

MORTGAGE AND SECURITY AGREEMENT

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COOK COUNTY RECORDER

This Mortgage and Security Agreement ("Mortgage") is made as of this 7th day of September, 1991 by and between STEVEN ARWADY and SUSAN ARWADY, his wife (collectively, the "Mortgagor"), and MORRIS EHRENSAFT, EDITH EHRENSAFT and RICHARD EHRENSAFT (collectively, the "Mortgagee").

WHEREAS, Mortgagor holds the title to the real estate legally described on Exhibit A, attached hereto and made a part hereof ("Property"), commonly known as 1003 West Cypress, Arlington Heights, Illinois; and

WHEREAS, Mortgagor desires to mortgage the Premises (hereinafter defined) to Mortgagee for collateral purposes and as security for the payment and performance of that certain Guaranty and Pledge Agreement dated as of September 7, 1991 (the "Guaranty") executed and delivered by the Mortgagor and ES Industrial Supply Co., d/b/a Dee Supply Company, an Illinois corporation, in favor of Mortgagee; and

NOW, THEREFORE, in consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Mortgagor hereby grants, bargains, sells, conveys, mortgages and warrants Mortgagor's interest in the Property to the Mortgagee;

TOGETHER with all the buildings and improvements now or hereafter erected thereon, including all gas and electric fixtures, plumbing, motors, boilers, furnaces, ranges, refrigerators, and all apparatuses and fixtures of every kind, whether used for the purpose of supplying or distributing heat, refrigeration, light, water, air, power or otherwise now in or which hereafter may be placed in any building or improvement upon said Premises; together with the rents, issues and profits of every name, nature and kind, it being the intention hereby to establish an absolute transfer and assignment to the Mortgagee of all leases and avails of said Premises and the furnishings and equipment therein. Such rents, issues and profits shall be applied first to the payment of all costs and expenses of acting under such assignment, and second to the payment of any indebtedness then due or incurred hereunder; and

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TOGETHER with all privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said Premises and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which the Mortgagor now has or may hereafter acquire in the said Premises and improvements; and

All easements, rights-of-way and rights used in connection with the said Premises and improvements or as a means of ingress and egress thereto, and all tenements, hereditaments and appurtenances thereof and thereto; and

RETURN TO:  
BOX 378  
Asa

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All materials intended for construction, reconstruction, alteration and repairs of the Premises and improvements, all of which materials shall be deemed to be included within the Premises and improvements immediately upon the delivery thereof to the real estate; and

All fixtures now or hereafter owned by the Mortgagor and attached to or contained in and used in connection with the said Premises and improvements, including, but not limited to, all machinery, motors, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property owned by the Mortgagor and existing on said Premises and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said Premises and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property owned by the Mortgagor and placed by it on and in the said Premises and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the Premises and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the Premises or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code of Illinois), this Mortgage is deemed to be a security agreement under the Uniform Commercial Code of Illinois for the purpose of creating hereby a security interest in such property, which the Mortgagor hereby grants to the Mortgagee; and

All the estate, interest, right, title, other claim or demand, including claims or demands with respect to any proceeds of insurance related thereto, which the Mortgagor now has or may hereafter acquire in the said Premises and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said Premises and improvements or personal property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages;

The said Property and improvements and the property and interests described above being also collectively referred to herein as the "Premises."

TO HAVE AND TO HOLD said Premises, with said appurtenances, apparatuses and fixtures, unto said Mortgagee forever, for the uses herein set forth free from the rights and benefits under the Homestead Exemption laws of the State of Illinois.

This Mortgage is given to secure the payment and the performance by the Mortgagor of the covenants herein contained and the payment and performance by Mortgagor of all of the Obligations (as defined in the Guaranty), as more fully described in the

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Guaranty secured hereby. This Mortgage shall secure unpaid balances of any loan advances, whether obligatory or not, made by or accommodated by the Mortgagee after this Mortgage is recorded to the extent that the total unpaid indebtedness, exclusive of interest thereon and additional indebtedness thereunder, does not exceed the maximum amount of unpaid indebtedness under the Guaranty which may be outstanding at any time thereunder, which is \$1,000,000 .

A. THE MORTGAGOR COVENANTS:

(1) To pay the Mortgagee all sums payable to Mortgagee under the terms of the Guaranty secured hereby, together with interest as therein provided or allowed by law and to repay all other sums paid or advanced by the Mortgagee hereunder, together with interest thereon at the rate as described in the Guaranty or allowed by law, whether such sums shall have been paid or advanced at the date hereof or at any time hereafter. Failure to pay said indebtedness shall result in a default under this Mortgage.

(2) To pay when due all taxes and assessments levied against the Premises or any part thereof under any existing or future law, and to deliver receipts of such payments to the Mortgagee promptly upon demand.

(3) Until said indebtedness is fully paid, or in case of foreclosure, to keep the improvements now or hereafter on said Premises insured for the full insurable value against damage by fire, tornado or other hazards, as the Mortgagee may require and by companies approved by Mortgagee; and to pay or provide for payment of premiums on such insurance in any manner Mortgagee may request. Such insurance policies shall remain with the Mortgagee during said period or periods, and contain the clause naming the Mortgagee as first payee after other mortgages having liens of record superior in priority to this Mortgage, and in case of foreclosure sale payable to the owner of the certificate of sale and thereafter to the holder of any master's deed issued pursuant to such certificate of sale. In case of loss under such policies, the Mortgagor authorizes the Mortgagee to adjust, collect and compromise, in its discretion, all claims thereunder, and in such case, the Mortgagor covenants to sign, upon demand, all receipts, vouchers and releases where such signature is required by the insurance companies.

(4) To commit or suffer no waste of the Premises, and to maintain the same in good condition and repair, to pay promptly all bills for such repairs and all other expenses incident to the Mortgagor's interest in said Premises in order that no lien of mechanics or materialmen shall attach to said Premises; and to suffer or permit no unlawful use of nor any nuisance to exist upon said Premises; nor to weaken, diminish or impair the value of said Premises or the security intended to be effected by virtue of this Mortgage by any act or omission to act; to appear in and defend any proceeding which, in the opinion of the Mortgagee, affects its

security hereunder, and to pay all costs, expenses and attorneys' fees incurred or paid by the Mortgagee in any proceeding in which it may be made a party defendant by reason of this Mortgage.

(5) Not to permit or suffer without the written permission or consent of the Mortgagee being first had and obtained, the use of said Premises for any purpose other than that for which the same is now used or represented to be used, and not to permit any alterations, additions to, demolition or removal of any of the improvements now or hereafter existing upon said Premises, except the construction of improvements previously approved by Mortgagee, nor a sale, mortgage or transfer of any right, title or interest in and to said property or any portion thereof.

(6) [Intentionally reserved].

(7) To pay to Mortgagee, all sums payable to it and to comply with and timely perform all covenants and obligations under the Guaranty.

**B. THE MORTGAGOR FURTHER COVENANTS:**

(1) That in case of failure or inability to perform any of the covenants herein, the Mortgagee may do any act it may deem necessary to maintain or repair said Premises or to protect the lien of this Mortgage. Any monies paid or disbursed by the Mortgagee for any such purpose and all expenses and charges in connection therewith shall become so much additional indebtedness secured by this Mortgage and, at the election of the Mortgagee, shall be forthwith due and payable, together with interest thereon at the highest rate for which it may then be lawful to contract, or shall be added to and included in the principal mortgage indebtedness. It shall not be obligatory upon the Mortgagee to inquire into the validity of any lien, encumbrance or claim in advancing monies in that behalf, as herein authorized, but nothing herein contained shall be construed as requiring the Mortgagee to advance any monies for that purpose nor do any act hereunder, nor shall the Mortgagee incur personal liability because of anything it may do or omit to do hereunder.

(2) [Intentionally reserved]

(3) [Intentionally reserved]

(4) [Intentionally reserved]

(5) Without Mortgagee's prior written consent thereto, which may be unreasonably withheld, the Mortgagor may not pledge any of the collateral described herein as collateral security for any other loans or obligations.

(6) Each of the following occurrences shall constitute an "Event of Default" hereunder:

(a) The Mortgagor shall fail to perform or observe any of the covenants contained in this Mortgage; or

(b) The Mortgagor shall fail to perform or observe any of the covenants contained in the Guaranty; or

(c) Any representation or warranty made by the Mortgagor in this Mortgage is untrue or misleading in any material respect, or any statement, certificate or report furnished hereunder by or on behalf of the Mortgagor is untrue or misleading in any material respect; or

(d) If the Premises specifically described in this Mortgage or any portion thereof is abandoned, vacated or left unattended by the Mortgagor; or

(e) The Mortgagor should fail to provide to Mortgagee, within thirty (30) days of Mortgagee's request therefor, all information on any incident which may cause a material adverse change in the financial condition of Mortgagor. Information as used herein shall include, but not be limited to changes in financial condition, claims, lawsuits, bankruptcies, tax assessments and/or death and the information required to be delivered to Mortgagee under paragraph 10 hereinafter.

When the indebtedness secured by this Mortgage, or any part thereof, shall become due, and after giving the appropriate notice, as otherwise provided for in this paragraph, and except as provided for below, the Mortgagee shall have the right to foreclose the lien on the Premises of Mortgagor, for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of the Mortgagee under this Mortgage or the Guaranty, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other loan documents or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage, immediately due and payable, with



interest thereon at a rate of three percent (3%) above the then prevailing interest rate announced from time to time by Harris Bank and Trust Company as its "reference rate." In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. The Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

The proceeds of any foreclosure sale of the Premises or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned above; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage with interest thereon as therein provided; and third, any overplus to the Mortgagor, its successors or assigns, as their rights may appear.

Upon or any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises or any portion thereof, consistent with the terms of the Illinois Mortgage Foreclosure Act. Such appointment may be made without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then value of the Premises and the Mortgagee or any holder of the Note may be appointed as such receiver. Such receiver shall have power (i) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (ii) to extend or modify any then existing leases and to make new leases, which extension, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured by this Mortgage and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of the indebtedness secured by this Mortgage, or found due or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale.

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The Mortgagee shall be entitled to enforce against the Mortgagor payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the other documents securing the Guaranty, or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligation secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, mortgage or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being agreed that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as the Mortgagee may in its absolute discretion determine. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by Illinois statute. Every power or remedy given by any of the documents securing the Guaranty to the Mortgagee, or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by the Mortgagee and the Mortgagee may pursue inconsistent remedies. Failure by the Mortgagee to exercise any right which it may exercise hereunder, or the acceptance by the Mortgagee of partial payments, shall not be deemed a waiver by the Mortgagee of any default or of its right to exercise any such rights thereafter.

If the Mortgagee at any time holds additional security for any of the indebtedness secured by this Mortgage, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with exercising remedies under this Mortgage or after a sale is made hereunder.

(7) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Act (Chapter 110) Sections 15-1101 et seq., Illinois Revised Statutes) (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with the Act.

If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraph B(6) of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

The Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include agricultural real estate (as defined in Section 15-1201 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives any rights to reinstatement and redemption allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisement, homestead exemption, stay, redemption and moratorium laws under any state or federal law.

(8) [Intentionally reserved].

(9) [Intentionally reserved].

(10) [Intentionally reserved].

(11) Any and all notices required to be delivered to Mortgagee or Mortgagor hereunder shall be in writing and delivered as follows:

To Mortgagee:

c/o Mr. Morris Thrensaff  
8943 N. Kilpatrick  
Skokie, Illinois 60076

with a copy to:

Arnstein & Lehr  
120 S. Riverside Plaza, Suite 1200  
Chicago, Illinois 60606  
Attn: Louis A. Lehr, Jr. Esq.

To Mortgagor:

Mr. Steven Arwady  
Ms. Susan Arwady  
1003 N. Cypress  
Arlington Heights Illinois 60005

with a copy to:

Mr. George Skuros  
5045 N. Harlem Avenue  
Chicago, Illinois 60656

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Said notices shall be delivered personally or by certified mail, return receipt requested, postage prepaid. Mailing of the notice shall be deemed sufficient delivery.

IN WITNESS WHEREOF, the undersigned have set their hands as of the date first above written.

*Steven Arwady*  
STEVEN ARWADY

*Susan Arwady*  
SUSAN ARWADY

Property of Cook County Clerk's Office

This instrument was prepared by: Andrew S. Adair, Arnstein & Lehr,  
120 S. Riverside Plaza, Chicago, Illinois 60606

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STATE OF ~~MICHIGAN~~ ILLINOIS }  
COUNTY OF Cook } **BNTB**

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Steven Arwady and Susan Arwady, his wife, 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 sealed and delivered the said instrument, as their free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 11<sup>TH</sup> day of SEPTEMBER, 1991

[Signature]  
Notary Public

2/19/93  
My Commission Expires



Property of Cook County Clerk's Office

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# UNOFFICIAL COPY

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## EXHIBIT A

LOT 281 IN SURREY RIDGE WEST UNIT NUMBER 4, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF SECTION 9, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PREIN: 08-09-107-025

Commonly Known As: 1003 W. Cypress Drive, Arlington Heights, IL

Property of Cook County Clerk's Office

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