

UNOFFICIAL COPY

AFTER RECORDING, MAIL TO:

MR. STANLEY J. TRYGAR, JR.
BANK OF WAUKEGAN
1601 N. LEWIS AVENUE
WAUKEGAN IL 60085

96978724

SC 337 201

96978724

**REVOLVING CREDIT
ADJUSTABLE RATE
COMMERCIAL
MORTGAGE**

DEPT-01 RECORDING \$43.50
T40003 TRAN 1080 12/30/96 12:29:00
1010 * LM *-96-978724
COOK COUNTY RECORDER

Above Space for Recorder's Use Only

TICOR TITLE INSURANCE

THIS MORTGAGE ("Security Instrument") is given on December 16, 1996. The Mortgagor is **CYRUS HOMES, INC.**, an Illinois corporation (hereinafter "Borrower"). This Security Instrument is given to **BANK OF WAUKEGAN**, organized and existing under the laws of the State of Illinois, and whose address is 1601 North Lewis Avenue, Waukegan, Illinois (hereinafter "Lender"). Borrower is indebted to Lender in the principal sum of **FIVE HUNDRED FIFTY-SEVEN THOUSAND TWO HUNDRED EIGHTY-FIVE DOLLARS** (\$557,285.00. This debt is evidenced by Borrower's Note dated the same date as this Security Instrument (hereinafter "Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **DECEMBER 16, 1997**. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications thereof; (b) the payment of all other sums, with interest, advanced hereunder to protect the collateral pledged by this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note and any and all other agreements between Borrower and Lender including but not limited to Loan Agreements and Security Agreements. For this purpose Borrower does hereby mortgage, warrant, grant and convey to Lender the following described property located in Cook County, Illinois:

The east 1/2 of Lot 14 in Block 18 in Gage's Addition to Wilmette in section 27, township 42 north, range 13, east of the third principal meridian, in Cook County, Illinois.

Commonly known as: 1316 Elmwood, Wilmette, Illinois 60091

Permanent Index Number: 05-27-309-023

96978724

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

TOGETHER WITH:

A. All right, title and interest of Borrower, including any after acquired title or reversion, remainder, all and singular tenements, hereditaments, easements, appurtenances, and other rights, and privileges thereof or in anyway now or hereafter appertaining, and any other claim at law or in equity.

B. All of Borrower's interest and rights (a) as lessor in all leases now or hereafter affecting the real estate, (b) all compensation for the loss of or damage to the Premises under all present and future fire and other hazard insurance policies pertaining to the Premises, (c) any and all sums at anytime on deposit with, for the benefit of or held by Borrower, and (d) all awards paid in any condemnation, eminent domain, or similar proceeding.

C. All buildings and improvements of every kind and description now or hereafter erected or placed on said premises, and all fixtures and personal property now or hereafter owned by Borrower and attached to or contained in and used in connection with the Premises.

BORROWER COVENANTS, REPRESENTS AND WARRANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, warrant, grant and convey the Property and that the Property is unencumbered. Borrower warrants and will defend generally the title to the Property against all claims and demands. Borrower further covenants, represents and warrants that the real estate is free and clear of any other lien or encumbrance except as provided on Exhibit "A" hereof.

BORROWER FURTHER COVENANTS and agrees as follows:

1. Borrower shall pay promptly when due the principal and interest on the indebtedness evidenced by the Note and any extensions or modifications or renewals thereof, in whole or in part, and any and all other sums which may be at anytime due or required to be paid as set forth herein or as set forth in the Note, or any Loan Agreement, Security Agreement, the Commitment Letter (hereinafter "Loan Commitment Letter") or other document with regard hereto, the terms and conditions of which are hereby incorporated herein by this reference.

2. Borrower shall immediately pay, when due and owing, all general taxes, real estate taxes, special taxes, special assessments, water charges, sewer service charges, utility charges, and all other charges of whatever kind, which may be levied or imposed against the Premises, and shall furnish to Lender upon request official receipts therefore within thirty (30) days after payment thereof.

3. Borrower shall keep the Premises and all buildings and improvements now or hereafter situated on the Premises insured against loss or damage by fire and extended coverage, malicious mischief and vandalism and such other hazards in such amounts as may reasonably be required by Lender for the full insurable value thereof, but in any case in such amounts as to negate the Borrower being a co-insurer in the event of the occurrence of a fire or other insurance casualty. Borrower shall also provide and keep in effect comprehensive public liability insurance with such limits for personal injury and death and property damage as Lender may reasonably require, and will also keep in effect upon the request of Lender, rent loss insurance, and/or business

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

interruption insurance, employer's liability and workmen's compensation insurance, in such amounts as Lender may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts reasonably satisfactory to Lender, with standard mortgagee loss payable clauses attached to all policies in favor of and in form satisfactory to Lender, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days prior written notice to the Lender. Borrower shall deliver the original of all policies, including additional and renewal policies, to Lender, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration. If any renewal policy is not delivered to Lender thirty (30) days before the expiration of any existing policy or policies, with evidence of premium paid, Lender may, but is not obligated to, obtain the required insurance on behalf of Borrower (or insurance in favor of Lender alone) and pay the premiums thereon. Any monies so advanced shall be so much additional indebtedness secured hereby and shall become immediately due and payable with interest thereon at an interest rate which is five per cent (5%) in excess of the rate set forth in the Note. So long as any sum remains due hereunder or under the Note, Borrower covenants and agrees that it shall not place, or cause to be placed or issued, any separate casualty, fire, rent loss, or liability insurance from the insurance required to be maintained under the terms hereof, unless in each such instance the Lender herein is included therein as the payee under a standard mortgagee's loss payable clause. Application by the Lender of any of the proceeds of such insurance to the indebtedness hereby secured shall not excuse the Borrower from making all monthly payments due hereunder.

4. Borrower shall, subject to the provisions hereof, restore and rebuild any buildings improvements now or at anytime upon said property and destroyed by fire or other casualty so as to be of at least equal value and substantially the same character as prior to such damage or destruction. In any case, where the insurance proceeds are made available for rebuilding and restoration, such proceeds shall be disbursed upon the disbursing party being furnished with satisfactory evidence of the estimated cost of completion thereof and with architects certificates, waivers of lien, contractors and sub-contractors sworn statements and other evidence of cost and payment so that the disbursing party can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics lien claims. No payment prior to the final completion of the work shall exceed ninety per cent (90%) of the value of the work performed from time to time and at all times the undisbursed balance of such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If the cost of rebuilding, repairing or restoring the buildings and improvements can reasonably exceed the sum of \$100,000, then the Lender shall approve plans and specifications of such work before such work shall be commenced. Any surplus which remains out of said insurance proceeds after payment of such costs of building or restoring shall at the option of the Lender be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto without interest.

5. In the case of loss, the Lender is hereby authorized either (a) to settle and adjust any claim under any insurance policies with the reasonable consent of Borrower, or (b) to allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss. In either case Lender is authorized to collect and receipt for any such insurance money. In case of any such loss or damage, if in Lender's sole but reasonable judgment and determination, the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

improvements to the mortgaged Premises cannot be restored and completed, or in the event in Lender's sole but reasonable judgment and determination the funds collected from any such insurance settlements are deemed insufficient to pay for the full and complete restoration and repair of such damage, Lender shall have the right to collect any insurance proceeds and after thirty (30) days written notice to Borrower apply the same toward payment of the indebtedness secured hereby, after deducting therefrom all expenses and fees of collection, with the further proviso that should the net insurance proceeds be insufficient to pay the then existing indebtedness secured hereby together with all accrued interest, fees and charges, Lender may, in its sole but reasonable discretion, after thirty (30) days prior written notice to Borrower, declare the entire unpaid balance to be immediately due and payable, and Lender may then treat the same as in the case of any other default hereunder. If however, in Lender's sole but reasonable judgment and determination, the damage sustained to the Premises can be restored in apt time, and, further, in Lender's sole but reasonable discretion and determination, the funds recovered from such loss (either alone or with additional funds deposited by Borrower) are, in Lender's judgment sufficient to pay the full and complete cost of such restoration, such funds will be made available for disbursement by Lender on presentation of good and sufficient architect's certificates and waivers of lien; provided, however, that should any insurance company have, in the opinion of Lender, a defense against Borrower (but not against Lender) to any claim for payment due to damage or destruction of the Premises or any part thereof by reason of fire or other casualty submitted by Lender or any part on behalf of Lender, or should such company raise any defense against Lender (but not against Borrower) to such payment, then Lender may, at its option, whether or not Lender has received funds from any insurance settlements, declare the unpaid balances to be immediately due and payable, and Lender may then treat the same as in the case of any other default hereunder. Provided however, that nothing contained in this Mortgage shall create any responsibility or obligation on the Lender to collect any amount owing on any insurance policy to rebuild, repair or replace any damaged or destroyed portion of the Premises or any improvements thereon or to perform any act hereunder.

6. Borrower shall comply with all statutes and ordinances, of any federal, state or municipal authority applicable to the premises (including, but not limited to, zoning ordinances, variances, and nonconforming uses applicable to the Premises). Borrower shall perform all covenants and conditions under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the Premises.

7. Borrower shall keep the Premises free from liens of mechanics and materialmen and from all other liens, charges, and encumbrances of whatever nature superior or equal in priority to the lien of this Mortgage, regardless of whether the same arise voluntarily or involuntarily, and shall not commit waste thereto.

8. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is any legal proceeding that may affect Lender's rights in the Property, then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action hereunder, it need not, and any action shall be in its sole and absolute discretion. Any amounts

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

disbursed by Lender hereunder shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon demand from Lender to Borrower requesting payment.

9. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower reasonable notice at the time of or prior to an inspection.

10. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned to and shall be paid to Lender. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, all proceeds shall be paid to Lender and the sums secured by this Security Instrument shall be reduced by the amount of the proceeds. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemner offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the date the notice is given, Lender is authorized to collect and apply the proceeds at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the payments referred to herein or in the Note secured hereby.

11. Any extension of the time for payment or other modification hereof or of the Note secured by this Security Instrument granted by Lender to Borrower shall not operate to release the liability of the Borrower, or of the Co-Borrowers.

12. This Security Instrument shall be governed by the law of the State of Illinois. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable. Notwithstanding the foregoing, if enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Security Instrument unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies set forth herein or in the Note.

13. Borrower, without any cost and expense to Lender, shall (i) at all times perform all material covenants, conditions and agreements contained in all leases of the Premises, if any, on the part of the landlord thereunder to be kept and performed, (ii) enforce all of the material covenants, conditions and agreements of such leases on the part of the lessees to be kept and performed. Any material default by Lessor in Lessors' obligation in a lease, or under any Assignment of Rents given as additional security for the indebtedness secured hereby, shall constitute a default hereunder on account of which the whole of the indebtedness secured hereby shall at once, at the option of the Lender, become immediately due and payable without notice to the Borrower subject to any applicable grace period. Nothing in this Mortgage or in any

96978724

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

other documents relating to the loan secured hereby shall be construed to obligate Lender, expressly or by implication, to perform any of the covenants of Borrower, as landlord, tenant or assignor, under any of the leases assigned to Lender or to pay any sum of money or damages therein provided to be paid by the landlord or landlord's assignee, each and all of which covenants and payments Borrower agrees to perform and pay, and further agrees to indemnify and to hold Lender harmless therefrom.

14. Lender, without notice, and without regard to the consideration, if any, paid therefore, and notwithstanding the existence at that time of any inferior liens, may, in its sole discretion, release any part of the Premises or any person liable for any indebtedness secured hereby, whether as co-maker or guarantor, without in anyway affecting the liability of any party to the Note and this Mortgage and without in any way affecting the priority of the lien of this Mortgage. Such agreement shall not, in anyway, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity remaining personally obligated to pay the indebtedness secured hereby.

15. Any costs, damages, expenses or fees, including reasonable attorneys' fees, incurred by Lender in connection with (i) sustaining the lien of this Mortgage or its priority (ii) protecting or enforcing any of Lender's rights hereunder, (iii) recovering any indebtedness secured hereby, shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Borrower on demand, with interest thereon at a rate set forth in the Note.

16. In order to further secure said indebtedness, and as a part of the consideration herefore, the Borrower hereby assigns, transfers and sets over unto Lender, and/or its successors and assigns, all the rents now due or which may hereafter become due under or by virtue of any lease, either oral or written, or any letting of, or any agreement for the use or occupancy of any part of the premises herein described, which may have been heretofore or may be hereafter made or agreed to, or which may be made or agreed to by the Lender under the power herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such leases and agreements and all the avails thereunder unto the Lender and especially those certain leases and agreements now existing on the property hereinabove described.

Borrower hereby irrevocably appoints the said Lender the agent of the Borrower for the management of said property, and does hereby authorize the Lender to let and re-let said premises or any part thereof, according to its own discretion, and to bring or defend any suits in connection with said premises, in its own name or in the names of the Borrower, as it may consider expedient, and to make such repairs to the premises as it may deem proper or advisable, and to do anything in and about said premises that the Borrower might do, hereby ratifying and confirming anything and everything that the said Lender may do.

It is understood and agreed that the Lender shall have the power to use and apply said avails, issues and profits toward the payment of any present or future indebtedness or liability of the Borrower to the Lender, due or to become due, or that may hereafter be contracted, and also toward the payment of all expenses for the care and management of said premise including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing said premises and collecting rents and the expense for such attorneys, agents, and servants as may reasonably be necessary.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

It is understood and agreed that the Lender will not exercise its right under this assignment unless default shall occur hereunder, or under the terms of the Note secured hereby, the terms of which are hereby incorporated herein.

It is further understood and agreed, that in the event of the exercise of this assignment, the Borrower will pay rent for the premises occupied by the Borrower at the prevailing rate per month therefore, and a failure on the part of the Borrower to promptly pay said rent on the first day of each and every month shall, in and of itself constitute a forcible entry and detainer and the Lender may in its own name and without any notice or demand, maintain an action of forcible entry and detainer and obtain possession of said premises. This assignment shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto and shall be construed as a Covenant running with the land, and shall continue in full force and effect until all of the indebtedness or liability of the Borrower to the said Lender shall have been fully paid, at which time this assignment shall terminate.

17. It shall constitute an event of default under this Mortgage when (i) any default occurs in the payment, when due, of the principal and interest on the indebtedness evidenced by the Note, (ii) any default occurs in the performance of any other term, covenant or condition in this Mortgage and such event of default remains uncured for a period of thirty (30) days after written notice thereafter, or (iii) an event of default occurs under the Note or any other instrument or document tendered to Lender in connection herewith including but not limited to any modifications or amendments hereto, the Loan Agreement, the Loan Commitment Letter, and any other agreement with regard hereto, which default remains uncured for a period of thirty (30) days after written notice to Borrower.

In addition to any other remedy herein specified, if any default under this Mortgage shall occur, Lender may immediately after the expiration of any applicable grace period without a cure being affected, at its option, (i) declare the entire indebtedness secured hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by Borrower) whereupon the same shall become immediately due and payable, (ii) institute proceedings for the complete foreclosure of this Mortgage, (iii) institute proceedings to collect any delinquent installment or installments of the entire indebtedness secured hereby without accelerating the due date of the entire indebtedness, (iv) take such steps to protect and enforce its rights whether by suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, or (v) enforce this Mortgage in any other manner permitted under the laws of the State of Illinois.

In any case in which, under the provisions of this Mortgage, Lender has a right to institute foreclosure proceedings, upon demand of Lender, Borrower shall surrender to Lender and Lender shall be entitled to take actual possession of the Premises, and may, as agent of Borrower, or in its own name as Lender and under the powers herein granted: (i) operate, manage, and control the Premises and conduct the business, if any, thereof, either personally or by its agents, (ii) cancel or terminate any lease or sublease, (iii) extend or modify any then existing leases and make new leases, (iv) make all necessary repairs, alterations, additions, and improvements to the Premises which the Lender may deem appropriate, (v) receive all rents, issues and profits of the Premises, which shall be applied in payment of any and all amounts due

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

hereunder or under the Note secured hereby. At anytime after the filing of any action to foreclose this Mortgage, Borrower consents upon application by Lender to the appointment of a receiver of the Premises.

Borrower covenants and agrees that Borrower shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "moratorium laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. **BORROWER DOES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THIS MORTGAGE.**

18. Acceptance by Lender of any payment which is less than payment in full of amounts due and payable at the time of such payment shall not constitute a waiver of Lender's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of the Lender at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of Lender.

19. No delay in the exercise of or failure to exercise any remedy or right under this Mortgage shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default.

20. All notices to Borrower or Lender that are required in connection with this Mortgage shall be in writing, and shall be deemed given upon the earlier of the actual receipt thereof or five (5) days after mailing the same with postage prepaid via certified first class mail.

21. It is specifically agreed that time is of the essence of this Mortgage.

22. This Mortgage may not be changed or modified except by a writing signed by all parties hereto and all co-makers of the Note secured hereby.

23. This Mortgage and all provisions hereof shall be binding upon Borrower, Borrower's successors and assigns and all persons claiming under or through Borrower. All covenants, agreements, representations, warranties and indemnifications of Borrower shall be binding upon the beneficiaries of Borrower, and any other party claiming any interest in the premises under Borrower, and upon any and all makers and guarantors of the Note secured hereby. The beneficiaries of the trust, by their execution of the direction authorizing execution of this Mortgage, covenant and agree that the trust beneficiary or beneficiaries are individually liable for any loss, cost, expense, or damage incurred by Lender due to any misrepresentation of any material fact to Lender under or pursuant to the covenants, agreements, representations, warranties and indemnifications set forth herein, in the Note, or in any other Collateral and/or Loan Documents executed in regard hereto.

24. Borrower shall execute, acknowledge and deliver to Lender and to any subsequent holder of the Note secured hereby from time to time upon demand (and pay the cost of preparing and recording thereof) any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, and so as to reaffirm, to correct and to

50551/104

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

perfect the evidence of the obligation hereby secured and the lien of Lender to all or any part of the Premises intended to be hereby mortgaged, and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage.

25. If the Premises are now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the Act), the Borrower will keep the Premises covered for the term of the Note by flood insurance up to the maximum limit of coverage available under the Act.

26. Borrower warrants that the premises herein are free from environmental violations, and that the buildings and other improvements constructed on, under or above the subject real estate will be used and maintained in accordance with all applicable environmental regulations and the use of said buildings by Borrower, or Borrower's lessees, will not pollute the premises, or the atmosphere with smoke, fumes, noxious gases or particulate pollutants in violation of any such regulations; and in case Borrower (or said lessees) are served with notice of violation by any such environmental agency or other governmental or municipal body, that it will immediately cure such violations and abate whatever nuisance or violation is claimed or alleged to exist.

Borrower, its beneficiaries, and all makers and guarantors of the Note secured hereby, hereby indemnify and save Lender harmless of and from all loss, cost (including reasonable attorneys' fees) liability, and damages whatsoever incurred by Lender by reason of any violation of any applicable statute or regulation for the protection of the environment which occurs upon the Premises, or by reason of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation; provided that, to the extent that Lender is strictly liable under any such statute, Borrower's obligation to Lender under this indemnity shall likewise be without regard to fault on the part of Borrower with respect to the violation of law which results in liability to Lender. The obligations of Borrower, its beneficiaries, and all makers and guarantors of the Note secured hereby, under this paragraph shall survive any termination or satisfaction of this Mortgage.

27. This Mortgage shall be deemed a Security Agreement as defined in the Illinois Commercial Code. This Mortgage creates a security interest in favor of Lender in all property including all personal property, fixtures, and goods affecting property either referred to or described herein or in anyway connected with the use or enjoyment of the Premises. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in any Financing Statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such a Financing Statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and the hereby stated intention of the parties hereto, that everything used in connection with the production of income from the Premises and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any

96978724

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Lender, (iii) any such item is referred to or reflected in any such Financing Statement so filed at anytime.

28. Borrower, its beneficiaries, and all makers of the Note secured hereby, will protect, indemnify and save harmless Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' fees and expenses), imposed upon or incurred by or asserted against Lender by reason of (a) the ownership of the Premises or any interest therein or receipt of any rents, issues, proceeds or profits therefrom; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, or curbs, adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, the adjacent parking areas, streets or ways; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Mortgage; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof. Any amounts payable to Lender by reason of the application of this paragraph shall constitute additional indebtedness which is secured by this Mortgage and shall become immediately due and payable upon demand therefore and shall bear interest at five per cent (5%) in excess of the Note rate of interest from the date loss or damage is sustained by Lender until paid. The obligations of Borrower under this paragraph shall survive any termination or satisfaction of this Mortgage.

29. This Mortgage secures any and all liabilities, obligations and indebtedness of Borrower, Borrower's beneficiaries, or any other maker or guarantor of the Note to Lender for payment of any and all amounts due under the Note or this Mortgage, and for any other liabilities, indebtedness or obligations of every kind and nature of Borrower, any other maker of the Note, or any guarantor of the Note to Lender, whether now or hereafter owing or arising, howsoever created, whether direct or indirect, joint or several, whether existing or arising, through discount, overdraft, purchase, direct loan, by operation of law or otherwise. Notwithstanding the foregoing, in no event shall the lien of this Mortgage secure outstanding liabilities in excess of one hundred fifty per cent (150%) of the original stated principal amount of the Note and this Mortgage.

30. In the event Borrower shall convey, assign, or alienate the property secured by this Mortgage, by Installment Agreement for Warranty Deed, by conveyance into a land trust, Assignment of Beneficial Interest, or otherwise, or any interest therein, or shall be divested of title or any interest therein in any manner or way whether voluntarily or involuntarily, without the written consent of the Owner of the Note secured hereby being first obtained, which consent may be unreasonably withheld, said Note Owner, to the fullest extent provided by law, shall have the right at its option to declare any indebtedness or obligation therein or herein, irrespective of the maturity date specified in said Note, immediately due and payable.

31. Borrower shall complete within a reasonable time any buildings or improvements now or at any time in process of erection upon said property.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

32. The Promissory Note secured by this Mortgage provides for an adjustable rate of interest based upon a percentage addendum to the lender's prime rate of interest. Lender's prime rate of interest is defined in the Promissory Note as being the highest prime rate as published in the money rates section of the **WALL STREET JOURNAL** on each business day of the month, as more particularly provided in the Note.

33. This Mortgage is given to secure a revolving credit loan and shall secure not only presently existing indebtedness under the Agreement but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, as are made within the term hereof or 20 years from the date hereof whichever shall first occur, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness secured hereby outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all indebtedness secured hereby including future advances, from the time of its filing for record in the recorder's or registrar's office of the county in which the real estate is located. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid balance of indebtedness secured hereby (including disbursements which the Mortgagee may make under this Mortgage, the Agreement, the Commitment Letter, or any other document with respect thereto) at any one time outstanding shall not exceed the principal amount set forth above, plus interest thereon and any disbursements which the Mortgagee may make under this Mortgage, the Agreement or any other document with respect hereto (e.g. for payment of taxes, special assessments or insurance on the real estate) and interest on such disbursements (all such indebtedness being hereinafter referred to as the "maximum amount secured hereby"). This Mortgage is intended to and shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.

IN WITNESS WHEREOF, borrower has caused these presents to be signed the 16th day of December, 1996.

CYRUS HOMES, INC., an Illinois corporation,

BY: _____

ATTEST: _____
Secretary

56978724

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

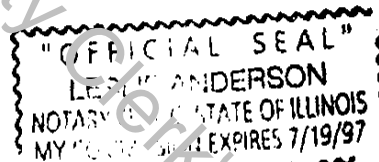
STATE OF ILLINOIS)
) SS
COUNTY OF L A K E)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, **DO HEREBY CERTIFY** that **GEORGE J. CYRUS** personally known to me to be the Chairman and Secretary of **CYRUS HOMES, INC.**, an Illinois corporation, and **WALTER H. KIHM, JR.**, personally known to me to be the Vice-President of said corporation, and 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 severally acknowledged that as such officers, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 16th day of December, 1996.


NOTARY PUBLIC

PREPARED BY:
STEPHEN G. APPLEHANS
STEPHEN G. APPLEHANS CHARTERED
1733 Washington Street
Waukegan Illinois 60085
(p) 847/336-6369
(f) 847/336-6409



96978724

UNOFFICIAL COPY

Property of Cook County Clerk's Office