

# UNOFFICIAL COPY

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## GUARANTY MORTGAGE

THIS MORTGAGE ("Mortgage") made as of the 22nd day of March, 1994 by Robin and David Clark, (hereinafter called "Mortgagor") to Illinois Department of Commerce and Community Affairs (hereinafter call the "Mortgagee"):

### WITNESSETH:

WHEREAS: Mortgagor has executed a guaranty ("Guaranty") dated the date of this Mortgage guarantying payment of \$50,000, or the total indebtedness (as defined in the Guaranty) of Jenne, Inc. dba Auntie Anne's ("Debtor") owing to the Mortgagee, including the Debtor's indebtedness under a certain promissory ("Note") dated the date of this Mortgage payable to the order of the Mortgagee in the original principal amount of \$50,000, plus interest at the per annum rate of three percent (3%), and after DEFAULT or MATURITY (as defined in the Note) at the per annum rate of twelve percent (12%), and all expenses, including attorney's fees, court costs relating in any manner to the protection of the Mortgagee's rights and interest hereunder, under the Note and Guaranty, and the enforcement and collection or attempted enforcement and collection of any of the Debtor's indebtedness and Mortgagor's liabilities. "Liabilities" means any and all liabilities, obligations, and indebtedness of Mortgagor hereunder and the INDEBTEDNESS (as defined in the Guaranty).

NOW, THEREFORE, TO SECURE PAYMENT OF THE Liabilities and in consideration of One Dollar (\$1.00) in hand paid, receipt whereof is hereby acknowledged, Mortgagor does hereby grant, remise, release, alien, convey, mortgage and warrant to Mortgagee, its successors and assigns, the following described real estate in Cook County, Illinois:

See Exhibit A attached hereto and by this reference made a part hereof

DEPT-01 RECORDING 931,500  
T02222 TRAM 9441 04/05/94 11:52:00  
05147 0 KIP. M-94-301551  
COOK COUNTY RECORDER

This document was prepared by:  
General Counsel  
Illinois Department of Commerce and  
Community Affairs  
620 Adams Street  
Springfield, Illinois 62701

Which real estate, together with the property described in the next succeeding paragraph is herein called the "premises".

TOGETHER WITH all right, title and interest, including the right of use or occupancy, which Mortgagor may now have or hereafter acquire in and to (a) any lands occupied by streets, alleys, or public places adjoining said premises or in such streets, alleys or public places; (b) all improvements, tenements, hereditaments, gas, oil, minerals, easements, fixtures and appurtenances, and all other rights and privileges thereto belonging or appertaining; (c) all apparatus, machinery, equipment and appliances of Mortgagor used or useful for or in connection with the maintenance and operation of said real estate or intended for the use or convenience of tenants, other occupants, or patrons thereof; (d) all items of furniture, furnishings, equipment, and personal property used or useful in the operation of said real estate; and (e) all replacements and substitutions for the foregoing whether or not any of the foregoing is or shall be on or attached to said real estate. It is mutually agreed, intended, and declared, that all of the aforesaid property owned by Mortgagor shall, so far as permitted by law, be deemed to form a part and parcel of said real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage. It is also agreed that if any of the property herein mortgaged is of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a Security Agreement and Mortgagor agrees to execute, deliver and file or file any financing statement, continuation statement, or other instruments Mortgage may require from time to time to perfect or renew such security interest under the Uniform Commercial Code. Notwithstanding anything to the contrary contained herein, if the Premises are the personal residence of the Mortgagor, this mortgage shall not constitute a lien, purchase money mortgage or security interest in any household goods or personal property exempt under 735 ILCS 5/12-1001.

As additional security for the liabilities secured hereby, Mortgagor does hereby pledge and assign to Mortgagee from and after the date hereof (including any period of redemption, primarily and on a parity with said real estate, and not secondarily, all the rents, issues and profits of the premises, and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing under any and all present and future leases, contracts or other agreements relative to the ownership or occupancy of all or any portion of the premises and does hereby transfer and assign to Mortgagee all such leases and agreements. Mortgagor agrees to execute and deliver such assignments of leases or assignments of land purchase contracts as Mortgagee may from time to time request. In the event of a default under the Note, Mortgagor hereby appoints Mortgagee as its true and lawful attorney in fact to manage said property and collect the rents and other income, with full power to bring suit for collection of said rents and possession of said property, giving and granting unto said Mortgagee and unto its agent or attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in the protection of the security hereby conveyed; provided, however, that this power of attorney and assignment of rents shall not be construed as an obligation upon said Mortgagor to make or cause to be made any repairs that may be helpful or necessary.

Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the premises by the Mortgagee. In the exercise of the powers herein granted to the Mortgagee, no liability shall be assessed or enforced against the Mortgagor, all such liability being expressly waived and released by Mortgagor.

TO HAVE AND TO HOLD the premises, properties, rights and privileges hereby conveyed or assigned, or intended so to be, unto Mortgagee, its successors and assigns, forever for the uses and purposes herein set forth. Mortgagor hereby releases and waives all rights under and by virtue of the Homestead Exemption Law of the State of Illinois and Mortgagor hereby covenants that, at the time of the executing and delivery of these presents, Mortgagor is well seized of said real estate and premises in fee simple, and with full legal and equitable title to the mortgaged property, with good right, full power and lawful authority to sell, assign, convey and mortgage the same, and that it is free and clear of encumbrances, except as described on Exhibit B attached hereto and made a part hereof, and that Mortgagor will forever defend the same against all lawful claims.

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1. Mortgagor agrees (a) not to abandon the premises; (b) to keep the premises in good, safe and insurable condition and repair and not to commit or suffer waste; (c) to refrain from impairing or diminishing the value of this Mortgage; and (d) neither to make nor to permit structural or other substantial alterations in the buildings or any substantial construction on the premises without the written consent of Mortgagee.

2. Mortgagor agrees to pay, not later than the due date and before any penalty or interest attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed or imposed on or against the premises.

3. Mortgagor agrees that, if the United States or the State of Illinois or any of their subdivisions having jurisdiction shall levy, assess, or charge any tax, assessment or imposition upon this Mortgage or the credit or indebtedness secured hereby or the interest of Mortgagee in the premises or upon Mortgagee by reason of or as holder of any of the foregoing then, Mortgagor shall pay (or reimburse Mortgagee for) such taxes, assessments or impositions.

4. Mortgagor agrees to maintain in force at all times insurance coverage on the premises as required by the Note.

5. Mortgagor agrees that it will comply with all restrictions affecting the premises and with all laws, ordinances, acts, rules, regulations and orders of any legislative, executive, administrative or judicial body, commission or officer (whether federal, state or local) exercising any power of regulations or supervision over Mortgagor, or any part of the premises, whether the same be directed to the repair thereof, manner of use thereof, structural alteration of buildings located thereon, or otherwise.

6. Mortgagor agrees that, if the United States Government or any department, agency or bureau thereof or the State of Illinois or any of its subdivisions shall at any time require documentary stamps to be affixed to this Mortgage, Mortgagor will, upon request, pay for such stamps in the required amount and deliver them to Mortgagee, and Mortgagor agrees to indemnify Mortgagee against liability on account of such documentary stamps, whether such liability arises before or after payment of the liabilities and regardless whether this Mortgage shall have been released.

7. In the event Mortgagor fails to pay any real estate tax or required insurance premium related to the premises when due, Mortgagor agrees to thereafter, at Mortgagee's request, make monthly deposits in an interest-bearing account, which account shall be pledged to Mortgagee, at a bank or similar financial institution acceptable to Mortgagee, of an amount equal to the sum of 1/12th of the annual general real estate taxes levied on the premises and 1/12th of the annual premium required to maintain insurance in force on the premises in accordance with the provisions of this Mortgage.

8. If any building or other improvement now or hereafter erected on the premises shall be destroyed or damaged by fire or any other cause, whether insured or uninsured, Mortgagee shall have the right either to apply any insurance proceeds or other recovery relating to such loss to a reduction of the liabilities or to require Mortgagor to restore or rebuild such building or other improvement with materials and workmanship of as good quality as existed before such damage and destruction to substantially their former state, commencing the work of restoration or rebuilding as soon as possible and proceeding diligently with it until completion. Plans and specifications for the restoration as herein required shall be submitted to Mortgagee prior to commencement of work and shall be subject to reasonable approval of Mortgagee.

9. Mortgagor agrees to indemnify Mortgagee from all loss, damage and expense, including reasonable attorneys' and paralegals' fees and expenses and the costs of any settlement or judgment, incurred in connection with any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this Mortgage and all such fees, expenses and costs shall be additional liabilities secured hereby.

10. Mortgagor hereby assigns to Mortgagee, as additional security, all awards of damages resulting from condemnation proceedings or the taking of or injury to the premises for public use, and Mortgagor agrees that the proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all its expenses in connection with such proceedings, including reasonable attorney's fees and expenses, to the reduction of the liabilities hereby secured, and Mortgagee is hereby authorized, on behalf of and in the name of Mortgagor, to execute and deliver valid acquittance for and to appeal from any such award.

11. Mortgagor agrees that, from and after the occurrence of a default under this Mortgage, Mortgagee may, but need not, make any payment or perform any act herein before required of Mortgagor, in any form and manner deemed expedient after reasonable inquiry into the validity thereof. All money paid for any of the purposes herein authorized and all other moneys advanced by Mortgagee to protect the premises and the lien hereof shall be additional liabilities secured hereby and shall become immediately due and payable without notice and shall bear interest thereon at the interest rate described in the Note ("Interest Rate") until paid to Mortgagee in full.

12. Mortgagee, or any person designated by Mortgagee in writing, shall have the right, from time to time hereafter, to call at the premises (or at any other place where information relating thereto is kept or located) during reasonable business hours and, without hindrance or delay, to make such inspection and verification of the premises, and the affairs, finances and business of Mortgagor in connection with the premises, as Mortgagee may consider reasonable under the circumstances, and to discuss the same with any agents or employees of Mortgagor.

13. Upon default, at the sole option of Mortgagee, the liabilities shall become immediately due and payable. The term "Default" when used in this Mortgage means any one or more of the events, conditions or acts defined as a "DEFAULT" in the Guaranty or the Note, or the failure of Mortgagor on the Note to pay and perform in accordance with the terms and provisions of the Note, or failure of Mortgagor to comply with or to perform in accordance with any representation, warranty, term, provision, condition, covenant or agreement contained in the Guaranty or this Mortgage, or any instrument, agreement or writing securing any liabilities to which the Mortgagor and Mortgagee are parties. Any DEFAULT (as defined in the Guaranty or the Note) shall be Default under this Mortgage. If any such default shall have occurred, then to the extent permitted by applicable law, the following provisions shall apply:

(a) All sums secured hereby shall, at the option of Mortgagee, become immediately due and payable without presentment, demand or further notice.

(b) It shall be lawful for Mortgagee to (i) immediately sell the premises either in whole or in separate parcels, as prescribed by Illinois law, under power of sale, which power is hereby granted to Mortgagee to the full extent permitted by Illinois law, and thereupon, to make and execute to any purchaser(s) thereof deeds of conveyance pursuant to applicable law or (ii) immediately foreclose this

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Mortgage by action. The court in which any proceeding is pending for the purpose of foreclosure of this Mortgage may, at once or at any time thereafter, either before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment of the liabilities secured hereby, and without regard to the then value of the premises or the occupancy thereof as a homestead, appoint a receiver (the provisions for the appointment of a receiver and assignment of rents being an express condition upon which the loan hereby secured is made) for the benefit of Mortgagee, with power to collect the rents, issues and profits of the premises, due and to become due, during such foreclosure suit and the full statutory period of redemption notwithstanding any redemption. The receiver, out of such rents, issues and profits when collected, may pay all or any part of the liabilities or other sums secured hereby or any deficiency decrees entered in such foreclosure proceedings.

(c) Mortgagee shall, at its option, have the right, acting through its agents or attorneys, to enter upon and take possession of the premises, to collect or receive all the rents, issues and profits thereof and to manage and control the same, and to lease the same or any part thereof, from time to time, and, after deducting all reasonable attorneys' fees and expenses, and all reasonable expenses incurred in the protection, care, maintenance, management and operation of the premises, apply the remaining net income upon the liabilities or other sums secured hereby or upon any deficiency decree entered in any foreclosure proceedings.

14. In any foreclosure of this Mortgage by action, or any sale of the premises by advertisement, there shall be allowed (and included in the decree for sale in the event of a foreclosure by action), to be paid out of the rents or the proceeds of such foreclosure proceeding or sale:

(a) all of the liabilities and other sums secured hereby which then remain unpaid;

(b) all other items advanced or paid by Mortgagee pursuant to this Mortgage, with interest thereon at the interest rate from the date of advancement; and

(c) all court costs, attorney's and paralegals' fees and expenses, appraisers' fees, advertising costs, notice expenses, expenditures for documentary and expert evidence, and costs of procuring all abstracts of title, title searches and examinations, title guarantees, title insurance policies and similar data with respect to title which Mortgagee may deem necessary. All such expenses shall become additional liabilities secured hereby and immediately due and payable, with interest thereon at the interest rate, when paid or incurred by Mortgagee in connection with any proceedings, to which Mortgagee shall be a party, by reason of this Mortgage or any indebtedness hereby secured or in connection with the preparations for the commencement of any suit for the foreclosure, whether or not actually commenced, or sale by advertisement.

15. In the event of a foreclosure of this Mortgage the liability then due the Mortgagee shall not be merged into any decree of foreclosure entered by the court, and Mortgagee may concurrently or subsequently seek to foreclose one or more mortgages which also secure said liabilities.

16. Mortgagor agrees that, upon request of Mortgagee from time to time, it will execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary to fully effectuate the intent of this Mortgage.

17. All notices, demands, consents, requests, approvals, undertakings or other instruments required or permitted to be given in connection with this Mortgage shall be in writing and shall be sent by United States registered or certified mail, addressed as follows:

If to Mortgagor:

David and Robin Clark  
17720 Larkspur Lane  
Homewood, Illinois 60410

If to Mortgagee:

Illinois Department of Commerce and  
Community Affairs  
820 Adams Street  
Springfield, Illinois 62701  
Attn: General Counsel

Mortgagor or Mortgagee shall, from time to time, have the right to specify as the proper addressee and/or address for the purposes of this Mortgage any other address in the United States upon giving ten (10) days' written notice thereof.

18. Mortgagor agrees that this Mortgage is to be construed and governed by the laws of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

19. Upon full payment of all sums secured hereby or upon application on the liabilities of the proceeds of any sale of the premises in accordance with the provisions of this Mortgage, at the time and in the manner provided, this conveyance shall be null and void and, upon demand therefore following such payment, a satisfaction of mortgage shall, in due course, be provided by Mortgagee to Mortgagor.

20. This Mortgage shall be binding upon the Mortgagor and upon the successors, assigns and vendees of the Mortgagor and shall inure to the benefit of the Mortgagee's successors and assigns.

21. Mortgagor represents that it has been authorized to, and Mortgagor does hereby, waive (to the full extent permitted under Illinois law) any and all statutory or equitable rights of redemption from sale by advertisement or sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor and each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the premises subsequent to the date hereof.

22. Mortgagor shall not permit any liens or security interests (including any mechanics' or materialmen's liens), other than those described on Exhibit A attached hereto and those in favor of Mortgagee or an affiliate of Mortgagee, to remain filed or attached to the premises for a period in excess of thirty (30) days without the written consent of Mortgagee, and Mortgagor shall not sell, convey, refinance or otherwise dispose of all or any part of the premises without the prior written consent of Mortgagee. If Mortgagor does sell, convey, refinance or otherwise dispose of all or any part of the premises without the prior written consent of Mortgagee, Mortgagee may elect, by notice in writing to Mortgagor, to declare all of the liabilities, or any part thereof, and all other sums secured hereby to be due and to become due and payable immediately upon the giving of such notice.

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23. Mortgagor agrees to the following terms concerning environmental matters:

(a) Mortgagor and its subsidiaries are in compliance with all Environmental Laws and all federal, state and local laws, rules, regulations, ordinances and codes related to Hazardous Substances and have obtained and are in compliance with all requirements of all permits and licenses required in connection therewith. No Hazardous Substances or storage tank is or has been located at or under any Premises. The Mortgagor has not at any time released, transported or disposed of any Hazardous Substance. None of the Mortgagor, its subsidiaries or any Premises (a) is subject to any liens, proceedings, orders or judgments or (b) has received notice of a claim or an alleged violation from any governmental or private party related to any Environmental Law, to the environmental condition of any Premises or the release or threatened release of any Hazardous Material and, to the best of Mortgagor's knowledge, none is threatened. Mortgagor will cause all representations made in this Paragraph to be true and correct on an ongoing basis at all times throughout the term of this Mortgage. Mortgagor shall promptly advise Lender in writing of any actual or threatened action of the types described in this paragraph.

(b) Upon the occurrence of any Default or any event which, with notice or the passage of time, or both, would constitute a Default, Mortgagor, its agents and independent professional consultants retained by Mortgagor shall have the right at Mortgagor's cost and expense to enter any Premises for the purpose of investigating compliance with Environmental Laws and the presence of Hazardous Substances and to take remedial action with respect to the same.

(c) Mortgagor shall fully and completely indemnify, defend and hold harmless Mortgagee, its officers, directors, employees and agents against any liability, judgment, loss, cost, claim, damage (including attorney's fees and disbursements, settlement costs, consultant fees, investigation and laboratory fees) to which any of them may become subject insofar as they may arise out of or are based upon, (a) any violation or claim of violation of any Environmental Laws with respect to any Premises, injury to any person or property as a result of the violation of any Environmental Law, or any governmental or judicial claim, ordinance or judgment with respect to the clean-up of Hazardous Substances at or with respect to any Premises (b) the presence of Hazardous Substances on or under any Premises (including the improvements) or (c) any cost, claim, liability or damage arising in connection with any remediation of the Premises required by a governmental authority regarding the presence of Hazardous Substances on the Premises or the subsurface thereof or the release, threatened release, escape, seepage, leakage, discharge or migration of any Hazardous Substances.

(d) For the purposes of this paragraph, the following definitions apply:

"Environmental Laws" shall mean all federal, state and local laws, rules, regulations, ordinances and codes relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act of 1976 U.S.C. et. seq. and state environmental lien or superlien and environmental clean-up statutes.

"Hazardous Substances" shall mean all hazardous and toxic substances, wastes, or materials, any pollutant or contaminant, including, without limitation, petroleum products, polychlorinated biphenyls, asbestos, asbestos-containing materials and new materials that include hazardous constituents or any other similar substances or materials that are included under or regulated by any Environmental Law or that could pose a health, safety or environmental hazard.

24. This Mortgage is junior to the prior lien and security of Bank of Homewood securing indebtedness in the original principal amount not to exceed \$114,000 and \$55,000 as evidenced by a mortgage dated December 8, 1993 and February 1, 1994.

IN WITNESS WHEREOF, this instrument is executed as of the day and year first above written by Jenne, Inc. dba Auntie Anne's on behalf of Mortgagor (and said person hereby represents that he possessed full power and authority to execute this instrument).

THE MORTGAGOR HEREBY DECLARES AND ACKNOWLEDGES THAT THE MORTGAGOR HAS RECEIVED, WITHOUT CHARGE, A TRUE COPY OF THIS MORTGAGE.

By [Signature]  
Robin Clark  
By [Signature]  
David Clark

Attest:

Its

AFFIX CORPORATE SEAL  
IF MORTGAGOR IS A  
CORPORATION

Witnesses: [Signature]  
(Name)

STATE OF ILLINOIS )  
                          ) SS.  
COUNTY OF Cook    )

I, James M. Hamman, certify that Robin and David Clark personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the instrument as their free and voluntary act, for the uses and purposes therein set forth.

Date 3/22/94

[Signature]  
James M. Hamman  
OFFICIAL SEAL  
JAMES M HAMMAN  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COM. EXPIRES ON 12/07  
(SEAL)

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EXHIBIT A  
TO  
MORTGAGE DATED March 22, 1994

Legal Description of the Premises:

Lot 26 in pace better Hollydale Subdivision of that part lying West of and adjoining the 100 foot right of way of Governors Highway of the Southwest 1/4 of the Northeast 1/4 of section 36, township 36 North, range 13 East of the third principal meridian, in Cook County, Illinois.

PLN 28-36-225-015

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EXHIBIT B  
TO  
MORTGAGE DATED March 23, 1994

Liens, claims and encumbrances:

None except:

All liens, claims and encumbrances specified on Chicago Title Insurance Company commitment for title insurance dated March 14, 1994, bearing No. 16 54 678 and any policy on title insurance issued pursuant to said commitment as same now exists or may hereafter be amended.

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3/23/94

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