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Document Title: Land Use Agreement

Grantors: City of Yakima, a municipal corporation;
Yakima Greenway Foundation, a Washington nonprofit corporation;

Grantees: City of Yakima, a municipal corporation;
Yakima Greenway Foundation, a Washington nonprofit corporation;
The Public

Legal Description (abbreviated): Ptn SW $\frac{1}{4}$ S 28 and SE $\frac{1}{4}$ S 29, T 13 N R 19 EWM

Additional legal(s) on page(s) _____

Assessor's Tax Parcel IDs#: 191329-41400; 191329-41404; 191328-32005

LAND USE AGREEMENT

This Land Use Agreement (the “Agreement”) is entered into by and between the CITY OF YAKIMA, a municipal corporation (“City”), and the YAKIMA GREENWAY FOUNDATION, a Washington nonprofit corporation (“Yakima Greenway”).

RECITALS

A. On, or about, April 30, 2018, the Wastewater Division of the City of Yakima through the Public Works Director for the City submitted land use applications for a Comprehensive Plan Map Amendment (“CPA”), Rezone, and for Environmental Review (the “Land Use Applications”) with regard to a portion of Yakima County Assessor Tax Parcel Numbers 191329-41400, -41404, and 191328-32005 located in the vicinity of Highway 24 and South 22nd Street in Yakima, Washington. The request was to change the selected 2.5 acres from low-density to commercial mixed use on the Future Land Use Map of the Comprehensive Plan and to concurrently rezone the property from Suburban Residential (SR) to General Commercial (GC). The property in question has now been surveyed and the legal description for the approximately 2.5 acres is set forth on the attached Exhibit “A”.

B. The “Subject Property” (described in Exhibit “A”) lies within the Yakima River Regional Greenway, sometimes identified as the “Greenway Overlay”. A map depicting the site is also attached as Exhibit “B”. This area was selected in 1977 by the Washington State Legislature as part of a uniquely valuable recreation, conservation, and scenic resource in the State of Washington. RCW 79A.05.750. Known as the “Washington State Yakima River Conservation Area”, the purpose recognized by the state legislature for this property is for development of recreational areas and their related facilities and to preserve, as much as possible, the river wetlands in their natural state. RCW 79A.05.775. The City adopted the Yakima River Regional Greenway Plan as part of its zoning ordinance, recognizing the Greenway Overlay (GO), in YMC Chapter 15.03.010, .020. The Greenway Master Plan was last updated in 1995 and was adopted by reference as part of the Yakima Urban Area Comprehensive Plan in April 1997. According to the 1995 Master Plan Update, commercial development in the area of the Subject Property “must be placed in the Greenway with a great deal of planning and consideration for the other needs of the Greenway. For this reason, commercial development has been encouraged only in those areas already zoned or developed commercially. All development should comply with Greenway design standards in order to maintain the integrity of the Greenway and a park like appearance throughout the corridor.” Greenway design standards are set forth in Appendix I to the 1995 Yakima Greenway Master Plan Update.

C. The City faces a severe housing crisis and lack of affordable housing especially for its very low income population. The Subject Property was identified as a possible location for homeless housing, however, the Wastewater Division intended the application submitted to be considered as a non-project CPA and Rezone. Following a

SEPA review and Determination of Non-Significance issued on July 5, 2018, the City's land use applications then proceeded to open record public hearings on August 8, 2018 before the Yakima Planning Commission. Following a continuation of the public hearing to September 12, 2018, on September 26, 2018, the Yakima Planning Commission adopted Findings and Conclusions that while the Comprehensive Plan Amendment was consistent with applicable approval criteria and YMC Section 16.10.040, nevertheless, the proposed rezone was not considered compatible with the surrounding neighborhood. The said recommendation of the Yakima Planning Commission was deliberated on by the Yakima City Council and on November 6, 2018, the City indicated approval of both the Comprehensive Plan Amendment and Rezone. In order to allow time for a survey to be completed of the 2.5 acre site, on, or about, December 4, 2018, the Yakima City Council adopted Ordinance No. 2018-053 approving both the Comprehensive Plan Amendment and Rezone, with an effective date of January 6, 2019.

D. Following the enactment of Ordinance No. 2018-053, the Yakima Greenway timely filed a Petition for Review of Land Use Decision ("LUPA Petition") in Yakima County Superior Court, Cause No. 18-2-04570-39, on December 21, 2018, and a Petition for Review before the Growth Management Hearings Board of Eastern Washington ("GMHB Petition") on, or about, January 31, 2019. The LUPA Petition case in Yakima County Superior Court has been stayed pending review by the Growth Management Hearings Board, pursuant to Order entered therein on February 7, 2019. Proceedings before the Growth Management Hearings Board have been extended in accordance with RCW 36.70A.300(2)(b) to enable the parties to discuss alternate dispute resolution. A status report is due in the GMHB Petition case, Case No. 19-1-0001 on December 4, 2019.

E. On, or about, August 5, 2019, a 6-person committee appointed by the Yakima City Council issued a report to the City Council to discuss and make recommendations concerning housing facilities that could be located on the Subject Property. That committee, consisting of representatives from the Arboretum, experts on programs and housing, City, County and community members and representatives, as well as City staff and legal counsel addressed three topics before the Council: (1) the nature of housing which may be appropriate and needed on the Subject Property; (2) the services potentially available on that site; and (3) the physical attributes of development at that location, including site-screening and other related topics. The Committee concluded that the Subject Property may not be optimal for housing, that there is no public transit available, the location was not walkable from town or close to services, and its proximity to the Wastewater plant was not ideal for housing. The Committee further acknowledged that the property was within the Greenway Overlay of the Yakima Zoning Ordinance and that the process outlined in the Yakima Municipal Code regarding the Greenway Overlay Zone would be required for any development of the property. Nevertheless, the Committee viewed the Subject Property as potentially suitable for some form of transitional housing with appropriate mitigations, support services, and outreach opportunities. The Yakima Greenway viewed several aspects of the Committee's report as compatible with the policies of the Yakima Greenway as long as certain safeguards are implemented and adhered to.

F. The parties have discussed the needs of the City, limitations on future use of the Subject Property, and additional mitigation proposals including Yakima Greenway use of City property adjacent and/or near the Subject Property for Yakima Greenway development and Yakima Greenway users and as a result of those discussions the parties have developed a strategy to protect and safeguard the Yakima Greenway which also helps address the shortage of affordable housing in Yakima for the very low income population. This Agreement, represents the culmination of the parties' discussions in this regard.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth in this Agreement, the parties agree as follows:

1. **Prohibited Uses.** In order for the Yakima Greenway to dismiss its LUPA Petition and GMHB Petition, the parties have first identified specifically prohibited uses of the Subject Property. The uses prohibited are in addition to those prohibited under Table 4-1 of YMC Section 15.04.030 in the GC zone, and as it may be amended. Additional prohibited uses of the Subject Property even though potentially allowed under said Table 4-1 in the GC zone are set forth on the attached Exhibit "C".

2. **Conditions.** Table 4-1 of YMC Section 15.04.030 allows for Group Homes, Adult Family Home, Boarding House, Convalescent and Nursing Homes, and Mission,¹

¹ The following definitions currently apply to the Health and Social Service Facilities listed in this paragraph:

"Group Home" means a place for handicapped, physically or developmentally disabled adults, or dependent or predelinquent children provided special care in a home like environment. This definition includes homes of this nature for six or fewer persons, excluding house parents, which are protected by state or federal laws as residential uses."

"Adult Family Home" means a regular family abode, licensed by the state, in which a person or persons provide personal care, special care, room, and board, to more than one, but not more than six adults who are not related by blood or marriage to the person or persons providing the services."

"Boarding House" means an establishment providing both lodging and meals for not more than ten persons residing in the facility on a permanent or semi-permanent basis.

"Convalescent or Nursing Home" means an establishment providing nursing, dietary and other personal services to convalescents, invalids, or aged persons, but not mental cases or cases for contagious or communicable diseases which are customarily treated in sanitariums and hospitals."

"Mission" means a facility typically owned or operated by a public agency or nonprofit corporation, providing a variety of services for the disadvantaged, typically including, but not limited to, temporary housing for the homeless, dining facilities, health and counseling activities, whether or not of a spiritual nature, with such services being generally provided to the public at large. Missions are subject to a Type 3 review and require an

hereinafter referred to as “Care Facilities”, under the land use category Health and Social Service Facility with varying review standards in the GC zone. For all Care Facilities, not prohibited under paragraph 1., above, there shall exist minimum standards to address issues of health and safety, operations and management, and facility design, which the parties hereto agree shall also be incorporated into a development agreement appurtenant to any such project development.

- A. Health and Safety. To promote health and safety to residents of any “Care Facilities” project targeted for the Subject Property as well as the public at-large, the following mitigation measures shall be required to be provided by the project developer:
- (i) the facility must have reasonable occupancy rules and regulations, adherence to which is mandatory for continued residency, such rules to include, for example, prohibiting criminal activity, discharge of firearms, illegal drug use and trafficking, gang activities, prostitution and gambling, and shall also include limitations on the number of occupants, visitors, and noise limitations;
 - (ii) any such developer must provide reasonable security in terms of construction, lighting, fencing and access as well as arranging for security staffing;
 - (iii) any such developer shall assist with enhancing security for the benefit of the public within the Greenway Overlay, by reasonably providing for increased lighting in dark areas, particularly near the SR 24 underpass, and Robertson Landing shall be lighted and fenced for Greenway user safety; and,

accompanying development agreement incorporating applicable development standards and mitigations imposed by hearing examiner. (Footnote continued on next page.)

Both parties acknowledge that at the time of entering into this Agreement the City’s Planning Commission has recommended removing the definition of “boarding house” and adding a new definition to the categories of Health and Social Service Facilities, namely, “congregate living facility.” It is anticipated these changes will be proposed to Table 4-1 of YMC Section 15.04.030 at a public hearing on December 3, 2019. If/when approved, the parties agree that the term “boarding house” herein will be replaced with the term “congregate living facility” defined as follows:

“Congregate living facility” means an establishment providing both lodging and meals, or the ability for residents of the facility to cook their own meals, for persons residing in the facility on a permanent or semi-permanent basis. This definition includes facilities commonly known as boardinghouse or dormitories, except that dormitories provided in conjunction with a proposed or existing educational facility shall be an accessory use to that facility.

- (iv) any such developer shall be required to insure reasonable means of transportation for occupants for medical, dental, treatment and therapy needs.

B. Operations and Management.

- (i) the facility must have a 24-hour on-site manager with experience in managing a Care Facility;
- (ii) besides an enforceable set of rules and regulations for its occupants, the facility must operate with reasonable procedures for maintenance, trash and debris removal, and weed and pest control; and
- (iii) the density of occupancy shall not exceed the allowed density of the facility meeting all Title 15 and City of Yakima development requirements.

C. Facility Design and Compatibility Requirements. For any such Care Facility the Design Standards adopted as Appendix I to the Yakima Greenway Master Plan Update 1995 shall be adhered to as much as possible, provided, however that design flexibility shall be promoted where it enhances the natural beauty of the Yakima Greenway and promotes access and recreational usage by the public and facility occupants of the Greenway Overlay.

The conditions for approval of a Care Facility on the Subject Property is intended to allow for on-site support services such as medical, dental and therapy providers, employment training and housing placement and coordination with other systems for residents of the facility. In this regard, the parties have been made aware of a Portland, Oregon housing development known as "The Blackburn Center" and Bellevue, Washington shelter sometimes referred to as the "Eastside Men's Shelter" which provide models for further development facility design considerations, operations and program management, health and safety and mitigation of impacts on surrounding property.

3. Mitigation Measures; Yakima Greenway Use of City Owned Property Within Close Proximity to the Subject Property. The parties agree to enter into a Greenway License Agreement, in the form attached hereto as Exhibit "D" which will allow the Greenway possession and use of a portion of City owned property adjacent to the Subject Property, the Yakima Greenway and the Wastewater Treatment Plant, hereinafter referred to as the "License Property." As part of the License, the Greenway shall not construct any permanent structures on the License Property without prior approval by the City, which may be withheld in the discretion of the City. Further, the Greenway acknowledges that any improvements made to the License Property will be at Greenway's cost, will be adequately maintained by the Greenway, and, if abandoned upon termination

of the Agreement, will become the property of the City of Yakima. A map depicting the License Property, with access roads and future projects to which use of the License Property is allowed, is attached as Exhibit “2” to the License.

4. Future Oversight and Development Within the Greenway Overlay. The parties understand and acknowledge that while efforts are being made to address and resolve the community’s housing crisis, that public recreation areas such as the Yakima Greenway, which are not designed to meet the housing needs of the homeless, are sometimes resorted to for refuge. The City agrees that the Yakima Greenway is an area of concern and consideration for homeless clean-up activities conducted by the City. The parties further agree that that for land use applications involving property within the Greenway Overlay Zone staff shall provide direct notice to the Yakima Greenway, as a private group with a known interest in land use proposals within the Greenway Overlay. RCW 36.70B.110(4)(c).

5. Development Review Process. This Agreement contemplates that City Ordinance No. 2018-053 will remain in effect and that the Subject Property is rezoned GC. Except as otherwise specifically set forth in this Agreement, development of the Subject Property shall not be subject to ordinance, resolution, rule, regulation, standard, directive, condition, or other measure that is in conflict with the law on the effective date of this Agreement or that reduces the rights provided by this Agreement unless agreed to in writing by the parties or imposed by the City through the exercise of substantive SEPA authority. Without limiting the generality of the foregoing, any changes in the law which would accomplish the following result on the Subject Property shall be deemed to conflict with the provisions of this Agreement:

- A. New legislation changing permitted land uses or the class or type of review of allowed uses in the General Commercial (GC) zone;
- B. New legislation redefining the terms for allowed uses within the General Commercial (GC) zone.

The City, nevertheless, reserves the authority to impose new or different regulations to the extent required to prevent a serious threat to public health and safety.

6. Effective Date. The Effective Date of this Agreement shall be the date of the last, required and acknowledged signature hereto.

7. Resolution of Pending Litigation. Upon final execution of this Agreement, properly approved by the parties hereto, the LUPA Petition and GMHB Petition filed under Yakima County Superior Court Cause No. 18-2-04570-39 and GMHB case number 19-1-0001 shall be dismissed and orders of dismissal with prejudice without an award of fees or costs to any party, shall be entered. The parties agree that no future litigation shall be commenced by the Yakima Greenway regarding the City’s request for Comprehensive Plan Amendment and Rezone which resulted in the adoption of Ordinance No. 2018-053;

provided, however, that the parties are free, consistent with the terms herein, to seek judicial remedies if necessary to enforce or interpret the provisions of this Agreement.

8. General Provisions.

- A. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.
- B. Amendment; Modifications. Any amendment to this Agreement must be approved by each of the following: (a) the City; and (b) the Yakima Greenway, their successors or assigns.
- C. Binding on Successors; Assignment; Enforcement.
 - (i) *Binding Agreement.* This Agreement shall be effective, binding upon and inure to the benefit of the successors and assigns of the Yakima Greenway and the City.
 - (ii) *Assignment.* The City has the right to assign or transfer all or any portion of its interest in the Subject Property to other parties. Consent by the Yakima Greenway shall not be required for any transfer of rights pursuant to this Agreement. Upon transfer, however, the transferee shall take any interest in the Subject Property subject to all obligations under this Agreement as to the property transferred.
 - (iii) *Enforcement of Agreement.* The City, and the Yakima Greenway, may enforce the terms and conditions of this Agreement in any court or tribunal with jurisdiction. Venue for any such action shall lie in Yakima County, Washington.
- D. Recording. This Agreement shall be recorded with the Yakima County Auditor and shall be binding on the parties, their successors and assigns.
- E. Interpretation. The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the City's and the Yakima Greenway's right to resolve land use disputes by agreement. This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall imply to the interpretation or enforcement of this Agreement.
- F. Severability. If any provision of this Agreement is determined to be unenforceable or invalid by a court of law, then this Agreement shall thereafter be modified to implement the intent of the parties to the maximum extent allowable under law. If a court finds unenforceable or invalid any

portion of this Agreement, the parties agree to seek diligently to modify the Agreement consistent with the court decision, and no party shall undertake any actions inconsistent with the intent of this Agreement until the modification of this Agreement has been completed. If the parties do not mutually agree to modifications within forty-five (45) days after the court ruling, then either party may initiate the dispute resolution proceedings in subsection 8.G., for determination of the modifications which implement the intent of this Agreement and the court decision.

G. Disputes; Default and Remedies.

- (i) *Dispute Resolution.* In the event of any dispute relating to this Agreement, all parties upon the request of any other party shall meet within seven (7) days of the request to seek in good faith to resolve the dispute. The City shall send the appropriate department director and persons with information relating to the dispute and the Yakima Greenway shall send a representative and any consultant or other person with technical information or expertise related to the dispute.
- (ii) *Default and Remedies.* No party shall be in default under this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is something that cannot be reasonably cured within the thirty (30) days, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall not be deemed a default. Any party not in default under this Agreement shall have all rights and remedies provided by law including without limitation, damages, specific performance or writs to compel performance or require action consistent with this Agreement.

H. No Third Party Beneficiary. This Agreement is made and entered into for the sole protection of the parties, their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

I. Integration. This Agreement represents the entire Agreement of the parties. There are no other agreements, oral or written, except as expressly set forth in this Agreement.

J. Authority. The City and Yakima Greenway each represent and warrant that they have the respective power and authority, and are duly authorized to execute, deliver and perform their obligations under this Agreement.

- K. Headings. The headings in this Agreement are inserted for reference only and shall not be construed to expand, limit or otherwise modify the terms and conditions of this Agreement.
- L. Notice. All communications, notices and demands of any kind which a party under this Agreement requires or desires to give to any other party shall be in writing and either (i) delivered personally; (ii) sent by electronic-mail transmission with request for receipt confirmation from the recipient (with return e-mail receipt serving as proof of delivery); or (iii) deposited in the US mail, certified mail, postage prepaid, return receipt requested and addressed as follows:

If to Yakima Greenway:

Yakima Greenway Foundation
c/o Kellie Connaughton
111 South 18th Street
Yakima, WA 98901
(509) 453-8280
kellie@yakimagreenway.org

with a copy to:

Halverson | Northwest Law Group P.C.
Michael F. Shinn
PO Box 22550
405 E. Lincoln Avenue
Yakima, WA 98907
(509) 248-6030
mshinn@hnw.law

If to the City:

City of Yakima
City Manager
129 N. 2nd Street
Yakima, WA 98901
(509) 575-6040

with a copy to:

City of Yakima
Jeff Cutter
Yakima City Attorney
Legal Department
200 South Third Street, 2nd Floor

Yakima, WA 98901
(509) 575-6030
jeff.cutter@yakimawa.gov

Notice by hand delivery or e-mail shall be effective with proof of receipt, if deposited in the mail, notice shall be deemed delivered forty-eight (48) hours after deposited. Any party at any time by notice to the other party may designate a different address or person to which such notice or communication shall be given.

- I. Cooperation. The parties shall not unreasonably withhold requests for information, approvals or consents provided for in this Agreement. The parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority to implement the intent of this Agreement. The City and Yakima Greenway agree to work cooperatively with each other to achieve the mutually agreeable goals as set forth in this Agreement. In this regard, the parties pledge to work cooperatively towards further updating the Yakima Greenway Master Plan and revisiting YMC Chapter 15.03 with regard to the Greenway Overlay and the adequacy of current land use legislation for the protection of the Yakima River Regional Greenway.

IN WITNESS WHEREOF, this Agreement has been entered into between the City and the Yakima Greenway, and is effective as of the ____ day of _____, 2019.

YAKIMA GREENWAY FOUNDATION,
a Washington non profit corporation
(Yakima Greenway)

By: _____
Ellen S. Jackson, President

CITY OF YAKIMA, a political subdivision
of the State of Washington

By: _____
_____, City Manager

Approved as to Form:

Jeff Cutter, City Attorney

[ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

STATE OF WASHINGTON)
)
County of Yakima)

I certify that I know or have satisfactory evidence that ELLEN S. JACKSON, is the person who appeared before me and is the PRESIDENT of YAKIMA GREENWAY FOUNDATION, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that (s)he is authorized to execute the same instrument on behalf of the corporation.

Given under my hand and official seal this ____ day of _____, 2019.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission Expires: _____

STATE OF WASHINGTON)
)
County of Yakima)

I certify that I know or have satisfactory evidence that _____, is the person who appeared before me and is the CITY MANAGER of THE CITY OF YAKIMA, the municipality that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that (s)he is authorized to execute the same instrument on behalf of the corporation.

Given under my hand and official seal this ____ day of _____, 2019.

NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission Expires: _____

Exhibit "A"
Legal Description of Subject Property

That part of the Southwest quarter of Section 28 and the Southeast quarter of Section 29, Township 13 North, Range 19 East, W.M., described as follows:

Commencing at the East quarter corner of said Section 29;

Thence North 89°17'40" West along the North line of the Southeast quarter of said Section 29 a distance of 205.60 feet to the Northerly extension of the "W-Line" shown on Washington State Department of Transportation (WSDOT) right of way plans "SR 82 SR 24 Interchange" dated March 26, 2004;

Thence South 0°25'20" West along said "W-Line" and its Northerly extension 396.05 feet;
Thence South 89°34'40" East 70.00 feet the Easterly right of way line of South 22nd Street as shown on said WSDOT right of way plans and the Point of Beginning;

Thence North 0°25'20" East along said right of way line 138.99 feet to an angle point in the Southerly right of way line of State Route 24;

Thence North 59°34'05" East along said right of way line 86.13 feet to a point on a curve concave to the Southwest, the center of said curve bearing South 18°19'49" West 1575.00 feet;

Thence Southeasterly along said curve consuming a central angle of 17°23'43" an arc length of 478.18 feet;

Thence North 71°25'18" West 21.68 feet to the point of curvature of a curve concave to the South and having a radius of 45.00 feet;

Thence Southwesterly along said curve consuming a central angle of 86°38'41" an arc length of 68.05 feet;

Thence South 21°56'01" West 39.49 feet to the point of curvature of a curve concave to the Northwest and having a radius of 400.00 feet;

Thence Southwesterly along said curve consuming a central angle of 23°37'37" an arc length of 164.95 feet;

Thence South 45°33'39" West 25.92 feet to the point of curvature of a curve concave to the Northeast and having a radius of 82.00 feet;

Thence consuming central angle of 126°10'43" an arc length of 180.58 feet;

Thence North 8°15'39" West 73.57 feet to the point of curvature of a curve concave to the Southwest and having a radius of 125.00 feet;

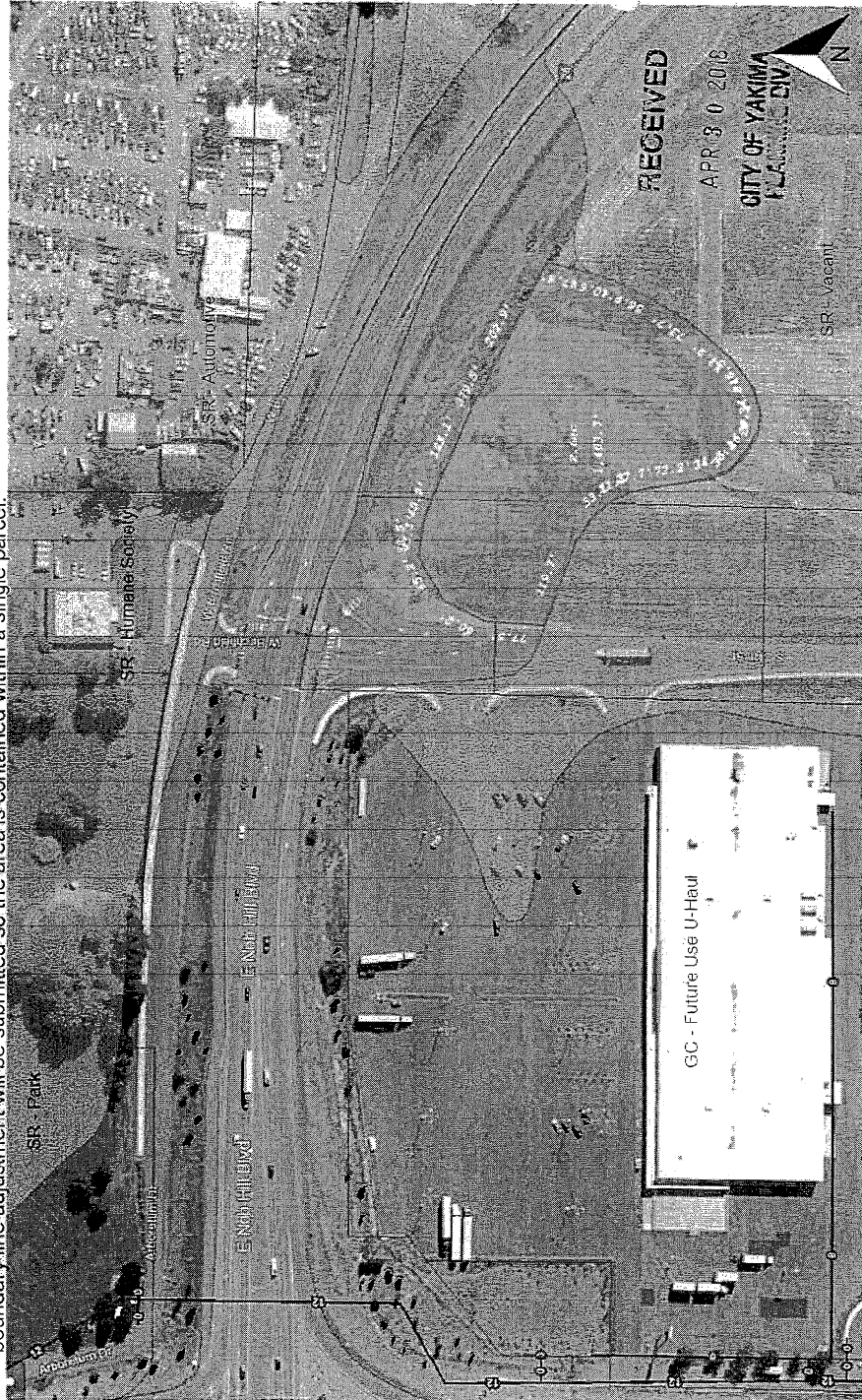
Thence consuming a central angle of 61°58'27" and arc length of 135.21 feet;

Thence North 70°14'06" West 72.45 feet to the Point of Beginning;

Situate in Yakima County, Washington.

Exhibit "B" Site Map

City of Yakima Comprehensive Plan and Rezone application. The approximately 2.6 acre area outlined below contains the portions of Parcels 191328-32005, 191329-41400, and 191329-41404 which are outside of the 100-year FEMA Floodplain. If approved, a boundary line adjustment will be submitted so the area is contained within a single parcel.



Address: Vicinity of SR-24 and S 24th St. Zoning: SR Future Land Use: Low Density Residential

Parcels: 191328-32005, 191329-41400, 191329-41404

City of Yakima, 2220 East Viola

Yakima, WA 98901

Exhibit "C"
Prohibited Uses

1. Low barrier emergency shelter.
2. Halfway house.
3. Treatment centers for drug and alcohol rehabilitation.
4. Correctional facilities.
5. A tavern, bar, nightclub, cocktail lounge, liquor store, discotheque, dance hall or any other establishment selling alcoholic beverages for on-premises consumption; provided, however, the foregoing shall not prohibit the operation of a restaurant where the sale of alcoholic beverages therein comprises less than thirty (30%) percent of the restaurant's gross revenues.
6. A service station, automotive repair shop, truck stop or vehicle fueling station.
7. A flea market or pawnshop.
8. A dry cleaning plant, central laundry or laundromat (which shall not preclude a "drop off" and "pick up" dry cleaning service where all dry cleaning processes shall be located outside of such premises).
9. A piercing pagoda or tattoo parlor or similar establishment.
10. An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts.
11. A massage parlor or any establishment purveying similar services.
12. A mobile home or trailer court, labor camp, junkyard or stockyard.
13. A landfill, garbage dump or for the dumping, disposing, incineration or reduction of garbage.
14. A gambling establishment of any kind including, without limitation, a casino, bingo parlor or betting parlor (but lottery tickets may be sold and

government sponsored lottery and similar gaming devices may be operated incidental to non-casino and non-hotel primary business at the premises).

15. An assembling, manufacturing, industrial, distilling, refining or smelting facility.

16. A storage warehouse or storage facility, except for storage incidental to a permitted use.

17. Any use which regularly emits a noxious odor, loud noises or sounds which can be heard or smelled outside of the occupant's premises.

18. A "so called" head shop.

19. A store or facility for the retail, wholesale or medical distribution of marijuana, or the sale or distribution of drugs or drug products by any business other than a licensed pharmacy.

**Exhibit “D”
License Agreement**