

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement ("Amendment") is entered into this 25th day of September, 2020, by and between the **CITY OF YAKIMA, WASHINGTON**, a municipal corporation organized under the laws of the state of Washington ("City"), **BRUCE SIMPSON** and **THERESA CAMPBELL-SIMPSON** and **BONA TERRA, LLC**, a Washington limited liability company (collectively "Simpson"), and **THE MEMORIAL FOUNDATION**, a Washington nonprofit corporation (the "Foundation").

RECITALS

A. To strengthen the public planning process and provide certainty to project development, the legislature of the state of Washington enacted RCW 36.70B.170-.210 (the "Development Agreement Statutes"), which authorize the City to enter into an agreement with any person having an ownership interest or control of real property located within the City regarding the development of such real property.

B. Simpson owns the approximate 0.66-acre parcel of real property addressed 3111 Tieton Drive, Yakima, Washington 98902 (Yakima County Assessor's Tax Parcel No. 181323-33003) that is legally described on attached Exhibit A (referred to as the "Subject Property"). The Subject Property is presently improved with a historic Tudor structure historically known as the "Raymond House." The Subject Property is located at the intersection of Tieton Drive and South 32nd Avenue (a signalized intersection) and adjoins property owned by Yakima Valley Memorial Hospital Association.

C. Simpson previously proposed that the Subject Property be rezoned from R-1 Single-Family Residential to B-1 Professional Business and it was previously determined that the requested rezone was consistent with the adopted Urban Area Comprehensive Plan for the City of Yakima. The rezone application was coupled with applications for a multi-use building including coffee house, hair salon, professional office space, and facility for private receptions. The purpose of the applications was to preserve the historic structure and grounds while allowing limited and defined usage of the facility.

D. A revised Site Plan was provided based upon comments and requirements of the Hearing Examiner for the City of Yakima, by letter dated the 28th day of June, 2001.

E. The City and Simpson agreed the rezone and approved land uses were limited to the specific proposal presented in the application and that no material modification, expansion, or alteration of such uses would be permitted without compliance with applicable ordinance procedures governing such matters.

F. The City and Simpson entered into that certain Development Agreement dated December 13, 2001, and recorded along with City of Yakima Ordinance No. 2001-65 on December 14, 2001, under Yakima County Auditor's File No. 7248394 (the "Development Agreement") to provide certainty for planning and use of the property and to assure the limitation of permissible uses to those identified and reviewed by the Hearing Examiner and City Council.

G. As stated therein, the terms of the Development Agreement were personal to Simpson and their family and beneficiaries and not transferable or assignable without a public hearing and amendment of the Development Agreement.

H. On or about December 22, 2016, Bruce Simpson conveyed ownership of his ownership interest in the Subject Property to Bona Terra 16, LLC, which limited liability company agreement is wholly owned by Simpson.

I. Bona Terra 16, LLC and the Foundation have entered into a purchase and sale agreement for the sale of the Subject Property by Bona Terra 16, LLC to the Foundation; *provided, however*, said sale is conditioned on the Foundation's satisfaction that the Subject Property is and will remain appropriately zoned for the Foundation's planned use of the Subject Property as an professional office and other ancillary uses thereof.

J. Simpson now wishes to assign and transfer all of Simpson's right, title, interest, and requirements in and under the Development Agreement to the Foundation in connection and contemporaneous with Bona Terra 16, LLC's conveyance and sale of the Subject Property the Foundation.

K. This Amendment is now entered into and executed by the undersigned parties for the purposes of (1) memorializing the assignment and transfer of all of Simpson's right, title, interest, and restrictions under the Development Agreement to the Foundation in connection and contemporaneous with Bona Terra 16, LLC's conveyance and sale of the Subject Property the Foundation, (2) memorializing the City's approval and consent to said assignment and transfer, and (c) to provide for certain minor amendments to the Development Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein, the City, Simpson, and the Foundation AGREE AS FOLLOWS:

1. **Amendment.** This Amendment amends, supplements, and is made part of the Development Agreement. In the event of a conflict between the provisions of this Amendment and the Development Agreement, the provisions of this Amendment will control. Nevertheless, except as expressly amended or supplemented by this Amendment, the provisions of the Development Agreement remain in full force and effect.

2. **Assignment and Acceptance.** Simpson hereby assigns and transfers all of Simpson's right, title, interest, and restrictions in and under the Development Agreement (as amended by this Amendment) to the Foundation in connection and contemporaneous with Bona Terra 16, LLC's conveyance and sale of the Subject Property the Foundation and the Foundation hereby accepts and assumes the same.

3. **Section 2 Amendment.** Section 2 of the Development Agreement is amended to permit the continued use of the Subject Property under the terms and requirements of the Development Agreement in accordance with the Subject Property's now built and presently configured site plan.

4. **Section 4(b) Amendment.** Section 4(b) of the Development Agreement is wholly amended and restated in its entirety to now read and provide as follows:

“ (b) **Professional/Administrative Office.** Professional/administrative offices may be maintained in the existing structures. Except as otherwise permitted under this Agreement, no retail business shall be permitted and any public conferences/meetings will be by appointment only.”

5. **Section 4(c) Amendment.** Section 4(c) of the Development Agreement is amended to remove the following verbiage: “and operated by Theresa Campbell-Simpson”.

6. **Section 6, 6(a), and 6(b) Amendments.** Sections 6, 6(a), and 6(b) of the Development Agreement are wholly amended and restated in their entirety to now read and provide as follows:

“ 6. **Nonassignability of Agreement.** The approved uses and this Agreement are personal to The Memorial Foundation and are not transferable or assignable without a public hearing and amendment of this Development Agreement. In the event The Memorial Foundation ceases to utilize the Subject Property in accordance with this Agreement, the following shall occur:

(a) **Reversion to Single Family Zoning.** Upon termination of use and occupancy by The Memorial Foundation, the zoning of the Subject Property shall revert to R-1 zoning.

(b) **Comprehensive Plan.** The Memorial Foundation further agrees that the land-use designation contained in the Yakima Urban Area Comprehensive Plan may return to Low Density Residential upon compliance with applicable procedures and processes with respect thereto.”

7. **Section 9, 13, 14, 15, and 16 Amendments.** Sections 9, 13, 14, 15, and 16 of the Development Agreement are each amended to replace all references to Simpson and Simpson’s family with new references to The Memorial Foundation.

8. **Notices to The Memorial Foundation.** Any notice or demand the City is required to give or make upon the Foundation under the Development Agreement shall be given/made in accordance with the provisions of Section 10 of the Development to the Foundation at the following address:

The Memorial Foundation
3111 Tieton Drive
Yakima, Washington 98902

9. **Effective Date.** This Amendment shall become effective upon the date (the “Effective Date”) on which (a) the ordinance approving this Amendment is authorized becomes effective the date of this Amendment (September 25, 2020) and (b) this Amendment is fully executed by the City, Simpson, and the Foundation.

10. **Incorporation of Recitals.** The Recitals contained in this Amendment are hereby incorporated into this Amendment as if fully set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment effective as of the Effective Date set forth in Section 9 above.

CITY OF YAKIMA,
a Washington municipal corporation

THE MEMORIAL FOUNDATION,
a Washington nonprofit corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

BONA TERRA 16, LLC,
a Washington limited liability company

BRUCE SIMPSON

By: _____
Name: _____
Title: _____

THERESA CAMPBELL-SIMPSON

STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

On _____, 2020, _____ ("*Signer*") who is personally known to me or proved by satisfactory evidence to be the Signer, personally appeared before me and acknowledged that Signer executed the above-stated **FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("*Instrument*")** as Signer's free and voluntary act and deed for the uses and purposes stated in the Instrument and that Signer is authorized to execute the Instrument as the _____ for the **CITY OF YAKIMA**, a Washington municipal corporation.

(*print name*) _____
NOTARY PUBLIC in and for the state of Washington
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

On _____, 2020, _____ ("*Signer*") who is personally known to me or proved by satisfactory evidence to be the Signer, personally appeared before me and acknowledged that Signer executed the above-stated **FIRST AMENDMENT TO DEVELOPMENT AGREEMENT ("*Instrument*")** as Signer's free and voluntary act and deed for the uses and purposes stated in the Instrument and that Signer is authorized to execute the Instrument as the _____ for **THE MEMORIAL FOUNDATION**, a Washington nonprofit corporation.

(*print name*) _____
NOTARY PUBLIC in and for the state of Washington
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

On _____, 2020, _____ ("*Signer*") who is personally known to me or proved by satisfactory evidence to be the Signer, personally appeared before me and

acknowledged that Signer executed the above-stated **FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** ("*Instrument*") as Signer's free and voluntary act and deed for the uses and purposes stated in the Instrument and that Signer is authorized to execute the Instrument as the _____ for the **BONA TERRA 16, LLC**, a Washington nonprofit corporation.

(print name)
NOTARY PUBLIC in and for the state of Washington
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

On _____, 2020, **BRUCE SIMPSON** ("*Signer*") who is personally known to me or proved by satisfactory evidence to be the Signer, personally appeared before me and acknowledged that Signer executed the above-stated **FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** ("*Instrument*") as Signer's free and voluntary act and deed for the uses and purposes stated in the Instrument and that Signer is authorized to execute the Instrument in the Signer's individual capacity.

(print name)
NOTARY PUBLIC in and for the state of Washington
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF YAKIMA)

On _____, 2020, **THERESA CAMPBELL-SIMPSON** ("*Signer*") who is personally known to me or proved by satisfactory evidence to be the Signer, personally appeared before me and acknowledged that Signer executed the above-stated **FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** ("*Instrument*") as Signer's free and voluntary act and deed for the uses and purposes stated in the Instrument and that Signer is authorized to execute the Instrument in the Signer's individual capacity.

(print name)
NOTARY PUBLIC in and for the state of Washington
My appointment expires _____

EXHIBIT A

LEGAL DESCRIPTION

THE WEST 186.4 FEET OF THE SOUTH 208 FEET OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 13 NORTH, RANGE 18 E.W.M.;

EXCEPT THE WEST 20 FEET;

AND EXCEPT THE SOUTH 30 FEET;

AND EXCEPT A TRIANGLE IN THE SOUTHWEST CORNER CONVEYED TO THE CITY OF YAKIMA, UNDER AUDITOR'S FILE NOS. 2001307, 2001308, AND 2001309;

AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF YAKIMA, UNDER AUDITOR'S FILE NO. 2957528.

SITUATED IN YAKIMA COUNTY, STATE OF WASHINGTON.