

# UNOFFICIAL COPY

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## ASSIGNMENT OF LEASES AND RENTS

KNOW ALL MEN BY THESE PRESENTS, that the Harris Bank Hinsdale, National Association, not personally, but as Trustee under a Deed or Deeds in Trust delivered in pursuance of a Trust Agreement dated June 1, 1987, and known as Trust Number L-1633 (the "Trustee"), and Kimball Hill, Inc., as General Partner of the Kimball Hill Housing Partnership, an Illinois Limited Partnership (the "Beneficiary"), (Beneficiary and Trustee being hereinafter collectively referred to as "Assignors"), in consideration of the sum of ten and no/100 dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, does hereby assign, transfer, and set over unto Harris Bank Hinsdale, National Association (hereinafter referred to as the "Assignee"), all right, title, and interest of the Assignors or any of them, under or pursuant to any and all present or future leases or subleases, whether written or oral, or any lettings or 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 Assignors or any of them 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 power hereinafter granted, including all amendments and supplements to and renewals thereof at any time made (collectively the "Leases"), relating to that certain real estate situated in the County of Cook, State of Illinois, described in Exhibit A attached hereto and made a part hereof and the improvements now or hereafter thereon (the "premises"), including, without limiting the generality of the foregoing, all right, title, and interest of the Assignors or any of them 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 or against guarantors of the obligations of the leases and obligors under the Leases.

This Assignment is made and given as collateral security for, and shall secure: (i) the payment in full of all principal of and interest on those certain Notes of the Trustee bearing even date herewith payable to the order of the Assignee totaling the face principal sum of two million nine hundred ninety six thousand two hundred thirty and no/100 dollars (\$2,996,230.00), expressed to bear interest prior to maturity at the rate per annum of one and one half percent (1.50%) over the prime commercial rate of the Harris Bank Hinsdale, National Association from time to time in effect and after maturity until paid at the rate per annum determined by adding four and one half percent (4.50%) to the rate applicable thereto at maturity and having a final maturity of all principal and interest not required to be sooner paid of December 19, 1988, and any notes issued in extension or renewal thereof or in substitution therefor (the "Notes"); (ii) the performance of all obligations, covenants, promises, and agreements contained herein or in that certain Land Acquisition, Development and Construction Mortgage bearing even date herewith from the Trustee to the Assignee (the "Mortgage"), conveying and mortgaging the premises as security for the Notes and any and all other indebtedness intended to be secured thereby; (iii) the performance of all obligations, covenants, promises, and agreements of the Trustee or the Beneficiary contained in any loan or other agreements setting forth terms and conditions applicable to the loan evidenced by the Notes or providing collateral security therefore; and (iv) the payment of all expenses and charges, legal or otherwise, paid or incurred by the Assignee in realizing upon or protecting the indebtedness referred to in the foregoing clauses (i), (ii), and (iii) or any security therefore, including this Assignment (the Notes and other indebtedness, obligations, and liabilities referred to in clauses (i), (ii), (iii), and (iv) above being hereinafter collectively referred to as the "indebtedness hereby secured").

The Assignors do hereby irrevocably constitute and appoint the Assignee the true and lawful attorney of the Assignors with full power of substitution for Assignors and in Assignors' name, place, and stead to ask, demand, collect, receive, receipt for, sue for, 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 Assignors could do, and to endorse the name of the Assignors or any of them 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 Assignors or any of them or otherwise, which the Assignee may deem 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.

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The Beneficiary warrants to the Assignee that the Assignors have good right to make this Assignment and that the Assignors have 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.

This Assignment includes and establishes a present, absolute, and primary transfer and assignment of all rents, earnings, income, issues and profits of the premises, but so long as no event of default shall exist under the Notes or the Mortgage and no event shall exist which by lapse of time or service of notice, or both, has or would become an event of default thereunder, the Assignors 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.

The Assignors hereby irrevocably consent to and authorize and direct that the tenant or other obligor under any Lease upon demand and notice from the Assignee of the Assignee's right to receive rents and other sums hereunder, shall pay such rents and other sums to the Assignee without any obligation on the part of such tenant or other obligor 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, notwithstanding any notice from or claim of the Assignors or any of them to the contrary. The Assignors hereby waive any right or claim against any tenant or other obligor for any such rents and other sums paid by tenant or other obligor 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, Assignors agree that in the event of default under said Mortgage, whether before or after the Notes are declared due in accordance with its terms or under the terms of said Mortgage and whether before or after satisfaction of any requirement of the lapse of time or the giving of notice of both on which acceleration after default may be conditioned, the Assignee may, at its option, (i) take actual possession of the premises hereinabove described, or any part thereof, personally or by agent or attorney, as for condition broken, and with or without force and with or without process of law, 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 Assignors, their agents or servants, therefrom and hold, operate, manage, and control the premises, and at the expense of the premises, from time to time, cause to be made all necessary or proper repairs, renewals, replacements, useful alteration, 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 said Mortgage, and cancel any lease or sublease for any cause or on any ground which would entitle the Assignors or any of them to cancel the same and in every such case have the right to manage and operate the said premises and to carry on the business thereof as the Assignee shall deem proper; or (ii) with or without taking possession of the premises, Assignee may proceed to enforce the Leases and collect all sums due or to become due thereunder and by so doing Assignee shall not be deemed a mortgagee in possession nor to have assumed or become responsible or liable for any obligations of Assignors arising thereunder or in respect thereof.

Any sums received by Assignee under or by virtue of this Assignment shall be applied to the payment of or on account of the following in such order and manner as the Assignee may elect:

(a) to the payment of all proper charges and expenses, including the just and reasonable compensation for the services Assignee, its attorneys, agents, clerks, servants, and others employed in connection with the operation, management, and control of the premises and the conduct of business thereof and, if the Assignee shall elect, to the establishment of a reserve which shall be sufficient in Assignee's judgment to indemnify it against any liability, loss, or damage on account of any matter or thing done in good faith and in pursuance of the rights and powers contained herein;

(b) to the payment of any sum secured by a lien or encumbrance upon the premises;

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(c) to the cost of completing any improvements being constructed on or about the premises; and

(d) to the reduction of the indebtedness hereby secured, whether or not the same may then be due or be otherwise adequately secured.

The manner of application of such sums and the items which shall be credited or paid out of same shall be within the sole discretion of Assignee, and nothing herein contained shall obligate Assignee to use any such sums for a purpose other than reducing the indebtedness hereby secured unless it shall elect to do so. Assignee shall be subrogated to any lien discharged out of the rents, income, and profits of premises.

The Assignors hereby further covenant that the Assignors 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 more effectively to vest in and secure to the Assignee the rights and rents which are intended to be assigned to the Assignee hereunder. Assignors irrevocably waive any right they 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.

Assignors covenant and agree to observe and perform all of the obligations imposed on them under the Leases and not to do or permit to be done anything to impair the security thereof, not to execute any Lease on terms and conditions less satisfactory to the lessor than are usual and customary in leases with a similar term and for similar types of space in the general market area where the premises are located, not to assign further or encumber their rights under the leases or their rights to the rents or other sums due or to become due thereunder and not 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 written consent of the Assignee. Assignors further covenant and agree not to amend, modify, or terminate any of the Leases without the prior written consent of Assignee, provided that unless and until an event of default or any event which with the lapse of time, the giving of notice, or both, would constitute such an event of default has occurred under the terms of the Mortgage or Notes, Assignors may enter into amendments and modifications to Leases which do not adversely affect the security thereof and may terminate Leases if substantially concurrently with such termination, it shall have entered into a new Lease of the space which was the subject of the terminated Lease upon terms and conditions no less beneficial to them than those contained in the terminated Lease and with a lessee of creditworthiness at least equal to the terminated lessee; provided that, the foregoing to the contrary notwithstanding, no Lease shall be terminated if such termination would reduce the amount which any lender is then obligated to fund under any commitment issued to provide financing for the premises. Assignors further covenant and agree that they will, at the request of Assignee, submit the executed originals of all Leases to Assignee.

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 a mortgagee in possession nor 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 under any Leases or under or by reason of this Assignment. Assignee shall have no liability to Assignors or anyone for any action taken or omitted to be taken by it hereunder, except for its 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 thereof, including costs, expenses, and reasonable attorneys' fees, together with interest thereon at the rate applicable to the Notes at the time of incurrence (or if the Notes have been paid in full at the time of incurrence, then at the rate applicable to the Notes at the time of such payment in full), shall be secured by this Assignment and by the Mortgage; and the Assignors shall reimburse the Assignee therefor immediately upon demand, Assignors' obligations so to pay to survive payment of the indebtedness hereby secured and the release of this agreement.

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

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 invalid or unenforceable, the validity and enforceability of the remaining provisions hereof shall in no way be affected thereby. If more than one person signs this instrument as Beneficiary, then the term "Beneficiary" as used herein shall mean all such persons, jointly and severally.

This instrument is executed by the Trustee, not personally, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument); and it is expressly understood and agreed that nothing herein or in said Notes contained shall be construed as creating any liability on said Trustee personally to pay said Notes or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being expressly waived by Assignee and by every person now or hereafter claiming any right or security hereunder, and that so far as said trustee personally is concerned, the legal holder or holders of said Notes and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby and by the Mortgage conveyed for the payment thereof, by the enforcement of the liens hereby and thereby created, in the manner herein and in said Mortgage provided or by action to enforce the personal liability of any guarantors of the indebtedness hereby secured or by realization on any other collateral for the indebtedness hereby secured.

IN WITNESS WHEREOF, parties hereto have executed this Assignment of Leases and Rents this 19th day of June, 1987.

Harris Bank Hinsdale, National Association not personally, but as Trustee as aforesaid

By:

James Hall  
Land Trust Officer

Attest:

Grace Zuckman  
Construction Loan Officer

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Kimball Hill, Inc., as General Partner of the Kimball Hill Housing Partnership, an Illinois Limited Partnership

By: David K. Hill, Jr.  
David K. Hill, Jr., President

ATTEST: James A. Moehling  
James A. Moehling, Asst. Secretary

State of Illinois )  
County of Cook )

I, the undersigned, a Notary Public in and for said County, in the State of Illinois, do hereby certify that Janet Hale, who is Land Trust Officer of Harris Bank Hinsdale, National Association and Carole Ziemann who is Construction Loan Officer of the same corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Land Trust Officer and Construction Loan Officer respectively, appeared before me this day in person and acknowledged that they signed and delivered the foregoing instrument as their free and voluntary act and as the free and voluntary act of the corporation for the uses and purposes therein set forth. Given under my hand and seal this 19th day of June, 1987.

My Commission Expires December 31, 1988, 19\_\_

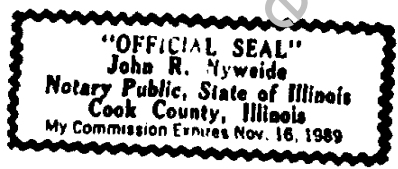
James A. Moehling  
Notary Public

STATE OF ILLINOIS)  
) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State of Illinois, do hereby certify that David K. Hill, Jr., President of Kimball Hill, Inc., as General Partner of the Kimball Hill Housing Partnership, an Illinois Limited Partnership and \_\_\_\_\_ of said corporation, which corporation is acting as General Partner of the Kimball Hill Partnership, an Illinois Limited Partnership, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary respectively, appeared before me this day in person and acknowledge that they signed and delivered the foregoing instrument as their free and voluntary act and as the free and voluntary act of said corporation being duly authorized to do so for the purpose therein set forth. Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 1987.

John R. Nyweide  
Notary Public

My commission expires \_\_\_\_\_, 19\_\_



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EXHIBIT "A"

That part of the premises known as all that part of the South West 1/4 of Section 27 and the North West 1/4 of Section 34, Township 42 North, Range 10 East of the Third Principal Meridian described as follows:

Beginning at South East corner of South West 1/4 of said Section 27; thence North 1908 feet; thence West 2360 feet to the center of a 3rd road; thence South along the center line of said road 3475 feet to the South line of an East and West road; thence East along the South line of said road 2360 feet to the East line of the North West 1/4 of Section 34; thence North along the 1/4 Section line 1562.5 feet to the point of beginning described as follows: beginning at the South East corner of said premises; thence West on the South line thereof 655 feet; thence North on a line parallel with the West line of said premises 541 feet; thence East on a line parallel to said South line 655.94 feet to the East line of said North West 1/4 of said Section 34; thence South on the East line of said North West 1/4, 541 feet to the point of beginning, in Cook County, Illinois.

Property Index Number: 02-34-101-009

*tb*

This instrument was prepared by  
Carole Ziemian  
Harris Bank Hinsdale  
50 South Lincoln Street  
Hinsdale, Illinois 60521

Mail to: Harris Bank Hinsdale  
50 South Lincoln Street  
Hinsdale, Illinois 60521  
Attention: Carole Ziemian

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. COOK COUNTY RECORDER

Property of Cook County Clerk's Office

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PROPERTY TAX  
NOTICE  
COUNTY CLERK

Property of Cook County Clerk's Office

11/11/11

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