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2002-08-19 11:39:16
Cook County Recorder 37.00

This Document Prepared By
and After Recording Return To:



0020907282

Eric M. Roberson
Chapman and Cutler
111 West Monroe Street
Chicago, Illinois 60603

SW 2D
8025288

Property of Cook County

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S
USE ONLY

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ASSIGNMENT OF LEASES AND RENTS

KNOW ALL MEN BY THESE PRESENTS, that ASTOR PLACE LIMITED PARTNERSHIP, an Illinois limited partnership, with an address c/o Kimball Hill, Inc., 5999 New Wilke Road, Suite 504, Rolling Meadows, Illinois 60008 (the "Assignor"), in consideration of the sum of One Dollar and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, do hereby assign, transfer and set over unto HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation ("Assignee"), with an office at 111 West Monroe Street, Chicago, Illinois 60690, all right, title and interest of the Assignor in, under or pursuant to any and all present or future leases or subleases, whether written or oral, or any lettings of possession of, or any agreements for the use or occupancy of, the whole or any part of the real estate and premises hereinafter described which the Assignor may have heretofore made or agreed to or may hereafter make or agree to, or which may be made or agreed to by the Assignee under the powers hereinafter granted, including all amendments and supplements thereto and renewals thereof at any time made, all relating to the fee simple estate in the real estate situated in the County of Cook, State of Illinois, described in Schedule I attached hereto and made a part hereof and the improvements now or hereafter erected thereon (the "premises"), including, without limiting the generality of the foregoing, all right, title and interest of Assignor in and to all the rents (whether fixed or contingent), earnings, renewal rents and all other sums due or which may hereafter become due under or by virtue of the leases and all rights under guarantees or against guarantors of the obligations of lessees under such leases (individually a "Lease" and collectively, the "Leases").

This Assignment is made and given as collateral security for, and shall secure the payment in full of all principal of and interest on the indebtedness evidenced by (i) that certain revolving promissory note in the principal amount of \$4,800,000 ("Note A"), (ii) that certain revolving promissory note in the principal amount of \$4,000,000 ("Note B") and (iii) that certain term promissory note in the principal amount of \$11,938,000 (the "Term Note") all made payable to the order of Assignee in and by which Assignor, promises to pay said principal sum, together with interest on the balance of principal outstanding and unpaid thereon at rates and at

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June 19, 2002

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times specified in the Loan Agreement (Note A, Note B and the Term Note any and all extensions and renewals thereof and any notes issued in replacement or substitution therefore and any notes issued in replacement or substitution therefor being collectively referred to as the "Notes"), (iv) the performance of all obligations, covenants, promises and agreements contained herein or in those certain Construction Mortgage and Security Agreement with Assignment of Rents bearing even date herewith from the Assignor to the Assignee (such Mortgage, as it may be from time to time amended, modified, supplemented or extended, is hereinafter referred to as the "Mortgage"), conveying and mortgaging Assignor's premises as security for the Notes, and any and all other indebtedness intended to be secured thereby, (v) the observance and performance of all obligations, covenants, promises and agreements of the Assignor pursuant to that certain Construction Loan Agreement dated as of even date herewith executed by Assignor and the Assignee, (as amended from time to time the "Loan Agreement") and in any other loan or other agreement setting forth terms and conditions applicable to the indebtedness evidenced by the Notes or providing collateral security therefor, and (vi) the payment of all expenses and charges, legal or otherwise, paid or incurred by the Assignee in collecting or enforcing the payment of the Notes or the other indebtedness referred to in the foregoing clauses (i), (ii), (iii), (iv) and (v) or in realizing upon or protecting any collateral security therefor, including without limitation this Assignment (the Notes and other indebtedness, obligations and liabilities referred to in clauses (i), (ii), (iii) (iv), (v) and (vi) above being hereinafter collectively referred to as the "indebtedness hereby secured").

The Assignor does hereby irrevocably constitute and appoint the Assignee the true and lawful attorney-in-fact of the Assignor with full power of substitution for Assignor and in Assignor's name, place and stead, to ask, demand, collect, receive, receipt for, sue, compound and give acquittance for any and all sums due or to become due under any Lease, with full power to settle, adjust or compromise any claim thereunder as fully as the Assignor could do, and to endorse the name of the Assignor on all commercial paper given in payment or in part payment thereof, and in the Assignee's discretion to file any claim or take any other action or proceeding, either in the Assignee's name or in the name of the Assignor or otherwise, which the Assignee may deem necessary or appropriate to collect any and all sums due or to become due under any Lease, or which may be necessary or appropriate to protect and preserve the right, title and interest of the Assignee in and to such sums and the security intended to be afforded hereby.

The Assignor warrants to the Assignee that the Assignor has good right to make and be bound by this Assignment and that the Assignor has not heretofore alienated, assigned, pledged or otherwise disposed of any of the rights, rents and other sums due or which may hereafter become due and which are intended to be assigned hereunder.

Notwithstanding the foregoing provisions making and establishing the present and absolute transfer and assignment of all rents, earnings, income, issues and profits as aforesaid, and so long as no event of default shall exist under the Notes, the Loan Agreement or the Mortgage, the Assignor shall have the right and license to collect, use and enjoy all rents and other sums due or to become due under and by virtue of any Lease as they respectively become due, but not more than 30 days in advance and to enjoy all of the rights and privileges of the lessor under any Lease, including without limitation the right to enforce the obligations of any lessee under any Lease.

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The Assignor hereby irrevocably consents to and authorizes and directs that the lessee or tenant under any Lease upon demand and notice from the Assignee of the Assignee's right to receive the rents and other sums hereunder, shall pay such rents and other sums to the Assignee without any obligation on the part of such lessee or tenant to determine the actual existence of any default or event claimed by the Assignee as the basis for the Assignee's right to receive such rents or other sums and notwithstanding any notice from or claim of the Assignor to the contrary. The Assignor hereby waives any right or claim against any lessee or tenant for any such rents and other sums paid by such lessee or tenant to the Assignee.

Without limiting any legal rights of the Assignee as the absolute assignee of the rents, issues and profits of the premises and in furtherance thereof, Assignor agrees that in the event of a default under the Mortgage, whether before or after the Notes are declared due in accordance with their terms or under the terms of the Mortgage and whether before or after satisfaction of any requirement of the lapse of time or the giving of notice or both on which acceleration after default may be conditioned, the Assignee may, at its option, to the extent permitted by law, (i) take actual possession of the premises hereinabove described, or of any part thereof, personally or by Assignee or attorney, as for condition broken, and with or without force, enter upon, take, and maintain possession of all or any part of said premises together with all documents, books, records, papers and accounts relating thereto, and exclude the Assignor and its agents or servants therefrom and hold, operate, manage and control the premises, and at the expense of the Assignor, the cost and expenses of what shall be secured hereunder, from time to time cause to be made all necessary or proper repairs, renewals, replacements, useful alterations, additions, betterments and improvements to the premises as may seem judicious, and pay taxes, assessments and prior or proper charges on the premises, or any part thereof, and insure and reinsure the same, and lease the premises in such parcels and for such times and on such terms as Assignee may deem fit, including leases for terms expiring beyond the maturity of the indebtedness secured by the Mortgage, and cancel any lease or sublease for any cause or on any ground that would entitle the Assignor to cancel the same, and in every such case have the right to manage and operate the premises and to carry on the business thereof as the Assignee shall deem proper or (ii) with or without taking possession of the premises proceed to enforce the Leases and collect all sums due or to become due thereunder, *provided, however,* that by so doing Assignee shall not be deemed to be an assignee-in-possession or to have assumed or become responsible or liable for any obligations of Assignor arising under the Leases or in respect thereof or (iii) have a receiver appointed of all or any portion of the premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Assignor hereby consents to the appointment of such receiver and shall not oppose any such appointment.

After payment of all proper charges and expenses, including the just and reasonable compensation for the services of Assignee, its attorneys, agents, clerks, servants and others employed by Assignee in connection with the operation, management and control of the premises and the conduct of the business thereof, and, to the extent permitted by law, such further sums as may be sufficient to indemnify Assignee against any liability, loss or damage on account of any matter or thing done in good faith in pursuance of the rights and powers of Assignee hereunder, Assignee shall credit the net amount of income which Assignee may receive by virtue of this Assignment and from the premises to any and all amounts due or owing to

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Assignee under the terms and provisions of the Notes, the Mortgage and the Loan Agreement, whether or not the same may then be due or be otherwise adequately secured. Assignee shall have the right, but not the duty, to apply such net income to the discharge of any other lien or charge upon the premises or to completion of the improvements being financed out of the proceeds of the Notes. The manner of the application of such net income and the item which shall be credited shall be within the sole discretion of Assignee. Assignee shall be subrogated to any lien or charge discharged out of the rents, income and profits of the premises.

The Assignor hereby further covenants that the Assignor will upon request of the Assignee execute and deliver such further instruments and do and perform such other acts and things as the Assignee may reasonably deem necessary or appropriate to vest in and secure to the Assignee the rights and rents which are intended to be assigned to the Assignee hereunder. The Assignor irrevocably waives any right it now or hereafter may have to offset any claim or liability owing from it to any obligor on a Lease against sums due or to become due from such obligor under a Lease.

Assignor covenants and agrees (i) to observe and perform all of the obligations imposed on it under the Leases and not to do or permit to be done anything to impair the security thereof, (ii) except as otherwise provided in the Loan Agreement, not to assign or encumber further its rights under the Leases or its rights to the rents or other sums due or to become due thereunder, (iii) except as otherwise provided in the Loan Agreement, not to suffer or permit any of the Leases to be subordinated to any other liens or encumbrances whatsoever, any such subordination to be null and void unless done with the prior written consent of Assignee, and (iv) to comply with all of the provisions of the Loan Agreement regarding Leases and amendments, modifications and terminations thereof.

The acceptance by the Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of actual physical possession of the premises by the Assignee, be deemed or construed to constitute the Assignee an assignee in possession nor thereafter impose any obligation whatsoever upon the Assignee, it being understood and agreed that the Assignee does not hereby undertake to perform or discharge any obligation, duty or liability of the landlord or Assignor under any Leases or under or by reason of this Assignment. Assignee shall have no liability to Assignor or anyone for any action taken or omitted to be taken by it hereunder, except for liability to Assignor for Assignee's gross negligence or willful misconduct. Should the Assignee incur any liability, loss or damage under or by reason of this Assignment or for any action taken by the Assignee hereunder, or in defense against any claim or demand whatsoever which may be asserted against the Assignee arising out of any Lease, the amount of such liability, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the Default Rate (as such term is defined in the Mortgage) shall be secured by this Assignment and by the Mortgage, and the Assignor shall reimburse the Assignee therefor immediately upon demand, and Assignor's obligation so to pay shall survive payment of the indebtedness hereby secured and the release of this Assignment and the Mortgage.

The rights and remedies of the Assignee hereunder are cumulative and are not in lieu of, but are in addition to, any rights or remedies which the Assignee shall have under the Notes, the

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Mortgage or any other instrument or document or under applicable law and the exercise by Assignee of any rights and remedies herein contained shall not be deemed a waiver of any other rights or remedies of Assignee, whether arising under the Mortgage or otherwise, each and all of which may be exercised whenever Assignee deems it in its interest to do so. The rights and remedies of the Assignee may be exercised from time to time and as often as such exercise is deemed expedient and the failure of the Assignee to enforce any of the terms, provisions and conditions of this Assignment for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights hereunder.

The right of the Assignee to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to the Assignee shall, to the extent not prohibited by law, extend also to the period from and after the filing of any suit to foreclose the lien of the Mortgage, including any period allowed by law for the redemption of the premises after any foreclosure sale.

This Assignment shall be assignable by the Assignee, and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective executors, administrators, legal representatives, successors and assigns of each of the parties hereto. All provisions hereof are severable and if any provisions hereof shall be held invalid or unenforceable, the validity and enforceability of the remaining provisions hereof shall in no way be affected thereby.

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20th IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed as of this day of June, 2002.

ASTOR PLACE LIMITED PARTNERSHIP, an Illinois limited partnership

By: Kimball Hill, Inc., its sole general partner

By: 

Printed Name: David K. Hill

Its: Chairman and CEO

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Eileen M. Connelly a Notary Public in and for said County, in the State aforesaid, do hereby certify that David K. Hill, Chairman and CEO of Kimball Hill, Inc., an Illinois corporation, the sole general partner of Astor Place Limited Partnership, an Illinois limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act and deed of said corporation and partnership for the uses and purposes therein set forth.

Given under my hand and seal, this 19 day of June, 2002.

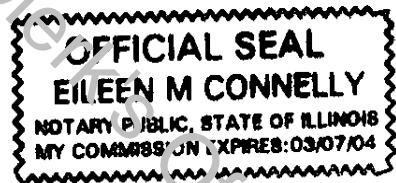
Eileen M. Connelly
Notary Public

Eileen M. Connelly
Type or Print Name

(SEAL)

My Commission Expires:

03/07/04



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PARCEL 1:

LOTS 1 AND 2, AND OUTLOTS A AND B IN THE ASTOR PLACE SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 12, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 7, 2002 AS DOCUMENT 20637721, IN COOK COUNTY, ILLINOIS.

PARCEL 2: (INTENTIONALLY OMITTED)

PARCEL 3:

THAT PART OF LOT 1 IN HENRY GRANDT AND OTHERS SUBDIVISION OF PART OF SECTIONS 12 AND 13 TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 29, 1923 AS DOCUMENT NUMBER 172867, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE NORTH LINE OF SAID LOT 1, 55.42 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 1, THENCE WEST ALONG THE NORTH LINE OF SAID LOT 1, 829.25 FEET, THENCE SOUTH 09 DEGREES 49 MINUTES 16 SECONDS EAST, 71.04 FEET TO A POINT 70.0 FEET SOUTH OF THE NORTH LINE OF SAID LOT 1; THENCE EAST PARALLEL WITH THE NORTH LINE OF SAID LOT 1, 850.60 FEET TO A POINT 70.0 FEET SOUTH OF THE NORTH LINE OF SAID LOT 1 AND 50.0 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 1; THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID LOT 1, 77.59 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 4:

20 FOOT EASEMENT FOR SANITARY SEWER, CREATED BY EASEMENT AGREEMENT MADE BY SEVEN HUNDRED ELM ASSOCIATES, INC., AN ILLINOIS CORPORATION AND KIMBALL HILL, INC., AN ILLINOIS CORPORATION DATED APRIL 18, 2002 AND RECORDED APRIL 25, 2002 AS DOCUMENT 0020473730 OVER THAT PART OF LOT 1 IN HENRY GRANDT AND OTHERS SUBDIVISION OF PART OF SECTIONS 12 AND 13, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 29, 1923 AS DOCUMENT 7790590, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID LOT 1 AND THE CENTERLINE OF MILWAUKEE AVENUE; THENCE NORTH 89 DEGREES 17 MINUTES 38 SECONDS WEST, ALONG SAID NORTH LINE, 397.77 FEET; THENCE SOUTH 00 DEGREES 28 MINUTES 24 SECONDS EAST, 70.01 FEET TO A LINE DRAWN 70.0 FEET, MEASURED AT RIGHT ANGLES, SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 1, FOR THE POINT OF BEGINNING, THENCE NORTH 89 DEGREES 17 MINUTES 28 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 11.30 FEET TO A LINE 400.00 FEET, MEASURED AT RIGHT ANGLES; WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF LOT 1; THENCE SOUTH 24 DEGREES 50 MINUTES 56 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 21.07 FEET; THENCE NORTH 00 DEGREES 28 MINUTES 24 SECONDS WEST, 69.02 FEET TO THE POINT OF BEGINNING.

PARCEL 5:

50 FOOT TEMPORARY CONSTRUCTION EASEMENT AS CREATED BY AGREEMENT MADE BY SEVEN HUNDRED ELM ASSOCIATES, INC., AN ILLINOIS CORPORATION AND KIMBALL HILL, INC., AN ILLINOIS CORPORATION DATED APRIL 18, 2002, AND RECORDED APRIL 25, 2002 AS DOCUMENT 0020473730 OVER THAT PART OF LOT 1 IN HENRY GRANDT AND OTHERS SUBDIVISION OF PART OF SECTIONS 12 AND 13, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 29, 1923 AS DOCUMENT 7790590, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF SAID LOT 1 AND THE CENTERLINE OF MILWAUKEE AVENUE; THENCE NORTH 89 DEGREES 17 MINUTES 38 SECONDS WEST, ALONG SAID NORTH LINE 379.77 FEET, THENCE SOUTH 00 DEGREES 28 MINUTES 24 SECONDS EAST, 70.01 FEET TO A LINE DRAWN 70.0 FEET, MEASURED AT RIGHT ANGLES, SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 1; THENCE NORTH 89 DEGREES 17 MINUTES 38 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE, 20.00 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUING NORTH 89 DEGREES 17 MINUTES 38 SECONDS WEST, ALONG SAID LAST DESCRIBED PARALLEL LINE, 50.01 FEET; THENCE SOUTH 00 DEGREES 28 MINUTES 24 SECONDS EAST, 50.01

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FEET TO A LINE DRAWN 100.0 FEET, MEASURED AT RIGHT ANGLES, SOUTH OF AND PARALLEL WITH THE NORTH LINE OF LOT 1; THENCE SOUTH 89 DEGREES 17 MINUTES 38 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE 50.01 FEET; THENCE NORTH 00 DEGREES 28 MINUTES 24 SECONDS WEST, 50.01' TO THE POINT OF BEGINNING.

PERMANENT INDEX NUMBERS: 03-12-300-050-0000
03-12-300-109-0000

PROPERTY ADDRESS:

642 S. MILWAUKEE AVE.
WHEELING, ILLINOIS 60090

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