

# UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Holland & Knight LLP  
131 S. Dearborn Street  
30<sup>th</sup> Floor  
Chicago, Illinois 60603  
Francis L. Keldermans, Esq.



Doc#: 1108945072 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/30/2011 12:54 PM Pg: 1 of 10

*This space reserved for Recorder's use only*

## FIRST MODIFICATION OF LOAN DOCUMENTS (Loan No. 285313)

**THIS MODIFICATION OF LOAN DOCUMENTS** ("Agreement") is dated as of the ~~24~~ day of March, 2011, but effective as of December 15, 2010, by and among Dickens Storage Properties LLC, an Illinois limited liability company ("Borrower"), John S. Mengel ("Guarantor") and MB Financial Bank, N.A., a national banking association, its successors and assigns ("Lender").

### RECITALS

A. Borrower and Lender have entered into a Construction Loan Agreement dated December 18, 2009 ("Initial Loan Agreement"; all capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in the Initial Loan Agreement), whereby Lender agreed to make a loan ("Loan") to Borrower in the original principal amount of Two Million One Hundred Sixty-Eight Thousand Seven Hundred Forty-Five and 00/100 Dollars (\$2,168,745.00).

B. The Loan is evidenced by a Mortgage Note dated as of December 18, 2009, made payable by Borrower to the order of Lender in the principal sum of Two Million One Hundred Sixty-Eight Thousand Seven Hundred Forty-Five And 00/100 Dollars (\$2,168,745.00), all as more specifically set forth in said Mortgage Note ("Initial Note").

C. The Initial Note is secured by, among other things, (i) a Construction Mortgage, Assignment of Leases and Rents, and Security Agreement dated December 18, 2009, by Borrower in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois ("Recorder"), on December 24, 2009, as Document No. 0935804020 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on **Exhibit A** hereto ("Property"), (ii) a Collateral Assignment of Leases and Rents dated December 18, 2009, made by Borrower in favor of Lender and recorded with the Recorder on December 24, 2009 as Document

# UNOFFICIAL COPY

No. 0935804021 ("Assignment"), (iii) a Guaranty of Payment dated December 18, 2009, by John S. Mengel, individually ("Guarantor") to Lender, (iv) a Guaranty of Completion dated December 18, 2009, by Guarantor to Lender (hereinafter, the Guaranty of Payment and the Guaranty of Completion are collectively referred to as the "Guaranty") and (v) certain other loan documents (the Initial Loan Agreement, Initial Note, Mortgage, Assignment, Guaranty and the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

D. Borrower desires to amend the Loan Documents in order to, among other things, extend the maturity date of the Loan from December 15, 2010 to April 15, 2011 ("Extension"). In connection therewith, Borrower will execute and deliver to Lender a First Amended and Restated Mortgage Note dated of even date herewith ("First Amended Note") in the remaining principal amount of Two Million One Hundred Sixty-Eight Thousand Seven Hundred Forty-Four and 15/100 Dollars (\$2,168,744.15) (the Initial Note and the First Amended Note are collectively referred to as the "Note") (the Initial Loan Agreement and this Agreement are collectively referred to as the "Loan Agreement").

## 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:

1. **Maturity Date.** The Maturity Date of the Note is hereby extended to April 15, 2011. Any reference in the Note, the Loan Agreement or any other Loan Document to the Maturity Date shall mean April 15, 2011.

2. **Principal and Interest.** Principal and interest shall be due and payable as set forth in the Note.

3. **Representations and Warranties of Borrower and Guarantor.** Borrower and Guarantor each hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Construction 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 Note, the Mortgage or the other Loan Documents and Borrower does not know 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 Note, 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

# UNOFFICIAL COPY

obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(e) Borrower 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 Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

4. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 1401-008497022-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.

5. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder. In addition, Guarantor hereby expressly and unconditionally waives, releases, and discharges any and all rights or claims under the Illinois Sureties Act, 740 ILCS 155/0.01 et. seq. ("Illinois Sureties Act"), and further acknowledges and agrees that Lender has no duty or obligation to Guarantor under the Illinois Sureties Act.

6. **Release of Claims.** For good and valuable consideration, Borrower and Guarantor (collectively, Borrower and Guarantor are referred to as the "Releasers"), on behalf of (i) themselves, (ii) any partnership or joint venture of which any Releaser is a partner, (iii) any limited liability company of which any Releaser is a member or manager, (iv) any corporation of which any Releaser is a shareholder, and (v) the respective partners, officers, directors, shareholders, beneficiaries, heirs, legal representatives, legatees, employees, agents, attorneys, successors and assigns of all of the foregoing (collectively, with Releasers, the "Releaser Related Parties") hereby forever release and discharge Lender, its predecessors in interest and their respective past, present and future officers, directors, shareholders, affiliates, subsidiaries, employees, attorneys, agents, legal representatives, successors and assigns, together with their respective heirs, legal representatives, legatees, successors and assigns (collectively, with Lender and its predecessors in interest, the "Released Parties") from and against any and all actions, claims, counter-claims, demands, damages, debts, losses, liabilities, indebtedness, and causes of action, at law and in equity, and all other obligations of every kind and nature, whether known or unknown, direct or indirect, new or existing, which any or all of the Releaser Related Parties have, have had or may have against any or all of the Released Parties, by reason of any matter,

# UNOFFICIAL COPY

cause or thing whatsoever arising out of or relating to any matter, cause or thing arising out of or relating to the Property or the Loan Documents or Lender's administration of the Loan and any acts or omissions of Lender with respect to any collateral for said Loan.

7. **Expenses.** As a condition precedent to the agreements contained herein, Borrower 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.

8. **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 Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor 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 venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor 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 Borrower, Guarantor 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 "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the

# UNOFFICIAL COPY

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 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 of Borrower's obligations under this Agreement.

[Signature Page Follows]

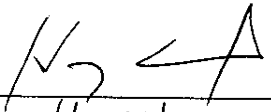
Property of Cook County Clerk's Office

# UNOFFICIAL COPY

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

**LENDER:**

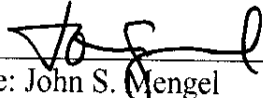
**MB FINANCIAL BANK, N.A.**, a national banking association

By:   
Name: Henry Lessor  
Title: Dep. President

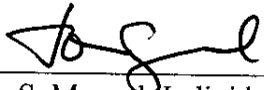
**BORROWER:**

**Dickens Storage Properties LLC**, an Illinois limited liability company

By: JSM Venture, Inc., an Illinois corporation, its Sole Manager

By:   
Name: John S. Mengel  
Title: President

**GUARANTOR:**

  
John S. Mengel, Individually

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

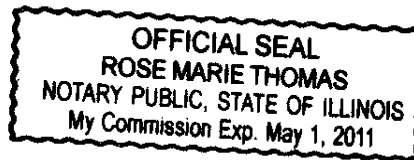
STATE OF ILLINOIS     )  
  ) .ss  
COUNTY OF COOK     )

I Rose Marie Thomas, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Henry Messel, VP of MB Financial Bank, N.A., a national banking 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 signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24<sup>th</sup> day of March, 2011.

Rose Marie Thomas  
\_\_\_\_\_  
Notary Public

My Commission Expires: May 1, 2011



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

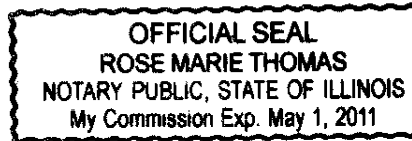
STATE OF ILLINOIS     )  
  ) .ss  
COUNTY OF COOK     )

I Rose Marie Thomas, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John S. Mengel, President of JSM Venture Inc., the manager of Dickens Storage Properties LLC, 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 signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 24th day of March, 2011.

Rose Marie Thomas  
Notary Public

My Commission Expires: May 1, 2011



Property of Cook County Clerk's Office





# UNOFFICIAL COPY

## EXHIBIT A

### THE PROPERTY

#### PARCEL 1:

A TRACT OF LAND IN THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BETWEEN THE SOUTH LINE OF DICKENS AVENUE AND THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD (NOW CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY) RIGHT OF WAY, BEING THE SOUTH 466 FEET, EXCEPT THE SOUTH 50 FEET FOR RAILROAD AND EXCEPT THE WEST 33 FEET FOR AUSTIN AVENUE, AND EXCEPT THAT PORTION OF SAID TRACT LYING EAST OF A STRAIGHT LINE DRAWN THROUGH A POINT IN THE NORTH LINE OF SAID SOUTH 466 FEET (BEING THE SOUTH LINE OF DICKENS AVENUE), WHICH POINT IS 562.25 FEET EAST OF THE EAST LINE OF NORTH AUSTIN AVENUE (SAID EAST LINE OF NORTH AUSTIN AVENUE BEING 33 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 32) AND A POINT IN NORTH LINE OF SAID RIGHT OF WAY OF CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD COMPANY, WHICH POINT IS 561.89 FEET OF SAID EAST LINE OF NORTH AUSTIN AVENUE, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

LOTS 23 AND 24 IN RESUBDIVISION OF PART OF GRANDVIEW, BEING JOHN T. KELLEY AND OTHERS SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF CENTER LINE OF GRAND AVENUE AND NORTH OF THE SOUTH LINE OF DICKENS AVENUE PRODUCED WEST, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED JANUARY 31, 1914 AS DOCUMENT NO. 5349766, IN COOK COUNTY, ILLINOIS.

P.I.N.: 13-32-219-032

13-32-225-001

PROPERTY ADDRESS: 5921 S. Dickens, Chicago, Illinois 60639

#10195383\_v2