

**DEVELOPMENT AGREEMENT  
BETWEEN  
CITY OF YAKIMA, WASHINGTON AND  
A DLT INVESTMENT GROUP, LLC**

THIS DEVELOPMENT AGREEMENT (“agreement”) is entered into between the City of Yakima, a Washington municipal corporation (“City”), and A DLT Investment Group, LLC, a Washington Limited Liability Company (“Developer”).

WHEREAS, the City is a first class charter city incorporated under the laws of the State of Washington, and has the authority to enact laws and enter into agreements to promote the health, safety and welfare of its citizens and thereby to control the use and development of property within its corporate limits; and

WHEREAS, the City has the authority to enter into development agreements with those who own or control property within its jurisdiction pursuant to RCW 36.70B.170-36.70B.210, YMC 15.28.050 and YMC 14.10.010; and

WHEREAS, Developer has obtained development rights for a 5.16 acre parcel at the southwest corner of S. 90<sup>th</sup> Avenue and Tieton Drive, Yakima, Washington (the “property”). The property legal description is in Exhibit ‘A’ and incorporated herein, and

WHEREAS, Developer intends to take certain steps to comply with environmental and land use requirements related to development of the property; and

WHEREAS, Developer is proposing a 20 lot subdivision and creation of a planned development with certain amenities for the property; and

WHEREAS, Developer intends to take certain steps to comply with environmental and land use requirements related to development of the property; and

WHEREAS, pursuant to the Growth Management Act, RCW 36.70A, the City adopted its Yakima Urban Area Comprehensive Plan. Subsequently, the City has revised and updated this plan and has adopted, and continues to adopt, development regulations to implement the plan, including adoption of Yakima Urban Area Zoning Ordinances, which zoned the property B-2 Local Business; and

WHEREAS, the parties intend this agreement to guide the current and future uses of the property; now, therefore,

IN CONSIDERATION OF mutual benefits, the parties agree as follows:

**1. The proposed development.** Developer’s proposal for the property is hereby acknowledged and warranted to be for the purpose of constructing a residential subdivision and planned development. Developer specifically acknowledges and warrants that the proposal for the property is construction of not more than 20 two-family residential structures (duplexes) on separate lots

together with accompanying amenities. The Developer's preliminary plat/planned development application have been filed with the City. It was reviewed and recommended for approval by the Hearing Examiner to the Yakima City Council in the form of a Hearing Examiner's Recommendation dated on October 7, 2021, and incorporated herein as if set forth in full. The said subdivision and planned development are referred to herein as the "proposed development".

**2. Conditions of approval.** Developer agrees to abide by the terms and conditions of approval recommended by the Hearing Examiner, including construction of all infrastructure described on the preliminary plat/planned development site plan map and incorporated herein by this reference as if set forth in full, including as the same may be revised to conform with conditions of approval set forth in the Hearing Examiner's Recommendation. Developer agrees that the use of the property pursuant to this agreement shall be consistent with the project description identified in the Washington State Environmental Policy Act Mitigated Determination of Nonsignificance issued by the City of Yakima on July 30, 2021 and incorporated herein by this reference as if set forth in full (the "DNS"). Developer agrees to abide by the mitigation and other requirements identified as a part of the MDNS. Developer agrees to abide by the conditions of such further or additional land use permits or approvals as may be identified in the MDNS, or as may otherwise be required by applicable federal, state and local law including, but not limited to, the City's Title 12 and all other applicable development standards, all as the same currently exist or may be hereafter amended; provided, however, that the procedures and substantive rules of the City's Master Planned Development ordinances, as codified at Ch. 15.28, Yakima Municipal Code as it existed as of the date of this agreement and incorporated herein by this reference, shall guide and control all matters related to said ordinances and to the planned development aspect of the proposed development until this agreement terminates as provided elsewhere herein. Developer agrees to make future applications or submissions as may be necessary to fully implement any phased review of the proposed development and any specific project proposed therein.

**3. Summary of proposed modifications to development standards.** Reduction of the following Title 12 private road standards (YMC 12.06.090) and Title 12 and Title 15 sidewalk standards (YMC 12.05.010) and (YMC 15.05.020(J)):

- a. Access easement width from 50 feet to 40 feet,
- b. Pavement width from 30 feet to 25 feet,
- c. No sidewalks,
- d. No turnaround provided that gates are provided at the far (west) end of the private streets that allow for emergency vehicle access to them,
- e. No frontage improvements on South 92<sup>nd</sup> Avenue.

**4. Developer's Compliance.** Developer agrees to abide by all such conditions identified as a part of the Developer's Homeowner's Association and Declaration of Covenants, Conditions, and Restrictions for the proposed development and incorporated herein by this reference as if set forth in full.

**5. Appeals.** In the event that any of the permits or approvals associated with the proposed development, including but not limited to SEPA determinations, preliminary plat, Type 2 Review, or planned development approval, are or may be appealed, then in that event the City's obligations

under this agreement and under the above-referenced development entitlements, shall be suspended, and may be terminated in whole or in part to the extent that the City reasonably believes necessary to maintain consistency between this agreement (and/or the above-referenced development entitlements) and the conclusion of any appellate proceedings associated with the proposed development. Developer agrees not to appeal any of the previously required permits or approvals associated with the proposed development, including but not limited to SEPA determinations, preliminary plat, Type 2 Review or planned development approval.

**6. Default/Notice.** No party shall be in default under this agreement unless it has failed to perform as required for a period of 30 days after written notice of default to the 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. The party not in default under this agreement shall have all rights and remedies provided by law or equity, including without limitation, damages, specific performance or writs to compel performance or require action consistent with this agreement.

**7. No third party beneficiary.** This agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision in this agreement.

**8. Third party legal challenge.** In the event any legal action or special proceeding is commenced against the City by any person or entity other than by a party to this agreement to challenge this agreement or any provision herein, including any of the permits, approvals or entitlements associated with this agreement, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer. In such event, Developer shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to reasonable attorneys fees and expenses of litigation and damages awarded to the prevailing party or parties in such litigation. The Developer shall not settle any such tendered lawsuit without the consent of the City, which consent shall not be unreasonably withheld.

**9. Term.** This agreement shall continue in force for a period of thirty (30) years unless extended or terminated as provided herein or when the property has been fully developed, whichever first occurs, and all the Developer's obligations in connection herewith have been satisfied in the sole reasonable discretion of the City. Provided, however, that termination of this agreement shall not affect any of Developer's obligations to comply with the Yakima Urban Area Comprehensive Plan, any applicable zoning, subdivision, or other municipal codes, or any land use entitlements approved with respect to the property or proposed development. Termination of this agreement shall not affect any of Developer's obligations herein which expressly or by implication are to continue after the termination of this agreement; notwithstanding the generality of the foregoing, the parties expressly agree and covenant that the streets within the proposed development shall be required to be private and shall never be accepted by the City of Yakima as public streets.

**10. City's reservation of rights.** The parties intend this agreement is interpreted to the full extent authorized by law and as an exercise of the City's authority to enter into development agreements pursuant to RCW 36.70B.170. Provided, however, that this agreement shall be construed to exclude from its scope and reserve to the City the authority which is prohibited by law from

implementation by mutual agreement with consideration of parties acting under Ch. 36.70B RCW. Without limitation, this shall include the right of the City to impose new or different conditions on the property to the extent required by stormwater development standards and any serious threat to public health and safety. Developer acknowledges that any phased approach to developing the proposed development contemplates and requires the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA and other applicable law. Nothing in this agreement shall be construed to limit the authority or the obligation of the City or any of its officials or officers in complying with or applying applicable law during review of specific project proposals or other subsequent phases of the proposed development.

**11. Developer's warranties and representations.** Developer represents and warrants to the City that Developer has a property interest in the property, and that the covenants and obligations of Developer in this agreement and in the permits, approvals, and entitlements associated with this agreement and the proposed development do not violate or constitute a default under or breach of any agreement between Developer and any third party by which Developer is bound. Developer represents and warrants to City that Developer is fully authorized to enter into and perform its obligations under this agreement. Developer represents and warrants to City that there is neither pending nor, to the knowledge of Developer, any threatened legal action, arbitration or administrative hearing before any governmental authority to which Developer is a party and which could enjoin or restrict Developer's right or ability to perform its obligations under this agreement.

**12. Modification of an approved master planned development overlay.** Modifications to the adopted master development plan and/or development agreement may be requested from time to time.

Minor modifications will undergo Type 1 Review as defined in YMC Chapter 15.13. The administrative official shall review modifications to adopted master development plan and/or development agreement as a minor modification if it has been determined that:

1. The amendment does not increase the areas identified for any particular land use or increase the residential density approved in the master plan;
2. The amendment does not increase the total area of nonresidential uses by more than five percent;
3. The amendment does not materially change the type and character of approved uses;
4. The amendment does not materially change parking or traffic circulation within the development;
5. The amendment does not materially change setbacks, buffers, landscaping, shoreline, critical areas, or other mitigation measures
6. The amendment does not materially impact the overall design of the approved master plan; and
7. Other similar changes of a minor nature proposed to be made to the configuration, design, layout or topography of the master planned development which are deemed not to be material or significant in relation to the entire master planned development and are determined not to have any significant adverse effect on adjacent or nearby lands or the public health, safety or welfare.

Major modifications will undergo Type 3 Review as defined in YMC Chapter 15.15 and shall be referred to the hearing examiner in accordance with YMC 15.15.040. A “major modification” shall be any modification to an approved master development plan or development agreement that is deemed to be more significant than a “minor modification” as described hereinabove.

**13. Vesting.** The master planned development review shall be vested to development regulations, standards, conditions, and laws applicable at the time the development agreement is recorded, inclusive of specific conditions and standards set forth in said Development Agreement to the extent it complies with applicable Washington law. The vesting period shall be for the “Term” as stated in the development agreement and shall be agreed upon by the parties to the Development Agreement after giving consideration to the extent and complexity of the proposed development as well as specific development planning considerations raised by the Developer.

**14. Severability.** If any provisions of this agreement are determined to be unenforceable or invalid pursuant to a final decree or judgment by a court of law or tribunal with jurisdiction, then the remainder of this agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect.

**15. Agreement to be recorded.** This agreement may be modified only by written agreement of the parties hereto. This agreement or a memorandum thereof shall be recorded against the property as a covenant with the land which touches and concerns the property and shall be binding upon the City and Developer, their heirs, successors and assigns, and all future owners of the property. Developer shall be responsible for the costs of recording.

**16. Agreement approval.** This agreement may only become effective upon execution by the City of Yakima following adoption of a resolution approving the same following a public hearing in compliance with Chapter 36.70B RCW.

**17. Entire agreement.** This agreement constitutes the entire agreement of the parties and incorporates all prior discussions and agreements.

IN WITNESS WHEREOF, this Agreement has been entered into between the City and Developer and is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2021.

**A DLT INVESTMENT GROUP, LLC,  
a Washington limited liability company**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY OF YAKIMA, a Political Subdivision of  
the State of Washington**

\_\_\_\_\_  
By: \_\_\_\_\_, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
By: \_\_\_\_\_, City Attorney

ATTEST TO:

\_\_\_\_\_  
By: \_\_\_\_\_, City Clerk

[ACKNOWLEDGMENTS ON FOLLOWING PAGES]

STATE OF WASHINGTON )  
 ) ss.  
County of Yakima )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of A DLT INVESTMENT GROUP, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the same instrument on behalf of the limited liability company.

Witness my hand and official seal hereto affixed the day and year first above written.

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

STATE OF WASHINGTON )  
 ) ss.  
County of Yakima )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of A DLT INVESTMENT GROUP, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the same instrument on behalf of the limited liability company.

Witness my hand and official seal hereto affixed the day and year first above written.

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





**Exhibit "A"**  
**Legal Description**

Lot 1 of that certain Short Plat recorded in Book 92 of Short Plats, Page 14 Records of Yakima County, Washington;

Together with that portion of Lot 2 of said Short Plat lying North of a line described as follows:

Beginning at the Northwest corner of said Lot 2;

Thence South 0°00'13" West, along the West line thereof, 432.91 feet to the Southwest corner of said Lot 2 and the True Point of Beginning of the herein described line;

Thence North 89°29'50" East 359.16 feet to the East line of said Lot 2 and the terminus of the herein described line;

Except right-of-way conveyed to Yakima County under Auditor's File No. 7282942, Records of Yakima County, Washington.