

**LEASE AGREEMENT – PARKING LOTS**  
**City of Yakima**  
**And**  
**JEM Development Company**

**THIS LEASE AGREEMENT - PARKING LOTS** (the "Lease") is entered into and effective as of the \_\_\_ day of May, 2015 (herein the "Effective Date"), by and between JEM Properties, LLC, Morrier Family Realty, LLC, and JEM Development Real Estate, Inc., doing business as JEM Development Company (collectively, the "Lessor"), and the City of Yakima, a municipal corporation (the Lessee, hereafter called "City"). Lessor and City are sometimes referred to herein collectively as the "parties".

**I. Recitals**

A. The companies comprising Lessor are a corporation or limited liability company, each of which is duly formed and existing under the laws of the State of Washington, with principal business offices located at 402 East Yakima Avenue, Suite 1200, Yakima, Washington 98901.

B. City is a municipal corporation duly formed and existing under the laws of the State of Washington, with City Hall located at 129 North 2<sup>nd</sup> Street, Yakima, Washington 98901.

C. Lessor owns, operates and maintains property and structures, more particularly described below, which are adequate and available for parking of vehicles. Lessor and City desire to enter this Lease, whereby Lessor will make available to City the described parking lots and structures for parking of vehicles for the public and for access of the public in connection with the parking of vehicles.

**II. Agreement**

In consideration of the mutual covenants, conditions and benefits in this Lease, the Lessor and the City agree as follows.

**1. The Premises.** The Lessor hereby leases to the City, and the City hereby leases from the Lessor, the following six (6) parcels situated in the City of Yakima, Yakima County, Washington (collectively called the "Premises"), and as further collectively shown on the maps attached hereto as Exhibit "A," which Exhibit "A" is hereby incorporated herein by this reference:

**(A) Parking Lot A: North 4<sup>th</sup> Street and North Naches Avenue Parcels.** The following three (3) parcels comprise Parking Lot A, improved as paved parking lots with 80 parking spaces, collectively:

**(i) Parking Lot, 101 North 4<sup>th</sup> Street.**

This parcel is approximately 0.45 acre in size and is located at the corner of East "A" Street and North 4<sup>th</sup> Street. This parcel is legally described as follows:

Lots 14, 15 and 16 of Block 89. Plat of Yakima, being within the Northwest quarter of Section 19, Township 13, Range 19 E.W.M.; EXCEPT the South 10 feet of said Lot 16 for street right of way.

Yakima County Assessor's Parcel No.191319-21447.

**(ii) Parking Lot, 107 North 4<sup>th</sup> Street.**

This parcel is approximately 0.32 acre in size and is located north of and abutting Parcel (i) described above. This parcel is legally described as follows:

Lots 12 and 13, Block 89, Plat of Yakima

Yakima County Assessor's Parcel No. 191319-21445.

**(iii) Parking Lot, 108 North Naches Avenue.**

This parcel is approximately 0.32 acre in size and is located east of and abutting Parcel (ii) described above. This parcel is legally described as follows:

Lots 4 and 5, Block 89, Plat of Yakima

Yakima County Assessor's Parcel No. 191319-21440.

Parcel A(i) above is owned of record by Morrier Family Realty, LLC, a Washington limited liability company. Parcels A(ii) and A(iii) above are owned of record by JEM Development Real Estate, Inc., a Washington corporation (the legal name of which was changed from "Yakima Mall Shopping Center Corporation" to "JEM Development Real Estate, Inc.", by Amendment to Articles of Incorporation filed with the Washington Secretary of State's office).

**(B) Parking Lot B: Parcels on southeast corner of intersection of East Chestnut Avenue and South Naches Avenue.** The following three (3) parcels comprise Parking Lot B, improved as paved parking lots with \_\_\_\_ parking spaces, collectively:

**(i) Parking Lot, 101 South Naches Avenue.**

This parcel is approximately 8,796 square feet in size and is located at the southeast corner of the intersection of East Chestnut Avenue and South Naches Avenue. This parcel is legally described as follows:

Lot 16 and the North one-third of Lot 15, Block 112, Plat of Yakima.

Yakima County Assessor's Parcel No. 191319-13426.

**(ii) Parking Lot, 103 South Naches Avenue.**

This parcel is approximately 8,985 square feet in size and is located south of and abutting parcel (i) described above. This parcel is legally described as follows:

The North two-thirds of Lot 14, and the South two-thirds of Lot 15, Block 112, Plat of Yakima.

Yakima County Assessor's Parcel No. 191319-13425.

**(iii) Parking Lot, 105 South Naches Avenue.**

This parcel is approximately 9,191 square feet in size and is located south of and abutting parcel (ii) described above. This parcel is legally described as follows:

Lot 13, and the South one-third of Lot 14, Block 112, Plat of Yakima.

Yakima County Assessor's Parcel No. 191319-13424.

Said parcels comprising Parking Lot B are owned of record by JEM Properties, LLC, a Washington limited liability company.

**2. Term.** The parties agree and understand that the purpose of this Lease is to provide additional public parking spaces during the time that the "Downtown Plaza" (situated on the City-owned property commonly known as 22 South 3<sup>rd</sup> Street (Yakima County Assessor's Parcel No. 191319-24507)) is being constructed. Consequently, the term of this Lease will commence upon the date that a written "Notice to Commence" is issued by City to Lessor (hereafter the "Commencement Date"). The initial term of this Lease will be for a two (2) year period ending on the second (2<sup>nd</sup>) anniversary date of the Commencement Date, subject to administration on a month-to-month basis until termination as set forth below.

Unless earlier terminated in accordance with the terms hereof, this Lease shall be automatically renewed for four (4) additional two-year terms; provided that, the final term shall in any event end no later than May 31, 2125. Either party shall have the right to terminate this Lease in its entirety, or the right to modify the Lease by terminating the application of this Lease to any one or more of the parking lots comprising Parking Lot A or Parking Lot B as defined and described in Section 1 above, upon sixty (60) days prior written notice in accordance with and pursuant to Section 17 below. Either party may elect nonrenewal of this Lease, or modification of this Lease by withdrawing any one or more of the parking lots comprising Parking Lot A or Parking Lot B as defined and described in Section 1 above, by delivering written notice of nonrenewal to the other party at least sixty (60) days prior to the date of the expiration of the then term of this Lease.

Notwithstanding the above, the parties anticipate that City will issue its Notice to Commence within two years after execution of this Lease. If such Notice to Commence is not issued by City on or prior to the 2<sup>nd</sup> anniversary date of the Effective Date then this Lease shall expire and terminate without further notice to either party.

**3. Use.** City shall use the Premises as parking lots for the general public (and not for City's employees, contractors and the like) and for no other use or purpose. City shall not allow its employees or any other persons to use the Premises for any use or purpose other than parking for the general public without the prior written consent of the Lessor, which consent may be withheld in the Lessor's sole and absolute discretion. City shall have the sole right and authority to regulate and control use of such parking lots for the general public during the term of this Lease, and may post appropriate signage governing allowable purposes and parking times. City shall not permit anything to be done in or about the Premises that will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Provided that, notwithstanding the foregoing, City may permit its employees and its guests the non-exclusive use of Parking Lot B in the manner and to the extent as provided in that certain Lease dated February 17, 2015, by and between City and The Tower, LLC, a Washington limited liability company (and an affiliate of Lessor herein) for the lease of Suite 100 in that certain property known and generally referred to as the "Tower Annex."

**4. Rent.** City will not pay rent, but Lessor agrees and acknowledges that performance of City's improvements, maintenance and repair obligations, as well as other mutual benefits, as set forth herein and below, constitute good and sufficient consideration supporting this Lease.

**5. City Improvements.** City will restripe all of the parking lots comprising Parking Lot A and Parking Lot B and will provide signage as deemed appropriate in City's sole discretion, all at City's sole cost. For purposes of information only, the City estimates that the cost of restriping of Parking Lot A will be approximately \$3,000.00. In addition, City shall install lighting in each of the parking lots comprising Parking Lot A and Parking Lot B that is of a type and location at such parking lots that is necessary, in

City's discretion as it shall determine, to ensure the safety of the general public utilizing the Premises. City shall install such lighting, all at its sole cost, within sixty (60) days after the Commencement Date.

**6. Security Deposit.** None

**7. Utilities.** City shall pay any and all charges for water, sewer, gas, electricity, telecommunication, cable, and all other utilities at the Premises and shall establish accounts directly with the utility providers.

**8. Maintenance and Repair; Upkeep of Premises; Hazardous Substances.** City is solely responsible for all maintenance and repair of the Premises, including but specifically not limited to snow removal. City shall keep the Premises in a neat and safe condition. The City shall maintain the Premises in compliance with all laws, ordinances, or regulations governing the Premises and the City's use of the Premises. The Lessor shall have no obligation to make any repairs or improvements to the Premises from and after the Effective Date and during the term of this Lease. City's duties to repair and maintain the Premises shall not include any duty or responsibility to replace pavement on the Premises, or to repair damage to such pavement caused by ordinary wear and tear. City's duty to repair pavement shall be limited to that portion of any existing pavement excavated by City to facilitate installation of lighting or any other approved City improvement.

City shall not keep on or around the Premises, for the use, disposal, treatment, transportation, generation, storage or sale, any substances designated as or containing components designated as hazardous, dangerous, toxic or harmful, and/or which are subject to regulation as hazardous substances by any federal, state or local law, regulation, statute or ordinance (collectively referred to as "Hazardous Substances"). Without limiting the foregoing City shall with respect to any such Hazardous Substance comply promptly, timely, and completely with all governmental regulations regarding Hazardous Substances. In the event City shall be found to have violated any of the above covenants, any and all costs incurred by Lessor as a result of City's non-compliance, including Lessor's attorneys fees and costs, shall be additional rent and shall be due and payable to Lessor immediately upon demand by Lessor. Without limiting the foregoing, City shall be fully and completely liable to Lessor for and shall indemnify, defend and hold Lessor harmless from and with respect to any and all cleanup costs and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to the use, disposal, treatment, transportation, generation and/or sale of Hazardous Substances, in or about the Premises.

**9. Property Taxes.** Lessor shall be responsible for paying the property taxes.

**10. Condition.** City has had the opportunity to inspect the Premises prior to signing this Lease and accepts the Premises in their "AS IS" condition without any representation from the Lessor as to its condition or suitability for City's intended use.

**11. Alterations.** Except as set forth above in Paragraph 5 of this Lease, City shall not make any alterations, additions, or improvements to the Premises without first obtaining the written consent of the Lessor, which consent may be withheld in the Lessor's sole discretion.

**12. Liability; Indemnification; Release.** City hereby agrees to indemnify and to hold Lessor harmless from and to defend Lessor against: (a) any and all claims of liability for any injury or damage to any person or property whatsoever occurring in, on or about the Premises or any part thereof, except only those claims for liability arising solely from the intentional acts or gross negligence of Lessor or its agents or representatives in, on or about the Premises; (b) any and all claims arising from any breach or default in the performance of any obligation on City's part to be performed under the terms of this Lease, or arising from any act or negligence of City, or any of its agents, contractors, employees or invitees; and (c) any and all costs, attorneys fees, expenses and liabilities incurred by Lessor relating to any such claims in (a) or (b) above or in any action or proceeding brought thereon.

Nothing in this Lease or in this section shall create any obligation by either party (or both parties) to defend, hold harmless or indemnify any person or member of the public entering upon or using the Premises described herein. Nothing in this Lease or in this section shall be construed to create any liability for any personal injuries (including death) or property damage caused by or resulting from the use of the Premises by any third party and/or member of the public entering upon or using the Premises or parking spaces described herein.

**13. Insurance.** City will procure and maintain, at its sole cost and expense, during the term of this Lease, insurance satisfactory to the Lessor, insuring the Lessor (a) from liability for damage to person or property and (b) for contractual liability arising in whole or in part from action or inaction by, or on behalf of, the City arising out of the rights or obligations of City under this Lease. For the avoidance of doubt, City does not have responsibility to obtain insurance for replacement of the Premises in the case of a catastrophic event, which coverage is the responsibility of the Lessor in Lessor's discretion.

As of the Commencement Date of this Lease, and continuing without interruption during the term of this Lease, City shall provide certificate(s) of insurance to Lessor on behalf of City. The certificate(s) of insurance shall meet the following minimum requirements.

**Commercial General Liability Insurance.** City shall provide Lessor with a certificate of insurance as proof of commercial liability insurance and commercial umbrella liability insurance with a total liability limit of the limits required in the policy, subject to minimum limits of Two Million Dollars (\$2,000,000.00) per

occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Lease. The policy shall name the Lessor, its officers, agents, and employees as additional insureds. City shall not cancel or change the insurance without first giving Lessor thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and licensed in the State of Washington

**14. Assignment; Sublease.** City shall not assign this Lease and City shall not sublease the Premises in whole or in part.

**15. Lessor's Right of Access.** The Lessor, or the Lessor's employees or agents, shall have the right to enter the Premises in a reasonable manner upon reasonable advance notice to City to inspect the Premises or to conduct surveys, testing, or studies in connection with any engineering, design, financing, or permitting activities related to potential development of the Premises; provided, however, that no notice will be required in emergency circumstances where it is impractical to provide City with advance notice. The Lessor shall use reasonable efforts to minimize any disruption of City's activities.

**16. Default.** Each of the following shall constitute an Event of Default:

- a. The City fails to maintain at all times the insurance required by this Lease.
- b. Either party fails to comply with any agreement or requirement in this Lease, other than the obligations listed in subsection (a), for a period of thirty (30) days after notice from the Lessor.

If an Event of Default has occurred and continues, the non-defaulting party may terminate this Lease and pursue any other remedies available under Washington state law. In any litigation, the substantially prevailing party shall be entitled to collect from the other party, in addition to any damages, all reasonable costs, fees, and expenses, including reasonable attorneys' fees, incurred by the prevailing party in pursuing its remedies.

**17. Termination.** Either party may terminate this Lease in whole or in part by delivering at least sixty (60) days' advance written Notice of Termination to the other party. For avoidance of doubt, the City or Lessor may terminate this Lease in its entirety or only in part by terminating the lease with respect to any one or more of the parking lots comprising Parking Lot A and Parking Lot B as defined and described in Section 1 above. On the expiration of the Term, or any earlier termination of this Lease, the City shall: (a) immediately vacate the Premises (or the portion thereof terminated); (b) repair all damage to the Premises (or the portion thereof terminated) caused by the City's removal of its equipment and property from the Premises; and (c) restore the terminated

Premises to the general condition that existed at the commencement of the Term, reasonable wear and tear excepted. The City's indemnity obligation shall survive the termination or expiration of this Lease.

**18. Entire Agreement, Applicable Law, Venue.** This Lease contains the entire agreement of the parties with respect to the leasing of the Premises and no representations or agreements not included in this Lease shall be enforceable unless in writing and signed by the party to be charged. This Lease shall be governed by and interpreted in accordance with the laws of the State of Washington. Venue for any action arising out of the performance, breach or enforcement of this Lease shall lie in Yakima County, Washington.

IN WITNESS WHEREOF, the Lessor and the City have caused this Lease to be executed by their duly authorized agents as of on the date first written above.

**CITY:**

**LESSOR:**

**CITY OF YAKIMA**

**JEM DEVELOPMENT REAL ESTATE,  
INC.; JEM PROPERTIES, LLC;  
MORRIER FAMILY REALTY, LLC**

By: \_\_\_\_\_  
Tony O'Rourke, City Manager

By: \_\_\_\_\_  
Joseph Morrier, President and  
Manager, respectively

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

By: \_\_\_\_\_  
Sonya Claar Tee, City Clerk



ATTESTATION

STATE OF WASHINGTON )  
 ) ss.  
Yakima County )

At Yakima, Washington, this \_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared JOSEPH MORRIER, President, and \_\_\_\_\_, Secretary, duly authorized officers agent of JEM Development Real Estate, Inc., and JOSEPH MORRIER, as Manager of JEM Properties, LLC and as Manager of Morrier Family Realty, LLC, and acknowledged this instrument, by said officers sealed and subscribed, to be said officers' free act and deed and the free act and deed of the LESSOR named above.

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

STATE OF WASHINGTON )  
 ) ss.  
Yakima County )

At Yakima, Washington, this \_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared TONY O'ROURKE, City Manager of the City of Yakima, CITY named above, and acknowledged this instrument, by said officer sealed and subscribed, to be said officer's free act and deed and the free act and deed on behalf of the CITY named above.

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