

# UNOFFICIAL COPY



Doc#: 0607243162 Fee: \$40.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/13/2006 01:06 PM Pg: 1 of 9

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## FIRST MODIFICATION OF LOAN DOCUMENTS

THIS FIRST MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 29 day of July, 2005, by and among CHICAGO TITLE LAND TRUST COMPANY, AS SUCCESSOR TRUSTEE TO LASALLE BANK NATIONAL ASSOCIATION UNDER A TRUST AGREEMENT DATED JULY 18, 1985 AND KNOWN AS TRUST NO. 109929 ("Trustee"), DRY STORAGE CORPORATION, an Illinois corporation ("Dry Storage", and together with Trustee, "Obligors"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender").

### RECITALS:

A. Lender has heretofore made revolving loans ("Revolving Loans") to Dry Storage, DSC Logistics, Inc., an Indiana corporation ("DSC"), Remlo Logistics, Inc., an Illinois corporation ("Remlo"), and DSC Integrated Logistics, Inc., an Illinois corporation ("Integrated", and together with Dry Storage, DSC and Remlo, collectively, "Borrowers") in the original principal amount of \$40,000,000, pursuant to the terms and conditions of that certain Third Amended and Restated Loan and Security Agreement dated as of February 8, 1999 by and among Borrowers and Lender, as amended from time to time (as amended, restated, modified or supplemented and in effect from time to time, the "Loan Agreement"), as evidenced by that certain Replacement Revolving Note dated as of February 8, 1999 made payable by Borrowers to the order of Lender in the principal amount of \$40,000,000, as amended from time to time (as amended, restated, modified or supplemented and in effect from time to time, the "Revolving Note").

#### **This document prepared by and after recording return to:**

Diana Y. Tsai, Esq.  
Schwartz, Cooper, Greenberger &  
Krauss, Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601

#### **Permanent Index Numbers:**

09-30-200-018  
09-30-201-002

#### **Address of Property:**

1750 Wolf Road  
Des Plaines, Illinois

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B. The Revolving Loans are secured by, among other things, that certain Mortgage dated as of January 3, 2000 made by Obligor in favor of Lender and recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on January 1, 2000, as Document No. 00049012 (the "Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated as of January 3, 2000 made by Obligor in favor of Lender and recorded in the Recorder's Office on January 20, 2000, as Document No. 00049013 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated as of January 3, 2000 made by Dry Storage in favor of Lender (the "Indemnity Agreement"); and (iv) certain other loan documents (the Revolving Note, the Mortgage, the Assignment of Leases, the Indemnity Agreement, the other agreements, documents and instruments evidencing, securing and guaranteeing the Loan, in their original form and as amended, restated, modified or supplemented and in effect from time to time are sometimes collectively referred to herein as the "Loan Documents").

C. Borrowers and Lender are entering into that certain LaSalle Bank National Association Commercial Card Agreement (as it may be amended, restated, modified or supplemented and in effect from time to time, the "Purchase Card Agreement"), pursuant to which Lender has agreed to establish a credit line up to the maximum principal amount of \$2,000,000 and open certain Card Accounts and/or Accounts for Borrowers and to issue Cards to Employees (as all such capitalized terms in the Purchase Card Agreement), upon and subject to the terms and provisions contained therein.

D. Borrowers and Lender are entering into that certain Ninth Amendment of Third Amended and Restated Loan and Security Agreement and other Loan Documents (the "Ninth Amendment") pursuant to which, among other things: (i) the maximum principal amount of the Revolving Loans is being reduced to \$15,000,000, (ii) the maturity date of the Revolving Loans is being extended to September 15, 2007, (iii) certain of Borrowers' financial covenants are being modified, and (iv) the revolving line of credit advances made under and pursuant to the Purchase Card Agreement (collectively, the "Purchase Card Loans") are being secured by the Collateral (as defined in the Loan Agreement).

E. Obligor desire to amend the Loan Documents in order to provide that the Mortgage, the Assignment of Leases and the other Loan Documents additionally secure the Purchase Card Loans and any and all notes which evidence the Purchase Card Loans.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

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1. **Mortgage Secures Additional Loans.** The Mortgage, the Assignment of Leases and the other Loan Documents are hereby modified to provide that they additionally secure the Purchase Card Loans. All references in the Mortgage, the Assignment of Leases and the other Loan Documents to "Loan", "Loans", "Note" and "Notes" shall include the Purchase Card Loans and any and all Notes which evidence the Purchase Card Loans, respectively. All references to "Loan Agreement" in the Mortgage, the Assignment of Leases and the other Loan Documents shall refer to the Loan Agreement, the Assignment of Leases and the other Loan Documents, each as heretofore amended and as amended by the Ninth Amendment.

2. **Representations and Warranties of Obligor.** Each Obligor hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Notes, the Mortgage or the other Loan Documents and neither Obligor knows of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Notes, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of each Obligor to which it is a party, enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Dry Storage or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, neither Obligor has any claims, counterclaims, defenses, or set-offs with respect to the Loans or the Loan Documents as modified herein.

(f) Dry Storage is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Dry Storage. This Agreement has been duly executed and delivered on behalf of Dry Storage.

3. **Title Policy.** As a condition precedent to the agreements contained herein, Dry Storage shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's Title Insurance Policy No. 1401 007852283 D2 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

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4. **Expenses.** As a condition precedent to the agreements contained herein, Dry Storage shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

5. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Obligors merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Obligors and Lender have contributed substantially and materially to the preparation of this Agreement, and Obligors and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venture or partner of or in any way associated with Obligors nor shall privity of contract be presumed to have been established with any third party.

(d) Obligors and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Obligors and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Notes", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Notes, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein

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which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each Obligor's obligations under this Agreement.

6. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act.** Lender hereby notifies Dry Storage that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies Dry Storage, which information includes the name and address of Dry Storage and such other information that will allow Lender to identify Dry Storage in accordance with the Act. In addition, Dry Storage shall (a) ensure that no person who owns a controlling interest in or otherwise controls Dry Storage or any subsidiary of Dry Storage is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

*[Remainder of page intentionally left blank; signature page follows]*

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IN WITNESS WHEREOF, the parties hereto have executed this First Modification of Loan Documents dated as of the day and year first above written.

## LENDER:

**LASALLE BANK NATIONAL  
ASSOCIATION**

By: Kathleen L Ross  
Name: Kathleen L Ross  
Title: SVP

## OBLIGORS:

**DRY STORAGE CORPORATION**

By: John Armando Lora  
Name: JOHN ARMANDO LORA  
Title: VP & Treasurer

**CHICAGO TITLE LAND TRUST  
COMPANY, AS SUCCESSOR  
TRUSTEE TO LASALLE BANK  
NATIONAL ASSOCIATION, not  
personally, but solely as Trustee as aforesaid**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SEE RIDER ATTACHED FOR SIGNATURE OF  
TRUSTEE AND NOTARY ACKNOWLEDGMENT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attestation not required  
pursuant to corporate by-laws.



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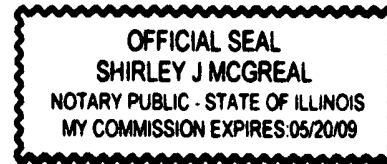
STATE OF ILLINOIS )  
 ) .ss  
 COUNTY OF COOK )

I Shirley J McCreal a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ of LASALLE BANK NATIONAL ASSOCIATION, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he or she signed and delivered said instrument as his or her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28 day of FEBRUARY, 2006.

Shirley J McCreal  
 Notary Public

My Commission Expires: 05/20/09



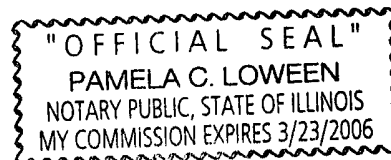
STATE OF ILLINOIS )  
 ) .ss  
 COUNTY OF COOK )

I Pamela C. Loween a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jo Ann Sannaschido Gilek, the Vice President & Treasurer of DRY STORAGE CORPORATION, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he or she signed and delivered said instrument as his or her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20<sup>th</sup> day of February, 2006.

Pamela C. Loween  
 Notary Public

My Commission Expires: 3/23/06



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It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against CHICAGO TITLE LAND TRUST COMPANY, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

**DATE: March 1, 2006**

**CHICAGO TITLE LAND TRUST COMPANY, AS SUCCESSOR TRUSTEE TO LASALLE BANK NATIONAL ASSOCIATION, AND NOT PERSONALLY, UNDER TRUST AGREEMENT DATED JULY 18, 1985, AND KNOWN AS TRUST 109929.**

BY:

Jane B. Zakrzewski  
**JANE B. ZAKRZEWSKI, TRUST OFFICER**

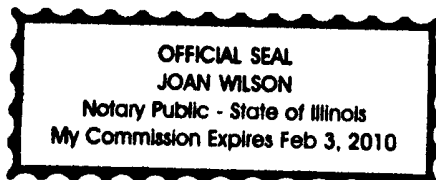
**STATE OF ILLINOIS)**

**) SS**

**COUNTY OF COOK )**

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that **Jane B. Zakrzewski**, an officer of **CHICAGO TITLE LAND TRUST COMPANY**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that said officer of said corporation signed and delivered this instrument as a free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 1<sup>st</sup> day of **March, 2006**.



Joan Wilson  
**NOTARY PUBLIC**



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## EXHIBIT A

### Legal Description of Premises

#### PARCEL 1:

THAT PART OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF A LINE 14.70 FEET NORTH OF AND PARALLEL WITH THE EAST AND WEST CENTER LINE OF THE NORTH 1/2 OF SAID SECTION 30, EXCEPT THAT PART THEREOF TAKEN FOR STREETS AND HIGHWAYS, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

LOT 1 IN GREWE'S SUBDIVISION OF THAT PART OF THE NORTHWEST FRACTIONAL 1/4 AND THE WEST 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF A LINE 14.70 FEET NORTH OF THE EAST AND WEST CENTER LINE OF THE NORTH 1/2 OF SAID SECTION (EXCEPT THE RIGHT OF WAY OF THE DESPLAINES VALLEY RAILWAY), EXCEPTING THEREFROM THAT PART THEREOF DESCRIBED AS FOLLOWS:

THAT PART OF LOT 1 IN GREWE'S SUBDIVISION AFORESAID, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF AFORESAID LOT 1; THENCE NORTH 87 DEGREES, 20 MINUTES, 30 SECONDS EAST IN ITS SOUTH LINE A DISTANCE OF 0.79 OF A FOOT TO THE PLACE OF BEGINNING OF THE FOLLOWING DESCRIBED TRACT OF LAND; THENCE CONTINUING NORTH 87 DEGREES, 20 MINUTES, 30 SECONDS EAST ON AFORESAID SOUTH LINE, A DISTANCE OF 395.22 FEET TO A POINT; THENCE NORTH 00 DEGREE, 09 MINUTES, 48 SECONDS WEST IN A LINE, A DISTANCE OF 240.94 FEET TO A POINT; THENCE SOUTH 87 DEGREES, 20 MINUTES, 30 SECONDS WEST IN A LINE, A DISTANCE OF 29.76 FEET TO A POINT OF INTERSECTION WITH A CURVED LINE; THENCE SOUTHWESTERLY ON AFORESAID CURVED LINE CONVEX TO THE SOUTHEAST AND HAVING A RADIUS OF 524.05 FEET, AN ARC DISTANCE OF 102.56 FEET AND WHOSE CHORD LENGTH IS 102.40 FEET AND BEARS SOUTH 65 DEGREES, 57 MINUTES, 03 SECONDS WEST; THENCE SOUTH 71 DEGREES, 33 MINUTES, 27 SECONDS WEST IN A LINE TANGENT TO THE AFORESAID CURVE, A DISTANCE OF 57.59 FEET TO A POINT OF TANGENCY WITH A CURVED LINE; THENCE SOUTHWESTERLY ON LAST DESCRIBED CURVED LINE, CONVEX TO THE NORTHWEST AND HAVING A RADIUS 360.00 FEET, AN ARC DISTANCE OF 301.93 FEET AND WHOSE CHORD LENGTH IS 293.16 FEET AND BEARS SOUTH 47 DEGREES, 31 MINUTES, 50 SECONDS WEST, TO THE PLACE OF BEGINNING, ALSO EXCEPTING THAT PART THEREOF TAKEN FOR OAKTON STREET, IN COOK COUNTY, ILLINOIS.