



8393362-9001

JW

1998 01 01 19: 00: 00

[Land Trust Form]

MORTGAGE

(For use with Firststar Loan Documents Only)

ILLINOIS REAL ESTATE

This Mortgage ("Mortgage") is made and entered into by the undersigned borrower(s), guarantor(s) and/or other obligor(s)/pledgor(s) (collectively the "Mortgagor") in favor of FIRSTSTAR BANK ILLINOIS (the "Bank") as of the date set forth on the last page of this Mortgage.

ARTICLE I. MORTGAGE/SECURITY INTEREST

1.1 Grant of Mortgage, Security Interest. The Mortgagor hereby mortgages, conveys, grants and collaterally assigns to the Bank the Mortgaged Property (defined below) to secure all of the Obligations (defined below) to the Bank. The intent of the parties hereto is that the Mortgaged Property secures all Obligations of the Mortgagor and its beneficiary (the "Beneficiary") to the Bank, whether now or hereafter existing, between the Mortgagor or the Beneficiary and the Bank or in favor of the Bank, including, without limitation, any note, any loan or security agreement, any lease, any other mortgage, deed of trust or other pledge of an interest in real or personal property, any guaranty, any letter of credit or reimbursement agreement or banker's acceptance, any agreement for any other services or credit extended by the Bank to the Mortgagor or the Beneficiary even though not specifically enumerated herein and any other agreement with the Bank (together and individually, the "Loan Documents"). Notwithstanding anything to the contrary herein, the amount secured hereby shall not exceed \$100,000,000.

1.2 "Mortgaged Property" means all of the following whether now owned or existing or hereafter acquired by the Mortgagor, wherever located: all the real estate described below or in Exhibit A attached hereto (the "Land"), together with all buildings, structures, fixtures, equipment and furnishings used in connection with the operation of the Land and improvements, and all other improvements now or hereafter constructed, affixed or located thereon (the "Improvements") (the Land and the Improvements collectively the "Premises"); TOGETHER with any, and all easements, rights-of-way, licenses, privileges, and appurtenances thereto, and any and all leases or other agreements for the use or occupancy of the Premises, all the rents, issues, profits or any proceeds therefrom and all security deposits and any guaranty of a tenant's obligations thereunder (collectively the "Rents"); all awards as a result of condemnation, eminent domain or other decrease in value of the Premises and all insurance and other proceeds of the Premises.

The Land is described as follows (or in Exhibit A hereto if the description does not appear below):  
LOTS 12, 13 AND 14 IN BLOCK 8 IN DES PLAINES CENTER A SUBDIVISION IN SECTION 17, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 1449 RAND RD, DES PLAINES, IL 60016 PIN# 09-17-205-126

1.3 "Obligations" means all loans by the Bank to FIRSTSTAR BANK ILLINOIS, as Trustee including those loans evidenced by a note or notes dated 02/25/98 in the initial principal amount(s) of \$135,000.00 and any extensions, renewals, restatements and modifications thereof and all principal, interest, fees and expenses relating thereto (the "Note"); and also means all the Mortgagor's or the Beneficiary's debts, liabilities, obligations, covenants, representations, and duties to the Bank (plus its affiliates including any Eban entity), whether now or hereafter existing or

9/97  
[Handwritten initials]

incurred, whether liquidated or unliquidated, whether absolute or contingent, whether arising out of the Loan Documents or otherwise, and regardless of whether such Obligations arise out of existing or future credit granted by the Bank to any Mortgagor or any Beneficiary, to any Mortgagor or any Beneficiary and others, to others guaranteed, endorsed or otherwise secured by any Mortgagor or any Beneficiary or to any debtor-in-possession/successor-in-interest of any Mortgagor or any Beneficiary, and principal, interest, fees, expenses and charges relating to any of the foregoing, including, without limitation, costs and expenses of collection and enforcement of this Mortgage, attorneys' fees of both inside and outside counsel and environmental assessment or remediation costs. The interest rate and maturity of such Obligations are as described in the documents creating the indebtedness secured hereby.

1.4 Homestead. The Premises are not the homestead of the Mortgagor. If so, the Mortgagor hereby releases and waives all rights under and by virtue of the homestead exemption laws of the State of Illinois.  
(are) (are not)

1.5 Revolving Loan.  If checked here, this Mortgage is given to secure a revolving credit facility and secures not only present indebtedness, but also future advances, whether such future advances are obligatory or are to be made at the option of the Bank, or otherwise as are to be made within twenty (20) years following the date hereof. Nothing herein shall be construed as meaning that such revolving indebtedness has a term of twenty (20) years. The amount of revolving indebtedness secured hereby may increase or decrease from time to time, however, the principal amount of such revolving indebtedness shall not at any one time exceed the amount of \$100,000,000 plus interest thereon, and other costs, amounts and disbursements provided herein and in the other Loan Documents.

ARTICLE II. REPRESENTATIONS AND COVENANTS

In addition to all other representations and covenants of the Mortgagor under the Loan Documents which are expressly incorporated herein as part of this Mortgage, including the covenants to pay and perform all Obligations, and while any part of the credit granted the Mortgagor under the Loan Documents is available or any Obligations to the Bank are unpaid or outstanding, the Mortgagor continuously represents and agrees as follows:

2.1 Representation of Title/Possession. The Mortgagor represents that it has sole and exclusive title to and possession of the Premises, excepting only the following "Permitted Encumbrances": restrictions and easements of record, and zoning ordinances (the terms of which are and will be complied with, and in the case of easements, are and will be kept free of encroachments) and taxes and assessments not yet due and payable and those Permitted Encumbrances set forth on Exhibit B attached hereto (except that if no Exhibit B is attached, there will be no additional Permitted Encumbrances). The lien of this Mortgage, subject only to Permitted Encumbrances, is and will continue to be a valid first and only lien upon all of the Mortgaged Property.

2.2 Maintenance; Waste; Alteration. The Mortgagor will maintain the Premises in good and tenantable condition and will restore or replace damaged or destroyed improvements with items of at least equal utility and value. The Mortgagor will not commit or permit waste to be committed on the Premises. The Mortgagor will not remove, demolish or materially alter any part of the Premises without the Bank's prior written consent, except the Mortgagor may remove a fixture, provided the fixture is promptly replaced with another fixture of at least equal utility. The replacement fixture will be subject to the priority lien and security of this Mortgage.

2.3 Transfer and Liens. The Mortgagor will not, without the prior written consent of the Bank, which may be withheld in the Bank's sole and absolute discretion, either voluntarily or involuntarily (a) sell, assign, lease or transfer, or permit to be sold, assigned, leased or transferred, any part of the Premises, or any interest therein; or (b) pledge or otherwise encumber, create or permit to exist any mortgage, pledge, lien or claim for lien or encumbrance upon any part of the Premises or interest therein, except for the Permitted Encumbrances. The Mortgagor shall not suffer or permit the assignment of the beneficial interest in the trust covering the Premises for which the Mortgagor is trustee, or the collateral assignment or other encumbrance of such beneficial interest, and any such assignment shall be a default under this Mortgage.

2.4 Escrow. After written request from the Bank, the Mortgagor will pay to the Bank sufficient funds at such time as the Bank designates, to pay (a) the estimated annual real estate taxes and assessments on the Premises; and (b) all property or hazard insurance premiums when due. Interest will not be paid by the Bank on any escrowed funds. Escrowed funds may be commingled with other funds of the Bank. All escrowed funds are hereby pledged as additional security for the Obligations.

2.5 Taxes, Assessments and Charges. To the extent not paid to the Bank under 2.4 above, the Mortgagor will pay before they become delinquent all taxes, assessments and other charges now or hereafter levied or assessed against the Premises, against the Bank based upon this Mortgage or the Obligations secured by this Mortgage, or upon the Bank's interest in the Premises, and deliver to the Bank receipts showing timely payment.

**2.6 Insurance.** The Mortgagor will continually insure the Premises against such perils or hazards as the Bank may require, in amounts, with acceptable co-insurance provisions, not less than the unpaid balance of the Obligations or the full replacement value of the Improvements, whichever is less. The policies will contain an agreement by each insurer that the policy will not be terminated or modified without at least thirty (30) days' prior written notice to the Bank and will contain a mortgage clause acceptable to the Bank; and the Mortgagor will take such other action as the Bank may reasonably request to ensure that the Bank will receive (subject to no other interests) the insurance proceeds from the Improvements. The Mortgagor hereby assigns all insurance proceeds to and irrevocably directs, while any Obligations remain unpaid, any insurer to pay to the Bank the proceeds of all such insurance and any premium refund; and authorizes the Bank to endorse the Mortgagor's name to effect the same, to make, adjust or settle, in the Mortgagor's name, any claim on any insurance policy relating to the Premises. The proceeds and refunds will be applied in such manner as the Bank, in its sole and absolute discretion, determines to rebuilding of the Premises or to payment of the Obligations, whether or not then due and payable.

**2.7 Condemnation.** The Mortgagor will pay to the Bank all compensation received for the taking of the Premises, or any part thereof, by a condemnation proceeding (including payments in compromise of condemnation proceedings), and all compensation received as damages for injury to the Premises, or any part thereof. The compensation will be applied in such manner as the Bank, in its sole and absolute discretion, determines to rebuilding of the Premises or to payment of the Obligations, whether or not then due and payable.

**2.8 Environmental Matters.** The following representations and covenants are subject to those exceptions set forth on Exhibit C attached hereto (except that if no Exhibit C is attached, there will be no exceptions). There exists no uncorrected violation by the Mortgagor of any federal, state or local laws (including statutes, regulations, ordinances or other governmental restrictions and requirements) relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or Hazardous Substances as hereinafter defined, whether such laws currently exist or are enacted in the future (collectively "Environmental Laws"). The term "Hazardous Substances" will mean any hazardous or toxic wastes, chemicals or other substances, the generation, possession or existence of which is prohibited or governed by any Environmental Laws. The Mortgagor is not subject to any judgment, decree, order or citation, or a party to (or threatened with) any litigation or administrative proceeding, which asserts that the Mortgagor (a) has violated any Environmental Laws; (b) is required to clean up, remove or take remedial or other action with respect to any Hazardous Substances (collectively "Remedial Action"); or (c) is required to pay all or a portion of the cost of any Remedial Action, as a potentially responsible party. Except as disclosed on the Borrower's environmental questionnaire provided to the Bank, there are not now, nor to the Mortgagor's knowledge after reasonable investigation have there ever been, any Hazardous Substances (or tanks or other facilities for the storage of Hazardous Substances) stored, deposited, recycled or disposed of on, under or at any real estate owned or occupied by the Mortgagor during the periods that the Mortgagor owned or occupied such real estate, which if present on the real estate or in soils or ground water, could require Remedial Action. To the Mortgagor's knowledge, there are no proposed or pending changes in Environmental Laws which would adversely affect the Mortgagor or its business, and there are no conditions existing currently or likely to exist while the Loan Documents are in effect which would subject the Mortgagor to Remedial Action or other liability. The Mortgagor currently complies with and will continue to timely comply with all applicable Environmental Laws; and will provide the Bank, immediately upon receipt, copies of any correspondence, notice, complaint, order or other document from any source asserting or alleging any circumstance or condition which requires or may require a financial contribution by the Mortgagor or Remedial Action or other response by or on the part of the Mortgagor under Environmental Laws, or which seeks damages or civil, criminal or punitive penalties from the Mortgagor for an alleged violation of Environmental Laws. In the event of any such circumstance or condition, the Mortgagor agrees, at its expense and at the request of the Bank, to permit an environmental audit solely for the benefit of the Bank, to be conducted by the Bank or an independent agent selected by the Bank and which may not be relied on by the Mortgagor for any purpose. This provision shall not relieve the Mortgagor from conducting its own environmental audits or taking any other steps necessary to comply with Environmental Laws.

The Mortgagor hereby represents and covenants that the execution and delivery of this Mortgage is not a transfer of "real property," as "real property" is defined in the Illinois Responsible Property Transfer Act (765 ILCS 90/1 et seq.), as said Act may be amended from time to time, or, if the execution and delivery of this Mortgage is "real property," as defined in said Act, then the Mortgagor hereby represents and covenants that it has complied with the provisions thereof.

**2.9 Assignments.** The Mortgagor will not assign, in whole or in part, without the Bank's prior written consent, the rents, issues or profits arising from the Premises.

**2.10 Right of Inspection.** The Bank may at all reasonable times enter and inspect the Premises.

**2.11 Waivers by Mortgagor.** To the greatest extent that such rights may then be lawfully waived, the Mortgagor hereby agrees for itself and any persons claiming under the Mortgage that it will waive and will not, at any time, insist upon

or plead or in any manner whatsoever claim or take any benefit or advantage of (a) any exemption, stay, extension or moratorium law now or at any time hereafter in force; (b) any law now or hereafter in force providing for the valuation or appraisal of the Premises or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained or pursuant to the decree, judgment or order of any court of competent jurisdiction; (c) to the extent permitted by law, any law now or at any time hereafter made or enacted granting a right to redeem from foreclosure or any other rights of redemption in connection with foreclosure of this Mortgage; (d) any statute of limitations now or at any time hereafter in force; or (e) any right to require marshalling of assets by the Bank.

**2.12 Assignment of Rents and Leases.** The Mortgagor assigns and transfers to the Bank, as additional security for the Obligations, all right, title and interest of the Mortgagor in and to all leases which now exist or hereafter may be executed by or on behalf of the Mortgagor covering the Premises and any extensions or renewals thereof, together with all Rents, it being intended that this is an absolute and present assignment of the Rents. Notwithstanding that this assignment constitutes a present assignment of leases and rents, the Mortgagor may collect the Rents and manage the Premises, but only if and so long as a default has not occurred. If a default occurs, the right of Mortgagor to collect the Rents and to manage the Premises shall thereupon automatically terminate and such right, together with other rights, powers and authorizations contained herein, shall belong exclusively to the Bank. This assignment confers upon the Bank a power coupled with an interest and cannot be revoked by the Mortgagor. Upon the occurrence of a default, the Bank, at its option without notice and without seeking or obtaining the appointment of a receiver or taking actual possession of the Premises may (a) give notice to any tenant(s) that the tenant(s) should begin making payments under their lease agreement(s) directly to the Bank or its designee; (b) commence a foreclosure action and file a motion for appointment of a receiver; or (c) give notice to the Mortgagor that the Mortgagor should collect all Rents arising from the Premises and remit them to the Bank upon collection and that the Mortgagor should enforce the terms of the lease(s) to ensure prompt payment by tenant(s) under the lease(s). All Rents received by the Mortgagor shall be held in trust by the Mortgagor for the Bank. All such payments received by the Bank may be applied in any manner as the Bank determines to payments required under this Mortgage, the Loan Documents and the Obligations. The Mortgagor agrees to hold each tenant harmless from actions relating to tenant's payment of Rents to the Bank.

**ARTICLE III. RIGHTS AND DUTIES OF THE BANK**

In addition to all other rights (including setoff) and duties of the Bank under the Loan Documents which are expressly incorporated herein as a part of this Mortgage, the following provisions will also apply:

**3.1 Bank Authorized to Perform for Mortgagor.** If the Mortgagor fails to perform any of the Mortgagor's duties or covenants set forth in this Mortgage, the Bank may perform the duties or cause them to be performed, including without limitation signing the Mortgagor's name or paying any amount so required, and the cost, with interest at the default rate set forth in the Loan Documents, will immediately be due from the Mortgagor to the Bank from the date of expenditure by the Bank to date of payment by the Mortgagor, and will be one of the Obligations secured by this Mortgage. All acts by the Bank are hereby ratified and approved, and the Bank will not be liable for any act of commission or omission, nor for any errors of judgment or mistakes of fact or law.

**ARTICLE IV. DEFAULTS AND REMEDIES**

The Bank may enforce its rights and remedies under this Mortgage upon default. A default will occur if the Mortgagor fails to comply with the terms of any Loan Documents (including this Mortgage or any guaranty by the Mortgagor) or a demand for payment is made under a demand loan, or the Mortgagor defaults on any other mortgage affecting the Land, or if any other obligor fails to comply with the terms of any Loan Documents for which the Mortgagor or the Beneficiary has given the Bank a guaranty or pledge. Upon the occurrence of a default, the Bank may declare the Obligations to be immediately due and payable.

**4.1 Cumulative Remedies; Waiver.** In addition to the remedies for default set forth in the Loan Documents, including acceleration, the Bank upon default will have all other rights and remedies for default available by law or equity including foreclosure of this Mortgage. The rights and remedies specified herein are cumulative and are not exclusive of any rights or remedies which the Bank would otherwise have. With respect to such rights and remedies:

(a) **Receiver; Mortgagee-in-Possession.** Upon the commencement or during the pendency of any action to foreclose this Mortgage, the Bank will be entitled, as a matter of right, without notice or demand and without giving bond or other security, and without regard to the solvency or insolvency of the Mortgagor or to the value of the Premises, to have a receiver appointed for all or any part of the Premises, which receiver will be authorized to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action, and until discharged, and to hold and apply such rents, issues and profits, when so collected, as the court will from time to time direct. Without limitation of the foregoing, the Mortgagor hereby authorizes the Bank to be placed in

# UNOFFICIAL COPY

possession of the Premises during foreclosure, whether the Premises are residential or not, and, for so long as the Bank shall remain in possession of the Premises, the Bank shall have the power and authority to operate, manage and control the Premises, including, without limitation, the right to receive the rents, issues and profits of the Premises, perform all maintenance and make all repairs and replacements, enter into leases, and amend, cancel, renew, modify and terminate the same.

(b) **Agreement to State Foreclosure Statutes.** The Mortgagor agrees that in the event of foreclosure of this Mortgage, the Mortgagor will be bound by the provisions of Section 735 ILCS 5/15-1101 et seq., as the same may be amended or renumbered from time to time, whichever may be applicable to the Premises, permitting the Bank (at its option) to waive the right to a deficiency judgment and shorten the length of the redemption period in the event of foreclosure.

(c) **Waiver by the Bank.** The Bank may permit the Mortgagor to attempt to remedy any default without waiving its rights and remedies hereunder, and the Bank may waive any default without waiving any other subsequent or prior default by the Mortgagor. Furthermore, delay on the part of the Bank in exercising any right, power or privilege hereunder or at law will not operate as a waiver thereof, nor will any single or partial exercise of such right, power or privilege preclude other exercise thereof or the exercise of any other right, power or privilege. No waiver or suspension will be deemed to have occurred unless the Bank has expressly agreed in writing specifying such waiver or suspension.

(d) **Attorneys' Fees and Other Costs.** Attorneys' fees and other costs incurred in connection with foreclosure of this Mortgage may be recovered by the Bank and included in any judgment of foreclosure.

## ARTICLE V. MISCELLANEOUS

In addition to all other miscellaneous provisions under the Loan Documents which are expressly incorporated as a part of this Mortgage, the following provisions will also apply:

5.1 **Term of Mortgage.** The term of this Mortgage shall continue in full force and effect until this Mortgage is released.

5.2 **Time of the Essence.** Time is of the essence with respect to payment of the Obligations, the performance of all covenants of the Mortgagor and the payment of taxes, assessments, and similar charges and insurance premiums.

5.3 **Subrogation.** The Bank will be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the proceeds of the Note or other advances by the Bank, in which event any sums otherwise advanced by the Bank shall be immediately due and payable, with interest at the default rate set forth in the Loan Documents from the date of advance by the Bank to the date of payment by the Mortgagor or the Beneficiary and will be one of the Obligations secured by this Mortgage.

5.4 **Choice of Law.** Foreclosure of this Mortgage will be governed by the laws of the state in which the Mortgaged Property is located. For all other purposes, the choice of law specified in the Loan Documents will govern.

5.5 **Land Trust Exculpatory.** This instrument is executed by FIRSTAR BANK ILLINOIS, not personally, but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by FIRSTAR BANK ILLINOIS are undertaken by it solely as Trustee, as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against said Trustee by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

5.6 **Severability.** Invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provision.

5.7 **Entire Agreement.** This Mortgage is intended by the Mortgagor and the Bank as a final expression of this Mortgage and as a complete and exclusive statement of its terms, there being no conditions to the full effectiveness of this Mortgage. No parol evidence of any nature shall be used to supplement or modify any terms.

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has/have executed this MORTGAGE as of FEBRUARY 25, 1998

fka First Colonial Trust Company Successor to Avenue Bank Northwest

Land Trustee Mortgagor FIRSTAR BANK  
ILLINOIS \*, as Trustee  
under Trust Agreement dated 08/25/86  
known as Trust No. 865N

(Land Trustee Address)  
FIRSTAR BANK ILLINOIS  
104 N. Oak Park Avenue  
West Oak Park, IL 60301

By: June M. Stout  
Name: June M. Stout  
Title: AVP

(Bank Address)  
FIRSTAR BANK ILLINOIS  
9575 W. Higgins Road  
ROSEMONT, IL 60018

Attest: Mary Figiol  
Mary Figiol, Land Trust Officer

STATE OF ILLINOIS }  
COUNTY OF Cook } ss.

This instrument was acknowledged before me on 3-11-98, by June M. Stout &  
(Date) (Name(s) of Person(s))  
Mary Figiol as AVP & Land Trust Officer  
(Type of authority, if any, e.g., officer, trustee; if an individual, state "a married individual" or "a  
of FIRSTAR BANK ILLINOIS  
(Name of entity on whose behalf the document was executed; use N/A if individual)

(Notarial Seal)



Angela McClain  
Printed Name: Angela McClain  
Notary Public, State of: ILLINOIS  
My commission expires: \_\_\_\_\_

This instrument was drafted by DAVID SCHWEDER  
(name)

on behalf of

After recording return to FIRSTAR BANK ILLINOIS COLLATERAL DEPARTMENT P.O. Box 2584, OSHKOSH WI 54903  
(name) (address)