

LEASE AGREEMENT

THIS LEASE AGREEMENT is made by and between SOUTH WHIDBEY SCHOOL DISTRICT NO. 206, a municipal corporation (hereinafter "Landlord"), and Tenant, and dated as of the Lease Reference Date set forth in the lease cover sheet of the Lease Agreement ("Lease Cover Sheet").

WITNESSETH

FOR AND IN CONSIDERATION of the rents herein reserved and in further consideration of the mutual promises, terms and conditions hereof, the parties hereby agree as follows:

1. PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises described in Section 1.6 of the Lease Cover Sheet, together with a non-exclusive right during the term of this Lease to use the common areas of the Building as from time to time constituted by Landlord, such use to be in common with Landlord and all other occupants of the Building, and their employees, agents, customers and invitees. Landlord reserves the right to make changes in the common areas and the Building as Landlord deems necessary and to establish reasonable rules and regulations for the use of the common areas and the Building. The parties agree and acknowledge that the square footage figure stipulated in Section 1.6 of the Lease Cover Sheet is a general figure which shall serve as the square footage of the leased premises for the purpose of calculating base rent under this Lease, regardless of any actual measurements of the interior space of the leased premises, and regardless of any permitted alternations which Tenant may make to the interior of the leased premises.

2. BUSINESS PURPOSES

The Premises are to be used only for the purposes described in Section 1.11 of the Lease Cover Sheet and for no other business or purpose without the written consent of Landlord, which it may give or withhold in its sole discretion.

3. TERM

The term of this Lease shall commence on the Commencement Date on a month to month basis. Either party may give 20 days' notice to terminate the lease. The lease will continue until otherwise terminated as stated in Section 1.8 of the Lease Cover Sheet.

4. SECURITY DEPOSIT

4.1 The Security Deposit, if any, deposited by Tenant shall be kept by Landlord as security for the performance by Tenant of all the terms, covenants, and conditions required to be performed by Tenant hereunder, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. The Security Deposit shall be returned to Tenant (less any amounts retained by Landlord as permitted herein) within thirty (30) days after the expiration of the term of this Lease and return of possession of the Premises to Landlord if, at such time, Tenant has performed all such terms, covenants, and conditions of this Lease. Prior to the time when Tenant is entitled to any return of the Security Deposit, Landlord may intermingle the Security Deposit with its own funds and use such sum for such purposes as Landlord may determine. Tenant shall not be entitled to any interest on the Security Deposit.

4.2 In the event of default by Tenant in respect to any of its obligations under this Lease, including, but not limited to, the payment of rent, Landlord may use, apply, or retain all or any part of the Security Deposit for the payment of any unpaid rent, or for any other amount which Landlord may be required to expend by reason of the default of Tenant, without prejudice to any other remedy.

No portion of the Security Deposit shall be applied towards payment of the last month's rent hereunder without the prior written consent of the Landlord. Tenant shall, upon five (5) days' written demand, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount.

5. RENT & LEASEHOLD EXCISE TAX.

5.1 Tenant covenants and agrees to pay Landlord, as monthly rental for the Premises, in lawful money of the United States, in advance on the first day of each calendar month to Landlord at Landlord's office or at such other place as Landlord may hereafter designate, the amount(s) stated in Section 1.9 of the Lease Cover Sheet.

5.2 In addition to the monthly rental and utility expenses specified in Section 1.9 of the Lease Cover Sheet, Tenant shall pay to Landlord monthly, in advance, on the first day of each calendar month, the leasehold excise tax assessed pursuant to RCW 82.29A against Tenant, if any, in respect of the monthly rent paid pursuant to paragraph 5.1 above. The said leasehold tax is currently equal to twelve point eighty-four percent (12.84%) of the taxable rent paid to Landlord, and is subject to change by the Legislature. Tenant shall in addition pay to Landlord when due the leasehold excise tax in respect of any payment or obligation hereunder which is deemed to be taxable rent. . If the Tenant qualifies for exemption of the excise tax due to their non-profit status, Tenant shall provide proof of current exemption from the Washington State Department of Revenue.

5.3 Tenant acknowledges that late payment to Landlord of rental or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which would be extremely difficult and impractical to ascertain.

Such costs include, but are not limited to, processing and accounting charges. Therefore, in the event Tenant should fail to pay any installment of rental or any sum due hereunder after such amount is due, Tenant shall pay to Landlord as additional rental a late charge equal to five percent (5%) of each such late installment or the sum of Twenty-Five Dollars (\$25.00) per month, whichever is greater. A Fifteen Dollar (\$15.00) charge will be paid by Tenant to Landlord for each returned check.

6. SECURITY ALARM

Tenant is responsible for securing the Premises before leaving the Building, i.e. closing windows, locking doors, etc.

7. UTILITIES AND SERVICE

7.1 It is the intent of the parties that Tenant shall assume all responsibility for the operation and maintenance of the Premises. Therefore, notwithstanding anything in the Lease to the contrary, during the term of this Lease, the following utilities and services will be provided on the premises:

(a) Tenant will provide Electricity, water and sewer service, since the services are billed to the Landlord, the Tenant will pay a monthly sum (_____) subject to annual review based upon the average usage the previous year.

(b) The Landlord shall provide heat to such extent and to such levels as, in the Landlord's judgment, is reasonably required for the comfortable use and occupancy of the Premises.

(c) Tenant will provide landscaping and grounds keeping to the common areas and Premises.

- 7.2 Tenant shall, at its own costs, provide custodial and janitorial service to the Premises.
- 7.3 Tenant shall arrange for and shall pay the entire cost and expense of all telephone stations, equipment and use charges, electric light bulbs and all other materials and services not expressly required to be provided and paid by Landlord pursuant to the provisions of this Section 7.
- 7.4 Tenant shall not, without the written consent of Landlord, use any apparatus or device on the Premises (including, but without limitation thereto, electronic data processing machines, punch card machines or machines using current in excess of 110 volts) which will in any way increase the amount of electricity or water usually supplied at the Premises. Tenant shall not connect with electrical current, except through existing electrical outlets in the Premises. If Tenant requires water or electric current in excess of that usually supplied at the Premises, Tenant shall first procure the written consent of Landlord for the use thereof. Landlord may cause a water meter or electric current meter to be installed in the Premises. The cost of such meters and of installation, maintenance, and repair thereof shall be paid by Tenant. Tenant further agrees to pay Landlord promptly upon demand for all such water and electric current consumed at the rates charged for such services by the City of Langley or the local public utility, plus any additional expense incurred by Landlord in keeping account of the water and electric current so consumed.
- 7.5 Landlord shall not be liable for and Tenant shall not be entitled to terminate this Lease or to effectuate any abatement or reduction of rent by reason of Landlord's failure to provide or furnish any of the foregoing utilities or services unless such failure was due to the gross negligence or intentional misconduct of Landlord. Landlord shall not be liable for loss or injury to persons or property, however arising, occurring in connection with or attributable to any failure to furnish such utilities or services, unless and only to the extent due to the gross negligence or intentional misconduct of Landlord, and in no event shall Landlord be liable for Tenant's consequential damages.
- 7.6 Landlord shall be responsible for repairs of the major mechanical system, such as the boiler, HVAC and electrical system, and "Building Envelope", such as the roof, foundation, walls and other structural components of the Building. Tenant shall be responsible for routine operation, maintenance and repairs of the Premises. A major repair to a system is one which exceeds \$10,000 in a twelve month period. In the event when a major mechanical or building system failure is too costly to be repaired, if so deemed by the Landlord, and if neither Landlord or Tenant is willing or able to remedy the situation, either party can cancel this Lease.
- 7.7 Landlord shall not be responsible for any loss caused to Tenant by Landlord's failure to make any major repairs. The District's priority and scheduling may push these repairs out several years.

8. ACCEPTANCE AND CARE OF PREMISES

- 8.1 Tenant has inspected the Premises and accepts the Premises "AS IS" in its present condition. During the term of this Lease and any extension thereof, Tenant, at Tenant's sole cost, shall keep the Premises in a neat, clean, and sanitary condition and shall make all necessary repairs and maintenance to the Premises.

Tenant shall maintain the Premises including, but not limited to, glass, plumbing and lighting fixtures, in good and proper repair, and in accordance with all applicable statutes, city ordinances and directions or regulations of the proper public authorities. Tenant shall not be required to make any repairs in respect to structural defects in the walls, foundation or roof of the Premises; provided, however, Tenant acknowledges that Landlord shall not be required to make such repairs or any repairs to the Premises.

- 8.2 In the event Tenant fails to maintain the Premises in good order, condition, and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. In the event Tenant fails to commence such work within ten (10) days of notice and to diligently prosecute it to completion, then Landlord shall have the right, at its option and in addition to all other remedies, to do such acts and expend such funds to maintain the Premises and to invoice Tenant for costs incurred. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work.
- 8.3 Tenant acknowledges and agrees that Landlord shall have no obligation whatsoever to make any alterations, additions, renovations or improvements to the Premises or to determine if any alterations are necessary in order for Tenant to conduct its business as set forth in Section 2 above. In the event that any federal, state, or city department or agency determines that certain alterations, additions, renovations or improvements are required to permit Tenant to use the Premises for the purpose(s) set forth in Section 2 above, Landlord shall have no obligation to make such changes. If Tenant is unable, in its sole judgment, to make such changes, then this Lease shall be terminated and both parties relieved of all rights and obligations hereunder.

9. WAIVER OF SUBROGATION

- 9.1 Landlord and Tenant do each herewith and hereby release and relieve the other from responsibility for, and waive their entire claim of recovery for, any loss or damage to the real or personal property of either located anywhere in the Premises or the Building, arising out of or incident to the occurrence of any of the perils which are covered by any property insurance policy obtained by Tenant or Landlord or required by this Lease to be obtained. Each party shall obtain any special endorsements, if required by its insurer, to evidence this waiver of the insurer's right to subrogation against the other party.
- 9.2 The mutual waivers and waivers of subrogation rights in Section 9.1 above shall not apply to the extent Tenant self-insures for property damage, if allowed to do so by Landlord. Additionally, the mutual waivers and waivers of subrogation in Section 9.1 above shall not apply for losses or claims for anyone (1) property damage occurrence, in which the amount of damages is equal to or less than Landlord's property damage deductible or self-insurance retention (collectively, the "Deductible"), which is, as of the date of execution hereof, \$100,000 ("Deductible"). For all such property damage losses equal to or less than the Deductible, Landlord shall be the sole loss payee under the Tenant's property insurance, and any proceeds received therefrom shall be made payable by the insurance company directly to Landlord. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, demands, damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of any such property damage event or occurrence.

10. INSURANCE

- 10.1 Tenant, at its own expense, shall provide and keep in force with companies reasonably acceptable to Landlord, the following:
- Commercial general liability insurance for the benefit of Landlord and Tenant jointly against liability for bodily injury and property damage for a combined single limit of not less than Five Hundred Thousand Dollars (\$500,000) for any one occurrence and One Million Dollars (\$1,000,000) in the aggregate for this location, including coverage for contractual liability and personal injury, and One Hundred Thousand Dollars (\$100,000) for fire legal liability;
 - Sexual abuse or molestation coverage shall be provided with a minimum limit of \$100,000 per occurrence and \$200,000 annual aggregate; and

- Products/Completed Operations Liability in the amount of \$500,000 per occurrence.

The foregoing insurance shall be placed with an insurance company or companies licensed to do business in the State of Washington and shall have an A.M. Best's rating of A or better. Tenant shall furnish Landlord with a copy or certificate of such policies before the commencement date of this Lease and whenever required shall satisfy Landlord that such policies are in full force and effect. Such policies shall list Landlord as an **additional insured** and shall be primary and non-contributing with any insurance carried by Landlord. Such policies shall not be cancelable or materially altered without forty-five (45) days' prior written notice to Landlord. In addition, the policies shall provide for ten (10) days' written notice to Landlord in the event of cancellation for non-payment of premium. In the event that Tenant fails to deliver the policies or certificates to Landlord as required above, Landlord may, after fifteen (15) days' notice to Tenant, take out such coverage and/or policies as Landlord may deem necessary or prudent in its sole discretion and for its sole benefit, and charge their costs to Tenant as additional rent, to be paid by Tenant on the fifth day of the month following the date on which Landlord takes out such coverage and/or policies and sends notice to Tenant demanding such payment.

- 10.2 If Landlord permits Tenant to self-insure for all or any portion of the insurance coverages required to be carried by Tenant hereunder, Tenant hereby agrees to provide written proof of such self-insurance program and agrees to indemnify, defend and hold Landlord harmless from and against any and all claims, demands, damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of any event or occurrence which is or would have been covered by insurance policies otherwise required to be maintained by Tenant.

11. ALTERATIONS OR IMPROVEMENTS

Tenant shall not make any alterations, additions, renovations or improvements in or to the Premises without first obtaining the written consent of Landlord. All alterations, additions, renovations and improvements which shall be made shall be at the sole cost and expense of Tenant and shall become a part of the real property and belong to Landlord and shall remain in and be surrendered with the Premises as a part thereof at the termination of this Lease, or be removed from the Premises by Tenant at the sole discretion of Landlord. Tenant further agrees to indemnify, defend, and hold Landlord and the Premises free and harmless from, and against, any and all damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of said work. Landlord reserves the right to review and approve Tenant's plans, specifications and contractor and, further, Landlord reserves the right to impose such restrictions or conditions upon its consent to the above work, including the requirement that Tenant appropriately bond the same, as Landlord may deem reasonably appropriate.

Tenant shall provide Landlord within sixty (60) days after receipt from contractor of "As-built documentation", a set of mylar reproducible copies of record drawings and other data showing the construction project. Tenant shall also furnish to Landlord one preliminary review copy and three finished copies of "Equipment Operation and Maintenance Manual" for the Premises at which work was performed. All plan views of the construction project shall be prepared using AutoCAD software, Release #11 by Autodesk, Inc. Copies of all plan drawings shall be submitted to Landlord on floppy disk in AutoCAD drawing format.

Landlord further reserves the right to make any alterations, additions, or improvements to the Premises which, in Landlord's sole discretion, are necessary or appropriate for the Premises, provided that Landlord will avoid to the extent reasonably possible interfering with Tenant's use of the Premises.

12. DAMAGE OR DESTRUCTION

In the event the Premises or the Building are partially or wholly destroyed or damaged by fire, earthquake, or other casualty, it shall be optional with Landlord to repair or rebuild the same, and in the meantime the

monthly rental, leasehold excise tax payment, and utility costs (to the extent such utilities are not actually used by Tenant) shall be abated in the same proportion as the untenable portion of the Premises bears to the tenable portion thereof. Unless Landlord within sixty (60) days after the happening of any such damage or casualty shall notify Tenant of its election to restore said Premises or Building, this Lease shall thereupon terminate. Landlord shall not be required to repair or restore any damage or injury nor replace any equipment, inventory, fixtures or other personal property of Tenant or others located on the Premises. Any proceeds payable to Landlord from insurance policies carried by Landlord or Tenant and covering the Premises or the Building shall be the sole and exclusive property of Landlord.

13. CONDEMNATION

If any part of the Premises or the Building shall be taken or condemned, and a part thereof remains which is susceptible of occupation hereunder, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor, and the rental payable hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the term only such portion of such rent as the number of square feet in the part remaining after the condemnation bears to the number of square feet of the entire Premises at the date of condemnation; but in such event Landlord shall have the option to terminate this Lease by written notice to Tenant within thirty (30) days of the date when title to the part so condemned vests in the condemnor. If part or all of the Premises or the Building be taken or condemned, all compensation awarded upon such condemnation or taking shall go to Landlord and Tenant shall have no claim thereto, and Tenant hereby irrevocably assigns and transfers to Landlord any right to compensation or damages to which Landlord may be entitled during the term hereof by reason of the condemnation of all or a part of the Premises; provided, Tenant may make separate claims against the condemning authority for damages to its personal property or moving expenses.

14. ACCIDENTS AND INDEMNIFICATION

14.1 Tenant shall indemnify and hold harmless Landlord and its Superintendent, Board members, officers, agents, employees, trustees, advisors and consultants (collectively, "Landlord's Agents") from and against, and shall defend with counsel acceptable to Landlord, any and all suits, actions, damages, claims, demands, personal injuries, loss of life, losses, liens, liabilities, penalties, fines, lawsuits, actions, other proceedings and expenses (including reasonable attorneys' fees and expenses incurred in connection with the proceeding whether at trial or on appeal) (collectively, "Claims") (a) arising in whole or in part out of any occurrence in, upon, at or from the Premises, to the extent (b) arising in whole or in part out of any act, omission or negligence of Tenant, its agents, employees, contractors, servants, invitees, licensees or concessionaires, (c) arising in whole or in part out of any breach of default by Tenant under this Lease, or (d) advanced or prosecuted by any agent, employee, contractor, servant, invitee, licensee or concessionaire of Tenant; provided that, Tenant shall not be liable to Landlord if and to the extent such Claims arise out of the gross negligence or willful misconduct of Landlord in failing to repair or maintain those portions of the Building which Landlord is required to maintain as required under the express terms of this Lease after at least thirty (30) days advance written notice of the required repair or maintenance from Tenant to Landlord.

14.2 Tenant hereby expressly waives and releases Landlord from, and Landlord shall not be responsible or liable at any time for, any Claims (a) arising out of any acts or omissions of other tenants, occupants, licensees, visitors, contractors or other third parties in, on or about the Building, (b) arising out of any fire, flood, robbery, theft, vandalism, terrorism or other casualty, (c) arising out of any leakage in any part of the Premises or Building from rain, ice or snow or from drains, pipes or plumbing fixtures, (d) arising out of any interruption or diminution of utilities, or (e) advanced or prosecuted by any agent, employee, contractor, servant, invitee, licensee or concessionaire of Tenant; except only if and to the extent such Claims arise out of the gross negligence or willful misconduct of Landlord in failing to repair or maintain those portions of the Building which Landlord is required to maintain as required under the express terms of this Lease after at least thirty (30) days advance written notice of the required repair or maintenance from Tenant to

Landlord. In no event and under no circumstances shall Landlord be liable for special, punitive or consequential damages. Tenant shall store its property in the Premises and shall use and enjoy the Premises and all other portions of the Building at its own risk, and hereby waives and releases Landlord, to the fullest extent permitted by law and except as expressly provided above, from all Claims arising out of any cause whatsoever.

14.3 In the event Tenant hires any agents or contractors (“Contractors”) to perform work on the Premises, Tenant shall include a provision in all contracts between Tenant and any Contractor that, to the fullest extent permitted by law, Contractor will defend, indemnify, and save Landlord harmless from and against any and all claims, actions, lawsuits, damages, liability, and expense (including, without limitation, attorneys’ fees) arising from loss, damage, or injury to persons or property or loss of use of the property occurring in, on, or about the Premises, arising out of the work performed at the Premises, or occasioned wholly or in part by any act or omission of Contractor, Contractor’s agents, contractors, lower-tier subcontractors, customers or employees. Notwithstanding anything to the contrary herein, Contractor shall not be required to indemnify Landlord for Landlord’s sole negligence or intentional misconduct.

14.4 Solely for the purpose of effectuating the indemnification obligations under this Lease, and not for the benefit of any third parties (including but not limited to employees of Tenant), Tenant specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Furthermore, the indemnification obligations under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts. Tenant shall cause Contractors and their subcontractors and material suppliers to execute similar waivers of industrial insurance immunity. The parties acknowledge that the foregoing provisions of this Section 14.4 have been specifically and mutually negotiated between the parties.

15. COMPLIANCE WITH ZACKERY LYSTEDT LAW - YOUTH PROGRAMS

Tenant is responsible for the safety and conduct of its participants and spectators. All private/non-profit youth programs must verify that they have complied with the mandated policies for concussion and head injury education, prevention, and management as prescribed in the Zackery Lystedt Law. Access to facilities used for youth programs under this Agreement will not be granted until a) proof of insurance covering injury or damage arising from the delivery of its services is provided, and b) a statement for compliance with the policies for the management of concussion and head injury in youth sports as set forth under the Zackery Lystedt Law is signed and returned to Landlord.

16. COMPLIANCE WITH LAWS

Tenant shall comply fully at its sole expense with all federal and state statutes and city ordinances now or hereafter in force in respect to the Premises and Tenant’s activities therein. Tenant warrants and represents to Landlord that Tenant shall use the Premises only for lawful purposes.

17. ACCESS

Landlord shall have the right to inspect the Premises at all reasonable times and enter the same for purposes of cleaning, repairing, altering, improving the Premises or the Building, but nothing contained in this Lease shall be construed so as to impose any obligation on Landlord to make any repairs, alterations or improvements. Tenant shall not install any new lock or bolt on any door without Landlord’s prior written consent. Landlord shall have the right to show the Premises to prospective tenants three months prior to the expiration of the term of this Lease.

Landlord shall have the right to enter all premises for access to network cabinets at all reasonable times, including but not limited to the hours of school (7:30am till 4:00pm), and enter the same for purposes of checking, repairing, altering and improving the network. Rooms currently holding network cabinets include but are not limited to rooms 108, 113 and 401A (accessible only from rooms 401 and 406).

18. SIGNS OR ADVERTISING

Tenant will not inscribe, post, place, or in any manner display any sign, notice, picture, poster or any advertising matter whatsoever anywhere in or about the Premises, without first obtaining Landlord's written consent thereto. Any consent so obtained from Landlord shall be with the understanding and agreement that Tenant will remove same at the termination of the tenancy herein created and repair any damage or injury to the Premises or the Building caused thereby, and must comply with applicable governmental requirements. Any advertising, flyers or posters must state that Landlord is not in any way sponsoring or endorsing this activity. In addition, the Premises may not be used by religious groups for recruitment or proselytizing activities.

19. WASTE AND UNLAWFUL USE

Tenant will not commit or suffer any waste upon the Premises, or disturb the quiet enjoyment of any other occupants of the Building by making or suffering any nuisance, undue or unseemly noise, or otherwise, and will not do or permit to be done in or about the Premises anything which is illegal or unlawful, or which will be dangerous to life or limb, or which will increase any insurance rate upon the Premises or the Building.

20. SUCCESSORS

All the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors, marital communities and assigns. Any assignment or subletting of the Premises or any interest in this Lease shall not relieve Tenant of primary responsibility for the performance of the terms and payment of the sums to be performed or paid by Tenant hereunder.

21. POSSESSION

In the event of the inability of Landlord to deliver possession of the Premises or any portion thereof at the time of the commencement of the term of this Lease, Landlord shall not be liable for any loss or damage caused thereby, nor shall this Lease thereby become void or voidable, nor shall the term herein specified be in any way extended, but in such event Tenant shall not be liable for any rental until such time as Landlord can deliver possession. If Landlord shall deliver possession of the Premises to Tenant prior to the commencement date of this Lease and Tenant agrees to accept the same at such time, both Landlord and Tenant agree to be bound by all the provisions and obligations of this Lease during the prior period, including the payment of rental and other amounts payable by Tenant to Landlord hereunder at the same monthly rate prorated for the prior period.

22. TAXES

The monthly base rent and leasehold excise tax payments required hereunder are exclusive of any sales, business or occupation or other state taxes levied or assessed against Landlord and which are based on rents, and should any such taxes apply, or be enacted during the life of this Lease, the rental shall be increased by such amount. Tenant shall pay before delinquency any and all taxes, assessments, license fees and public charges levied, assessed or imposed and which shall become payable during the term of this Lease upon Tenant's fixtures, furniture and personal property installed or located in the Premises.

23. INSOLVENCY

Either (i) the appointment of a receiver to take possession of all or any part of the assets of Tenant, or (ii) the general assignment by Tenant for the benefit of creditors, or (iii) any action taken or suffered by Tenant under any insolvency or bankruptcy act shall, if such appointment, assignment or action continues for a period of thirty (30) days, constitute a breach of this Lease by Tenant, and Landlord may at its election and without notice terminate this Lease and in that event Landlord shall be entitled to immediate possession of the Premises. Provided, however, that in the event any provision of this Paragraph is contrary to any applicable law, such provision shall be of no force or effect.

24. COSTS AND ATTORNEYS' FEES

If, by reason of any default or breach hereunder by Landlord or by Tenant, it becomes necessary to institute suit, the prevailing party in such suit shall be entitled to recover, as part of any judgment, such amount as the court shall determine reasonable as attorneys' fees for the prevailing party in such suit, together with taxable costs, including such costs and attorneys' fees on appeal and in any bankruptcy proceeding.

25. NON WAIVER OF BREACH

The failure of Landlord to insist upon strict performance of any of the covenants and agreements of this Lease or to exercise any option herein conferred in anyone or more instances shall not be construed to be a waiver or relinquishment of any such or of any other covenant or agreement, but the same shall be and remain in full force and effect.

26. REMOVAL OF PROPERTY

In the event of any entry in, or taking possession of, the Premises upon the termination of this Lease, Landlord shall have the right, but not the obligation, to remove from the Premises all personal property located therein, and may store the same in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored property, without notice to Tenant, after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Tenant to Landlord under any of the terms hereof, with the balance, if any, to be paid to Tenant.

27. HOLDOVER

If Tenant shall, without the written consent of Landlord, hold over after the expiration of the term of this Lease, such tenancy shall be for an indefinite period of time on a month-to-month tenancy, which tenancy may be terminated as provided by the laws of the State of Washington. During such tenancy, Tenant agrees to pay to Landlord the same rate of rental as set forth herein including all other amounts then payable by Tenant to Landlord, unless a different rate is agreed upon, and to be bound by all the terms, covenants, and conditions as herein specified, so far as applicable.

28. ASSIGNMENT AND SUBLETTING

28.1 Tenant shall not transfer, dispose, assign, mortgage, or hypothecate this Lease, in whole or in part, or permit the use of the Premises by any person or persons other than Tenant, or sublet the Premises, or any part thereof (each of the foregoing shall be a "Transfer") without the prior written consent of Landlord in each instance, which may be withheld in Landlord's sole discretion. Such prohibition against Transfer shall include any transfer by operation of law and any transfer of this Lease from the Tenant by merger, consolidation, transfer of assets, or liquidation. In the event that Tenant hereunder is a corporation, an unincorporated association, or a partnership, the transfer, assignment, or hypothecation of any stock or interest in such corporation, association, or partnership in the aggregate in excess of twenty percent (20%) in any continuous twelve-month

period shall be deemed a Transfer requiring Landlord's prior consent.

28.2 Any Transfer without Landlord's consent shall, at Landlord's sole discretion, be void, and shall constitute a default hereunder which, at the option of Landlord, shall result in the termination of this Lease or exercise of Landlord's other remedies hereunder. Consent to any Transfer shall not operate as a waiver of the necessity for consent to any subsequent Transfer, and the terms of such consent shall be binding upon any person holding by, under, or through Tenant.

28.3 If this Lease or all or any portion of the Premises is Transferred or occupied by any person other than Tenant, Landlord may collect rent and other charges from such other party and apply the amount collected to the rent and other charges reserved hereunder, but such collection shall not constitute consent or waiver of the necessity of consent to such Transfer, nor shall such collection constitute the recognition of such assignee, sublessee, or other party as Tenant hereunder or a release of Tenant from the further performance of all of the covenants and obligations of Tenant herein contained. In the event that Landlord shall consent to a Transfer, Tenant shall pay to Landlord a fee equal to ten percent (10%) of one month's rent for expenses incurred in connection with processing of documents necessary to the giving of such consent, and shall include with the request for consent a copy of the proposed transfer document and adequate financial information for the proposed transferee.

29. NOTICES

All notices, statements, demands, requests, consents, approvals, authorization, offers, agreements, appointments, or designations under this Lease by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if personally delivered or sent by certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Tenant, addressed to the last known post office address of Tenant or to the Premises;

If to Landlord, addressed to Landlord at the address set forth in Section 1.5 of the Lease Cover Sheet, or to such other place as Landlord may from time to time designate by notice to Tenant.

30. LIENS AND ENCUMBRANCES

Tenant shall keep the Premises free and clear of any liens and encumbrances arising out of the use and occupancy of the Premises by Tenant. At Landlord's request Tenant shall furnish Landlord with written proof of payment of any item which, if not paid, would or might constitute the basis for such a lien on the Premises.

31. BREACH BY TENANT

In the event that Tenant defaults in the performance of any of the terms, provisions, covenants and agreements on the Tenant's part to be kept, observed and performed, and such default is not corrected within thirty (30) days after the provision of notice thereof from Landlord, or such longer period as may be reasonable under the circumstances; or shorter period if required by applicable fire or safety codes; or if Tenant shall abandon, desert, vacate or remove from the Premises; or if Tenant shall fail to pay any amount due hereunder for more than five (5) days after written notice thereof from Landlord, then, in such event, Landlord, at its option at any time thereafter, may terminate this Lease together with all of the estate, right, and title thereby granted to or vested in Tenant by giving twenty (20) days notice in writing of such election, by certified mail addressed to Tenant at the address specified in this Lease, and at the expiration of such (20) day period, this Lease and all of the estate, right, title and interest thereby granted to or vested in Tenant shall then cease and terminate, and Landlord may re-enter said Premises using such force as may be required. Notwithstanding such re-entry by Landlord and anything to the contrary in this agreement, the liability of Tenant for the rent provided for herein shall not be extinguished for the balance of the term of this Lease. The Manager of Landlord's Property Management Office, if any, shall have the right to

determine on Landlord's behalf the existence of any default in performance or other breach or violation of the terms and conditions hereof on the part of Tenant. Notwithstanding anything to the contrary herein, Landlord has the right to terminate this Lease immediately, or to suspend access to the Premises if Landlord determines that access to the Premises or continuation of Tenant's occupancy would jeopardize the health or safety of the students, staff or public.

In the event of a default by Tenant, Landlord, in addition to other rights or remedies that it may have, shall have the right to either terminate this Lease or from time to time, without terminating this Lease, enter and relet the Premises or other part thereof for the account and in the name of Tenant or otherwise, for any such term or terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises. Tenant shall pay to Landlord as soon as ascertained, the costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs. Rentals received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness, other than rental, due hereunder from Tenant to Landlord; second, to the payment of the cost of any alterations and repairs to the Premises necessary to return the Premises to good condition, normal wear and tear excepted, for uses permitted by this Lease and the cost of storing any of Tenant's property left on the Premises at the time of reletting; third, to the payment of rental due and unpaid hereunder and the residue, if any, shall be held by Landlord and applied in payment of future rent or damages in the event of termination as the same may become due and payable hereunder and the balance, if any, at the end of the term of this Lease shall be paid to Tenant. Should such rental received from time to time from such reletting during any month be less than that agreed to be paid during that month by Tenant hereunder, Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly.

32. CANCELLATION

In the event Landlord determines at any time during the term of this Lease that the Premises are required for other purposes, this Lease shall be subject to cancellation by Landlord as provided in Section 1.12 of the Lease Cover Sheet.

33. VACATING OF PREMISES

Upon termination of this Lease, Tenant shall return the Premises in good order and condition, except for normal wear and tear and damage by fire or other casualty. On or before the date of termination, Tenant shall have removed all furniture, equipment, supplies, and other materials owned and controlled by Tenant. At the election of Landlord, Tenant shall restore the Premises to their original condition, including the removal of all improvements, additions, fixtures or alterations made by Tenant to the Premises.

34. MISCELLANEOUS

34.1 The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Lease.

34.2 Time is of the essence hereof.

34.3 If any portion of this Lease shall be deemed void, illegal or unenforceable, the balance of this Lease shall not be affected thereby.

34.4 This Lease shall be interpreted under the laws of the State of Washington.

34.5 The parties agree that the Superior Court of the State of Washington for Island County shall have sole jurisdiction over any question, claim, loss or injury arising hereunder.

34.6 Tenant acknowledges that except as expressly set forth in this Lease, neither Landlord nor any other person has made any representation or warranty with respect to the Premises or any other

portion of the Building. Specifically, but not in limitation of the foregoing, no representation has been made or relied on with respect to the suitability of the Premises or any other portion of the Building for the conduct of Tenant's business.

- 34.7 When applicable, Tenant shall provide all cooking surfaces with hood, vent, and fire suppression systems that have been approved by the Washington Survey & Rating Bureau to issue maximum fire insurance rate credit. In the event the premium for fire insurance on the Premises or the Building is increased as a result of Tenant's failure to install such an approved system, Tenant shall be liable for the increase.
- 34.8 If Tenant fails to pay, when the same is due and payable, any rent, or other sum required to be paid by Tenant hereunder, such unpaid amounts shall bear interest from the due date thereof to the date of payment at a rate equal to ten percent (10%). Landlord may elect to make payment of any unpaid amounts required to be made by Tenant hereunder and, upon demand, Tenant shall reimburse Landlord for said amounts together with interest.
- 34.9 Landlord does not by this Lease, in any way or for any purpose, become a partner or joint venturer of Tenant in the conduct of its business or otherwise.
- 34.10 Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Landlord's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or service, or acts of God.
- 34.11 This Lease and the Exhibits, Riders, and/or Addenda, if any, attached hereto, constitute the entire agreement between the parties. All Exhibits, Riders, or Addenda mentioned in this Lease are incorporated herein by reference. Any guaranty attached hereto is an integral part of this Lease and constitutes consideration given to Landlord to enter into this Lease. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed. Submission of this Lease for examination does not constitute an option for the Premises and becomes effective as a lease only upon approval of this Lease by the South Whidbey School District Board and execution and delivery of this Lease by Landlord to Tenant. If any provision contained in a Rider or Addenda is inconsistent with a provision in the body of this Lease, the provision contained in said Rider or Addenda shall control. The captions and paragraph numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of any paragraph.
- 34.12 Landlord and Tenant shall comply with all applicable federal, state and local requirements prohibiting discrimination based on sex, sexual orientation, race, national origin, age, and/or handicapping conditions. Tenant acknowledges that Tenant's failure to comply with the foregoing shall be a default under this Lease, and may cause Landlord to sustain substantial damages, including the loss of federal, state, and/or local funding.
- 34.13 Tenant shall, at its sole cost, dispose of all toxic substances that it brings or uses on the Premises. Tenant shall be responsible for complying with all federal, state and local laws and regulations in regard to the handling of and disposing of toxic substances, and agrees to indemnify, defend, and hold Landlord harmless from and against all losses, costs, and expenses (including but not limited to site cleanup, investigation, and remediation costs and attorneys fees and costs related thereto) arising from a breach by Tenant of its obligations under this Section 34.13.
- 34.14 If Tenant operates or allows subcontractors to operate day care or other child-serving programs or services (any program or services where children are on District premises and not under the care or supervision of their own parents), all of Tenant's staff and contractor personnel who have access to

children on the Premises shall take the Adult Sexual Misconduct (ASM) training class approved or provided by the South Whidbey School District. Upon completion of the ASM training, evidence of such training shall be submitted to the District.

- 34.15 Landlord reserves the right to change the name of the Building in its sole discretion, without notice or liability to Tenant.
- 34.16 Each of the parties represents and warrants that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease, and agrees to indemnify the other against, and hold it harmless from, and defend with counsel acceptable to such party, all liabilities arising from any such claim (including, without limitation, the cost of counsel fees in connection therewith).
- 34.17 Tenant agrees that any damage caused by Tenant or any agent, employee, contractor, servant, invitee, licensee, or concessionaire of Tenant to any personal or real property in the Common Areas or Premises as state in Section 1.6 of the cover sheet above shall be promptly repaired or replaced by Tenant at the Tenant's expense.
- 34.18 Tenant is responsible for the behaviors and actions of any agent, employee, contractor, servant, invitee, licensee, or concessionaire of Tenant.
- 34.19 Tenant agrees to a NO FLAME BAN. Smoking will not be allowed in and around the premises, buildings or common areas (including but not limited to the parking lots and fields) at any time.
- 34.20 Littering the premises and common areas is not permitted. The Common Areas include the bathrooms, hallways, courtyard, and areas between the buildings.
- 34.21 The multi-purpose room, gym, boys and girls lockers (known as rooms 520 and 505 respectively), Office and Storage rooms off of the multipurpose room and all doors, stairwells and halls accessing these areas are off limits and are NOT COMMON AREAS to be shared with Tenant.

35 PARKING

Tenant acknowledges that the parking lot in front of the building on Camano Avenue and on the North Side of the Cooler is for the joint use by all of the tenants in the buildings and their guests and invitees and that there are no designated or reserved parking spaces. Parking spaces may not be used for storage of any kind including non-operating vehicles without the expressed written consent of the Landlord. Tenant acknowledges that snow may reduce the amount of parking available to the building's tenants and their guests and invitees and or which may impact the available space on a seasonal basis. Parking is not permitted on the back of the campus behind rooms 106, 105, 104 and 102. This area is only to be used as a *Loading Zone* for drop off and pick up. No driving or parking is allowed in and around the buildings unless in the specified parking lots.

36 COMPLIANCE WITH PUBLIC AUTHORITIES

Tenant agrees, at Tenant's cost, to comply with all applicable municipal, county, state and federal laws and regulations now in force or which may hereafter be enforced concerning Tenant's particular use of the leased premises. If any alteration to the leased premises desired by Tenant would trigger any obligation on the part of the Landlord to make other changes to the building to comply with any law or regulation from which the building is otherwise exempted or grandfathered, then the Landlord shall have the discretion to refuse Tenant's desired alteration.

37 WAIVER OF SUBROGATION

Notwithstanding anything herein to the contrary, Tenant hereby releases Landlord and Landlord's respective officers, agents and employees, from any and all claims or demands for damages, loss, expense,

