

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program



Doc#: 1015918002 Fee: \$60.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 06/08/2010 10:07 AM Pg: 1 of 13

Certificate of Exemption

Report Mortgage Fraud  
800-532-8785

The property identified as: **Pin:** 17-07-132-001-0000

**Address:**

**Street:** 401 N. Western Avenue

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60612

**Lender:** West-Hub Building Corp.

**Borrower:** West-Hub Limited Liability Company

**Loan / Mortgage Amount:** \$1,190,252.00

This property is located within Cook County and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

**Certificate number:** 7DD1A09E-C248-49C6-98C3-B0659F067B0B

**Execution date:** 05/24/2010

# UNOFFICIAL COPY

INSTRUMENT WAS PREPARED  
BY AND AFTER RECORDING  
SHOULD BE RETURNED TO:

Strauss & Malk LLP  
135 Revere Drive  
Northbrook, Illinois 60062

PROPERTY ADDRESS:  
401 N. Western Avenue  
Chicago, IL 60612

TAX IDENTIFICATION NUMBER:  
17-07-132-001-0000

(This space reserved for Recorder's Office.)

## MORTGAGE, SECURITY AGREEMENT, AND ASSIGNMENT OF RENTS

THIS INDENTURE made as of this 12 day of MAY, 2010, by West-Hub Limited Liability Company, an Illinois limited liability company, ("**Mortgagor**"), and West-Hub Building Corp., an Illinois corporation ("**Mortgagee**").

### WITNESSETH:

WHEREAS, Mortgagor is justly indebted to Mortgagee for the principal sum of ONE MILLION ONE HUNDRED NINETY THOUSAND TWO HUNDRED FIFTY TWO AND NO/100 DOLLARS (\$1,190,252.00), as evidenced by a certain Promissory Note (the "**Note**") of even date herewith, made by Mortgagor and payable to the order of and delivered to Mortgagee, and any and all renewals, extensions or refinancings thereof, in and by which Note, Mortgagor promises to pay the said principal sum and interest in the manner and at the rates as provided therein. The unpaid principal amount and all accrued and unpaid interest due under the Note, if not sooner paid, shall be due on a date which is ten (10) years from the date of the Note. All such payments on account of the indebtedness evidenced by the Note shall be first applied to interest on the unpaid principal balance and the remainder to principal and all of said principal and interest being made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, at the address indicated above or at such other address as Mortgagee may from time to time designate in writing. This Mortgage, the Note, and each and every other document now evidencing or securing or hereafter given to evidence or secure the loan from Mortgagee to Mortgagor, including any and all renewals, modifications, extensions, amendments and replacements thereof, are collectively referred to as the "**Loan Documents**."

ACCORDINGLY, Mortgagor, to secure: (i) the payment of said principal sum of money and all interest, late charges and other indebtedness evidenced by the Note and by any extensions, renewals or refinancings thereof; (ii) the performance and observance of the covenants, terms, conditions and agreements contained in the Note, this Mortgage and the Loan Documents; and

# UNOFFICIAL COPY

(iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the Loan Documents, with interest thereon as provided herein or therein; and also in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, ASSIGN, REMISE, RELEASE, WARRANT, AND CONVEY unto Mortgagee, its successors and assigns, the real estate and all of its estate, right, title and interest therein situate, legally described in Exhibit A attached hereto and made a part hereof, which together with the property hereinafter described, is referred to herein as the "**Premises**";

TOGETHER with all improvements now or hereafter constructed upon or erected upon or located on the real estate legally described in Exhibit A attached hereto, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the real estate legally described in Exhibit A attached hereto, and all rents, issues, royalties, income, proceeds, profits and other benefits thereof, and any after acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Mortgagee may be entitled thereto (which are pledged primarily and on a parity with said such times as Mortgagee may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily)), and all shades, awnings, Venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain and drapery fixtures, partitions, attached floor covering, now or hereafter therein or thereon, and all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing): all fixtures, apparatus, equipment and articles, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as defined in the Uniform Commercial Code of Illinois (the "**Code**")), this Mortgage is hereby deemed to also be a Security Agreement under the Code for purposes of granting a security interest in such property, which Mortgagee hereby grants to Mortgagee, as Secured Party (as defined in the Code), as more particularly provided in paragraph 19 of this Mortgage.

TO HAVE AND TO HOLD the Premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

# UNOFFICIAL COPY

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title. Mortgagor represents and covenants that (a) Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except for any Permitted Indebtedness (as defined in the Loan Documents), and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

2. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc. Mortgagor shall (a) repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest by appropriate proceedings diligently prosecuted the validity or amount of any such lien if and only if Mortgagor shall within fifteen (15) days after receiving notice of the filing thereof place a bond with Mortgagee in an amount, form, content and issued by a surety reasonably acceptable to Mortgagee for the payment of any such lien; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (d) complete within a reasonable time any improvements now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use and development thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; and (f) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note. As used in this paragraph and elsewhere in this Mortgage, the term "**indebtedness**" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.

3. Payment of Taxes and Assessments. Mortgagor shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due and before any penalty or interest attaches, and shall furnish to Mortgagee, upon Mortgagee's written request, duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted.

4. Insurance. Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as follows: may reasonably be required by Mortgagee, including without limitation: (a) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements; and (b) comprehensive public liability and property damage

# UNOFFICIAL COPY

insurance covering the Premises, with such limits for personal injury, death and property damage as are commercially reasonable. Mortgagor shall deliver evidence of such policies, including additional and renewal policies, upon request of Mortgagee.

5. Effect of Extensions of Time. If the payment of said indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

6. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee. At any time after the occurrence and during the continuance of an Event of Default, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. At any time after the occurrence and during the continuance of an Event of Default, Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of any buildings or other improvements now or at any time hereafter on the Premises, and rent, operate and manage the Premises and such buildings and improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and such buildings and improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at an annual rate of seven percent (7%) (the "**Default Rate**"). The interest accruing on amounts constituting additional indebtedness under this paragraph shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the loan evidenced by the Note, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment. Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to Four Million and No/100 Dollars (\$4,000,000.00).

# UNOFFICIAL COPY

7. Acceleration of Indebtedness in Event of Default. Each of the following shall constitute an "**Event of Default**" for purposes of this Mortgage:

(a) Mortgagor shall fail to perform and act or make any payment as required under the Note or any of the Loan Documents, and such default is not cured within any applicable cure period; or

(b) There shall exist or be continuing an "Event of Default" under the Note or any of the Loan Documents, and such default is not cured within the applicable cure period, if any.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable. If while any insurance proceeds are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, as set forth herein, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

8. Foreclosure: Expense of Litigation. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. In the event of a foreclosure sale, Mortgagee is hereby authorized to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

# UNOFFICIAL COPY

9. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the paragraph above; second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided and all principal and interest remaining unpaid on the Note; and third, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

10. Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

11. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage, Mortgagor has a right to institute foreclosure proceedings, Mortgagor shall forthwith and upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take, actual possession of the Premises or any part thereof personally, or by its agents or attorneys, as for condition broken. Mortgagee's rights and remedies under this paragraph shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due and provided hereunder, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the Premises, Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto. In such case Mortgagee, under the powers herein granted, may hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions, in forcible detainer and actions in distress for rent, Mortgagee shall have full power:

# UNOFFICIAL COPY

(a) to extend, modify or cancel any existing leases and to enter new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(b) to make any repairs, decorating renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious;

(c) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and

(d) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease.

12. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or any other document given to secure the Note or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

13. Release Upon Payment and Discharge of Mortgagor's Obligations. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of reasonable expenses incurred by Mortgagee in connection with the execution of such release.

14. Notices. Any notice or demand required or permitted to be given under this Mortgage shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, return receipt requested, addressed as follows:



**UNOFFICIAL COPY**

To Mortgagee: West-Hub Building Corporation  
 c/o Crown Packaging International  
 8919 Colorado  
 Merrillville, Indiana 46410  
 Attention: Berle Blitstein

To Mortgagor: West-Hub Limited Liability Company  
 c/o Crown Packaging International  
 8919 Colorado  
 Merrillville, Indiana 46410  
 Attention: Berle Blitstein

With Copy to: Strauss & Malk, LLP  
 135 Revere Drive  
 Northbrook, Illinois 60062  
 Attention: Benton C. Strauss, Esq.

Either party may designate a different address for notice purposes by giving notice thereof in accordance with this paragraph; provided, however, that such notice shall not be deemed given until actually received by the addressee. Any notice or demand given by United States mail shall be deemed given on the second business day after the same is deposited in the United States mail as registered or certified mail, addressed as above provided with postage thereon fully prepaid.

15. Waiver of Defenses. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

16. Due on Sale or Further Encumbrance. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any sale, conveyance, or other transfer of all or any part of the title to the Premises, without the prior written consent of Mortgagee, shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder. Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent Event of Default.

17. Further Instruments. Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

18. Subordination of Property Manager's Lien. Any property management agreement for the Premises entered into hereafter by Mortgagor with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager

# UNOFFICIAL COPY

may have pursuant to 770 ILCS 60/0.01 et. seq. (1994). Such property management agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, Mortgagor shall cause the property manager to enter into a Subordination of Management Agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property manager, to the lien of this Mortgage.

19. Security Agreement and Financing Statement. Mortgagor and Mortgagee agree (a) that this Mortgage shall constitute a Security Agreement within the meaning of Section 9-402(6) of the Code with respect to all any personal property included in the definition herein of the word "**Premises**" which property may not be deemed to form a part of the real estate described in Exhibit A attached hereto or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, books and records relating to the Premises and operation thereof and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "**Collateral**"), and (b) that a security interest in and to the Collateral is hereby granted to the Mortgagee; all to secure payment of the indebtedness hereby secured and to secure performance by the Mortgagor of the terms, covenants and provisions hereof. Upon the occurrence of any Event of Default hereunder, Mortgagee, pursuant to the appropriate provisions of the Code, shall have the right to proceed with respect to both the real property and the Collateral in accordance with its rights, powers, and remedies under the Code.

20. Compliance with Illinois Mortgage Foreclosure Law. If any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law 735 ILCS 5/15 - 1101 (1994) et seq. (herein called the "**Act**"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

21. Miscellaneous.

(a) Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its successors and permitted assigns, any subsequent owner or owners of the Premises who acquire the Premises subject to this Mortgage and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions. In the event one or more of the provisions contained in this Mortgage or the Note or in any security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality

# UNOFFICIAL COPY

or unenforceability shall at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage and the Note it secures are to be construed and governed by the substantive laws of the State of Illinois.

(c) Mortgagee in Possession. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

(d) Relationship of Mortgagee and Mortgagor. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor, lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a Mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

(e) Time of the Essence. Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage.

(f) No Merger. It being the desire and intention of the parties hereto that the Mortgage and the lien thereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(g) Value for Purposes of Insurance. Upon request by Mortgagee, Mortgagor agrees to furnish evidence of replacement value, without cost to Mortgagee, of the type which is regularly and ordinarily made for insurance companies, with respect to the buildings and improvements on the Premises.

(h) Estoppel Certificates. Each of Mortgagor and Mortgagee, within fifteen (15) days after receipt of a written request from the other, agrees to furnish from time to time a signed statement setting forth the amount of the indebtedness and whether or not any default, offset or defense then is alleged to exist against the indebtedness and, if so, specifying the nature thereof.

[Signature Page Follows]

# UNOFFICIAL COPY

Mortgagor has executed this instrument the day and year first above written.

MORTGAGOR:

West-Hub Limited Liability Company, an Illinois limited liability company



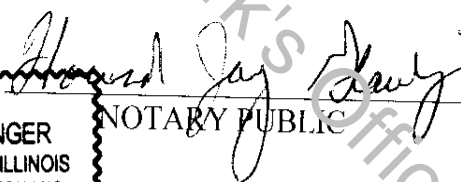
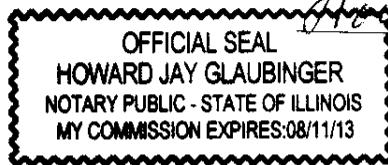
By: Berle R. Blitstein  
Its: Manager

STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF COOK )

I, HOWARD JAY GLAUBINGER, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Berle R. Blitstein, as Manager of West-Hub Limited Liability Company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Member, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 12 day of May, 2010.

(SEAL)



NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

# UNOFFICIAL COPY

## EXHIBIT A

### Legal Description

ALL OF BLOCK 3 IN EBERHART & WILBER'S SUBDIVISION OF BLOCK 25 OF CANAL TRUSTEE'S SUBDIVISION OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT PART OF SAID BLOCK 3 AFORESAID LYING SOUTH OF A LINE DRAWN FROM A POINT ON THE WEST LINE OF LOT 13 IN SAID BLOCK, 21 AND 8/10THS FEET NORTH OF THE SOUTHWEST CORNER OF SAID LOT 13 TO THE SOUTHWEST CORNER OF LOT 12) AND (EXCEPT FROM SAID BLOCK 1 THAT PART LYING WEST OF A LINE DRAWN PARALLEL WITH AND 50 FEET EAST OF THE WEST LINE OF SECTION 7) IN COOK COUNTY, ILLINOIS.

Property commonly know as: 401 N. Western Avenue, Chicago, Illinois 60612  
Permanent Index Number: 17-07-132-001-0000

Cook County Clerk's Office