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TO:



Eugene "Gene" Moore Fee: \$34.00  
Cook County Recorder of Deeds  
Date: 06/10/2003 03:44 PM Pg: 1 of 6

Associated Bank, National  
Association  
200 N. Adams St. PO Box 19006  
Green Bay, WI 54307-9006

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378469

W. B. A. 428 ALR IL (1/03) F41142  
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05-35-117-002  
05-35-117-027  
05-35-117-003

DOCUMENT NO.

Parcel Identification No.

## ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT, made this 2ND day of APRIL, 2003, by CYRUS HOMES, INC, AN ILLINOIS CORPORATION

, whose address is 821 NOYES ST, EVANSTON, IL 60201, (the "Assignor"), to Associated Bank, National Association, whose address is 200 N. Adams St. PO Box 19006, Green Bay, WI 54307-9006 (the "Assignee")  
in consideration of an extension of credit to CYRUS HOMES, INC

whose address is 821 NOYES ST, EVANSTON, IL 60201 (the "Borrower").

FOR VALUE RECEIVED, the Assignor grants, transfers and assigns to the Assignee the leases set forth in Exhibit "A" attached which lease part of the real estate described in Exhibit "B" attached ("Premises"), together with any and all other leases of space, whether oral or written, of the Premises now or hereafter entered into by the Assignor (the "Leases"), together with any and all extensions and renewals of the Leases, together with any guarantees of the tenants' obligations under the Leases, together with the use and possession of and the right to rent and/or lease any or all furniture, furnishings, fittings, attachments, appliances and appurtenances of any kind now or hereafter available for use by tenants and/or operation of the Premises, together with the immediate and continuing right to collect and receive all rents, income, proceeds, payments and profits arising out of the Leases or out of the Premises ("Rents"), together with the right to all proceeds payable to the Assignor pursuant to any purchase options on the part of the tenants under the Leases, together with all payments derived under the Leases including but not limited to claims for the recovery of damages done to the Premises or for the abatement of any nuisance, claims for damages resulting from default under the Leases whether resulting from acts of insolvency or acts of bankruptcy or otherwise, and lump sum payments for the cancellation of the Leases or the waiver of any obligation or term prior to the expiration date and the return of any insurance premiums and/or ad valorem tax payments made in advance and subsequently refunded, to secure the following ("Secured Debt"):

- a. Payment of Borrower's note(s) or agreements dated APRIL 2, 2003 and payable to the Assignee, including all extensions, renewals and modifications (all called the "Note"), which Note is secured by a mortgage on the Premises from the Assignor to the Assignee dated SEPTEMBER 30, 2002 ("Mortgage").
- b. All additional sums which are in the future loaned by Assignee to Assignor, to Assignor and another or to another guaranteed or endorsed by Assignor which are secured by the Mortgage.
- c. Payment of all other sums with interest becoming due and payable to the Assignee under this Assignment, the Note, the Mortgage and all other instruments constituting security for the Note.
- d. Performance and discharge of the obligations, covenants and agreements of the Assignor under this Assignment, the Note, the Mortgage and all other instruments constituting security for the Note.

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The Assignor agrees, assigns and covenants as follows:

1. **Performance of Leases.** To faithfully abide by, perform and discharge each and every obligation, covenant and agreement of the Leases to be performed by the lessor; to use its best efforts to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Leases to be performed by the tenants; not to modify, extend, renew, terminate, accept a surrender of, or in any way alter the terms of the Leases nor borrow against, pledge, or assign any rentals due under the Leases, nor consent to a subordination or assignment of the interest of the tenants under the Leases to any party other than Assignee, nor collect prepayment of the rents under the Leases for more than one (1) month in advance or reduce the amount of the rents and other payments under the Leases, nor enter into any additional leases of all or any part of the Premises without the prior written consent of the Assignee.
2. **Protect Security.** At the Assignor's sole cost and expense, to appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of the lessor under the Leases, and to pay all costs and expenses of the Assignee, including reasonable attorneys' fees in any such action or proceeding in which the Assignee in its sole discretion must appear.
3. **Representations.** With reference to the Leases described in Exhibit "A", the Assignor represents and warrants that: (a) it is the owner of the Leases with full right and title to assign the Leases and the Rents payable under the Leases; (b) the Leases are valid, in full force and effect and have not been modified or amended; (c) there are no outstanding assignments or pledges of the Leases or the Rents payable under the Leases; (d) there are no existing defaults under the Leases on the part of any party; (e) no Rents have been waived, or prepaid, discounted, compromised or released; and (f) the tenants have no defenses, set-offs, or counterclaims against the Assignor.
4. **Present Assignment.** This Assignment shall constitute a perfected, absolute and present assignment and the Assignor understands and agrees that it establishes a present and complete transfer of the Leases, Rents and all other items subject to this Assignment. However, the Assignor shall have the license to collect, but not prior to accrual, all of the Rents and to retain, use and enjoy the same unless and until a default shall occur under the Mortgage or any other document evidencing the Secured Debt. The Assignor hereby releases and surrenders to the Assignee all rights to amend, modify or in any way alter the Leases without the prior written consent of the Assignee.
5. **Assignee's Right to Perform Under Leases.** Should the Assignor fail to perform, comply with or discharge any obligations of Assignor under the Leases or should the Assignor become aware of or be notified by any tenant under the Leases of a failure on the part of the Assignor to perform, comply with or discharge its obligations under the Leases, Assignee may, but shall not be obligated to, and without further demand upon the Assignor, and without waiving or releasing the Assignor from any of its obligations under this Assignment, remedy such failure, and the Assignor agrees to repay Agreement upon demand all sums incurred by the Assignee in remedying any such failure together with interest at the rate then in effect under the terms of the Note. All such sums, together with interest shall become additional Secured Debt, but no such advance shall relieve the Assignor from any default under this Assignment.
6. **Remedies.** Upon or at any time after default in the payment of any Secured Debt or in the performance of any obligation, covenant or agreement in this Assignment or in the Note or Mortgage or any other instrument constituting security for the Note, the Assignee may revoke the license granted Assignor to collect the Rents, and may, at its option, without notice, either in person or by agent, with or without taking possession of or entering the Premises, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, collect all the Rents payable under the Leases, enforce the payment of Rents and exercise all of the rights of the Assignor under the Leases and all of the rights of the Assignee under this Assignment, and may enter upon, take possession of, manage and operate the Premises, or any part thereof; may cancel, enforce or modify the Leases, and fix or modify the Rents, and do any acts that the Assignee deems proper to protect its security with or without taking possession of the Premises; and the Assignee may apply the Rents to the costs and expenses of operation, management and collection, including reasonable attorneys' fees, to the payment of the expenses of any agent appointed by the Assignee, to the payment of taxes, assessments, insurance premiums and expenditures for the upkeep of the Premises, to the performance of the lessor's obligations under the Leases and to any Secured Debt all in such order as the Assignee may determine not otherwise prohibited by law. Any entering upon and taking possession of the Premises, any collection of Rents, and any application of Rents as allowed by this Assignment shall not cure or waive any default or waive, modify or affect notice of default under the Mortgage or invalidate any act done pursuant to such notice, nor in any way operate to prevent the Assignee from pursuing any other remedy which it now or hereafter may have under the terms or conditions of this Assignment, the Mortgage, the Note, or any other instrument securing the Note.
7. **No Liability for the Assignee.** The Assignee shall not be obligated to perform or discharge, nor does it undertake to perform or discharge any obligation, duty or liability under the Leases nor shall this Assignment operate to place responsibility for the control, care, management or repair of the Premises upon the Assignee nor for the carrying out of any of the terms and conditions of the Leases; nor shall it operate to make the Assignee responsible or liable for any waste committed on the Premises, or for any dangerous or defective condition of the Premises, or any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee,

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employee or stranger nor liable for laches or failure to collect the Rents and the Assignee shall be required to account only for such monies as are actually received by it. All actions taken by the Assignee pursuant to this Assignment shall be taken for the purposes of protecting the Assignee's security and the Assignor agrees that nothing in this Assignment and no actions taken by the Assignee under this Assignment, including, but not limited to, the Assignee's approval or rejection of any leases for any portion of the Premises, shall in any way alter or impact the obligation of the Assignor for the Secured Debt. The Assignor waives any defense or claim that may now exist or hereafter arise by reason of any action taken by the Assignee under this Assignment.

**8. Assignor to Hold Assignee Harmless.** The Assignor shall indemnify and hold the Assignee harmless from and against any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and from and against any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should the Assignee incur any such liability, or any costs or expenses in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment, shall be added to the Secured Debt and the Assignor shall reimburse the Assignee for such amount immediately upon demand, and the failure of the Assignor to do so shall constitute a default under this Assignment and a default under the Mortgage.

**9. Security Deposits.** The Assignor agrees on demand to transfer to the Assignee any security deposits held by the Assignor under the terms of the Leases. The Assignor agrees that such security deposits may be held by the Assignee without accrual of interest to Assignor and shall become the property of the Assignee upon a default under this Assignment or the Mortgage, to be applied in accordance with the provisions of the Leases. Until the Assignee makes such demand and the deposits are paid over to the Assignee, the Assignee assumes no responsibility to the tenants for any such security deposit.

**10. Authorization to Tenants.** The tenants under the Leases are irrevocably authorized and directed to recognize the claims of the Assignee or any receiver appointed under this Assignment without investigating the reason for any action taken by the Assignee or such receiver, or the validity or the amount of indebtedness owing to the Assignee, or the existence of any default under the Note, the Mortgage, or under or by reason of this Assignment, or the application to be made by the Assignee or receiver. The Assignor irrevocably directs and authorizes the tenants to pay to the Assignee or such receiver all sums due under the Leases and consents and directs that such sums shall be paid to the Assignee or any such receiver in accordance with the terms of its receivership without the necessity for a judicial determination that a default has occurred under this Assignment, the Note, or the Mortgage, or that the Assignee is entitled to exercise its right under this Assignment, and to the extent such sums are paid to the Assignee or receiver, the Assignor agrees that the tenants shall have no further liability to the Assignor for the same. The sole signature of the Assignee or such receiver shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of the Assignee or such receiver for any sums received shall be a full discharge and release of the obligation of any such tenants or occupants of the Premises. Checks for all or any part of the rentals collected under this Assignment shall upon notice from the Assignee or such receiver be drawn to the exclusive order of the Assignee or such receiver.

**11. Satisfaction.** Upon the payment in full of all Secured Debt as evidenced by a recorded satisfaction of the Mortgage executed by the Assignee or its assigns, this Assignment shall without the need for any further satisfaction or release become null and void and be of no further effect.

**12. Assignee Creditor of the Tenants.** At any time after default in the payment of any Secured Debt or in the performance of an obligation, covenant, or agreement in this Assignment, the Note or the Mortgage, the Assignor agrees that the Assignee, and not the Assignor, shall be the creditor of the tenants in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such tenants (without obligation on the part of the Assignee, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein, and reserving the right to the Assignor to make such filing in such event) with an option to the Assignee to apply any money received by the Assignee as such creditor in reduction of the Secured Debt.

**13. Assignee Attorney-in-Fact.** The Assignor irrevocably appoints the Assignee and its successors and assigns as its agent and attorney-in-fact, which appointment is coupled with an interest, after an event of default as defined in the Note or the Mortgage, to exercise any rights or remedies under this Assignment and to execute and deliver during the term of this Assignment such instruments as Assignee may deem necessary to make this Assignment and any further assignment effective.

**14. Subsequent Leases.** Until the Secured Debt has been paid in full, the Assignor will deliver to the Assignee executed copies of all Leases affecting any part of the Premises and agrees to make, execute and deliver to the Assignee upon demand and at any time or times, any and all assignments and other instruments sufficient to assign the Leases and the Rents to the Assignee or that the Assignee may deem to be advisable for carrying out the purposes and intent of this Assignment. From time to time on request of the Assignee the Assignor agrees to furnish the Assignee with a rent roll of the Premises disclosing current tenancies, rents payable, and such other matters as the Assignee may reasonably request.

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**15. General Assignment of Leases and Rents.** The rights contained in this Assignment are in addition to and shall be cumulative with the rights given and created in the Mortgage, assigning generally all rents and profits of the Premises and shall in no way limit the rights created under the Mortgage.

**16. No Mortgagee in Possession.** Nothing in this Assignment and no actions taken pursuant to this Assignment shall be construed as constituting the Assignee a "Mortgagee in Possession."

**17. Continuing Rights.** The rights and powers of the Assignee or any receiver under this Assignment shall continue and remain in full force and effect until all Secured Debt, including any deficiency remaining from a foreclosure sale, is paid in full, and shall continue after commencement of a foreclosure action and, if the Assignee is the purchaser at the foreclosure sale, after a foreclosure sale and expiration of any redemption rights.

**18. Successors and Assigns.** This Assignment and the covenants, agreements and provisions in this Assignment shall be binding upon the Assignor and its successors and assigns including without limitation each and every record owner of the Premises or any other person having an interest in the Premises and shall inure to the benefit of the Assignee and its successor and assigns. As used in this Assignment the words "successors and assigns" shall also mean the heirs, executors, representatives and administrators of any natural person who is a party to this Assignment.

**19. Governing Law.** This Assignment is governed by the laws of the State of Illinois.

**20. Validity Clause.** The intent of this Assignment is to confer to the Assignee the rights and benefits under this Assignment to the full extent allowable by law. The unenforceability or invalidity of any provision in this Assignment shall not render any other provision or provisions in this Assignment unenforceable or invalid. Any provisions found to be unenforceable shall be severed from this Assignment.

**21. Costs of Enforcement.** The Assignor agrees that if, and as often as, this Assignment is placed in the hands of attorneys to defend or enforce any of the Assignee's rights under this Assignment, the Assignor will pay to the Assignee its reasonable costs and other expenses incurred in connection with such enforcement before and after judgment, including without limitation, reasonable attorneys' fees.

CYRUS HOMES, INC \_\_\_\_\_ (SEAL)

AN ILLINOIS CORPORATION \_\_\_\_\_  
(Type of Organization)

WALTER H KIHM, JR \_\_\_\_\_ (SEAL)  
CHAIRMAN \_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL) \_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL) \_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL) \_\_\_\_\_ (SEAL)

### ACKNOWLEDGEMENT

STATE OF ILLINOIS  
County of Cook } ss.

The foregoing instrument was acknowledged before me on APRIL 2, 2003,

by WALTER H KIHM, JR  
(Name(s) of persons(s))

as CHAIRMAN  
(Type of authority; e.g., officer, trustee, etc., if any)

of CYRUS HOMES, INC a AN ILLINOIS CORPORATION  
(Name of party on behalf of whom instrument was executed, if any)

\* Robert M. Callero, Jr.  
Notary Public, Illinois

My Commission (Expires)(Is) \_\_\_\_\_

**OFFICIAL SEAL**  
ROBERT MICHAEL CALLERO JR  
NOTARY PUBLIC, STATE OF ILLINOIS  
COMMISSION EXPIRES: 07/08

\*Type or print name signed above

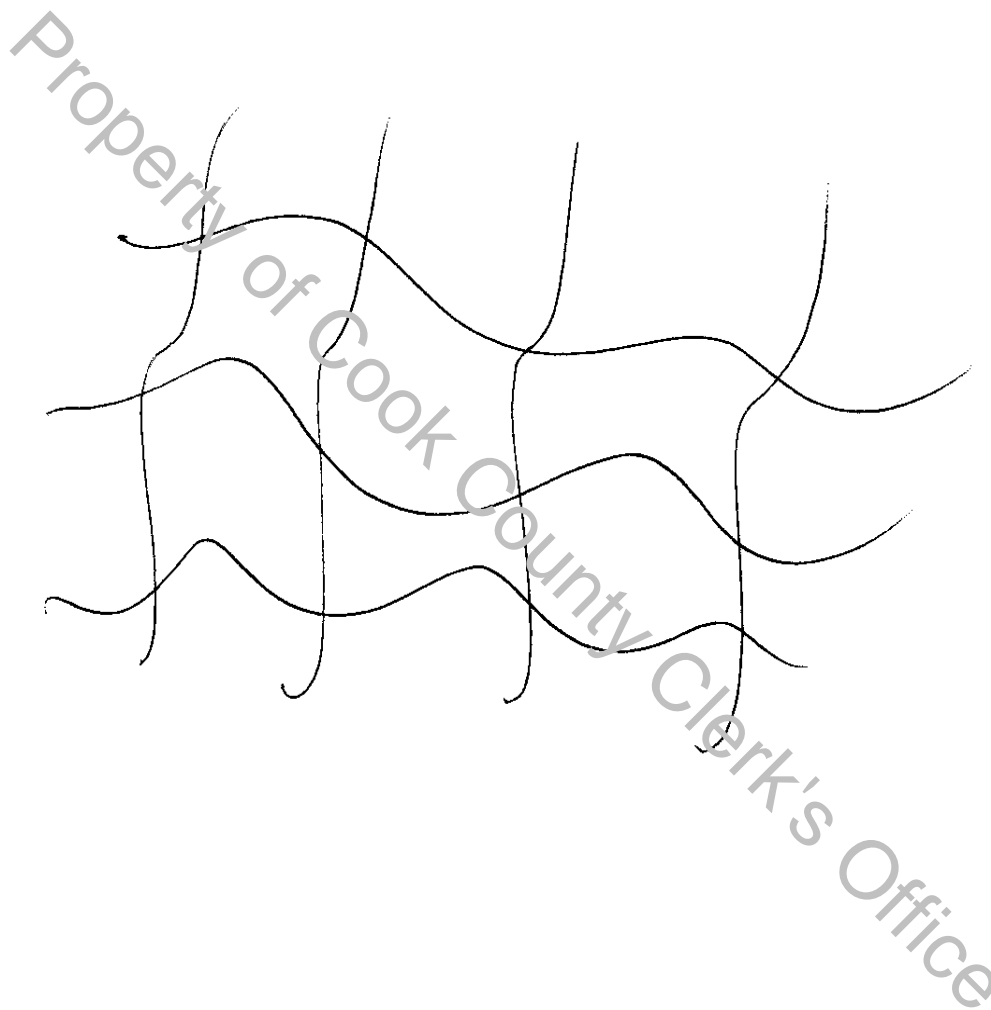
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Exhibit "A" to

Assignment of Leases and Rents [WBA428ALR]

Dated APRIL 2, 2003

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Exhibit "B" to

Assignment of Leases and Rents [WBA428ALR]

Dated APRIL 2, 2003

ALL OF LOT 11 AND THE EAST 1/2 OF LOT 12 IN BLOCK 17 IN LAKE SHORE ADDITION TO WILMETTE, IN COOK COUNTY, ILLINOIS. ALSO LOT 7 (EXCEPT THE EAST 31 1/2 FEET THEREOF) AND ALL OF LOT 8 IN OWNERS'S SUBDIVISION OF LOTS 1 TO 10 INCLUSIVE IN BLOCK 17 IN LAKE SHORE ADDITION TO WILMETTE IN TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LKA 147-155 LINDEN AV WILMETTE IL 60091

Property of Cook County Clerk's Office