

WESTERN WASHINGTON UNIVERSITY ITEM SUBMITTED TO THE BOARD OF TRUSTEES

TO: Members of the Board of Trustees

FROM: President Sabah Randhawa by Becca Kenna-Schenk, Chief of Staff to the President

DATE: June 14, 2024

SUBJECT: **WWU Ground Lease Agreement with Olympic College for Construction of a WWU Academic Building on the OC-Poulsbo Campus**

PURPOSE: Action Item

Purpose of Submittal:

Western Washington University is requesting approval to enter into a ground lease with Olympic College for construction of a new WWU academic building on the Olympic College-Poulsbo campus.

Background Information:

WWU has offered bachelor's and master's degree programs on the Kitsap and Olympic Peninsulas since 1993 through its "Western on the Peninsulas" program, a network of academic locations designed to support degree attainment and regional growth. Co-located on the Olympic College Poulsbo and Bremerton campuses, as well as the Peninsula College campus in Port Angeles, Western's expanded programs include critical and highly sought after cybersecurity, data science, business, sociology, industrial systems design, and environmental science degree programs, and are focused on providing the necessary educational and workforce advancement opportunities for location-bound and non-traditional students in the region, including many present and former military personnel.

Western on the Peninsulas presently occupies office and classroom space at the Olympic College building on the OC-Poulsbo campus. With no space available in the existing Olympic College building to support expanded WWU programs and given Olympic College's plans to significantly expand their program offerings on the Poulsbo campus, a new academic building for WWU is critical to meeting that need.

A new academic building will contribute significantly to WWU's ability to fulfill its mission to support the population of the Peninsulas with easy access to a post-secondary credential. WWU has been carefully developing programs that align with local business and industry, working with employees to understand what skills are needed from students when they graduate. In addition to these academic programs, WWU's Cyber Range Poulsbo operations are currently housed at the Olympic College-Poulsbo building. The Cyber Range has undergone dramatic growth in both size and scope, and now constitutes a major hub of support for cybersecurity education and innovation for the entire state of Washington, as well as serving as a partner in a major program facilitated by the Department of Homeland Security. Their current operations support

hands-on live experiences for students from twelve colleges and universities and fifteen public school districts across Washington. As the Cyber Range operations continue to expand, the need to provide infrastructure to support the current operations and additional growth is critical. In the last few years, the Cyber Range has reached 2,000-3,000 users in the last year, and with this new space, they would likely hit 5,000 users per year.

WWU is in the process of completing a pre-design study for a new academic building on the OC-Poulsbo campus, which will be submitted to the Office of Financial Management by July 1, 2024. In the upcoming 2025-27 biennium, WWU plans to request state capital funding for the design and construction phases of the project.

The Olympic College Board of Trustees adopted a similar resolution at their May 21, 2024 meeting approving the material terms of the ground lease and delegating authority to the President of Olympic College for final approval of the ground lease. The State Board for Community and Technical Colleges is scheduled to review and approve the ground lease at their June 27, 2024 meeting.

Attachments:

- Ground Lease Agreement with Olympic College

Ground Lease
between
The State Board for Community and Technical
Colleges/ Olympic College
and
Western Washington University

GROUND LEASE

This Ground Lease ("**Ground Lease**") is made by and between The State Board of Community And Technical Colleges (the "**State Board**"), as "**Ground Lessor**" on behalf of Olympic College, a community and technical college of the state of Washington organized under Ch. 28B.50 RCW (the "**College**"), and Western Washington University, a regional university of the state of Washington organized under Ch. 28B.35 RCW ("**WWU**" or "**Ground Lessee**"), collectively referred to herein as the "**Parties**" or individually as a "**Party**," as of the date that all Parties fully execute this Agreement (the "**Effective Date**").

RECITALS

- A.** The Ground Lessor, on behalf of the College, owns approximately 24.1 acres of property in Poulsbo, Washington, on which the College operates its Poulsbo campus, the legal description of which is attached hereto as Exhibit A (collectively, the "**College Property**").
- B.** In 1997, the City of Poulsbo (the "**City**") adopted the Olhava Property Integrated Master Plan (the "**Master Plan**"). The Master Plan governs the development of the 215-acre Olhava Property, which includes the College Property.
- C.** In 2004, the College and Olhava Associates, L.P., as developers, and the City entered into a Development Agreement recorded with Kitsap County under No. 200404290005 for the Olhava Property (the "**Development Agreement**").
- D.** The College has constructed and currently operates a 38,755 SF building on the College Property. The College has a long-term plan for expanding its facilities on the College Property, including moving its Nursing and Allied Health Division programs to the College Property and developing a 70,000 SF Allied Health Building and 10,000 SF Health Clinic upon the College Property ("**College Current Use and Long Term Plan**").
- E.** The City adopted a development moratorium, Ordinance No. 2023-11, effective August 19, 2023 for a period of 12 months (the "**Development Moratorium**"). The Development

Moratorium temporarily prohibits additional development in the designated Commercial and Business Park zones of the Olhava Property, which includes portions of the College Property, including the Leased Premises (defined below).

- F. Olympic College and WWU have heretofore collaborated in offering 4-year degree programs in business administration, business and sustainability, cyber security, early childhood education, environmental policy, environmental science, environmental studies, human services, multidisciplinary studies, and natural resource management to students through 2+2 programs, in which Olympic College students obtain an AAS-T degree and then transfer to WWU to obtain bachelor's degrees in these fields. Through collaborative outreach and recruitment efforts, OC and WWU jointly benefit from the increasing number of students enrolled in these 2+2 degree programs.
- G. WWU wishes to enhance its presence in the Kitsap and Olympic Peninsulas including the addition of new bachelor's degree programs in sociology, data science, and industrial and systems engineering and graduate degree programs in social work and nursing ("**Programs**") by constructing a new, approximately 40,000 SF academic facility (the "**Improvements**") on a portion of the College Property (the "**Project**"). These new degree programs will result in increased enrollments for both Olympic College and WWU. Pathways to new graduate programs will allow students to transfer from Olympic College to WWU. For example, planning is underway for a pathway from Olympic College's BSN to WWU's MSN for nursing students and professionals.
- H. By collocating WWU's Peninsulas operations on the Olympic College-Poulsbo campus, Olympic College and WWU both benefit from shared use of facilities, such as classroom and lab space, and use of WWU's Cyber Range for educational purposes. This continued partnership will allow Olympic College and WWU to expand their support to students across both institutions.
- I. The College wishes to accommodate WWU by granting it a ground lease upon a portion of the College Property for the purpose of constructing such Improvements and operating the Programs, subject to the conditions provided herein.
- J. Ground Lessor and the College will benefit from having the Programs on the College Property in that the Programs will significantly enhance the College's educational programs by providing additional pathways for students to pursue baccalaureate and graduate level degree programs in high demand fields. The College will also benefit from the new cyber facilities which the Ground Lessor will make available to the College for educational purposes.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Ground Lessor, the College, and Ground Lessee hereby agree as follows:

1. INCORPORATION OF RECITALS; DEFINITIONS.

Each recital set forth above is incorporated into this Ground Lease as though fully set forth herein. All capitalized terms not otherwise defined herein shall have the meaning set forth in Section 31 of this Ground Lease.

2. LEASED PREMISES; REVISIONS THERETO.

Ground Lessor does hereby lease to Ground Lessee, and Ground Lessee does hereby lease from Ground Lessor, the real property located in the City of Poulsbo, County of Kitsap, State of Washington, identified by County Assessor tax parcel no. 102601-2-060-2006, and more particularly described in the Legal Description for that property attached hereto as Exhibit B, and depicted on the Site Map attached hereto as Exhibit C, together with all rights, title, and interest of Ground Lessor in and to all rights of way or use, servitudes, licenses, easements, tenements, hereditaments, and appurtenances now and hereafter belonging or pertaining to the use of such real property during the Term, provided however that Ground Lessor reserves to itself all easements and rights of access and use necessary or convenient to the College Current Use and Long Term Plan that do not unreasonably interfere with Ground Lessee’s use of the property for the purposes provided hereunder (the “**Leased Premises**”).

The Parties may, by mutual written agreement, elect to revise the location of the Leased Premises.

3. TERM; OPTION TO EXTEND.

This Ground Lease shall be for a term of thirty (30) years, commencing upon the Effective Date, (the “**Term**”). Ground Lessee shall have two consecutive options to extend Term each for an additional ten-years on the same terms and conditions contained herein (each an “**Extension Option**”). Ground Lessee shall give written notice to Ground Lessor and the College of its election to exercise an Extension Option, in writing, not fewer than thirty (30) days prior to expiration of the then-current Term.

4. FUNDAMENTAL PROJECT ELEMENTS AND SCHEDULE

Ground Lessee shall at its sole cost and expense, design, entitle, construct, and operate Improvements as described herein. The fundamental elements of the Improvements, as currently contemplated by the Parties, are as follows:

- Approximately 40,000 SF, 2-story building including:
 - Teaching/Learning Space including lecture hall and classrooms, offices, and faculty space
 - Common areas; and
 - Cybersecurity space
- Approximately 150 parking spaces
- All necessary utility facilities

- All necessary road, sidewalk, and access facilities

The final details and specifications for the Improvements will be agreed upon by the parties after Ground Lessee is appropriated the funds necessary to complete the Project. The parties will work in good faith to develop the **Project Schedule** as set forth in Exhibit D and the **Project Milestones** set forth on Exhibit E.

5. REVIEW OF PROPERTY

5.1. Delivery of Documents

The College shall deliver to Ground Lessee reports relating to the physical condition of the Leased Premises and other environmental testing and remediation of the Leased Premises to the extent they exist and are in the College's possession or can be obtained by the College, including engineering, mechanical, environmental, structural and seismographic reports and any additional studies and documents related to any Phase 1, Phase 2 and other environmental testing and remediation of the Leased Premises no later than thirty (30) days following the Effective Date. If Reports are available, the College has no actual knowledge that any of the Reports contain inaccurate information or that any of the Reports are incomplete. The College makes no other representations or warranties of any kind whatsoever to Ground Lessee as to the accuracy or completeness of the content of the Reports or any other information delivered to or made available to Ground Lessee pursuant to this Ground Lease, and beyond this specific representation, the College shall not have any liability or responsibility to Ground Lessee with respect to the accuracy or completeness of any of the Reports or other information or based upon or arising out of any use Ground Lessee may make of the Reports or other information.

5.2. Due Diligence Review.

During the time period between the Effective Date and one hundred eighty (180) days following the date the funds for the Project are appropriated to Ground Lessee by the State Legislature (the "**Due Diligence Period**"), Ground Lessee shall have the right to make an analysis of the Leased Premises including such engineering, feasibility studies, soils tests, environmental studies, and other investigations as Ground Lessee, in its sole discretion, may desire, with respect to the suitability of the Leased Premises for Ground Lessee's contemplated uses and to conduct such other review and investigation which Ground Lessee deems appropriate to satisfy itself to acquire the Leased Premises.

Ground Lessee shall coordinate with the College in advance of Ground Lessee's entry on the Leased Premises during the Due Diligence Period. The College reserves the right to have representatives present during any such inspections.

5.3. Approval/Disapproval of Due Diligence Review.

Prior to the expiration of the Due Diligence Period, Ground Lessee may notify the College in writing of Ground Lessee's approval or disapproval of the condition of the Leased Premises and Ground Lessee's investigations with respect thereto (excluding title matters), which approval may be withheld in Ground Lessee's sole and absolute discretion ("**Due Diligence Notice**"). Ground Lessee's failure to deliver the Due Diligence Notice on or before the expiration of the Due

Diligence Period shall be conclusively deemed Ground Lessee's approval thereof. Ground Lessee's disapproval of said matters shall automatically terminate the Ground Lease.

6. TITLE.

6.1. Title Contingency.

College shall cause the _____ ("**Title Company**") to provide the College and Ground Lessee with a preliminary commitment for title insurance for the Leased Property ("**Title Commitment**") within three (3) business days following the Effective Date. Ground Lessee shall have thirty (30) days from the date of receipt of the Title Commitment (the "**Title Inspection Period**") to notify the College of its approval or disapproval of each exception in Schedule B of the Title Commitment (the "**Title Notice**"). Ground Lessee's failure to issue a Title Notice during the Title Inspection Period shall be conclusively deemed Ground Lessee's acceptance of any such matter. If Ground Lessee issues a Title Notice during the Title Inspection Period, the College shall have thirty (30) days to notify Ground Lessee whether the College will remove the objected to exceptions. If the College does not timely notify Ground Lessee that it will remove a matter to which Ground Lessee has objected, the College shall be deemed to have given notice of its election not to cause such matter to be removed. If the College elects or is deemed to elect not to remove any matter to which Ground Lessee has objected, Ground Lessee may terminate the Ground Lease by written notice to the College within ten (10) days of the date on which the College elects or is deemed to elect not to remove any such exceptions. Each exception in Schedule B of the Title Commitment to which Ground Lessee does not object in the Title Notice, and each such exception to which Ground Lessee does object, but College does not agree to remove, shall be referred to herein as "**Permitted Exceptions.**"

6.2. Title Insurance.

Ground Lessee may, in its discretion, obtain a policy of leasehold title insurance from the Title Company, at Ground Lessee's sole cost and expense.

6.3. Title to Improvements.

- a. Ground Lessor, on behalf of the College, shall retain fee simple title to the Leased Premises.
- b. Title and ownership of all Improvements, fixtures, and equipment hereafter located on the Leased Premises by Ground Lessee shall be vested in Ground Lessee until the termination or expiration of this Ground Lease. Upon the termination or expiration of this Ground Lease, title to all Improvements shall vest automatically in the Ground Lessor.
- c. During the Term, and any renewals thereof, the Improvements shall not be conveyed, transferred, or assigned without the prior written consent of Ground Lessor and the College. Ground Lessee shall allow no other person to construct, except for Ground Lessee's account, any additional improvements on the Leased Premises, and except as allowed pursuant to Section 14.2 of this Ground Lease.

- d. All of Ground Lessee's right, title, and interest to any Improvements shall terminate and title to the Improvements shall automatically vest in Ground Lessor and the Improvements shall be surrendered by Ground Lessee to Ground Lessor upon expiration or earlier termination of this Ground Lease. No further deed or other instrument shall be necessary to confirm the vesting of title to the Improvements in the Ground Lessor. However, upon termination or expiration of this Ground Lease, Ground Lessee, upon request of the College or Ground Lessor, shall execute, acknowledge, and deliver to the College a deed in a form mutually agreeable to Ground Lessee, the College, and Ground Lessor, confirming that all of Ground Lessee's right, title, and interest in the Improvements has expired and that title to the Improvements has vested in Ground Lessor.
- e. The Parties shall enter into reciprocal easements, covenants or other permanent mechanism to ensure smooth functioning of integrated elements of the project (for example, parking).

7. RENT PAYMENTS.

7.1. Rent.

Commencing on the Rent Commencement Date, Ground Lessee shall pay to the College the following Rent:

a. Base Rent.

In compliance with RCW 39.33.010 and RCW 43.09.210, the Base Rent for the Leased Premises shall be One Dollar (\$1.00) per year, on the or before the first day of the year, for each full or partial calendar year of the Term through to the end of the Term ("**Base Rent**"). The amount of Base Rent has been determined by the Parties taking into consideration the following criteria: (a) the Leased Premises are largely unimproved; (b) the Improvements will be owned by Ground Lessor upon expiration of the Term and any renewals thereof of this Ground Lease; (c) the restrictions set forth in this Ground Lease on Ground Lessee's use of the Leased Premises; (e) the Ground Lessee's promise to use reasonable efforts to bring its students to attend classes in the Leased Premises as more fully described in Section 7.3; (e) the College's and or its students shared usage of portions of the Leased Premises to be determined more specifically in a Management Agreement to be negotiated and executed between the College and Ground Lessee; and (f) the unique partnership and benefits as described above in the Recitals.

b. Additional Rent.

Ground Lessee shall pay, within thirty (30) business days of the College's demand therefor any expenses incurred by the College resulting from Ground Lessee's failure to pay or cause to be paid any amounts owed to the College under this Ground Lease (other than Base Rent) or any person or entity, including, but not limited to, utilities, maintenance, impositions, liens, or encumbrances. ("**Additional Rent**").

7.2. Triple Net Lease; No Counterclaim; Abatement.

Under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall the College or the Ground Lessor be expected or required to make any payment of any kind whatsoever, including without limitation,

any regular or special assessments levied against the Leased Premises, or be under any obligation or liability hereunder, except as herein expressly set forth. Neither the Ground Lessor nor the College shall be responsible for any costs of repair, maintenance, or replacement whatsoever unless, and only to the extent, such repair, maintenance, or replacement is required primarily as a result of the negligence or willful misconduct of the College or its contractors, employees, officers, or agents (but not its patrons, students or the general public). Except as otherwise expressly provided herein, this Ground Lease shall continue in full force and effect, and the obligations of Ground Lessee shall not be released, discharged, or otherwise affected, by reason of: (a) any damage to or destruction of the Leased Premises or Improvements; (b) any restriction or prevention of or interference with any use of the Leased Premises or the Improvements or any part thereof which materially interferes with Ground Lessee's possession or use of the Leased Premises; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to College, or any action taken with respect to this Ground Lease by any trustee or receiver of College with respect to this Ground Lease by any trustee or receiver of the College, or by any court, in any proceeding; (d) any claim which Ground Lessee has or might have against the College or Ground Lessor; or (e) any failure on the part of the College or Ground Lessor to perform or comply with any of the terms hereof or of any other agreement with Ground Lessee. Except as expressly provided in this Ground Lease, the obligations of Ground Lessee shall be separate and independent covenants and agreements.

7.3 Affirmative Duty to Utilize the Project to Provide Classroom Instruction.

As additional consideration for Ground Lessee's benefit of this Lease, Ground Lessee shall use its reasonable best efforts to promote the Project to provide classroom instruction and to meet enrollment projections in every academic quarter or semester during the Term, beginning in the third year following Completion of the Project. Ground Lessee shall report annually to College, within thirty (30) days after the end of each academic year (June 30 if not otherwise established) of its performance of this affirmative duty in the preceding academic year. If Ground Lessee fails to perform this affirmative duty for any three consecutive academic years during the term of this Lease (beginning in the third year following Completion of the Project) and continues to fail to perform this affirmative duty for another academic year after College provides it with written notice of such failure and an opportunity to cure, the Parties shall resolve any dispute over this term through the dispute resolution process contemplated in Section 30.14.

8. COMPLIANCE WITH LEGAL REQUIREMENTS AND AGREEMENTS.

Ground Lessee shall, at its sole cost and expense, comply with and perform all obligations with respect to (a) the Legal Requirements, and (b) all applicable contracts (including insurance policies, to the extent necessary to prevent cancellation and to ensure full payment of all claims made under such policies), covenants, conditions and restrictions, and all other applicable agreements to the Leased Premises and its ownership, operation, use, or possession.

9. USE AND CONDITION OF LEASED PREMISES.

9.1. Right of Entry Prior to Rent Commencement Date.

Prior to the Rent Commencement Date, Ground Lessee shall have a right of entry upon the

Leased Premises to provide reasonable access as necessary to perform its Due Diligence as described in Section 5.2 and to achieve the conditions precedent described in Section 9.2. During that time, Ground Lessee shall coordinate with the College in advance of Ground Lessee's entry on the Leased Premises. Ground Lessee shall coordinate with the College in advance of Ground Lessee's entry on the Leased Premises prior to the Rent Commencement Date. The College reserves the right to have representatives present during any such entry. Ground Lessee shall indemnify, defend, and hold the College and Ground Lessor harmless from and against any claims, injuries or damages arising out of or involving any such entry or activity as more fully described in Section 29. Any such activity shall be undertaken only after securing any necessary permits from the appropriate governmental agencies, if any, and providing the College with appropriate certificates of insurance or evidence of self insurance acceptable to the College in its sole discretion.

9.2. Possession Upon Rent Commencement Date.

Subject to Permitted Exceptions and easements and covenants reserved to Ground Lessor or College hereunder, sole possession of the Leased Premises shall be delivered to Ground Lessee on the Rent Commencement Date, free and clear of any other tenancies or right of occupancy or use, and Ground Lessee shall take possession as of that date. The **Rent Commencement Date** shall mean the date on which Ground Lessee has satisfied all of the following conditions precedent:

- 9.2.1.** College and Ground Lessee have entered into the Management Agreement, described in Section 9.4
- 9.2.2.** College has approved the Design Documents, as described in Section 11.2
- 9.2.3.** College has approved the Financing Plan, as described in Section 9.5
- 9.2.4.** Ground Lessee has obtained all necessary Entitlements for the Project
- 9.2.5.** Ground Lessee has entered into a Construction Contract for the Project supported by the Approved Financing Plan
- 9.2.6.** Ground Lessee has obtained a Payment and Performance Bond as described in Section 13.2.

9.3. Leased Premises to be Used Solely for the Programs or other Mutually Agreed Upon Educational Purpose.

Ground Lessee shall use the Leased Premises for the construction and operation of the Project to serve the educational purposes of the Programs. No other use may be made of the Leased Premises without the prior written approval of the College and the Ground Lessor.

9.4. Management Agreement.

Ground Lessee and the College shall execute a management agreement (the "Management Agreement") in a form and of substance approved by each of the Parties, which requires that the Leased Premises will be operated to allow reasonable access to Ground Lessee and College students, instructors, contractors and staff based on the terms agreed to in the Management

Agreement consistent with both Ground Lessee’s and the College’s educational programming. The Management Agreement will also address ongoing maintenance, shared utilities (if applicable), use of Leased Premises by the College, custodial staff, security, and other joint operating issues.

9.5. Financing Plan

Ground Lessee shall submit the following information to the College, for review and approval by the College:

- 9.5.1. A complete budget for the construction of the Project (“**Project Budget**”) and all other improvements required by the Ground Lease, including all proposed sources and uses of funds, all “hard” and “soft” costs and contingencies, which will be submitted as part of WWU’s legislative funding proposal.

Upon approval by the State Legislature, the financing plan for the initial construction of the Project shall constitute the **Approved Financing Plan** for the Project. Any material change to the Approved Financing Plan for prior to the Rent Commencement Date must first be submitted to and approved by College.

9.6. Prohibited Uses.

Ground Lessee shall not allow the Leased Premises or the Improvements to be used for any unlawful purpose, nor shall Ground Lessee cause, maintain, or permit any nuisance in, on, or about the Leased Premises or the Improvements. Ground Lessee shall not commit or suffer to be committed any waste in or upon the Leased Premises, the Improvements, or the landscaping. Ground Lessee shall not do or permit anything to be done on the Leased Premises or the Improvements that will cause damage to the Leased Premises or the Improvements.

9.7. AS-IS Condition of the Leased Premises.

Ground Lessee shall acquire the ground leasehold in the Leased Premises in its “AS-IS” condition.

EXCEPT AS SPECIFICALLY SET FORTH IN THE GROUND LEASE, THE COLLEGE MAKES AND WILL MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PHYSICAL CONDITION OR VALUE OF THE LEASED PREMISES, THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES ON THE COLLEGE PROPERTY, SOILS CONDITIONS, OR OTHER PHYSICAL CHARACTERISTIC OF THE COLLEGE PROPERTY OR THE SUITABILITY OF THE COLLEGE PROPERTY FOR GROUND LESSEE’S INTENDED DEVELOPMENT. THE COLLEGE MAKES NO REPRESENTATION WHATSOEVER REGARDING THE FINANCIAL FEASIBILITY OF THE PROPOSED REDEVELOPMENT OF THE COLLEGE PROPERTY.

10. MODIFICATION OF EXISTING CITY RESTRICTIONS.

10.1. Termination or Expiration of Moratorium.

Development of the Leased Premises and other portions of the College Property are prohibited by the Moratorium as of the Effective Date. The Moratorium is expected to expire August 19, 2024, and the City has indicated its willingness to consider termination of Moratorium as it affects the College Property prior to that date. If the development restrictions contained in the Moratorium

are not terminated by the date set forth in the Project Schedule, this Ground Lease may be terminated by either Party by sending written notice thereof to the other Party.

10.2. Amendments to the Master Plan and Development Agreement.

The Parties acknowledge that pursuant to the current Master Plan and Development Agreement, the College's planned future development and the Project cannot currently all be developed on the College Property and that to do so will require amendment of the Master Plan and Development Agreement (the "**Amendments**"). The College shall, in consultation with Ground Lessor and Ground Lessee, use commercially reasonable good faith efforts to pursue the Amendments so as to accommodate the Project as well as the College's planned future development on the College Property. The College shall coordinate with Ground Lessee all submittals to the City regarding the amendments to the Master Plan and Development Agreement as it relates to the Project, allowing Ground Lessee at least five (5) business days to review the materials before submitting them to the City. College shall provide timely updates on the progress of the Master Plan and Development Agreement amendments, and allow Ground Lessee to attend the College's meetings with the City to stay informed.

If the City has not finally approved the Amendments by the date set forth in the Project Schedule, either Party may, in its sole discretion, terminate the Ground Lease. If Ground Lessee is not satisfied that the approved Amendments appropriately accommodate the Project, Ground Lessee may, in its sole discretion, terminate the Ground Lease by giving the College notice thereof within 30 days of the effective date of the amendments. If, after thorough discussions with the City, the Amendments proposed to be considered by the City Council do not, in Ground Lessee's opinion, appropriately accommodate the Project, and Ground Lessee determines that it will terminate this Ground Lease, then Ground Lessee shall use commercially reasonable efforts to inform the College of its decision to terminate the Ground Lease prior to the City's action approving the Amendments. If Ground Lessee terminates the Ground Lease, it shall pay to the College incurred Additional Entitlement Costs (as defined below) within 30 days of the termination.

The College shall be the lead applicant for the Amendments and shall bear the costs thereof; provided, however, that Ground Lessee shall reimburse the College for all reasonable costs associated with accommodating the Project within the amended Master Plan and Development Agreement, including without limitation, soft costs associated with City review, planning, design, submissions, community relations, and all supporting reports and studies related to the Amendments ("**Additional Entitlement Costs**"). Ground Lessee shall pay the College all reasonable net additional costs incurred by the College in future development on the College Property resulting from development of the Improvements as compared to the College's costs of development of the College Property without the Project ("**Additional Development Costs**"). The Parties shall use commercially reasonable efforts in good faith to agree upon the amount of the Additional Development Costs in advance of incurring these expenses. If the Parties fail to agree, then the amount shall be determined through the Dispute Resolution process set forth in Section 30.14.

11. LEASEHOLD IMPROVEMENTS.

11.1. General.

Construction and design of the Improvements shall be consistent with the then-current Master Plan, Development Agreement, and all other applicable City and other governmental rules and regulations, including the City's Design Review process (if required) (the "**Development Standards**"). No applications for approval or permits related to the Leased Property shall be submitted to City without the College's prior opportunity to review. Ground Lessee shall promptly provide the College with copies of all site plans, surveys, applications for land use approvals and permits, licenses, approvals, and other agreements with state and local governmental entities with jurisdiction over the development and use of the Leased Premises.

11.2. Preparation and Approval of Design Documents.

a. Pre-design Consultation.

The College agrees to provide Ground Lessee with the College's design requirements and to make staff available to meet with Ground Lessee's design team to ensure appropriate design.

b. College Review and Approval.

Ground Lessee will invite a representative of College, designated by the College, on the group of "stakeholders" it convenes as part of its Project design and development effort and shall keep such College stakeholder representative regularly apprised of the progress of the development of the design of the Project and of the Project entitlement process. Ground Lessee shall, at its sole cost and expense, and on or before the deadlines established in the Project Schedule, prepare and submit to the College for its review any and all Design Documents for development of Improvements on the Leased Premises. The Design Documents to be reviewed by the College shall include all schematic design, design development, and construction documents related to the Project (the "**Design Documents**"). Ground Lessee shall give the College notice of the date Ground Lessee expects to submit each such Design Document to the College a reasonable time prior to such expected submittal date. Ground Lessor shall submit to the College electronic copies of the Design Documents. At the College's request, Ground Lessee shall also provide the College with up to three (3) hard copies of the Design Documents. Upon Ground Lessee's submittal of Design Documents to the College, the College shall promptly review the Design Documents and shall give Ground Lessee written notice within ten (10) business days following its receipt of such Design Documents of its approval or of any changes that are required in order for the College to approve the Design Documents. Ground Lessee shall, immediately following receipt of a proper notice of any disapproval or requested modification, undertake to further amend or modify the Design Documents so as to conform to the College's design requirements, Development Standards, and Legal Requirements and, upon completion thereof, the same shall be resubmitted to the College for its written approval within five (5) business days. Ground Lessee may dispute the decision of the College through the dispute resolution process contemplated in Section 30.14. The College agrees that Ground Lessee's consultants may, at the Ground Lessee's risk, continue to design during the College's review period.

c. Approved Plans.

Upon Olympic College's approval of any Design Document, Ground Lessee shall submit such approved document(s) to the relevant governmental authority for review (the "**Approved Plans**").

Except for change orders the net cost of which is under \$10,000 that may occur during the design and construction process, there shall be no material change in the Approved Plans without the prior written consent of the College.

11.3. Entitlements.

Ground Lessee shall exercise commercially reasonable efforts to secure, at its sole cost and expense, all development and building permits and approvals from the City and other regulatory authorities with jurisdiction required for the Project (the "Entitlements"), in a timely manner according to the Project Schedule. The College and/or Ground Lessor shall join in the application for such Entitlements whenever such joinder is required and the College and/or Ground Lessor will timely provide owners' authorizations as may be required by regulatory authorities; provided, however, that the College shall incur no expense or liability in connection therewith. Prior to applying for any Entitlement with the City or other relevant regulatory authority, Ground Lessee shall submit any such application to the College for its review and approval, which the College shall timely review, comment on, and approve or disprove. Ground Lessee shall, immediately following receipt of a proper notice of any disapproval or requested modification, undertake to further amend or modify any Entitlement application so as to respond to the College's requirements, and upon completion thereof, the same shall be resubmitted to the College for its written approval. Upon the College's approval of any Entitlement application, Ground Lessee shall submit such approved application to the relevant governmental authority. Ground Lessee shall not agree to any Entitlement conditions proposed or approved by the City or other relevant governmental authority without prior approval from the College.

11.4. Construction of Improvements in Accordance with Development Standards.

Ground Lessee shall contract for the construction of the Improvements at its sole cost and expense and shall diligently and continuously prosecute construction so as to achieve Completion within the period set forth in the Project Schedule, subject to Enforced Delay in a good and workmanlike manner, free from defects in work or materials and in substantial accordance with the applicable Entitlements and the approved Construction Documents, free and clear of all Construction Liens and in compliance with all Laws. All necessary plans shall be prepared by qualified licensed architects and engineers. The Improvements shall be constructed in accordance with Class A Standards using high-quality materials and, if necessary, with plans and/or drawings prepared by a qualified licensed architect or space planner. All construction work shall be performed in a first-class manner by qualified contractors and subcontractors experienced in the respective trades in which they are engaged.

Ground Lessor and the College would not have entered into this Ground Lease but for the agreement by Ground Lessee to undertake, at Ground Lessee's sole cost and expense, the construction of the Improvement in substantial accordance with the Development Standards. Ground Lessee agrees to design, construct, and diligently and continuously work to complete the construction of the Improvements in a timely and cost-effective fashion, in a good and workmanlike manner, and in accordance with the Approved Plans, free and clear of all Liens and otherwise in accordance with the requirements of this Ground Lease subject to Section 11. Ground Lessee also agrees to partner with the College to consult early in the project planning process with the Washington Department of Archaeology and Historic Preservation ("DAHP") and

any affected tribes regarding the proposed Improvements. Ground Lessee will take all reasonable action to avoid, minimize, or mitigate adverse effects to archeological sites, sacred sites, or other cultural resources. Should DAHP or any affected tribes notify the College or Ground Lessee that additional studies are needed before the project may proceed, Ground Lessee is responsible for undertaking these actions at its own cost. Upon completion of the Improvements, Ground Lessee will promptly provide the College, at no cost to the College, with a set of "as built" plans as provided by the construction manager/General Contractor.

11.5. Disclaimer of Liability by the College.

Approval by the College of the Design Documents, Permit Packages, or Approved Plans shall not constitute any representation or warranty by the College or Ground Lessor that such plans comply with all Legal Requirements, and neither the College nor Ground Lessor assumes any liability with respect thereto. Notwithstanding any provision of this Ground Lease to the contrary, neither the College nor Ground Lessor is under any obligation or duty to, nor shall either of them design, supervise design, construct, or supervise construction of the Improvements, except to the extent that Ground Lessor or the College disapprove of submitted plans per Section 11.2 above. The College's approvals of the Preliminary Plans and the Approved Plans as provided in this Ground Lease are for the sole purpose of protecting its rights as the owner of a reversionary interest in the Leased Premises.

12. CONSTRUCTION IMPACTS AND MITIGATION.

Ground Lessee shall coordinate site logistics with the College to ensure wayfinding signage, barricades, and access points around the work site(s) provide good mobility for College students, faculty, and employees and construction operations while keeping one safe and secure from the other. During construction, Ground Lessee shall at all times require its General Contractor and any subcontractors to conduct all activities in conformance with this Ground Lease and so as not to interfere with, obstruct, or endanger Ground Lessor's or the College's facilities, property, or operations. Prior to beginning any new construction activities, Ground Lessor shall provide a construction staging and access plan for the College's review and approval.

13. LIENS.

13.1. Covenant Against Liens.

Ground Lessee covenants and agrees that it shall not, during the Term of this Ground Lease, suffer or permit any lien, charge, security interest, or encumbrance (collectively, "**Liens**") to be attached to, upon, or against the Leased Premises, or any portion thereof or any Rent payable under this Ground Lease for any reason, including, without limitation, Liens arising out of the possession, use, occupancy, design, construction, repair, or rebuilding of the Leased Premises or by reason of the furnishing of labor, services, materials, or equipment to the Leased Premises or to Ground Lessee. Ground Lessee agrees to indemnify, protect, defend, and hold Ground Lessor and the College harmless from and against all liabilities, losses, damages, expenses, and costs (including reasonable attorneys' fees and costs) incurred in connection with any such Lien. Ground Lessee's obligations pursuant to this Section 13.1 shall survive the expiration or earlier termination of this Ground Lease.

13.2 Payment and Performance Bond.

Ground Lessee shall provide or cause its contractor(s) to provide a Payment and Performance Bond in compliance with RCW 39.08.010, the acceptance of which is subject to the College's review and approval, in which the obligation is to the state of Washington, guaranteeing payment for and faithful performance and completion (within the respective times provided in the Project Milestones) of the Project, in accordance with the Design Documents.

14. MAINTENANCE AND MODIFICATIONS OF LEASED PROPERTY.

14.1. Maintenance and Repairs.

Maintenance and repairs of the Leased Premises, the Improvements, all facilities, and equipment thereon, and all sidewalks, curbs, gutters, landscaping, utility lines, and appurtenances and every part thereof, shall be at the sole cost and responsibility of the Ground Lessee. Ground Lessee shall maintain Improvements in good repair for the full Term. Ground Lessee shall maintain reserves or have another capitalization plan, subject to review by the College, sufficient to carry out its obligations to repair and maintain the improvements.

14.2. Modifications, Alterations, and Additions.

a. Ground Lessee shall not make any modifications, alterations, additions, or improvements to the Leased Premises or any part thereof (other than the Improvements) with a dollar value greater than \$25,000 ("Substantial Modifications") without first obtaining the prior written consent of the College. In all events, Ground Lessee shall promptly furnish the College with copies of all plans and specifications prepared in connection with any substantial repairs, alterations, additions, or improvements. All Substantial Modifications shall be constructed in accordance with plans and specifications approved by the College. Notice and approvals required by this Section shall be given and all permits acquired as set forth in Section 11.2 herein.

b. Before commencing any work relative to the Substantial Modifications, Ground Lessee shall notify the College in writing of the expected date of commencement thereof. The College shall then have the right at any time to post and maintain on the Leased Premises such notices as the College reasonably deems necessary to protect the Leased Premises and the College from construction or other Liens. Any Substantial Modifications shall be expeditiously completed in a good and workmanlike manner and in compliance with all applicable Legal Requirements and the requirements of all insurance policies applicable to the Leased Premises. Ground Lessee will procure all necessary permits before making any Substantial Modifications, repairs, or redecoration. Ground Lessee shall pay, when due, all claims for labor, materials, supplies, or equipment furnished to or for Ground Lessee at or for use in the Leased Premises. Ground Lessee shall not permit any Liens to be levied against the Leased Premises for any labor, materials, supplies, or equipment furnished to Ground Lessee or claimed to have been furnished to Ground Lessee or to Ground Lessee's agents or contractors in connection with the work and any such Liens shall be removed as required under Section 13 of this Ground Lease.

15. UTILITIES AND SERVICES.

During construction of the Improvements, Ground Lessee shall be solely responsible for all utility costs associated with the Improvements and construction thereof. Following completion of the Improvements, Ground Lessee shall continue to be solely responsible for utilities and services to the Improvements and Leased Premises.

16. GROUND LESSEE FINANCING OF IMPROVEMENTS.

Ground Lessee shall not have the right to mortgage, pledge, encumber, or assign its leasehold interest under this Ground Lease, in whole or in part, without the written permission of the College. Any mortgage will be subject to and subordinate to the rights of Ground Lessor or the College under the Ground Lease and to the Ground Lessor's fee interest in the College Property. No mortgage of Ground Lessee's leasehold interest shall exceed the term of this Ground Lease.

17. ENVIRONMENTAL OBLIGATIONS OF THE PARTIES.

17.1. Definitions. As used in this Ground Lease, the following terms are defined as follows:

- a. "Environmental Laws" shall include any and all federal state, and local statutes, regulations, rules, and ordinances, now or hereafter in effect, which in any way govern the use, storage, or spillage of any Hazardous Substances, including but not limited to the laws referenced in Section 31.11 of this Ground Lease.
- b. "Hazardous Substances" shall be interpreted in the broadest sense to include any substance, material, or product defined or designated by federal or state law as hazardous, toxic, radioactive, dangerous, or regulated wastes, including, but not limited to, those provisions listed in Section 24.6 of this Ground Lease.
- c. "Environmental Costs" shall be interpreted in the broadest sense to include, but shall not necessarily be limited to: (i) costs or expenses relating to any actual or claimed violation of or noncompliance with any Environmental Law; (ii) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (iii) the cost, expense, or loss to a Party to this Ground Lease as a result of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Party or the Leased Premises; (iv) all expenses of evaluation, testing, analysis, cleanup, remediation, removal, and disposal relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals, and experts; (v) all expenses of reporting the existence of Hazardous Substances or the violation of Environmental laws to any agency of the State of Washington or the United States as required by applicable Environmental Laws; (vi) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom, whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying, telephone, and telefax charges and other expenses; and (vii) any damages, costs, fines, liabilities, and expenses which are claimed to be owed by any federal, state, or local regulating or administrative agency.

17.2. Responsibility for Cleanup/Remediation and Costs.

- a. Should the presence of Hazardous Materials be discovered on the Leased Premises during design or construction of the Project, and such Hazardous Materials were present prior to the Rent Commencement Date, the College shall, in coordination with Ground Lessee and its contractor, cause such material(s) to be removed and disposed of and the Leased Premises remediated in full compliance with all Environmental Laws or orders or directives of governmental regulators with jurisdiction over the Leased Premises and the Parties. All Environmental Costs, together with any costs incurred by Ground Lessee due to delay or the necessity of coordination of the cleanup or remediation, shall be borne by the College and/or Ground Lessor. Alternatively, in such event, within sixty (60) days of such discovery, College or Ground Lessor may terminate this Ground Lease in its sole discretion by sending notice thereof to Ground Lessor and this Ground Lease shall have no further force or effect except for terms that expressly survive such termination. The removal and disposal requirements under this Section 17.2(a) shall terminate in the event this Ground Lease is terminated under this Section.
- b. Should Ground Lessee or its contractors cause to be spilled or discharged Hazardous Materials on the Premises, or should the presence of Hazardous Materials that were not present prior to the Rent Commencement Date be discovered on the Leased Premises, then Ground Lessee or its contractor shall cause such material(s) to be removed and disposed of and the Premises remediated in full compliance with all Environmental Laws or orders or directives of governmental regulators with jurisdiction. All Environmental Costs incurred to affect such cleanup shall be borne by Ground Lessee or its contractor(s).

17.3. No Use of Hazardous Substances. No handling, generation, storage, creation, disposal, transportation, or discharge of any Hazardous Substances shall be permitted on, about, or from the Premises except as approved in writing by the College. This restriction shall not apply, however, to use of construction materials and supplies customarily needed for use in construction of the Improvements, or to office and janitorial supplies which are available over the counter for common use by members of the general public so long as such use is in small quantities, nor shall this prohibition apply to substances fully contained inside of vehicles so long as used in accordance with all Environmental Laws.

17.4. Environmental Inspection. The College reserves the right to inspect for Hazardous Substances and/or Ground Lessee's management of Hazardous Substances on the Premises at any reasonable time, and from time to time, with notice to Ground Lessee.

17.5. Disposal of Hazardous Substances. Ground Lessee, shall not dispose of any Hazardous Substances, regardless of the quantity or concentration, into any drainage ditches, storm, and/or sanitary sewer drains and plumbing facilities within the Premises, or other property of the College except in compliance with all Environmental Laws. Any disposal of Hazardous Substances shall be in approved containers and removed from the Premises by Ground Lessee in accordance with the law. If the College or Ground Lessee knows, or has reasonable cause to believe, that any release of Hazardous Substances has come to be located on or beneath the Premises, then the College or Ground Lessee, as the case may be, must immediately give written notice of that condition to the other Party.

17.6. Notice to Party. Any Party hereto shall immediately notify all other Parties hereto upon becoming aware of a violation or alleged violation of any Environmental Law and/or: (1) any leak, spill, release, or disposal of a Hazardous Substance on, under, or adjacent to the Premises or threat of, or reasonable suspicion of, any of the same; and/or (2) any notice or communication from a governmental agency or known by a Party directed to any Party hereto or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation or alleged violation of any Environmental Laws with respect to the Premises.

17.7. Indemnity/Hold Harmless. Each Party hereto shall indemnify and hold harmless the other Parties for any Environmental Costs incurred by an indemnified Party to the extent that the indemnifying Party or its agent or employee causes any violation of an Environmental Law or any spillage or mishandling of any Hazardous Material for which any Environmental Costs are incurred.

17.8. Compliance with Laws and Regulations. The Parties hereby represent, warrant, covenant, and agree to and that all operations or activities upon, or any use or occupancy of the Premises or any portion thereof by Ground Lessee, the College, or any occupant of the Premises shall, throughout the Term of this Ground Lease, be in compliance in all material respects with all state, federal, and local Environmental Laws and regulations governing or in any way relating to the generation, handling, storage, use, transportation, discharge, or disposal (whether legal or illegal, accidental or intentional) of any Hazardous Substances.

17.9. Breach as Material Default. All Parties hereby specifically acknowledge and agree that each of the covenants, obligations, agreements, representations, and warranties set forth in Section 17 is a material inducement to the Parties to enter into this Ground Lease, and (b) breach by any Party of any covenants, obligations, agreements, representations, and warranties set forth in Section 17 shall constitute a material breach of this Ground Lease by the breaching Party, entitling the other Parties to all of the rights and remedies provided to the Parties under this Ground Lease or under applicable law.

17.10. Survival. Each of the covenants, agreements, obligations, representations, and warranties of the Parties set forth in this Section 17 shall survive the expiration or earlier termination of this Ground Lease.

18. INSURANCE POLICIES.

18.1. Ground Lessee Insurance. Ground Lessee, as a public institution of higher education, is self-insured for all exposures to tort liability, general liability, property damage liability, and vehicle liability arising out of the Ground Lessee's negligence, as provided in statute (RCW 4.92). Ground Lessee may satisfy all insurance obligations through its participation in the State of Washington Self-Insurance Liability Program ("SILP"), which provides liability insurance coverage up to \$5 million per occurrence with no deductible. Upon request, a certificate of insurance will be issued by the Washington State Office of Risk Management to Ground Lessor and the College.

18.2. Waiver of Subrogation. Ground Lessee waives its entire right to right of recovery, claims, actions, or causes of action against Ground Lessor or the College for physical loss or damage to the Leased Premises, or any personal property such Party therein or loss of use of the Leased Premises that is caused by loss or damage that is covered under the “builder’s risk” insurance policy. Ground Lessee shall cause each insurance policy obtained by it, its General Contractor, subcontractors, and its architect, engineers, and subconsultants to include waivers of subrogation by endorsement.

18.3. Contractor Insurance.

18.3.1. Contractors other than Construction Contractors. Ground Lessee shall cause its contractors other than its General Contractor and all General Contractor subcontractors to maintain insurance in the following types and amounts:

18.3.1.1. Commercial General Liability Insurance – comprehensive broad form commercial general liability insurance against claims and liability for personal injury or death and property damage arising from the use, occupancy, disuse or condition of the Leased Premises providing protection of at least ___ Million Dollars (\$___,000,000.00) per occurrence and ___ Million (\$___,000,000) general aggregate, with ___ Million (\$___,000,000) products and completed operations coverage. This requirement may be satisfied through the use of an excess umbrella liability insurance policy.

18.3.1.2. Worker’s Compensation – Contractors shall carry workers’ compensation insurance as required by law.

18.3.1.3. Business Automobile Liability Insurance. If not covered by its other insurance policies, contractors shall carry business liability insurance on an occurrence form covering owned, hired, leased and non-owned automobiles used by or on behalf of the contractor and providing insurance for bodily injury, property damage and contractual liability.

18.3.2. General Contractor and its Subcontractors. Ground Lessee shall cause its General Contractor and all General Contractor subcontractors to maintain insurance in the following types and amounts:

18.3.2.1. Commercial General Liability Insurance – comprehensive broad form commercial general liability insurance against claims and liability for personal injury or death and property damage arising from the use, occupancy, disuse or condition of the Leased Premises providing protection of at least ___ Million Dollars (\$___,000,000.00) per occurrence and ___ Million (\$___,000,000) general aggregate, with ___ Million (\$___,000,000) products and completed operations coverage. This requirement may be satisfied through the use of an excess

umbrella liability insurance policy.

18.3.2.2. Builder's Risk Insurance – "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits in accordance with subsection (a) above.

18.3.2.3. Worker's Compensation – Contractors shall carry workers' compensation insurance as required by law.

18.3.2.4. Business Automobile Liability Insurance. If not covered by its other insurance policies, contractors shall carry business liability insurance on an occurrence form covering owned, hired, leased and non-owned automobiles used by or on behalf of the contractor and providing insurance for bodily injury, property damage and contractual liability.

18.3.3. General Insurance Requirements.

18.3.3.1. In General. The insurance required by this Section 18.4 shall be provided under an occurrence form, and each contractor shall maintain (or cause to be maintained) such coverage continuously throughout the term it contract. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be twice the occurrence limits specified above.

18.3.3.2. Additional Insureds. The insurance policies required pursuant to this Section 18.4 (other than Worker's Compensation insurance) shall be endorsed to name as additional insureds College and Ground Lessor and their respective officials (appointed and elected), officers, agents, attorneys and employees (collectively, the "Additional Insureds").

18.3.3.3. Additional Requirements. All insurance policies (except workers compensation) shall:

18.3.3.3.1. Include an agreement by the insurer to give Sound Transit at least thirty (30) days' notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies;

18.3.3.3.2. Be primary and non-contributing with any insurance that may be carried by College or Ground Lessor;

18.3.3.3.3. Include a separation of insureds provision such that no act or omission of Developer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained by an additional insured;

18.3.3.3.4. Include a provision waiving or allowing the waiver by the insurer of all rights of subrogation against the Additional Insureds in connection with any loss or damage thereby insured against;

18.3.3.3.5. Upon College's or Ground Lessor's request at any time during the Term of this Agreement, each contractor shall provide certificates of insurance, in form and with insurers reasonably acceptable to College and Ground Lessor, evidencing compliance with the requirements of this section, and shall provide complete copies of such insurance policies, including a separate endorsement naming the Additional Insureds as additional insureds.

18.3.3.3.6. All insurance companies providing coverage pursuant to this Section 18.4 shall be insurance organizations authorized to transact the business of insurance in the State of Washington, and shall have an A. M. Best's rating of not less than "A:VII."

19. DAMAGE OR DESTRUCTION OF PREMISES

If any of the Improvements or any appurtenance thereto shall be damaged or destroyed by fire or other casualty, Ground Lessee shall give prompt written notice thereof to the College, and shall, to the extent possible given its financial resources, proceed with reasonable diligence to carry out any necessary demolition and/or to restore, repair, replace, and rebuild such Improvements at Ground Lessee's own cost and expense. If Ground Lessee is required or otherwise elects to repair, reconstruct or replace the Improvements, Ground Lessee shall repair, reconstruct or replace them so that upon completion the Improvements are substantially as existed prior to the damage or destruction.

20. CONDEMNATION.

If during the Term there is a taking or damaging of all or any portion of the Leased Premises by the exercise of any governmental power, whether by legal proceedings or otherwise, by a governmental agency with jurisdiction or a transfer by any Party either under threat of condemnation or while legal proceedings for condemnation are pending (a "Condemnation") such that there can be no reasonable use of the Leased Premises by Ground Lessee, this Ground Lease shall terminate on the date the governmental agency has the right to possession of the property being condemned. Any award authorized by Title 8 RCW or other applicable condemnation law with respect to the taking of the Leased Premises shall belong to Ground Lessor, provided however the portion of the award related to Ground Lessee's interest in the remaining term of the Ground Lease, including the value of Ground Lessee's right to the Improvements for the remaining term of the Ground Lease (subject to Ground Lessor's right under Section 6.3 to ownership of the Improvements upon termination of the Ground Lease at the end of the remaining term) shall belong to Ground Lessee. . If during the Term there is a partial taking of a part of the Leased Premises by Condemnation, and the Parties agree that a reasonable use can be made of the remainder of the Leased Premises, then this Ground Lease will continue in full force and effect as to the remainder of the Leased Premises with any award for

such partial taking payable in full to Ground Lessee.

21. ASSIGNMENT AND SUBLETTING.

Ground Lessee shall not assign nor sublet any portion of the Leased Premises without first obtaining the College's and Ground Lessor's prior written consent. Assignment and/or subletting must align with the Parties' missions.

22. LIABILITY.

Each Party to this Ground Lease shall be responsible for its own acts and/or omissions and those of its officers, employees, and agents. No Party to this Ground Lease shall be responsible for the acts and/or omissions of entities or individuals not a party to this Ground Lease. This Section shall survive the expiration or other termination of this Ground Lease. This Section is for the sole benefit of the Parties and shall not inure to the benefit of any third party. No Party shall be considered the "agent" of the other for purposes of this Section.

23. DEFAULT.

The occurrence of any of the following shall constitute a material default ("**Material Default**") under this Ground Lease:

23.1. Failure to Pay.

Ground Lessee's failure to make any payments of Rent or any other payments due under this Ground Lease if the failure to pay is not cured within thirty (30) business days after written notice thereof shall have been given to Ground Lessee by Ground Lessor and the College;

23.2. Failure to Commence Construction.

Ground Lessee's failure to commence construction of the Improvements as required by the Ground Lease for one hundred eighty (180) days after the issuance of building permits by the City, subject to Enforced Delay;

23.3. Abandonment.

Ground Lessee's abandoning or substantial suspension of construction of the Project for a period of ninety (90) days after written notice of such abandonment or suspension from the College, subject to Enforced Delay;

23.4. Prohibited Transfer.

Ground Lessee's assignment of the Ground Lease, or any rights therein applicable to the Project Site, or transfer or suffering of any involuntary transfer of Ground Lessee's interest in the Leased Property, or any part thereof, in violation of the Ground Lease, if such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof by the College;

23.5. Violation of Educational Mission.

Ground Lessee's utilization of the Leased Premises in a manner inconsistent with its educational mission without the prior consent of Ground Lessor and the College if use inconsistent with its educational mission is not cured within thirty (30) business days after written notice of such default is provided by the College and Ground Lessor to Ground Lessee. If the default cannot reasonably be cured within thirty (30) business days, then Ground Lessee shall not be in default

under this Ground Lease if Ground Lessee commences to cure the default within thirty (30) business days and diligently and in good faith continues to cure the default; or

23.6. Other Failure to Perform.

Failure to perform any other material provision of this Ground Lease if the failure to perform is not cured within thirty (30) business days after written notice of such default has been given by Ground Lessor and the College to the Ground Lessee, or by Ground Lessee to the College and Ground Lessor. If the default cannot reasonably be cured within thirty (30) business days, then no Party shall be in default under this Ground Lease if the Party commences to cure the default within thirty (30) business days and diligently and in good faith continues to cure the default.

23.7. Enforced Delay.

Performance by either Party hereunder shall not be deemed to be in default where delays or defaults are not, with respect to Ground Lessee, due to Ground Lessee's failure to diligently prosecute the Improvements to completion, and with respect to the College, due to College's failure to diligently perform its obligations hereunder, but are primarily due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; acts of the "public enemy"; epidemics; pandemics; quarantine restrictions; freight embargoes; governmental restrictions; refusal or delays by the regulatory agency with jurisdiction in the issuance of permits and approvals for or directly affecting the Project (except that to the extent that such refusal or delay results from acts or the failure to act of a Party, such refusal or delays shall not excuse performance of that Party), litigation directly related to the Project; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, consultant, or supplier; acts or failure to act of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of either party as a governmental agency shall not excuse performance by the party); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. Enforced Delay of one Project Milestone shall entitle Ground Lessee additional time to complete all subsequent Project Milestones which are affected by the Enforced Delay.

In the event of such a delay (herein "**Enforced Delay**"), the Party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the discovery of the cause, provided notice by the party claiming such extension is sent to the other party within thirty (30) days of when the party providing the notice first discovered the cause.

24. TERMINATION.

24.1. Termination Prior to Rent Commencement Date.

In addition to all other remedies available at law or in equity, either Party shall have the right, at its option and subject to legal process, to terminate the Ground Lease upon sixty (60) days written notice if prior to the Rent Commencement Date, (i) Ground Lessee fails to obtain through appropriation or otherwise by the date set forth for such Project Milestone on Exhibit E, subject to Enforced Delay all of the funds necessary to complete the Project as set forth in the Project

Budget and Approved Financing Plan; (ii) Ground Lessee fails to obtain a building permit for the Project by the date set forth for such Project Milestone on Exhibit E, subject to Enforced Delay; (iii) the City fails to amend the Master Plan, Development Agreement and/or the Moratorium in a way that allows for satisfactory development of the Project by the date set forth for such Project Milestone on Exhibit E, subject to Enforced Delay.

24.2. Termination After Rent Commencement Date.

In addition to all other remedies available at law or in equity, the College and the Ground Lessor shall have the right, at its option and subject to legal process, to terminate the Ground Lease upon sixty (60) days written notice if after the Rent Commencement Date, Ground Lessee (i) fails to commence construction as described in Section 23.2 above; (ii) abandons the Project as described in Section 23.3 above; (iii) fails to complete the Project on the date set forth on the Project Milestones on Exhibit C, subject to Enforced Delay, or shall commit a Material Default.

24.3. Effect of Termination.

In event of termination of the Ground Lease by Ground Lessor or the College, as set forth in this Section 24, and in addition to all other remedies available at law or in equity:

- a. title to the Improvements shall pass to the College and the Ground Lessor; and
- b. Ground Lessee shall, promptly upon the College's request and without additional consideration, assign the applicable permits and governmental approvals and the construction contracts and all other agreements, licenses and rights applicable to the Project to the College;
- c. In the event of any termination that does not result from a material default by College or Ground Lessor and upon request by the College, copies of all drawings, specifications, reports, records, documents, and other materials prepared by WWU, its employees, agents, and subcontractors in the performance of the Ground Lease, which documents are in the possession of WWU and are not confidential and which WWU is authorized to release, shall be delivered to the College. College shall have an unrestricted right to use such documents and materials as if it were in all respects the owner of the same, subject to the ownership or proprietary rights of third parties (as to which WWU makes no warranty, representation, or assurance).

25. REMEDIES.

- 25.1.** In the event of any material default or breach by a Party, the non-defaulting Party(ies) may, at any time thereafter, without limiting such Party(ies) in the exercise of their rights or remedies at law or equity, or as set forth herein, maintain the Ground Lease in full force and effect without terminating Ground Lessee's right to possession of the **Leased** Premises. In no event shall the provisions of this Section 25 be construed to limit the right of the College, Ground Lessor, or Ground Lessee to terminate this Ground Lease pursuant to Section 24.
- 25.2.** In the event of any material breach by Ground Lessor or the College that materially disrupts the Program or renders the Premises unfit for operation of the Program, Ground Lessor and/or the College shall provide Ground Lessee with temporary

alternative space, if feasible, to allow Ground Lessee to continue operation of the Programs.

26. SIGNS.

Ground Lessee shall not place identification signage, other signage, advertisements, awnings, banners, or other exterior decorations on the exterior of the Leased Premises without the approval from the College, which consent shall not be unreasonably withheld so long as such signs comply with the College's standards regarding signs. Any sign that Ground Lessee has the right to place, construct, and maintain shall comply with all laws; and Ground Lessee shall obtain any approval required by such laws. The College makes no representation with respect to Ground Lessee's ability to obtain such approval.

27. DUTIES OF THE PARTIES UPON TERMINATION.

27.1. Duties on Termination.

Upon expiration or earlier termination of this Ground Lease, Ground Lessee shall deliver all keys to the College and surrender the Premises and the Improvements on the Premises in reasonable order, condition, and wear. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored. Improvements constructed by Ground Lessee with permission from the College shall become the College's property and shall not be removed. Ground Lessee shall also provide to the College, upon expiration or earlier termination of this Ground Lease, all building and maintenance records and other pertinent information in Ground Lessee's possession pertaining to construction, operation, and maintenance of the Improvements and the Premises, Alternatively, at College's sole discretion, College may direct Ground Lessee to demolish the Improvements and restore the Property to substantially its condition prior to construction of the Improvement at Ground Lessee's sole expense.

27.2 Holding Over.

If Ground Lessee shall hold over after the expiration or termination of the Term or any renewals thereof of this Ground Lease, and the College and Ground Lessee shall not have agreed in writing upon the terms and provisions of a new ground lease (or on an additional extension of this Ground Lease) prior to such expiration, Ground Lessee shall be deemed to be occupying the Premises on a month-to-month tenancy, during which Ground Lessee shall be bound by all of the terms, covenants and conditions herein specified, so far as applicable, and the parties shall enter into the dispute resolution process contemplated in Section 30.14 to negotiate the extension or termination of this Ground Lease or execution of a new ground lease for the Leased Premises. Actions necessary to restore the Leased Premises following the expiration or earlier termination of this Ground Lease shall not constitute a holdover.

28. PROTECTION AGAINST CLAIMS BY THE PUBLIC.

Either Party may request another Party, at the latter's expense, to take such steps as are reasonably necessary to protect against possible claims of prescriptive rights in favor of the public.

29. INDEMNIFICATION.

29.1. Notwithstanding this Section 29, or elsewhere in this Ground Lease, the Ground Lessee, College, and Ground Lessor are entities of the State of Washington and may only assume liability, such as indemnification, defense, and hold harmless of another party under this Ground Lease, to the extent allowed under State of Washington Tort Claims Act and Self-Insurance Liability Program.

29.2. Ground Lessee. To the full extent permitted by law, Ground Lessor and College shall not be liable for any injury to any Person or for the loss of or any damage to any property occurring in or about the Leased Premises or the Improvements from any cause whatsoever (except to the extent of claims arising from the negligence or intentional misconduct of Ground Lessor or College or their agents or contractors or any of their officers, directors, partners, members, invitees, volunteers, or employees (collectively, “**Ground Lessor Parties**”)). Ground Lessee hereby agrees to indemnify and hold harmless Ground Lessor Indemnified Parties from and against all claims, charges, liabilities, obligations, penalties, causes of actions, liens, damages, costs and expenses, including reasonable attorneys’ fees, arising from or related to any matter arising from Ground Lessee’s or any Ground Lessee’s agents or contractors or any of their officers, directors, partners, members, invitees, volunteers, or employees (collectively, “**Ground Lessee Parties**”) use of the Premises, the Improvements, the construction of the Improvements, or conduct of any business or activity upon the Premises, or any work or other thing done, permitted or suffered by any of such Person(s) in or about the Premises; Ground Lessee’s failure to perform any of its obligations under this Lease; and Ground Lessee’s failure to comply with any applicable law relating to the Premises or its activities thereon; and from any breach or non-compliance of Ground Lessee under any Development Related Agreement executed by Ground Lessor or College or any other agreement or instrument otherwise executed by Ground Lessor, in its capacity as fee owner of the Property, or College at the request of Ground Lessee. Ground Lessee’s liability and obligations under this Section 29.1 shall survive any termination or expiration of this Lease with respect to any indemnified claim arising from events prior to such expiration or termination. The foregoing provisions shall not be construed to make Ground Lessee responsible for loss, damage, liability or expense to the extent caused by the negligence or willful misconduct of Ground Lessor Parties. Section 17.3 above provides the exclusive indemnity with respect to Hazardous Substances and this Section 29 shall not apply to such claims.

29.3. Ground Lessor. To the full extent permitted by law, Ground Lessor hereby agrees to indemnify and hold harmless Ground Lessee and Ground Lessee Parties from and against all claims, charges, liabilities, obligations, penalties, causes of actions, liens, damages, costs and expenses, including reasonable attorneys’ fees, to the extent arising from the negligence or intentional misconduct of Ground Lessor Parties occurring at the Premises. Ground Lessor’s liability and obligations under this Section 29.2 shall survive any termination or expiration of this Lease. The foregoing provisions shall not be construed to make Ground Lessor responsible for loss, damage, liability or expense to the extent caused by the negligence or willful misconduct of Ground Lessee.

29.4. Qualification Pursuant to RCW 4.24.115.

To the extent that this Lease is deemed to be “a contract or agreement relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate” within the meaning of RCW 4.24.115, the foregoing indemnifications shall not extend to any Loss or Liability to the extent it arises out of (1) the sole negligence of any indemnitee and (2) if caused by or resulting from the concurrent negligence of (i) Ground Lessor Parties, and (ii) the Ground Lessee Parties, is valid and enforceable only to the extent of the indemnitor’s negligence. SOLELY FOR THE PURPOSE OF EFFECTUATING THE INDEMNITIES CONTAINED IN THIS LEASE, INCLUDING SECTION 29, AND NOT FOR THE BENEFIT OF GROUND LESSOR’S, COLLEGE’S, OR GROUND LESSEE’S PARTIES’ EMPLOYEES OR ANY THIRD PARTIES, GROUND LESSOR, COLLEGE, AND GROUND LESSEE HEREBY WAIVE ANY IMMUNITY GRANTED TO THEM UNDER THE WASHINGTON INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, AND AGREE THAT THIS WAIVER WAS EXPRESSLY AND SPECIFICALLY NEGOTIATED BY THE PARTIES.

30. MISCELLANEOUS PROVISIONS.

30.1. Entire Agreement.

This Ground Lease represents the entire agreement between the Parties; provided that this Ground Lease shall be construed together with the Management Agreement, when drafted. This Ground Lease may not be amended or rescinded in any manner except by an instrument in writing signed by a duly authorized officer or representative of each Party hereto.

30.2. Governing Law.

This Ground Lease shall be governed by and construed and enforced in accordance with the laws of the state of Washington.

30.3. Severability.

Should any of the provisions of this Ground Lease be found to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such provision shall be stricken, and the remainder of this Ground Lease shall nonetheless remain in full force and effect unless striking such provision shall materially alter the intention of the Parties.

30.4. Venue.

The Parties hereto agree that Kitsap County, Washington is the proper jurisdiction and venue for legal proceedings of any matters relating to this Lease.

30.5. Waiver.

No waiver of any right under this Ground Lease shall be effective unless contained in writing signed by a duly authorized officer or representative of the Party sought to be charged with the waiver, and no waiver of any right arising from any breach or failure to perform shall be deemed to be a waiver of any future right or of any other right arising under this Ground Lease.

30.6. Captions.

Section captions contained in this Ground Lease are included for convenience only and

form no part of the agreement between the Parties.

30.7. Notices.

Any notice required or desired to be given under this Lease shall be in writing with copies directed as indicated herein and shall be personally served or given by mail or email (with a follow up mailed copy). Any notice given by mail shall be deemed to have been given when seventy-two (72) hours have elapsed from the time when such notice was deposited in the United States mails, certified and postage prepaid, addressed to the party to be served at the last address given by that party to the other party. Any change in address shall be promptly given in writing to the other party. At the date of the execution of this Lease, the address of the College is:

Olympic College
3822 "Ej guvgt" Cxg"
Dtgo gtvqp."Y C"; : 559

With a copy to:

Tricia Boerger (or current Assistant Attorney General for College)

tricia.boerger@atg.wa.gov

and the address of Ground Lessor is:

The State Board for Community and Technical Colleges
1300 Quince St SE
Olympia, WA 98501

and the address of Ground Lessee is:

Western Washington University c/o Vice President of Business & Financial Affairs
516 High Street
Bellingham, WA 98225

With a copy to:

Julie Nicoll (or current Assistant Attorney General for Ground Lessee)

Julie.nicoll@atg.wa.gov

30.8. Publicity.

No advertisement or other publicity concerning this Ground Lease or the terms therein shall be made or disseminated by any Party at any time without the review and approval of all Parties.

30.9. Binding Effect.

This Ground Lease shall be binding upon, and inure to the benefit of, the Parties hereto and

their respective successors and assigns. No permitted assignment of this Ground Lease or Ground Lessee's rights hereunder shall be effective against the College or Ground Lessor unless and until an executed counterpart of the instrument of assignment shall have been delivered to the College and Ground Lessor and the College and Ground Lessor shall have been furnished with the name and address of the assignee. The term "Ground Lessee" shall be deemed to include the assignee under any such permitted assignment. Unless required or directed by law, neither the College nor Ground Lessor shall sell, transfer, or convey the Leased Premises, except to a city, county, state, governmental subdivision or agency, municipal corporation or public development authority, without the prior written consent of Ground Lessee.

30.10. Gender and Number.

As used in this Ground Lease, the masculine shall include the feminine and neuter, the feminine shall include the masculine and neuter, the neuter shall include the masculine and feminine, the singular shall include the plural, and the plural shall include the singular, as the context may require.

30.11. Nondiscrimination and Affirmative Action.

No Party shall discriminate in employment at the Leased Premises on the basis race, color, national origin, religion, sex, disability, honorably discharged veteran or military status, sexual orientation, gender identity, gender presentation, ancestry, ethnicity, family status, immigration status, citizenship, socioeconomic status, genetic information, or age in regard to any position for which the employee is qualified.

30.12. Fair Construction.

The provisions of this Ground Lease shall be construed as a whole according to their common meaning not strictly for or against any Party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Ground Lease and any Management Agreement reached between the College, Ground Lessor and Ground Lessee. Each Party hereto and its counsel has reviewed and revised this Ground Lease and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be applied in the interpretation of this Ground Lease.

30.13. Recording.

Ground Lessee shall record this Ground Lease with the Kitsap County Auditor's Office at its own expense within ten (10) days of execution and provide the College with a copy. Within ten (10) days following the expiration or earlier termination of this Ground Lease, Ground Lessee shall record an instrument confirming the termination of this Ground Lease with the Kitsap County Auditor's Office and provide the College with a copy.

30.14. Dispute Resolution.

Whenever a dispute arises between the Parties, the Parties shall employ every effort to resolve the dispute themselves without resorting to litigation, and otherwise resolve the dispute as required by RCW 43.17.330 as now or hereinafter amended.

30.15. Time is of the Essence.

The Parties hereto expressly agree that time shall be of the essence in the payment and performance of each Party's obligations under this Ground Lease.

30.16. Payment Obligations Subject to Appropriation.

Ground Lessor, College, and Ground Lessee are each agencies of the State of Washington and each Party's ability to meet its respective obligations under this Ground Lease to make payments is subject to prior appropriation of funds by the Washington State Legislature. A Party's failure to make a required payment hereunder due solely to the failure of the Washington State Legislature to appropriate sufficient funds shall not be deemed a Default hereunder; provided, however, in the event of such a payment failure due to a failure of the Washington State Legislature to appropriate funds, either Party shall have the right to terminate this Ground Lease by sending notice thereof to the other Party.

30.17. Approval; Failure to Respond May Result in Deemed Approval.

Any requirement for a party's "approval" or "consent" or "agreement" throughout this Ground Lease shall not be unreasonably withheld, conditioned, or delayed unless otherwise expressly specified. Unless another time period is expressly provided in this Ground Lease, if a party fails to respond within ten (10) business days to a request for approval, consent, or agreement contemplated in this Ground Lease, then the request shall be conclusively deemed approved, consented to, or agreed upon unless otherwise expressly specified.

31. DEFINITIONS.

As used in this Ground Lease, the following capitalized terms shall have the following meanings:

31.1. Approved Construction Plans. All plans and specifications in connection with the construction of the Improvements, including, but not limited to, final architectural drawings and specifications, final structural engineering plans, final civil engineering plans, final Landscaping plans and specifications, upon which the City is ready to issue all applicable site development, engineering, and building permits.

31.2. Calendar Year. A calendar year commencing January 1 and ending December 31.

31.3. College. Olympic College, an agency of the State of Washington.

31.4. College Property. The real property located in the City and owned by the College, as more particularly described in Exhibit A.

31.5. Completion. The point in time when all of the following shall have occurred: (1) issuance of a final certificate of occupancy by the City of Poulsbo and such other approvals required to permit occupancy and use the Project; (2) the construction of the Improvements has been fully completed and the architect preparing the Final Construction Documents for such Improvements has duly certified that the construction of the Improvements (including the Punch List Items) has been completed in accordance with such Final Construction Documents (3) recordation of a Notice of Completion, or similar instrument, by Ground Lessee or its

contractor; and (4) payment, settlement or other extinguishment, discharge, release, waiver, bonding or insuring against any mechanic's lien that have been recorded or stop notices that have been delivered.

31.6. Construction Contract. The construction contract between Ground Lessee and the General Contractor for construction of the Improvements.

31.7. Construction Documents. All Approved Construction Plans upon which Ground Lessee, and its contractors, shall rely in connection with the construction of the Improvements, and the Construction Schedule.

31.8. Construction Liens. Liens of the General Contractor; other contractors, subcontractors of any tier, material suppliers, design professionals and others providing materials, equipment, fixtures, permits, or other goods or services for or in connection with the Project.

31.9. Development Standards. The Master Plan, the Development Agreement, the Poulsbo Municipal Code, and other governmental rules, regulations, and requirements applicable to development at the Olympic College campus, as amended.

31.10. Design Documents. All the documents describing and supporting the Concept Design, the Schematic Design, Design Development, and Construction Documents.

31.11. Environmental Law. Any federal or state regulation promulgated to regulate Hazardous Substances, including, but not limited to, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq. ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., Federal Hazardous Materials Transportation Control Act, 49 U.S.C. Section 5101 et seq., Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., Federal Water Pollution Control Act, Federal Water Act of 1977, 33 U.S.C. Section 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., Washington Water Pollution Control Act, RCW Chapter 90.48, Washington Clean Air Act, RCW Chapter 70A.15, Washington Solid Waste Management Recovery and Recycling Act, RCW Chapter 70A.205, Washington Hazardous Waste Management Act, RCW Chapter 70A.300, Washington Hazardous Waste Fees Act, RCW Chapter 70A.218, Washington Model Toxics Control Act, RCW Chapter 70A.305, Washington Nuclear Energy and Radiation Act, RCW Chapter 70A.388, Washington Radioactive Waste Storage and Transportation Act of 1980, RCW Chapter 70A.390, Washington Underground Petroleum Storage Tanks Act, RCW Chapter 70A.325, and any regulations promulgated thereunder, all as amended from time to time.

31.12. Fiscal Year. A twelve-month period commencing July 1 and ending June 30 of the following calendar year.

31.13. General Contractor. A licensed, experienced and financially responsible general contractor with whom Ground Lessee has entered into a Construction Contract for construction of the Improvements.

31.14. Ground Lessee. Refers to Western Washington University and its predecessors, successors, and assigns.

31.15. Hazardous Substances. Shall include, without limitation:

- (a) Those substances included within the definition of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., and in the regulations promulgated pursuant to said laws, all as amended.
- (b) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto).
- (c) Any material, waste, or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, or (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1251 et seq. (33 U.S.C. § 1321), (v) listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), (vi) flammable explosives, or (vii) radioactive materials.
- (d) Those substances defined as "dangerous waste," "hazardous waste," or as "hazardous substances" under the Water Pollution Control Act, RCW 90.48.010 et seq., the Hazardous Waste Management Act, RCW 70A.300 et seq., the Toxic Substances Control Act, 15 USC 2601 et seq., the Model Toxics Control Act, RCW 70A.305 et seq., and in the regulations promulgated pursuant to said laws.
- (e) Such other substances, materials, and wastes which are or become regulated as hazardous or toxic under applicable local, state, or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

31.16. Improvements. The approximately 40,000 square foot Programs facility and related space and property to be constructed or present on the Real Property.

31.17. Law. Any constitution, statute, ordinance, regulation, rule, judicial decision, administrative order, or other requirement of any federal, state, county, municipal, or other governmental

agency or authority having jurisdiction over the Parties or the Leased Premises, or both, in effect either at the time of execution of this Ground Lease or at any time during the Term, including, without limitation, any regulation or order of a quasi-official entity or body (e.g. board of fire examiners or public utilities); and all rules, laws, and regulations arising under Title III of the Americans with Disabilities Act and the regulations issued thereunder by the United States Department of Justice.

31.18. Legal Requirements. All obligations with respect to all applicable local, state, and federal laws, ordinances and regulations, and other governmental rules and orders now or hereafter in effect, whether or not presently contemplated, applicable to the Leased Premises or its ownership, operation, use or possession, including (without limitation) all those relating to parking restrictions, building codes, zoning, life safety requirements, or other land use matters, and the Americans with Disabilities Act of 1990, as amended, state, or local laws or regulations.

31.19. Liens. As defined in Section 13 of this Ground Lease.

31.20. Person. Any individual, association of individuals, corporation, limited liability company, partnership or other legal entity.

31.21. Personal Property. Equipment, furniture, and other movable personal property placed in or on the Leased Premises by Ground Lessee.

31.22. Rent. Base Rent and Additional Rent as defined in Section 7.1 of this Ground Lease.

31.23. Term. The period set forth in Section 3.

31.24. Year. Each succeeding year of the term, commencing with the Commencement Date and ending with the date which is one (1) day less than one (1) year later.

32. AUTHORITY.

Olympic College and the State Board of Community and Technical Colleges are agencies of the State of Washington, established and existing pursuant to Chapter 28B.50 RCW. Western Washington University is a regional university of the state of Washington established and existing pursuant to Ch. 28B.35 RCW.

[Remainder of page intentionally blank; signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Ground Lease as of the dates set forth below.

Sabah Randhawa, President
Western Washington University

Dr. Paul Francis, Executive Director
State Board for Community and Technical
Colleges

Dr. Marty Cavaluzzi, President
Olympic College

Approved as to form this _____ day of _____, 2024.

Julie Nicoll, Assistant Attorney General on behalf
of Western Washington University

Approved as to form this ___ day of _____, 2024.

Tricia Boerger, Assistant Attorney General on
behalf of Olympic College

GROUND LESSOR ACKNOWLEDGEMENT

STATE OF WASHINGTON

County of Thurston

On this _____ day of _____, 2024, before me personally appeared **PAUL FRANCIS**, to me known to be the Executive Director of the State Board for Community and Technical Colleges, executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said agency, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature of Notary Public

Printed Name: _____

Notary Public in and for the State of Washington

Residing at _____

My commission expires _____

COLLEGE ACKNOWLEDGEMENT

STATE OF WASHINGTON

County of Kitsap

On this _____ day of _____, 2024, before me personally appeared **MARTY CAVALUZZI**, to me known to be the President of Olympic College, executed the within and foregoing instrument and acknowledged the said instrument to the free and voluntary act and deed of said agency, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature of Notary Public

Printed Name: _____

Notary Public in and for the State of Washington

Residing at _____

My commission expires _____

GROUND LESSEE ACKNOWLEDGEMENT

STATE OF WASHINGTON

County of Whatcom

On this _____ day of _____, 2024, I certify that I know or have satisfactory evidence that **SABAH RANDHAWA**, to me known to be the President of Western Washington University, is the individual who appeared before me, and said individual acknowledged that they signed this instrument, and on oath stated that they were authorized to execute the instrument and acknowledged that this was a free and voluntary act of such party for the uses and purposes mentioned in the instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature of Notary Public

Printed Name: _____

Notary Public in and for the State of Washington

Residing at _____

My commission expires _____

EXHIBIT A – COLLEGE PROPERTY

EXHIBIT B – LEASED PREMISES

EXHIBIT C – SITE MAP

EXHIBIT D – PROJECT SCHEDULE
[for discussion only – to be customized for the Project]

Task Name	Duration (weeks)	Start	Finish
NOTICE TO PROCEED			
DESIGN			
Master Plan / Confirm Program			
Schematic Design			
Prepare Design Review package -			
Complete Schematic Design			
Submit SD package for cost est.			
Design Development (all parcels)			
Prepare Site Plan Review documents			
Complete DD documents			
Submit DD package for cost est.			
Construction Documents			
Prepare Building Permit Set			
Prepare GMP Bid Set			
QC Review			
GMP Bid Set Issued- 100% CD			
Complete For-Construction Set			
ENTITLEMENTS			
Site Plan Review / Design Review			
Submit Design Review Packets			
Design Review Meeting			
Submit Site Review Documents			
City Review			
Site Plan Approval Publication			
Appeal Period			
Routing and Final			
Site Plan Issued			
PERMITTING - BUILDING			
Building Permit			

Task Name	Duration (weeks)	Start	Finish
Building Permit Intake			
City Review			
Issue Building Permit			
COST ESTIMATES			
SD Cost Estimate			
DD Cost Estimate			
Building Permit Cost Verification			
GMP Bid			
Negotiate Contract			
CONSTRUCTION			
Construction - Excavation & Shoring			
Construction - Foundation to Grade			
Construction - Building			

EXHIBIT E – PROJECT MILESTONES

[for discussion only – to be customized for the Project]

Task Name	Milestone Date
MASTER PLAN, DEVELOPMENT AGREEMENT AND/OR THE MORATORIUM AMENDMENT ENTITLEMENTS OBTAINED CONSTRUCTION CONTRACT EXECUTED ALL NECESSARY PROJECT FUNDS APPROPRIATED OR OTHERWISE COMMITTED CONSTRUCTION COMMENCES PROJECT COMPLETED	

**Western Washington University Resolution
to Approve Ground Lease with Olympic
College**

Resolution No. 2024-02

WHEREAS, since 2013, Western Washington University (“WWU”) and Olympic College have collaborated in offering 4-year degree programs to students through 2+2 programs, in which Olympic College students obtain an AAS-T degree and then transfer to WWU to obtain bachelor’s degrees in these fields.

WHEREAS, through collaborative outreach and recruitment efforts, WWU and Olympic College will jointly benefit from increasing the number of students enrolled in these 2+2 degree programs at the Olympic College Poulsbo campus;

WHEREAS, beginning in the 2015-17 budget cycle, the Washington State Legislature allocated funds to WWU to expand baccalaureate and graduate level degree programming on the Kitsap and Olympic peninsulas;

WHEREAS, the Presidents and Trustees of WWU and Olympic College have held discussions to develop a collaborative plan for WWU’s expansion on the Olympic College Poulsbo campus;

WHEREAS, WWU intends to request funding for the design and construction of a new academic building on the Olympic College Poulsbo campus in the State’s 2025-2027 Capital Budget and WWU has started working on the preliminary design of this proposed building;

WHEREAS, WWU wishes to enhance its presence in the Kitsap and Olympic Peninsulas including the addition of new bachelor’s degree programs in sociology, data science, and industrial and systems engineering and graduate degree programs in social work and nursing (“Programs”) by constructing a new, approximately 40,000 SF academic facility on a portion of the Olympic College Poulsbo campus;

WHEREAS, by collocating WWU’s Peninsulas operations on the Olympic College Poulsbo campus, WWU and Olympic College will both benefit from shared use of facilities, such as classroom and lab space, and use of WWU’s Cyber Range Center for educational purposes;

WHEREAS, this continued partnership will allow WWU and Olympic College to expand their support to students across both institutions;

WHEREAS, WWU and Olympic College have substantially agreed to the material terms of a ground lease that allows for a single, approximately 40,000 SF building to be paid for and constructed by WWU at the Olympic College Poulsbo campus; and

WHEREAS, on May 21, 2024, the Board of Trustees of Olympic College adopted a resolution approving the material terms of the draft ground lease and delegated authority to the President of Olympic College to approve the final ground lease; therefore,

BE IT RESOLVED, that the Board of Trustees of Western Washington University approves and executes the ground lease in Attachment A to the Board materials, for a single building to be constructed by WWU at the Olympic College Poulsbo campus.

APPROVED by the Board of Trustees of Western Washington University at its meeting thereof duly and regularly held this 14th day of June 2024.