

## LEASE AGREEMENT

This Lease Agreement (“Agreement” or “Lease”) is made this the 15th day of November, 2021, by and between the **City of Lynden** (hereinafter called “Lessor” or “City”), and **Kyle Olivarez** (hereinafter called “Lessee” or “Olivarez”). City and Olivarez may be referred to individually as “Party” and collectively as “Parties” herein.

**WHEREAS**, the City owns the real property located at 8200 Double Ditch Road, Lynden, Washington, depicted as **Lot C** in **Exhibit A** (“**Property**” or “**Leased Premises**”); and

**WHEREAS**, the City has agreed to lease the Property together with access thereto over an existing paved drive as shown on **Exhibit A** to Lessee on the terms and conditions set forth herein; and

**WHEREAS**, a portion of the Property is a public park and shall be used for public park purposes during the term of this Lease; and

**WHEREAS**, the foregoing recitals are a material part of this Agreement;

**NOW THEREFORE**, in recognition of the foregoing recitals, and in consideration of the covenants and agreements hereinafter contained, the Parties agree as follows:

### **1. Premises Leased and Consideration:**

The City hereby leases the Property to Lessee. Lessee is authorized to possess the Property pursuant to this Agreement commencing on **November 15, 2021**.

Lessee shall pay to the City as rent for the Property the sum of **\$2,000.00** per month inclusive of leasehold excise tax, in advance or on the first day of each calendar month. Rent will be prorated if the term does not start on the first day of the month or for any other partial month of the term. The first monthly payment will be prorated and shall be due upon execution of the Lease. Any rental payment not received by the City by the 10<sup>th</sup> day of each month shall give rise to a late charge of \$10.00 per day from the first day rent is late, which shall be due and payable immediately as rent hereunder. If a personal check is dishonored, a \$40.00 returned check charge will be assessed, and thereafter Lessee must pay by money order or cashier’s check.

Notwithstanding, the foregoing, the City shall not charge or impose any late fees or other charges against Lessee for the nonpayment of rent that became due prior to six (6) months following the expiration of the Governor’s eviction moratorium (State of Washington Governor’s Proclamation 20-19.6) on June 30, 2021.

**2. Term:**

The term of this Lease shall be **one (1) year**, beginning on the **November 15, 2021** and ending on **November 15, 2022**, with an option for an additional year. Lessee may exercise the option to renew the lease for an additional year by providing to the City at least twenty (20) days' written notice prior to the end of the lease term of Lessee's intent to exercise the option.

**3. Termination:**

Lessee may terminate this Lease at the end of the lease term by giving the City at least twenty (20) days' written notice prior to the end of the lease term. During the lease term, the City may terminate this Lease only due to a material breach by Lessee or if the Property becomes unsafe for residential use. The City may also terminate Lessee's tenancy at the end of the lease term by giving Lessee at least sixty (60) days' written notice prior to the end of the lease term that Lessee's tenancy will be deemed expired (and thus terminated) at the end of the lease term. The City shall serve said notice in a manner consistent with RCW 59.12.040.

**4. Insurance:**

Lessee is encouraged to obtain a renters policy of insurance to insure the value of his personal property located on the Property.

**5. Exclusive Access Areas:**

Lessee shall have exclusive access to the residence on the Property and its immediate grounds, all appurtenances to the residence, and the two lower lawn areas (the "Exclusive Access Area"), subject to lawful entry by the City or its agents. Outside of the Exclusive Access Area, remainder of the Property is a public park. The Parties agree that during the term of this Lease a legal description and depiction of the Exclusive Access Area may be prepared by Lessor to more precisely define the entire Exclusive Access Area, which description and depiction shall be made an addendum to this Agreement.

**6. Lessee Access to Areas Outside of Exclusive Access Areas:**

Lessee shall have non-exclusive access no greater and no less than any other member of the public to the Property outside the Exclusive Access Area. Outside the Exclusive Access Area, Lessee shall not trim or remove vegetation, cut down trees,

construct permanent or semi-permanent structures or other improvements, or engage in excavation or fill work.

**7. Stormwater Discharge Element:**

The City reserves the right to construct a stormwater discharge element on the Property for the Pepin Creek development project or Double Ditch overflow. In no event shall the City place the stormwater discharge element in a place or manner such that it prevents Lessee's residential use of the Property while this Lease is active. The City may prohibit Lessee from entering the area around the stormwater discharge element if required for safety or insurance purposes.

**8. Utilities and Fees:**

Lessee shall be solely responsible for all charges for light, heat, water, telephone, cable, sanitary services and other utilities which shall be charged against the Property during the full term of this Lease. In the event the City establishes utility service(s) outside the Exclusive Access Area, those costs and charges of utilities used outside of the Exclusive Access Area shall be borne by the City.

**9. Repairs, Maintenance, and Improvements – General Terms:**

The Property is accepted by Lessee in its present condition. Lessee shall, at his own expense and at all times, keep the Exclusive Access Area neat, clean and in a sanitary condition, and keep and use the Exclusive Access Area in accordance with applicable laws, ordinances, rules, regulations and requirement of governmental authorities. Lessee shall permit no waste, damage or injury to the Exclusive Access Area; all waste and junk shall be removed promptly. No hazardous materials of any kind shall be brought on the Property by Lessee, other than normal cleaning products, lawn care maintenance products and products typically stored at a person's place of residence primarily used for maintenance and repair. Lessee shall maintain the Exclusive Access Area in as good condition as they now are, reasonable use and wear excepted, and damage by fire and other casualty excepted.

**10. Repairs, Maintenance, and Improvements – Specific Terms:**

- a. **Written Permission of City Required.** Prior to undertaking any major maintenance or improvements in the Exclusive Access Area, the Lessee shall obtain the written permission of the City detailing the work to be performed. Lessee shall not undertake any maintenance or improvement activity outside the Exclusive Access Area.

- b. Residence.** Lessee shall be solely responsible for maintenance of the interior and exterior of the residence. This responsibility extends to elements of the residence including, but not limited to exterior walls and siding, roofs, foundations, decks, plumbing and electrical elements located inside of the residence, interior walls, flooring, all appliances, and all other interior or attached exterior fixtures. The Lessee may maintain and improve these elements in any way such that the value or safety of the Property is not greatly diminished, subject to Section 10(a) above.
- c. Outdoor Exclusive Access Area.** Lessee shall be responsible for mowing the two lower lawn areas, and maintenance of the grounds in the immediate vicinity of the residence, and all other outdoor portions of the Exclusive Access Area. The City shall supply Lessee with a suitable lawn mower for mowing the lawns.
- d. City Maintenance and Improvements.** The City shall maintain all areas of the Property outside of the Exclusive Access Area. The City may make improvements to these areas of the Property, including but not limited to adding park-like features such as on-site parking, playground equipment, trails, and other amenities. Lessee acknowledges that some or all of these improvements may take place while he resides on the Property.
- e. Capital Improvements.** Any capital improvements required to the Property shall be at the sole cost and expense of the City. The City need not make any needed capital improvements if it determines in its sole and absolute discretion that such capital improvements do not make economic sense. In such an event, Lessee shall have the option to terminate the Lease on five (5) days notices if the needed capital improvements injure their reasonable use and enjoyment of the Property.

#### **11. No Commercial Use by Lessee:**

Lessee shall not operate a commercial venture of any kind on the Property.

#### **12. Subletting or Assignment:**

Lessee shall not sublet, or through any other process, transfer to any other person rental of the Property, or any other right or privilege, without written permission of the City.

### **13. Right of Access:**

The City shall have the right to enter the Exclusive Access Area at all reasonable times for the purpose of inspection or of making excavations, surveys, design reviews, repairs, additions or alterations. Unless an emergency situation exists, all access by the City to the Exclusive Access Area shall require no less than twenty-four (24) hour prior written notice. The City shall have the right to enter areas on the Property other than the Exclusive Access Area at any time, with or without notice to Lessee.

### **14. Default:**

Material breaches of this Lease by Lessee shall constitute default and be grounds for termination of the Lease. In the event of a default by Lessee, the City may terminate this Lease and seek removal of Lessee from the premises, upon providing written notice as required by law.

### **15. Accidents and Non-Liability:**

Lessee agrees that the City shall not be liable for loss arising out of damage to or destruction of stored material goods and chattels or livestock resulting from any defect in the Property or from any other cause, while in the possession of Lessee. This Agreement shall be binding whether or not such damage or destruction be caused by the neglect of the City or its, agents, servants, or employees, and further, any and all right of subrogation by any insurance carrier is hereby waived, except as herein described.

### **16. Abandoned Property:**

Upon termination of Lease and surrendering possession of the Property to the City by the Lessee, or at the completion of the rental term or by any other means, any property remaining in or about the Property shall be assumed by the City to be abandoned property and may be disposed of in accordance with the laws of the State of Washington.

### **17. Relationship of the Parties:**

The Parties agree that they are each independent entities operating pursuant to the terms and conditions of this Agreement. No agent, employee, servant or representative of any Party shall be deemed to be an employee, agent, servant or representative of any other Party for any purpose. Each Party will be solely and

entirely responsible for its acts and for the acts of its agents, employees, and servants during the term of this Agreement.

**18. Indemnification and Hold Harmless:**

Lessee shall indemnify, defend and hold harmless the City from any and all claims, suits, actions, damage awards, fee awards, fines, or penalties, whether to person or property, or expense of any type or nature which may occur to the City including reasonable attorneys' fees, expert's fees and other costs, based upon the intentional or negligent acts or omissions of Lessee, its agents and/or employees in the performance of this Agreement. In any case in which suit or action is instituted against the City by reason of damages or injury caused in whole or in part by the gross negligence or intentional misconduct of Lessee, its agents and/or employees, the City shall cause written notice thereof to be given to Lessee and Lessee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the City. For purposes of carrying out this indemnification and hold harmless provision, Lessee expressly waives any immunity it may otherwise have pursuant to Title 51, Industrial Insurance provisions of the Revised Code of Washington.

**19. Costs and Attorneys' Fees:**

In the event any unlawful detainer action, lawsuit, or other legal proceeding is commenced pertaining to this Lease, the prevailing party shall be entitled to recover all of its reasonable legal costs and attorney's fees incurred from the other party.

**20. Extent of Agreement:**

This Agreement contains all of the terms and conditions agreed upon by the Parties. The Parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of the Agreement.

**21. Notice and Rent Payment.**

Any rent, notice, declaration, demand or communication to be given by a Party to this Agreement to the other shall be in writing and transmitted to the other Party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

**City of Lynden:**

**Lessee:**

\_\_\_\_\_  
Mayor Scott Korthuis

\_\_\_\_\_  
Kyle Olivarez

Date: \_\_\_\_\_

Date: \_\_\_\_\_

The mailing and certifying of any such notice as herein provided shall be sufficient service thereof. All notices given in compliance with this section shall be deemed effective two (2) business days following the deposit thereof in the U.S. mail, irrespective of the date of actual receipt of such notice by the addressee. Either Party may, by notice, change its address for notice.

**22. Recording.**

Either Party may choose to record this Lease with the Whatcom County Auditor's Office. The recording Party shall be responsible for the costs of recording and shall provide the other Party a copy of the recorded Lease.

**23. Entire Agreement.**

This Lease Agreement contains the entire agreement of the Parties hereto and supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. Neither the City nor Lessee shall be liable to the other for any representations made by any person concerning the Property or regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement. This Agreement may be amended only by written instrument executed by the City and Lessee or their lawful successors and assigns subsequent to the date hereof.

**24. Governing Law and Venue Stipulation:**

This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit in equity, or judicial proceeding, for the enforcement of the Agreement, or any of the provisions contained therein, shall be instituted and maintained only in the Whatcom County Superior Court, Bellingham, Washington.

**IN WITNESS WHEREOF**, the Parties have hereto set their hands and seals the date first above written.

LESSOR:  
THE CITY OF LYNDEN

LESSEE:

By \_\_\_\_\_  
Scott Korthuis, Mayor

\_\_\_\_\_  
Kyle Olivarez

STATE OF WASHINGTON    )  
  ) §  
COUNTY OF WHATCOM    )

I certify that I know or have satisfactory evidence that SCOTT KORTHUIS, the Mayor of the City of Lynden, signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument and acknowledged that he had the authorization to sign said instrument on behalf of the Lessor herein.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, NOTARY PUBLIC  
in and for the State of WA. My commission  
expires \_\_\_\_\_.

STATE OF WASHINGTON    )  
  ) §  
COUNTY OF WHATCOM    )

I certify that I know or have satisfactory evidence that KYLE OLIVAREZ signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument and acknowledged that he had the authorization to sign said instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, NOTARY PUBLIC  
in and for the State of WA. My commission  
expires \_\_\_\_\_.