

COOK COUNTY, ILLINOIS  
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**MORTGAGE AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage"), is made this 14th day of October, 1994, by Auberge Partners, L.P., an Illinois limited partnership having its principal office at 731 Franklin, River Forest, Illinois 60305 ("Mortgagor"), and Michelle K. Bolas, having her principal residence at 444 Birchwood Rd., Hinsdale, Illinois 60521 ("Mortgagee").

**WITNESSETH:**

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of TWO HUNDRED SIXTY THOUSAND AND 00/100 DOLLARS (\$260,000.00) lawful money of the United States of America, payable with interest thereon in accordance with the terms of the Note of even date herewith (the "Note"), executed by the Mortgagor, payable to the order of Mortgagee at her residence or at such other place as Mortgagee may designate in writing, the balance of said principal sum with interest thereon maturing and being due and payable on or before December 31, 2000.

WHEREAS, as a material inducement to the Mortgagee to advance funds to the Mortgagor, the Mortgagor has agreed to execute this Mortgage.

WHEREAS, this Mortgage is executed for the purpose of securing (1) payment of said indebtedness as provided in the Note and all extensions or modifications thereof, (2) payment of all other obligations of Mortgagor, or any Guarantor to Mortgagee, and (3) the performance of all of the covenants, conditions, stipulations and agreements contained in this Mortgage and the Note.

This Instrument Prepared by, and After Recording Return to:

David A. Fewkes  
Fewkes & Wentz, P.C.  
2100 Clearwater Drive  
Suite 107  
Oak Brook, Illinois 60521

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NOW, THEREFORE, Mortgagor does hereby MORTGAGE, CONVEY and WARRANT to Mortgagee, that certain real property located in the Village of Oak Park, County of Cook, State of Illinois, described in Exhibit A attached hereto and made a part hereof (the "Property"), together with all improvement, tenements, easements, fixtures thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily on a parity with said real estate and not secondarily), and all apparatus, equipment or articles now or hereafter used to supply to the Premises heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, wall beds, awnings, stoves and water heaters. All of the foregoing are declared to be a part of said real property whether physically attached thereto or not, and it is agreed that all similar apparatus, equipment or articles hereafter placed on the Property by the Mortgagor or its successors or assigns shall be considered as constituting part of the real property.

TOGETHER WITH all right, title and interest of Mortgagor in and to all rights, rights-of-way, easements, privileges, title and interest of Mortgagor, if any, now owned or hereafter acquired, in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Property to the center line thereof (the Property and all other real estate, buildings, improvements, rights, title and interests hereby mortgaged, conveyed, and warranted to Mortgagee being hereinafter collectively called the "Premises").

TO HAVE AND TO HOLD the Premises, with all the privileges and appurtenances to the same belonging to Mortgagee, and its successors and assigns, forever for the uses and purposes set forth herein, free from all rights and benefits under any homestead exemption, rights of reinstatement or redemption from sale, rights to retain possession and appraisal, valuation, stay, extension or moratorium laws of any state, all of which rights and benefits Mortgagor hereby expressly releases and waives. Mortgagor hereby binds itself, its successors and assigns to forever defend the Premises and every part thereof unto the Mortgagee, its successors and assigns, against the claims and demands of every person whomsoever lawfully claiming or attempting to claim the same or any part thereof, by, through or under Mortgagor.

MORTGAGOR HEREBY REPRESENTS TO AND COVENANTS AND AGREES WITH MORTGAGEE AS FOLLOWS:

1. Mortgagor will cause to be paid all sums secured hereby when due.

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2. Subject to the provisions of Paragraph 7, Mortgagor will pay, when due, utility charges and governmental charges of every type or nature levied or assessed against all or any part of the Premises or upon Mortgagor's or Mortgagee's interest therein, and any lawful claim, lien or encumbrance against all or any part of the Premises and, if requested by Mortgagee in writing, shall produce all receipts or other satisfactory evidence of such payments. However all real estate taxes and assessments shall be paid on or before the due date and receipts of payment provided to mortgagee promptly thereafter.

In accordance with Paragraph 10 herein and the applicable cure periods therein, if any of such items shall not be paid, Mortgagee shall have the right to pay the same and add the amount so paid to the principal sums secured hereby with interest thereon at the Default Rate, as that term is defined in the Note, until paid.

Except for taxes based upon Mortgagee's income, Mortgagor will pay all taxes which may be assessed upon this Mortgage or the Note, or indebtedness secured hereby, without regard to any law, heretofore or hereafter enacted, imposing payment of all or any part thereof upon Mortgagee. In event of enactment of any law imposing payment of all or any portion of any such taxes upon Mortgagee, or the rendering by any court of competent jurisdiction of a decision that the undertaking by Mortgagor, as herein provided, to pay such tax or taxes is legally inoperative, then, all sums hereby secured, without any deduction, shall at the option of Mortgagee become immediately due and payable, notwithstanding anything contained herein or any law heretofore or hereafter enacted.

3. Mortgagor represents that it is lawfully seized and possessed thereof with full right and power to convey, mortgage and warrant the Premises, and to execute and deliver this Mortgage. Mortgagor agrees to forever defend the Premises against the claims of all persons whomsoever by, through or under Mortgagor but not otherwise, and will appear in and defend any suit, action or proceeding that might in any way and in the reasonable judgment of Mortgagee affect the value of the Premises, the priority of this Mortgage or the rights and powers of Mortgagee with respect to the Premises.

4. Mortgagor will keep the Premises insured against loss or damage by fire, windstorm and such other hazards as may be required by Mortgagee, in form and amounts satisfactory to (but not less than full insurable value in amounts sufficient to avoid coinsurance liability) and in insurance companies approved by Mortgagee, the proceeds of which insurance shall be payable to Mortgagee. Mortgagor shall also at its expense provide public liability insurance in amount and with companies satisfactory to Mortgagee.

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All policies shall be endorsed with a noncontributory Standard Mortgagee Clause in favor of Mortgagee which shall provide that the policy shall not be canceled without a minimum of 20 days written notice to Mortgagee. One original or a Certificate of Insurance shall be delivered to Mortgagee, together with receipts showing payment for the premiums therefore. Upon foreclosure of this Mortgage or other acquisition of the Premises or any part thereof by Mortgagee, said policies shall become the absolute property of Mortgagee, limited to and to the extent of all monies owed pursuant to the Note.

In the event any policy required by Mortgagee is not renewed on or before its expiration and evidence thereof provided to Mortgagee, Mortgagee may procure said insurance, pay the premium therefore, and such sum shall become immediately due and payable with interest at the Default Rate until paid and shall be secured hereby. In accordance with Paragraph 10 herein and the applicable cure periods therein, failure on the part of Mortgagor to furnish such renewal copies as are herein required or failure to pay any sums advanced hereunder shall, at the option of Mortgagee, constitute an Event of Default under the terms hereof.

Provided that all junior mortgages or liens include a provision that any loss or damage to the Premises by fire or other casualty not exceeding \$25,000.00 may be settled and adjusted by Mortgagor, to said extent, insurance proceeds may be payable to Mortgagor and Mortgagor shall settle and adjust such loss and damage; provided, however, that Mortgagor shall still be responsible for notifying Mortgagee of the status and final determination and payment for any such loss. If the loss or damage to the Premises by fire or other casualty exceeds \$25,000.00, or junior mortgages or liens do not contain the provision stated above, and

- (a) no default exists hereunder,
- (b) the restoration can, in Mortgagee's reasonable judgment, be completed prior to the maturity date of the Note, and
- (c) the insurance proceeds together with any funds deposited by Mortgagor are, in Mortgagee's reasonable judgment, sufficient to complete the repairs,

such proceeds, after deducting therefrom any expenses incurred in the collection thereof, shall be made available to Mortgagor for the cost of rebuilding or restoration of the Premises and the improvements thereon, in the manner and under such reasonable conditions as Mortgagee may require, including, without limitation,

- (i) approval of plans and specifications of such work before such work shall be commenced,

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- (ii) suitable completion or performance bonds and Builder's All Risk insurance, and
- (iii) a requirement that the restoration or rebuilding be of at least equal value and substantially the same character as prior to such damage or destruction.

In all other events, such insurance proceeds may, at the option of Mortgagee, either be applied in reduction of the indebtedness secured hereby, whether due or not, or be held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of the Premises. If the proceeds are made available by Mortgagee to pay Mortgagor's cost of said rebuilding or restoration, any surplus which may remain out of said proceeds after payment of such cost of rebuilding or restoration shall be applied against the indebtedness secured hereby to the extent then in default and the balance paid to Mortgagor. Subject to the foregoing, Mortgagor hereby assigns to the Mortgagee, for the use and purposes aforesaid, all insurance required by this Mortgage and the proceeds thereof and, after an Event of Default hereby irrevocably appoints Mortgagee as Attorney-in-Fact of Mortgagor to assign each policy in the event of foreclosure of this Mortgage.

Mortgagor shall promptly notify Mortgagee of any damage to or destruction of any part of the Premises, whether or not the same is covered by insurance, and shall furnish to Mortgagee, upon request, a certificate signed by an authorized individual containing a detailed list of the insurance policies then outstanding and in force on the Premises.

5. a. Prior to the Mortgagor obtaining legally binding commitments for the note(s) discussed in Paragraph 9(e), below, and, also, following the completion of Mortgagor's renovation and remodeling plans which are the intended use of the funds from such note(s), Mortgagor will not remove, demolish, or materially alter the design or structural character of any building now or hereafter erected upon the Property, or remove or permit the removal of any fixtures, equipment or appliances therefrom unless Mortgagee shall first consent thereto in writing (except that Mortgagor may remove or demolish any fixtures, equipment or appliances in the ordinary course of business or that are no longer useful or used in the conduct of its business). Mortgagor shall advise Mortgagee when it has obtained such commitments for the note(s), and, prior to commencing any action otherwise prohibited by this paragraph 5(a), furnish Mortgagee with a copy of the associated documents.

b. Mortgagor will; (i) maintain the Premises in good condition and repair; (ii) not commit or suffer waste thereon; and (iii) comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Premises, and not suffer or permit any violation thereof.

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Should Mortgagor fail to make any and all necessary repairs to keep the Premises in good condition and repair within thirty days after receipt by Mortgagor of written notice from Mortgagee directing that such repairs be made, or such longer period of time as may be required so long as Mortgagor is diligently pursuing any such repairs, then Mortgagee, her agents, employees or contractors, if Mortgagee so elects, may enter the Premises and make the necessary repairs. All expenses incurred by Mortgagee in connection therewith shall become immediately due and payable with interest at the Default Rate until paid and shall be secured hereby. Failure on the part of Mortgagor to pay all expenses incurred by Mortgagee in connection with the making of such repairs, and the continuation of such failure to pay for 15 days after receipt of notice of Mortgagee's payment from Mortgagee to Mortgagor, shall at the option of Mortgagee, constitute an Event of Default.

5. If Mortgagor (i) fails to pay, release, discharge or "bond around" any lawful claim, lien or encumbrance on the Premises when due, whether subordinate or prior to this Mortgage, or to pay any tax, assessment or insurance premium before the same becomes delinquent, or (ii) fails to keep the Premises in repair, or commits or permits waste, or uses the Premises for an illegal purpose; or if there be commenced any action or proceedings affecting the Premises or the title thereto, or if Mortgagor defaults in the performance of any of its covenants or agreements hereunder, then Mortgagee, at her option but subject to Paragraph 10 herein and the applicable cure periods, may pay said claim, lien, encumbrance, tax, assessment or premium, with right of subrogation thereunder, may make such repairs and take such steps as she deems advisable to prevent or cure such waste, may appear in any such action or proceeding as Mortgagee deems advisable, and may perform such covenants and agreements, and for any part of said purposes Mortgagee may advance such sums of money as she deems necessary. Such sums advanced, with interest thereon at the Default Rate, shall immediately be due from Mortgagor to Mortgagee and be secured by this Mortgage.

Notwithstanding the foregoing, so long as no Event of Default shall have occurred hereunder and be continuing, Mortgagor shall have the right to contest, at Mortgagor's sole cost and expense, the amount or validity, in whole or in part, of any of the aforesaid taxes, claims, liens, encumbrances or assessments (hereinafter collectively referred to as "taxes") by appropriate proceedings diligently conducted by Mortgagor in good faith, but only after payment of such taxes, unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof, in either of which latter events, and Mortgagor may postpone or defer payment of such taxes if (1) the right or privilege so to do is granted or sanctioned by applicable law or otherwise, (2) Mortgagor deposits with Mortgagee sufficient security to pay such taxes

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and all costs, fees, interest and other liabilities in connection therewith (the sufficiency of which security shall be in the reasonable discretion of Mortgagee), (3) the Premises or any part thereof shall not, by reasons of such postponement or deferment, be subject to forfeiture or loss, and (4) Mortgagor shall promptly commence proceedings for such contest and prosecute the same with all due diligence. Upon the termination of such proceedings, Mortgagor shall pay such amount of any such taxes or part thereof as is finally determined in such proceedings, the payment of which shall have been deferred during the prosecution of such proceedings, together with all costs, fees, interest, penalties and other liabilities in connection therewith. Mortgagor covenants to defend, indemnify and hold Mortgagee harmless from and against any liability and for the payment of all costs and expenses in connection with any such proceedings, except for matters caused by the bad faith, negligence or willful misconduct of Mortgagee.

7. Mortgagor will comply with all applicable laws, ordinances, regulations, covenants, conditions and restrictions affecting the Premises or its operation, and will pay all fees or charges of any kind in connection therewith. Mortgagor shall, within thirty days following notice from the proper authorities, comply with any legal requirements of the state, county or municipality in which the Premises are located which affect the Premises. Notwithstanding the foregoing, Mortgagor may, in good faith, contest any such requirement.

8. All awards heretofore or hereafter made by any public or quasi-public authority to the present and all subsequent owners of the Premises by virtue of an exercise of the right of eminent domain by such authority, including any award for a taking of title, possession or right of access to a public way, or for any change of grade or streets affecting said Premises, are hereby assigned to Mortgagee and Mortgagee, at her option, is hereby authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor. Mortgagee may, at the Mortgagee's election, use such proceeds when received in any one or more of the following ways: (1) apply the same or any part thereof upon the indebtedness secured hereby, whether such indebtedness then be matured or unmatured, (2) use the same or any part to fulfill any of the covenants contained herein as Mortgagee may determine, (3) use the same or any part thereof to replace or restore the Premises to a condition satisfactory to Mortgagee, or (4) release the same to Mortgagor.

Mortgagor hereby covenants and agrees, upon request by Mortgagee, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of so assigning all such awards to the Mortgagee. Mortgagee shall have the right to intervene and participate in any proceeding for and in connection with any taking referred to in this Paragraph,



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provided, however, that if such intervention shall not be permissible or permitted by the court, Mortgagor shall, at its expense, consult with Mortgagee, her attorney and experts and make all reasonable efforts to cooperate with them in any defense of such proceedings. The Mortgagor shall not enter into any agreement for the taking of the Premises or any part thereof with any person or persons authorized to acquire the same by condemnation or eminent domain, unless Mortgagee shall have consented thereto in writing.

Notwithstanding any taking by condemnation or eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, Mortgagor shall continue to pay the regular monthly installments due under the Note (including interest on the entire principal sum secured), and any reduction in the principal sum resulting from the application by the Mortgagee of such award or payment shall be deemed to take effect only on the date of such receipt by Mortgagee.

9. The occurrence of any of the following events continuing after any applicable cure period, shall constitute an Event of Default under this Mortgage:

(a) The failure of the Mortgagor to make any payment required to be made under the Note or this Mortgage in accordance with their terms and the continuation of such failure for ten days after written notice thereof to Mortgagor by Mortgagee;

(b) The failure of Mortgagor to observe or to perform any other obligation of Mortgagor contained in the Note or this Mortgage, or the occurrence of any other default under any of the foregoing instruments, or failure of Mortgagor to observe the terms and obligations of any local, state or federal permit, franchise or certificate issued in connection with the Premises and the continuation of such failure for 30 days after written notice thereof to Mortgagor by Mortgagee, or such longer period of time as may reasonably be required for so long as Mortgagor is diligently attempting to cure such failure, except as provided in Subparagraph 9(a);

(c) If by the order of a court of competent jurisdiction, (i) a receiver or liquidator or trustee of Mortgagor or any two Guarantors shall be appointed and shall have not been discharged within a period of sixty days, or (ii) if, by decree of such a court, the Mortgagor or any two Guarantors shall be adjudicated as bankrupt or any substantial part of its or their property shall be sequestered and such decree shall continue undischarged and unstayed for a period of sixty (60) days after the entry thereof; or (iii) a petition to reorganize the Mortgagor or any two Guarantors pursuant to the Federal Bankruptcy Code, as it now exists or as it may hereafter

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be amended, or pursuant to any other analogous statute applicable to Mortgagor or any two Guarantors as now or hereinafter in effect, shall be filed against the Mortgagor or any two Guarantors and shall not be dismissed within sixty days;

(d) If any two Guarantors shall file a petition in voluntary bankruptcy under any provision of any bankruptcy law or petition to take advantage of any insolvency act, or shall make an assignment for the benefit of its or their creditors, or shall admit in writing its or their inability to pay its or their debts generally as they become due, or shall consent to the appointment of a receiver or receivers of all or any part of the Premises or shall consent to the filing of any bankruptcy, arrangement, or reorganization petition by or against it or them under any provision of the bankruptcy law, or (without limitation of the generality of the foregoing) any two Guarantors shall file a petition or answer seeking an arrangement or reorganization pursuant to the Federal Bankruptcy Code, as it now exists or as it may hereafter be amended, or pursuant to any other analogous statute applicable to any of the Guarantors as now or hereafter in effect;

(e) The Premises are transferred or further encumbered by operation of law or otherwise, except for those certain note(s) and mortgage(s) in favor of Oak Park Development Corporation and the Village of Oak Park, in the aggregate principal sum not to exceed \$1,100,000.00, which mortgage(s) shall be junior to the lien of this Mortgage.

## 10. Upon and after the happening of an Event of Default:

(a) Mortgagee shall have the right, at her option to declare the amount of principal of the Note then unpaid, with interest thereon as provided in the Note, to be due and payable immediately, without notice, and upon such declaration the principal of, and the interest on the Note then outstanding shall forthwith become and be due and payable as fully and to the same effect as if the date of such declaration were the date originally specified for the maturity of the unpaid balance of the Note;

(b) The election by Mortgagee to accelerate the maturity of said principal sum pursuant to Subparagraph 10(a) above shall be evidenced by delivery to Mortgagor of written declaration by Mortgagee of default and demand for sale, and Mortgagee shall, to the extent required by law, thereafter file or cause to be filed for record a notice of such default and of election to cause the Premises to be sold;

(c) Mortgagee shall have the right to perform at the expense of Mortgagor (Mortgagor's liability for such expense shall not exceed \$1,000.00) such environmental assessment, audit or tests of the property as Mortgagee shall deem advisable in

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her sole discretion;

(d) To the extent allowed by applicable law, after the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default, intent to accelerate, intent to sell, and of sale having been given as required by law, Mortgagee shall sell the Premises at the time and place of sale fixed by her in said notice of sale, either as a whole or in separate parcels and in such order as it may be determined, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale; and Mortgagee shall deliver to such purchaser a deed conveying the property so sold, but without any covenant or warranty express or implied from Mortgagee and the recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof;

(e) To the extent allowed by applicable law, Mortgagee may postpone the sale authorized under Subparagraph 10(d) of all or any portion of the Premises by public announcement at such time and place of sale, and from time to time thereafter may postpone such public sale by public announcement at the time fixed by the preceding postponement;

(f) To the extent allowed by applicable law, after deducting all costs, fees and expenses of Mortgagee, including cost of evidence of title and any environmental assessment, audit or tests performed in connection with sale (subject to the limitation contained in Paragraph 10(c)), Mortgagee shall apply the proceeds of sale to payment of (i) all sums expended under the terms hereof, not then repaid, with interest at the Default Rate; (ii) all other sums then secured hereby, and (iii) the remainder, if any, to Mortgagor, and to any other person or persons legally entitled thereto;

(g) The provisions contained in the foregoing Subparagraphs shall not be construed to preclude Mortgagee from enforcing any appropriate remedy against Mortgagor or from proceeding by suit to foreclose or by suits at law or in equity, as Mortgagee may elect, to enforce payment of all sums secured hereby;

(h) Mortgagee is hereby to the extent permitted by applicable law, irrevocably appointed the true and lawful attorney of the Mortgagor, in its name and stead, after occurrence of an Event of Default, and the continuance thereof to make all necessary conveyances, assignments, transfers and deliveries of the Premises and rights so sold and for that purpose, Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, the Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Mortgagor, if so requested by Mortgagee, shall ratify and

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confirm all such sale or sales by executing and delivering to Mortgagee or to such other purchaser or purchasers all such instruments as may be advisable, in the judgment of Mortgagee, for that purpose, and as may be designated in such request.

Any such sale or sales made under or by virtue of this Paragraph 10 in strict accordance with all applicable laws, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor;

(i) Upon any sale made under or by virtue of this Paragraph 10, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, any person, including Mortgagor and Mortgagee, may bid for and acquire the Premises or any part thereof; and in lieu of paying cash therefore, Mortgagee may make settlement for the purchase price by crediting upon the indebtedness of Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage;

(j) Mortgagee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage; and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure of the lien hereof. In the event of a sale of the Premises and of the application of the proceeds of sale to the payment of the debt hereby secured, Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon the Note, and to enforce payment of all other charges, payments and costs due under this Mortgage. In case of proceedings against Mortgagor in insolvency or bankruptcy or any proceedings for its arrangement or reorganization or involving the liquidation of its assets, then Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Note to the full amount thereof, and all other payments, charges and costs due under this Mortgage without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Premises; provided, however, that in no case shall Mortgagee receive a greater amount than such principal and interest and such other payments, charges and costs from the aggregate amount

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of the proceeds of the sale of the Premises and the distribution from the estate of Mortgagor;

(k) Mortgagor shall not at any time insist upon, or plead or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Premises or any part thereof, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist upon any benefit or advantage of 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 which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof. Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives to the extent that it lawfully may, all right to have the Premises marshaled upon any foreclosure hereof;

(l) Mortgagee shall be entitled, as a matter of right, to the appointment of a receiver of the Premises, and the court may appoint a receiver, either before or after judgment, upon notice as required by law, without regard to the solvency or insolvency of Mortgagor at the time of the application for such receiver and without regard to the then value of the Premises. Such receiver shall have full power to collect the rents, revenues, issues, income and profits from the Premises and all other powers necessary or incidental for the protection, possession, control, management and operation of the Premises. Said receiver shall also have full power and authority, at the expense of the Premises and of Mortgagor, to maintain, restore and keep insured the Premises and to pay all taxes, assessments and other charges arising in connection therewith. Mortgagor hereby consents to the appointment of a receiver and will upon Mortgagee's request formally evidence such consent in writing or in any proceeding for the appointment of such receiver.

11. Mortgagor further covenants and agrees as follows:

(a) Mortgagor hereby assigns and transfers to Mortgagee all rents, issues, profits, revenues and income from the Premises, including all rents now due or which may hereafter become due under all leases thereof, whether written or verbal, now existing or hereafter made, as additional security for the indebtedness secured hereby, and Mortgagee is given a prior and continuing lien thereon. To the extent permitted under

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applicable law, after an Event of Default, and the continuance thereof, Mortgagor hereby appoints Mortgagee as its Attorney-in-Fact with power to collect said rents, revenues and income with or without suit, and apply same, less expenses of collection, to said indebtedness, in such manner as Mortgagee may elect; provided, however, that Mortgagor may exercise all acts of ownership and collect all rents, revenues and income as if this Mortgage had not been executed until an Event of Default occurs.

Mortgagee does not assume and shall not be liable in respect of any obligation of the lessor under any of said leases, and no liability shall attach to Mortgagee for failure or inability to collect any rents, revenues and incomes hereby assigned. Mortgagor shall not collect any rents under any of said leases in advance of the time when they become due, and except as provided above and in the ordinary course of business will not materially modify or cancel any of said leases without the prior written consent of Mortgagee.

Mortgagor will (i) fulfill or perform each and every term, covenant and provision of any such lease; (ii) reasonably enforce, short of termination thereof, the performance or observance of each and every term, covenant and provision of any such lease by the lessee thereunder, and, in any Event of Default, to the extent permitted by applicable law, Mortgagor will pay monthly in advance to Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of such units of the Premises as may be in possession of Mortgagor and upon default in any such payment, will vacate and surrender possession of such part of the Premises to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise.

(b) Nothing in this Mortgage shall be construed to obligate Mortgagee to discharge or perform duties of a landlord to a tenant or to impose any liability as a result of the exercise of the option to collect rents under this Mortgage by virtue of an Event of Default, and it is agreed that the collection or participation therein shall be as agent only for the Mortgagor.

(c) Mortgagor will do, execute and deliver all further acts, mortgages, assignments, UCC filing statements and assurances as Mortgagee may reasonably require from time to time, for confirming to Mortgagee the property and rights hereby and hereafter intended to be conveyed or assigned, and Mortgagor will pay all filing, registration or recording fees, and all federal, state, county and municipal stamp taxes and other

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taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and the Mortgage.

(d) Mortgagee and Mortgagor will furnish upon either party's request within ten (10) days after written request, a written statement setting forth the amount of the debt secured by this Mortgage, and stating either that no setoffs or defenses exist against the Mortgagee or the debt, or, if such setoffs or defenses are alleged to exist, the nature thereof.

12. Mortgagor will at all times, indemnify, defend, hold harmless and on demand reimburse Mortgagee for any and all loss, damage, expense or cost, of whatsoever kind and nature, including, without limitation cost of evidence of title, appraisal fees, documentary and expert evidence, stenographer's and publication charges, and reasonable attorneys', accountants' and other professionals' fees, arising out of or incurred in connection with (i) any suit, action or proceeding relative to the Premises or the Mortgagor, or having impact on the interest granted hereunder including probate, bankruptcy, appellate proceedings, and foreclosure of this Mortgage, but excluding any suit, action or proceeding based on a claim incurred prior to Mortgagor's acquisition of the Premises, (ii) preparation for the commencement or defense of any proceeding, (iii) adjustment and settlement of insurance proceeds and condemnation awards, (iv) advances made by Mortgagee pursuant to Paragraph 6 hereof or elsewhere hereunder, (v) other costs incurred by Mortgagee in connection with preserving the Premises, (vi) retaking, holding, preparing and selling the property pursuant to the Uniform Commercial Code, and (vii) arising out of the transaction contemplated by the Note and the Security Documents and any breach thereof. The sum of such expenditures will bear interest at the Default Rate, will be due and payable on demand and will be secured by this Mortgage, except for any matters (including without limitation items (i) through (vii) above) caused by the bad faith, gross negligence, or willful misconduct of Mortgagee.

13. The powers and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law, and the powers herein may be executed after the death, dissolution or termination of the Mortgagor and after the Premises have been sold.

14. Mortgagor and Mortgagee acknowledge that the continued ownership of the Premises by Mortgagor is a material inducement to the making of the loan served by this Mortgage; therefore Mortgagor further agrees as an additional security for the debt herein described that it shall not sell, assign, transfer or further encumber the Premises (except as described in Paragraph 10(h) or 9(e) above or otherwise permitted hereunder) or any part thereof, or the chattels in any manner whatsoever without the prior written consent of the Mortgagee. Except as permitted

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hereunder, should the Mortgagor transfer said Property or further encumber said Property without the prior written consent of Mortgagee, it shall constitute an Event of Default under the terms of this Mortgage and the Note. Nothing contained herein shall be construed to prohibit Mortgagor from selling excess personal property contained in the Premises or from making replacements of mechanical systems currently in the Premises, including without limitation, the HVAC, plumbing and electrical systems.

15. Mortgagor shall furnish to Mortgagee a copy of any environmental impact statement prepared by Mortgagor and submitted, to a governmental agency, whether or not required by law. Mortgagor shall also furnish to Mortgagee copies of all responses received with respect to any such statement.

16. Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor. Neither Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner, or owners of the Premises and the Mortgagee extending the time of payment or modifying the terms of the Note or Mortgage without first having obtained the consent of Mortgagor or such other person, and in the latter event, Mortgagor and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Mortgagee.

The Mortgagee may release, regardless of consideration, any part of the security held for the indebtedness secured by this Mortgage, without, as to the remainder of the security, in anyway impairing or affecting the lien; and Mortgagee may resort for the payment of the indebtedness to security therefore held by the Mortgagee in such order and manner as Mortgagee may elect.

17. This Mortgage shall be construed according to the laws of the State of Illinois. If any of the provisions of this Mortgage shall contravene, or be invalid under the laws of the State of Illinois, or of any county or jurisdiction therein, such contravention or invalidity shall not invalidate this entire Mortgage, but it shall be construed as if not containing



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the particular provision or provisions so held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

18. All notices and demands under and with respect to this Mortgage or the Note secured hereby shall be in writing, and shall be served by hand, sent prepaid by overnight delivery service, or sent by the United States Mail, registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of (a) the day of actual receipt of the written notice or demand by the party to whom the notice was given, or (b) the date on which the party to whom such notice was sent accepts or refuses delivery of such notice. All notices or demands shall be addressed to the respective parties at the following address:

Mortgagor: Auberge Partners, L.P.  
731 Franklin  
PO Box 5706  
River Forest, Illinois 60305

Copy to: JuliAnn H. Robinson  
731 Franklin  
River Forest, Il. 60305

Mortgagee: Michelle K. Bokos  
444 Birchwood Road  
Hinsdale, Illinois 60521

Copy To: David A. Fewkes  
Fewkes & Wentz, P.C.  
2100 Clearwater Drive  
Suite 107  
Oak Brook, Illinois 60521

19. Notwithstanding any provision herein or in the Note, Mortgagee is not and shall not be deemed to be a partner or joint venturer with Mortgagor with respect to the Premises. It is not intended that the making of the loan or any other activities of Mortgagee with respect to the Premises shall be for the benefit of or be relied upon by any third party, and Mortgagee shall not in any way be liable or responsible for any reason for the payment of any claims to any such third party.

20. Time is of the essence in the performance by Mortgagor of all of its obligations, covenants and agreements contained herein.

21. The warranties, covenants, conditions, representations and agreements contained in this Mortgage shall run with the land and shall bind Mortgagor, its successors and assigns, and shall be construed as including any subsequent owner or owners of the Premises and shall inure to the benefit of the Mortgagee,

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its successors and assigns. Notwithstanding the foregoing, the warranties, covenants, conditions, representations and agreements shall continue until the indebtedness secured by this Mortgage has been paid in full, or upon a foreclosure of or exercise of power of sale under the Mortgage, a delivery of a deed in lieu of foreclosure, or termination of this Mortgage for any reason, whichever first occurs.

22. Whenever the singular or plural number, or masculine, feminine or neuter gender is used herein, it shall equally include the other, and every mention herein of the Mortgagor or Mortgagee shall include heirs, executors, legal representatives, administrators, successors and assigns of the party so designated.

23. Mortgagor acknowledges and agrees that the loan secured by this Mortgage is a business loan under the provisions of 815 ILCS 205/4(1).

24. As further security for the indebtedness herein described, Mortgagor hereby grants to Mortgagee a security interest in, and this Mortgage will constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (the "Code") with respect to, all of the following which are located at the Premises: all present furnishings, furniture, appliances, and equipment (the "chattels") and the proceeds thereof, which security interest shall have priority over all other security interests. Except as permitted herein Mortgagor further agrees that it shall not sell, assign, lease, transfer or otherwise dispose of said chattels without Mortgagee's prior written consent. Mortgagor shall have the right to remove and dispose of, free from the lien of this Mortgage, such chattels as from time to time may become excess, worn out or obsolete, provided that either:

(i) Simultaneously, with or prior to such removal, any worn out or obsolete chattels shall be replaced with other chattels of a value at least equal to that of the replaced chattels and free from security agreement or other encumbrances and from any reservation of title, and by such removal and replacement Mortgagor shall be deemed to have subjected such chattels to the lien of this Mortgage; or

(ii) Any net cash proceeds received from disposition of any of said worn out or obsolete chattels shall be used to replace said chattels or shall be paid over promptly to Mortgagee to be applied to the last installment due on the indebtedness secured, without any charge for prepayment.

In the event of an Event of Default, Mortgagee will have the option of proceeding as to both real and personal property in accordance with its rights and remedies with respect to real property, in which case the default provisions of the code shall not apply. Mortgagor agrees that, in the event Mortgagee

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elects to proceed with respect to the portion of the Premises which may be deemed not to form a part of the real estate described herein or may not constitute a fixture within the meaning of the Code (collectively the "Code Property") separately from the rest of the Premises, fifteen days notice of the sale of the Code Property will be reasonable notice.

IN WITNESS WHEREOF, this Mortgage is duly executed the day and year first above written.

ATTEST:

AUBERGE PARTNERS, L.P.

By: *John J. Kelly*

Its: *Sir*

By: AUBERGE GROUP INCORPORATED

Its: GENERAL PARTNER

*By: [Signature]*  
*President*

Property of  
Cook County Clerk's Office

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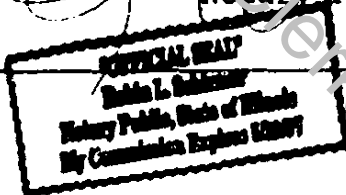
STATE OF ILLINOIS )  
COUNTY OF Cook ) SS

I, Robin L. Schirmer, a Notary Public in and for said County in the state aforesaid, DO HEREBY CERTIFY THAT William H. Robinson, President of AUBERGE GROUP INCORPORATED, an Illinois corporation and the General Partner of AUBERGE PARTNERS, L.P., an Illinois limited partnership, and Patricia S. Ireland, secretary of such corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation and limited partnership, for the uses and purposes therein set forth; and said Secretary did also then and there acknowledge that she, as custodian of the Corporate Seal of said corporation, did affix said Corporate Seal to said instrument as her own free and voluntary act, and as the free and voluntary act of said corporation and limited partnership for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14th day of October, 1994.

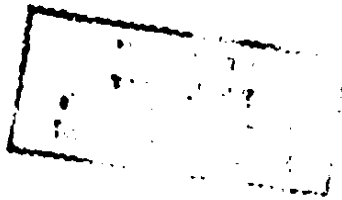
[Signature]  
Notary Public

My Commission Expires:



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## EXHIBIT A

LOT 10 IN BLOCK 1 IN SCOVILLE AND NILES ADDITION TO OAK PARK SAID ADDITION BEING A SUBDIVISION OF THE WEST 40 ACRES OF THE SOUTHWEST 1/4 OF SECTION 7, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Pin # 16-07-301-013

property address

123

Manor St  
Oak Park

Mail to:

Aubrey Partners, L.P.

731 Franklin

River Forest, IL

60305