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ELAN ONE,
Mortgagor

TO

SWH FUNDING CORP.,
Mortgagee

FIRST MORTGAGE

Amount: $465,000.00
Maturity Date: November 1, 1994
Premises: Rollys Camp Road
Poland Spring, Androscoggin County
Maine

Date: April 19, 1993

Record and Return to:

SOLOMON AND WEINBERG
Two University Plaza
Hackensack, New Jersey 07601

Attn: Craig H. Solomon, Esq.

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FIRST MORTGAGE

THIS FIRST MORTGAGE, made as of April 19, 1993, by ELAN ONE, a Maine corporation, having an office at RR1, Box 370, Poland Spring, Maine 04274-9711 and an address for purposes of notices and legal process c/o Thompson, McNabee, Ashley & Bull, 85 Exchange Street, Portland Maine, 04112-0447 ("Mortgagor"), to SWH FUNDING CORP., a New Jersey corporation, having an office c/o PSWH Realty Corporation, Two University Plaza, Hackensack, New Jersey 07601 ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is the owner and holder of fee title to the parcel(s) of land located at Rollys Camp Road, Poland Sring, Maine, being more particularly described in Exhibit A annexed hereto and made a part hereof (the "Land"), together with the fee title to all buildings, structures and other improvements now or hereafter located on the Land (the "Premises").

NOW, THEREFORE, in consideration of the Premises and of the covenants herein contained, and in order to secure the payment of the principal of and interest on a certain mortgage note, of even date herewith, made by Elan One, Golden Ark Enterprises, Inc., Elan Two, Elan Three, Elan Four, Elan Five, Elan Six and Elan Eight (collectively, "Maker") to Mortgagee in the original principal sum of $465,000 (as the same may hereafter be modified, amended, extended, renewed or substituted for, the "Note") and the payment of all other indebtedness which this Mortgage by its terms secures and compliance with all of the terms hereof and the Note, Mortgagor does hereby grant, bargain, sell, mortgage, warrant, pledge, assign, transfer and convey to Mortgagee, and to its successors and assigns, the following property (collectively hereinafter referred to as the "Mortgaged Property"):

(a) the Land;

(b) all additional lands and estates that may, from time to time, by supplemental mortgage or additional mortgage, be made subject to the lien of this Mortgage;

(c) Mortgagor's interest in any improvements, structures and buildings and any alterations thereto or replacements thereof, now or hereafter erected upon the Land, and its interest in all fixtures, fittings, appliances, apparatus, equipment, machinery, material and replacements thereof, now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Land or such improvements, structures or buildings, including but not limited to, furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, water tanks, fire systems, wash-

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tubs, sinks, gas and electric fixtures, stoves, ranges, ovens, disposals, dishwashers, hood and fan combinations, awnings, screens window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, kitchen equipment, laundry equipment, plants and shrubbery and all other equipment and machinery, appliances, fittings and fixtures of every nature whatsoever now or hereafter owned or acquired by Mortgagor and located in or on, or attached to, and used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned by Mortgagor, and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and a part of the real property encumbered hereby (collectively, the "Improvements");

(d) all leases, subleases, occupancy agreements and management agreements (written or oral), by concession, license or otherwise, of the Land and/or any Improvements thereon, or any part thereof, now existing or hereafter entered into between Mortgagor (or any predecessor in title to the Mortgaged Property, or any part thereof) and tenants, occupants or operators of the Land and/or any Improvements thereon ("Leases"), and all right, title and interest of Mortgagor therein and thereunder, including cash or securities deposited thereunder to secure performance of such obligations thereunder and the right to enforce, whether by action at law or in equity or by other means, all provisions, covenants and agreements thereof;

(e) Mortgagor's interest in all furniture, furnishings, equipment and other articles of personal property, together with all replacements and renewals thereof, now or at any time hereafter placed upon, located in or used in any way in connection with the complete and comfortable use, enjoyment, occupancy and operation of the Mortgaged Property (hereinafter collectively referred to as the "Furniture, Furnishings and Equipment");

(f) Mortgagor's interest in all agreements, contracts, certificates, instruments and other documents, now or hereafter entered into, pertaining to the construction, operation or management of any structure or building now or hereafter erected on the Land or to the sale of any direct or indirect interest in the Mortgaged Property, including any purchase money mortgage or security agreement securing the payment of any portion of the purchase price due to Mortgagor for such interest, and all right, title and interest of Mortgagor therein and thereunder, including the right upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(g) Mortgagor's interest in the franchises, permits, licenses and rights therein and thereto respecting the use, occupation and operation of the Mortgaged Property, or any part thereof, and respecting any business or activity conducted on the Mortgaged Property, or any part thereof, and the goodwill associated therewith;

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(h) Mortgagor's interest in all easements, rights-of-way, strips and/or gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever, in any way belonging, described in the preceding clauses (a) through (g), or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;

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(i) Mortgagor's interest in all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Mortgaged Property described in the preceding clauses (a) through (h); and

(j) all rents, income and other benefits to which Mortgagor may now or hereafter be entitled from the Mortgaged Property described in the preceding clauses (a) through (i), to be applied against the indebtedness and other sums secured hereby as fully provided in Section 2.09.02 hereof;

AND, without limiting any of the other provisions of this Mortgage, Mortgagor expressly grants to Mortgagee, as secured party, a security interest in all of those portions of the Mortgaged Property which are or may be subject to the provisions of the Maine Uniform Commercial Code (sometimes referred to herein as the "UCC" or the "Code"), applicable to secured transactions.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors, and assigns forever.

AND Mortgagor covenants and agrees with Mortgagee as follows:

ARTICLE 1

The Note

1.01 **Payment of the Note.** Mortgagor will duly and punctually pay (a) the principal of and premium, if any, and interest on the Note at the time outstanding in accordance with the terms thereof and hereof, and (b) when and as due and payable from time to time as provided herein, all other sums payable hereunder or secured hereby, together with, to the extent permitted by applicable law, interest at the Default Rate, on any sums as shall not be paid when due and payable from the date when due and payable (whether during a grace period, if any, or otherwise) until payment thereof.

1.02 **Late Charge.** In the event that any payment due hereunder shall not be made by Mortgagor within seven (7) days after the same shall become due and payable, a late charge of seven and one-half (7.5%) percent of each dollar ($1.00) so over due, may be charged by Mortgagee for the purpose of defraying the expense incident to handling such delinquent payment.

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1.03 **Guaranty.** Mortgagor has caused to be delivered to Mortgagee simultaneously with the execution and delivery hereof the Unconditional Guaranty ("Guaranty") of Joseph J. Ricci ("Guarantor"), of the obligations of Mortgagor hereunder and of Maker under the Note, as more fully set forth therein, duly executed by Guarantor.

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ARTICLE 2

Ownership, Condition, etc., of Mortgaged Property

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2.01 **Representations, Covenants and Warranties as to Title to Mortgaged Property, etc.** Mortgagor represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof: (a) Mortgagor is and shall be seized of a valid and subsisting fee simple estate in, and has and shall have good, marketable and absolute fee simple title to, the Mortgaged Property, and has good right, full power and lawful authority to mortgage and pledge the same as provided herein and Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof; the Mortgaged Property is and shall be free and clear of all liens, security interests, charges and encumbrances whatsoever except those exceptions to title as are specified in the title insurance policy to be issued to Mortgagee pursuant to the title insurance commitment of even date herewith and accepted by Mortgagee (the "Permitted Encumbrances"); (b) Mortgagor has good and lawful right, power and authority to execute this Mortgage and to mortgage the Mortgaged Property, to assign its right, title and interest as landlord under the Leases and to grant a security interest in the Mortgaged Property; (c) this Mortgage has been duly executed and delivered by the duly authorized representatives of Mortgagor and constitutes the legal, valid and binding obligation of Mortgagor, enforceable in accordance with its terms; (d) all costs payable by Mortgagor arising from construction of any improvements and the purchase of all equipment located on the Mortgaged Property have been or will, within sixty (60) days of the date hereof, be paid in full; and (e) Mortgagor has not taken any action (or been responsible for any omission) that would cause the Mortgaged Property or any part thereof or any interest therein to be subject to forfeiture under applicable laws. Mortgagor at its expense will warrant and defend to Mortgagee such title to the Mortgaged Property and the lien and security interest of Mortgagee thereon and therein, against all claims and demands and will maintain and preserve such lien and security interest and will keep this Mortgage a lien upon and a priority perfected security interest in the Mortgaged Property, subject only to the Permitted Encumbrances.

2.02 **Title Insurance.**

2.02.01 **Title Insurance Policy.** Prior to or concurrently with the execution and delivery of this Mortgage, Mortgagor, at its own cost and expense, will obtain and deliver to Mortgagee a mortgagee's title insurance policy in the amount of this Mortgage, issued by a title insurance company satisfactory to Mortgagee and in

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form and substance satisfactory to Mortgagee and its counsel, naming Mortgagee as the insured, insuring title to and priority of the lien of this Mortgage upon the Mortgaged Property, together with such reinsurance and co-insurance as Mortgagee may reasonable require (the "Title Policy").

2.02.02 **Intentionally Omitted.**

2.02.03 **Title Insurance Proceeds.** All proceeds received by Mortgagee for any loss under the title insurance policy or policies delivered to Mortgagee under Section 2.02.01 or otherwise in connection with this Mortgage, or under any title insurance policy or policies delivered to Mortgagee in substitution therefor or in replacement thereof, shall be the property of Mortgagee and applied in the manner provided in Section 5.07 Second, Third and Fourth, after applying the same to Mortgagee's costs and expenses, if any, incurred in collecting such proceeds.

2.03 **Recordation.** Mortgagor, at its expense, will at all times cause this Mortgage and any instruments amendatory hereof or supplemental hereto and any instruments of assignment hereof or thereof (and any appropriate financing statements or other instruments and continuations thereof with respect to any thereof) to be recorded, registered and filed and to be kept recorded, registered and filed, in such manner and in such places, and will pay all such recording, registration, filing fees and other charges, and will comply with all such statutes and regulations as may be required by law in order to establish, preserve, perfect and protect the lien of this Mortgage as a valid, direct mortgage lien and priority perfected security interest in the Mortgaged Property, subject only to the Permitted Encumbrances. Mortgagor will pay or cause to be paid, and will indemnify Mortgagee in respect of, all taxes (including interest and penalties) at any time payable in connection with the filing and recording of this Mortgage and any and all supplements and amendments thereto.

2.04 **Payment of Impositions, etc.** Subject to Section 2.07 (relating to permitted contests) and Section 2.08 (relating to escrows), Mortgagor will pay or cause to be paid when due and payable all taxes, assessments (including, but not limited to, all assessments for public improvements or benefits), frontage and sewer rents, water meter charges, charges for public or private utilities, license or permit fees, inspection fees and other governmental levies or payments, of every kind and nature whatsoever, general and special, ordinary and extraordinary, unforeseen as well as foreseen, which at any time may be assessed, levied, confirmed, imposed or which may become a lien upon the Mortgaged Property, or any portion thereof, or which are payable with respect thereto, or upon the rents, issues, revenues, income or profits thereof, or on the occupancy, operation, use, possession or activities thereof, whether any or all of the same be levied directly or indirectly or as excise taxes or as income taxes, and, except for Mortgagee's city, state and federal income tax obligations, all taxes, assessments or charges which may be levied on the Note, or the interest thereon (collectively, the "Impositions"). Mortgagor will deliver to Mortgagee, upon

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request, copies of official receipts or other satisfactory proof evidencing such payments.

2.05 **Insurance and Legal Requirements.** Subject to Section 2.07 (relating to permitted contests), Mortgagor, at its expense, will comply or cause compliance with:

(a) all provisions of any insurance policy covering or applicable to the Mortgaged Property or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the Maine Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Mortgaged Property or any part thereof or any use or condition of the Mortgaged Property; or any part thereof (collectively, the "Insurance Requirements"); and

(b) all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Mortgaged Property or any part thereof, or any of the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, or any use or condition of the Mortgaged Property or any part thereof (collectively, the "Legal Requirements"); whether or not compliance therewith shall require structural changes in or interference with the use and enjoyment of the Mortgaged Property or any part thereof.

2.06 **Liens, etc.** Mortgagor will not directly or indirectly create or permit or suffer to be created or to remain, and will promptly discharge or cause to be discharged, any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to the Mortgaged Property or any part thereof or the interest of Mortgagor or Mortgagee therein or any rents or other sums arising therefrom, other than the Permitted Encumbrances.

2.07 **Permitted Contests.** Mortgagor at its expense may, with the prior written consent of Mortgagee or, in the case of tax certiorari proceedings, upon notice to Mortgagee, contest, or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of application, in whole or in part, of any Imposition, Legal Requirement or Insurance Requirement or of any lien, encumbrance or charge referred to in Section 2.06, provided that (a) in the case of an unpaid Imposition, lien, encumbrance or charge, such proceedings shall suspend the collection thereof from Mortgagor, Mortgagee, the Mortgaged Property and any rent or other income therefrom and shall not interfere with the payment of any such rent or income, (b) neither the Mortgaged Property nor any rent or other income therefrom nor any part thereof or interest therein would be in any danger of being sold, forfeited, lost or interfered with, (c) in the case of a Legal Requirement, neither Mortgagor nor Mortgagee would be in danger of any civil or criminal liability for failure to comply therewith, (d) Mortgagor shall have furnished such security, if

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any, as may be required in the proceedings or as may be reasonably requested by Mortgagee, (e) the nonpayment of the whole or any part of any tax, assessment or charge will not result in the delivery of a tax deed to the Mortgaged Property or any part thereof because of such nonpayment, (f) the payment of any sums required to be paid under the Note or under this Mortgage (other than any unpaid Imposition, lien, encumbrance or charge at the time being contested in accordance with this Section 2.07) shall not be interfered with or otherwise affected, and (g) in the case of any Insurance Requirement, the failure of Mortgagor to comply therewith shall not affect the validity of any insurance required to be maintained by Mortgagor under Section 3.01.

2.08 **Escrow for Impositions and Insurance.**

2.08.01 Upon the request of Mortgagee, Mortgagor shall deposit with Mortgagee on the same date that installment payments are due under the Note, a sum equal to 1/12th of (a) 105% of the annual Impositions, as estimated by Mortgagee, and (b) the total amount of annual premiums for all insurance policies required to be obtained and maintained by Mortgagor pursuant to Section 3.01.01 (the "Insurance Premiums"), and full irrevocable authority and direction is hereby given to Mortgagee to apply the same to the payment thereof. If the amount paid by Mortgagor is insufficient to pay for all of such Impositions and/or Insurance Premiums, Mortgagor agrees to pay the deficiency within ten (10) days after Mortgagee's written demand therefor, the failure of which constituting an Event of Default (as defined in Section 5.01) hereunder. Upon Mortgagee's written request, Mortgagor shall deposit with Mortgagee sufficient sums so that the amount so deposited coupled with the amounts to be received pursuant to the provisions herein contained shall provide Mortgagee with adequate funds at least thirty (30) days prior to the due date for said payments.

2.09 **Leases.**

2.09.01 **Enforcement, etc.** Mortgagor will faithfully keep and perform all of the obligations of the lessor under each of the Leases in accordance with their terms. Mortgagor will maintain the Leases in full force and effect, and will not, without the prior written consent of Mortgagee, (a) enter into any Lease after the date hereof for any portion of the Mortgaged Property, (b) terminate or cancel any Lease or consent to or accept any termination, cancellation or surrender thereof, or permit any condition or event to exist or to occur that could, or would entitle the tenant thereunder to, terminate or cancel the same, (c) amend, modify or otherwise change the terms of any Lease except to increase the rent or other charges or assessments payable by tenants thereunder upon any renewal or extension of any such Lease, (d) waive any default under or breach of any Lease, (e) consent to or permit any prepayment or discount of rent or payment of advance rent under any Lease (other than the usual prepayment of rent as would result from the acceptance on the first day of each month of the rent for the ensuing month and a reasonable and customary security deposit in accordance with the terms of any such Lease), or (f) give any

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waiver, consent or approval under any Lease or take any other action in connection with any such Lease that would or might impair the value of Mortgagor's interest thereunder or of the Mortgaged Property subject thereto, or impair the interest of Mortgagee therein. If the Mortgaged Property is located in the State of New York, reference is hereby made for the purposes of this Section to Section 291-f of the Real Property Law of the State of New York.

2.09.02 **Assignment of Leases, etc.** Mortgagor hereby bargains, sells, transfers, assigns and sets over to Mortgagee all rents, income, profits, proceeds, revenue, consideration and any and all cash collateral to be derived from the Mortgaged Property, or any part thereof, or from Mortgagor's use and occupancy thereof, including, without limitation, all rents, royalties, revenue, rights, deposits (including security deposits) and benefits accruing to Mortgagor under all Leases now or hereafter covering the Mortgaged Property, whether before or after foreclosure or during the full period of redemption, if any, and the right to receive the same and apply them against Mortgagor's obligations hereunder, together with all contracts, bonds, Leases and other documents evidencing the same now or hereafter in effect and all rights of Mortgagor thereunder or therein. Nothing contained in the preceding sentence shall be construed to bind Mortgagee to the performance of any of the provisions of any such contract, bond, Lease or other document or otherwise impose any obligation upon Mortgagee (including any liability under a covenant of quiet enjoyment contained in any Lease or under applicable law in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been foreclosed of all right, title and interest and all equity of redemption in the Mortgaged Property), except that Mortgagee shall be accountable for any money actually received pursuant hereto. This assignment is intended to be and is an absolute present assignment from Mortgagor to Mortgagee and not merely the passing of a security interest. So long as there shall exist no Event of Default hereunder, and except as otherwise expressly provided herein, Mortgagor shall have the right and license to collect, as the same shall accrue, said rents, income, profits, proceeds, revenue consideration and cash collateral. Mortgagor agrees to hold the same in trust and to use the same in payment of Mortgagor's obligations hereunder and all other charges on or against the Mortgaged Property. In the event of any such Event of Default, the foregoing right and license may be revoked by Mortgagee, and thereafter Mortgagee shall have the right and authority to exercise any of the rights or remedies referred to or set forth in Article 5 hereof. In addition, upon any such Event of Default, Mortgagor shall promptly, upon written demand, pay to Mortgagee (i) all rent prepayments and security or other deposits paid to Mortgagor pursuant to any lease assigned hereunder and (ii) all charges for services or facilities or for escalation which were paid pursuant to any such lease to the extent allocable to any period from and after such Event of Default. If Mortgagor or any affiliate of Mortgagor occupies any portion of the Mortgaged Property and is not required to surrender possession thereof in the event of any such Event of Default, Mortgagor, and any affiliate of Mortgagor, will pay monthly in advance to the holder hereof, on its entry into possession pursuant to the Mortgage, or to any receiver appointed to collect said rents, income, profits or proceeds, revenue and consideration, the fair and reasonable rental

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value for the use and occupancy of the Mortgaged Property of such part thereof as may be in the possession of Mortgagor or any such affiliate. Upon a default in any such payment, Mortgagor will vacate and surrender such possession to Mortgagee or such receiver, and, upon a default in vacating and surrendering the same, may be evicted by summary or any other available proceedings. Mortgagor will, as and when requested from time to time by Mortgagee, execute, acknowledge and deliver to Mortgagee, in form approved by Mortgagee, one or more general or specific assignments of the lessor's interest under any Lease now or hereafter affecting the whole or any part of the Mortgaged Property. Mortgagor will, on written demand, pay to Mortgagee, or reimburse Mortgagee for, the payment of any costs or expenses incurred in connection with the preparation or recording of any such assignment.

2.09.03 **Further Assignments.** Mortgagor shall assign to Mortgagee, upon written request, as further security for the indebtedness secured hereby, Mortgagor's interests in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments in form reasonably satisfactory to Mortgagee; but no such assignment shall be construed as a consent by Mortgagee to any Mortgage, contract, license or permit so assigned, or to impose upon Mortgagee any obligations with respect thereto.

2.09,04 **Rent Roll.** Mortgagor shall furnish to Mortgagee, within five (5) days after a written request by Mortgagee to do so, a certified statement containing the names of all tenants of the Mortgaged Property or any part thereof, the term of their respective leases, the space occupied, the rents payable and the securities deposited thereunder, together with true copies of each Lease and any amendments and supplements thereto not theretofore delivered to Mortgagee.

2.09.05 **No Commingling.** All securities deposited by tenants of the Mortgaged Property which Mortgagor now or hereafter holds shall be treated as trust funds not to be commingled with any other funds of Mortgagor and Mortgagor shall, upon demand, furnish to Mortgagee satisfactory evidence of compliance with this provision, together with a verified statement of all securities deposited by the tenants.

2.09.06 **Successor Not Bound.** To the extent not so provided by applicable law, each Lease of the Mortgaged Property, or of any part thereof, entered into after the date hereof, shall provide that, in the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, any person succeeding to the interest of Mortgagor as a result of such enforcement shall not be bound by any payment of rent or additional rent for more than one (1) month in advance.

2.10 **Use of Property, etc.** Mortgagor shall continue to operate the Mortgaged Property for the purposes for which used on the date hereof and for no other purpose, and shall not acquire any fixtures, equipment, furnishings or apparatus covered by this Mortgage subject to any security interest or other charge or lien taking precedence over the security interest and lien of this Mortgage. Mortgagor shall not make or

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suffer any improper or offensive use of the Mortgaged Property or any part thereof and will not use or permit to be used any part of the Mortgaged Property for any dangerous, noxious, offensive or unlawful trade or business or for any purpose which will reduce the value of the Mortgaged Property in any respect or will cause the Mortgaged Property or any part thereof or interest therein to be subject to forfeiture. In the case of any action or omission of any party which may cause the Mortgaged Property or any part thereof or any interest therein to be subject to forfeiture under applicable laws, Mortgagor shall, within five (5) days after Mortgagor shall have obtained knowledge thereof, (1) give notice thereof to Mortgagee, and (2) take at its expense all action (including, without limitation, the commencement of all summary proceedings required to evict any party responsible for such act or omission) required to prevent such forfeiture. Mortgagor will not do or permit any act or thing which is contrary to any Legal Requirement or Insurance Requirement or any document of record affecting the Property, or which might impair the value or usefulness of the Mortgaged Property or any part thereof, or commit or permit any waste of the Mortgaged Property or any part thereof, and will not cause or maintain any nuisance in, at or on the Mortgaged Property or any part thereof, or commit or permit any waste of the Mortgaged Property. Mortgagor at its expense will promptly comply with all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Mortgaged Property and all instruments relating or evidencing the same, in each case, to the extent compliance therewith is required of Mortgagor under the terms thereof. Mortgagor will not take any action which results in a forfeiture or termination of the rights afforded to Mortgagor under any such instruments and will not, without the prior written consent of Mortgagee, which consent shall not unreasonably be withheld or delayed, amend in any material respect any of such instruments. Mortgagor shall at all times comply with any instruments of record at the time in force affecting the Mortgaged Property or any part thereof and shall procure, maintain and comply with all permits, licenses and other authorizations required for any use of the Mortgaged Property.

2.11 **Utility Services.** Mortgagor will pay or cause to be paid all charges for all public and private utility services, all public or private communications services and all sprinkler systems and protective services at any time rendered to or in connection with the Mortgaged Property or any part thereof, will comply or cause compliance with all contracts relating to any such services, and will do all other things required for the maintenance and continuance of all such services.

2.12 **Maintenance and Repair, etc.** Subject to Section 2.13, Mortgagor will keep or cause to be kept all presently and subsequently erected or acquired improvements and the sidewalks, curbs, vaults, and vault space, if any, in good and substantial order and repair and in such a fashion that the value and utility of the Mortgaged Property will not be diminished, and, at its sole cost and expense, will promptly make or cause to be made all necessary and appropriate repairs, replacements and renewals thereof, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen. All repairs,

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replacements and renewals shall be at least equal in quality and class to the original improvements. Mortgagor's obligations to repair shall include the obligation to rebuild in the event of destruction however caused, provided that damage by fire or other cause for which Mortgagor is obligated to maintain insurance by any of the provisions of Section 3.01 shall be governed by the provisions of Sections 3.01 and 3.02 and the damage by any taking shall be governed by the provisions of Section 3.02, and further provided that Mortgagor shall not be required to rebuild if Mortgagee shall elect not to make available the proceeds of any insurance therefor. Mortgagor at its expense will do or cause to be done all shoring of foundations and walls of any building or other improvements and (to the extent permitted by law) of the ground adjacent thereto, and every other act necessary or appropriate for the preservation and safety of the Property by reason of or in connection with any excavation or other building operation upon the Property and upon any adjoining property, whether or not Mortgagor shall, by any Legal Requirement, be required to take such action or be liable for failure to do so.

2.13 **Alterations, Additions, etc.** So long as no Event of Default shall have occurred and be continuing, and with the prior written consent of Mortgagee, which consent shall not unreasonably be withheld or delayed, Mortgagor shall have the right at any time and from time to time to make or cause to be made reasonable alterations of and additions to the Mortgaged Property or any part thereof.

2.14 **Acquired Property Subject To Lien.** All property at any time acquired by Mortgagor and required by this Mortgage to become subject to the lien and security interest hereof, including any property acquired as provided in Section 2.13, whether such property is acquired by exchange, purchase, construction or otherwise, shall forthwith become subject to the lien and security interest of this Mortgage without further action on the part of Mortgagor or Mortgagee. Mortgagor, at its expense, will execute and deliver to Mortgagee (and will record and file as provided in Section 2.03) an instrument supplemental to this Mortgage, satisfactory in substance and form to Mortgagee, whenever such an instrument is necessary under applicable law to subject to the lien and security interest of this Mortgage all right, title and interest of Mortgagor in and to all property required by this Mortgage to be subject to the lien and security interest hereof and acquired by Mortgagor since the date of this Mortgage or the date of the most recent supplemental instrument so subjecting property to the lien hereof, whichever is later.

2.15 **No Claims Against Mortgagee, etc.** Nothing contained in this Mortgage shall constitute any consent or request by Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, or shall be construed to permit the making of any claim against Mortgagee in respect of labor or services or the furnishing of any materials or other property or any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

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2.16 **Indemnification Against Liabilities.** Mortgagor will protect, indemnify, save harmless and defend Mortgagee from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of a mortgagee's interest in the Mortgaged Property, (b) any accident, injury to or death of persons or loss of or damage to or loss of the use of property occurring on or about the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (c) any use, non-use or condition of the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage, (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof made or suffered to be made by or on behalf of Mortgagor, (f) any negligence or tortious act on the part of Mortgagor or any of its agents, contractors, lessees, licensees or invitees, (g) any work in connection with any alterations, changes, new construction or demolition of or additions to the Mortgaged Property, or (h) any mortgage between Mortgagor and any prior holder of the Prior Note and Mortgage in connection with the closing of the loan evidenced and secured thereby.

If any action or proceeding be commenced, including an action to foreclose this Mortgage or to collect the indebtedness secured hereby, to which action or proceeding Mortgagee is made a party by reason of the execution of this Mortgage or the Note, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by Mortgagee for the expense of any litigation to prosecute or defend the rights and lien created hereby shall be paid by Mortgagor to Mortgagee as hereinafter provided. Mortgagor will pay and save Mortgagee harmless from and against any and all liability with respect to any intangible personal property tax or similar imposition of the state in which the Mortgaged Property is located or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by Mortgagee in respect of this Mortgage or the Note. All amounts payable to Mortgagee under this Section 2.16 shall be deemed indebtedness secured by this Mortgage and any such amounts that are not paid within ten (10) days after written demand therefor by Mortgagee shall bear interest at the Default Rate from the date of such demand. In case any action, suit or proceeding is brought against Mortgagee by reason of any such occurrence, Mortgagor, upon request of Mortgagee, will, at Mortgagor's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended, by counsel designated by Mortgagor and approved by Mortgagee, which approval shall not unreasonably be withheld or delayed. The obligations of Mortgagor under this Section 2.16 shall survive any discharge of this Mortgage and payment in full of the Note.

2.17 **Mortgagee's Exculpation.** Mortgagor is advised and agrees that this Mortgage is made on the express condition that any obligation hereunder of Mortgagee shall be enforceable only against Mortgagee's interest in this Mortgage, and

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that no trustee, officer, director, employee, beneficiary or shareholder (collectively, "Interested Person") of Mortgagee or SWH Realty Corporation or any partner of Mortgagee or any Interested Person in any such partner, shall be personally liable for any matter in connection with, or arising out of, this Mortgage. The foregoing shall not be deemed in any way to impose any obligations on Mortgagee except as expressly provided herein.

2.18 **Disposition or Encumbering of the Mortgaged Property.** Mortgagor shall not, during the term hereof, sell, assign, mortgage, pledge or hypothecate or otherwise transfer or dispose of the Mortgaged Property or any part thereof or any interest therein or any of the rents or other sums to be earned therefrom or of any direct or indirect ownership interest in Mortgagor, either of record or beneficially, without Mortgagee's prior written consent (a "Restricted Transfer"). For purposes of the foregoing sentence, issuance of new capital stock, the creation of new partnership interests or the dilution, in any manner, of an existing interest, direct or indirect, in the Mortgaged Property, Mortgagor and/or any general partner of Mortgagor, shall be deemed to be a Restricted Transfer of the Mortgaged Property and shall not be permitted without Mortgagee's prior written consent.

2.19 **Intentionally Omitted.**

ARTICLE 3

Insurance Damage, Destruction or Taking, etc.

3.01 **Insurance.**

3.01.01 **Risks to be Insured: Delivery of Policies, etc.** Mortgagor (i) will keep the Mortgaged Property insured against loss or damage by fire and against loss or damage by other risks now or hereafter embraced by "extended coverage" and other such hazards, as Mortgagee shall from time to time reasonably require in amounts approved by Mortgagee, which amounts shall in no event be less than the outstanding principal balance of this Mortgage plus the outstanding balance of any mortgage the lien of which is senior hereto or exceed in the aggregate 100% of the full insurable value of the Mortgaged Property and shall be sufficient to meet all applicable co-insurance requirements (with a deductible of not more than $5,000 per occurrence); (ii) will maintain 100% rental and business interruption insurance covering the Mortgaged Property for at least twelve (12) months; (iii) will maintain general public liability insurance covering the Premises and Mortgagee's use thereof, against claims for personal or bodily injury or death and property damage incurring upon, in or about the Mortgaged Property, such insurance to afford protection of not less than $2,500,000 for injury to or death of any number of persons arising out of any one occurrence or for any instance of property damage, or a combined single minimum coverage of $2,500,000; and (iv) such other forms of insurance coverage with respect to the Mortgaged Property (including, without limitation, builders' risk coverage during the period when approved renovations or capital improvements are

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being made to the Improvements) as Mortgagee shall from time to time reasonably require in amounts approved by Mortgagee. All policies of insurance (hereinafter referred to as the "Policies") shall be issued by an insurer lawfully doing business in Maine with an A. M. Best's Directory of Fire Insurance Companies rating of at least "A+" and reasonably acceptable to Mortgagee and shall contain a standard non-contributory mortgagee clause in favor of Mortgagee or an equivalent endorsement satisfactory to Mortgagee naming Mortgagee as the person to which all payments made by such insurance company shall be paid. All Policies and renewals thereof shall contain, in form and substance reasonably acceptable to Mortgagee, a standard waiver of subrogation endorsement, and an endorsement providing in general that any claim or defense the insurer may have against Mortgagor to deny payment of any claim by Mortgagor thereunder shall not be effective against Mortgagee (and affirmatively providing that the insurer will pay the Policies' proceeds to Mortgagee notwithstanding any claim or defense of the insurer against Mortgagor). Mortgagor shall pay the premiums for the Policies as the same become due and payable. At the request of Mortgagee, Mortgagor will deliver the Policies to Mortgagee. Not later than twenty (20) days prior to the expiration date of each of the Policies, Mortgagor will deliver to Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment of premium satisfactory to Mortgagee. If at any time Mortgagee is not in receipt of written evidence that all insurance required hereunder is in force and effect, Mortgagee shall have the right without notice to Mortgagor to take such action as Mortgagee deems necessary to protect its interest in the Mortgaged Property, including, without limitation, the obtaining of such insurance coverage as Mortgagee in its sole discretion deems appropriate, and all expenses incurred by Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Mortgagor to Mortgagee upon demand.

3.01.02 Separate Insurance. Mortgagor will not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Section 3.01.

3.02 **Damage, Destruction or Taking; Mortgagor to Give Notice; Assignment of Awards.** In case of (a) any damage to or destruction of the Mortgaged Property or any part thereof, or (b) any taking (whether for permanent or temporary use) of all or any part of the Mortgaged Property or any interest therein or right accruing thereto, as the result of or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, or a change of grade affecting the Mortgaged Property or any part thereof (a "Taking"), or the commencement of any proceedings or negotiations which might result in any such Taking, Mortgagor will promptly give written notice thereof to Mortgagee, generally describing the nature and extent of such damage or destruction or of such Taking or the nature of such proceedings or negotiations and the nature and extent of the Taking which might result therefrom, as the case may be. To the extent of Mortgagor's interest therein, Mortgagee shall be entitled to all insurance proceeds payable on account of such damage or destruction and to all awards or payments allocable to the Mortgaged Property on account of such Taking,

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and Mortgagor hereby irrevocably assigns to Mortgagee all rights of Mortgagor to any such proceeds, award or payment and irrevocably authorizes and empowers Mortgagee, at its option, in the name of Mortgagor or otherwise, to file and prosecute what would otherwise be Mortgagor's claim for any such proceeds, award or payment and to collect, receipt for and retain the same for disposition in accordance with Section 3.03.

3.03 Application of Proceeds. Notwithstanding anything to the contrary in this Article 3 contained, in case of any single damage or destruction of or to the Mortgaged Property (a "Casualty") on account of which the insurance proceeds payable, net of all costs of collection and settlement (the "Net Proceeds"), are less than $100,000.00, the following shall apply:

3.03.01 The Net Proceeds shall be paid to and held by Mortgagee for disposition as herein more fully provided.

3.03.02 Mortgagor shall promptly commence and diligently prosecute to completion the repair and/or restoration of the affected portion of the Mortgaged Property (a "Restoration"). Such Restoration shall be performed only by contractors and according to plans and specifications, construction budgets and construction and material contracts previously submitted to and approved by Mortgagee, such approval not unreasonalby to be withheld or delayed.

3.03.03 Provided that there shall not have occurred and be continuing an Event of Default, payment of the Net Proceeds shall be made to Mortgagor as the Restoration progresses upon receipt by Mortgagee of the following:

(a) A certificate of a duly authorized corporate officer of Mortgagor describing in reasonable detail the work and materials applied to the Restoration since the date of the last certificate of Mortgagor and stating that: (i) Mortgagor is conducting the Restoration in compliance with this Mortgage; (ii) Mortgagor requests Mortgagee to pay to Mortgagor or for its account the amount therein specified; (iii) the work and materials described have not previously been made the basis of any request for any withdrawal of money under this subsection (a); (iv) the amount specified is justly due to the contractors, subcontractors and other persons rendering work, labor or services or supplying materials on account of the Restoration, or Mortgagee is justly required to reimburse Mortgagor for expenditures made by it in connection with the Restoration, and, when added to all amounts previously paid to Mortgagor under this subsection (a), does not exceed the amount expended for or the value of the Restoration to the date of such certificate and is consistent with the construction budgets and contracts previously approved by Mortgagee; (v) the balance of the Net Proceeds remaining shall be sufficient upon the completion of the Restoration to pay for the same; and (vi) there has not been filed with respect to the Mortgaged Property any mechanic's or other lien on account of the Restoration which has not been vacated, bonded or otherwise discharged of record,

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the same to be confirmed by proof reasonably satisfactory to Mortgagee, including, if so required, an up-to-date title report confirming such fact;

(b) A certificate of even date with the certificate referred to in subsection (a) above, of the architect or engineer (who shall be reasonably satisfactory to Mortgagee) in charge of the Restoration, to the same effect as stated in subsections (iii), (iv) and (v) thereof and further stating that, to the date of such certificate, the Restoration is proceeding substantially in accordance with the plans and specifications therefor;

(c) Such other certificates, approvals, documents and permits of governmental authorities having jurisdiction over the Mortgaged Property, or any part thereof, as may reasonably be required by Mortgagee, including, if requested, bills of contractors and subcontractors aggregating the amount requested, affidavits of contractors, subcontractors, mechanics and/or materialmen as to the status of the Restoration and payments previously made to them.

(d) If, after the final disbursement, there shall be any balance of the Restoration Funds remaining, the same shall be disbursed as hereinafter in this Section 3.03 provided.

In case of any Casualty on account of which the Net Proceeds are $100,000.00 or more or in the case of any remaining balance of Net Proceeds after Restoration or upon any Casualty during the continuance of an Event of Default, Mortgagee may at its sole option apply all amounts recovered by Mortgagor under any insurance policy required to be maintained by Mortgagor hereunder and all net awards received by it on account of any Taking in any one or more of the following ways: (a) as provided in Section 5.07, regardless of whether part or all of the indebtedness secured hereby shall then be matured or unmatured, or (b) to fulfill any of the covenants contained herein as Mortgagee may determine, or (c) to Mortgagor, in one lump sum or in installments as Net Proceeds, for application to the cost of restoration, or (d) to Mortgagor. If Mortgagee shall receive and retain any insurance proceeds, the lien of this Mortgage shall be reduced only by the amount thereof received and retained by Mortgagee and actually applied by Mortgagee in reduction of the indebtedness secured hereby. If Mortgagee shall elect to disburse any award of $100,000.00 or more as Net Proceeds, the provisions of subsections 3.03.02 and 3.03.03 hereof shall apply.

3.04 **Total Taking.** In case of (a) a Taking of the entire Mortgaged Property, or (b) a Taking of less than the entire Mortgaged Property which, in the judgment of Mortgagee, renders the Mortgaged Property remaining after such Taking unsuitable for restoration for use as property of substantially the same value, condition, character and general utility as the Mortgaged Property prior to such Taking (any such Taking being herein called a "Total Taking"), then the net awards received by Mortgagee or Mortgagor on account of such Total Taking shall be applied by Mortgagee in the manner specified in Section 5.07.

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ARTICLE 4

Miscellaneous Covenants of Mortgagor

4.01 **Maintenance of Existence, etc.** Mortgagor will at all times maintain, preserve and keep in full force and effect its existence, good standing, franchises, rights and privileges as an entity under the laws of the state of its organization and the state in which the Mortgaged Property is located and its right to own and operate the Mortgaged Property and to transact business in such states.

4.02 **Restrictions on Business Activities.** Mortgagor will not, so long as any amounts are payable under the Note or otherwise secured by this Mortgage, directly or indirectly, engage in any activity in a manner which would impair the security value to Mortgagee of the Mortgaged Property or any part thereof or which would impair in any material respect the position or interest of Mortgagee.

4.03 **Inspection, etc.** Mortgagor will permit Mortgagee and any representatives designated by Mortgagee to visit and inspect the Mortgaged Property or any part thereof (subject to the rights of the tenants under the Leases), to inspect the books of account of Mortgagor and all other property, books and records relating to the Mortgaged Property and to make copies thereof and extracts therefrom, and to discuss its affairs, finances and accounts with, and to be advised as to the same by, the officers, employees, agents and independent accountants of Mortgagor, all at such reasonable times and intervals as from time to time may be requested. Mortgagee shall not have any duty to make any such inspection and shall not incur any liability or obligation for not making any such inspection or, once having undertaken any such inspection, for not making the same carefully or properly, or for not completing the same; nor shall the fact that such inspection may not have been made by Mortgagee relieve Mortgagor of any obligations that it may otherwise have under this Mortgage.

4.04 **Certificates as to No Default, Notice by Mortgagor, etc.**

4.04.01 **Certificate as to No Default, etc. by Mortgagor.** Within five (5) business days after a request therefor by Mortgagee, Mortgagor will furnish to Mortgagee a certificate of a venturer of Mortgagor (a "Compliance Certificate") certifying the principal amount then outstanding on the Note and certifying that there is no condition or event existing which constitutes an Event of Default or which, after notice or lapse of time or both, would constitute an Event of Default, or, if any such condition or event exists, specifying the nature and period of existence thereof and what action Mortgagor is taking or proposes to take with respect thereto.

4.04.02 **Notice by Mortgagor.** Mortgagor shall give prompt notice to Mortgagee of (a) a default or Event of Default, (b) any notice given or any other action taken or, to Mortgagor's knowledge, intended to be taken by (i) the holder of any other mortgage encumbering the Mortgaged Property, whether prior, equal or subordinate

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to the lien hereof and whether or not such encumbrance is permitted hereunder, (ii) a tenant under any Lease, (iii) a holder of any other indebtedness of Mortgagor or (iv) any other persons, if such notice is given or such other action is taken with respect to (x) a claimed default under such Lease, (y) a default or Event of Default under this Mortgage, or (z) a claimed default involving a potential liability in excess of $10,000 not covered by Mortgagor's insurance, under any other indenture, lease, assignment, mortgage or other instrument to which Mortgagor or any principal, partner, shareholder or affiliate of Mortgagor is a party or by which it or the Mortgaged Property may be bound or affected, and (c) any proceedings instituted by or against Mortgagor in any federal or state court or by any governmental department, agency or instrumentality, or any such proceedings threatened against Mortgagor in any federal or state court or by any governmental department, agency or instrumentality, affecting the Mortgaged Property or any portion thereof or which, if adversely determined, would have a material adverse effect upon Mortgagor's business, assets or condition, financial or other, or upon the lien of this Mortgage. Any notice so given shall specify the nature and period of existence of such event or condition and what action Mortgagor is taking or causing to be taken and proposes to take or cause to be taken with respect thereto and shall include a copy of any documents relevant thereto.

4.05 **No Credit for Payment of Taxes.** Mortgagor shall not be entitled to any credit against the principal of or interest on the Note or any other sum which may become payable under the terms thereof or hereof by reason of the payment of any tax on the Mortgaged Property or any part thereof or by reason of the payment of any other Imposition, and shall not apply for or claim any deduction from the taxable value of the Mortgaged Property or any part thereof by reason of this Mortgage.

4.06 **Books and Records; Financial Statements.** Mortgagor covenants to keep adequate records and books of account in which complete entries will be made in accordance with generally accepted accounting principles consistently applied reflecting all financial transactions of Mortgagor in respect of the Mortgaged Property. Mortgagor further covenants that it will, at any reasonable time and from time to time, permit Mortgagee or any agents or representatives thereof to examine and make copies of and abstracts from such books and records of account and visit the Mortgaged Property to discuss the affairs, finances and account with respect thereto with Mortgagor and any of its officers, directors or agents in respect of the Mortgaged Property. Mortgagor shall deliver to Mortgagee, not later than ninety (90) days after the end of each fiscal year of Mortgagor, (a) statements in detail reasonably satisfactory to Mortgagee, certified by a duly authorized corporate officer of Mortgagor and prepared in accordance with generally accepted accounting principles consistently applied by a firm of certified public accountants acceptable to Mortgagee, of annual income and expenses with respect to the ownership and operation of the Mortgaged Property for such fiscal year, setting forth in comparative form the figures for the previous fiscal year, and (b) balance sheets in detail reasonably satisfactory to Mortgagee, certified by a duly authorized corporate officer of Mortgagor, as at the end of such fiscal year, setting forth in comparative form the figures as at the end of the

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preceding fiscal year. Mortgagor shall also deliver to Mortgagee such other information and data with respect to the business, operations, affairs, prospects, condition, properties and assets of Mortgagor and the Mortgaged Property as Mortgagee may from time to time reasonably request.

ARTICLE 5

Events of Default; Remedies, etc.

5.01 **Events of Default; Declaration of Note Due.** If any one or more of the following events ("Events of Default") shall occur:

(a) Maker and/or Mortgagor shall default in the due and punctual payment of any principal of or interest on the Note when and as due and payable (whether at maturity or as an installment of interest or by reason of any prepayment requirement or by declaration of acceleration or otherwise) and such default shall continue for a period of seven (7) days; or

(b) Maker and/or Mortgagor shall default in the payment, when and as due and payable, of any other indebtedness or other sums payable pursuant to the Note or this Mortgage and such default shall continue for ten (10) days after when due; or

(c) Maker and/or Mortgagor shall default in the due performance or observance of any term of Section 2.01, 2.02, 2.03, 2.04, 2.06, 2.08, 2.09, 2.18, 3.01 or Article 9, and such default shall continue for ten (10) days after written notice to Mortgagor specifying such default; or

(d) Mortgagor shall default in the due performance or observance of any of the terms of this Mortgage or the Note, other than those referred to in subdivisions (a), (b), and (c) of this Section 5.01, and such failure shall continue for thirty (30) days after written notice to Mortgagor specifying such default; or

(e) any warranty, representation or other statement made by or on behalf of Mortgagor in or pursuant to this Mortgage (including, without limitation, any financial statement delivered pursuant to Section 4.06) or the Note is false, incorrect or misleading in any material respect; or

(f) Mortgagor, Maker, or Guarantor, or any of them, shall make an assignment for the benefit of creditors, or shall be generally not paying its debts as they become due, or shall commence a case under the federal bankruptcy laws, or shall file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, custodian,

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receiver or liquidator thereof, or any material part of any of their properties or assets, or if Mortgagor, Maker or Guarantor, or any of them, shall take any action for the purpose of the foregoing; or

(g) within sixty (60) days after the commencement of an action against Mortgagor, Maker, or Guarantor, or any of them, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such action shall not have been dismissed or all orders entered therein or proceedings thereunder affecting the business, operations and properties thereof stayed, or if the stay of any such order or proceeding shall thereafter be set aside, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Mortgagor, Maker, or Guarantor, or any of them, of any trustee, custodian, receiver or liquidator thereof, or of any material part of any of their properties or assets, such appointment shall not have been vacated; or

(h) Mortgagor, Maker, Guarantor, or any of them, shall take any action looking to its dissolution or liquidation; or

(i) subsequent to the date of this Mortgage the laws of the state in which the Mortgaged Property is located shall be changed by statutory enactment, judicial decision, regulation or otherwise, so as (i) to deduct from the value of land for the purpose of taxation (for state, county, municipal or other purpose) any lien or charge thereon, or (ii) to change the method of taxation of mortgages or debts secured by land or the manner of collecting any such taxation, so as to affect the security under this Mortgage, and thereafter, within thirty (30) days following receipt of a written request from Mortgagee, Mortgagor shall have failed to enter into a lawful and binding agreement with Mortgagee, satisfactory in substance and form to Mortgagee, obligating Mortgagor to reimburse Mortgagee for any increase in taxation imposed on Mortgagee by reason of any of the foregoing; or

(j) a final judgment shall be entered against Mortgagor, Maker Guarantor, or any of them, and if, within sixty (60) days after entry thereof, such judgment shall not have been discharged or execution thereof stayed pending appeal or otherwise bonded over to the satisfaction of Mortgagee, or if, within sixty (60) days after the expiration of any such stay, such judgment shall not have been discharged; or

(k) Mortgagor, or any of its successors or assigns, shall make any conveyance of all or part of the property described in clauses (a), (b), (c), (d), (e), (f), (h) and (i) of the Granting Clause, or any interest therein, including, without limitation, any unused development rights or air rights; or

(l) there shall be any default, beyond applicable grace periods under any mortgage, or any note secured by any mortgage, which is prior, equal or subordinate to the lien of this Mortgage, or the mortgagee under any such prior, equal or subordinate

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mortgage commences a foreclosure action or exercises an assignment of rents in connection with such mortgage; or

(m) any act or omission on or relating to the Mortgaged Property or any part thereof or any interest therein shall render it, or any such part or interest, subject to forfeiture under applicable laws; or

(n) there shall be a default, beyond applicable grace periods, under any Other Security Document (as defined in the Note); or

(o) there shall occur a Restricted Transfer hereunder; or

(p) **Intentionally Omitted.**

(q) there shall occur an Event of Default under a certain mortgage, of even date herewith, granted by Joseph J. Ricci to Mortgagee, covering certain premises located at 328 Blackstrap Road, Falmouth, Maine, as more particularly described therein, intended to be recorded in the Cumberland County Registry of Deeds on the date hereof; or

(r) the 60 Day Accounts Receivable (as hereinafter defined) of Elan Three, a Maine corporation, shall at any time be less than $300,000.00. The term "60 Day Accounts Receivable" shall mean amounts actually due and owing to Elan Three under Agency Enrollment Agreements, Private Enrollment Agreements, or any other agreement pursuant to which Elan Three provides services, from all accounts, clients or customers other than the State of Indiana, which are not more than 59 days past due. The terms "account(s)" and "accounts receivable(s)" shall have the respective meanings ascribed thereto in the Code.

then and in any such event (i) interest at the Default Rate shall be due and payable on the principal of and (to the extent permitted by law) interest on the Note at the time outstanding together with all other indebtedness secured hereby, from the date of the Event of Default and (ii) Mortgagee may at any time thereafter declare, by written notice to Mortgagor, the Note, and all other indebtedness secured hereby to be due and payable upon the date specified in such notice and upon such date the same shall become due and payable, together with interest accrued thereon, without presentment, demand, protest or notice, all of which Mortgagor hereby waives. Mortgagor will pay on demand all costs and expenses (including attorneys' fees and expenses) incurred by or on behalf of Mortgagee in enforcing this Mortgage or the Note, or occasioned by any default or Event of Default under this Mortgage, or incurred in connection with any foreclosure proceeding or other action brought by Mortgagee to enforce and protect its rights and interests under this Mortgage or the Note. Without limiting the foregoing, Mortgagee shall have the right to recover all such costs and expenses, including reasonable attorneys' fees and expenses, in any judgment of foreclosure and sale.

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5.02 **Legal Proceedings; Foreclosure, etc.** If an Event of Default shall have occurred, Mortgagee at any time may, at its election, do one or more of the following: (i) proceed at law or in equity or otherwise to enforce the payment of the Note at the time outstanding in accordance with the terms hereof and thereof, (ii) foreclose the lien of this Mortgage as against all or any part of the Mortgaged Property and have the same sold under the judgment or decree of a court of competent jurisdiction, (iii) exercise any or all of the remedies of a secured party under the Code, with respect to any personal property covered hereby. In any action service of process may be made upon Mortgagor by mailing a copy of the papers to be served to Mortgagor at the address set forth on the first page hereof, and such service shall be deemed complete upon the posting of such papers in any mail box regularly maintained by the United States Post Office. THIS MORTGAGE is on the STATUTORY CONDITION and upon the further condition of full and seasonable compliance of Mortgagee with all of the preceding terms, conditions, covenants and agreements, for any breach of which: Mortgagee shall be in default hereunder, (b) Mortgagor shall have the right of foreclosure and any and all other rights and remedies given to a mortgagee and secured party under the law of Maine, this Mortgage and any document it secures; and (c) Mortgagee shall also have THE STATUTORY POWER OF SALE under 33 M.R.S.A. § 501-A, which is incorporated in this Mortgage by reference, and, in that regard, Mortgagor hereby stipulates and agrees that this Mortgage secures a loan primarily for business or commercial purposes extended to a corporation, partnership or trust and the Mortgaged Property is not the primary residence of any mortgagor who is a natural person. No remedy herein conferred on Mortgagee is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing. The failure to exercise any right or remedy shall in no event be construed as a waiver or release thereof. Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms or provisions of this Mortgage shall not be deemed to be a waiver of any terms or provisions of this Mortgage and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of such terms and provisions.

5.03 **Purchase of Mortgaged Property by Mortgagee.** Mortgagee may be a purchaser of the Mortgaged Property or of any part thereof or of any interest therein at any sale thereof, whether pursuant to foreclosure or otherwise, and may apply upon the purchase price thereof the indebtedness secured hereby owing to Mortgagee. Mortgagee shall, upon any such purchase, acquire good title to the properties so purchased, free of the lien of this Mortgage and free of all rights of redemption in Mortgagor.

5.04 **Waiver of Appraisement, Valuation, etc.** Mortgagor hereby waives, to the fullest extent it may lawfully do so, the benefit of all appraisement, valuation, stay, extension, redemption and all applicable exemption rights now or hereafter in force and all rights of marshaling in the event of any sale of the Mortgaged Property or any part thereof of any interest therein.

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5.05 **Sale a Bar Against Mortgagor.** Any sale of the Mortgaged Property or any part thereof or any interest therein under or by virtue of this Mortgage, whether pursuant to foreclosure or otherwise, shall forever be a bar against Mortgagor.

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5.06 **Sale in One or More Parcels.** If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may at Mortgagee's discretion, be sold in one or more parcels or in several interests or portions or in any order or manner intended and reasonably expected to maximize sale proceeds.

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5.07 **Application of Proceeds of Sale and Other Moneys.** The proceeds of any sale of the Mortgaged Property or any part thereof or any interest therein under or by virtue of this Mortgage, whether pursuant to foreclosure or otherwise, and all other moneys at any time held by Mortgagee as part of the Mortgaged Property, shall be applied as follows:

First: to the payment of the costs and expenses of such sale (including, without limitation, attorneys' fees and expenses, the cost of evidence of title and the costs and expenses, if any, of taking possession of, retaining custody over, repairing, managing, operating, maintaining and preserving the Mortgaged Property or any part thereof prior to such sale), all costs and expenses of any receiver of the Mortgaged Property or any part thereof, and any taxes, assessments or charges prior to the lien of this Mortgage, which Mortgagee reasonably determines are necessary or desirable to pay;

Second: to the payment of any indebtedness secured by this Mortgage, other than indebtedness with respect to the Note at the time outstanding, which Mortgagee reasonably determines are necessary or desirable to pay;

Third: to the payment of all amounts of principal of, premium, if any, and interest at the time due and payable on the Note at the time outstanding (whether due by reason of maturity or as an installment of interest or by reason of any prepayment requirement or by declaration of acceleration or otherwise), including interest at the Default Rate on any overdue principal and premium, if any; and in case such moneys shall be insufficient to pay in full the amounts so due and unpaid upon the Note at the time outstanding, then, first, to the payment of all amounts of interest at the time due and payable on the Note, and second to the payment of all amounts of principal at the time due and payable on the Note; and

Fourth: the balance, if any, held by Mortgagee after payment in full of all amounts referred to in subdivisions First, Second and Third above shall, unless a court of competent jurisdiction may otherwise direct by final order not subject to appeal, be paid to or upon the direction of Mortgagor.

5.08 **Appointment of Receiver.** If an Event of Default shall have occurred, then for so long as, and until, the indebtedness secured hereby is repaid in full, Mortgagee shall, as a matter of right and without regard to the adequacy of any security for the indebtedness secured hereby and without regard to whether

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Mortgagee has commenced an action to foreclose the lien of this Mortgage, be entitled to the appointment of a receiver, without the necessity of notice to Mortgagor, for all or any part of the Mortgaged Property, whether such receivership be part of the Mortgaged Property or otherwise, and without regard to the nature of the action in which the appointment of a receiver is sought, and Mortgagor hereby consents to the appointment of such a receiver and will not oppose any such appointment. Mortgagee may also seek a temporary restraining order or other injunctive relief with respect to any act or omission constituting an Event of Default. Such receiver may enter upon and take possession of the Mortgaged Property or any part thereof by force, summary proceeding, ejectment or otherwise and may remove Mortgagor and all other persons and any and all property therefrom and may hold, operate, maintain, repair, preserve and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto (including, without limitation, any management fee now or hereafter being paid) or any part thereof. Mortgagor, and any affiliate of Mortgagor, if then the occupant of the Mortgaged Property or any part thereof, shall immediately surrender possession of the space so occupied to Mortgagee and if Mortgagor or such affiliate is permitted to remain in possession, the possession shall be as a month-to-month tenant, and, on demand, Mortgagor shall pay to such receiver monthly, in advance, a fair market rental for the space so occupied, and in default thereof Mortgagor may be dispossessed by the usual summary proceedings. Mortgagor, or any affiliate of Mortgagor which serves as managing agent of the Mortgaged Property, or any part thereof, shall promptly provide to such receiver all lease files, books, records, bills, contracts and other management documents relating to the Mortgaged Property. Mortgagee shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operating or management, except in the case of Mortgagee's willful misconduct, gross negligence or actual fraud.

5.09 **Possession, Management and Income.** If an Event of Default shall have occurred and be continuing, Mortgagee, without notice to Mortgagor, may enter upon and take possession of the Mortgaged Property or any part thereof by force, summary proceeding, ejectment or otherwise and may remove Mortgagor and all other persons and any and all property therefrom and may hold, operate, maintain, repair, preserve and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto and any part thereof. Mortgagor, and any affiliate of Mortgagor, if the occupant of the Mortgaged Property or any part thereof, shall immediately surrender the possession of the space so occupied to Mortgagee and if Mortgagor or such affiliate is permitted to remain in possession, the possession shall be as a month-to-month tenant of Mortgagee, and, on demand, Mortgagor or such affiliate shall pay to Mortgagee monthly, in advance, a fair market rental as determined by Mortgagee, for the space so occupied, and in default thereof Mortgagor or such affiliate shall be dispossessed by the usual summary proceedings. Mortgagee shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management, except that any amounts so received by Mortgagee shall be applied to pay all reasonable costs and expenses of so entering upon, taking possession of, holding, operating, maintaining, repairing, preserving, and managing the Mortgaged Property or any part thereof, and any taxes, assessments

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or other charges prior to the lien and security interest of this Mortgage which Mortgagee shall reasonably determine are necessary or desirable to pay, and any balance of such amounts shall be applied as provided in Section 5.07. The covenants contained in this Section 5.09 may be enforced by a receiver of the Mortgaged Property or any part thereof.

5.10 **Right of Mortgagee to Perform Mortgagor's Covenants, etc.** If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without notice to or demand upon Mortgagor, and without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Property for such purpose and take all such action thereon as, in Mortgagee's opinion, may be necessary or appropriate therefor. No such entry and no such action shall be deemed an eviction of any tenant of the Mortgaged Property or any part thereof. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment or incurring, shall constitute additional indebtedness secured by this Mortgage and shall be paid by Mortgagor to Mortgagee on demand.

5.11 **Remedies, etc., Cumulative.** Each right, power and remedy of Mortgagee provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Mortgagee of any one or more of the rights, powers or remedies provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Mortgagee of any or all such other rights, powers or remedies.

5.12 **Provisions Subject to Applicable Law.** All rights powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of such term shall not be affected thereby.

5.13 **Waiver, etc.** No failure by Mortgagee or any holder of the Note to insist upon the strict performance of any term hereof or thereof, or to exercise any right, power or remedy consequent upon a breach hereof or thereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach. By accepting payment of any amount secured hereby before or after its due date, neither Mortgagee nor any holder of the

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Note shall be deemed to waive its right either to require prompt payment when due of all other amounts payable hereunder or to declare a default for failure to effect such prompt payment.

5.14 **Compromise of Actions, etc.** Any action, suit or proceeding brought by Mortgagee pursuant to any of the terms of this Mortgage or otherwise, and any claim made by Mortgagee hereunder may be compromised, withdrawn or otherwise dealt with by Mortgagee without any notice to or approval of Mortgagor, except as shall be required by law.

5.15 **Collateral; UCC Remedies.** This Mortgage constitutes a Security Agreement within the Meaning of the Code with respect to (a) all sums on deposit with Mortgagee from time to time (the "Deposits"), (b) any property within the meaning of "Mortgaged Property" as set forth in the Granting Clause to the extent deemed not to form a part of the Land or to constitute a "fixture" under the Code and (c) all replacements thereof, substitutions therefor and additions thereto, and proceeds of the conversion thereof (collectively, the "Collateral"). Mortgagor hereby grants a security interest in and to the Collateral to Mortgagee and assigns the same to Mortgagee to secure the payment of the indebtedness evidenced by the Note and Mortgagee's performance of all of the terms and conditions hereof. Notwithstanding the foregoing, Mortgagor agrees that all property of every nature and description, whether real or personal, covered by this Mortgage, together with all Collateral, are encumbered as one unit, and that this Mortgage may at Mortgagee's option, upon an Event of Default, be foreclosed or sold in the same proceeding, and that all property (both real property and the Collateral) may be sold as such in one unit as a going concern, subject to applicable law. If Mortgagee should elect to foreclose the Collateral separate from the real property, ten (10) days notice by Mortgagee to Mortgagor shall be deemed to be commercially reasonable notice under any provision of the Code. Mortgagee shall, in all events, be entitled to receive the reasonable expenses of retaking, holding, preparing for sale, selling and the like, including, without limitation, reasonable attorneys' fees and disbursements. Mortgagor will not, without Mortgagee's prior written consent, which consent shall not unreasonably be withheld or delayed, remove or permit to be removed any of the Collateral from the Mortgaged Property; provided, however, that for so long as there shall not occur a default or event which, with the giving of notice or lapse of time, or both, would constitute a default hereunder, Mortgagee shall be entitled, if applicable, to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Mortgaged Property, but only to the extent replaced with the same or other Collateral at least equal in value and utility thereto. Mortgagor shall, from time to time, on request of Mortgagee, deliver to Mortgagee such further financing statements and security documents and grievances as Mortgagee may require in order to maintain a perfected first lien security in and to the Collateral in accordance with the requirements of present or future law. This Mortgage, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the Code.

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ARTICLE 6

Representations and Warranties

Mortgagor represents and warrants that as of the date of delivery of this Mortgage:

6.01 **Organization, Standing, &c. of Mortgagor.** If Mortgagor is a partnership, limited partnership, joint venture or corporation (whichever is set forth after the name of Mortgagor in the Preamble to this Mortgage) it is duly formed, validly existing and in good standing under the Uniform Partnership Act, Uniform Limited Partnership Act or business corporation law, as the case may be, of the state set forth after the name of Mortgagor in the Preamble to this Mortgage, and is in good standing in the state in which the Mortgaged Property is located, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and proposed to be conducted, and to execute, deliver and perform this Mortgage and to issue the Note. Mortgagor is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities and no bankruptcy or insolvency proceedings are pending against or contemplated by Mortgagor. The execution of this Mortgage, the Note, and the documents executed and/or delivered in connection therewith will not defraud, hinder or delay any of the creditors of Mortgagor and Mortgagor will not be rendered insolvent by reason of the execution of this Mortgage, the Note or the documents executed in connection therewith. Mortgagor is not in default, nor has it received any notice of any uncured default, under the terms of any instrument evidencing or securing any indebtedness of Mortgagor, and there has, to the best of Mortgagor's knowledge, occurred no event, which, if uncured or uncorrected would constitute a default under any such instrument upon notice or lapse of time or both. All reports, statements and other data furnished by Mortgagor to Mortgagee in connection with the loan evidenced by the Note are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. This Mortgage, the Note and other instruments securing the Note or otherwise executed in connection therewith are valid and binding obligations enforceable in accordance with their respective terms.

6.02 **Compliance with Other Instruments, etc.** The execution, delivery, recordation and performance of this Mortgage and the consummation of the transaction contemplated hereby will not result in any violation of any term or condition of any contract, mortgage, lease, instrument, judgment, decree, order, statute, rule, regulation, ordinance, franchise, certificate, permit or the like applicable to Mortgagor or by which Mortgagor or its properties or assets are bound or affected.

6.03 **Governmental Consent.** No consent, approval or authorization of, or registration, declaration or filing with, any governmental or public authority, body or agency is required, in connection with the valid execution, delivery and performance by Mortgagor of this Mortgage except the recordation of this Mortgage in the appropriate recording office or offices and the filing of all necessary financing

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statements with respect thereto and except for such consents as Mortgagor has delivered to Mortgagee.

6.04 **Litigation, etc.** There is no action, suit, proceeding or investigation pending or threatened, or to the best of Mortgagor's knowledge, any basis therefor known to Mortgagor, which questions the validity of this Mortgage or the Note, or any action taken or threatened to be taken pursuant thereto. No notice has been given by any governmental authority of any proceeding to condemn, purchase or otherwise acquire the Mortgaged Property or any part thereof or interest therein and, to the best of Mortgagor's knowledge, no such proceeding is contemplated.

6.05 **No Violations, etc.** To the best of its knowledge, Mortgagor is in compliance in all material respects with all governmental laws, rules and regulations and other requirements which are applicable to the Mortgaged Property or any part thereof, or any use or condition of the Mortgaged Property or any part thereof. Mortgagor has no knowledge of any violation, nor is there any notice or other record of violation, of any zoning, health, safety, building, fire, labor, environment, or other statute, ordinance, rule, regulation or restriction applicable to the Mortgaged Property or any part or use thereof.

6.06 **Use of Proceeds.** Mortgagor has applied and will apply the proceeds of the Note for such purpose as does not and will not constitute a use of any part thereof, directly or indirectly, for the purpose of purchasing or carrying any "margin security" within the meaning of Regulation G, 12 C.F.R. 207, as amended, and no part of the proceeds of the Note was used or will be used for the purpose (whether immediate, incidental or ultimate) of "purchasing" or "carrying" any "margin security" within the meaning of such Regulation G or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose. Mortgagor does not own or have any present intention of acquiring any such margin security and will not otherwise knowingly take or permit any action which would involve a violation of such Regulation G or any other Regulation of the Board of Governors of the Federal Reserve System.

6.07 **Easements and Utility Services.** Mortgagor has all easements, including those for use, maintenance, repair and replacement of and access to structures, facilities or space for support, mechanical systems, utilities (including water and sewage disposal) and any other private or municipal improvements, services and facilities, necessary to the proper operation, repair, maintenance, occupancy and use of the Improvements for their current use. Electric, gas, sewer and water facilities and all other necessary utilities are available in sufficient capacity to satisfactorily service the Mortgaged Property.

6.08 **Disclosure.** Neither this Mortgage nor any other document or certificate furnished to Mortgagee or to counsel for Mortgagee in connection with the transactions contemplated hereby contains any untrue statement of a material fact or

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omits to state a material fact necessary in order to make the statements contained herein or therein not misleading.

6.09 **Intentionally Omitted.**

ARTICLE 7
Miscellaneous

7.01 **Further Assurances.** Mortgagor, at its expense, will execute, acknowledge and deliver all such instruments and take all such actions as Mortgagee from time to time may request (a) to better subject to the lien and security interest of this Mortgage all or any portion of the Mortgaged Property, (b) to perfect, publish notice or protect the validity of the lien and security interest of this Mortgage, (c) to preserve and defend the title to the Mortgaged Property and the rights of Mortgagee therein against the claims of all persons and parties so long as this Mortgage shall remain undischarged, (d) to better subject to the lien and security interest of this Mortgage with respect to any replacement or substitution of any improvements or any other after-acquired property, or (e) in order to further effectuate the purpose of this Mortgage and to carry out the terms hereof and to better assure and confirm to the Mortgagee its rights, powers and remedies hereunder.

7.02 **Certificates.** Upon written request, either party shall, without charge, at any time and from time to time, deliver promptly to the other or its designee a certificate duly executed by the requested party certifying the principal amount then outstanding hereon, or on the Note, the date to which interest has been paid, and that no condition exists and no event has occurred under this Mortgage or the Note which constitutes a default hereunder, or which, with the passage of time or giving of notice or both, would constitute a default hereunder or, if any such condition exists or event has occurred, specifying the nature and period of existence thereof or the date of occurrence.

7.03 **Additional Security.** Without notice to or consent of Mortgagor, and without impairment of the lien and rights created by this Mortgage, Mortgagee may accept from Mortgagor or from any other person additional security for the Note; neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent Mortgagee from resorting, first, to the security created by this Mortgage, or concurrently to both, in any case without affecting Mortgagee's lien and rights under this Mortgage.

7.04 **Notices, etc.** All notices, demands, requests, consents, approval and other instruments under this Mortgage or the Note shall be in writing and shall be deemed to have been actually or properly given if and when sent by first-class registered or certified mail, return receipt requested, postage prepaid or by reputable overnight courier, or by facsimile transmission, in any case, addressed (a) if to Mortgagor, to its address set forth on the first page hereof, or at such other address as

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Mortgagor may have designated by notice to Mortgagee, with a copy to Thompson, McNaboe, Ashley & Bull, 85 Exchange Street, P.O. Box 447, Portland, Maine, 04112-0447, Attention: Edward S. MacColl, Esq.; (b) if to the Mortgagee originally named herein, to it at its address set forth on the first page hereof, with a copy to Solomon and Weinberg, Two University Plaza, Hackensack, New Jersey 07601, Attention: Craig H. Solomon, Esq. or at such other address as Mortgagee may have designated by notice to Mortgagor, or (c) if to any other holder of the Note, at such address as such holder shall have designated by notice in writing to Mortgagor or, until an address is so designated, to and at the address of the last holder so designating an address. The foregoing insertion of Mortgagor's mailing address shall be deemed to be a request by Mortgagor that a copy of any notice of default and of any notice of sale hereunder be mailed to Mortgagor at such address as provided by law. Notices sent as aforesaid shall be deemed given (i) two (2) business days after when mailed, in the case of certified mail, (ii) upon receipt, in the case of overnight courier and (iii) when sent, in the case of facsimile transmission.

7.05 **Amendments and Waivers.** This Mortgage, the Note, and any term hereof or thereof may be amended, discharged or terminated and the observance of any term of this Mortgage or the Note may be waived (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party to be charged.

7.06 **Expenses.** Mortgagor will pay or cause to be paid (a) the cost of filing and recording of this Mortgage, the Uniform Commercial Code financing statements and any other documents to be filed or recorded in connection with the execution and delivery hereof or thereof; (b) all taxes (including interest and penalties) at any time payable in connection with the execution and delivery of this Mortgage and any other instruments or agreements relating hereto and thereto, any amendment or waiver relating hereto or thereto, the issue and acquisition of the Note and, where applicable, such filing and recording (Mortgagor agreeing to indemnify Mortgagee in respect of such taxes, interest and penalties); (c) the cost of Mortgagor's performance of and compliance with the terms and conditions of this Mortgage and of the other instruments mentioned herein; (d) the cost of title insurance, reinsurance, security interest searches and surveys required hereby or delivered in connection herewith; (e) the fees, expenses and disbursements of Mortgagee's counsel in connection with the subject matter of this Mortgage and any amendments, releases or other actions or waivers hereunder or in respect hereof; and (f) all reasonable out-of-pocket expenses incurred by Mortgagee in connection herewith. Mortgagor shall indemnify and hold Mortgagee harmless from and against all claims in respect of all fees of brokers and finders payable in connection with this Mortgage.

7.07 **Intentionally Omitted.**

7.08 **Limitation on Interest.** Under no circumstances shall Mortgagor be charged under the Note or this Mortgage, more than the highest rate of interest which lawfully may be charged by the holder of the Note and paid by Mortgagor on the

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indebtedness secured hereby. It is, therefore, agreed that if at any time interest on the indebtedness secured hereby would otherwise exceed the highest lawful rate, only such highest lawful rate shall be charged to or paid by Mortgagor. Should any amount be paid to Mortgagee in excess of such legal rate, such excess shall be deemed to have been paid in reduction of the principal balance of the Note as more fully set forth therein.

7.09 **Miscellaneous.** All the terms of this Mortgage shall apply to and be binding upon the respective successors and assigns of Mortgagor, and all persons claiming under or through Mortgagor or any such successor or assign, and shall inure to the benefit of and be enforceable by Mortgagee and its successors and assigns. The headings and table of contents in this Mortgage are for convenience of reference only and shall not limit or otherwise affect any of the terms hereof. This Mortgage may be executed in several counterparts, each of which shall constitute one and the same instrument. This Mortgage shall be construed and enforced in accordance with and governed by the laws of the state in which the Mortgaged Property is located.

7.10 **Intentionally Omitted.**

ARTICLE 8

Particular Provisions

8.01 **Not 1-6 Residential Units.** This Mortgage does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units each having their own separate cooking facilities.

8.02 **Joint and Several.** If more than one party constitutes Mortgagor hereunder, each such party shall be jointly and severally liable hereunder.

8.03 **Intentionally Omitted.**

8.04 **Environmental Regulations.**

(a) Mortgagor covenants, represents and warrants (i) that the Mortgaged Property does not contain and will not contain (A) asbestos in any form, (B) urea formaldehyde foam insulation, (C) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million, or (D) any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous, controlled or toxic substances, or any pollutant or contaminant, or related materials defined in or controlled pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601, et seq.), and in the regulations

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adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation (collectively, "Environmental Laws"); or which, even if not so regulated, may or could pose a hazard to the health or safety of the occupants of the Mortgaged Property or the owners of the Mortgaged Property (the substances described in (A), (B), (C) or (D) above being hereinafter collectively referred to as "Hazardous Materials"), except to the extent such Hazardous Materials are produced or utilized by any lessee under any Lease, and then if and only if (y) such Lease and use of Hazardous Materials was theretofore approved by Mortgagee in writing, prior to the effectiveness of such Lease and (z) such Hazardous Materials are stored, handled and disposed of in full compliance with all applicable Environmental Laws; (ii) that the Mortgaged Property and any buildings and other improvements and additions previously, now or hereafter located thereon, are not now being used and will never be used for any activities involving, directly or indirectly, the use, generation, treatment, transportation, storage or disposal of any Hazardous Materials whether by Mortgagor or any present tenant of the Mortgaged Property, except in accordance with the provisions of subdivision (i) above; (iii) that there has never been any Hazardous Materials Release (as hereinbelow defined) on, from or affecting the Mortgaged Property; (iv) that neither the Mortgaged Property nor Mortgagor, with respect to the Mortgaged Property, is subject to any past, existing, pending, or threatened notice, summons, citation, directive, investigation, litigation, proceeding, inquiry, lien, encumbrance or restriction, settlement, remedial, response, cleanup or closure arrangement or any other remedial obligations by or with any governmental authority (collectively "Regulatory Actions") under, or are in violation of, any Environmental Laws or any other applicable laws, rules, regulations or orders pertaining to health, the environment or Hazardous Materials; and (v) that none of the Mortgaged Property and any buildings and other improvements and additions previously or now located thereon have ever been used as a petroleum storage, refining or distribution facility or terminal, or a gasoline station by Mortgagor or any present tenant of the Mortgaged Property. Mortgagor does not know and has no reason to know of any violation of the foregoing representations, warranties and covenants.

(b) Mortgagor represents, warrants and covenants that with respect to the Mortgaged Property and any buildings and other improvements and additions thereon, Mortgagor (i) shall comply with and ensure compliance by all tenants with the Environmental Laws and all other applicable laws, rules and regulations or orders pertaining to health, the environment or Hazardous Materials, (ii) shall not store, utilize, generate, treat, transport or dispose (or permit or acquiesce in the storage, utilization, generation, transportation, treatment or disposal of) any Hazardous Materials on or from the Mortgaged Property, except as provided in subdivision (i) above, (iii) shall ensure that all future tenant Leases of the Mortgaged Property contain agreements requiring tenant's compliance with the requirements of the foregoing subdivisions (i) and (ii), and (iv) shall use all reasonable efforts to cause any tenant or other person or entity using and/or occupying any part of the Mortgaged Property to comply with the representations, warranties and covenants contained in this Section.

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(c) In the event of any storage, presence, utilization, generation, transportation, treatment or disposal of Hazardous Materials on the Mortgaged Property which is not in accordance with the provisions of subdivision (i) above, or in the event of any Hazardous Materials Release, Mortgagor shall, at the direction of Mortgagee or any federal, state, or local authority or other governmental authority, remove or cause the removal of any such Hazardous Materials and rectify any such Hazardous Materials Release, and otherwise comply or cause compliance with the laws, rules, regulations or orders of such authority, all at the expense of Mortgagor, including without limitation, the undertaking and completion of all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Mortgaged Property. If Mortgagor shall fail to proceed with such removal or otherwise comply with such laws, rules, regulations or orders within the cure period permitted under the applicable regulation or order, the same shall constitute an Event of Default under Article 5 hereof, and Mortgagee shall have the right, at its sole option, to accelerate the maturity of the indebtedness secured hereby and declare such indebtedness due and payable, and either in addition to or in lieu of the foregoing, at Mortgagee's sole option, Mortgagee may, but shall not be obligated to, do whatever is necessary to eliminate such Hazardous Materials from the Mortgaged Property or otherwise comply with the applicable law, rule, regulation or order, acting either in its own name or in the name of Mortgagor pursuant to this Section, and the cost thereof shall be part of the indebtedness secured hereby and shall become immediately due and payable without notice. In addition to and without limiting Mortgagee's rights pursuant to this Mortgage, Mortgagor shall give to the Mortgagee and its agents and employees access to the Mortgaged Property and all buildings and other improvements and additions thereon for such purposes and hereby specifically grants to Mortgagee a license to remove the Hazardous Materials and otherwise comply with such applicable laws, rules, regulations or orders, acting either in its own name or in the name of the Mortgagor pursuant to this Section.

(d) Mortgagor shall indemnify and save Mortgagee and each of its shareholders, subsidiaries, affiliates, officers, directors, partners and trustees, and any receiver, trustee or other fiduciary appointed for the Mortgaged Property harmless from, against, for and in respect of, any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of actions, encumbrances, fines, penalties, and costs and expenses suffered, sustained, incurred or required to be paid by any such indemnified party (including, without limitation, reasonable fees and disbursements of attorneys, engineers, laboratories, contractors and consultants) because of, or arising out of or relating to any Environmental Liabilities (as hereinbelow defined) in connection with the Mortgaged Property or any buildings previously, now or hereafter located thereon. For purposes of this indemnification clause, "Environmental Liabilities" shall include all costs and liabilities with respect to the past, present or future presence, removal, utilization, generation, storage, transportation, disposal or treatment of any Hazardous Materials or any release, spill, leak, pumping, pouring, emitting, emptying, discharge, injection, escaping, leaching,

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dumping or disposing into the environment (air, land or water) of any Hazardous Materials (each a "Hazardous Materials Release"), including without limitation, cleanups, remedial and response actions, remedial investigations and feasibility studies, permits and licenses required by, or undertaken in order to comply with the requirements of, any federal, state or local law, regulation, or agency or court, any damages for injury to person, property or natural resources, claims of governmental agencies or third parties for cleanup costs and costs of removal, discharge, and satisfaction of all liens, encumbrances and restrictions on the Mortgaged Property relating to the foregoing. Hazardous Materials Release shall also include by means of any contamination, leaking, corrosion or rupture of or from underground or above ground storage tanks, pipes or pipelines.

(e) Mortgagor shall promptly notify Mortgagee in writing of the occurrence of any Hazardous Materials Release or any pending or threatened Regulatory Actions, or any claims made by any governmental authority or third party, relating to any Hazardous Materials or Hazardous Materials Release on or from, the Mortgaged Property, or any buildings or other improvements or additions previously, now or hereafter located thereon and shall promptly furnish Mortgagee with copies of any correspondence or legal pleadings or documents in connection therewith. Mortgagee shall have the right, but shall not be obligated, to notify any governmental authority of any state of facts which may come to its attention with respect to any Hazardous Materials or Hazardous Materials Release on or from the Mortgaged Property.

(f) The liability of Mortgagor to Mortgagee pursuant to, by reason of or arising from the representations, warranties, covenants and indemnities provided for this Section is not limited by any exculpatory provision contained herein or in the Note or in the other documents further securing the indebtedness secured hereby and shall survive any foreclosure of this Mortgage, any transfer of the Mortgaged Property by deed in lieu of foreclosure, any transfer of the Mortgaged Property or interests therein or any change in ownership thereof.

(g) In the event this Mortgage is foreclosed, or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Mortgaged Property to Mortgagee free of any and all Hazardous Materials and any liens, encumbrances and restrictions relating to Environmental Liabilities, so that the conditions of the Mortgaged Property shall conform with all applicable federal, state and local laws, rules, regulations and orders pertaining to health, the environment or Hazardous Materials.

(h) Mortgagor covenants, represents and warrants that the Mortgaged Property, and any buildings and other improvements and additions now or hereafter located thereon, do not contain any underground or aboveground storage tanks, pipes or pipelines for the storage or transportation of Hazardous Materials, including, without limitation, heating oil, fuel oil, gasoline and/or other petroleum products, whether such tanks, pipes or pipelines are in operation, not operational, closed or abandoned (collectively, "Tanks"). Notwithstanding the foregoing, if the Mortgaged

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Property contains any such Tanks, Mortgagor covenants, represents and warrants that Mortgagor is in full compliance with all registration and other requirements of 42 U.S.C. Section 6991, "Regulation of Underground Storage Tanks" and all federal, state and local laws and regulations implementing the provisions of such act or otherwise regulating the existence, usage and removal thereof.

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

ELAN ONE, a
Maine corporation

By: _____
Name: Joseph J. Ricci
Title: (Vice) President

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STATE OF NEW JERSEY)
) SS.:
COUNTY OF BERGEN)

On the 19th day of April, 1993, before me personally came Joseph J. Ricci, to me known, who, being by me duly sworn, did depose and say that he resides at 328 Blackstrap Road, Falmouth, Maine; that he is the (Vice) President of ELAN ONE, a Maine corporation, the corporation described in and which executed the foregoing instrument, and that he executed the instrument as his free act and deed on behalf of said corporation pursuant to the authority of the board of directors thereof for the uses and purposes in said instrument set forth, and as the free act and deed of said corporation for the uses and purposes therein set forth.

Notary Public

LAURA B. ZEBOOKER
A Notary Public State of New Jersey
My Commission Expires August 21, 1997

SEAL

swh funding/elan one/poland spr first mortgage/ 4/8/93

-OVER-

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EXHIBIT A

Two certain lots or parcels of land with the buildings thereon situated in Poland, County of Androscoggin and State of Maine, bounded and described as follows:

Parcel One. Beginning at an iron post set in a stone wall at the corner of the second parcel of land described in a deed from Hiram Ricker & Sons to Else R. Strauss dated May 10, 1949, recorded in the Androscoggin County Registry of Deeds in Book 626, Page 152, and thence the line runs in a northeasterly direction along the boundary line between the land hereby conveyed and said property conveyed to Strauss, a distance of five hundred and eighty (580') feet to a point; thence the line runs in a southeasterly direction maintaining a course parallel to the aforementioned stone wall a distance of one thousand five hundred (1,500') feet to a point; thence the line runs in a southwesterly direction maintaining a course parallel to the first course above described to the road leading from the North Raymond Road, so-called to the former Strauss premises knows as Rolly's Camp; thence the line runs in a northwesterly direction along said road leading to Rolly's Camp, so-called, to the entrance of said Rolly's Camp marking the southeasterly end of the aforementioned stone wall and the property line between the property hereby conveyed and other property formerly of said Strauss known as Rolly's Camp; thence the line runs in a northwesterly direction along the second parcel of land described herein being a stone wall a distance of three hundred thirty-two (332') feet to the iron post marking the point of beginning.

Parcel Two. Beginning at a point about one-quarter mile northerly from the main road leading from Range Hill to North Raymond at a point where an old road leads to the number six (6) lot and at a point where said old wood road joins with the land described as Parcel One above; thence the line runs in a northwesterly direction along said first parcel and along land formerly of Hiram Ricker & Sons to an iron post set in the ground near the shore of Upper Range Pond; thence the line runs in a southwesterly direction roughly parallel with the shore of said pond a distance of four hundred eighty-two (482') feet, more or less in a straight line and to a point on the shore marked by an iron stake set in the ground, which iron stake designates the most northerly corner of a triangular parcel of land conveyed by these Grantors to Robert D. MacKerron by deed dated January 24, 1974, to be recorded herewith in said Registry of Deeds; thence the line runs in a general southeasterly direction along said triangular parcel conveyed to Robert D. MacKerron(said line to be marked by a wood and wire fence) a distance of two hundred sixteen (216') feet, more or less, to a stake and stones designating the most southerly corner of said triangle and the most easterly corner of a parcel of land conveyed by these Grantors to said Robert D. MacKerron by deed dated September 26,

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1972, recorded in said Registry of Deeds in Book 1078, Page 20; thence the line runs in a southwesterly direction along the premises described in said recorded deed to Robert D. MacKerron and along the southwesterly line of land conveyed by these Grantors to Mark Alan Willis et al by deeds dated November 1, 1971, recorded in said Registry in Book 1043, Page 594 and Book 1043, Page 597, a distance of slightly more than one hundred (100') feet to an iron post set in the ground in a wire fence which iron post constitutes the point of beginning as contained in a mutual dividing line established by exchanged deeds between Else R. Strauss and Iva Hunnewell dated November 8, 1945, recorded in said Registry in Book 570, Page 31, and Book 570, Page 30; thence the line runs in a southeasterly direction along said wire fence a distance of four hundred and fifty-eight and five tenths (458.5') feet to an iron pin; thence the line runs in a southeasterly direction along said wire fence a distance of three hundred sixty-seven and two tenths (367.2') feet to the terminus of the third course as it was actually described in the third parcel contained in a deed given to Else R. Strauss by Charles R. King dated September 10, 1959 and recorded in said Registry in Book 812, Page 66; thence the line runs in an easterly direction along said old wood road to the point of beginning. Also including any land between extensions northwesterly of the first and third courses above described to the low water mark of Upper Range Pond.

ATTEST:
Jeannine D. Gregerson
REGISTER OF DEEDS
93 APR 20 PM 1:47
ANDROSCOGGIN, SS.
REGISTRY OF DEEDS