

UNOFFICIAL COPY

Mortgage

THIS MORTGAGE is made on February 1, 1994, between (_____) and known as _____ not personally, but as Trustee under a Trust Agreement dated _____, 19____, and known as _____, Trust No. _____, Faust, Inc., whose address is 7150 West Cermak Road, Berwyn, IL 60402 (the "Mortgagor") and NBD Bank an Illinois banking corporation whose address is 211 South Wheaton Avenue, Wheaton, Illinois 60187 (the "Mortgagee").

The Mortgagor MORTGAGES, CONVEYS AND WARRANTS to the Mortgagee real property and all the buildings, structures and improvements on it described as:
 Land located in the Township of Lake
 County of Cook, State of Illinois:

Lots 6,7,8,9,10, and 11 in Block 4 of Egger's Subdivision of Blocks 3 & 4 in Dewey and Hogg's Subdivision of the West Half of the Northwest Quarter of Section 30, Township 38 North, Range 14, East of the Third Principal Meridian, (Except Railroad Right of Way) in Cook County, Illinois.

("the Premises")
 Commonly known as: 7101 S. Western Avenue, Chicago, IL
 Tax Parcel Identification No. 20-30-100-001; 20-30-100-002; 20-30-100-003; 20-30-100-004; 20-30-100-001-005

The Premises shall also include all of the Mortgagor's right, title and interest in and to the following:

- (1) All easements, rights-of-way, licenses, privileges and hereditaments.
- (2) Land lying in the bed of any road, or the like, opened, proposed or vacated, or any strip or gore, adjoining the Premises.
- (3) All machinery, apparatus, equipment, fittings, fixtures, and articles of personal property of every kind and nature whatsoever located now or in the future in or upon the Premises and used or useable in connection with any present or future operation of the Premises (all of which is called "Equipment"). It is agreed that all Equipment is part of the Premises and appropriated to the use of the real estate and, whether affixed or annexed or not, shall for the purposes of this Mortgage unless the Mortgagee shall otherwise elect, be deemed conclusively to be real estate and mortgaged and warranted to the Mortgagee.
- (4) All mineral, oil, gas and water rights, royalties, water and water stock, if any.
- (5) All awards or payments including interest or as a result of: the exercise of the right of eminent domain; the alteration of the grade of any street, any loss of or damage to any building or other improvement on the Premises, any other injury to or decrease in the value of the Premises, any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the Premises, and the reasonable attorneys' and paralegals' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of any such award or payment.
- (6) All of the rents, issues and profits of the Premises under present or future leases, or otherwise.

The Premises are unencumbered except as follows: _____

("Permitted Encumbrances"). If the Premises are encumbered by Permitted Encumbrances, the Mortgagor shall perform all obligations and make all payments as required by the Permitted Encumbrances. The Mortgagee shall provide copies of all writings pertaining to Permitted Encumbrances, and the Mortgagee is authorized to request and receive that information from any other person without the consent or knowledge of the Mortgagor.

This Mortgage secures the indebtedness or obligation evidenced by:

- (i) The note(s) dated February 1, 1994 in the principal amount(s) of \$211,000.00 respectively, maturing on February 1, 1999 executed and delivered by Mortgagor to the Mortgagee with interest at the per annum rate of Nine percent (9.0%) on the principal balance remaining from time to time unpaid. Interest after default or maturity of the note, whether by acceleration or otherwise, on the principal balance of the note remaining from time to time unpaid shall be at the per annum rate of Twelve percent (12.0%) and
- (ii) the guaranty of the debt of _____ dated _____ executed and delivered by _____ to the Mortgagee; and
- (iii) _____ including any extensions, renewals, modifications or replacements without limit as to the number or frequency (the "Debt").

LIMITATION ON AMOUNT SECURED BY MORTGAGE. Notwithstanding anything to the contrary contained in this Mortgage, the amount secured by this Mortgage shall not exceed the principal sum of \$211,000.00 at any one time outstanding.

FUTURE ADVANCES AND CROSS-LIEN: The Debt shall also include all other present and future, direct and indirect obligations and liabilities of the Mortgagor, or any one or more of them, with or without others, to the Mortgagee. This shall not apply to any obligation or debt incurred for personal, family or household purposes unless the note or guaranty expressly states that it is secured by this Mortgage.

This Mortgage shall also secure the performance of the promises and agreements contained in this Mortgage.

The Mortgagor promises and agrees as follows:

1. PAYMENT OF DEBT; PERFORMANCE OF OBLIGATIONS. The Mortgagor shall promptly pay when due, whether by acceleration or otherwise, the Debt for which the Mortgagor is liable, and shall promptly perform all obligations to which the Mortgagor has agreed under the terms of this Mortgage and any loan documents evidencing the Debt.

2. TAXES. The Mortgagor shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions, and other charges which may become a lien prior to this Mortgage. Should the Mortgagor fail to make such payments, the Mortgagee may, at its option and at the expense of the Mortgagor, pay the amounts due for the account of

the Mortgagor. Upon the request of the Mortgagee, the Mortgagor shall immediately furnish to the Mortgagee all notices of amounts due and receipts evidencing payment. The Mortgagor shall promptly notify the Mortgagee of any lien on all or any part of the Premises and shall promptly discharge any unpermitted lien or encumbrance.

3. CHANGE IN TAXES. In the event of the passage of any law or regulation, state, federal or municipal, subsequent to the date of this Mortgage in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting such taxes, the entire principal secured by this Mortgage and all interest accrued shall become due and payable immediately at the option of the Mortgagee.

4. INSURANCE. Until the Debt is fully paid, the Mortgagor shall keep the Premises and the present and future buildings and other improvements on the Premises constantly insured for the benefit of the Mortgagee against fire and such other hazards and risks customarily covered by the standard form of extended coverage endorsement available in the State of Illinois, including risks of vandalism and malicious mischief, and shall further provide flood insurance (if the Premises are situated in an area designated as a flood risk area by the Director of the Federal Emergency Management Agency or as otherwise required by the Flood Disaster Protection Act of 1973 and regulations issued under it).

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10/26/97
MARIONNE HARTL, Notary Public
"OFFICIAL SEAL"
Faust, Inc. 1097
Marionne Hartl

My Commission Expires

Given under my hand and notarial seal this

(association), as Trustee, for the uses and purposes therein set forth.

(of said (corporation) (association) to said instrument as his own free and voluntary act, and as the free and voluntary act of said (corporation)

did also then and there acknowledge that he, as custodian of the corporate seal of said (corporation) (association), affixed the said corporate seal

(association), as Trustee, for the uses and purposes therein set forth; and the said

acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said (corp-

such James J. Faust and John C. Faust and

(of said (corporation) (association) personally known to me to be the same persons whose names are subscribed to the foregoing instrument as

James J. Faust and John C. Faust Corporation

the undersigned of Faust, Inc.

a Notary Public in and for said County, in the State aforesaid, do hereby certify that

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FILED FOR RECORD
COOK COUNTY, ILLINOIS

Notary Public

County of

State of Illinois

My Commission Expires

Given under my hand and notarial seal this

and voluntary act, for the uses and purposes herein set forth.

instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as his/her free

personally known to me to be the same person(s) whose names

a Notary Public in and for said County and State, do hereby certify that

County of

State of Illinois

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personally known to me to be the same person(s) whose names

BOX 333-CT1

James J. Faust, President
John C. Faust, Secretary
Faust, Inc.
Notary Public, in and for said County and State, do hereby certify that

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Property of Cook County Clerk

the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Premises or the so-called "contaminated" buildings, personal property, persons or animals; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Premises; (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials with respect to the Premises, and/or (d) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Mortgagee, which are based upon or in any way related to such Hazardous Materials used on the Premises. The indemnity obligations under this paragraph are specifically limited as follows:

(i) The Mortgagor shall have no indemnity obligation with respect to Hazardous Materials that are first introduced to the Premises or any part of the Premises subsequent to the date that the Mortgagor's interest in and possession of that part of the Premises to which such Hazardous Materials have been so introduced shall have fully terminated by foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure;

(ii) The Mortgagor shall have no indemnity obligation with respect to any Hazardous Materials introduced to the Premises or any part of the Premises by the Mortgagee, its successors or assigns.

The Mortgagor agrees that in the event this Mortgage is foreclosed or the Mortgagor tenders a deed in lieu of foreclosure, the Mortgagor shall deliver the Premises to the Mortgagee free of any and all Hazardous Materials which are then required to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises.

For purposes of this Mortgage, "Hazardous Materials" means any materials or substance: (i) which is or becomes defined as a "hazardous substance", "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC Section 9601 et seq) and amendments thereto and regulations promulgated thereunder; (ii) containing gasoline, oil, diesel fuel or other petroleum products; (iii) which is or becomes defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act (42 USC Section 6901 et seq) and amendments thereto and regulations promulgated thereunder; (iv) containing polychlorinated biphenyls (PCBs); (v) containing asbestos; (vi) which is radioactive; (vii) which is biologically hazardous or (viii) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance or policy; or (ix) which is or becomes defined as a "hazardous waste", "hazardous substance", "pollutant" or "contaminant" under any federal, state or local statute, regulation or ordinance; or (x) any toxic, explosive, corrosive or otherwise hazardous substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, or (xi) which causes a nuisance upon or waste to the Premises.

"Governmental Regulation(s)" means any law, regulation, rule, policy, ordinance or similar requirement of the United States, any state, any county, city or other agency or subdivision of the United States or any state.

The provisions of this section shall be in addition to any and all other obligations and liabilities the Mortgagor may have to the Mortgagee under the Debt, any loan document, and in common law, and shall survive (a) the repayment of all sums due for the Debt, (b) the satisfaction of all of the other obligations of the Mortgagor in this Mortgage and under any loan document, (c) the discharge of this Mortgage, and (d) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure. Notwithstanding anything to the contrary contained in this Mortgage, it is the intention of the Mortgagor and the Mortgagee that the indemnity provisions of this section shall only apply to an action commenced against any owner or operator of the Premises in which any interest of the Mortgagee is threatened or any claim is made against the Mortgagee for the payment of money.

17. EVENTS OF DEFAULT/ACCELERATION: Upon the occurrence of any of the following, the Mortgagee shall be entitled to exercise its remedies under this Mortgage or as otherwise provided by law: (1) The Mortgagor or, if other than the Mortgagor, any principal obligor of the Debt ("Principal Obligor") fails to pay when due any amount payable under the notes, the guaranty, or any other agreement evidencing the Debt; (2) the Mortgagor or Principal Obligor (a) fails to observe or perform any other term of the note(s), the guaranty, or any other agreement evidencing the Debt or (b) makes any materially incorrect or misleading representation in any financial statement or other information delivered to the Mortgagee; (3) the Mortgagor or Principal Obligor defaults under the terms of this Mortgage, any loan agreement, mortgage, security agreement, or other document executed as part of the Debt transaction or any guaranty of the Debt becomes unenforceable in whole or in part, or any guarantor fails to promptly perform under such a guaranty; (4) the Mortgagor fails to pay when due any amount payable under any note or agreement evidencing debt to the Mortgagee or defaults under the terms of any agreement or instrument relating to or securing any debt for borrowed money owing to the Mortgagee; (5) a "reportable event" (as defined in the Employee Retirement Income Security Act of 1974 as amended) occurs that would permit the Pension Benefit Guaranty Corporation to terminate any employee benefit plan of the Mortgagor or Principal Obligor or any affiliate of the Mortgagor or Principal Obligor; (6) the Mortgagor or Principal Obligor becomes insolvent or unable to pay its debts as they become due; (7) the Mortgagor or Principal Obligor (a) makes an assignment for the benefit of creditors, or (b) consents to the appointment of a custodian, receiver, or trustee for itself or for a substantial part of its assets, or (c) commences any proceeding under any bankruptcy, reorganization, liquidation, insolvency or similar laws of any jurisdiction; (8) a custodian, receiver, or trustee is appointed for the Mortgagor or Principal Obligor or for a substantial part of its assets without the consent of the party against which the appointment is made and is not removed within 60 days after such appointment; (9) proceedings are commenced against the Mortgagor or Principal Obligor under any bankruptcy, reorganization, liquidation, or similar laws of any jurisdiction, and such proceedings remain undismissed for 60 days after commencement; or the Mortgagor or Principal Obligor consents to the commencement of such proceedings; (10) any judgment is entered against the Mortgagor or Principal Obligor, or any attachment, levy, or garnishment is issued against any property of the Mortgagor or Principal Obligor; (11) any proceedings are instituted for the foreclosure or collection of any mortgage, judgment or lien affecting the Premises; (12) the Mortgagor sells, transfers or hypothecates any part of the Premises except as provided in this Mortgage without the prior written consent of the Mortgagee; (13) the Mortgagor or Principal Obligor dies; (14) The Mortgagor or Principal Obligor, without the Mortgagee's written consent, (a) is dissolved, liquidated, merged or consolidates with any third party, (b) sells a material part of its assets or business outside the ordinary course of its business, or (c) agrees to do any of the foregoing; (15) there is a substantial change in the existing or prospective

financial condition of the Mortgagor or Principal Obligor which the Mortgagee in good faith determines to be materially adverse.

18. REMEDIES UPON DEFAULT: Upon the occurrence of any of the events of default set forth in this Mortgage, at the sole option of Mortgagee, the note and/or any other liabilities shall become immediately due and payable and Mortgagee shall pay all expenses of Mortgagee including attorneys' and paralegals' fees and all expenses incurred in connection with this Mortgage and all expenses incurred in the enforcement of Mortgagee's rights in the Premises and other costs incurred in connection with the disposition of the Premises. When the indebtedness secured hereby shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien of this Mortgage. In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional indebtedness in the judgment of foreclosure all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' and paralegals' fees, appraisers' fees, outlays for documentary and expert evidence, stenographer's charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, tax and lien searches, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute the foreclosure suit or to evidence to bidders at any foreclosure sale. All of the foregoing items, which may be expended after entry of the foreclosure judgment, may be estimated by Mortgagee. All expenditures and expenses mentioned in this paragraph, when incurred or paid by Mortgagee shall become additional indebtedness secured hereby and shall be immediately due and payable, with interest thereon at the highest rate permitted under any of the instruments evidencing any of the Debt. This paragraph shall also apply to any expenditures or expenses incurred or paid by Mortgagee or on behalf of Mortgagee in connection with (a) any proceeding, including without limitation, probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness secured hereby; or (b) any preparation for the commencement of any suit for the foreclosure of this Mortgage after accrual of the right to foreclose whether or not actually commenced or preparation for the commencement of any suit to collect upon or enforce the provisions of the note or any instrument which secures the note after default, whether or not actually commenced; or (c) any preparation for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced. The proceeds of any foreclosure sale shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all the items that are above mentioned; second, all other items which under the terms of this Mortgage constitute indebtedness secured by this Mortgage additional to that evidenced by the note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the note and the liabilities (first to interest and then to principal); fourth, any surplus to Mortgagor or Mortgagor's heirs, legal representatives, successors or assigns, as their rights may appear. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such suit is filed may grant the Mortgagee the right to possess the Premises pursuant to Chapter 10, Sections 15-1701 through 15-1703 of the Illinois Revised Statutes and/or appoint a receiver of the Premises. Such grant and/or appointment may be made either before or after entry of judgment of foreclosure, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for the grant and/or without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead or not. Mortgagee may be appointed as the receiver. The Mortgagee in possession and/or receiver shall have all powers conferred by law including but not limited to the power to collect the rents, issues and profits of the Premises during the pendency of the foreclosure suit and, in case of an entry of judgment of foreclosure, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of Mortgagee in possession or receiver, would be entitled to collect the rents, issues and profits. The Mortgagee in possession or receiver shall also have all other powers which may be necessary or useful for the protection, possession, control, management and operation of the Premises. The court in which the foreclosure suit is filed may from time to time authorize the Mortgagee in possession or receiver to apply the net income in its hands in payment in whole or in part of the indebtedness secured hereby, or secured by any judgment evidencing this Mortgage, or any tax, special assessment or other lien or encumbrance which may be or will become superior to the lien hereof or of the judgment, and the deficiency judgment against Mortgagor or any guarantor of the note in case of a foreclosure sale and deficiency. No action for the enforcement of the lien or of any provision of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the note.

19. REPRESENTATIONS: If the Mortgagor is a corporation, it represents that it is a corporation duly organized, existing and in good standing under the laws of its state of incorporation, that it is duly qualified and in good standing under the laws of Illinois, and that the execution and delivery of this Mortgage and the performance of the obligations it imposes are within its corporate powers, have been duly authorized by all necessary action of its board of directors, and do not contravene the terms of its articles of incorporation or by-laws. If the Mortgagor is a general or limited partnership, it represents that it is duly organized and existing and that the execution and delivery of this Mortgage and the performance of the obligations it imposes do not conflict with any provision of its partnership agreement and have been duly authorized by all necessary action of its partners. Each Mortgagor represents that the execution and delivery of this Mortgage and the performance of the obligations it imposes do not violate any law and do not conflict with any agreement by which it is bound, and that no consent or approval of any governmental authority or any third party is required for the execution or delivery of this Mortgage or the performance of the obligations it imposes and that this Mortgage is a valid and binding agreement, enforceable in accordance with its terms. Each Mortgagor further represents that it shall provide all balance sheets, profit and loss statements, and other financial statements, as requested by Mortgagee. Any such statements that are furnished to the Mortgagee are accurate and fairly reflect the financial condition of the organizations and persons to which they apply on their effective dates, including contingent liabilities of every type, which financial condition has not changed materially and adversely since those dates.

20. NOTICES: Notice from one party to another relating to this Mortgage shall be deemed effective if made in writing (including telecommunications) and delivered to the recipient's address, telex number or telecopier number set forth above by any of the following means: (a) hand delivery, (b) registered or certified mail, postage prepaid, with return receipt requested, (c) first class or express mail, postage prepaid, (d) Federal Express, Parcelor Courier or like overnight courier service or (e)

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agreement of any written notice of default... Mortgagee shall have the right to pay or perform the obligation...

11. SPECIALTY AGREEMENT. This Mortgage also constitutes a security agreement within the meaning of the Uniform Commercial Code (U.C.C.)... shall have all of the rights and remedies available to a secured party under the U.C.C.

12. REINVESTMENT OF ADVANCES. If Mortgagee fails to perform any of its obligations under this Mortgage, it shall be deemed to have assigned to a trust... shall have all of the rights and remedies available to a secured party under the U.C.C.

13. PAYMENT OF OTHER OBLIGATIONS. The Mortgagee shall also pay all other obligations which may become due or charges against the Premises for any present or future expansion or improvement... shall also pay the deferred purchase price for any property to be acquired...

14. ALTERNATION, REMOVAL, NO BUILDING, STRUCTURE, IMPROVEMENT, FIXTURE OR PERSONAL PROPERTY. No building, structure, improvement, fixture, or personal property shall be placed on the Premises without the prior written consent of the Mortgagee.

15. MAINTENANCE. The Mortgagee shall keep the Premises in good repair, shall not permit any waste, and shall not allow any other act or thing which shall result in damage to or decrease in value of the Premises... shall be liable for any damage to or decrease in value of the Premises...

16. HAZARDOUS MATERIALS. The Mortgagee represents and warrants to the Mortgagor that it has not used hazardous materials (as defined below) on, from or affecting the Premises in any manner which would violate any environmental, health, safety, or other laws... shall be liable for any damage to or decrease in value of the Premises...

17. DEFENSE TRANSFER. Notwithstanding any other provisions of this Mortgage, no sale, lease, mortgage, first deed, grant by Mortgagee of this or any other real estate shall constitute a default under this Mortgage... shall be liable for any damage to or decrease in value of the Premises...

18. RESERVES FOR TAXES AND ISSUES. Mortgagee shall, in addition to the monthly payments, pay to Mortgagee at the time of and in addition to the monthly payments... shall be liable for any damage to or decrease in value of the Premises...

19. REPAIRS AND MAINTENANCE. Mortgagee shall, in addition to the monthly payments, pay to Mortgagee at the time of and in addition to the monthly payments... shall be liable for any damage to or decrease in value of the Premises...

20. ASSIGNMENT OF INTEREST AS EVIDENCE OF PERFORMANCE. If the Mortgagee's interest in the Premises is that of a tenant or a partner, the Mortgagee shall assign to the Mortgagor... shall be liable for any damage to or decrease in value of the Premises...

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