

UNOFFICIAL COPY



Doc#: 1203039088 Fee: \$128.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/30/2012 01:54 PM Pg: 1 of 19

DOCUMENT PREPARED BY:

Barbara A. McIntyre
McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, GA 30308

UPON RECORDATION PLEASE RETURN TO:

Jeannette I. Butler
PNC Bank, National Association
10851 Mastin
Overland Park, KS 66210

Loan No: 94-0960126

DES PLAINES BUSSE STORAGE LLC, a Delaware limited liability company, as assignor
(Borrower)

to

PNC BANK, NATIONAL ASSOCIATION, a national banking association, as assignee
(Lender)

ASSIGNMENT OF LEASES AND RENTS

Dated: As of January 24th, 2012

Location: 1865 Milner Street
Des Plaines, IL 60016
County: Cook County, IL

Tax Identification Numbers: 09-21-107-052-0000 Vol. 91; 09-21-107-053-0000 Vol. 91; 09-21-107-054-0000 Vol. 91

ATLANTA:5356440.1

NCS 515004 40FS
DW

UNOFFICIAL COPY

THIS ASSIGNMENT OF LEASES AND RENTS (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, this "**Assignment**") made as of January 24, 2012, by **DES PLAINES BUSSE STORAGE LLC**, a Delaware limited liability company, having its principal place of business at c/o Metro Storage LLC, 13528 Boulton Boulevard, Lake Forest, Illinois 60045, as assignor ("**Borrower**") to **PNC BANK, NATIONAL ASSOCIATION**, a national banking association, having an address at 10851 Mastin, Overland Park, KS 66210, as assignee (together with its successors and/or assigns, "**Lender**").

RECITALS:

Borrower and the entities listed on Schedule 1 (the "**Other Borrowers**") and Lender have entered into a Loan Agreement dated as of the date hereof (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), pursuant to which Lender is making a secured loan (the "**Loan**") to Borrower in the principal sum of SIXTEEN MILLION FIFTY ONE THOUSAND ONE HUNDRED AND 00/100 DOLLARS (\$16,051,100.00), which Loan is evidenced by that certain Promissory Note, dated as of the date hereof, made by Borrower and the Other Borrowers in favor of Lender (such Promissory Note, together with all extensions, renewals, replacements, restatements, amendments, supplements, severances or modifications thereof being hereinafter referred to as the "**Note**"), which Note is secured by, among other things, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith executed by Borrower in favor of Lender (together with all extensions, renewals, replacements, restatements, amendments, supplements, severances or modifications thereof being hereinafter referred to as the "**Security Instrument**"), which Security Instrument encumbers the Property (as hereinafter defined). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

This Assignment is given pursuant to the Loan Agreement, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Assignment.

ARTICLE 1 ASSIGNMENT

Section 1.01. **Property Assigned.** Borrower hereby absolutely and unconditionally assigns and grants to Lender the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower:

(a) **Leases.** All existing and future leases affecting the use, enjoyment, or occupancy of all or any part of that certain lot or piece of land, more particularly described in **Exhibit A** annexed hereto and made a part hereof, together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "**Property**") and the right, title and interest of Borrower, its successors and assigns, therein and thereunder.

UNOFFICIAL COPY

(b) **Other Leases and Agreements.** All other leases, subleases or subsubleases, lettings, licenses, concessions, occupancy agreements, or other agreements (whether written or oral and whether now or hereafter in effect) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land or any space in the Improvements, and every extension, renewal, replacement, modification, amendment, restatement or other agreement relating thereto (whether before or after the filing by or against Borrower of any petition for relief under any Creditors Rights Laws), this Assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment. The leases described in **Section 1.01(a)** and the leases and other agreements described in this **Section 1.01(b)**, together with all other present and future leases and present and future agreements and any extension or renewal of the same are collectively referred to as the "**Leases**."

(c) **Rents.** All rents (including, without limitation percentage rents), ground rents, additional rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, revenues, issues, royalties and profits from the Land (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, receivables, receipts, deposits (including, without limitation, cash or securities deposited under any Lease to secure the performance by the lessee of its obligations thereunder, utility deposits and other deposits), accounts, cash, charges for services rendered, charges for electricity, oil, gas, water, steam, heat, ventilation, air-conditioning and any other energy, telecommunication, telephone, utility or similar items or time use charges, HVAC equipment charges, sprinkler charges, escalation charges, license fees, maintenance fees, charges for Taxes, operating expenses or other reimbursables to Borrower (or to Manager for the account of Borrower), under any Lease, all Lease Termination Payments, all other consideration of whatever form or nature received by or paid to or for the account of or benefit of Borrower or its agents or employees from any and all sources arising from or attributable to the Land or the Improvements, all proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Land and/or the Improvements (whether paid or accruing before or after the filing by or against Borrower of any petition for relief under any Creditors Rights Laws), and all proceeds or streams of payment from the sale or other disposition of any Lease or any Rents (collectively, the "**Rents**") and the right to receive and apply the Rents to the payment of the Debt, and the right to do all other things which Borrower or a lessor is or may become entitled to do under the Leases or with respect to the Rents (collectively, the "**Rents**").

(d) **Bankruptcy Claims.** All of Borrower's claims and rights (the "**Bankruptcy Claims**") to the payment of damages arising from any rejection by a lessee of any Lease under Creditors Rights Laws.

(e) **Lease Guaranties.** All of Borrower's right, title and interest in and claims under any and all lease guaranties, letters of credit and any other credit support given by any tenant or other Person to guarantee or secure the performance and observance of covenants to be performed by any other party to any Lease (individually, a "**Lease Guarantor**," collectively, the "**Lease Guarantors**") to Borrower (individually, a "**Lease Guaranty**," collectively, the "**Lease Guaranties**").

UNOFFICIAL COPY

(f) **Proceeds.** All proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(g) **Other.** All rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt or the Other Obligations), and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

(h) **Entry.** The right, at Lender's option, upon revocation of the license granted herein, to peacefully enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents, after prior reasonable notice to Borrower.

(i) **Power of Attorney.** Borrower's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in **Section 3.01** hereof and any or all other reasonable actions designated by Lender for the proper management and preservation of the Property.

(j) **Other Rights and Agreements.** Any and all other rights of Borrower in and to the items set forth in subsections (a) through (i) above, and all amendments, modifications, replacements, renewals and substitutions thereof.

Section 1.02. **Consideration.** This Assignment is made in consideration of the Loan. The principal sum, interest and all other sums due and payable under the Loan Agreement, the Note, the Security Instrument, this Assignment and the other Loan Documents are collectively referred to as the "**Debt.**"

Section 1.03. **Termination of Assignment.** Upon payment in full of the Debt, this Assignment shall become null and void and shall be of no further force and effect.

ARTICLE 2 TERMS OF ASSIGNMENT

Section 2.01. **Present Assignment and License Back.** It is intended by Borrower that this Assignment constitute a present, absolute assignment of the Leases, Rents, Lease Guaranties and Bankruptcy Claims, and not an assignment for additional security only. Nevertheless, subject to the terms of **Section 3.01** hereof, unless and until there exists a continuing Event of Default, Lender grants to Borrower a revocable license to operate and manage the Property in order to enable Borrower to take any and all actions, including the collection of the Rents, Lease Guaranties and Bankruptcy Claims and other sums due under the Lease Guaranties, necessary for the property management and operation of the Property. Lender's right to revoke the license granted to Borrower upon an Event of Default is in addition to all other rights and remedies available to Lender during the continuance of an Event of Default.

UNOFFICIAL COPY

Section 2.02. **Notice to Lessees.** Borrower hereby authorizes and directs, and hereby agrees to authorize and direct, the lessees named in the Leases or any other or future lessees or occupants of the Property and all Lease Guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any Lease Guaranties in accordance with the Loan Agreement or upon receipt from Lender of written notice to the effect that Lender is then the holder of the Security Instrument and that a Default (defined below) exists, and to continue so to do until otherwise notified by Lender.

Section 2.03. **Incorporation by Reference.** All representations, warranties, covenants, conditions and agreements contained in the Loan Agreement and the Security Instrument as same may be modified, renewed, substituted or extended are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein.

ARTICLE 3 **REMEDIES**

Section 3.01. **Remedies of Lender.** Upon or at any time after the occurrence and during the continuance of an Event of Default (a "**Default**"), the license granted to Borrower in **Section 2.01** of this Assignment shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents and sums due under any Lease Guaranties, whether or not Lender enters upon or takes control of the Property. In addition, Lender may, at its option, without waiving such Default, without notice and without regard to the adequacy of the security for the Debt, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Borrower and its agents and servants from the Property, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents and sums due under all Lease Guaranties, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender and may apply the Rents and sums received pursuant to any Lease Guaranties to the payment of the following in such order and proportion as Lender in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Debt, together with all costs and reasonable attorneys' fees. In addition, upon the occurrence of a Default, Lender, at its option, may (i) complete any construction on the Property in such manner and form as Lender deems advisable, (ii) exercise all rights and powers of Borrower, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties, and (iii) either require Borrower to

UNOFFICIAL COPY

(A) pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Borrower or (B) vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise. The Borrower hereby irrevocably consents to the appointment of a receiver by a court to collect and receive all Rents and to otherwise exercise the rights and remedies contained in this Article 3 and/or such additional rights as may be set forth in an order issued by such court.

Section 3.02. **Other Remedies.** Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under any of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Debt and to enforce any Collateral therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Borrower under this Assignment and the other Loan Documents or otherwise with respect to the Loan in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the assignment granted by this Assignment, or upon the Lien or security interest of any of the other Loan Documents (provided, however, that the foregoing shall not be deemed a waiver of Borrower's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

Section 3.03. **Collateral.** Lender may take or release any Collateral for the payment of the Debt, may release any Person primarily or secondarily liable therefor and may apply any Collateral held by it to the reduction or satisfaction of the Debt without prejudice to any of its rights under this Assignment.

Section 3.04. **Non-Waiver.** The exercise by Lender of the option granted it in **Section 3.01** hereof and the collection of the Rents and sums due under the Lease Guaranties and the application thereof as herein provided shall not be considered a waiver of any default by Borrower under any of the Loan Documents. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other Person to take any action to enforce any of the provisions hereof or of the other Loan Documents, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment or the other Loan Documents. Lender may resort for the payment of the Debt to any Collateral held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof or under any of the other Loan Documents without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall

UNOFFICIAL COPY

be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

Section 3.05. Bankruptcy.

(a) Upon or at any time after the occurrence and during the continuance of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under Creditors Rights Laws. Any amounts received by Lender as damages arising out of rejection of any Lease as aforesaid shall be applied first to all costs and expenses of Lender (including, without limitation, reasonable attorneys' fees and disbursements) incurred in connection with the exercise of any of its rights or remedies under this Section 3.05.

(b) If there shall be filed by or against Borrower a petition under Creditors Rights Laws, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to any applicable provision of any Creditors Rights Law, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy or other applicable court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to any applicable provision of any Creditors Rights Law and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

ARTICLE 4

NO LIABILITY, FURTHER ASSURANCES

Section 4.01. No Liability of Lender. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after a Default or from any other act or omission of Lender in managing the Property after a Default unless such loss is caused by the gross negligence or willful misconduct of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment and Borrower shall, and hereby agrees, except as may arise out of Lender's gross negligence or willful misconduct, to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Leases, any Lease Guaranties or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or

UNOFFICIAL COPY

agreements contained in the Leases or any Lease Guaranties. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment and by the Security Instrument and the other Loan Documents and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower so to do Lender may, at its option, declare all sums secured by this Assignment and by the Security Instrument and the other Loan Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, or for any dangerous or defective condition of the Property, including without limitation the presence of any Hazardous Materials, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

Section 4.02. **No Mortgagee in Possession.** Neither the granting of this Assignment to Lender, nor Lender's exercise of any rights or remedies with respect to this Assignment, shall be construed (i) to make Lender a "mortgagee in possession" of the Property in the absence of Lender itself taking actual possession of the Property or (ii) to obligate Lender to take any action with respect to the Leases, the Rents, the Lease Guaranties or the Bankruptcy Claims, including, without limitation, the performance of any obligation to be performed on the part of Borrower under any of the Leases, which shall remain exclusively with Borrower. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

Section 4.03. **Further Assurances.** Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver and hereby authorizes Lender to file one or more financing statements or execute in the name of Borrower to the extent Lender may lawfully do so, one or more chattel mortgages or other instruments, to evidence more effectively the assignment set forth in **Section 1.01** hereof.

ARTICLE 5 **MISCELLANEOUS PROVISIONS**

Section 5.01. **Conflict of Terms.** In case of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

Section 5.02. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be given and shall become effective as provided in **Section 13.6** of the Loan Agreement.

UNOFFICIAL COPY

Section 5.03. **Modifications.** This Assignment may not be modified, amended, extended, discharged, terminated, changed, and no provision hereof may be waived, orally or by any act or failure to act on the part of Borrower or Lender, and no consent to any departure by Borrower therefrom shall be effective, except by a writing signed by the party against whom enforcement is sought, and then such modification, amendment, extension, discharge, termination, change, waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on Borrower, shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 5.04. **Binding Effect; Joint and Several Obligations.** Whenever in this Assignment any of the parties hereto is referred to, such reference shall be deemed to include the heirs, executors, legal representatives, administrators, successors and assigns of such party. All covenants, promises and agreements in this Assignment, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender. Borrower may not delegate or transfer this Assignment or any of its rights or obligations hereunder without the prior written consent of Lender. Each Person constituting Borrower shall be jointly and severally liable hereunder.

Section 5.05. **Certain Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Security Instrument," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder, and the word "Debt" shall mean the principal balance of the Note with interest thereon as provided in the Loan Agreement, the Note and the Security Instrument and all other sums due pursuant to the Note, the Security Instrument, this Assignment and the other Loan Documents.

Section 5.06. **Principles of Construction.** All references to sections and exhibits, if any, are to sections and exhibits in or to this Assignment unless otherwise specified. Article and section headings are for convenience only and shall not be used in interpretation of this Assignment. All uses of the word "including" shall mean "including, without limitation" unless the context shall indicate otherwise. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Assignment shall refer to this Assignment as a whole and not to any particular provision of this Assignment; the word "section" refers to the entire section and not to any particular subsection, paragraph or other subdivision; the word "or" shall be deemed to include "and/or"; and "Assignment" and each of the Loan Documents referred to herein mean each such agreement as originally executed and as hereafter amended, restated, replaced, supplemented or otherwise modified from time to time,

UNOFFICIAL COPY

but only to the extent such modifications are not prohibited by the terms hereof or by the terms of any of the other Loan Documents. References to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referenced. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of the terms so defined, and pronouns shall be construed to cover all genders.

Section 5.07. **Severability.** Wherever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Assignment.

Section 5.08. **Duplicate Originals; Counterparts.** This Assignment may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Assignment (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed Assignment even though all signatures do not appear on the same page. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 5.09. **Lender's Discretion.** Whenever pursuant to this Assignment, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the good faith business judgment of Lender and shall be final and conclusive. Prior to a Securitization, whenever pursuant to the Loan Agreement the Rating Agencies are given any right to approve or disapprove any matter relating to Borrower, or any arrangement or term relating to Borrower is to be satisfactory to the Rating Agencies, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory, based upon Lender's determination of Rating Agency criteria, shall be substituted therefor.

Section 5.10. **Preservation of Rights.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. Lender's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which Lender may have under other agreements, at law or in equity. Any representations, warranties, covenants or indemnification liabilities for breach thereof contained in this Assignment shall not be affected by any knowledge of, or investigations performed by, Lender. Any one or more Persons comprising Borrower, or any other party liable upon or in respect of this Assignment or the Debt, may be released without affecting the liability of any party not so released.

Section 5.11. **Costs and Expenses.** Wherever pursuant to this Assignment it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but

UNOFFICIAL COPY

not be limited to, legal fees and disbursements of Lender, whether with respect to retained firms, the reimbursement for the expenses of in-house staff or otherwise.

Section 5.12. **Servicer.** Pursuant to Section 11.4 of the Loan Agreement, the Loan may be serviced by a Servicer. All references to Lender herein shall refer to and include any such Servicer to the extent applicable.

Section 5.13. APPLICABLE LAW.

(a) THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS WERE NEGOTIATED IN THE STATE OF ILLINOIS. THE PARTIES AGREE THAT THE STATE OF ILLINOIS HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY. IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, AND THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE LAND IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF ILLINOIS SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS ASSIGNMENT OR ANY OF THE OTHER LOAN DOCUMENTS.

(b) NOTWITHSTANDING THE FOREGOING, THE UCC IN EFFECT IN THE COMMONWEALTH OF PENNSYLVANIA SHALL GOVERN THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED IN THE ACCOUNT COLLATERAL.

Section 5.14. **WAIVER OF TRIAL BY JURY.** BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM OF ANY NATURE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN, THIS ASSIGNMENT OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY ACTS OR OMISSIONS OF LENDER, OR ANY OF ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY

UNOFFICIAL COPY

TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH RESPECT TO ANY OF THE FOREGOING. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER CONFIRMS THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) BY INDEPENDENT LEGAL COUNSEL FREELY CHOSEN BY BORROWER CONCERNING THE LOAN, THE LOAN DOCUMENTS AND SPECIFICALLY THE WAIVER OF JURY TRIAL CONTAINED HEREIN AND THAT BORROWER HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH SUCH COUNSEL. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY SUCH ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

Section 5.15. Submission to Jurisdiction. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS ASSIGNMENT OR ANY OF THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN OR FOR THE CITY OF CHICAGO, ILLINOIS AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

Illinois Corporation Service Company

801 Adlai Stevenson Drive

Springfield, IL 62703

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN OR FOR THE CITY OF CHICAGO, ILLINOIS, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF ILLINOIS. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN THE CITY OF CHICAGO, ILLINOIS (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE

UNOFFICIAL COPY

OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN THE CITY OF CHICAGO, ILLINOIS OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

ARTICLE 6

STATE SPECIFIC PROVISIONS

Section 6.01. **Principles of Construction.** In the event of any inconsistencies between the other terms and conditions of this Assignment and this Article 6, the terms and conditions of Article 6 shall control and be binding.

Section 6.01. Notwithstanding anything to the contrary contained in 765 ILCS 5/31.5, Borrower agrees that the mere recordation of this Assignment entitles Lender immediately to collect and receive Rents upon the occurrence of an Event of Default, without first taking any acts of enforcement under applicable law, including providing notice to Borrower, filing foreclosure proceedings, or seeking the appointment of a receiver. Further, Lender's right to the Rents does not depend on whether or not Lender takes possession of the Property as permitted under Section 9.02 of the Security Instrument. In Lender's sole discretion, Lender may choose to collect Rents either with or without taking possession of the Property. It is the express intention of the Borrower and Lender to "otherwise agree" as permitted in 765 ILCS 5/31.5 that after an Event of Default, Lender is entitled to immediately collect rents (and Borrower hereby agrees it will immediately pay all such rents to Lender) without Lender having to take any steps to enforce the assignment.

THIS ASSIGNMENT, together with the covenants and warranties therein contained, shall inure to the benefit of Lender and shall be binding upon Borrower, its heirs, executors, administrators, successors and assigns and any subsequent owner of the Property.

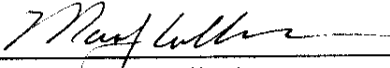
[No further text on this page]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

BORROWER:

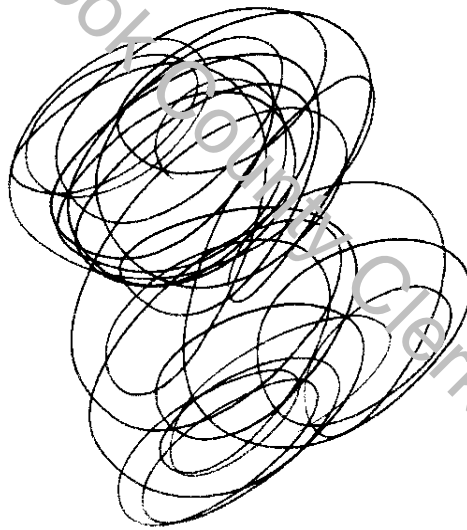
DES PLAINES BUSSE STORAGE LLC, a
Delaware limited liability company

By: 

Name: Martin J. Gallagher

Title: President

Property of Cook County Clerk's Office



UNOFFICIAL COPY

STATE OF ILLINOIS :
: SS.
COUNTY OF LAKE :

I, Lisa M. Reitenbach, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Martin J. Gallagher, personally known to me as President of DES PLAINES BUSSE STORAGE LLC, a Delaware limited liability company, and 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 as such they signed and delivered the said instrument pursuant to proper authority given said limited liability company, as his/her free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23rd day of January, 2012.

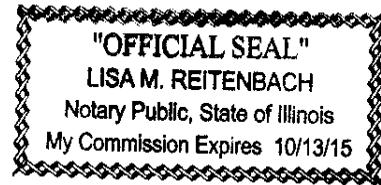
Lisa M. Reitenbach

Notary Public

[SEAL]

My commission expires:

10/13/15



PROPERTY OF COOK COUNTY CLERK'S OFFICE

UNOFFICIAL COPY

EXHIBIT A

Real property in the City of Des Plaines, County of Cook, State of Illinois, described as follows:

PARCEL 1

THAT PART OF LOT 3 IN G.T.E. RESUBDIVISION OF PARTS OF LOTS 167, 169 AND 172 IN THE TOWN OF RAND, PART OF LOT 24 IN COUNTY CLERK'S SUBDIVISION AND LOTS 38 AND 39 IN ALBERT E. CLARK'S SUBDIVISION, ALL IN THE SOUTHWEST 1/4 OF SECTION 16 AND THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 3, 1987 AS DOCUMENT NUMBER 87426203 MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 135.20 FEET; THENCE NORTH 37 DEGREES 10 MINUTES 10 SECONDS EAST, A DISTANCE OF 141.90 FEET; THENCE NORTH 52 DEGREES 49 MINUTES 50 SECONDS WEST, A DISTANCE OF 107.59 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 60.47 FEET TO THE SOUTHEAST CORNER OF LOT 1 IN G.T.E. RESUBDIVISION, AFORESAID; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 1 TO THE SOUTHWEST CORNER THEREOF; THENCE SOUTH ALONG THE SOUTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 1 TO THE NORTHEASTERLY RIGHT OF WAY LINE OF BUSSE HIGHWAY; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 414.65 FEET TO THE POINT OF BEGINNING (EXCEPTING THEREFROM, THAT PART DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE NORTHWESTERLY ALONG THE SOUTHERLY LINE OF LOT 3, ALSO BEING THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 414.65 FEET; THENCE NORTH PARALLEL WITH THE EAST LINE OF LOT 172 IN THE TOWN OF RAND, AFORESAID, A DISTANCE OF 20.60 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE NORTHEASTERLY ON A LINE DRAWN AT RIGHT ANGLES TO THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 73.84 FEET; THENCE NORTHWESTERLY ON A LINE PARALLEL WITH THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 55.98 FEET TO A POINT ON A LINE DRAWN PARALLEL WITH THE EAST LINE OF SAID LOT 172; THENCE SOUTH ALONG SAID LINE PARALLEL WITH THE EAST LINE OF LOT 172, A DISTANCE OF 92.66 FEET TO THE PLACE OF BEGINNING), IN COOK COUNTY, ILLINOIS.

PARCEL 2

LOT 4 IN G.T.E. RESUBDIVISION OF PARTS OF LOTS 167, 169 AND 172 IN TOWN OF RAND, PART OF LOT 24 IN THE COUNTY CLERK'S DIVISION AND OF LOTS 38 AND 39 IN ALBERT E. CLARKE'S SUBDIVISION, ALL IN THE SOUTHWEST 1/4 OF SECTION 16 AND THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 41 NORTH,

UNOFFICIAL COPY

RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3

THAT PART OF LOT 3 IN G.T.E. RESUBDIVISION OF PARTS OF LOTS 167, 169 AND 172 IN TOWN OF RAND, PART OF LOT 24 IN THE COUNTY CLERK'S DIVISION AND OF LOTS 38 AND 39 IN ALBERT E. CLARKE'S SUBDIVISION, ALL IN THE SOUTHWEST 1/4 OF SECTION 16 AND THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

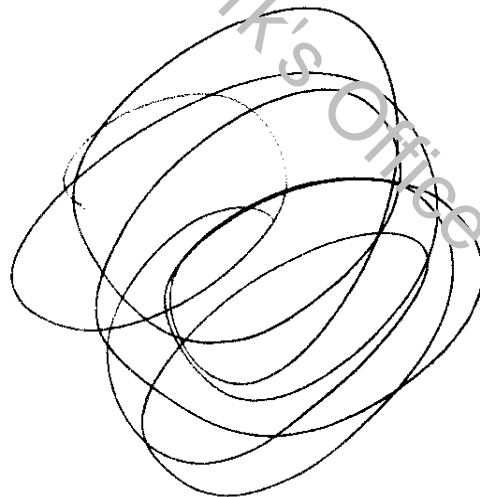
COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE NORTHWESTERLY ALONG THE SOUTHERLY LINE OF LOT 3, ALSO BEING THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 414.65 FEET TO A POINT FOR THE PLACE OF BEGINNING; THENCE NORTH PARALLEL WITH THE EAST LINE OF LOT 172 IN TOWN OF RAND, AFORESAID, A DISTANCE OF 20.60 FEET; THENCE NORTHEASTERLY ON A LINE DRAWN AT RIGHT ANGLES TO THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 73.84 FEET; THENCE NORTHWESTERLY ON A LINE PARALLEL WITH THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 55.98 FEET TO A POINT ON A LINE DRAWN PARALLEL WITH THE EAST LINE OF SAID LOT 172; THENCE NORTH ALONG AFORESAID PARALLEL LINE, 284.74 FEET, MORE OR LESS, TO A POINT IN THE SOUTHERLY LINE OF MINER STREET 261.77 FEET WESTERLY (AS MEASURED ALONG SAID SOUTHERLY LINE) OF THE INTERSECTION OF SAID SOUTHERLY LINE OF MINER STREET WITH THE EASTERLY LINE OF SAID LOT 172; THENCE WESTERLY ALONG THE SOUTHERLY LINE OF MINER STREET, 70.61 FEET TO THE MOST EASTERLY WEST LINE OF SAID LOT 3; THENCE SOUTH ON SAID WEST LINE, 145.72 FEET; THENCE WEST ON A LINE DRAWN AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 130.47 FEET TO THE MOST WESTERLY LINE OF SAID LOT 3; THENCE SOUTH ALONG SAID LINE, 91.00 FEET TO A POINT IN THE NORTHEASTERLY LINE OF BUSSE HIGHWAY; THENCE SOUTHEASTERLY ALONG THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, A DISTANCE OF 251.58 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCELS 1, 2 AND 3 ALSO KNOWN AS THE FOLLOWING PERIMETER LEGAL DESCRIPTION:

ALL OF LOTS 3 AND 4 IN G.T.E. RESUBDIVISION OF PARTS OF LOTS 167, 169 AND 172 IN THE TOWN OF RAND, PART OF LOT 24 IN COUNTY CLERK'S SUBDIVISION AND LOTS 38 AND 39 IN ALBERT E. CLARK'S SUBDIVISION, ALL IN THE SOUTHWEST 1/4 OF SECTION 16 AND THE NORTHWEST 1/4 OF SECTION 21, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 3, 1987 AS DOCUMENT 87426203, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 3, BEING ALSO

UNOFFICIAL COPY

THE WEST LINE OF LOT 167 IN THE TOWN OF RAND, 135.20 FEET; THENCE NORTH 37 DEGREES 10 MINUTES 10 SECONDS EAST ALONG THE EASTERLY LINE OF SAID LOT 3, 141.90 FEET; THENCE NORTH 52 DEGREES 49 MINUTES 50 SECONDS WEST ALONG THE EASTERLY LINE OF SAID LOT 3, 107.59 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 3, BEING ALSO THE WEST LINE OF LOT 167 IN THE TOWN OF RAND, 60.47 FEET TO THE SOUTHEAST CORNER OF LOT 1 IN G.T.E. RESUBDIVISION, AFORESAID; THENCE NORTH 89 DEGREES 48 MINUTES 46 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 1, 330.43 TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 1, 274.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1, BEING A POINT ON THE SOUTHERLY LINE OF MINER STREET; THENCE SOUTH 82 DEGREES 26 MINUTES 40 SECONDS WEST ALONG SAID SOUTHERLY LINE OF MINER STREET, 139.94 FEET TO AN ANGLE POINT IN SAID LINE; THENCE NORTH 89 DEGREES 17 MINUTES 20 SECONDS WEST ALONG THE SOUTHERLY LINE OF MINER STREET, 138.40 FEET TO THE NORTHWEST CORNER OF LOT 4 IN G.T.E. RESUBDIVISION, AFORESAID; THENCE SOUTH 00 DEGREES 42 MINUTES 40 SECONDS WEST ALONG THE WESTERLY LINE OF SAID LOT 4, 75.91 FEET TO AN ANGLE POINT IN SAID LINE; THENCE SOUTH 37 DEGREES 10 MINUTES 10 SECONDS WEST ALONG THE WESTERLY LINE OF SAID LOT 4, 75.62 FEET TO THE SOUTHWEST CORNER OF SAID LOT 4, BEING A POINT ON THE NORTHEASTERLY LINE OF BUSSE HIGHWAY; THENCE SOUTH 52 DEGREES 49 MINUTES 50 SECONDS EAST ALONG THE SOUTHERLY LINE OF LOTS 3 AND 4 IN G.T.E. RESUBDIVISION, AFORESAID, BEING ALSO THE NORTHEASTERLY LINE OF BUSSE HIGHWAY, 820.93 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS. (CONTAINING 169,769 SQUARE FEET OR 3.897 ACRES)



UNOFFICIAL COPY

SCHEDULE 1

OTHER BORROWERS

Chicago 79th Storage LLC, a Delaware limited liability company

Chicago 87th Storage LLC, a Delaware limited liability company

Chicago 105th Storage LLC, a Delaware limited liability company

Stanhope Storage LLC, a Delaware limited liability company

Staten Island Storage LLC, a Delaware limited liability company

Property of Cook County Clerk's Office