

# UNOFFICIAL COPY

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Cook County Recorder 35.00



This Document Prepared By  
and After Recording Return To:

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

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## ASSIGNMENT OF LEASES AND RENTS

KNOW ALL MEN BY THESE PRESENTS, that THE WEXFORD LIMITED PARTNERSHIP, an Illinois limited partnership with an address at 5999 New Wilke Road, Suite 504, Rolling Meadows 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 ("Harris"), with an office at 111 West Monroe Street, Chicago, Illinois 60690, and as agent for the Banks (as identified and defined herein) (Harris in its capacity as agent for the Banks together with any successors in its capacity hereinafter referred to as "Agent"), 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 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 Agent 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 Lake, 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 (i) the payment in full of all principal of and interest on the indebtedness evidenced by the revolving promissory notes in an aggregate principal amount not to exceed U.S.\$85,000,000, such revolving promissory notes made payable to the order of each Bank in the amount of their respective Revolving Credit Commitments (as defined in the Loan Agreement) in and by which

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Assignor, Willoughby Farms New Dimensions Limited Partnership, Willoughby Farms Third New Dimensions Limited Partnership, Kimball Hill, Inc. and borrowers which from time to time will be parties to the Loan Agreement (individually "*Borrower*" and collectively, "*Borrowers*") promise to pay said principal sum, together with interest on the balance of principal time to time outstanding and unpaid thereon at rates and at times specified in the Loan Agreement (said revolving promissory notes and 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 individually referred to as "*Note*" and collectively referred to as the "*Notes*"), (ii) 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 Borrower to the Agent (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 each Borrower's respective premises as security for the Notes, the Letters of Credit and any and all other indebtedness intended to be secured thereby, (iii) the payment in full of all sums owing in connection with the letters of credit issued by Agent under the Loan Agreement for the account of Borrowers (the "*Letters of Credit*") pursuant to the terms of separate applications and agreements for letters of credit executed by Assignor (collectively, the "*Applications*"), including the obligation of Borrowers to reimburse Agent for any draws under the Letters of Credit (collectively, the "*Reimbursement Obligations*"), (iv) the observance and performance of all obligations, covenants, promises and agreements of the Borrowers pursuant to that certain Revolving Construction Loan Agreement bearing even date herewith executed by the Borrowers, the Agent and the Banks, (as amended from time to time the "*Loan Agreement*") and in any other loan or other agreements setting forth terms and conditions applicable to the indebtedness evidenced by the Notes or providing collateral security therefor, and (v) the payment of all expenses and charges, legal or otherwise, paid or incurred by the Agent in collecting or enforcing the payment of the Notes or the Applications and the other indebtedness referred to in the foregoing clauses (i), (ii), (iii) and (iv) or in realizing upon or protecting any collateral security therefor, including without limitation this Assignment (the Notes, the Letters of Credit and other indebtedness, obligations and liabilities referred to in clauses (i), (ii), (iii), (iv) and (v) above being hereinafter collectively referred to as the "*indebtedness hereby secured*").

The Assignor does hereby irrevocably constitute and appoint the Agent 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 Agent's discretion to file any claim or take any other action or proceeding, either in the Agent's name or in the name of the Assignor or otherwise, which the Agent 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 Agent in and to such sums and the security intended to be afforded hereby.

The Assignor warrants to the Agent 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 Applications, 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.

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

Without limiting any legal rights of the Agent 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 Agent 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 agent 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 Agent 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 Agent 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 Agent 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 Agent, its attorneys, agents, clerks, servants and others employed by Agent 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 Agent 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 Agent hereunder, Agent shall credit the net amount of income which Agent may receive by virtue of this Assignment and from the premises to any and all amounts due or owing to Agent 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. Agent 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 Agent. Agent 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 Agent execute and deliver such further instruments and do and perform such other acts and things as the Agent may reasonably deem necessary or appropriate to vest in and secure to the Agent the rights and rents which are intended to be assigned to the Agent 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 Agent, 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 Agent 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 Agent, be deemed or construed to constitute the Agent an assignee in possession nor thereafter impose any obligation whatsoever upon the Agent, it being understood and agreed that the Agent 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. Agent 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 Agent's gross negligence or willful misconduct. Should the Agent incur any liability, loss or damage under or by reason of

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this Assignment or for any action taken by the Agent hereunder, or in defense against any claim or demand whatsoever which may be asserted against the Agent 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 Agent 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 Agent hereunder are cumulative and are not in lieu of, but are in addition to, any rights or remedies which the Agent shall have under the Notes, the Application, the Mortgage or any other instrument or document or under applicable law and the exercise by Agent of any rights and remedies herein contained shall not be deemed a waiver of any other rights or remedies of Agent, whether arising under the Mortgage or otherwise, each and all of which may be exercised whenever Agent deems it in its interest to do so. The rights and remedies of the Agent may be exercised from time to time and as often as such exercise is deemed expedient and the failure of the Agent 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 Agent to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to the Agent 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 Agent, 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.

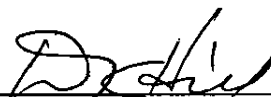
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IN WITNESS WHEREOF, Assignor has caused these presents to be signed and sealed the  
~~day and year first above written~~  
as of the 1<sup>st</sup> day of July, 1999

THE WEXFORD LIMITED PARTNERSHIP, an  
Illinois limited partnership

By: KIMBALL HILL, INC., an Illinois  
corporation,  
Its sole general partner

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

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Wexford

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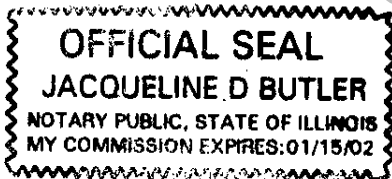
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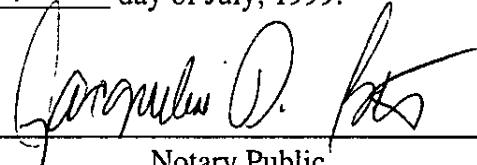
STATE OF ILLINOIS )

COUNTY OF COOK )

I, JACQUELINE D. BUTLER, 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 The Wexford Limited Partnership, an Illinois limited partnership, who is personally known to be 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 limited partnership for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 7<sup>th</sup> day of July, 1999.



  
\_\_\_\_\_  
Notary Public

JACQUELINE D. BUTLER

\_\_\_\_\_  
(TYPE OR PRINT NAME)

(SEAL)

My Commission Expires: 01-15-2002

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SCHEDULE I

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## LEGAL DESCRIPTION

PARCEL 3A: LOTS 1 THROUGH 22, BOTH INCLUSIVE, 24, 25, 26, AND 28 THROUGH 65, BOTH INCLUSIVE, LOTS A, B AND C IN WEXFORD UNIT 1 SUBDIVISION BEING A SUBDIVISION IN THE SOUTH 1/2 OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 18, 1998 AS DOCUMENT 08041913, IN COOK COUNTY, ILLINOIS

PARCEL 3B: LOTS 66 THROUGH 79, BOTH INCLUSIVE, LOTS F AND G IN WEXFORD UNIT 3 SUBDIVISION BEING A SUBDIVISION IN THE SOUTH 1/2 OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 18, 1998 AS DOCUMENT 08041912, IN COOK COUNTY, ILLINOIS

PARCEL 3C: LOTS 1, 2, 4, 6, 11, 12, 14, 15, 16, 17, 18, 19, 22, 23, 24, 28, 29, 30 AND 31, LOTS D, E AND F IN WEXFORD UNIT 2 SUBDIVISION BEING A SUBDIVISION IN THE SOUTH 1/2 OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 28, 1998 AS DOCUMENT 08174320, IN COOK COUNTY, ILLINOIS

PINS: 02-27-301-003  
02-27-301-004  
02-27-301-007  
02-27-400-003  
02-27-400-005  
02-27-400-006

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