

1/2

UNOFFICIAL COPY

0021405487

329 0.36 81 001 Page 1 of 7

2002-12-18 11:36:55

Cook County Recorder

36.00

This Document Prepared By
and After Recording Return To:

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



0021405487

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE ONLY

7
D

SECOND AMENDMENT TO MORTGAGE AND
SECURITY AGREEMENT WITH ASSIGNMENT OF RENTS

629131 Cook (1)

This Second Amendment to Mortgage and Security Agreement with Assignment of Rents (this "Amendment") is dated as of June 30, 2002, from CHAPEL CROSSING LIMITED PARTNERSHIP, an Illinois limited partnership with its mailing address c/o Kimball Hill, Inc., 5999 New Wilke Road, Suite 504, Rolling Meadows, Illinois 60008 (hereinafter referred to as the "Mortgagor"), to HARRIS TRUST AND SAVINGS BANK, an Illinois banking corporation ("Harris") with its mailing address at 111 West Monroe Street, Chicago, Illinois 60603 and as agent for the Banks (as defined in the Loan Agreement, which is defined below) (Harris in its capacity as agent for said Banks, together with any successors, is hereinafter referred to as "Agent");

WITNESSETH THAT:

WHEREAS, the Mortgagor and the Agent have entered into that certain Construction Mortgage and Security Agreement with Assignment of Rents dated as of July 12, 1999, recorded with the Recorder of Cook County, Illinois as Document No. 99700908, as amended by that certain First Amendment to Mortgage and Security Agreement with Assignment of Rents dated as of October 31, 2000, recorded with the Recorder of Cook County, Illinois as Document No. 00949275 (as may be amended and supplemented from time to time, the "Mortgage");

WHEREAS, Mortgagor executed and delivered revolving promissory notes dated as of October 31, 2000 in an aggregate principal amount not to exceed U.S. \$105,000,000, such revolving promissory notes made payable to the order of each Bank in their respective Revolving Credit Commitments (as defined in the Loan Agreement) in and by which Mortgagor promised to pay said principal sum (or so much thereof as may be outstanding at the maturity thereof),

BOX 333-CT

629131
52 MS-DN

Property of Cook County Clerk's Office

UNOFFICIAL COPY

together with interest on the balance of principal from time to time outstanding and unpaid thereon at the rates and at the times specified in the Loan Agreement (hereinafter defined) with a final maturity of all principal and interest on or before July 1, 2002, as the same may be extended, is herein referred to as the "*Termination Date*", as provided for in the Loan Agreement described below (said revolving promissory notes and any and all extensions and renewals thereof and any notes issued in replacement or substitution therefor being individually referred to as "*Note*" and collectively referred to as the "*Notes*"); and

WHEREAS, the Notes have been issued under and subject to the provisions of that certain First Amended and Restated Revolving Construction Loan Agreement dated as of October 31, 2000 among Mortgagor, Willoughby Farms New Dimensions Limited Partnership, Willoughby Farms Limited Partnership, Chapel Crossing Limited Partnership, The Wexford Limited Partnership and the borrowers from time to time party thereto, the Agent and the Banks from time to time party thereto (Harris and the other banks from time to time party to the Loan Agreement are hereinafter collectively referred to as the "*Banks*" and each individually as a "*Bank*") (such Loan Agreement, as the same may from time to time be modified, amended or restated, being herein referred to as the "*Loan Agreement*"), and the Notes evidence the \$105,000,000 revolving loan made pursuant to the Loan Agreement; and

WHEREAS, pursuant to the Loan Agreement, Harris has issued or may issue one or more letters of credit (individually a "*Letter of Credit*" and collectively the "*Letters of Credit*") for the account of Mortgagor in an aggregate face amount not to exceed \$15,000,000 and with expiry dates in no event later than the Termination Date, which Letters of Credit are to be issued upon and subject to the terms of separate applications and agreements for Letters of Credit to be executed by Mortgagor (individually an "*Application*" and collectively the "*Applications*");

WHEREAS, the Mortgage is to continue to secure all indebtedness now secured thereby, this Amendment being executed and delivered to confirm and assure the foregoing;

NOW, THEREFORE, for and in consideration of the execution and delivery by the Mortgagor of this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the second full paragraph on page 2 of the Mortgage is hereby deleted and substituted with the following, to wit:

1. "To secure (i) the payment of the principal and premium, if any, of and interest on the Notes as and when the same becomes due and payable (whether by lapse of time, acceleration or otherwise) and all advances now or hereafter evidenced thereby, (ii) the payment of all sums owing in connection with the Letters of Credit, including the obligation of Mortgagor to reimburse Harris for any draws under the Letters of Credit (collectively, the "*Reimbursement Obligations*") as and when the same become due and payable, (iii) the payment of all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms and the observance and (iv) the observance and performance of all covenants and agreements contained herein or in the Construction Loan Agreement, the Notes, the Letters of Credit, the Applications or in any other instrument or document at any time evidencing or securing any of the foregoing or setting forth terms and conditions applicable thereto (all of such indebtedness, obligations and liabilities described in clauses (i), (ii), (iii) and (iv) above being hereinafter

UNOFFICIAL COPY

collectively referred to as the "*indebtedness hereby secured*"), Mortgagor does hereby grant, bargain, sell, convey, mortgage, warrant, assign, and pledge unto Agent, its successors and assigns, and grant to Agent, its successors and assigns a security interest in all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI and VII below, all of the same being collectively referred to herein as the "*Mortgaged Premises*" and Mortgagor does hereby grant to Agent, its successors and assigns, a security interest in and agrees and acknowledges that Agent has and shall continue to have a security interest in that portion of the Mortgaged Premises owned by the Mortgagor described in Granting Clauses I, II, III, IV, V, VI and VII."

2. The Mortgage is hereby amended as follows:

(a) deleting the date "*July 1, 2002*" appearing in the eighth and ninth lines of the first "WHEREAS" clause and substituting therefor "*July 1, 2003*";

(b) adding the names "*Bolingbrook Limited Partnership, The Glen Townhomes Limited Partnership*" to the second "WHEREAS" clause after the name "*The Wexford Limited Partnership*"; and

(c) deleting "*First Amended and Restated Revolving Construction Loan Agreement dated as of October 31, 2000*" appearing in the second "WHEREAS" clause and substituting therefor "*Second Amended and Restated Revolving Construction Loan Agreement dated as of June 30, 2001, as amended by that certain Third Amended and Restated Revolving Construction Loan Agreement dated as of June 30, 2002.*"

3. Mortgagor hereby represents and warrants to Agent that as of the date hereof each of the representations and warranties set forth in the Mortgage as amended hereby are true and correct and that no Event of Default (as such term is defined in the Mortgage), or any other event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, has occurred and is continuing or shall result after giving effect to this Amendment. Mortgagor hereby repeats and reaffirms all covenants and agreements contained in the Mortgage, each and all of which shall be applicable to all of the indebtedness secured by the Mortgage as amended hereby and to all the properties, rights, interest and privileges subject to the Mortgage as amended hereby. The Mortgagor repeats and reaffirms its covenant that all the indebtedness secured by the Mortgage as amended hereby will be promptly paid as and when the same becomes due and payable.

4. All capitalized terms used herein without definition shall have the same meanings herein as they have in the Mortgage. The definitions provided herein of any capitalized terms shall apply to such capitalized terms as the same appear in the Mortgage as amended hereby, all to the end that any capitalized terms defined herein and used in the Mortgage as amended hereby shall have the same meanings in the Mortgage as amended hereby as are given to such capitalized terms herein. Without limiting the foregoing, all references in the Mortgage to the term "*indebtedness hereby secured*" shall be deemed references to all the indebtedness, obligations and liabilities secured by the Mortgage as amended hereby; all references in the

UNOFFICIAL COPY

Mortgage to the term "*Mortgaged Premises*" shall be deemed to mean and include the Mortgaged Premises as defined herein.

5. All of the provisions, stipulations, powers and covenants contained in the Mortgage shall stand and remain unchanged and in full force and effect except to the extent specifically modified hereby and shall be applicable to all of the indebtedness, obligations and liabilities secured by the Mortgage as amended hereby.

6. Mortgagor acknowledges and agrees that the Mortgage as amended hereby is and shall remain in full force and effect, and that the Mortgaged Premises are and shall remain subject to the lien and security interest granted and provided for by the Mortgage for the benefit and security of all the indebtedness hereby secured. Without limiting the foregoing, Mortgagor hereby agrees that, notwithstanding the execution and delivery hereof, (i) all rights and remedies of Agent under the Mortgage, (ii) all obligations of Mortgagor thereunder and (iii) the lien and security interest granted and provided for thereby are and as amended hereby shall remain in full force and effect for the benefit and security of all the indebtedness hereby secured, it being specifically understood and agreed that this Amendment shall constitute and be, among other things, an acknowledgment and continuation of the rights, remedies, lien and security interest in favor of Agent, and of the obligations of Mortgagor to Agent, which exist under the Mortgage as amended hereby.

7. No reference to this Amendment need be made in any note, instrument or other document making reference to the Mortgage, any reference to the Mortgage in any of such to be deemed to be a reference to the Mortgage as amended hereby. This instrument shall be construed and governed by and in accordance with the laws of the State of Illinois.

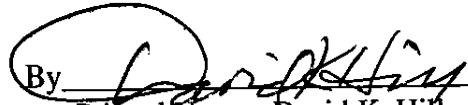
8. Wherever herein any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements by or on behalf of Mortgagor, or by or on behalf of Agent, or by or on behalf of the holder or holders of the indebtedness hereby secured contained in the Mortgage as amended hereby shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed by its member,
as of the day and year first above written.

CHAPEL CROSSING LIMITED PARTNERSHIP, an
Illinois limited partnership

By: Kimball Hill, Inc., an Illinois corporation
Its sole general partner

By 
Printed Name: David K. Hill
Its: CEO and Chairman

Property of Cook County Clerk's Office

21405487

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, HEREBY CERTIFY that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared David K. Hill, the CEO and Chairman of Kimball Hill, Inc., an Illinois corporation, the sole general partner of Chapel Crossing Limited Partnership, an Illinois limited partnership well known to be the person named in the foregoing instrument and that he/she acknowledged executing the foregoing instrument freely and voluntarily on behalf of said corporation and partnership.

WITNESS my hand and official in the County and State last aforesaid.

This 30th day of June, 2002.

Deborah S. Byerly
Notary Public



(SEAL)

Deborah S. Byerly
(Type or Print Name)

Commission Expires:

March 23, 2003

21405487

UNOFFICIAL COPY

SCHEDULE I

LEGAL DESCRIPTION

PARCEL 5: LOTS 48, 62, 63, 64 AND 65, 92, 96, 97, 100, 102, 104, 105, 106, 107, 108, 109, 110, 112, 113, 114, 115, 116, 118, 141, 142 AND 150; [OUTLOTS A, C, D AND E, AND CHAPEL LOT] IN CHAPEL CROSSING AT THE GLEN SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 23, 2000 AS DOCUMENT 00202939, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

Property Address: Glenview, IL

P.I.N. No.: [04-27-301-014]
[04-27-400-030]

1141317.01.05.B
1494129/EMR
12/13/02

21405487

Glenview
(Chapel Crossing)