

# UNOFFICIAL COPY

AMENDED AND RESTATED  
ASSIGNMENT OF LEASES AND RENTS

Address of Property: 500 W. Cermak Rd.  
Chicago, Illinois

P.I.N.: 17-21-332-012-0000



Doc#: 0611134097 Fee: \$50.50  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 04/21/2006 02:23 PM Pg: 1 of 14

Prepared by: Mark E. O'Neill  
Godfrey & Kahn, S.C.  
780 North Water Street  
Milwaukee, Wisconsin 53202



First American Title Insurance Company  
Attn: Heather Vree  
30 N. LaSalle St, Suite 310  
Chicago, IL 60602

THIS AMENDED AND RESTATED ASSIGNMENT OF LEASES AND RENTS ("Assignment") dated this 25 day of March, 2006, by Storage Today V, LLC, an Arizona limited liability company ("Assignor") to M&I Marshall & Ilsley Bank ("Assignee").

## RECITAL

Assignor is the owner of certain real estate identified on EXHIBIT A attached hereto ("Real Estate"). Assignee has on this date entered into a Loan Agreement ("Loan Agreement") with Assignor pursuant to which Assignee has agreed to loan Assignor Six Million and No/100 Dollars (\$6,000,000.00). Assignor has executed an Amended and Restated Promissory Note ("Note") dated of even date herewith to evidence such indebtedness. Concurrently with the execution of this Assignment, the Assignor has also executed and delivered to Assignee an Amended and Restated Real Estate Mortgage, Security Agreement and Financing Statement ("Mortgage") encumbering the Real Estate to secure, among other things, payment of the Note. This Assignment is given in addition to the Mortgage as further security for the performance of Assignor's obligations under the Note, the Loan Agreement and any other documents executed in connection with the loan (the Note, Mortgage, Loan Agreement, this Assignment and all such other documents are sometimes hereinafter referred to as the "Loan Documents").

This Amended and Restated Assignment of Leases and Rents amends and restates the Assignment of Leases and Rents executed by Assignor and Assignee in favor of Assignee on January 5, 2006, and recorded as Document No. 0601235514 on January 12, 2006, in the Cook

First American Title Order # NCS 220036

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County Recorder of Deeds, Illinois, as amended from time to time.

I.

## ASSIGNMENT

NOW, THEREFORE, the Assignor, in consideration of Assignee making the above referenced loan and in order to secure payment of the Note in accordance with its terms and all increases, additions, extensions, modifications and renewals to such note, and all other sums payable under the Loan Documents and the performance and observance of all of the provisions hereof and of the Loan Documents, the Assignor hereby sells, transfers and sets over to the Assignee all of the Assignor's right, title and interest in, to and under any and all of the following described property, whether now or at any time hereafter existing:

(i) All oral and written leases and agreements for the use or occupancy of the whole or any part of the Real Estate, including all amendments of, supplements to, and renewals and extensions thereof at any time made (all such leases, agreements, amendments, supplements, renewals and extensions being hereinafter referred to collectively as the "Leases") together with all rents, earnings, income, issues and profits arising from the Real Estate or such Leases, including, but not limited to, any and all income and profits from guest rooms, meeting rooms, food and beverage facilities, vending machines, telephone and television systems, guest laundry, the provision or sale of other goods and services, as well as all room rents, accounts, accounts receivable and hotel receivables and all other payments and rights to payment of any nature whatsoever made for or with respect to hotel room occupancy by any person, which includes any payment or monies received or to be received in whole or in part, whether actual or deemed to be, for the sale of services or products in connection with such occupancy, advance registration fees by hotel guests, tour or junket proceeds or deposits, deposits for convention and/or party reservations, and other benefits, and all rights to payment with respect to conference facilities, dining or bar facilities or other facilities in any way connected with the Mortgaged Premises and all rights to payment from any consumer credit charge card organization or entity including, without limitation, payments arising from the use of the American Express Card, Discover Card, the Visa Card, the MasterCard or any other credit card, including those now existing or hereafter created, substitutions therefor;

(ii) All proceeds payable under any policy of insurance covering loss of rents under any of the Leases for any cause;

(iii) All rights, powers, privileges, options and other benefits of Assignor as lessor under such Leases, including but not limited to, (a) the immediate and continuing right to receive and collect all rents, income, revenues, issues, profits, condemnation awards, use and occupancy payments, damages, monies and security payable or receivable under or with respect to the Leases or pursuant to any of the provisions thereof, subject to the rights of the tenants, whether as rent or otherwise, and (b) the right to make all waivers, agreements and

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settlements, to give and receive all notices, consents and releases, to take such action upon the happening of a default under any of the Leases, including the commencement, conduct and consummation of such legal proceedings as may be permitted under any provision of any of the Leases or by law, and to do any and all other things whatsoever which the Assignor is or may become entitled to do under any of the Leases;

(iv) All guaranties of the tenant's performance under any of the Leases; and

(v) Any award made to Assignor in any court proceeding involving any of the tenants in any bankruptcy, insolvency or reorganization proceedings in any state or federal court.

TO HAVE AND TO HOLD unto the Assignee, its successors and assigns forever; PROVIDED HOWEVER, that unless and until the occurrence of an Event of Default, as defined in the Note, shall occur, Assignor shall have the revocable right and license to collect, use and enjoy the rents, issues, profits and any other sums payable under and by virtue of any of the Leases, but only as the same become due under the provisions of such Leases, and to enforce the covenants of each of the Leases.

## II.

### COVENANTS AND WARRANTIES

Assignor hereby covenants and warrants to Assignee as follows:

a. All Leases currently affecting the Real Estate are listed on EXHIBIT B, the Schedule of Leases, attached hereto and incorporated herein.

b. That the sole ownership of the landlord's interest in all Leases shall be vested in Assignor.

c. That Assignor has not, and shall not: (i) perform any act or execute any instrument which might prevent Assignee from fully exercising its rights under any term, covenant or condition of this Assignment; (ii) execute any assignment or pledge of rents, income, or profits of any of the Leases except an assignment or pledge to Assignee to further secure the indebtedness secured hereby; (iii) accept any payment of any installment of rent more than thirty (30) days before the due date thereof for all leases in excess of 1,000 square feet; (iv) enter into any lease affecting the Real Estate that does not require actual occupancy by the tenant thereunder; or (v) compromise any rent or other amount due or to become due under any of the Leases or grant commissions, rebates or allowances to any tenant with leases greater than 1,000 square feet without prior written approval of Assignee.

d. That none of the Leases greater than 1,000 square feet shall be altered, modified, amended, terminated, cancelled or surrendered or any term or condition thereof waived without the prior written consent of Assignee.

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e. That none of the Leases greater than 1,000 square feet shall be terminated, cancelled or surrendered without the prior written consent of Assignee.

f. That Assignor will fulfill and perform each and every material covenant and condition of each of the Leases by the landlord thereunder and, at the sole cost and expense of Assignor, enforce (short of termination of any of the Leases) the performance and observance of each and every material covenant and condition to be performed and observed by the tenants under the Leases.

g. That Assignor shall promptly inform Assignee in writing of each notice received by Assignor claiming that a default on the part of the landlord has occurred under any of the Leases, and shall concurrently therewith send a complete copy of each such notice to Assignee.

h. That each of the Leases shall remain in full force and effect irrespective of any merger of the interest of any landlord and any tenant under any of the Leases.

i. That, without Assignee's prior written consent in each case, Assignor will not suffer or permit any of the Leases to become subordinate to any lien other than the lien of the Mortgage, this Assignment and Permitted Liens and Encumbrances allowed under the Mortgage.

j. That Assignor shall not enter into any Lease for a term of more than one year.

### III.

#### REMEDIES

3.1. Revocation of License. Assignor hereby covenants and agrees that if an Event of Default shall occur, the right and license granted to Assignor above shall, at Assignee's option, be deemed automatically revoked and terminated.

3.2. Assignee's Options. Upon revocation of Assignor's right and license granted above, Assignee, at its option, may at any time:

(a) personally or by its agents or attorneys, (with or without taking possession of the Real Estate) demand, collect, receive and sue for all rents or other sums payable under the Leases and to exercise all rights and remedies of Assignor thereunder and to collect and receive all other rents, earnings, income, issues and profits of the Real Estate or any part thereof, whether or not arising under the Leases;

(b) either personally or by its agents or attorney, may enter into and upon all or any part of the Real Estate and each and every part thereof, and may exclude the Assignor, its agents and servants wholly therefrom, and having and holding the same, may use, operate,

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manage and control the Real Estate or any part thereof and conduct the business thereof either personally or by its superintendents, managers, agents, servants, attorneys or receivers, and upon every such entry and from time to time, Assignee, at the expense of Assignor, may make all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments and improvements thereto and thereon as the Assignee may deem advisable in its sole discretion, and Assignee shall have the right to manage and operate the Real Estate and to carry on the business thereof and exercise all rights and powers of Assignor with respect thereto either in the name of Assignor or otherwise as it shall deem best, including but not limited to reletting the Real Estate, canceling and modifying the Leases, evicting tenants, bringing or defending any suits in connection with the possession of the Real Estate in its own name or the Assignor's name, and rebuilding and restoring the improvements on the Real Estate or making the same rentable, all as Assignee deems proper in its sole discretion; and

(c) after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges upon the Real Estate or any part thereof, as well as just and reasonable compensation for the services of Assignee and for all receivers, attorneys, agents, clerks and other employees by it properly engaged and employed, Assignee may apply the moneys arising as aforesaid in such manner and at such times as Assignee shall determine in its discretion to the payment of the indebtedness secured hereby and the interest thereon, when and as the same shall become payable, and/or to the payment of any other sums required to be paid by the Assignee under the Note, Mortgage or any of the Loan Documents.

3.3. Collection of Rents. The Assignor hereby consents to and irrevocably authorizes and directs the tenants under the Leases and their successors in interest, upon demand and notice from the Assignee stating that an Event of Default has occurred, to pay to Assignee the rents and other amounts due or to become due under the Leases and agrees that said tenants shall have the right to rely upon such demand and notice from Assignee and shall pay such rents and other amounts to Assignee without any obligation or right to determine the actual existence of any such default or the Assignee's right to receive such rents and amounts, notwithstanding any notice from or claim of Assignor to the contrary, and Assignor shall have no right or claim against such tenants for any such rents or other amounts so paid by such tenants to Assignee. Assignor agrees that it will at Assignee's request take such action as Assignee may from time to time request to assist Assignee in exercising any rights hereunder, including, without limitation, the joining at Assignee's request in a written direction to the tenants to pay rents under the Leases to Assignee as provided herein.

3.4. Independent Covenants. The remedies set forth in this Article III are independent of each other and are in addition to and independent of the other remedies set forth herein. Assignee may exercise its remedies either independently or cumulatively.

IV.



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## MISCELLANEOUS

4.1. No Waiver. Neither the failure of Assignee to avail itself of any of the terms, provisions and conditions of this Assignment for any period of time, or at any time or times nor Assignee's (a) taking or releasing of other security; (b) releasing any party primarily or secondarily liable for any of the indebtedness secured hereby; (c) granting extensions, renewals or indulgences with respect to such indebtedness; or (d) applying or failing to apply any other security for such indebtedness held by Assignee to the satisfaction of such indebtedness, shall be construed or deemed to be a waiver of any of its rights under the terms hereof; and Assignee shall have full right, power and authority to enforce this Assignment or any of the terms, provisions or conditions hereof and exercise its powers hereunder at any time or times that it shall deem fit.

4.2. Remedies Not Exclusive. No remedy or right herein granted Assignee shall be exclusive of any other right or remedy available to Assignee under any of the Loan Documents, or under applicable law.

4.3. No Liability. Assignee shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Assignor under any of the Leases, and the Assignor hereby agrees to indemnify the Assignee for, and to save it harmless from, any and all liability in connection with, arising from or related to the Leases or this Assignment, including all costs, expenses and attorneys' fees incurred in connection therewith, except for liability, costs, expenses and fees resulting from Assignee's gross negligence or malicious misconduct and this Assignment shall not place responsibility for the control, care, management or repair of the Real Estate upon the Assignee unless and until Assignee actually takes possession of the Real Estate and assumes such responsibility, or make the Assignee responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Real Estate resulting in loss or injury or death to any tenant, licensee, employee or stranger until Assignee actually takes possession of the Real Estate or unless such loss or injury is caused by the malicious act or gross negligence of Assignee or Assignee's employees, agents, successors or assigns.

4.4. Severability. If any provision contained in this Assignment or the application of any provision contained herein is to any extent invalid or unenforceable, then such clause(s) or provision(s) only shall be held for naught as though not contained herein and the remainder of this Assignment shall remain operative and in full force and effect.

4.5. Binding On Successors and Assigns. This Assignment shall be assignable by Assignee and all of the terms, provisions and conditions hereof will be applicable to and binding upon the parties hereto and all persons claiming under or through Assignor, including but not limited to their respective successors and assigns, personal representatives, heirs, administrators or executors, and the word "Assignor" when used herein shall include such persons and all persons liable for the payment of the indebtedness secured by the Note, or any part thereof, whether or not such persons shall have

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executed the Note, the Mortgage, the Loan Agreement or the Loan Documents or this Assignment. The word "Assignee," as used herein shall include the successors and assigns of the Assignee, and the holder or holders from time to time of the Note secured hereby.

4.6. Absolute Assignment. Notwithstanding any provision herein to the contrary, this Assignment of Leases and Rents is intended to be an absolute assignment from Assignor to Assignee and not merely the passing of a security interest.

4.7. Amendment. This Assignment shall not be amended, modified or changed, and no waiver of any provision herein shall be effective, except by an instrument in writing that is signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

4.8. Notices. All notices to be sent pursuant to this Assignment shall be sent in accordance with the notice provision of the Mortgage to the respective addresses of Mortgagor (Assignor hereunder) and Mortgagee (Assignee hereunder).

4.9. Applicable Law. The terms of this Assignment, with respect to the obligations of Assignor to pay the Obligations, as defined in the Mortgage, or additional charges pursuant to the Loan Documents and other matters related to the Note, as defined in the Note, and all other matters unrelated to this Assignment, shall be governed by and construed in accordance with the laws of the State of Wisconsin; provided, however, all other provisions of this Assignment, including the rights and remedies of the Assignee and the enforcement thereof with respect to the Premises and procedural matters as provided herein shall be governed by and construed in accordance with the internal laws of Illinois.

IN WITNESS WHEREOF, this Assignment is executed as of the date first above written.

STORAGE TODAY V, LLC, an Arizona limited liability company

By: Storage Today Advisors, LLC, an Arizona limited liability company, Manager

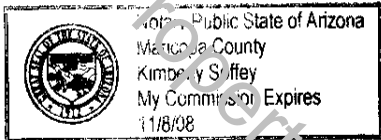
By: Donald W. Murney  
Name: Donald W. Murney  
Its: Manager

**[ACKNOWLEDGMENT ON NEXT PAGE FOLLOWING]**

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STATE OF Arizona )  
 ) SS  
COUNTY OF Maricopa )

Personally came before me this 25<sup>th</sup> day of March, 2006, the above-named Donald W. Murney, in his capacity as Manager of Storage Today Advisors, LLC, an Arizona limited liability company, a Manager of Storage Today V, LLC, an Arizona limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.



Kimberly Soffey  
\*  
Notary Public, State of ARIZONA  
My Commission: 11/08/08

[Notarial Seal]

This instrument was drafted  
by and after recording is to  
be returned to:

Mark E. O'Neill  
Godfrey & Kahn, S.C.  
780 North Water Street  
Milwaukee, WI 53202

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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

Lot 9 in Block 35 (excepting from said Lot 9 that portion thereof conveyed to the City of Chicago by Deed recorded May 2, 1871 as Document 95032 in Book 647, page 467, and excepting therefrom that portion thereof conveyed to the Sanitary District of Chicago by Deed recorded February 25, 1903 as Document 3356067 in Book 7968, page 528) in the Canal Trustee's Subdivision of the West  $\frac{1}{2}$  and that portion West of the river of the South East  $\frac{1}{4}$  of Section 21, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

#### PARCEL 2:

That part of Lot 10 in Block 35 in the Canal Trustees' Subdivision aforesaid commencing at the Northwest corner of said lots; thence Easterly along the Northerly line thereof 184 feet; thence Southerly to a point in the South line of said lot which is 150 feet distant from the Southwest corner thereof; thence Westerly along said South line to said Southwest corner; thence Northerly along the West line of said lot to the point of beginning, excepting therefrom that part lying Easterly of a line described as beginning at a point on the North line of 22<sup>nd</sup> Street 153.94 feet East of the Northeast corner of Lumber and 22<sup>nd</sup> Streets measured along said North line; running thence Northeasterly to a point in the North line of said Lot 10, 152.31 feet Easterly of the Northwest corner of said lot conveyed by Deed to the Sanitary District of Chicago recorded as Document 5167309; also excepting therefrom that part lying South of a line 14 feet North of and parallel to the North line of 22<sup>nd</sup> Street conveyed by Deed to the City of Chicago recorded as Document 5728622, all in Cook County, Illinois.

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## EXHIBIT B

### SCHEDULE OF LEASES

Property of Cook County Clerk's Office

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Unit #	Sq.Ft.	Tenant
LL-1	881	Vacant
LL-20	653	Vacant
LL-12	596	Vacant
LL13	3829	Vacant
LL-14	1177	Vacant
LL-16	1128	Vacant
LL 17 A	914	James Wilcox
LL 20	3,819	Vacant
LL23	334	Vacant
100	9,915	Artcrest
102	4,444	Thomas Darman
103/113	4,700	Modern Luxury, Inc.
108	358	Rayraldo Galindo
109 / 111	2,133	Chuan He
110	680	Unique Metal Design
115	1,304	Craigeo Curlet
116	1,458	Vacant
200	1,718	Vacant
201	2,423	Vacant
201A	645	Vacant
202	1,436	Vacant
203	264	Vacant
204	690	Richard Nielsen
207A/205	2,427	Vacant
207B	495	Elevated Marketing
208	387	Vacant
209	1,391	Vacant
210	1,791	Vacant
211	1025	James Wilcox
212	845	Vacant
212A	1,322	Vacant
213	946	Vacant
215	936	Herb Migdoll
215A	290	Alvin Collins
216	266	Vacant
217	275	Alvin Collins

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Unit #	Sq.Ft.	Tenant
219	6,531	Vacant
222	3,190	Vacant
300	1,505	Patrick McGarry
300B	395	Church Corp
300C	466	Renae Hill
300D	1,048	Dorian Sylvain
300E	572	VACANT (1/1)
300F	357	Vacant
300G	357	Williams Realty
301	609	Worldwide Copiers
302	593	Sara Payne
303	4,852	Vacant
304	552	Vacant
304A	407	Plavec, Alan
305	266	NQ Corp/L. Baker
305A	2,173	(MJ Copiers)
306A	228	Vacant
306	532	Couch, Kenyatta
307	443	Vacant
308	3,198	Vacant
310	1,937	Vacant
311	1,743	Nature's Health Corp.
313	1,856	Greg Walker
315/210a	687	ADOA Holdings
318	785	Chi Vision
319	193	Vacant
320	604	Radovsky/Ehrlich/Dean
321	1,337	Vacant
322	574	Liquid Taxi (New)
324	604	DT Prod/Brandon Brown
325	379	Striggle/Alexander
326	1,449	Xtreme Rescue Tech
400/305A	4,809	M.J. Copiers Corp.
401/403	2,787	Vacant
402	1,147	Vacant
404A	745	Matt Mahoney
404B	741	Vacant
404C	431	Donna Seitzer

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Unit #	Sq.Ft.	Tenant
405	2,654	One Choice
406	2,231	Vacant
407/411	2,186	Tony Smith
409	646	Beatman Recording
410/412	1737	Vacant
411A	446	Diarra Diaby (new)
411B	653	Tim Burd
411C	303	Residential Develop
413	1,042	Vacant
413A	247	Chun He (VAC 1/f)
414	1,004	Adam Scott
415	794	Vacant
415A	1,481	Vacant
415B	573	Peter Ziv
416	552	Planet 11 Studio/Collier
417	405	Anthony Sittman Jr.
418	246	Urban Force DJ P
420	fmr unit	Urban Force DJ P
419	395	Pullman Machining
420	1,445	VACANT
421	481	Eckles/Idowu
423	419	Sculptures Magnificent
424	1,178	Jamie Carter
425	418	Yorhighness Prod.
426A	595	Campane Records
426B	792	Luzviminda Calo
427	444	Charles Levi
500	2,559	Torres / Ruiz
500A	352	Renae Hill
501/503	5,049	THE LAB
502A / B	1,468	Orlando Espinoza
504	1,485	Dimensions Mail & Print
505	1,990	Monica Franson
506	812	Filemon Jaramillo
506A	550	Usualt Suspectz/Collier
507	400	Raymond Chandler
508	1,836	Faster Messenger
509	1,432	Nina Smoot Cain

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Unit #	Sq.Ft.	Tenant
510	1,388	Totally Tees, Inc.
511	3,387	Vacant
512	966	CJ Artist Management
514	661	Studio MRK
515	1,618	Dewayne Holmes
517	252	Kevin Vlack
521	1,773	Parrish Lewis
523	487	Cuttie W. Bacon, III
528	532	Shannon O'Brien
600/602	2,971	Jewell / Thomas
607	1,083	Half Block Ent. H. Coleman
608	945	Catalyst 01 / CBEA
608A	850	Vacant
610	1,323	Andie Guichard
612	736	Ligo Inc./C. Harris
612A	455	John Williamson
617	1,728	L. Leon Sands
700	2,743	Vacant
701	2,001	Barron Custom Furniture
703	915	Vacant
704A	2620	Vacant
705/707	4,140	Barron Custom Furniture
715	2,421	Vacant
716/720	1,584	Smartmouth (Sum) Design
721 / 723	1,168	Rockboy Studio/D.Daniels
722	525	Pierre Burnaugh
724	990	Springloaded Theater
725	742	Artesian Waters
726A	488	Ernest Rowe
726B	713	Jason Salavon
819	2,307	Vacant
820	3,379	Building Office
Roof		U.S. Cellular