



Special Board Meeting Agenda
Fort Worden Lifelong Learning Center Public Development Authority (FWPDA)
Wednesday, August 10, 2022 | 5:30 p.m.
Seminar Building 297

Meeting Agenda

- I. Call to order (5:30)**
- II. Roll Call**
- III. Reports**
 - A. Executive Director's Reports**
- IV. Public Comment**
- V. Action Items**
 - 1. Consent Agenda**
 - a. Review the July 26, 2022 meeting minutes. *

Proposed action: Approve the consent agenda.

- 2. Review Partner Leases***
 - A. Staff presentation
 - B. Board clarifying questions
 - C. Board discussion
 - D. Board liaison comments

Proposed action: Motion to authorize and accept the substitution of indemnification language as presented in the final lease terms, entitled Article 14, for Buildings 305, 308, and 324.

- 3. Board Terms***
 - A. Staff presentation
 - B. Board clarifying questions
 - C. Board discussion
 - D. Board liaison comments

Proposed action: Motion to direct the Chair to submit to the City the proposed changes to

terms for the existing Board.

VI. Public Comment

VII. Next Board Meeting

September 27, 2022 at 5:30 p.m.

VIII. Adjourn

**Topic involves documents in agenda packet*



Fort Worden
— PORT TOWNSEND —
A HISTORIC GATHERING PLACE

To: FWPDA Board of Directors

From: David Timmons, Fort Worden Lifelong Learning Center Public Development Authority (FWPDA) Executive Director

Date: August 5, 2022

Subject: Special Meeting Agenda Item – V.2. Review of Partner Leases

I appreciate the Board's willingness to hold this special meeting to expedite closure of the pending Partner Leases. We have consensus and agreement on all the terms but we have identified an inconsistency in the documents.

You may recall we are using certain terms for Makers Square per our property management obligations with the Foundation. We are also using the Master lease as a template for all the other leases classified and referred to as "Class D" properties. The main differences between the two addresses that Makers Square properties were fully renovated under a complex agreement with the Foundation, while the "Class D" properties are "as is" with capital renovation to be undertaken by the lease holder. Contained within both were drafts of General Conditions. Within the General Conditions terms resides an indemnification clause. This language generally is standard in all contracts and leases. However, in this case with these documents we have two different set of terms and conditions. We were able to make them uniform except for the indemnification terms.

Attached is a copy of two indemnification clauses that appear in the pending Partner Leases. The first resides in the Makers Square leases, while the latter (Article 14) resides in the "Class D" leases. Both lease documents were prepared independent of the other. The latter language was sourced and modeled from the language the PDA agreed to with the Parks Commission under the Master Lease.

The Makers Square indemnification as presented is much broader in its scope in indemnifying the PDA. Whereas the "Class D" indemnification is more towards a share obligation and exposure. In other words, the level of indemnification provided by the Makers Square terms is a higher level than the other language.

The desire of the parties is to have both documents utilize the same indemnification terms. It is the desire of the parties to adopt the language contained in Article 14 as the norm for all leases. To apply this change to the Makers Square document is considered a material change and requires the Board to approve. Our policy position on lease terms has been and is to maintain a standard equal to the standards that are contained in the Master Lease for partners. This change then appears to be an acceptable alternative.

Since the PDA is the property manager and has authority from the Foundation to modify terms of the draft lease we can accept this change. This however does not diminish our indemnification commitment to the Foundation.

The recommendation before you is to accept the language of Article 14 as it would apply to the Makers Square lease consistent with the objective to establish a uniform standard with the Master Lease.

Motion: Move to authorize and accept the substitution of indemnification language as presented in the final lease terms, entitled Article 14, for Buildings 305, 308 and 324.

I. ACCIDENTS, LIABILITY, RELEASE

- 1. Indemnification / Hold Harmless.** LANDLORD shall not be liable for, and LESSEE shall defend, indemnify, and hold harmless the LANDLORD, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, including reasonable attorneys' fees, which arises out of LESSEE's use of Premises, or from the conduct of LESSEE's business, or from any activity, work or thing done, permitted, or suffered by LESSEE in or about the Premises, or any condition of the leased or LANDLORD premises (including existing or future conditions), except only such injury or damage as shall have been occasioned by the sole negligence of the LANDLORD. If injury or damage is occasioned by the sole negligence of LANDLORD, then LANDLORD shall be responsible for the claim loss, and shall defend, indemnify, and hold harmless the LESSEE, its officers, officials, employees and volunteers from the claim or loss.
- 2. LESSEE's Release.** LESSEE waives and releases all claims against LANDLORD, its employees and agents, with respect to any damage or loss to LESSEE's property for which LESSEE has agreed to provide property insurance as set forth above, from any cause, including LANDLORD's negligence, but not including intentional acts by LANDLORD, and LESSEE acknowledges and agrees that its property insurance will fully satisfy any loss or damage it sustains from any loss or damage however caused.

ARTICLE 14 INDEMNIFICATION

14.1 Lessee Indemnification

14.1.1 Subject to the waiver of recovery and subrogation in Section 13.4, Lessee shall indemnify, pay the defense costs of, and hold harmless Lessor, Lessor Parties, and the Lessor's board members and employees from Claims for damages, costs, personal injury, death, or for loss or damage to property that arise out of or relate to: (a) the acts or omissions of Lessee, its employees, agents, contractors, affiliates, or licensees in the development, improvement, operation, maintenance, or use of the Campus; or (b) any breach or default by Lessee in the performance of any obligation on Lessee's part to be performed under this Lease.

14.1.2 This indemnity does not apply: (1) to Claims to the extent they are caused by the acts, omissions, or misconduct of Lessor Parties; or (2) to damages, claims, suits, actions or liabilities waived under Section 13.4. The term "Lessor Parties" means Lessor, its board members, agents, employees, contractors, and licensees.

14.2 Lessor Indemnification

14.2.1 Subject to the waiver of recovery and subrogation in Section 13.5, Lessor shall indemnify, pay the defense costs of, and hold harmless Lessee and its officers, directors,

employees, from Claims for damages, costs, personal injury, death, or for loss or damage to property that arise out of or relate to the negligence of Lessor, its officers, or employees in connection with the Campus or this Lease.

14.2.2 This indemnity does not apply: (1) to Claims to the extent they are caused by the acts or omissions or misconduct of Lessee, including its officers, directors, trustees, agents, employees, contractors, affiliates, and licensees; or (2) to damages, claims, suits, actions, or liabilities waived under Section 13.5.

14.3 *Joint, Comparative, or Concurrent Negligence.* If the parties are determined to be jointly and severally liable in any action, then each party's duty to indemnify and defend shall be proportionate to such party's allocable share of joint, comparative or concurrent negligence.

14.4 *Waiver of Indemnity.* Lessor and Lessee agree that the foregoing indemnities specifically include, without limitation, Claims brought by either party's employees against the other party.

THE FOREGOING INDEMNITIES ARE EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF EACH PARTY'S IMMUNITY UNDER WASHINGTON'S INDUSTRIAL INSURANCE ACT, RCW TITLE 51, TO THE EXTENT NECESSARY TO PROVIDE THE OTHER PARTY OR PARTIES WITH A FULL AND COMPLETE INDEMNITY FROM CLAIMS MADE BY EACH PARTY AND ITS EMPLOYEES, TO THE EXTENT OF THEIR NEGLIGENCE. LANDLORD AND LESSEE ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

ARTICLE 12 ACCESS TO CAMPUS

12.1 Commission Access. Commission and its agents, employees, and representatives shall have the right to access, enter, and inspect the Campus at any reasonable time for the purpose of ascertaining the condition of the Campus, monitoring compliance with this Lease, or for any other purpose permitted under the terms of this Lease. In exercising such rights, the parties shall cooperate and shall take all reasonable steps to avoid disruption or unnecessary interference with Tenant's use and operations of the Campus.

12.2 Public Access. Tenant agrees that the public shall have free access through the Campus in order to reach adjacent areas of the Property, subject to such reasonable rules and regulations as Tenant may from time-to-time impose for the safe and efficient functioning of the Campus. Tenant shall be entitled to establish such access rules, procedures, and policies as it deems appropriate for the Buildings within the Campus (subject to Commission's rights to Buildings under this Lease), and may convey exclusive use of and access to a Building or space within a Building to tenants, licensees, or other users of the same.

ARTICLE 13 INSURANCE, WAIVER OF CLAIMS AND LIMITATION OF LIABILITY

13.1 Tenant's Liability Insurance. Tenant, at its expense, shall purchase and keep in force during the Term Commercial General Liability insurance with limits of not less than Two Million and 00/100 Dollars (\$2,000,000.00) combined single limit each occurrence, covering bodily injury to persons, including death and damage to property. Such insurance shall provide coverage for Tenant's premises and operations and contractual liability assumed in Article 13. Tenant shall cause their Commercial General Liability insurer to name ~~Commission-Landlord~~ as an additional insured under such insurance and such policy shall contain a severability of interests provision, a provision that the insurance provided to ~~Commission-Landlord~~ as additional insured shall be primary to and not contributory with insurance maintained by ~~Commission-Landlord~~, and a provision that an act or omission of one of the insureds or additional insureds that would void or otherwise reduce coverage shall not reduce or void the coverage as to the other named and additional insureds.

13.2 Campus Property Insurance. Neither party has an obligation to insure the structures located on the Campus, except as otherwise set forth in this Lease. Either party may elect, at its discretion, to insure one or more structures under its control at its own cost. Further, Tenant may impose such insurance obligations on any subtenant that rents a structure, as deemed appropriate by Tenant or required by any finance agreement affecting the structure. ~~Commission-Landlord~~ and Tenant shall assist and cooperate with any insurance company in the adjustment or litigation of all insurance claims arising under the insurance provided.

13.3 General Insurance Requirements. All of the third-party insurance policies required to be maintained under Sections 13.1 shall: (a) be issued by insurance companies authorized to do business in the State of Washington and having an A.M. Best's rating of not less than A- VII, unless placed as a surplus line by an authorized Washington State surplus lines broker; (b) contain an endorsement requiring thirty (30) days' written notice from the insurance company to both

parties before cancellation, non-renewal, or change in the coverage, scope, or amount of any policy; and (c) be written as primary policies, not contributing with and not supplemental to the coverage that other party may carry. Certificates of insurance and complete copies of the insurance policies evidencing that the insurance required under this section is in effect shall be delivered to ~~Commission-Landlord~~ before any entry on the Campus by Tenant, and shall be kept current throughout the Term. Such certificate shall reflect the status of ~~Commission-Landlord~~ as additional insured (as to the insurance under Section 13.1), and shall provide for at least thirty (30) days' advance notice to ~~Commission-Landlord~~ in the event of cancellation. ~~Commission-Landlord~~ and Tenant shall assist and cooperate with any insurance company in the adjustment or litigation of all insurance claims arising under the insurance required by this Section. ~~A certificate of demonstrating procurement of the required insurance, including an actual copy of the additional insured policy provision, shall be issued to the State of Washington. However, the original certification shall not be mailed but sent either by facsimile transmission to the Director or emailed as an attachment in PDF format.~~

13.4 Waiver of Recovery and Subrogation. ~~Commission-Landlord~~ and Tenant release and relieve the other from any liability they might otherwise have and waive their entire right of recovery for loss or damage to property located within or constituting a part or all of the Campus to the extent that the loss or damage either (a) is actually covered by the injured party's property insurance, or (b) would have been covered by the property insurance the injured party is required to carry under this Section 13, whichever is greater. This waiver applies regardless of the cause or origin of the claim including without limitation loss due to the negligent acts or omissions of ~~Commission-Landlord~~ or Tenant, or their respective officers, directors, council members, employees, agents, contractors, invitees, Tenant's assignees, or subtenants. The parties shall have their property insurers endorse the applicable insurance policies to reflect the foregoing waiver of claims; provided, however, that the endorsement shall not be required if the applicable policy of insurance permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver shall be acceptable.

13.5 Reallocation of Insurance Responsibilities. Notwithstanding the allocations of responsibility to insure contained in Sections 13.1-13.4 above, the parties may by mutual agreement decide to reallocate such responsibilities, including allocating the cost thereof in an appropriate way among the parties. The parties will engage in good faith discussions, including consulting with their insurance professionals, to agree on the preferred arrangements for purchasing the insurance and sharing the cost thereof, which may change from time-to-time by mutual agreement. In addition, the parties may by mutual agreement amend the insurance requirements of this Lease from time-to-time as appropriate to address changes in insurance practices and the insurance needs of the parties consistent with their rights and obligations hereunder.

13.6 Limitation of Tenant's Liability. In no event shall ~~Commission-Landlord~~, its successors or assigns, have any recourse whatsoever for any damages payable, obligations assumed or indemnifications proffered by Tenant under this Lease to any funds that have been pledged for a specific purpose as a condition of the pledge by the donor/grantor.

ARTICLE 14 INDEMNIFICATION

14.1 Tenant Indemnification

14.1.1 Subject to the waiver of recovery and subrogation in Section 13.5, Tenant shall indemnify, pay the defense costs of, and hold harmless ~~Commission-Landlord, Landlord Parties, and its the Landlord's council-board~~ members and employees from Claims for damages, costs, personal injury, death, or for loss or damage to property that arise out of or relate to: (a) the acts or omissions of Tenant, its employees, agents, contractors, affiliates, or licensees in the development, improvement, operation, maintenance, or use of the Campus; or (b) any breach or default by Tenant in the performance of any obligation on Tenant's part to be performed under this Lease.

14.1.2 This indemnity does not apply: (1) to Claims to the extent they are caused by the acts, omissions, or misconduct of ~~Commission-Landlord Parties~~; or (2) to damages, claims, suits, actions or liabilities waived under Section 13.5. The term "~~Commission-Landlord Parties~~" means ~~CommissionLandlord~~, its ~~council-board~~ members, agents, employees, contractors, and licensees.

14.2 Commission-Landlord Indemnification

14.2.1 Subject to the waiver of recovery and subrogation in Section 13.5, ~~Commission-Landlord~~ shall indemnify, pay the defense costs of, and hold harmless Tenant and its officers, directors, employees, from Claims for damages, costs, personal injury, death, or for loss or damage to property that arise out of or relate to the negligence of ~~CommissionLandlord~~, its officers, or employees in connection with the Campus or this Lease.

14.2.2 This indemnity does not apply: (1) to Claims to the extent they are caused by the acts or omissions or misconduct of Tenant, including its officers, directors, trustees, agents, employees, contractors, affiliates, and licensees; or (2) to damages, claims, suits, actions, or liabilities waived under Section 13.5.

14.3 Joint, Comparative, or Concurrent Negligence. If the parties are determined to be jointly and severally liable in any action, then each party's duty to indemnify and defend shall be proportionate to such party's allocable share of joint, comparative or concurrent negligence.

14.4 Waiver of Indemnity. ~~Commission-Landlord~~ and Tenant agree that the foregoing indemnities specifically include, without limitation, Claims brought by either party's employees against the other party. THE FOREGOING INDEMNITIES ARE EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF EACH PARTY'S IMMUNITY UNDER WASHINGTON'S INDUSTRIAL INSURANCE ACT, RCW TITLE 51, TO THE EXTENT NECESSARY TO PROVIDE THE OTHER PARTY OR PARTIES WITH A FULL AND COMPLETE INDEMNITY FROM CLAIMS MADE BY EACH PARTY AND ITS EMPLOYEES, TO THE EXTENT OF THEIR NEGLIGENCE. COMMISSION AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.



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A HISTORIC GATHERING PLACE

To: FWPDA Board of Directors

From: David Timmons, Fort Worden Lifelong Learning Center Public Development Authority (FWPDA) Executive Director

Date: August 5, 2022

Subject: Agenda Item – V. 3. Board terms

Attached is a form I developed that will help you decide on what if any modifications to terms you want to propose to the City Council. I am sure you all recall that the terms were assigned and that there was no opportunity given before hand to review the assignments of terms. It was left with the understanding that we could recommend changes when it became necessary.

It appears with terms expiring for the one-year term this October, we will need to decide if any changes are desired or not. Celeste Tell and Brad Mace were given 1-year terms. Their term will expire in October of this year. Others however have expressed that they would prefer a 1-year term and are willing, in lieu of resignation, “trade” for the 1-year term.

The 1-year term is a transitional start up term. The City will reappoint the 1-year term seat with a 3-year term assignment. We will need to notify the City soon on the status of the 1-year term as they will need to begin the recruitment and (re)appointment process soon.

At the Special meeting the objective is to fill in the column with the names of the current Board into the terms that are more suitable for you. (Also keep in mind to accept a longer term is not an indentured obligation to serve the full term.)

If we reach consensus during the Special meeting on which seat each of you will fulfill then it is recommended that the Board move to submit the proposed changes to the City Council for consideration.

Motion: Move to direct the Chair to submit to the City the proposed changes to terms for the existing Board.

FWPDA Board Terms and Proposed Changes

City Council Assignment		FWPDA Board Proposed Modification
1 year	expires 10/24/22	
Brad Mace		Name:
Celeste Tell		Name:
2 year	expires 10/24/23	
David King		Name:
Eva Weber		Name:
3 year	expires 10/24/24	
John Begley		Name:
Rodger Schmitt		Name:
Torie Brazitis		Name: