

LEASE AGREEMENT

This LEASE AGREEMENT (“Lease”) is made as of _____, 2019 by DUNGENESS VALLEY LUTHERAN CHURCH, a Washington nonprofit corporation, located at 925 N. Sequim Ave, Sequim, WA 98382, (“Congregation”) and DUNGENESS HOMES, a Washington non-profit corporation, also located at 925 N. Sequim Ave, Sequim, WA 98382 (“Homes”).

1. Summary of Fundamental Lease Provisions.

- **Landlord**

Dungeness Valley Lutheran Church
925 N. Sequim Ave
Sequim, WA 98382

- **Tenant**

Dungeness Homes
925 N. Sequim Ave
Sequim, WA 98382

- **Rent**

One Dollar (\$1.00) per year

- **Location of Complex**

925 N. Sequim Ave
Sequim, WA 98382 (legally described on Exhibit 1)

- **Lease Term**

Twenty (20) years, subject to early termination or extension as set forth below

2. **Purpose.** The purpose of this Lease is to allow Homes, a wholly-owned nonprofit subsidiary of the Congregation, to finance, construct, manage and operate an affordable housing complex (“Complex”) on property owned by the Congregation. Homes will offer units in the Complex for rent to families with children in the Sequim School District who do not have a permanent address. Homes will also offer support services – counseling, tutoring, etc. – to all tenants on a continuing basis.

3. **Term and Rents.** The Congregation hereby leases to Homes, and Homes hereby leases from the Congregation, the real property located generally at 925 N. Sequim Ave., Sequim, WA and legally described on Exhibit 1 (“Property”), together with the Complex

Homes will construct thereon, for term of Twenty (20) years, commencing on January 1, 2020 and terminating on December 31, 2040; provided, the term shall not commence until the Lease is approved at a congregational meeting of the Congregation. Homes and the Congregation acknowledge that the Property constitutes about one (1) acre located at the west end of the Congregation's real property. The annual rental will be ONE and NO/100 dollars (\$1.00) and other valuable consideration. Homes will make all rental payments to the Congregation at the address specified above on January 1 of each year.

3.1. **Possession.** If the Congregation is unable to deliver possession of the Property at the commencement hereof, the Congregation shall not be liable for any damage caused thereby, nor shall this Lease be void or voidable, but Homes shall not be liable for any rent until possession is delivered. Homes may terminate this Lease if possession is not delivered within Thirty (30) days of the commencement of the term hereof.

3.2. **Possible Extension.** 120 days prior to the expiration of the twenty (20) year term of this Lease, the Congregation and Homes shall jointly determine in good faith concerning whether Homes is operating the Complex on the Property in accordance with the Purpose set forth in Section 2 above. If the determination is in the affirmative, Homes and the Congregation shall extend the Lease for an additional Twenty (20) year term upon mutually agreeable terms and conditions.

4. **Use.** Homes shall use and occupy the Property as the operator of a non-profit affordable housing Complex, which shall be involved in charitable, educational, and other philanthropic endeavors pursuant to the purpose and powers of Homes as stated in its Articles of Incorporation and Bylaws.

5. **Pre-Construction and Construction.**

5.1. **Fiscal Matters.** Homes shall assume full and sole responsibility for the financing, contract management, construction and ongoing management of the Complex. Prior to beginning construction on the Complex, Homes shall demonstrate to the Congregation that it has sufficient funds and pledges in hand to complete construction of the Complex and operate it for two (2) years after completion of construction.

5.2. **Approval of Plans.** The Congregation shall have the right to approve both the final construction plans for the Complex and the supporting services plan for operating it.

6. **Operation of Complex.** Homes will, upon completion of construction, operate the Complex in a manner consistent with the plans approved by the Congregation. Specifically, Homes shall limit tenancy in the Complex to families with children attending the Sequim School District and who have no permanent address. Homes shall pay all operating expenses incurred in the operation of the Complex, including without limitation the installation and ongoing use of all utilities in the Complex. Homes shall further pay all local, state and federal taxes associated with the ongoing operation of the Complex.

7. **Care and Maintenance of Complex.** Homes shall, at its own expense and at all times, maintain the Complex in good and safe condition, including plate glass, electrical

wiring, plumbing and heating installations and any other system or equipment in the Complex in a manner commensurate with the standards by which the Congregation maintains its property. Homes shall surrender the Property and the Complex at termination of this Lease, in as good condition, normal wear and tear excepted. Homes shall be responsible for all repairs required, including the roof, exterior walls, and structural foundations.

8. **Indemnification.**

8.1. **By Homes.** Homes shall indemnify and hold the Congregation harmless from any civil and/or criminal action arising from Homes's actions pursuant to this Lease, including payment of any and all costs and/or attorney's fees as a result of the Congregation having to defend itself as a result of actions brought against it as a result of Homes's negligence.

8.2. **By the Congregation.** The Congregation shall indemnify and hold Homes harmless from any civil and/or criminal action arising from the Congregation's actions pursuant to this Lease, including payment of any and all costs and/or attorney's fees as a result of Homes having to defend itself as a result of actions brought against it as a result of the Congregation's negligence.

9. **Insurance.**

9.1. **Coverage.** Homes, at its expense, shall maintain insurance coverage on the Complex consistent with coverages for similar housing facilities, including without limitation public liability insurance (including bodily injury) and property damage insurance. Homes shall provide the Congregation with a Certificate of Insurance showing the Congregation as additional insured. The Certificate shall provide for a 30 day written notice to the Congregation in the event of cancellation or material change of coverage.

9.2. **Waiver of Subrogation.** To the maximum extent permitted by insurance policies, which may be owned by the Congregation or Homes, Homes and the Congregation, for the benefit of each other, waive any and all rights of subrogation, which might otherwise exist.

10. **Eminent Domain.** If the Complex or any part thereof materially affecting Homes's use of the Complex shall be taken by eminent domain, this Lease shall terminate on the date when title vests pursuant to such taking. Homes shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Homes may file a claim for any taking of fixtures and improvements owned by Homes, and for moving expenses.

11. **Destruction of Complex.** In the event of a partial destruction of the Complex during the term hereof, from any cause, Homes shall forthwith repair the same within a reasonable time, in which case this Lease shall continue in effect. If Homes shall not elect to make such repairs within a reasonable time, this Lease may be terminated at the option of either party. A total destruction of the Complex shall terminate this Lease.

12. **Homes' Default.** Homes will be in default under this Lease upon the occurrence of any of the following circumstances:

12.1. **Abandonment.** Prior to commencement of construction, Homes abandons the plans to construct the Complex as set forth in Section 2 above.

12.2. **Failure to Timely Construct.** Homes fails to commence construction on the Complex within five (5) years after the commencement date of this Lease.

12.3. **Unacceptable Operation or Maintenance.** The Congregation's Council ("Council") determines in its reasonable discretion that Homes' ongoing operation or maintenance of the Complex is unacceptable.

13. **Congregation's Remedies on Default.** Upon the occurrence of a default by Homes, the Congregation shall give Homes written notice of its determination that a default has and the reasons for it ("Notice").

13.1. **Termination of Lease.** If Homes fails to remedy the deficiencies to the Council's reasonable satisfaction within ninety (90) days of receiving the Notice, the Congregation may terminate this Lease. If the Congregation has so terminated this Lease, the Congregation may at any time thereafter take possession of the Complex by any lawful means and remove Homes or other occupants and their effects.

13.2. **Increase of Rent.** As an alternative to terminating the Lease, the Congregation may increase the Rent from the amount stated herein to an amount the Congregation reasonably determines to be the market rent in the Sequim community for ground leases with terms similar to this Lease. This increased rent shall be enforceable against Homes and any purchaser of the Complex from Homes.

13.3. **Right to Purchase Complex.** Upon Homes' and failure to timely remedy deficiencies, the Congregation shall have the right to purchase the Complex. The Congregation shall exercise this right by giving written notice to Homes within ninety (90) days of Homes' failure to remedy deficiencies. Upon Homes' receipt of such notice, Homes and the Congregation shall negotiate in good faith to determine price and terms. If Homes and the Congregation are unable to agree on price and terms, the price shall be the fair market value of the Complex as determined by an independent appraiser hired by both parties and the terms shall be standard terms pertaining to real estate purchases in the Sequim area.

13.4. **Waiver.** No failure to enforce any term shall be deemed a waiver.

14. **Miscellaneous.**

14.1. **Entry and Inspection.** Homes shall permit the Congregation or the Congregation's agents to enter upon the Complex at reasonable times and upon reasonable notice for the purpose of inspecting of the same.

14.2. **Attorney's Fees.** If suit should be brought for recovery of the Complex, or for any sum due hereunder, or because of any act which may arise out of the possession of the Complex, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

14.3. **Waiver.** No failure of the Congregation or Homes to enforce any term hereof shall be deemed to be a waiver.

14.4. **Notices.** Any notice, which either party may or is required to give shall be given by mailing the same, postage prepaid, to Homes at the Complex, or the Congregation at the address specified above, or at such other places as may be designated by the parties from time to time.

14.5. **Binding on Successors.** The covenants and agreements of this Lease shall be binding and shall remain an obligation, not only upon the Congregation and Homes, but also upon their successors, assigns and purchasers.

14.6. **Counterparts.** This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement.

14.7. **Corporate Authority.** Each individual executing this Lease on behalf of Congregation and Homes represents and warrants that he (or she) is duly authorized to execute and deliver this Lease on behalf of the Congregation and Homes, and that this Lease is binding upon the corporation.

14.8. **Amendments.** No amendment or termination of this Lease shall be effective unless in writing signed by authorized signatories of Congregation and Homes, or by their respective successors in interest. No actions, policies, oral or informal arrangements, business dealings or other course of conduct by or between the parties shall be deemed to modify this Lease in any respect.

14.9. **Execution and Change.** This Lease contains the entire agreement between the parties hereto with respect to the Lease and that, in executing it, the parties did not rely upon any statement, promise, or representation not expressed in writing in this Lease.

DUNGENESS VALLEY LUTHERAN
CHURCH

DUNGENESS HOMES

By _____
Its: _____

By _____
Its: _____

EXHIBIT 1

LEGAL DESCRIPTION

The west 139.00 feet of lots 3 and 4 of vacated short plat recorded January 27, 1984 in volume 13 of short plats, page 82, under auditor's file number 551266, records of Clallam County, Washington, being a portion of the northeast quarter of the southeast quarter of section 18, township 30 north, range 3 west, W.M., Clallam County, Washington.