

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 0929533047 Fee: \$90.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 10/22/2009 09:37 AM Pg: 1 of 28

Report Mortgage Fraud  
800-532-8785

The property identified as: PIN: 13-34-302-002-0000

Address:

Street: 4555 W. Armitage

Street line 2:

City: Chicago

State: IL

ZIP Code: 60639

Lender: Bank of America, N.A.

Borrower: Plymouth Tube Company

Loan / Mortgage Amount: \$25,000,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 771/0 et seq. because it is commercial property.

Box 400-CTCC

Certificate number: 5BD5F5C9-BA72-4A23-8F8A-CF10CA86DB1E

Execution date: 10/15/2009

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Property of Cook County Clerk's Office

(1a11)

**UNOFFICIAL COPY****This Document Prepared By  
and After Recording Return To:**

John T. McEnroe (CWM)  
Vedder Price P.C.  
222 North LaSalle Street  
Chicago, IL 60601-1003

**Common Address:**

4555 West Armitage  
Chicago, IL 60639  
PIN: 13-34-302-002  
13-34-302-015

**JUNIOR MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT**

**THIS JUNIOR MORTGAGE, ASSIGNMENT OF LEASES AND SECURITY AGREEMENT** (hereinafter referred to as the "**Mortgage**") is made as of October 15, 2009 by **PLYMOUTH TUBE COMPANY**, a Michigan corporation (hereinafter referred to as "**Borrower**"), as mortgagor, whose address is set forth below, in favor of **BANK OF AMERICA, N.A.**, its successors and assigns, in its capacity as managing agent (in such capacity hereinafter referred to as "**Managing Agent**" or "**Mortgagee**"), whose address is set forth below, for the ratable benefit of the Banks (defined below).

**RECITALS**

A. Borrower is the owner of fee title interest in real property located in Cook County, Illinois, legally described on Exhibit A, attached hereto and made a part hereof (the "**Real Estate**"), subject to the lien of the Senior Mortgage (defined below).

B. Borrower and Managing Agent are parties to a certain Second Amended and Restated Credit Agreement dated as of even date herewith (as further amended, restated, modified or supplemented and in effect from time to time, the "**Credit Agreement**"), along with various "**Banks**" party thereto from time to time, whereby such Banks have made a loan ("**Loan**") to Borrower, as evidenced by various amended and restated promissory notes made payable by the Borrower to the Banks party to the Credit Agreement from time to time in the principal amount of the Loan.

C. The Credit Agreement amends and restates that certain Loan and Repayment Agreement dated as of May 2, 1988, as amended and as amended and restated by an Amendment and Restatement Agreement dated as of June 30, 1991, as amended and as amended and restated by that certain Second Amendment and Restatement Agreement, dated as of July 29, 1996, as amended and as amended and restated by that certain Third Amendment and Restatement Agreement dated as of October 3, 2000, as amended, and as amended, and restated by an

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Amended and Restated Credit Agreement dated as of October 31, 2002, by and among Borrower, the Banks and Managing Agent, and its predecessors in interest.

D. It is a condition precedent to Banks' obligations to enter into and to make financial accommodations pursuant to the terms of the Credit Agreement that Borrower grant a mortgage on the Mortgaged Property (as defined below) securing the obligations and liabilities under the Credit Agreement.

## ARTICLE 1

### TERMS OF THE INDEBTEDNESS

1.1 Certain Terms of Indebtedness. The following is a summary of certain terms of the Indebtedness (as hereinafter defined) secured by this Mortgage:

(a) Credit Agreement. Pursuant to the terms of the Credit Agreement, Banks have agreed to provide the Revolving Credit Loans in an aggregate amount not to exceed \$25,000,000. The Revolving Credit Loans are sometimes collectively referred to herein as the "**Loan**".

(b) Reserved.

(c) Revolving Note. The Revolving Credit Loans are evidenced by one or more amended and restated promissory notes dated even date herewith, in the aggregate principal amount of \$25,000,000 (each such note, together with any and all modifications, supplements, replacements, restatements or amendments thereof, collectively referred to as the "**Revolving Notes**"). The Revolving Notes are collectively referred to herein as the "**Notes**".

(d) Interest Rate and Payments. Interest shall accrue under the Notes at a variable rate. Installments of interest and of principal outstanding under the Notes shall be due and payable in the amounts, at the times and otherwise as provided in the Notes and the Credit Agreement.

(e) Maturity Date. All of the unpaid principal balance outstanding under the Notes and all unpaid interest accrued thereon shall become due and payable, if not sooner paid or if not sooner due by acceleration, notice of prepayment, or otherwise, on October 15, 2012 (subject to renewal in accordance with the terms of the Credit Agreement).

(f) Prepayment. The Notes may be prepaid only in accordance with the Notes and the Credit Agreement. Any payment in full of the Notes shall include, in addition to the unpaid principal balance outstanding, all interest accrued thereon, any applicable prepayment premium provided in the Notes and any other sums which are secured by the Mortgage and other Loan Documents (as hereinafter defined), including, but not limited to, any expenses incurred by Mortgagee in connection with the Loan or in connection with any Event of Default (as hereinafter defined) under the Notes, the Credit Agreement, this Mortgage or other Loan Documents.

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## ARTICLE 2

### DEFINITIONS

2.1 Definitions: The following terms shall have the following meanings; provided that any other capitalized term used herein that is not expressly defined in this Article shall have the meaning defined elsewhere in this Mortgage or in the Credit Agreement, which definitions are incorporated herein by reference as if fully set forth herein:

(a) Awards: All awards and payments heretofore or hereafter made by any municipal, state or federal agency or authority to Borrower, including any awards or payments for any taking of the Mortgaged Property (as hereinafter defined) as a result of the exercise of the right of condemnation or eminent domain.

(b) Borrower's Address: 29 W 150 Warrenville Road, Warrenville, Illinois 60555, Attention: Treasurer.

(c) Buildings: Any and all buildings, structures and improvements, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Real Estate (as hereinafter defined) or any part thereof.

(d) Collateral: The meaning set forth in paragraph 5.1.

(e) Event of Default: The occurrences defined in Article 8 of this Mortgage.

(f) Fixtures: All fixtures, as defined in and subject to the Uniform Commercial Code, located on the Real Estate including, without limitation, all systems, fittings, structures, equipment, apparatus, fixtures and other improvements and items now or hereafter temporarily or permanently attached to, installed in or used in connection with any of the Buildings or the Real Estate, including but not limited to any air partitions, hardware, motors, engines, boilers, furnaces, pipes, plumbing, conduit, sprinkler systems, fire extinguishing equipment, elevator equipment, telephone and other communications equipment, security equipment, master antennas and cable television equipment, water tanks, heating, ventilating, air conditioning and refrigeration equipment, laundry facilities, and incinerating, gas and electric machinery and equipment.

(g) Governmental Authority: Any and all courts, boards, agencies, commissions, offices or other authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) or arbitration authority, whether now or hereafter in existence.

(h) Impositions: All (i) general and special real estate and personal property taxes and other land taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, and (ii) charges for any easement or agreement maintained for the benefit of the Mortgaged Property which at any time prior to or after the execution of the Loan Documents may be assessed, levied or imposed upon the Mortgaged Property or the rent or income received therefrom or any use or occupancy thereof, and (iii) other taxes, assessments, fees and governmental charges levied,

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imposed or assessed upon or against Borrower in connection with the Mortgaged Property, and (iv) all annual premiums for insurance policies required to be maintained under this Mortgage.

(i) Indebtedness: The principal amount of, interest payable on, and all fees, amounts, payments, premiums, liabilities and monetary liabilities and obligations due or required to be paid by Borrower to Managing Agent, the Banks, or any one or more of them, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, pursuant to the Loan Documents; provided that Indebtedness shall expressly not include any liability under the Senior Agreements.

(j) Leases: Any and all leases, subleases, licenses, concessions or grants of other possessory interests (written or oral) now or hereafter in force, covering or affecting the Mortgaged Property, or any part thereof or interest therein, together with all rights, powers, privileges, options and other benefits or Borrower thereunder (but under no circumstances any liabilities, obligations or responsibilities thereunder).

(k) Legal Requirements: The terms, covenants, conditions and restrictions now or hereafter existing to which the Mortgaged Property is subject under any and all present and future statutes, laws, rulings, opinions, rules, regulations, codes, permits, certificates, approvals, ordinances, judicial decisions or orders of any Governmental Authority in any way applicable to the Mortgaged Property, and the ownership, use, occupancy, possession, development, design, construction, financing, operation, maintenance, alterations, repair, marketing, sale, lease or enjoyment thereof, including without limitation any related to zoning, building, utility service, sewer service, fire safety, land and water use, subdivision control, condominium property, environmental protection, occupational health and safety or flood hazard;

(l) Loan Documents: The Credit Agreement, together with all such agreements, loan agreements, security agreements, assignments, certificates, indemnifications, documents, notes, guarantees, pledges, consents, contracts, notices, financing statements, hypothecation agreements, collateral assignments, mortgages, chattel mortgages, applications for letters of credit and instruments given to evidence or secure any Indebtedness or other obligation of Borrower to Managing Agent, Banks, or any one or more of them, and all amendments, modifications, supplements, extensions, replacements and restatements thereof and thereto, and all agreements, notes, documents or instruments delivered in substitution therefor or in lieu thereof, whether heretofore, now or hereafter executed by or on behalf of Borrower, any party who or which has guaranteed all or any portion of any Indebtedness evidenced thereby, or any other person, or entity, provided that Loan Documents shall expressly exclude the Senior Agreements. Subject to the forgoing provision, it is hereby expressly agreed by Borrower that "**Loan Documents**" are not limited to those documents, instruments and agreements existing on the date hereof or contemplated in the Credit Agreement, but are intended to include any agreement, document or instrument entered into after the date hereof evidencing or securing any indebtedness, obligation, liability or agreement between the Borrower and any one or more of Managing Agent, Co-Agent or Banks.

(m) Material Adverse Effect: The meaning ascribed to this term in the Credit Agreement, which definition is incorporated herein by reference.

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(n) Mortgaged Property: The Real Estate, Buildings, Fixtures, Leases, Rents, Awards, Personalty and Proceeds together with: (i) any and all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of the Real Estate and/or the Buildings belonging or in any wise appertaining thereto and all right, title and interest of Borrower in and to any streets, ways, strips or gores of land adjoining the Real Estate or any part thereof; (ii) any and all betterments, additions, appurtenances, substitutions, replacements and after acquired title or interests thereof and all reversions and remainders therein; and (iii) any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations.

(o) Mortgagee's Address: Bank of America, N.A., as Managing Agent, 135 South LaSalle Street, 4th Floor, Chicago, Illinois 60603, Attention: Senior Portfolio Manager.

(p) Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than the obligation to repay the Indebtedness) of Borrower to one or more of Managing Agent or the Banks howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, pursuant to the Loan Documents; provided that, Obligations shall expressly not include any obligations under the terms of the Senior Agreements.

(q) Permitted Exceptions: The encumbrances and title exceptions specifically described in Exhibit "B" attached hereto and made a part hereof.

(r) Personalty: All right, title and interest of Borrower in and to all furniture, furnishings, equipment, machinery, goods, and all other tangible personal property and any intangibles of any kind or character as defined in and subject to the provisions of the Uniform Commercial Code (excluding the name Plymouth Tube Company or any modification or derivation thereof) now or hereafter located upon, within or about the Real Estate and Buildings, or used or useful in connection therewith, together with all existing or future accessories, replacements and substitutions thereto or therefor and the proceeds therefrom, including, but not limited to: (i) all furniture, furnishings and equipment furnished by Borrower to tenants of the Real Estate or the Buildings; (ii) building materials and equipment intended to be incorporated in the improvements now or hereafter to be constructed on the Real Estate, whether or not yet incorporated in such improvements; (iii) all machinery, apparatus, systems, equipment or articles used in supplying heating, gas, electricity, ventilation, air-conditioning, water, light, power, refrigeration, fire protection, elevator service, telephone and other communication service, master antennas and cable television service, waste removal and all fire sprinklers, smoke detectors, alarm systems, security systems, electronic monitoring equipment and devices; (iv) all window or structural cleaning and maintenance equipment; (v) all indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers, cabinets, wall safes and other furnishings; (vi) all rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds and curtains; (vii) all lamps, chandeliers and other lighting fixtures; (viii) all recreational equipment and materials; (ix) all office furniture, equipment and supplies; (x) all kitchen equipment and appliances, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units; (xi) all laundry equipment, including washers and dryers; (xii) all tractors, mowers, sweepers, snow removal equipment and

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other equipment used in maintenance of interior and exterior portions of the Real Estate; and (xiii) all other maintenance supplies and maintenance inventories; provided that the enumeration of any specific articles of personalty set forth above shall in no way exclude or be held to exclude any items or property not specifically enumerated, and any of the foregoing items that do not constitute personal property but constitute fixtures under applicable law shall be included in the definition of the term "**Fixtures**" as used herein.

(s) Potential Default: The meaning ascribed to this term in the Credit Agreement, which definition is incorporated herein by reference.

(t) Proceeds: Any and all proceeds and payments heretofore or hereafter made by any insurance company as a result of any casualty or other event in connection with the Mortgaged Property.

(u) Rents: All of the rents, revenues, income, profits, deposits and other benefits payable under the Leases and/or otherwise arising from or out of the Mortgaged Property or out of the ownership, use, enjoyment or disposition of all or any portion of the Mortgaged Property or part thereof or interest therein.

(v) Senior Agreements: That certain note dated August 10, 2007 from Borrower to Senior Mortgagee in the amount of \$500,000.00, as defined in the Senior Mortgage, as defined herein, and the Senior Mortgage as defined herein securing the Obligations as defined therein, and all amendments, modifications, supplements, replacements or restatements thereto or thereof.

(w) Senior Mortgage: That certain Mortgage, Assignment of Leases and Security Agreement recorded September 4, 2007 as document number 0724733006 in Cook County, Illinois made by Borrower in favor of Senior Mortgagee which is a lien upon the Mortgaged Property.

(x) Senior Mortgagee: Crucible Materials Corporation or its successor and assigns.

## ARTICLE 3

### GRANT

3.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Borrower by these presents hereby Grants, Bargains, Sells, Assigns, Mortgages and Conveys unto Mortgagee, as Managing Agent, the Mortgaged Property, subject to, but only to, the Senior Mortgage and the other Permitted Exceptions, to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever and Borrower does hereby warrant that Borrower is well and lawfully seized of good, absolute and indefeasible fee simple absolute title to the Real Estate and the Buildings thereon, free and clear of all mortgages, liens, charges, security interests and encumbrances whatsoever, except only the Senior Mortgage and the other Permitted Exceptions, and does hereby bind itself, its successors and assigns to warrant and forever defend fee simple absolute title to the Real Estate and the Buildings thereon unto the Mortgagee, and the quiet and peaceful

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enjoyment and possession of the Real Estate and the Buildings thereon against every person whomsoever claiming the same or any part thereof or interest therein, other than the Permitted Exceptions.

3.2 Revolving Credit Mortgage. This Mortgage is given to secure, in part, revolving credit loans under the Credit Agreement and the other Loan Documents, and shall secure not only presently existing Indebtedness under the Credit Agreement and the other Loan Documents, but also future advances, whether such advances are obligatory or to be made at the option of the Banks, or otherwise, and including advances under the Credit Agreement and the other Loan Documents, as are made within 20 years from the date hereof, to the same extent as if such future advances were made at the time of execution of this Mortgage and although there may be no Indebtedness hereby secured outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness, including future advances, from the time of its filing for record in the recorder's office in the county in which the Real Estate is located. The total amount of Indebtedness hereby secured may increase or decrease from time to time, but the total unpaid principal balance of Indebtedness hereby secured at any one time outstanding shall not exceed a maximum principal amount of \$90,000,000 plus interest thereon, and any disbursements made for payment of taxes, special assessments or insurance on the Mortgaged Property and interest on such disbursements. This Mortgage shall be valid and have priority over all subsequent liens and encumbrances, including (to the extent permitted by applicable law) statutory liens, except taxes and assessments levied on the Premises.

3.3 Condition of Grant. The condition of these presents is such that if Borrower shall pay or cause to be paid the Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations in accordance with the Mortgage, the Credit Agreement and the other Loan Documents, then this Mortgage and the other Loan Documents and the estates and rights granted by them shall be released and terminated by Mortgagee.

## ARTICLE 4

### ASSIGNMENT OF LEASES

4.1 Assignment of Rents, Leases and Profits. To further secure the full and timely payment of Indebtedness and the full and timely performance and discharge of the Obligations, Borrower hereby sells, assigns and transfers unto Mortgagee, as Managing Agent, all of the Leases and the Rents now due and which may hereafter become due under or by virtue of any of the Leases which may have been heretofore or may be hereafter made or agreed to by Borrower or the agents of Borrower or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute and present transfer and assignment of all such Leases, Rents and all avails thereunder, to Mortgagee; provided that, the acceptance by Mortgagee of the foregoing assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking possession of the Mortgaged Property by Mortgagee, be deemed or construed to constitute Mortgagee a "**Mortgagee in Possession**," nor thereafter or at any time or in any event obligate Mortgagee to appear in or defend any action or proceeding related to the Leases or to the Mortgaged Property, to take any actions thereunder, to expend any money, incur any expenses, or perform or discharge any



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obligation, duty or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Borrower by any lessee thereunder.

## ARTICLE 5

### SECURITY AGREEMENT

5.1 Security Interest. This Mortgage shall be construed as a mortgage on real property and it shall also constitute and serve as a "**Security Agreement**" on personal property within the meaning of, and shall constitute, until the grant of this Mortgage shall terminate as provided in paragraph 3.3 hereinabove, a security interest under, the Uniform Commercial Code with respect to the Personalty and Fixtures. To this end, Borrower does Grant, Bargain, Convey, Assign, Transfer and Set Over unto Mortgagee, as Managing Agent, a security interest in and to any and all of Borrower's right, title and interest in, to and under the Personalty and Fixtures (hereinafter referred to as the "**Collateral**") to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations. Reference is hereby made to the Credit Agreement which sets forth in more detail the terms and conditions of the Credit Agreement and the rights, remedies, powers and authority vested in Mortgagee, as Managing Agent for the ratable benefit of Banks, by virtue of the Credit Agreement, which terms, conditions, rights, remedies, powers and authority are herein incorporated by reference.

5.2 Financing Statement. This Mortgage is intended to be a financing statement within the purview of the Uniform Commercial Code with respect to the Personalty and Fixtures. The addresses of Borrower (Debtor) and Mortgagee (Secured Party) are as set forth in paragraph 2.1 hereof. This Mortgage is to be filed for record in the real estate records of the county where the Real Estate is located. Notwithstanding the foregoing, Borrower hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form, scope and substance satisfactory to Mortgagee, any renewals or extensions of said financing statements and such additional financing statements and such further assurances as Mortgagee may, from time to time, consider necessary to create, perfect and preserve Mortgagee's security interest herein granted and Mortgagee may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

## ARTICLE 6

### REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to Mortgagee as of the date hereof and as of all dates hereafter that:

6.1 Title. Borrower owns fee simple title interest in the Real Estate and good title to all other Mortgaged Property, free and clear of all liens and encumbrances other than the Permitted Exceptions.

6.2 Zoning. The Mortgaged Property is duly and validly zoned as to permit the current use, occupancy and operation of the Mortgaged Property and such zoning is final and

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unconditional and in full force and effect, and no attacks are pending or threatened with respect thereto. The Mortgaged Property complies and will comply with the requirements, standards and limitations set forth in the applicable zoning ordinance and other applicable ordinances in all particulars, including, but not limited to, bulk, density, height, character, dimension, locations and parking restrictions or provisions, except where failure to comply would not have a Material Adverse Effect.

6.3 Utilities. All utility services necessary and sufficient for the full use, occupancy and operation of the Mortgaged Property are available to and currently servicing the Mortgaged Property without the necessity of any off-site improvements or further connection costs.

6.4 Access. All streets and highways necessary for access to and full use, occupancy and operation of the Mortgaged Property have been completed and are open and available to the Mortgaged Property without further condition or cost to Borrower.

6.5 Survival of Representations and Warranties. Each and all of the representations and warranties contained herein shall survive the execution and delivery of the Loan Documents and shall continue in full force and effect until the Obligations and the Indebtedness shall have been satisfied and paid in full.

## ARTICLE 7

### COVENANTS

Until the entire Indebtedness shall have been paid in full, Borrower hereby unconditionally covenants and agrees as follows:

7.1 Payment and Performance. Borrower shall pay or cause to be paid the Indebtedness, as and when all or any payment thereunder is due under the Notes, the Credit Agreement, this Mortgage or the Loan Documents, and shall perform or cause to be performed all of the Obligations in full on or before the dates the Obligations or any part thereof are required to be performed and shall commit or suffer no act or event which (upon notice or the passage of time, or both) would constitute a default or Event of Default under the Loan Documents.

7.2 Insurance. Borrower shall procure, and maintain during the term of this Mortgage, a policy or policies of insurance insuring the Mortgaged Property against loss or damage by fire, explosion, windstorm, hail, tornado, all other perils insured against under “**extended coverage**” or “**all risk**” policies in such amounts and with such companies as shall be reasonably satisfactory to Mortgagee. Borrower shall deliver to the Mortgagee the certificates evidencing such insurance and any additional insurance which shall be taken out upon the Mortgaged Property evidencing the payment of all premiums, and certificates evidencing renewal of all such policies of insurance shall be delivered to Mortgagee at least ten (10) days before any such insurance shall expire. All casualty policies required of Borrower shall be payable to the Mortgagee and Borrower, subject to the senior interest of the Senior Mortgagee, as their interests may appear pursuant to a standard non-contributory mortgagee clause attached thereto which shall be in all respects reasonably satisfactory to Mortgagee; shall provide at least

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ten days' written notice to the Mortgagee prior to cancellation of such policies or any material change in the risk or coverages insured; shall be maintained throughout the term of this Mortgage without cost to Mortgagee; shall be evidenced by certificates thereof deposited with Mortgagee; and shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest. Mortgagee shall have the right and option, but shall not be obligated, to make premium payments to prevent any cancellation, endorsement, alteration or reissuance and such payments shall be accepted by insurer to prevent the same. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Indebtedness, all right, title and interest of Borrower in and to such policies then in force concerning the Mortgaged Property and all Proceeds payable thereunder (subject to the rights of Senior Mortgagee) shall thereupon vest in the purchaser at such foreclosure or the Mortgagee in the event of such transfer.

7.3 Adjustment of Loss. Subject to the terms and provisions of Section 10.10, Borrower hereby assigns to Mortgagee all Proceeds paid in connection with any such insurance. Unless an Event of Default or Potential Default has occurred and is continuing, Borrower is hereby authorized and empowered, after notice to Mortgagee and after providing such information as Mortgagee shall reasonably request, to make or file proofs of loss or damage and to adjust or compromise any loss. If an Event of Default or Potential Default has occurred and is continuing, subject to the rights of the Senior Mortgagee, Mortgagee is hereby authorized and empowered, at its option, to make or file proofs of loss or damage and to adjust or compromise any loss and to collect and receive such Proceeds. Any Proceeds collected shall be deposited with Mortgagee to be disbursed in accordance with the terms hereof. Mortgagee shall not be held responsible for any failure to collect any Proceeds, unless such failure is due to the gross negligence or willful misconduct of Mortgagee.

7.4 Application of Proceeds. In the event the Mortgaged Property or any part thereof covered by such insurance is destroyed or damaged by fire, or by any other casualty against which insurance shall have been required hereunder, provided no Event of Default or Potential Default shall have occurred and be continuing and provided Senior Mortgagee agrees to make such Proceeds available to Borrower for such use, then Borrower shall have the right, after Mortgagee deducts from said Proceeds all of Mortgagee's reasonable expenses incurred in the collection and administration of such sums, if any, to use said net Proceeds for repair or replacement of the Mortgaged Property so destroyed or damaged. If Borrower elects not to use the Proceeds to repair the Mortgaged Property, or if an Event of Default or Potential Default has occurred and is continuing, Mortgagee shall have the right to apply such Proceeds (subject to the rights of the Senior Mortgagee) to payment of Indebtedness, in such order of priority as Mortgagee shall elect, in Mortgagee's sole and exclusive discretion.

7.5 Disbursement of Proceeds for Repair. Subject to the rights of the Senior Mortgagee, any Proceeds to be made available for repair for replacement of the Mortgaged Property, may, if Mortgagee elects in its reasonable discretion, be held by the Mortgagee or with a title insurance company or escrow agent designated by the Mortgagee, upon such terms and conditions as Mortgagee may reasonably specify, without payment or allowance of interest thereon, and shall be paid out from time to time to Borrower (or, at the option of Mortgagee, jointly to Borrower and the persons furnishing labor and/or material incident to such restoration, repair or replacement or directly to such persons as the work progresses), upon such terms and

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conditions as Mortgagee may reasonably specify. As a condition precedent to the initial disbursement of Proceeds, Borrower shall be required to provide Mortgagee reasonably satisfactory evidence that Borrower has sufficient funds (including Proceeds) to repair and restore the Mortgaged Property to the general condition which existed prior to casualty. If, upon completion of the work, any portion of the Proceeds has not been disbursed for repair or restoration or applied by the Senior Mortgagee to indebtedness secured by the Senior Agreements, such Proceeds shall be disbursed to Mortgagee for application to the Indebtedness, in such order of priority as Mortgagee shall elect. Notwithstanding anything to the contrary contained in this Section, in the event the Proceeds payable with respect to any casualty loss are less than or equal to \$100,000, the Proceeds shall be delivered directly to Borrower; provided that Borrower shall deliver such evidence as Mortgagee shall reasonably request that following completion of such repair and restoration, the Mortgaged Property is free of all mechanics and materialmen's liens. Notwithstanding anything to the contrary contained in this Section, Mortgagee agrees to accept and be bound by any procedure for the disbursement of Proceeds as Senior Mortgagee shall deem reasonable and acceptable.

7.6 Awards. Subject to the rights of Senior Mortgagee, Borrower hereby assigns to Mortgagee all Awards. Unless an Event of Default or Potential Default has occurred and is continuing, Borrower is hereby authorized and empowered, after notice to Mortgagee and providing such information as Mortgagee shall reasonably request, to commence, appear in and prosecute any such proceeding relating to any condemnation, and to settle or compromise any claim in connection herewith. If an Event of Default or Potential Default has occurred and is continuing, Mortgagee is hereby authorized and empowered to commence, appear in and prosecute in its own name or in Borrower's name, any such proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. Mortgagee shall not be held responsible for any failure to collect any amount in connection with any such proceeding, regardless of the cause of such failure. Provided no Event of Default or Potential Default shall have occurred and is continuing, and provided that Senior Mortgagee makes such Awards available to Borrower for such use, Borrower shall have the right, after Mortgagee deducts from said Award all of Mortgagee's reasonable expenses incurred in the collection and administration of such sums, to use said net Award for repair or replacement of the Mortgaged Property so taken. The net Award shall be disbursed in accordance with the terms set forth in Section 7.5. Notwithstanding anything to the contrary contained in this Section, in the event the Award payable with respect to any taking is less than or equal to \$100,000, the Award shall be delivered directly to Borrower; provided that Borrower shall deliver such evidence as Mortgagee shall reasonably request that following completion of repair and restoration the Mortgaged Property in connection therewith, the Mortgaged Property is free of all mechanics and materialmen's liens.

7.7 Restrictions on Transfer and Financing. For the purpose of protecting Mortgagee's security and keeping the Mortgaged Property free from subordinate financing liens, Borrower agrees that it shall be an Event of Default hereunder if there occurs, without the Mortgagee's prior written consent, any sale, conveyance, assignment, mortgage, pledge or grant of a security interest of or in, all or any part of the legal and/or equitable title to the Mortgaged Property, except as expressly permitted pursuant to the terms of the Credit Agreement.

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7.8 Use Restrictions. Subject to the terms of the Credit Agreement, Borrower shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which would: (a) be dangerous unless safeguarded as required by law; (b) constitute a public or private nuisance; (c) make void, voidable or cancelable, or increase the premium of, any insurance then in force with respect thereto; or (d) alter the current use and occupancy of the Mortgaged Property in any material respect. Borrower will not operate the Mortgaged Property, or permit the same to be operated, as a cooperative or condominium building or buildings in which the tenants or occupants participate in the ownership, control or management of the Mortgaged Property, or any part thereof, as tenant stockholders or otherwise.

7.9 Alterations. Borrower shall not, without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld), make or permit to be made any material additions or material alterations to the Mortgaged Property which would have a Material Adverse Effect.

7.10 Restoration Following Any Casualty. Subject to the requirements of the Senior Agreements, if any act or occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtained or obtainable or condemnation for which the award was obtained or not obtained), shall result in damage to or loss or destruction of the Mortgaged Property which would have a Material Adverse Effect, Borrower shall give notice thereof to Mortgagee. Borrower shall either (i) promptly, provided that any Proceeds or Awards are made available to Borrower for such purpose, at Borrower's sole cost and expense, and regardless of whether any Proceeds or Award shall be sufficient for such purpose, commence and continue diligently to complete the restoration, repair, replacement and rebuilding of the Mortgaged Property to the general value and character immediately prior to such damage, loss or destruction or (ii) Borrower shall at its sole decision apply same to the Indebtedness herein or the Senior Mortgage. In connection with this paragraph, it is expressly understood and agreed by Borrower that its covenant to rebuild and restore the Mortgaged Property shall apply to those cases where Proceeds are not available as the result of damage or destruction of an amount less than any deductible under its policy or policies of insurance.

7.11 Tax on the Indebtedness. In the event of the enactment, after the date of this Mortgage, of any law of the State of Illinois deducting from the value of the Mortgaged Property for the purpose of taxation the amount of any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or Mortgagee, then, and in any such event, Borrower, upon demand by Mortgagee, shall pay such taxes or assessments or reimburse Mortgagee therefor; provided that, if, in the opinion of counsel for Mortgagee, (a) it may be unlawful to require Borrower to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Borrower, to declare the existence of an Event of Default hereunder, and all of the Indebtedness secured hereby shall become due and payable within sixty (60) days from the giving of such

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notice. Notwithstanding the foregoing, it is understood and agreed that Borrower is not obligated to pay any portion of Mortgagee's federal or state income tax.

7.12 Leasing. Notwithstanding Article 4 hereof, it is acknowledged that, at the time of execution hereof, Borrower is in sole possession of the Mortgaged Property and no Leases or any portion thereof are in existence. Borrower covenants and agrees that, during the term of this Mortgage, it shall not enter into any Leases or Leases of the Mortgaged Property or any part thereof without first obtaining the approval of Mortgagee to (a) the prospective tenant under any such Lease, (b) the form of any such Lease, and (c) the terms of any such Lease, including, without limitation, terms regarding rent and the term thereof. Borrower further agrees that, notwithstanding the fact that Article 4 hereof is intended to assign any such future Lease or Leases and the Rents thereunder to Borrower as further security for the Indebtedness, subject to the Senior Agreements, in the event any such Lease or Leases are executed, Borrower shall, upon request of Mortgagee, execute and deliver to Mortgagee for recording an Assignment of Leases, Rents and Profits, in form and substance acceptable to Mortgagee, which shall set forth in detail the terms and conditions of said assignment, including, without limitation, the rights, remedies, powers and authority vested in Mortgagee by virtue thereof.

## ARTICLE 8

### EVENTS OF DEFAULT

The term "**Event of Default**" shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following, without notice to Borrower and without any grace period unless otherwise expressly set forth herein.

8.1 Default under Loan Documents. Any Event of Default shall occur under the terms of the Credit Agreement, the Notes, any other Loan Documents.

8.2 Performance of Obligation. If Borrower shall default in the due observance or performance of any covenant or agreement contained in this Mortgage as and when required and said default shall remain uncured for a period of thirty (30) days after written notice from Mortgagee; provided that, if such default also constitutes a default under the terms of the Credit Agreement, the provisions of the Credit Agreement shall control with respect to the determination of Borrower's right, if any, to a grace period, notice of such default or cure a period with respect to such default.

8.3 Reserved.

8.4 Insurance; Damage or Destruction. If Mortgagee fails to obtain or maintain insurance, as required pursuant to the terms hereof, or if the Mortgaged Property or any material part thereof is demolished, destroyed or damaged by any cause whatsoever, which demolition, damage or destruction would have a Material Adverse Effect and the loss is not adequately covered by Proceeds actually collected or in the process of collection and Borrower fails to provide adequate assurance to Mortgagee that Borrower has sufficient funds to repair or restore the Mortgaged Property without effecting any Event of Default under the terms of the Credit Agreement.

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8.5 Tax on Indebtedness or Mortgage. If any law is enacted which results in the declaration of an Event of Default pursuant to paragraph 7.11 of this Mortgage.

8.6 Failure to Obtain Mortgagee's Consent to Transfer or Financing. If Borrower shall make any unpermitted transfer, lease or financing in violation of the provisions of the Credit Agreement or Section 7.12 hereof.

## ARTICLE 9

### DEFAULT AND FORECLOSURE

9.1 Consequences of an Event of Default. An Event of Default and the continuation or existence thereof under the terms hereof shall have the same consequences as an Event of Default under the terms of the Credit Agreement, as set forth in Section 9.2 of the Credit Agreement, which provisions are incorporated herein by reference as if fully set forth herein.

9.2 Remedies If an Event of Default shall occur and be continuing, Mortgagee may, at its opinion, exercise, subject to the rights of the Senior Mortgagee, one or more or all of the following remedies either successively or concurrently:

(a) Remedies in Other Loan Document. Exercise any and all remedies under the terms of the Credit Agreement or the other Loan Documents.

(b) Possession of Mortgaged Property; Remedies under Loan Documents and Note. To the extent permitted by law, Borrower hereby waives all right to the possession, income, and Rents of the Mortgaged Property from and after the occurrence of any Event of Default. Mortgagee is hereby expressly authorized and empowered, at and following the occurrence of any Event of Default, to enter into and upon and take possession of the Mortgaged Property or any part thereof, to complete any construction or repairs in progress thereon at the expense of Borrower, to lease the same, to collect and receive all Rents and to apply the same, less the necessary or appropriate expenses of collection thereof, either for the care, operation and preservation of the Mortgaged Property or, at the election of Mortgagee in its sole discretion, to a reduction of the Indebtedness in such order as Mortgagee may, in its sole discretion, elect. Mortgagee, in addition to the rights provided under the Notes, the Credit Agreement and any of the other Loan Documents, is also hereby granted full and complete authority to enter upon the Mortgaged Property, employ watchmen to protect the Buildings from depredation or injury and to preserve and protect the Collateral, and to continue any and all outstanding contracts for the erection, completion or repair of improvements to the Mortgaged Property, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Borrower. All such expenditures by Mortgagee shall be Indebtedness hereunder.

(c) Foreclosure; Receiver.

(i) Mortgagee shall have the right immediately or at any time thereafter to foreclose the lien of this Mortgage.

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(ii) Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of Mortgagee, in Mortgagee's sole and absolute discretion, appoint a receiver of the Mortgaged Property pursuant to the Illinois Mortgage Foreclosure Law, as amended (Illinois Code Ann. 735 ILCS 5/15-1001, et seq.) (the "**Mortgage Foreclosure Act**"). Such appointment may be made either before or after sale, without choice; without regard to the solvency or insolvency, at the time of application for each receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Mortgage Foreclosure Act, including the power to take possession, control and care of the Mortgaged Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the Indebtedness secured by this Mortgage, and in the event of a sale and a deficiency where Borrower has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Borrower or its devisees, legatees, administrators, legal representatives, successors or assigns except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing leases and make new leases of the Mortgaged Property or any part thereof, which extensions, modifications and new 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 Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Mortgaged Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser or at any time thereafter.

(iii) The court may, from time to time, authorize said receiver to apply the net amounts remaining in his hands, after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of the Indebtedness, including without limitation the following, in such order of application as Mortgagee may, in its sole and absolute discretion, elect: (i) amounts due upon the Notes, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Mortgaged Property, (iv) insurance premiums, repairs, impositions, water charges and interest, penalties and costs, in connection with the Mortgaged Property, (v) any other lien or charge upon the Mortgaged Property that may be or become superior to the lien of this Mortgage, including the Senior Mortgage, or of any decree foreclosing the same, and (vi) all moneys advanced by Mortgagee to cure or attempt to cure any default by Borrower in the performance of any obligation or condition contained in any of the other Loan Documents or this Mortgage or otherwise, to protect the security hereof provided



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herein, or in any of the other Loan Documents, with interest on such advances at the interest rate applicable after maturity under the Notes. The excess of the proceeds of sale, if any, shall then be paid to Borrower.

(iv) This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Mortgaged Property, as Mortgagee may elect, until all of the Mortgaged Property have been foreclosed against and sold. As part of the foreclosure, Mortgagee in its discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Mortgaged Property, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety or in separate lots, as Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable law. Upon the completion of any such sale or sales, Mortgagee shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers of the property so sold, in the manner and form as provided by applicable law, and Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Borrower, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose Mortgagee may execute and deliver, for and in the name of Borrower, all necessary instruments of assignment and transfer, Borrower hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof.

(v) In the case of any sale of the Mortgaged Property pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Notes and any claims for the debt in order that there may be credited as paid on the purchase price the amount of the debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by Mortgagee for the enforcement, protection or collection of this security, including court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by Borrower.

(vi) Until an Event of Default and acceleration of the Indebtedness by Managing Agent, Mortgagee agrees not prepay any monies due under the Senior Agreement until all obligations of Senior Mortgagee or its successors in interest are satisfied as further described in the Senior Agreements.

(d) Remedies for Leases and Rents.

(i) Whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, Mortgagee shall be entitled, in its discretion, to do all or any of the following: (1) enter and take actual possession of the Mortgaged Property, the Rents, the Leases and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude Borrower therefrom; (2) enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Borrower relating thereto; (3) as attorney-in-fact

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or agent of Borrower, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Mortgaged Property, the Rents, the Leases and other Collateral relating thereto and conduct the business, if any, thereof (including entering into new leases of the Mortgaged Property, or any part thereof, under such terms and conditions as Mortgagee, in its sole and absolute discretion, may elect) either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Leases and other Collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (4) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same;

(1) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof;

(2) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property and, in its reasonable discretion, may seem appropriate;

(3) insure and reinsure the Collateral for all risks incidental to Mortgagee's possession, operation and management thereof; and

(4) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as Mortgagee in its sole discretion may deem necessary or desirable.

(ii) Borrower hereby grants Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times when Event of Default has occurred and is continuing, without notice to Borrower or any other person. Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may, in its sole and absolute discretion, determine: (i) to the payment of the operating expenses of the Mortgaged Property, including the cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (ii) to the payment of impositions, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of Mortgagee, make it readily rentable; (iii) to the payment of any Indebtedness; and (iv) to the payment of any other cost or expense required or permitted hereunder.

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(iii) The entering upon and taking possession of the Mortgaged Property, or any part thereof, and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any default theretofore or thereafter occurring or affect any notice or default hereunder or invalidate any act done pursuant to any such default or notice, and, notwithstanding continuance in possession of the Mortgaged Property or any part thereof by Mortgagee or a receiver, and the collection, receipt and application of the Rents, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law or in equity.

(iv) Any of the actions referred to in this Article 9 may be taken by Mortgagee irrespective of and without regard to the adequacy of the security for the Indebtedness.

9.3 Waiver of Redemption, Notice, Marshalling, etc. To the extent permitted by law, Borrower hereby waives any and all rights of redemption from sale under any order or decree or foreclosure of this Mortgage or under any sale pursuant to any statute, order, decree or judgment of any court, on its own behalf, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property or any portion thereof. Borrower further agrees, to the extent permitted by law, that if a default occurs hereunder, neither Borrower nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any homestead exemption, appraisement, valuation, stay, extension, moratorium or other laws now or hereafter in force, in order to prevent or hinder enforcement or foreclosure of this Mortgage, or absolute sale of the property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Borrower, for itself and all who may at any time claim through or under it, hereby waives and releases to the full extent that it may lawfully so do the benefit of such laws and any and all rights to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

9.4 No Conditions Precedent to Exercise of Remedies. Borrower shall not be relieved of any Obligation by reason of: (a) the failure of Mortgagee to comply with any request of Borrower to foreclose the lien of this Mortgage or to enforce any provision of the other Loan Documents; or (b) by any other act or occurrence save and except the complete payment of the Indebtedness.

9.5 Indemnity. Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of Borrower and to the extent provided by law and except for Mortgagee's willful misconduct or gross negligence, Borrower shall and does hereby agree to protect, indemnify, defend and hold Mortgagee harmless of and from any and all liability, loss, cost, expense or damage which it may or might incur in the exercise of its rights, remedies, powers and authority hereunder, and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations, undertakings or liabilities. Should Mortgagee incur any such liability, loss, cost or damage of or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees, shall be secured hereby, and Borrower shall reimburse Mortgagee therefor immediately upon demand, with interest accruing at the rate applicable after an Event of Default under the terms of the Credit Agreement.

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9.6 Discontinuance of Proceedings. In case Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Mortgagee shall have the unqualified right so to do and, in such an event, Borrower and Mortgagee shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if same had never been invoked.

## ARTICLE 10

### MISCELLANEOUS

10.1 Further Assurance. Borrower, upon the reasonable request of Mortgagee, will execute, acknowledge and deliver such further instruments (including, without limitation, a declaration of no set-off) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of the Loan Documents.

10.2 Recording and Filing. Borrower will cause the Loan Documents and all supplements thereto at all times to be recorded and filed in such manner and in such places as Mortgagee shall request, and will pay any recording and filing taxes, fees and other charges.

10.3 Notice. Any and all notices, requests, demands, directions and other communications (collectively "Notices") under the provisions of this Mortgage shall be delivered in accordance with the provisions of Section 11.6 of the Credit Agreement.

10.4 Mortgagee's Right to Perform the Obligations. If Borrower fails to make any payment or perform any act required by the Note, the Loan Documents or, subject to the limitations set forth in the Credit Agreement, the Legal Requirements, Mortgagee, without any obligation so to do and without waiving any other right, remedy or recourse, may make such payment or perform such act at the expense of Borrower. All sums so paid by Mortgagee and all costs incurred in connection therewith, together with interest thereon at the interest rate applicable after an Event of Default under the terms of the Credit Agreement from the date of payment, shall constitute part of the indebtedness secured by this Mortgage and the Loan Documents and shall be paid by Borrower to Mortgagee on demand or, upon failure to pay on demand, shall be included in any judgment of foreclosure.

10.5 No Waiver. All options and rights of election herein provided for the benefit of the Mortgagee are continuing, and the failure to exercise any such option or right of election upon a particular default or breach or upon any subsequent default or breach shall not be construed as waiving the right to exercise such option or election at any later date. No exercise of the rights and powers herein granted and no delay or omission in the exercise of such rights and powers shall be held to exhaust the same or be construed as a waiver thereof, and every such right and power may be exercised at any time from time to time.

10.6 Subrogation. If the proceeds of the Notes are used to pay off any existing lien against the Mortgaged Properties or any portion thereof, the Mortgagee shall be subrogated to any and all rights of the holder of any such lien, whether or not it is assigned to the Mortgagee,

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and said liens are hereby renewed, extended and carried forward in full force and effect for the benefit of Mortgagee.

10.7 Mortgagee's Costs and Expenses. Borrower further expressly covenants and agrees to pay Mortgagee all costs and expenses in accordance with the terms of the Credit Agreement.

10.8 Successor and Assigns; Covenants Running with the Land. The terms, provisions, covenants and conditions hereof and of the Loan Documents shall be binding upon Borrower and its successors and assigns and shall inure to the benefit of the Mortgagee and its successors and assigns and shall constitute covenants running with the land. This subparagraph 10.8 shall in no way be construed to imply any consent by Mortgagee to any unpermitted transfer as set forth herein.

10.9 Conflict of Terms. The terms, provisions, covenants and conditions of the Mortgage shall be construed in such a manner as to be consistent with the terms and any other instruments executed in connection with or as security for the Note, provided that, in the event of conflict between the terms of this Mortgage and the terms of the other Loan Documents, the terms of the Second Restaurant Agreement shall control.

10.10 Senior Agreements.

(a) Senior Mortgage. Borrower has executed and delivered to Senior Mortgagee the Senior Mortgage and all Senior Agreements. Mortgagee hereby acknowledges that this Mortgage is junior and subordinate to the lien of the Senior Mortgage. Borrower hereby represents and warrants to and covenants with Mortgagee that:

(i) the copies of the Senior Agreements given to Mortgagee by Borrower are true and complete;

(ii) as of the date hereof, all payments on account of principal and interest due under the Senior Agreements have been made and all other obligations and all the covenants, agreements and provisions on the part of the obligor to be paid, performed and observed under the Senior Agreements have been paid, performed, and observed;

(iii) the Senior Agreements are in full force and effect at the date hereof, and there is no existing and continuing default or any event which the lapse of time or the giving of notice, or both, would constitute a default under the Senior Agreements.

(b) Obligations with Respect to Senior Agreements: With respect to the Senior Agreements:

(i) Compliance; Performance. Borrower covenants and agrees to comply with all of the terms and provisions of the Senior Mortgage and all other Senior Agreements. If Borrower shall default in the performance of any term or provision contained in any Senior Agreement which is not cured within the time period provided

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therefor, then Mortgagee may, but shall not be obligated to, pay any principal or interest due under the Senior Agreements.

(ii) Delivery of Notices. Borrower shall give Mortgagee a copy of all notices given to (or by) Borrower with respect to any of the Senior Agreements within five (5) days after receiving (or sending) such notice.

10.11 No Joint Venture; No Third Party Beneficiary. Borrower acknowledges and agrees that in no event shall Mortgagee be deemed to be a partner or joint venturer with it. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document securing any portion of the Indebtedness or otherwise. No other person shall be deemed to have any right or priority under this Mortgage to any extent or for any purpose whatsoever, nor shall any other person have any claim or right of action with respect to the Mortgaged Property or proceeds of the Indebtedness or be deemed a third-party beneficiary under this Mortgage or under the Loan Documents.

10.12 Severability. The provisions of this Mortgage are intended to be severable. If any provision of this Mortgage is held invalid or unenforceable in whole or in part in any jurisdiction, the provision will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability of the provision in any other jurisdiction or the remaining provisions of this Mortgage in any jurisdiction. In no event shall interest be due under any of the Loans at a rate in excess of the highest lawful rate. It is not the intention of the parties hereto to make any agreement which shall violate the applicable laws of the State of Illinois, the United States of America or any other state thereof relating to usury. In no event shall Borrower pay or the Banks accept or charge any interest which, together with any other charges upon the principal or any portion thereof howsoever computed, shall exceed the maximum legal rate of interest allowable under the applicable laws of the State of Illinois, the United States of America or any state thereof. Should any provisions of this Mortgage or any of the Loan Documents be construed to require the payment of interest which, together with any other charges upon the principal, or any portion thereof, exceed such maximum legal rate of interest, then any such excess shall be and is hereby expressly waived as interest and shall be credited to the outstanding principal balance.

## 10.13 Governing Law.

(a) Jurisdiction. THIS MORTGAGE, THE NOTES AND THE LOAN DOCUMENTS HAVE BEEN DELIVERED IN CHICAGO, ILLINOIS AND SHALL BE GOVERNED BY ILLINOIS LAW. THE INTERNAL LAWS OF THE STATE OF OTHER JURISDICTIONS SHALL APPLY TO THE CREATION OF LIENS ON COLLATERAL LOCATED IN SUCH JURISDICTIONS. THE INTERNAL PROCEDURAL LAWS OF THE STATE OF SUCH OTHER JURISDICTIONS SHALL APPLY TO ANY FORECLOSURE, FORECLOSURE SALE, APPOINTMENT OF RECEIVER OR OTHER REMEDIES WITH RESPECT TO THAT PORTION OF THE COLLATERAL CONSISTING OF PROPERTY (REAL OR PERSONAL), LOCATED IN SUCH OTHER JURISDICTIONS. UNDER NO CIRCUMSTANCE SHALL THE SUBSTANTIVE LAW OF ANY OTHER JURISDICTION APPLY WITH RESPECT TO THE ENFORCEMENT OF ANY REMEDY. THE

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SUBSTANTIVE INTERNAL LAWS OF THE STATE OF ILLINOIS SHALL APPLY FOR ALL PURPOSES (EXCEPT THE CREATION OF LIENS ON COLLATERAL LOCATED IN OTHER JURISDICTIONS), INCLUDING, WITHOUT LIMITATION, ACTIONS ON THIS MORTGAGE, THE NOTES OR ANY OTHER LOAN DOCUMENTS (WHETHER SUCH ACTION IS BROUGHT SEPARATE FROM ANY MORTGAGE OR BEFORE, CONCURRENT OR SUBSEQUENT TO THE FORECLOSURE OF ANY OTHER MORTGAGE BY JUDICIAL ACTION OR BY THE POWER OF SALE CONTAINED THEREIN, IF ANY), AND SHALL INCLUDE ACTIONS FOR A DEFICIENCY JUDGMENT AFTER ANY SUCH FORECLOSURE. BORROWER UNDERSTANDS AND AGREES THAT UNDER NO CIRCUMSTANCES WOULD THE MANAGING AGENT OR THE BANKS MAKE THE LOANS UNDER THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF OR ANY OTHER JURISDICTION REGARDING DEFICIENCY JUDGMENTS.

(b) Exclusive Jurisdiction. EXCEPT AS PROVIDED IN SUBSECTION (c), BORROWER, THE MANAGING AGENT AND THE BANKS AGREE THAT ALL DISPUTES BETWEEN THEM ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS MORTGAGE, THE NOTES AND THE OTHER LOAN DOCUMENTS, AND WHETHER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, MAY, IN BANK'S SOLE AND EXCLUSIVE DISCRETION, BE RESOLVED BY STATE OR FEDERAL COURTS LOCATED IN COOK COUNTY, ILLINOIS, BUT EACH OF BORROWER AND BANK ACKNOWLEDGES THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF COOK COUNTY, ILLINOIS. BORROWER WAIVES IN ALL DISPUTES ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT CONSIDERING THE DISPUTE.

10.14 Release Upon Payment and Discharge of Borrower's Obligations: If Borrower shall fully pay all principal and interest on the Notes and all other Indebtedness evidenced and secured hereby and perform and comply with all the Obligations to be performed and complied with by Borrower, then this Mortgage shall be satisfied, and Mortgagee shall thereupon release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all Indebtedness secured hereby and, if allowed by law, upon payment to Mortgagee of a reasonable fee for the preparation of such release.

10.15 Limitation of Liability of Mortgagee.

(a) The powers conferred on Mortgagee hereunder are solely to protect Banks' interest in the Mortgaged Property and the Collateral and shall not impose any duty upon Mortgagee to exercise any such powers. Except for the exercise of reasonable care in the custody of the Mortgaged Property and any Collateral in its possession and the accounting for moneys actually received by it hereunder, Mortgagee shall have no duty as to the Mortgaged Property or any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to the Mortgaged Property. Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of the Mortgaged Property and the Collateral in its possession if such Mortgaged Property or other Collateral is accorded treatment substantially equal to that which Mortgagee accords its own property.

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(b) Unless expressly provided to the contrary, all rights, duties and obligations of Mortgagee hereunder shall be deemed to be not the rights, duties or obligations of Mortgagee personally, but solely as agent for the ratable benefit of the Banks.

10.16 Mortgagee as Agent. Mortgagee has been appointed by the Banks to act as Mortgagee hereunder pursuant to the Credit Agreement. Mortgagee shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights and to take or refrain from taking any action (including without limitation, the release or substitution of any Collateral), solely in accordance with the Credit Agreement. Mortgagee shall at all times be the same person that is Managing Agent under the Credit Agreement. Written notice or resignation of Mortgagee pursuant to the terms of the Credit Agreement shall also constitute notice of resignation as Mortgagee under this Mortgage and each of the other Loan Documents to which Mortgagee, as agent, is a party. Removal of Mortgagee as Managing Agent pursuant to the terms of the Credit Agreement shall also constitute removal of Mortgagee under this Mortgage and appointment of a successor Managing Agent pursuant to the terms of the Credit Agreement shall also constitute appointment of a successor Mortgagee under this Mortgage. Upon the acceptance of any appointment of Managing Agent under the Credit Agreement by a successor Managing Agent, that successor Managing Agent shall be Mortgagee hereunder shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Mortgagee under this Mortgage, and the retiring or removed Mortgagee under this Mortgage shall promptly transfer to such successor Mortgagee all sums, securities and other items of Collateral held hereunder, together with all records and other documents necessary or appropriate in connection with the assignment to such successor Mortgagee of the security interests created hereunder, whereupon such retiring or removed Mortgagee shall be discharged from its duties and obligations under this Mortgage. After retiring or removed Mortgagee's resignation or removal hereunder as Mortgagee, the provisions of this Mortgage shall inure to its benefit as to actions taken or permitted to be taken by it under this Mortgage while it was Mortgagee hereunder.

10.17 Waiver of Jury Trial. BORROWER, MORTGAGEE AND THE BANKS (BY ACCEPTANCE HEREOF) EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY OTHER LOAN DOCUMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OR EITHER PARTY. BORROWER HEREBY EXPRESSLY ACKNOWLEDGES THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE MANAGING AGENT AND THE BANKS TO ACCEPT AND TO MAKE THE LOANS EVIDENCED BY THE LOAN DOCUMENTS.

BORROWER HEREBY EXPRESSLY ACKNOWLEDGES THAT BORROWER IS WAIVING ITS RIGHT TO TRIAL BY JURY.



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*(Signature Page to Junior Mortgage - Illinois)*

**IN WITNESS WHEREOF**, Borrower has caused this Mortgage to be executed as of the day and year first above written.

**BORROWER:**

**PLYMOUTH TUBE COMPANY**

By: David Barnes  
Name: DAVID BARNES  
Title: VP Finance

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

(Signature Page to Junior Mortgage - Illinois)

STATE OF IL )  
 ) .ss  
COUNTY OF DuPage )

I Beth Meyerholz, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David Barnes, VP Finance of Plymouth Tube Company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that 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 8<sup>th</sup> day of October, 2009.

Beth Meyerholz  
Notary Public

My Commission Expires: 10/30/11



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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 21, 22 AND 23 AND LOTS 26 TO 41, BOTH INCLUSIVE, IN ASHFORD'S SUBDIVISION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

4555 West Armitage  
Chicago, IL 60639  
PIN: 13-34-302-002  
13-34-302-015

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## EXHIBIT B

### PERMITTED EXCEPTIONS

- o The Senior Mortgage
- o Taxes which are not yet due and payable
- o Permitted Liens, as defined in the Credit Agreement
- o Liens in favor of the Managing Agent or Banks
- o Matters set forth on that certain Title Insurance Policy issued by Chicago Title Insurance Company dated as of the time and date of the recording of this Mortgage and referenced as policy number 1401-8488534.

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