

**APPLETON STORAGE I, LLC**  
**SPECIAL USE DEVELOPMENT AGREEMENT**

THIS SPECIAL USE ~~RE~~DEVELOPMENT AGREEMENT (“Agreement”) is made by and between the City of Appleton (“City”), a municipal corporation and political subdivision of the State of Wisconsin, located in Outagamie County and Appleton Storage I, LLC, a Wisconsin limited liability company. (“Developer”).

WITNESSETH:

WHEREAS, Developer owns approximately ~~8.36~~11.56 acres of land located at 2400 West College Avenue in the City, within TIF District 10, all as described on the attached Exhibit A (the “Property”); and

WHEREAS, Developer seeks to divide the Property in accordance with the certified survey map (the “CSM”), which CSM was approved by the City on June 20, 2018. The CSM as approved by the City is attached hereto as Exhibit B; and

WHEREAS, Developer seeks to develop the Property into a personal storage facility on Lot 2 of the CSM and other uses on Lot 1 of the CSM; and

WHEREAS, on May 2, 2018, the City granted a conditional Special Use Permit for Lot 2 of the CSM; and

WHEREAS, the City conditioned the issuance of the Special Use Permit for the personal storage facility on the terms and conditions set forth below;

NOW THEREFORE, in consideration of the mutual covenants herein exchanged, the parties hereto agree as follows:

SECTION I

**PRE-DEVELOPMENT AND CONSTRUCTION PERIOD:** The following shall be undertaken by Developer in connection with the initial development of the Property into a personal storage facility, with related improvements, on Lot 2 of the CSM.

1. Plans. Developer is authorized to construct the development in strict conformity with plans and other documents submitted to and approved by the City, said plans and other documents being attached hereto, made a part hereof and marked as follows:

Exhibit A     Legal description

Exhibit B     Certified survey map

- Exhibit C Site plan
- Exhibit D Utilities, drainage and Grading-grading plan
- Exhibit E Architectural plans, including elevations
- Exhibit F Sign plan
- Exhibit G Report adopted by the Plan Commission on April 10, 2018
- Exhibit H Resolution #1-18 adopted by the Common Council on May 2, 2018

Exhibit I Landscaping plan submitted by the Developer for approval by the City

Developer agrees that all exhibits shall require final approval by City Staff, ~~City Planner, City Director of Inspection Services or City Engineer, as applicable,~~ before any plans can be implemented. Implicit in this covenant is the right of the City to require additional data and plan revisions, not inconsistent with applicable ordinances, or requests by required boards and committees. Such approvals shall not be unreasonably withheld, conditioned or delayed.

2. Specific Planning Consultant Special Use Permit Conditions. City Staff must be satisfied that the specific conditions to the plans for the personal storage facility, as adopted by City, are met. These conditions include those set forth in Exhibit H, except as modified herein.

(a) Roadway. The section of the Property dedicated for public roadway, is depicted on Exhibit B. The dedication for public roadway on the Property and on the adjoining property in the Town of Grand Chute is depicted on Exhibit C. Any roadway to be constructed where depicted on either Exhibit B or C shall require no setback area, be 28 feet in width, shall be improved with pavement and curbing (at no cost to Developer) and shall not allow sidewalks or parking on either side. If the roadway improvements are not constructed within five (5) years of the issuance to Developer of the first occupancy permit on Lot 2 of the CSM, City shall vacate the dedicated roadway on the Property and convey it to Developer.

(b) Purchase Option. The City's right to purchase Lot 1 of CSM shall commence ~~upon~~ three (3) years after the issuance of the first occupancy permit on Lot 2 of the CSM and shall expire three (3) years thereafter. During the period of the non-exclusive option, Developer retains the right to market Lot 1 of the CSM and, if Developer enters into a purchase/sale agreement with a prospective owner of Lot 1 of

the CSM, City's option right is suspended, pending closing of said purchase/sale agreement. If closing occurs, the option is cancelled. If closing does not occur, the City's option rights are reinstated. If the City chooses to exercise its option as provided above, the City shall notify Attorney Alan Marcuvitz by U.S. Mail of its decision. Both parties shall obtain an appraisal of Lot 1 within sixty (60) days of the City's notification of its intent to exercise said option and provided to the other party within ten (10) days of receipt. The parties shall negotiate the purchase price based upon the appraisals received. The appraisals shall establish a maximum and minimum purchase price for said property.

If the Developer enters into a purchase/sale agreement with a prospective owner of Lot 1 of the CSM, and said purchase/sale agreement is closed on said purchase, the City's option is not exercised. If a subsequent purchaser does not develop Lot 1 of the CSM within three (3) years of said purchase, the City's option becomes applicable on the terms herein identified.

3. Specific Engineering Conditions. City Staff must be satisfied that the additional specific conditions to the plans for the personal storage facility, as adopted by City, are met. All site engineering-related portions of the project, including traffic engineering, driveway design (including driveway design at intersecting streets), grading, storm water runoff and drainage, utilities, easements, sewer, water, electrical and all other engineering-related issues are subject to review and approval of the City Engineer.
4. Building Code Compliance. All proposed architectural and construction plans are subject to review and approval by the City ~~Director of Inspection Services~~ for compliance with all building codes.
5. Governmental Permits. Copies of any letters of review or permits required by any federal, state or county regulatory agency or other governmental agency shall be submitted to City prior to site plan approval.
6. Compliance with Ordinances. Developer shall comply with all applicable ~~Village~~ City ordinances during all construction by Developer, its successors or assigns on the Property.
7. Easement Documents. Prior to commencement of construction, Developer shall provide the City fully executed easements, as reasonably required by the City Engineer, such as utility easements benefiting the Property.
8. Off-Property Costs and Improvements. Developer shall pay all costs for

improvements and perform any work off the Property required by any imposition or requirement of any governmental body, including City, or any public utility.

9. Restrictive Covenants Prohibited. Other than this Agreement or as expressly authorized by City, neither Developer nor its successors or assigns may record with the Outagamie County Register of Deeds any covenant limiting or restricting the use of the Property or any portion of the Property. This prohibition does not apply to the recording of utility, access, storm water, parking or similar easements.

## SECTION II

OPERATIONAL CONDITIONS: The following conditions shall apply to operation of the proposed personal storage facility on Lot 2 of the CSM.

1. Outdoor Activities Prohibited. All sales, display, servicing, processing and other business, shall be conducted within completely enclosed buildings. All such activities are prohibited outdoors without a special use permit specifically granted by City for any such use.
2. Drives and Parking. Access drives are exclusively for ingress and egress for customer and employee vehicles and delivery trucks. Parking spaces are exclusively for parking for customer and employee vehicles. All parking shall occur in parking stalls designated in the Site Plan as off-street parking. There shall be no parking along College Avenue Service Road. Delivery truck parking shall be only for the reasonable time required to load and unload the trucks. All other use of parking spaces and drives is prohibited.
3. Truck Deliveries and Snowplowing. Truck deliveries and snowplowing shall be limited to 7:00 a.m. to 8:00 p.m. Snow from Lot 2 of the CSM shall not be stored on Lot 1 of the CSM.
4. Overhead Doors. All overhead doors shall remain closed unless loading or unloading is in progress.
5. Noise. HVAC mechanical units shall comply with the City noise ordinance. No outdoor public address speakers shall be used except as required for emergency purposes.

## SECTION III

AMENDMENTS:

This Agreement may not be rescinded, modified or amended, in whole or in part, except by mutual written agreement of the parties hereto, or their successors or assigns.

#### SECTION IV

##### SEVERABILITY OF PROVISIONS:

If any provision of this Agreement shall be held or declared to be invalid, illegal or unenforceable by reason of its being contrary to any applicable law, such provision shall be deemed to be deleted from this Agreement without impairing or prejudicing the validity, legality or enforceability of the remaining provisions.

#### SECTION V

##### MEDIATION OF DISPUTES REQUIRED:

Prior to litigation, and as a condition precedent to bringing litigation, any party deeming itself aggrieved under this Agreement shall be obligated to request nonbinding mediation of the dispute. Mediation shall proceed before a single mediator. In the event the parties cannot agree, the aggrieved party may then commence an action. However, the parties will thereafter be required to agree to alternative dispute resolution, if ordered by the Court.

#### SECTION VI

##### REMEDIES:

1. In the event of any party's default which is not cured within thirty (30) days after written notice thereof to the defaulting party, the non-defaulting party shall have all rights and remedies available under law or equity with respect to the default. In addition, and without limitation, any of the parties shall have the following specific rights and remedies:
  - (a) With respect to matters that are capable of being corrected by the non-defaulting party, the non-defaulting party may, at its option, correct the default and the non-defaulting party's reasonable costs in correcting the same, plus interest as provided in Section 3 below, shall be paid by the defaulting party to the non-defaulting party immediately upon demand;
  - (b) Injunctive relief;
  - (c) Action for specific performance; and;
  - (d) Action for money damages.
2. Reimbursement. Any amounts expended by the non-defaulting party in enforcing this Agreement, including reasonable attorney fees, together with interest at the

rate provided in Section 3 below, shall be reimbursed or paid to the non-defaulting party. If the defaulting party is Developer or its successors or assigns, such amounts expended by the City shall constitute a lien against the Property until such amounts are reimbursed or paid to the City, with such lien to be in the nature of a mortgage and enforceable pursuant to the procedures for foreclosure of a mortgage.

3. Interest. Interest shall accrue on all amounts required to be reimbursed by the defaulting party to the non-defaulting party at the prime rate of interest as established from time to time by U.S. Bank N.A. plus two percent (2%) per annum, from the date of default until the date of reimbursement in full with accrued interest.
4. Remedies are Cumulative. All remedies provided herein shall be cumulative and the exercise of one remedy shall not preclude the use of any other or all of said remedies.
5. Failure to Enforce Not Waiver. Failure to enforce any provision contained herein shall not be deemed a waiver of that party's rights to enforce such provision or any other provision in the event of a subsequent default.

#### SECTION VII

##### FORCE MAJEURE:

As used herein, the term "Force Majeure" shall mean any accident, breakage, war, insurrection, civil commotion, riot, act of God or the elements, governmental action, strike or lockout, picketing (whether legal or illegal), inability of a party or its agents or contractors, as applicable, to obtain fuel or supplies, or any other cause or causes beyond the reasonable control of such party or its agents or contractors, as applicable. The term "Force Majeure" shall not include depressed market or economic conditions. No party to this Agreement shall be in default hereunder if such party or its agents and contractors, if applicable, are prevented from performing any of its obligations hereunder due to a Force Majeure occurrence.

#### SECTION VIII

##### BINDING EFFECT:

This Agreement shall be binding upon the parties hereto and their successors and assigns. It is acknowledged that Developer may assign all or portions of its rights and obligations to retail end users.

#### SECTION IX

NOTICES:

When any notice is to be provided by either party, the following are provided:

(a) City of Appleton  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Appleton Storage I, LLC  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION X

RECORDING:

A memorandum of this Agreement shall be recorded in the Office of the Register of Deeds for Outagamie County.

SECTION XI

As long as the tax increment district, including this site, remains in existence, the land and buildings on the site shall be owned and taxable for real estate tax, special assessments and personal property taxes. This provision may be waived at the option of the City upon the entry into a Payment in Lieu of Taxes (PILOT) agreement with the then property owner or lessee.

NOW, THEREFORE, in consideration of the terms, acknowledgments, understandings and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereby memorialize their understandings, acknowledgments, and agreements as aforesaid.

**[SIGNATURE PAGES TO FOLLOW]**





**CITY:**

CITY OF APPLETON, WISCONSIN

\_\_\_\_\_, 2018.

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

Name: Timothy M. Hanna

Title: Mayor

\_\_\_\_\_, 2018.

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

Name: Kami Lynch

Title: City Clerk

STATE OF WISCONSIN )

: ss

MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above named Timothy M. Hanna, the Mayor, and Kami Lynch, the City Clerk of the CITY OF APPLETON, a Wisconsin municipal corporation, to me known to be the persons who executed the foregoing instrument and acknowledged the same, as the act and deed of said municipal corporation, by its authority.

\_\_\_\_\_  
Notary Public, State of Wisconsin

My Commission Expires: \_\_\_\_\_

Last Updated: 06/12/2018  
By: James P. Walsh  
City Law: A18-0505 / CR: A17-0804

**EXHIBIT A**

THE PROPERTY

**EXHIBIT B**

CERTIFIED SURVEY MAP