
LEASE AGREEMENT

This Lease Agreement (the “Lease”) is made and entered into the 15th day of January, 2024, by and between THE CITY OF DYERSVILLE, IOWA, acting by and through its Mayor, whose address is 340 1st Avenue East, Dyersville, Iowa, 52040, hereinafter referred to as “Lessor,” and MOSER SCHOOL OF DANCE AND GYMNASTICS, hereinafter referred to as “Lessee.”

Background

- A. Lessor is the owner of the Memorial Building located at 340 1st Avenue East, City of Dyersville, State of Iowa, legally described on the attached **Exhibit A** (the “Owned Premises”). The primary purpose of the Owned Premises is to provide a workplace and working environment primarily for police, administrative, and managerial workers of the City of Dyersville and Dubuque County.
- B. Lessee desires to lease a portion of the Owned Premises’ space for the use of a for-profit dance and gymnastic studio, legally described on the attached **Exhibit B** (the “Leased Space”).
- C. Accordingly, the parties are entering into this Lease on the terms and conditions set forth below.

Agreement

In consideration of their mutual covenants, the parties agree as follows:

- 1. **Leased Premises.** Lessor leases to Lessee and Lessee leases from Lessor a portion of the Owned Premises, consisting of the Leased Space. Lessee intends to locate equipment on the Leased Space as more fully described on the attached **Exhibit C**. Lessee may not add additional equipment other than that shown on **Exhibit C** without the prior written approval of Lessor.

Since the Lessee has equipment that may cause undue vibration, noise, and/or interference of Lessor’s operations, Lessor, through the approval of the Dyersville City Council, reserves the right to require Lessee to relocate its equipment to other locations on the Leased Space. Lessee shall complete the relocation of its equipment within thirty (30) calendar days after receiving written notice from Lessor. The relocation shall be at Lessee’s

expense. If such relocation does not meet Lessee's operation needs of its business and uses incidental thereto, Lessee may terminate this Lease in accordance with Section 14 herein.

This Lease is not a franchise pursuant to state, local, county, or federal law, nor is it a permit to use the rights-of-way. Any such franchise or permit must be obtained separately.

2. **Term.** The term of this Lease shall commence July 1, 2024, (the "Commencement Date") and shall terminate on June 30, 2025, ("the Termination Date"), unless sooner terminated as otherwise provided in this lease.

3. **Rent.**

a. Lessee shall pay to Lessor as monthly rent for the Leased Space the sum of Seven Hundred Twenty Dollars and Zero Cents (\$720.00) (the "Base Rent"). Lessee shall pay Lessor Base Rent for the first month on the Commencement Date, and each subsequent monthly payment will be due on or before the last day of each month thereafter.

b. The Lessor believes that the Lessee's spring board equipment may cause undue vibration, noise, and/or interference with its day-to-day operations. Therefore, if Lessee locates springboard equipment on the Leased Space, as described in **Exhibit C**. Lessee shall pay Additional Rent per month to the Lessor in the sum of One Hundred Sixty-Four Dollars and Zero Cents (\$164.00). Furthermore, Lessee shall agree that the Additional Rent is in addition to the Base Rent as described in Section (3)(a).

c. Lessee shall pay Lessor a late payment charge equal to five percent (5%) of the late payment for any payment not paid when due. Any amounts not paid when due shall bear interest until paid at the lesser of the rate of two percent (2%) per month or the highest rate permitted by law.

d. If this Lease is terminated at a time other than on the last day of the month, Rent shall be pro-rated as of the date of termination.

4. **Use of the Premises.**

a. Lessee shall use the Leased Space for the operation of a for-profit dance and gymnastic studio and uses incidental thereto and for no other uses.

b. Lessee shall, at its expense, comply with all present and future federal, state, county, and local laws, ordinances, rules, and regulations in connection with the use and operation of Lessee's business.

c. (1) The equipment is agreed to be Lessee's personal property and shall never be considered fixtures to the real estate. Upon termination of the Lease, the Lessee shall remove the equipment from the Leased Space within thirty (30) calendar days. Such removal shall be done in a workman like and careful manner and without interference or damage to any other equipment, structures, or operations on the Leased Space. If, however, Lessee requests permission to not remove all or a portion of the improvements,

and Lessor consents to such non-removal, title to the affected improvements shall thereupon transfer to Lessor and the same thereafter shall be the sole and entire property of Lessor, and Lessee shall be relieved of its duty to otherwise remove same.

(2) Upon removal of the improvements (or portions thereof) as provided in Section 4(c)(1), herein, Lessee shall restore the affected areas of the Leased Space to the conditions which existed prior to this Lease, reasonable wear and tear excepted.

(3) All costs and expenses for the removal and restoration to be performed by Lessee pursuant to Section (4)(c)(1), (2) herein shall be borne by Lessee, and Lessee shall hold Lessor harmless from any portion thereof.

5. **Installation of Equipment.**

- a. Lessee shall have the right, as its sole cost and expense, to install, operate, and maintain its equipment on the Leased Space, as described on **Exhibit C**, in accordance with good practices and with all standards, statutes, ordinances, rules, and regulations now in effect or that may be issued thereafter by governing bodies.
- b. Lessee's installation of such equipment shall be done according to plans approved by Lessor, whose approval shall not be unreasonably withheld. Any damage done on the Leased Space and/or other structures during installation and/or operations shall be repaired or replaced immediately at Lessee's expense and to Lessor's reasonable satisfaction. In connection with the installation and operation of the equipment, Lessee shall not make any penetrations of the walls or roof of the Leased Space without Lessor's prior written consent.
- c. Within thirty (30) days of the completion of the initial installation of the equipment, Lessee shall provide Lessor with as-built drawings of equipment location and the improvements installed on the Leased Space, which show the actual location of all equipment and improvements consistent with **Exhibit C**. Said drawings shall be accompanied by a complete inventory of the building and all equipment located on the Leased Space.

6. **Equipment Upgrade.** Lessee may update, upgrade, or replace the equipment from time to time with the prior written approval of Lessor, whose approval shall not be unreasonably withheld, provided that the replacement equipment is not greater in number or size than the existing equipment and that any change in equipment locations on the Leased Space is approved in writing by the Lessor. Lessee shall submit to Lessor a proposal for any such replacement equipment for Lessor's evaluation.

7. **Premises Access.**

- a. Lessee shall have 24-hour/7-day access to the Leased Space in order to conduct, operate, and maintain its business. However, Lessee must not operate its spring board equipment from 9:00 AM to 4:00 PM, Monday through Friday.

- b. Lessee shall have unrestricted access to the Leased Space in order to install, operate and maintain its equipment and appurtenances.

8. **Care and Maintenance of Premises.**

- a. Lessor agrees to repair any equipment owned by the Lessor within the Leased Space; such as, doors, fans, furnaces, light fixtures, and toilets. The Lessee shall have sole responsibility for the security and the normal day-to-day cleaning of the Leased Space.
- b. Lessee shall have sole responsibility for the maintenance, repair, and security of its equipment, personal property, and leasehold improvements and Lessee shall keep the same in good repair and condition during the term of the Lease.
- c. In the event the Lessor or any other lessee undertakes painting, construction, repairs, or other alterations on the Leased Space, Lessee shall take reasonable measures at Lessee's cost to cover Lessee's equipment, personal property, and leasehold improvements and protect such from paint and/or debris fallout which may occur during the painting, construction, repair, or alteration process. Lessee shall notify Lessor at least thirty (30) calendar days prior to any painting, construction, repair(s), or alterations begun by Lessee to the Leased Space, unless such painting, construction, repair(s), or alterations must be made on an emergency basis, in which case Lessee shall notify Lessor as soon as practicable. Lessor shall notify Lessee at least thirty (30) calendar days prior to any painting, construction, repair(s), or other alterations begun by Lessor or any other lessee, unless said painting, construction, repair(s), or alterations must be made on an emergency basis, in which case Lessor shall notify Lessee as soon as practicable. Unless resulting from negligent actions or omissions of, or willful misconduct of, Lessor, its employees, agents, or contractors, Lessor shall not be liable for any damage incurred by Lessee from such painting, construction, repair(s), or alterations.

9. **Public Health Emergency.** The following provisions apply in the event of a Public Health Emergency Declaration by federal, state, regional, or local authorities.

- a. Lessee shall follow federal, state, regional, and local proclamation(s) and/or order(s) regarding operations during an infectious disease outbreak.
- b. In addition to the compliance obligation of Section 9(a), Lessee shall, regardless of the existence of and in addition to any active federal, state, regional, or local proclamation(s) and/or order(s) in effect, and in order to attain the highest degree of health and safety protections for other employees and users of the Owned Premise, the Leased Space, and Common Areas, Lessee must:
 - i. only allow athletes actively enrolled in dance or gymnastic classes, the athletes, parents/guardians, and on-duty employees to enter and exit the Owned Premises during Class Time and ten minutes before and after Class Time;

- ii. schedule individual classes during Class Time to avoid overlap so that athletes of each individual class can fully vacate the Owned Premises before the next class arrives;
 - iii. prohibit loitering in the Common Areas (as defined in Paragraph 9(b)(viii)) by athletes, parents/guardians, and on-duty employees;
 - iv. not allow athletes to remain on the Owned Premises outside of Class Time;
 - v. Lessee must require employees, students, and parents to self-monitor for signs and symptoms of COVID-19;
 - vi. Lessee shall require employees, students, and parents to inform Lessee of suspected exposure to COVID-19;
 - vii. not allow any employees or athletes to enter the Owned Premises if they are experiencing COVID-19 symptoms or are have been exposed to or report suspected exposure to COVID-19. If an employee or athletes has COVID-19 symptoms, has been exposed to COVID-19, or report suspected exposure to COVID-19, Lessee shall follow the Iowa Department of Public Health guidance regarding requiring employees/students to self-quarantine prior to allowing the employee or student to return to the Owned Premises and Leased Space; and
 - viii. Lessee shall be responsible for the deep cleaning and disinfecting of the Leased Space and all Common Areas at the beginning and end of each and every Class Time. The Lessee must either hire a third-party cleaning agency capable of cleaning and disinfecting against infectious diseases like COVID-19, or undertake such cleaning and disinfecting itself under a “Cleaning and Disinfecting Plan” that has previously been approved by both the Lessor and the Dubuque County Health Department. Lessee shall be solely responsible for any and all costs associated with the deep cleaning and disinfecting of the Leased Space and Common Areas. “Common Areas” is defined as the front entry of the Owned Premises, the stairs and handrails from the first floor of the Owned Premises to the Leased Space, and the elevator.
10. **Utilities.** Lessor shall pay for reasonable utility costs the Lessee consumes in its operations at the rate charged by the servicing utility company. Reasonable utility costs mean the normal utility consumption that the Lessee would use its day-to-day operations and not resulting from negligent actions or willful misconduct from the Lessee; such as, but not limited to, not reporting a running toilet or keeping the furnace thermostat higher than seventy (70) degrees Fahrenheit. Lessee shall have the right to draw electricity and other utilities from the existing utilities on the Leased Space.
11. **Monetary Default by Lessee.** Lessee shall be in default of this Lease if Lessee fails to make a payment of rent, or any other sums, when due and such failure continues for ten (10) calendar days after Lessor notifies Lessee in writing of such failure.

12. **Non-monetary Default by Lessee.** If Lessee fails to comply with any non-monetary provision of this Lease, which Lessor in its sole discretion claims to be a default hereof, Lessor shall serve written notice of such default upon Lessee, whereupon a grace period of ten (10) calendar days shall commence to run during which Lessee shall undertake and diligently pursue a cure of the default.

13. **Cure or Termination by Lessor.** In the event of any default of this Lease by Lessee, the Lessor may at any time, after giving notice (where required), cure the default for, and at the expense of, the Lessee. If Lessor is compelled to pay, or elects to pay, any sum of money or incurs any expense, the sums or expenses so paid by Lessor, with all interest, costs and damages, shall be deemed Additional Rent due from the Lessee to Lessor per Section 3, above.

The Lessor, through action by the Dyersville City Council, shall have the right, in its sole discretion, without cause, and in addition to and not exclusive of any other remedy Lessor may have by operation of law, to terminate this Lease. Lessor shall give Lessee thirty (30) calendar days' notice of its exercise of its right of termination of this Lease. Such notice of termination shall be given to Lessee in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice. All prepaid rent payments received by Lessor from Lessee shall be retained by Lessor. Upon such termination, this Lease shall become null and void and the parties shall have no further obligations to each other. In the event of termination, Lessee shall remove the equipment in accordance with Section 4(c) hereof.

14. **Option to Terminate.** Lessee shall have the right to terminate this Lease at any time by giving written notice of intent to terminate at least thirty (30) calendar days prior to the end of the lease. Upon such termination, Lessee shall remove the equipment in accordance with Section 4(c) herein.

15. **Alteration, Damage, or Destruction.** If the Leased Space or any portion thereof is altered, damaged, or destroyed, through no fault or negligence of Lessee, so as to materially hinder effective use of the business, Lessee may elect to terminate this Lease, without paying Additional Rent to Lessor, upon thirty (30) calendar days written notice to Lessor. In such event, Lessee shall remove the equipment from the Leased Space in accordance with Section 4(c), less any alteration, damage, or destruction hindering effective use of the Leased Space. This Lease and Lessee's obligations hereunder shall terminate upon Lessee's fulfillment of Section 4(c), at which time Lessee shall be entitled to reimbursement of any prepaid rent.

16. **Mutual Indemnification.**

a. Lessee's Indemnification. Unless resulting from negligent actions or omissions of, or willful misconduct of, Lessor, its employees, agents, or contractors, Lessee agrees to hold Lessor harmless, indemnify it, and, at Lessor's option, defend it from and against all liability, damages, losses, costs, causes of action, charges, and expenses, including reasonable attorney fees, which Lessor may sustain, incur, or be liable for arising out of or related to Lessee's use or occupancy of the Leased Space and its facilities. This is

includes but is not limited to the obligation of Lessee to defend (at Lessor's option), indemnify, and hold harmless Lessor from any and all liability, damages, losses, costs, causes of action, charges, and expenses, including attorney's fees, that arise out of or is related to potential exposure or contraction of coronavirus/COVID-19 or any other infectious disease on behalf of any Lessee employee, agent, contractor, athlete, or parent or guardian of an athlete.

- b. Lessor's Indemnification. Unless resulting from negligent actions or omissions of, or willful misconduct of, Lessee, its employees, agents, or contractors, Lessor agrees to hold Lessee harmless and indemnify it, and, at Lessee's option, defend it from and against all liability, damages, losses, costs, causes of action, charges, and expenses, including reasonable attorney fees, which Lessee may sustain, incur, or be liable for arising out of or related to Lessor's use or occupancy of the Leased Space and its facilities.
17. **Insurance**. Lessee shall provide such insurance as is required by the Insurance Schedule attached hereto as **Exhibit D**.
18. **Environmental Warranty**. Lessee agrees that it will not use, generate, store, or dispose of any Hazardous Material on, under, about, or within the Owned Premises in violation of any law or regulation. This paragraph shall survive the termination of this Agreement.
19. **Acceptance of Premises**. By taking possession of the Leased Space, Lessee accepts the Premises in the condition existing as of the Commencement Date. Lessor makes no representation or warranty with respect to the condition of the Leased Space and Lessor shall not be liable for any defect within the Leased Space.
20. **Force Majeure**. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Lease Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, but not limited to, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) a natural disaster (fires, explosions, earthquakes, hurricane, flooding, storms, explosions, infestations), epidemic, or pandemic; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law in effect on or after the date of this Agreement regardless of foreseeability; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority in effect on or after the date of this Agreement, regardless of foreseeability; (g) national or regional emergency in effect on or after the date of this Agreement, regardless of foreseeability; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities. The Impacted Party shall give Notice within ten (10) calendar days of the Force Majeure Event to the other party, stating the period of time the occurrence is estimated to continue, understanding this estimated duration is made in good faith only and shall have no binding effect on the enforceability of this provision and is provided for informational purposes only. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are

minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of **thirty (30) calendar** days following Notice given by it, the other party may thereafter terminate this Agreement upon Notice.

20. **Notices.** All notices and correspondence shall be sent to the following:

Lessor:

City of Dyersville
Attn. City Administrator
340 1st Avenue East
Dyersville, Iowa 52040

Lessee:

Moser School of Dance
Attn. Deb Moser
1413 8th Avenue SE
Dyersville, Iowa 52040

21. **Assignment of Lease by Lessee.** Lessee may not assign, or otherwise transfer all or any part of its interest in this Agreement or in the Leased Space, without the prior written consent of Lessor.
22. **Binding Effect.** All of the covenants, conditions, and provisions of this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
23. **Entire Agreement.** This Lease constitutes the entire agreement between the parties and supersedes any prior understandings or oral or written agreements between the parties respecting the within subject matter.
24. **Modifications.** This Lease may not be modified, except in writing and signed by the party against whom such modification is sought to be enforced.
25. **Attorney's Fees.** In any action on this Lease, whether at law or in equity, the prevailing party shall be entitled to recover the reasonable costs of its successful case, including reasonable attorney's fees and costs of appeal.
26. **Non-Waiver.** Failure of Lessor or Lessee to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Lease or to exercise any of its rights hereunder shall not waive such rights, but each party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by one party to the other after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.
27. **Property Taxes.** If there are any personal property taxes assessed on, or any portion of such taxes attributable to, the Leased Space, Lessor and Lessee shall renegotiate this Agreement. In such event that neither party can come to a new agreement within a reasonable amount of time, this Agreement shall be immediately terminated. Lessee shall remove the equipment from the Leased Space in accordance with Section 4(c), less any alteration, damage, or destruction hindering effective use of the Leased Space. This Lease and Lessee's obligations hereunder shall terminate upon Lessee's fulfillment of Section 4(c), at which time Lessee shall be entitled to reimbursement of any prepaid rent.

28. **Headings.** The headings of this Lease are for convenience only and shall not be considered as part of the Lease for purposes of construction of the terms and conditions hereof.
29. **Miscellaneous.**
- a. Lessor and Lessee represent that each, respectively, has full right, power, and authority to execute this Lease.
 - b. This Lease shall be construed in accordance with the laws of the State of Iowa.
 - c. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
 - d. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or otherwise withhold its approval or consent.
 - e. All Riders and Exhibits annexed hereto form material parts of this Agreement.
 - f. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

Signature Page

IN WITNESS WHEREOF, the parties hereto bind themselves to this Lease Agreement as of the day and year first above written.

LESSOR:

LESSEE:

City of Dyersville, Iowa

Moser School of Dance and Gymnastics

By: _____
Jeff Jacque, Mayor

By: _____
Debbie Moser

(Seal)

ATTEST:

By: _____
Tricia L. Maiers, City Clerk / Treasurer

EXHIBIT A

Legal Description of the Owned Premises

East 2/3 Lot 426 and West 1/3 Lot 427 of the Original City Plat of the City of Dyersville, Dubuque County, Iowa, commonly known as the Memorial Building located at 340 1st Avenue East, Dyersville, Iowa.

EXHIBIT B

Site Plan/Legal Description of the Premises

2nd Floor of the Community Room (5,056 Square Feet), Memorial Building, 340 1st Avenue, Dyersville, Iowa.

EXHIBIT C

Equipment to be Placed on The Premises

EXHIBIT D

Insurance Schedule

1. Any policy of insurance or certificate of insurance required hereunder shall be with a carrier authorized to do business in Iowa approved by Lessor, which approval shall not be unreasonably withheld.
2. Any policy of insurance required hereunder shall provide for a thirty-day notice to the City of any material change in coverage with respect to the activity contemplated under this Lease or any cancellation of the policy prior to its expiration date.

Lessee shall furnish to the City certificates of commercial insurance with limits that is acceptable to both parties and shall also furnish certificates of insurance from all independent contractors or subcontractors hired by Lessee or any independent contractor or subcontractor.

Coverage is to include: occurrence form, premises/operations/products/completed operations coverage, independent contractors' coverage, contractual liability, broad form property damage, personal injury, City of Dyersville named as an additional insured with thirty (30) calendar days' written notice of any material change or cancellation as provided in paragraph 2 above.