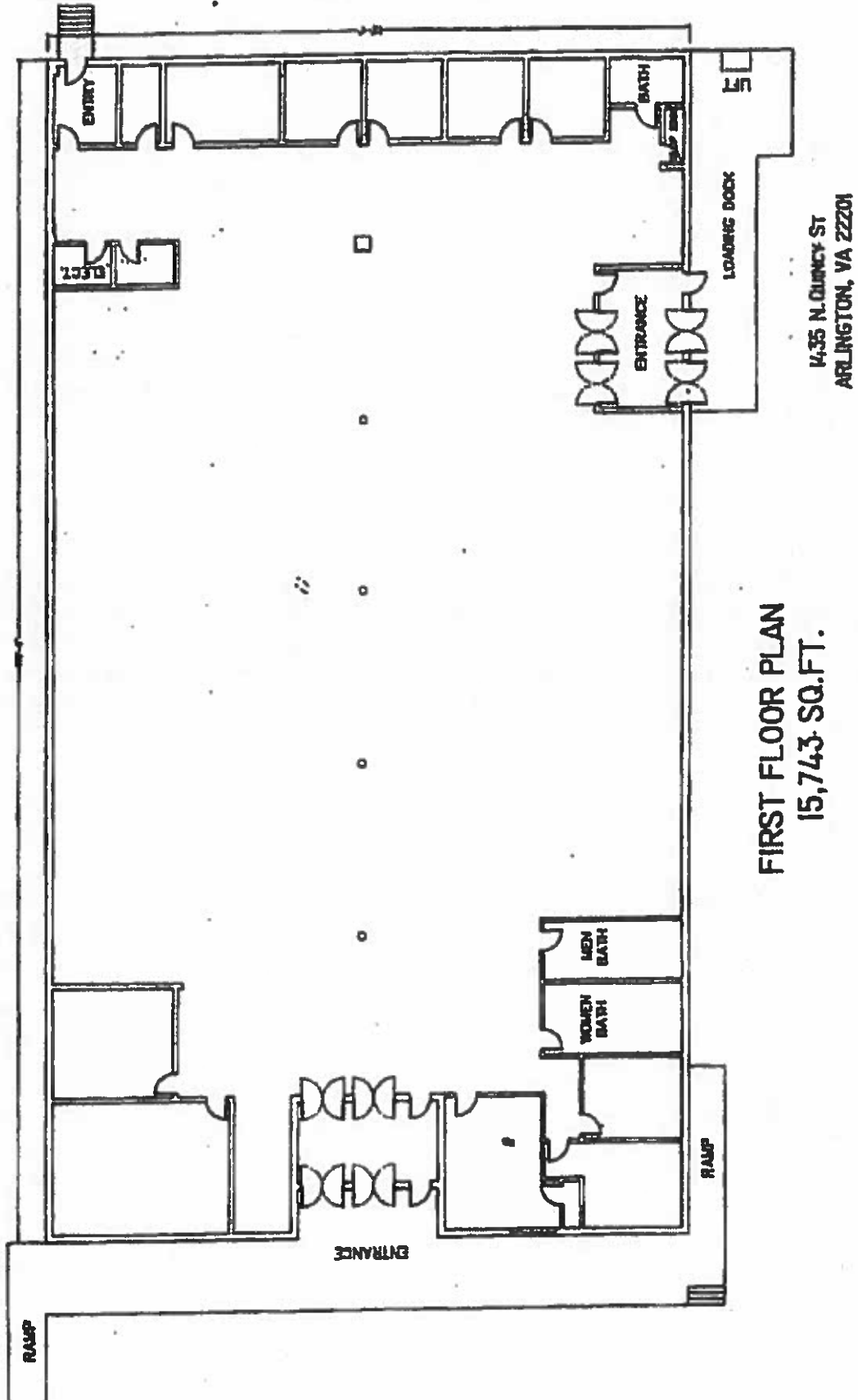
Registration No.: N/A



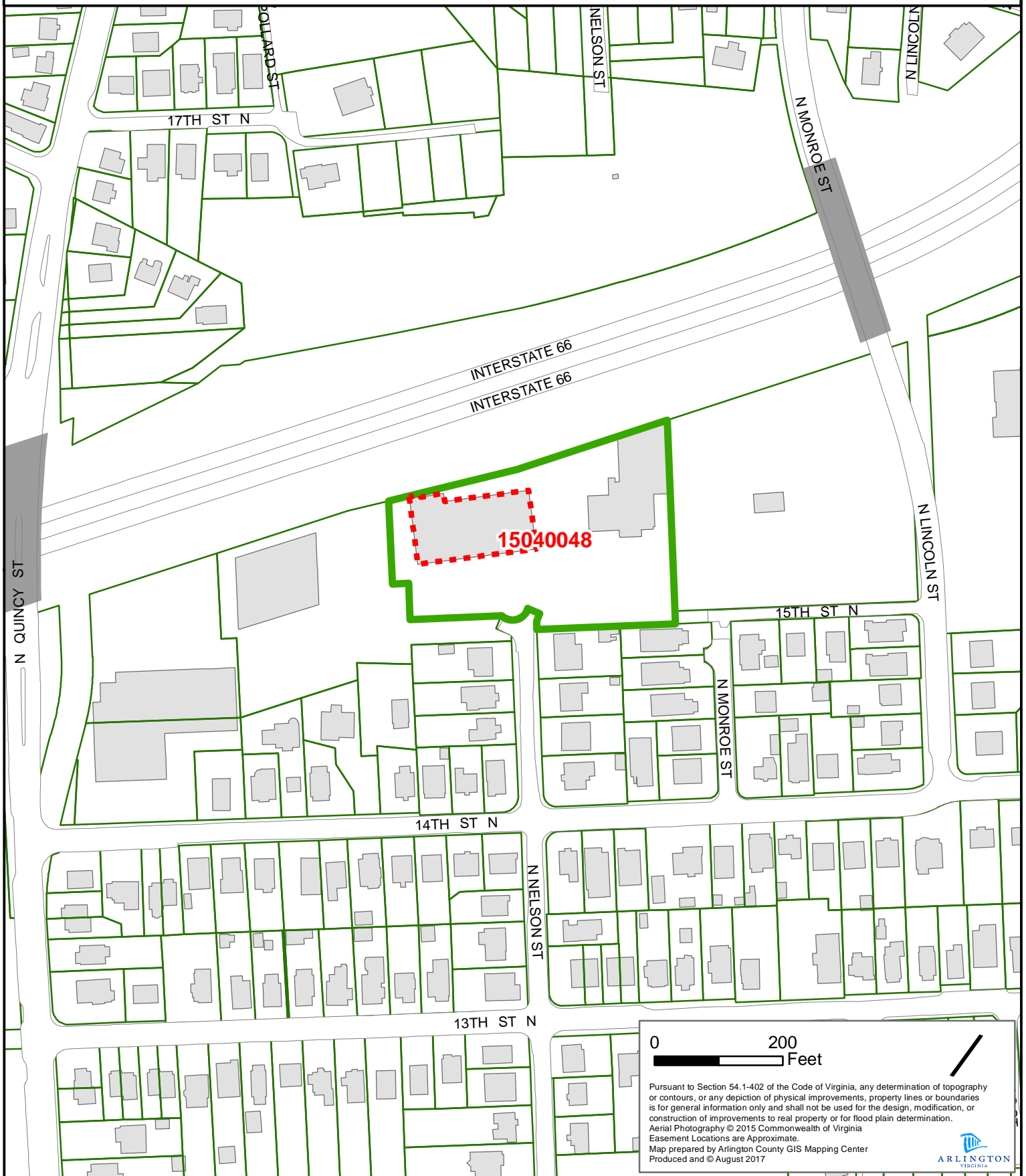
**EXHIBIT A**  
**DESCRIPTION OF PREMISES**  
**(Attached)**

**EXHIBIT A PREMISES**

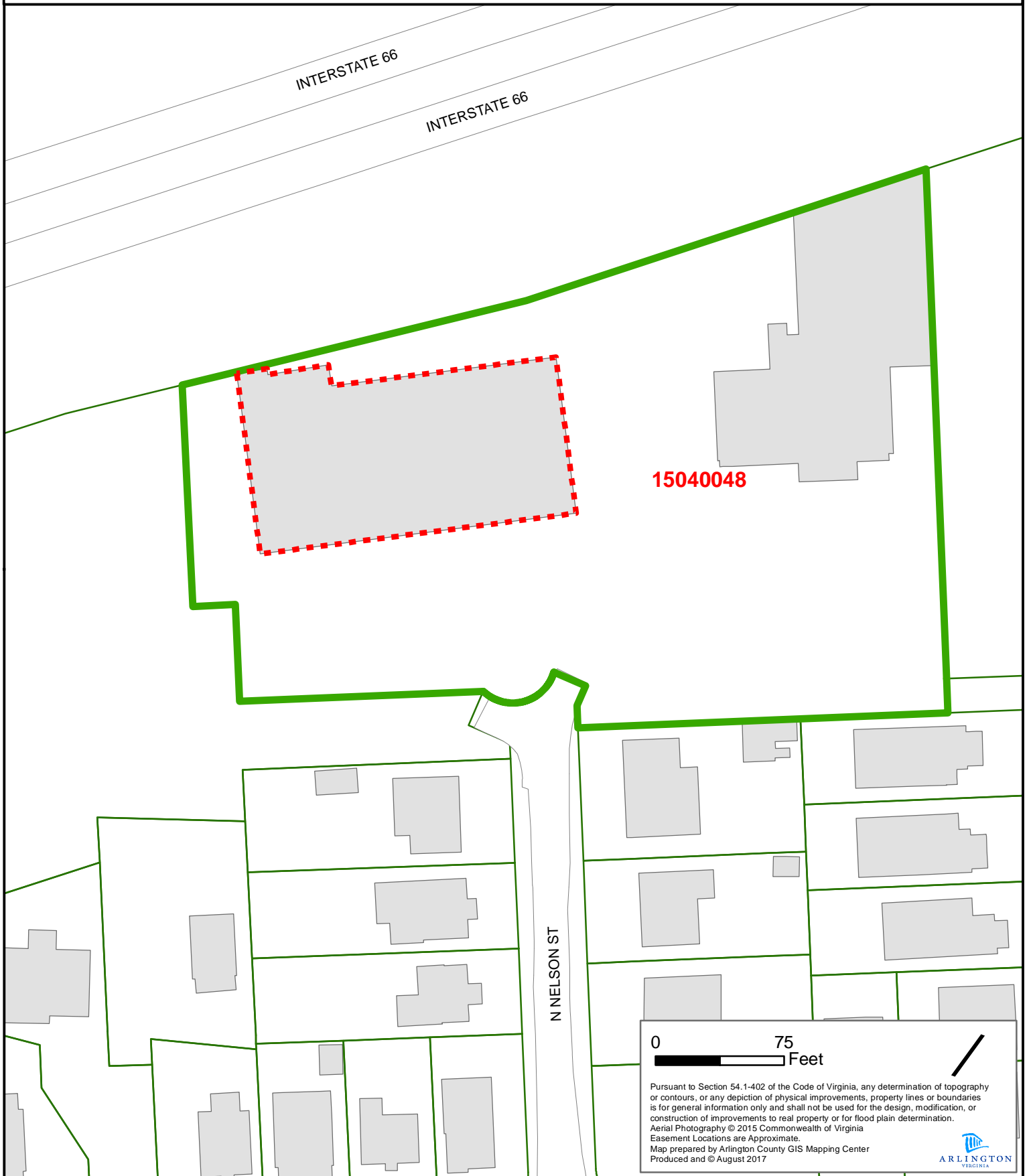
*(Does not depict Tenant alterations during lease with Cooper Quincy No. 2, LLC)*



Vicinity Map  
Lease of Premises known as 1435 N Quincy Street  
RPC # 15040048 to Dynamic Gymnastics, LLC



Vicinity Map  
Lease of Premises known as 1435 N Quincy Street  
RPC # 15040048 to Dynamic Gymnastics, LLC





Vicinity Map  
Lease of Premises known as 1435 N Quincy Street  
RPC # 15040048 to Dynamic Gymnastics, LLC

