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Cross Reference: _____
Cross Reference: _____

SHARED ACCESS AND MAINTENANCE AGREEMENT

THIS SHARED ACCESS AND MAINTENANCE AGREEMENT ("Agreement") is made effective the 23rd day of October, 2017, and is by and between **Sumpter Properties, LLC**, an Indiana limited liability company ("Sumpter") and **Toyshed Condominium Association, Inc.**, an Indiana nonprofit corporation ("Toyshed Association"). Sumpter and Toyshed Association may sometimes be referred to individually as a "Party" or collectively as the "Parties."

WITNESSETH:

WHEREAS, Sumpter is the owner of certain real estate (the "Sumpter Parcel") situated in Fort Wayne, Indiana, legally described in **Exhibit "A"** attached hereto, and depicted as "Sumpter Parcel" on the Site Plan (defined herein); and

WHEREAS, Sumpter [shall/has] establish[ed] a new horizontal property regime upon the Sumpter Parcel for the purpose of developing storage unit condominiums; and

WHEREAS, that certain parcel of real estate located in Fort Wayne, Indiana, and depicted as the "Toyshed Association Parcel" on the Site Plan defined herein and legally described in **Exhibit "B"**, is contiguous to the Sumpter Parcel, and is impressed with a horizontal property regime containing existing storage unit condominiums pursuant to the Declaration of Horizontal Property Regime and Easements, Restrictions and Covenants for Toyshed Condominiums dated May 31, 2002, and recorded as Document No. 202044263 in the Office of the Recorder of Allen County, Indiana ("Condominium Declaration"); and

WHEREAS, the Toyshed Association, on behalf of the owners of condominium interests within Toyshed Association Parcel, desires to enter into certain agreements with Sumpter regarding (i) the sharing of certain snow removal, landscaping, and perimeter fencing maintenance costs and expenses and (ii) shared access and associated maintenance costs and expenses.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows:




ARTICLE I DEFINITIONS

SECTION 1.1 The following terms shall be defined as set forth below:

- (a) Access Drive: shall mean the roadway depicted as "Access Drive" on the Site Plan (defined below).
- (b) Building Access Easement: shall mean the area depicted as the "Building Access Easement" shown on the Site Plan.
- (c) Parcels: shall mean the Sumpter Parcel and the Toyshed Association Parcel, collectively.
- (d) Perimeter Fence: shall mean the perimeter fence depicted as "Perimeter Fence" on the Site Plan (defined below), including a gate and any related equipment.
- (e) Permittee(s): shall mean all occupants (by lease or ownership) of a condominium unit within the Sumpter Parcel or the Toyshed Association Parcel and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of such occupants insofar as their activities relate to the intended use of a condominium unit within the Sumpter Parcel or the Toyshed Association Parcel.
- (f) Proportionate Share: With respect to Sumpter, "Proportionate Share" shall mean the square footage of all of the condominium units (excluding those owned by Sumpter prior to the sale, lease, or occupancy of or by the same to or of a third party) in the Sumpter Parcel divided by the sum of the square footage of all condominium units within the Sumpter Parcel and the Toyshed Association Parcel. With respect to the Toyshed Association, "Proportionate Share" shall mean the square footage of all of the condominium units in the Toyshed Association Parcel divided by the sum of the square footage of condominium units in the Sumpter Parcel (excluding those owned by Sumpter prior to the sale, lease, or occupancy of or by the same to or of a third party) and the Toyshed Association Parcel.
- (g) Shared Landscape Areas: shall mean the areas shown on the Site Plan (defined below) within which shared landscaping maintenance and costs shall be located as more fully set forth in Article III, below.
- (h) Site Plan: The site plan drawing identifying the Access Drive, Building Access Easement, Perimeter Fence, and Shared Landscape Areas shown and attached hereto as **Exhibit "C"**.

A handwritten signature in black ink, appearing to be 'J. M. S.', with a large, stylized flourish extending upwards and to the right.

ARTICLE II – ACCESS DRIVE; BUILDING ACCESS EASEMENT

SECTION 2.1 The Parties hereby grant to themselves, present and future owners of condominium interests within the Sumpter Parcel and the Toyshed Association Parcel, and their Permittees a nonexclusive, perpetual easement for vehicular and pedestrian ingress and egress on, over, to and across the Access Drive located on the Toyshed Association Parcel and the Sumpter Parcel, including without limitation, the right to use parking areas, drive access ways, and to have unobstructed pedestrian and vehicular access by the Parties and their Permittees. There shall be no parking on the Access Drive.

SECTION 2.2 Each Party agrees to contribute its respective Proportionate Share of the cost and expense of maintenance, repair, and replacement of the Access Drive, as may reasonably be determined necessary between the Parties. Additionally, each Party agrees to contribute its respective Proportionate Share of the cost and expense of snow and ice removal from the Access Drive, as reasonably determined necessary by mutual agreement of the Parties.

SECTION 2.3 The Parties hereby grant to each other and their respective Permittees a non-exclusive, perpetual easement to use such utility poles, utility lines, utility cables, utility mains and appurtenances which are used in common by the Parties and their respective Permittees which are located from time to time on, over or under the Access Drive.

SECTION 2.4 Each Party shall have a non-exclusive, perpetual easement to discharge incidental surface storm drainage and/or run off water, in reasonable amounts, over, upon and across the Access Drive.

SECTION 2.5 Each Party shall indemnify, defend, and save harmless the other Party and its Permittees from all claims, lawsuits, judgments, liens, damages and expenses, including reasonable attorneys' fees, arising out of any use of the Access Drive established in this Article II by such indemnifying Party or its Permittees.

SECTION 2.6 The Toyshed Association hereby grants to Sumpter a temporary easement over and across the Access Drive for use by vehicles and equipment in the construction of improvements upon and the development of the Sumpter Parcel for so long as such construction and development continues, but in any event, such temporary easement shall expire no later than October 1, 2019. After the completion of such construction and development, as determined by Sumpter, Sumpter shall mill and pave the surface of the Access Drive on a one-time basis at its sole cost and expense by such date.

SECTION 2.7 The Toyshed Association hereby grants to Sumpter and future owners of condominium interests in the building shown on the Site Plan as "Proposed Building "C" a perpetual easement of ingress and egress over the Building Access Easement for purposes of accessing and using storage units located within said "Proposed Building C". Sumpter shall be responsible for the repair and maintenance of the surface areas within the area of the Building Access Easement.

Handwritten signature of JMM and date 4/24/15.

ARTICLE III – SHARED COSTS FOR SHARED LANDSCAPE AREAS
AND BUILDING ACCESS EASEMENT; ADDITIONAL COVENANTS
OF SUMPTER WITH RESPECT TO ACCESS DRIVE AND OTHER MATTERS

SECTION 3.1 Each Party agrees to contribute for the following costs and expenses as follows: (a) each Party's Proportionate Share of snow removal within the Building Access Easement and Access Drive (b) each Party's Proportionate Share of the ordinary and continuing landscaping maintenance, replacement and repair within the Shared Landscape Areas, and (c) each Party's Proportionate Share of the shared dumpster and garbage collection expenses. Notwithstanding the foregoing, the Parties shall share equally, and not in a Proportionate Share, in the cost and expense of snow removal within the Access Drive and Building Access Easement until such time as the total square footage of occupied condominium units within the Sumpter Parcel exceeds the total square footage of condominium units within the Toyshed Parcel.

SECTION 3.2. Sumpter agrees, on a one-time basis, to perform the following:

- (a) Install, at its costs and expense, a black aluminum power sliding gate at the entrance of the Access Drive with key pad and/or card opener at heights sufficient for regular vehicles and recreational vehicles (RVs), and exit sensors, with each Party being responsible for its Proportionate Share of the operation, subsequent maintenance, repair, and replacement of the same. Additionally, Sumpter shall obtain a proposal for installation of a security camera at the entrance of the Access Drive, with each Party to be responsible for its Proportionate Share of the cost and expense of installation of the same. The details and specifications of such security gate shall be as set forth in attached Exhibit "D".
- (b) Install, at its own cost, fifteen (15) feet of sitework, drainage facilities, stone and asphalt along the eastern side of the Toyshed Association Parcel, in the areas shown on the Site Plan and repair the asphalt adjacent to condominium units A1 and A30 on the Toyshed Association Parcel per Exhibit "E."
- (c) Install a concrete apron for a trash dumpster to be used by the Parties, the location of which shall be reasonably determined by Sumpter and Toyshed Association upon final determination of the placement of improvements on the Sumpter Parcel.
- (d) Regrade the south end of the existing driveway on the Toyshed Association Parcel, as shown on the Site Plan, to accommodate drainage and snow removal, in a manner determined by Sumpter and install an inlet in a manner determined by Sumpter.
- (e) Apply new asphalt to the existing entrance to the driveway on the Toyshed Association Parcel to the eastern edge of the existing pavement upon completion of Sumpter's construction of improvements upon the Sumpter Parcel, but, in no event later than October 1, 2019, such installation to be completed in accordance with specifications set forth in Exhibit "F".

SECTION 3.3. The Parties grant to each other and their respective Permittees a non-exclusive right and easement to access and use the dump facilities and restroom facilities on their respective Parcels.



ARTICLE IV – INSTALLATION AND MAINTENANCE OF PERIMETER FENCE

SECTION 4.1 Sumpter agrees to install, at its sole cost and expense, that portion of the Perimeter Fence on the west, north, and south sides of the Toyshed Association Parcel and on the north and south sides of the Sumpter Parcel as shown on the Site Plan. That portion of the Perimeter Fence located along the north and south lines of the Sumpter Parcel shall be installed at a date subsequent to Sumpter's final determination of the location and number of storage unit buildings within the Sumpter Parcel. The type and material of the seven foot (7') Perimeter Fence shall be as reasonably determined by Sumpter, with the exception of those portions of the Perimeter Fence on the north, south and west sides of the Toyshed Association Parcel being a seven foot (7') black vinyl-coated chain link fencing. The existing fence along the right-of-way to the east of the Sumpter Parcel shall be utilized for control of access to that portion of the Sumpter Parcel so long as it remains in place. The Toyshed Association hereby grants to Sumpter a temporary construction easement over those parts of the Toyshed Association Parcel necessary for the installation of the Perimeter Fence (including ingress and egress to such areas). Sumpter shall indemnify the Toyshed Association from any and all damage to the Toyshed Association Parcel caused by the installation of the Perimeter Fence.

SECTION 4.2 Upon completion of the construction and installation of the Perimeter Fence, each Party shall contribute its respective Proportionate Share of the cost and expense of the maintenance, repair, and replacement of the Perimeter Fence.

ARTICLE V – INSURANCE AND INDEMNITY

SECTION 5.1 The Toyshed Association shall maintain commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about such parcel and/or the Access Drive with minimum limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate. Such policy of insurance shall name Sumpter (or any successor or assigns, as the case may be) as an additional insured and shall provide for no less than thirty (30) days' written notice of cancellation to Sumpter.

SECTION 5.2 Sumpter shall maintain commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage resulting from Sumpter's and Sumpter's invitees' and licensees' use of the Access Drive with minimum limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate. Such policy of insurance shall name the Toyshed Association (or any successor or assigns, as the case may be) as an additional insured and shall provide for no less than thirty (30) days' written notice of cancellation to the Toyshed Association.

SECTION 5.3 To the extent not covered by the insurance policies described above, each Party (the "Indemnitor") will pay, and indemnify and save harmless the other Party from and against, all claims, lawsuits, judgments, liens, damages, and expenses, including reasonable attorneys' fees, arising from Indemnitor's or its Permittees' use of the Access Drive.

SECTION 5.4 Each Party (the "Releasing Party") hereby releases the other Party (the "Released Party") from any and all liability or responsibility to the Releasing Party or anyone claiming through or under the Releasing Party by way of subrogation or otherwise for any incurred loss or

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damage to any person or property caused by fire or other peril or other such loss, damages, or other insured event or negligence of the Released Party, or anyone for whom such Released Party may be responsible.

ARTICLE VI – REMEDIES AND DISPUTE RESOLUTION

SECTION 6.1 In the case of any disputes between the Parties with respect to the terms, conditions, rights, and obligations under this Agreement, the Parties shall first attempt in good faith to informally resolve any disputes prior to the initiation of litigation. To that end, the complaining or objecting Party shall provide thirty (30) days' written notice to the non-complaining Party detailing the complaint, objection, or dispute and the proposed manner of resolution of such complaint, objection, or dispute. Should the non-complaining Party agree to such proposed manner of resolving the complaint, objection, or dispute, the non-Complaining shall have a reasonable amount of time, not to exceed ninety (90) days, to complete such resolution to the Parties' mutual satisfaction.

SECTION 6.2 Should the Parties fail to resolve any disputes between them pursuant to Section 6.1, above, then the Parties shall attempt to resolve such dispute by mediation with a neutral mediator. In that even that such mediation fails, then the Parties may avail themselves of all rights and remedies available under this Agreement, at law, or in equity.

SECTION 6.3 No Party shall be entitled to consequential, incidental, punitive, or other special or punitive damages from the other Party.

SECTION 6.4 In the case of an emergency threatening imminent harm to person(s) or property, a Party may perform any of the obligations of the other Party without notice and seek reimbursement for the cost and expense of such performance in the manner set forth in this Article VI.

ARTICLE VII MISCELLANEOUS PROVISIONS

SECTION 7.1 No part of this Agreement may be terminated or modified without the prior written consent of all the Parties.

SECTION 7.2 This Agreement shall not create an association, partnership, joint venture or a principal and agency relationship between any of the Parties.

SECTION 7.3 No waiver of any provision hereof shall be deemed to imply or constitute a further waiver thereof or any other provision set forth herein.

SECTION 7.4 Should any provision hereof be declared invalid by a legislative, administrative or judicial body of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall be unaffected by same.

SECTION 7.5 Each of the undersigned agrees that all notice and approvals required or permitted to be given hereunder shall be in writing and shall be delivered to the parties at the following addresses, until such time as a Party notifies the other Parties, in writing, of a change of this address:

Handwritten signature and initials. The signature appears to be "Jm" or "Jm1" with a large, stylized flourish. Below it, the initials "RF" are circled.

If to Toyshed Association:

Toyshed Condominium Association, Inc.
ATTN: Rocky Smith
921 East Dupont Road, Ste. 244
Fort Wayne, IN 46825

If to Sumpter:

Sumpter Properties, LLC
ATTN: John Nichols
~~301 Airport North Office Park~~
Fort Wayne, IN 46825

10050 Bent Creek Blvd

Date of service of notice or approval shall be the date on which such notice or approval is deposited in a Post Office of the United States Postal Service or any successor governmental agency, certified mail, return receipt requested, or the next business day after such notice or approval is deposited with a reputable overnight courier (but excluding U.S. Postal Express) for delivery on the next business day.

SECTION 7.6 All of the provisions hereof shall run with the land in perpetuity and shall bind and inure to the benefit of the Parties hereto, their heirs, executors, administrators, successors and assigns (which, in the case of Sumpter shall include an association, incorporated or unincorporated, of owners of condominium interests located within the Sumpter Parcel).

SECTION 7.7 Whenever approval or consent of a Party is required hereunder, such approval shall not be unreasonably withheld, conditioned or delayed.

SECTION 7.8 Should any Party default under any of terms of conditions of this Agreement, the non-defaulting Party, in addition to any other remedies available under this Agreement, shall be entitled to recover from the defaulting Party the costs and expenses, including reasonable attorney's fees, incurred by the non-defaulting Party in enforcing the term and conditions of this Agreement.

SECTION 7.9 The Toyshed Association and the undersigned signatory for the Toyshed Association jointly and severally warrant and represent that they have obtained all of the requisite consents, approvals, and authority under the Condominium Declaration (and the By-Laws comprising part of the same) to make and enter into this Agreement and bind the Toyshed Association and the condominium interests represented thereby to the terms of the Agreement.

SECTION 7.10 Should any portion of the Sumpter Parcel be used for any purpose other than storage units (or facilities and common areas related thereto), then the Toyshed Association may elect to terminate this Agreement as to such portion. In the event of such termination, the obligations and covenants of the Parties under this Agreement, and easements granted by and to any of the Parties by this Agreement shall also be terminated as to that portion of the Sumpter Parcel so used for such other purposes. Any obligations (including, but not limited to, monetary obligations related to common expenses and indemnity obligations) of any of the Parties arising prior to such termination or connected with acts or omissions of either of the Parties occurring prior to such termination shall survive the termination. __

IN WITNESS WHEREOF, the Parties hereto have executed this Shared Access and Maintenance Agreement as of the date and year first above written.



[signature pages follow]

Signature Page for Shared Access and Maintenance Agreement

Toyshed Condominium Association, Inc.

By: [Signature]
Rocky K. Smith, Pres.

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)



Before me, a Notary Public in and for said county and state, personally appeared ROCKY K. SMITH PRESIDENT of Toyshed Condominium Association, Inc., who, having been duly sworn, acknowledged the execution of the foregoing Shared Access and Maintenance Agreement on behalf of said company, this 23 day of OCTOBER, 2017.

[Signature]
Tammy M. Presssey Notary Public

My Commission Expires:

10-5-27

My County of Residence:

ALLEN

Signature Page for Shared Access and Maintenance Agreement

Sumpter Properties, LLC

By:

John M. Nichols
John M. Nichols, Partner

STATE OF INDIANA)

) SS:

COUNTY OF ALLEN)



Before me, a Notary Public in and for said county and state, personally appeared John Nichols, Manager of Sumpter Properties, LLC, who, having been duly sworn, acknowledged the execution of the foregoing Shared Access and Maintenance Agreement on behalf of said company, this 23 day of OCTOBER, 2017.

Tammy M. Pressey
Tammy M. Pressey, Notary Public

My Commission Expires:

10-5-27

My County of Residence:

ALLEN

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Robert C. Kruger

Instrument Prepared by: Robert C. Kruger, #22738-02, Burt Blee Dixon Sutton & Bloom, LLP, 200 East Main Street, Suite 1000, Fort Wayne, Indiana 46802, Telephone: (260) 426-1300