FIRSTAR BANK

MORTGAGE
(FOR USE WITH FIRSTAR LOAN DOCUMENTS ONLY)
IOWA REAL ESTATE

This Mortgage ("**Mortgage**") is made and entered into by the undersigned borrower(s), guarantor(s) and/or other obligor(s) (collectively the "**Mortgagor**") in favor of Firstar Bank Cedar Rapids, N.A. (the "**Bank**") as of the date set forth on the last page of this Mortgage.

NOTICE: THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF $ 70,000.00 . LOANS AND ADVANCES UP TO THIS AMOUNT, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER SUBSEQUENTLY RECORDED OR FILED MORTGAGES AND LIENS.

ARTICLE I. MORTGAGE/SECURITY INTEREST

1.1 **Grant of Mortgage/Security Interest.** The Mortgagor hereby sells, mortgages, conveys, grants a security interest and collaterally assigns to the Bank the Mortgaged Property (defined below) to secure all of the Mortgagor's Obligations (defined below) to the Bank. The intent of the parties hereto is that the Mortgaged Property secures all Obligations of the Mortgagor to the Bank, whether or not such Obligations exist under this Mortgage or any other agreements, whether now or hereafter existing, between the Mortgagor 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 even though not specifically enumerated herein and any other agreement with the Bank (together and individually, the "**Loan Documents**").

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 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 lease or other agreements for the use or occupancy of the Premises, all the rents, issues, profits or any proceeds therefrom; 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):

The North one thousand twenty three (1023) feet of the North one-half (N 1/2) of the Northwest Quarter (NW 1/4) of Section Sixteen (16), Township Eighty Seven (87) North, Range Five (5), West of the Fifth PM. Subject to highways and easements of record. All in Delaware County, Iowa.

For Release, See Book 143 Page 263 12-30-98

1.3 "**Obligations**" means all loans by the Bank to Dennis H. Miller and Mary E. Miller, including those loans evidenced by a note dated DECEMBER 28, 1994 in the initial principal amount of $ 70,000.00, 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 debts, liabilities, obligations, covenants, warranties, and duties to the Bank, whether now or hereafter existing or 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 the Mortgagor, to the Mortgagor and others, to others guaranteed or endorsed by the Mortgagor or to any debtor-in-possession/successor-in-interest of the Mortgagor, 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.

FILE No. 97-1798	FILED FOR RECORD THE 9 DAY OF	STATE OF IOWA, DELAWARE COUNTY
RECORDING FEE $ 26.00	Jan , 19 95 AT 11:37	Deborah L. Peyton , Recorder
TRANSFER FEE $	O'CLOCK A. M. BOOK 125 PAGE 134	LM CM 31

1.4 **Homestead.** The Premises __are not__ the homestead of the Mortgagor.
(are) (are not)

ARTICLE II. WARRANTIES AND COVENANTS

In addition to all other warranties 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 of the Mortgagor to the Bank are unpaid or outstanding, the Mortgagor continuously warrants and agrees as follows:

2.1 **Warranty of Title/Possession.** The Mortgagor warrants 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 interest of this Mortgage.

2.3 **Due On Sale.** If all or any part of Mortgagor's interest in the Premises is sold, conveyed, assigned, mortgaged, encumbered, hypothecated or transferred without the Bank's prior written consent, the Bank may, at the Bank's sole option, declare all sums secured hereby immediately due and payable.

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 (i) the estimated annual real estate taxes and assessments on the Premises; and (ii) all property or hazard insurance premiums when due. Interest will not be paid by the Bank on any escrow 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 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 warranties 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 (i) has violated any Environmental Laws; (ii) is required to clean up, remove or take remedial or other action with respect to any Hazardous Substances (collectively "**Remedial Action**"); or (iii) is required to pay all or a portion of the cost of any Remedial Action, as a potentially responsible party. 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.

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 **Redemption.** It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Bank, in such action, files an election to waive any deficiency judgment against the Mortgagor which may arise out of the foreclosure proceedings; all to be consistent with the provisions of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after sale such right of redemption shall be exclusive to the Mortgagor, and the time periods in Section 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to sixty (60) days if all of the three following contingencies develop: (1) The Land is less than ten (10) acres in size; (2) the Court finds affirmatively that the premises have been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) the Bank in such action files an election to waive any deficiency judgment against the Mortgagor or its successors in interest in such action. If the redemption period is so reduced, the Mortgagor or its successors in interest or the owner shall have the exclusive right to redeem for the first thirty (30) days after such sale, and the time provided for redemption by creditors as provided in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to forty (40) days. Entry of appearance by pleading or docket entry by or on behalf of the Mortgagor shall be a presumption that the Premises are not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code.

2.12 **Fixture Filing.** From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to the Improvements and for this purpose the name and address of the debtor is the name and address of the Mortgagor as set forth in this Mortgage and the name and address of the secured party is the name and address of the Bank as set forth in this Mortgage.

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 acts 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 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 has given the Bank a guaranty or pledge.

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; Foreclosure.** The Bank may (and is hereby authorized and empowered to) foreclose this Mortgage in accordance with the law of the State of Iowa, and at any time after the commencement of an action in foreclosure, or during the period of redemption, the court having jurisdiction of the case shall at the request of the Bank appoint a receiver to take immediate possession of the Mortgaged Property and of the revenues and income accruing therefrom, and to rent or cultivate the same as such receiver may deem best for the interest of all parties concerned, and such receiver shall be liable to account to the Mortgagor only for the net profits, after application of rents, issues and profits upon the costs and expenses of the receivership and foreclosure and upon the Obligations.

b. **Power of Sale.** In the event of foreclosure, the Bank may sell the Premises at public sale and execute and deliver to the purchasers deeds of conveyance pursuant to statute.

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.**

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 Bank's rights under this Mortgage will continue until the Bank's commitment to lend has been terminated or expired, and until all obligations have been paid in full and performed.

5.2 **Time is 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.

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

5.5 **Severability.** In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.

5.6 **Release of Rights of Dower, Homestead and Distributive Share.** Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the Mortgaged Property and waives all rights of exemption as to any of the Mortgaged Property.

5.7 **Copy.** The Mortgagor hereby acknowledges the receipt of a copy of this Mortgage, together with a copy of each promissory note secured hereby.

5.8 **Corporate Seal.** If the Mortgagor is a corporation, the Mortgagor warrants and represents that unless a corporate seal is affixed to this Mortgage, the Mortgagor has no seal.

IN WITNESS WHEREOF, the undersigned has/have executed this MORTGAGE as of DECEMBER 28, 1994.

(Individual Mortgagor)

Mortgagor Name Dennis H. Miller

(Individual Mortgagor)

Mortgagor Name Mary E. Miller

[If Mortgagor has a corporate seal, affix seal here]

N/A
Mortgagor Name (Organization)

a

By

Name and Title N/A

By

Name and Title N/A

(Mortgagor Address)
1046 Milstead Drive
Hiawatha, IA 52233

(Bank Address)
Firstar Bank Cedar Rapids, N.A.
222 Second Avenue SE
Cedar Rapids, IA 52401

[Complete if the Mortgaged Property includes the "homestead," within the meaning of Chapter 561 of the Iowa Code and is "agricultural land" as defined in Section 172C.1 of the Iowa Code, or dwellings, buildings, or other appurtenances located on the land]:

I (WE) UNDERSTAND THAT HOMESTEAD PROPERTY IS IN MANY CASES PROTECTED FROM THE CLAIMS OF CREDITORS AND EXEMPT FROM JUDICIAL SALE; AND THAT BY SIGNING THIS MORTGAGE, I (WE) VOLUNTARILY GIVE UP MY (OUR) RIGHT TO THIS PROTECTION FOR THIS MORTGAGED PROPERTY WITH RESPECT TO CLAIMS BASED UPON THIS MORTGAGE.

Dated:

N/A, Mortgagor
(Type or Print Name)

Dated:

N/A, Mortgagor
(Type or Print Name)

STATE OF Iowa
COUNTY OF
} ss.

This instrument was acknowledged before me on (Date), by Dennis H. Miller and Mary E. Miller (Name(s) of person(s)), as individuals (Type of authority, if any, e.g., officer, trustee; if an individual, state "an individual") of N/A (Name of entity on whose behalf the document was executed; use N/A if individual).

[COMPLETE FOR CORPORATE MORTGAGOR ONLY:]

☐ If checked here, the Mortgagor's representative has stated that the Mortgagor has a corporate seal, and the seal is attached.
If not checked, the representative has stated that the Mortgagor has no seal.

(Notarial Seal)

NOTARIAL SEAL IOWA
DENNIS O. EARHART
MY COMMISSION EXPIRES
May 7, 1996

Printed Name:

Notary Public, State of: Iowa

My commission expires:

This instrument was drafted by
(name)

After recording return to Firstar Bank Cedar Rapids, N.A222 Second Avenue SE, Cedar Rapids, IA 52401
(name) (address)