

**DRAFT OPERATING AGREEMENT FOR SELF-STORAGE BUSINESS
LOCATED IN THE CITY OF WOODLAND**

This Operating Agreement for Self-Storage Business (hereinafter “Agreement”), dated _____ (“Effective Date”), is entered into by and between the City of Woodland (the “City”), a California municipal corporation, and E Kronick 2012 GST Trust (“Owner”) and Patrick Laughlin (“Developer,” and together with Owner, “Self-Storage Business”). The City and Self-Storage Business may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Self-Storage Business submitted an application to the City for a conditional use permit to conduct certain self-storage uses in the City, located at 1424 E Main Street (Yolo County Assessor’s Parcel Numbers 066-030-019,021,033) (“Subject Property”); and

WHEREAS, the City granted a conditional use permit to Self-Storage Business on _____, to permit self-storage at the Subject Property, subject to conditions of approval contained therein (“Conditions”), issuance of a business license, and execution of this Agreement; and

WHEREAS, the Interim Zoning Ordinance, approved by the City of Woodland City Council on May 1, 2018, Ordinance No 1634, states that any personal storage (mini-storage) facility shall demonstrate a measurable community benefit in a manner agreed upon by the City and memorialized in a documented agreement; and

WHEREAS, the City Council of the City of Woodland has determined that both community benefits and potential adverse impacts may result from the operation of self-storage businesses in the City, and therefore desires to ensure all such impacts are adequately mitigated and offset by the potential community benefits the businesses can provide to the City and its residents; and

WHEREAS, Self-Storage Business and the City have mutually agreed to certain minimum payments to the City to provide for projects, programs, and other services and activities that will positively contribute to the community and account for any adverse impacts from Self-Storage Business in the community; and

WHEREAS, the Conditions require Self-Storage Business to construct certain infrastructure and improvements that benefit certain other properties adjacent to the Subject Property, and Self-Storage Business understands and agrees that it may negotiate a reimbursement agreement with the adjacent property owners but that City has no obligation to do so.

NOW, THEREFORE, in consideration of the mutual promises, conditions, and covenants set forth herein, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Recitals, and all defined terms set forth in this Agreement, are hereby incorporated into this Agreement as if set forth herein in full.

2. Definitions. The following terms shall have the following meanings for purposes of this Agreement, but other terms may be defined elsewhere in this Agreement.

- A. “City” means the City of Woodland.
- B. “City Permits” means all building permits, conditional use permits, zoning amendments, operating agreements, and other permits, licenses, entitlements, and agreements that the City, acting in its governmental capacity, must issue or approve for Self-Storage Business to operate in accordance with this Agreement.
- C. “Conditional Use Permit” means the regulatory permit issued by the City to Self-Storage Business pursuant to the City’s Zoning Code, as approved by the City Council on or about _____, related to the operation of a Personal Self-Storage business.
- D. “Effective Date” means the date first entered above as the Effective Date that both Parties have signed this Agreement.
- E. “Personal Self-Storage” means a storage facility that is characterized by individual separate spaces accessible by customers for the storing and retrieval of personal effects and household goods, as permitted by the Interim Zoning Ordinance.

3. Term of Agreement. The Term of this Agreement shall commence on the Effective Date and continue for a period of twenty-five (25) years therefrom (“Term”), unless earlier terminated as specified in this Agreement.

4. Assignment.

A. Right to Assign. Self-Storage Business shall have the right to sell, transfer, or assign the Subject Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm, or corporation at any time during the Term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties, and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

- 1. No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the Subject Property.
- 2. Concurrent with any such sale, transfer, or assignment, Self-Storage Business shall notify City, in writing, of such sale, transfer, or assignment and shall provide City with an executed agreement (“Assignment and Assumption Agreement”), in a form reasonably acceptable to City, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties, obligations, agreements, covenants, and waivers of Self-Storage Business under this Agreement.

Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Owner under this Agreement. Notwithstanding the failure of any purchaser, transferee, or assignee to execute the Assignment and Assumption Agreement required by paragraph 4.a.2 above, the burdens of this Agreement shall be binding upon such purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such Assignment and Assumption Agreement is executed.

B. Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, Owner or any subsequent transferring property owner shall continue to be obligated under this Agreement with respect to the transferred Subject Property or any transferred portion thereof, unless Owner or other transferring property owner is given a written release by City (which written confirmation may be in the form of execution and recordation of an Assignment and Assumption Agreement), which release shall be provided by City upon the full satisfaction by Owner or other transferring property owner of the following conditions:

1. Owner or other transferring owner no longer has a legal or equitable interest in all or any part of the Subject Property subject to the transfer.
2. Owner or other transferring owner is not then in default under this Agreement.
3. Owner or other transferring owner has provided City with the notice and executed an Assignment and Assumption Agreement required pursuant to this Agreement.

5. General Terms and Conditions. Self-Storage Business shall comply with all of the following terms and conditions for the Term of this Agreement:

- A. Conditions placed on the Conditional Use Permit shall be conditions of this Agreement. A copy of the Conditional Use Permit, and all applicable conditions, is attached hereto as **Exhibit A** and incorporated herein. Any violation of the Conditional Use Permit shall be deemed a violation of this Agreement and shall constitute a material breach of this Agreement, and any violation of this Agreement shall be deemed a violation of the Conditional Use Permit.
- B. Self-Storage Business shall obtain and maintain at all times during its operation a valid City-issued business license.
- C. Self-Storage Business understands, acknowledges, and agrees to comply with all applicable then-existing local laws and regulations applicable to operation of the self-storage (mini-storage) business.

6. Operational Requirements. In addition to the operational requirements set forth in the Conditions for the Conditional Use Permit, Self-Storage Business agrees to the following:

- A. **Project Phasing.** The personal storage (mini-storage) facility is scheduled to build out in three (3) phases consistent with Condition No. 6, attached hereto as **Exhibit A**, and

incorporated herein. The three phases are depicted in **Exhibit B**, attached hereto and incorporated herein. Phase One (1) will consist of approval and construction of the first seventy-five percent (75%) of the single-story storage units and office/residence building. Self-Storage Business agrees to provide monthly occupancy reports to City of Phase One occupancy. Phase Two (2) will consist of the proposed three (3)-story building, located along the east property boundary, which shall commence construction within sixty (60) days of ninety percent (90%) occupancy of Phase One. Phase Three (3) may be constructed concurrently with Phase Two, but City will not issue a certificate of occupancy for Phase Three prior to issuance of the Phase Two certificate of occupancy. If Self-Storage Business has not commenced construction of Phase Two within sixty (60) days of ninety percent (90%) occupancy of Phase One, Self-Storage Business agrees to make a monthly payment to City of Ten Thousand Dollars and No Cents (\$10,000.00), commencing on the first day of the month following the sixtieth day, and continuing monthly on the first day of each month until the commencement of construction of Phase Two. City shall use any funds received pursuant to this Section 6(A) to maintain the City roadway corridor adjacent to the Self-Storage Project.

- B. Self-Storage Business understands and agrees that the provisions set forth in paragraph A above are a material term of this Agreement and that City's preference is for the proposed three-story building located along the east property boundary to be built first in order to create a more aesthetically pleasing environment for the surrounding area. Because Self-Storage Business desires to construct Phase One first, the City agrees to the phasing set forth above but does so with the express understanding that Self-Storage Business will construct Phase Two in accordance with Paragraph A.

7. Consideration. As consideration for the rights and benefits it enjoys under this Agreement, including its operation of an approved Personal Self-Storage use in the City, Self-Storage Business shall do all of the following:

- A. Annual Community Benefit Payment. Self-Storage Business, as part of its project proposal submitted to the City and accepted and approved by the City Council, agrees to make certain community contributions to the City to ensure that any potential adverse impacts of Self-Storage Business are adequately offset by the business's required community benefit obligation. Self-Storage Business shall pay to the City a community benefit fee in the amount of Twenty-five Thousand Dollars (\$25,000.00) annually beginning on the date that is one (1) year after the date of issuance of the Phase One certificate of occupancy or first storage unit occupancy, whichever occurs first. Such payment shall cease at the conclusion of the Term.
- B. Annual Increase. The annual community benefit payment shall increase 2% per calendar year after the first such payment.

8. Reimbursements. The Conditional Use Permit Conditions require Self-Storage Business to construct certain infrastructure and improvements including, but not limited to, a gravity sewer line extension, off-site frontage improvements including curb, gutter, and sidewalk, lighting, a landscape median, and a private access driveway resulting from the City's contemplated abandonment of the unimproved public right of way owned by the City and located in part on the

Subject Property (“Improvements”), all of which benefit certain other properties adjacent to the Subject Property. Self-Storage Business may negotiate a reimbursement agreement with the adjacent property owners providing that the adjacent property owners will pay their fair share for the improvements benefiting their respective properties.

9. Indemnification. Self-Storage Business shall defend, at its sole cost and expense, including attorneys’ fees, indemnify, and hold harmless City, its agents, officers, and employees from any claim, action, or proceeding against City, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement, or any actions taken pursuant to this Agreement. City shall promptly notify Self-Storage Business of any claim, action, proceeding, or determination included within this Section, and City shall cooperate in the defense. City may in its discretion participate in the defense of any such claim, action, proceeding, or determination.

10. Notice. Any notice or other communication provided pursuant to this Agreement must be in writing and shall be considered properly given and effective only when mailed or delivered in the manner provided by this Section 10 to the persons identified below. A mailed notice or other communication shall be considered given and effective on the third day after it is deposited in the United States Mail (certified mail and return receipt requested). A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. A Party may change its address for these purposes by giving written notice of the change to the other Party in the manner provided in this Section 9.

If to the City:

City of Woodland
City Manager’s Office
300 First Street
Woodland, California 95695
Attention: Paul Navazio

If to Owner:

E Kronick 2012 GST Trust
1620 North Main Street #5
Walnut Creek, CA 94596

If to Developer:

11. Force Majeure.

- A. “Force Majeure Event” means a cause of delay that is not the fault of the Party who is required to perform under this Agreement and is beyond that Party’s reasonable control, including the elements (such as floods, earthquakes, windstorms, and unusually severe weather), fire, energy shortages or rationing, riots, acts of terrorism, war or war-defense conditions, acts of any public enemy, epidemics, the actions or inactions of any governmental entity (excluding the City) or that entity’s agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.
- B. Except as otherwise expressly provided in this Agreement, if the performance of any act required by this Agreement to be performed by either the City or Self-Storage

Business is prevented or delayed because of a Force Majeure Event, then the time for performance shall be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused.

12. Assignment. Concurrent with any such sale, transfer, or assignment, OWNER shall notify CITY, in writing, of such sale, transfer, or assignment and shall provide CITY with an executed agreement (“Assignment and Assumption Agreement”), in a form reasonably acceptable to CITY, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties, obligations, agreements, covenants, and waivers of OWNER under this Agreement

13. Waiver. A Party’s failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other Party’s breach of this Agreement shall not constitute a waiver of any performance, right, or remedy. A Party’s waiver of the other Party’s breach of any provision in this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in writing and signed by the waiving Party.

14. Relationship of Parties. This Agreement does not create any employment relationship, ownership interest, or other association between the City and Self-Storage Business. Nothing herein shall be construed to create the relationship of principal and agent, partnership or other joint venture between the City and Self-Storage Business.

15. Joint and Several Liability. Owner and Developer shall be jointly and severally liable for all obligations of Self-Storage Business set forth in this Agreement unless expressly stated otherwise.

16. Attorneys’ Fees. The Party prevailing in any litigation concerning this Agreement shall be entitled to an award by the court of reasonable attorneys’ fees and litigation costs. If the City is the prevailing party, then this Section shall apply whether the City is represented in the litigation by the designated City Attorney or by outside counsel.

17. Severability. If a court with jurisdiction finds any provision of this Agreement to be invalid, void, or unenforceable, then the remaining provisions shall remain in full force and effect, and to this end this Agreement shall be severable.

18. Counterparts. The Parties may execute this Agreement in counterparts, each of which shall constitute an original, but all of which shall collectively constitute this same Agreement.

19. Integration and Modification. This Agreement sets forth the Parties’ entire understanding and agreement regarding the matters addressed herein. This Agreement supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by written agreement signed by both Parties.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties enter into this Agreement as of the date first set forth on this Agreement.

City of Woodland

By: _____
Paul Navazio, City Manager
Dated: _____, 2020

Approved as to Form
Woodland City Attorney

By: _____
Kara K. Ueda, City Attorney

Self-Storage Business:

E Kronick 2012 GST Trust dated 12-12-12

By: _____
Benjamin J. Kronick, trustee
Dated: _____, 2020

By: _____
John L. Kronick, trustee
Dated: _____, 2020

Developer

By: _____
Pat Laughlin
Dated: _____, 2020

Attachments:
Exhibit A: Conditional Use Permit
Exhibit B: Phasing Plan

EXHIBIT A

[CONDITIONAL USE PERMIT]

DRAFT

EXHIBIT B

[INSERT PLANS SHOWING PHASING]

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