

CONSTRUCTION MORTGAGE

(With Security Agreement and Assignment of Rents)

26.00

101 JMA

1030

THIS MORTGAGE is made as of the 18<sup>th</sup> day of December, 1987, by Lake Arlington Towne Housing Partnership an Illinois Limited Partnership, whose address is 5999 New Wilke Road, Suite 504, Rolling Meadows, Illinois 60008, (hereinafter called "Mortgagor" or "Borrower") and The Lomas and Nettleton Company, a Connecticut corporation whose address is 2001 Bryan Tower, Suite 3600, Dallas, Texas 75201 (hereinafter called "Mortgagee").

WHEREAS, the Borrower is justly indebted to Mortgagee in the principal sum of Six Hundred Eight Thousand Seven Hundred Twelve and No. /100 Dollars (\$608,712.00) and interest thereon, according to a certain promissory note of even date herewith (hereinafter called the "Note") payable as in such Note provided.

NOW, THEREFORE, THIS MORTGAGE WITNESSETH THAT in consideration of One Dollar (\$1.00) paid by Mortgagee to Mortgagor, the receipt of which is hereby acknowledged, and for the purpose of securing (1) payment of the indebtedness evidenced by the Note and any renewals, increases, extensions or modifications thereof; and (2) payment of all other indebtedness now or hereafter owing by Mortgagor to Mortgagee, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety argeement, guaranty or otherwise, it being contemplated that Mortgagor may hereafter become indebted to Mortgagee in further sum or sums; Mortgagor does hereby GRANT, BARGAIN, SELL, MORTGAGE, WARRANT and CONVEY to Mortgagee, its successors and assigns, forever, the following described property (hereinafter called the "Prorerty"):

Legal Description set forth on Exhibit A attached hereto and made a part hereof;

together with all improvements thereon and all rights, hereditament and appurtenance in anywise appertaining or belonging thereto; and together with all equipment, fixtures and articles of personal property now or hereafter attached to or used in and about the building, buildings and other improvements (such building, buildings and other improvements being hereinafter called the "Project") now or hereafter erected, constructed or developed on the above-described real property which are necessary or useful for complete and comfortable use Project for the purposes for which they were or are to be erected, constructed or developed, or which are or may be used in or related to the planning, development, financing or operation thereof; all renewals or replacements thereof of articles in substitution therefor, whether or not the same are or shall be attached to the Project in any manner; all building material and equipment now or hereafter delivered to the Project and intended to be installed therein; all plans and specifications for the Project; all contracts and subcontracts relating to the Project; all deposits (including tenant's security deposits) funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Project; all permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the Project; all proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property described herein; all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project; all proceeds arising from the taking of all or a part of the real property or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law, or by right of eminent domain, or by private or other

87681665

purchase in lieu thereof; and all other interest of every kind and character which Mortgagor now has or at any time hereafter acquires in and to the above-described real and personal property and all property which is used or useful in connection therewith, including rights of ingress and egress, easements, licenses, and all reversionary rights or interest of Mortgagor with respect to such property, unto Mortgagee, its successors and assigns, forever. It is hereby agreed that to the extent permitted by law all of the foregoing personal property and fixtures are to be deemed and held to be a part of and affixed to the real property. In the event the estate of the Mortgagor in and to any of the above-described property is a leasehold estate, this conveyance shall include and the lien, security interest and assignment created hereby shall encumber and extend to all other further or additional title, estates, interest or rights which may exist now or at any time be acquired by Mortgagor in or to the property demised under the lease creating such leasehold estate and including Mortgagor's rights, if any, to purchase the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Mortgagor such fee simple interest shall be encumbered by this Mortgage in the same manner as if Mortgagor had fee simple title to such property as of the date of execution hereof. The foregoing described real and personal property is hereinafter collectively called the "Mortgaged Property."

TO HAVE AND TO HOLD the Mortgaged Property, unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Mortgaged Property after the occurrence of any default as hereinafter defined; the Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State in which the Mortgaged Property is located.

If the Note or any other indebtedness hereby secured shall be collected by legal proceedings or through a probate or bankruptcy court, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by the option given to the Mortgagee to mature same, Mortgagor agrees that a reasonable sum shall be paid by Mortgagor as attorney's or collection fees, and shall be a part of the indebtedness hereby secured.

Better to secure payment of said indebtedness, Mortgagor does hereby covenant and agree with the Mortgagee as follows:

(1) All of the indebtedness hereby secured, together with the interest thereon, shall be paid when the same shall become due, in accordance with the terms of the Note or any other instrument evidencing, securing or pertaining to such indebtedness or evidencing any renewal or extension of such indebtedness, or any part thereof; and further, Mortgagor shall punctually and properly perform all of Mortgagor's covenants, obligations, and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, assignment, loan agreement or any other instrument or agreement of any kind now or hereafter existing as security for, executed in connection with, or related to the indebtedness or other obligations secured hereby, or any part thereof.

(2) Mortgagor has in its own right good, perfect, and indefeasible title in fee simple, except as otherwise provided herein, to the Mortgaged Property which is free from encumbrance superior to the indebtedness hereby secured, except as otherwise provided herein, and has full right to make this conveyance, and with respect to each Mortgagor who is an individual, no part of the Mortgaged Property constitutes any part of his business or residential homestead.

(3) Mortgagor will keep all insurable Mortgaged Property insured against the risks covered by policies of fire and extended coverage insurance and such other risks as Mortgagee may require, such insurance to be written in amounts, in form and in companies acceptable to Mortgagee, with loss made payable to Mortgagee by mortgagee clauses of standard form, and will deliver the policies of insurance to Mortgagee promptly as issued; and in case Mortgagor fails so to do, Mortgagee, at its option, may procure such insurance at Mortgagor's expense. All renewal and substitute policies of insurance shall be delivered at the office of Mortgagee, premiums paid, fifteen (15) days before termination of policies theretofore delivered to Mortgagee. In case of loss, Mortgagee, at its option, shall be entitled to receive and retain the proceeds of the insurance policies, applying the same upon the indebtedness hereby secured. If any loss shall occur at any time when Mortgagor shall be in default in the performance of this covenant, Mortgagee shall be entitled to the benefit of all insurance held by or for any Mortgagor, to the same extent as if it had been made payable to Mortgagee and upon foreclosure hereunder, Mortgagee shall become the owner thereof.

(4) Mortgagor will pay all taxes and assessments against the Mortgaged Property as the same become due and payable; and if Mortgagor fails so to do, the Mortgagee may pay them together with all costs and penalties thereon, at Mortgagor's expense; provided, however, that Mortgagor may in good faith, in lieu of paying such taxes and assessments as they become due and payable, by appropriate proceedings, contest the validity thereof, and pending such contest Mortgagor shall not be deemed in default hereunder because of such nonpayment, if prior to delinquency of the asserted tax or assessment, Mortgagor furnishes the Mortgagee an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as herein stipulated, secured by a deposit in cash, or security acceptable to Mortgagee, or with surety acceptable to Mortgagee, in the amount of the tax or assessment being contested by Mortgagor, and a reasonable additional sum to pay all possible costs, interest and penalties imposed or incurred in connection therewith, and if Mortgagor promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, before such judgment becomes final; and provided further, that in any event, each such contest shall be concluded and the tax assessment, penalties, interest and costs shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment.

(5) At the request of Mortgagee, Mortgagor shall create a fund or reserve for the payment of all insurance premiums, taxes and assessments against or affecting the Mortgaged Property by paying to Mortgagee, on the first day of each calendar month prior to the maturity of the Note, a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Mortgaged Property, or any part thereof, plus taxes and assessments next due on the Mortgaged Property, or any part thereof, as estimated by Mortgagee, less all sums paid previously to Mortgagee therefor, divided by the number of months to elapse before one month prior to the date when such premiums, taxes and assessments will become delinquent, such sums to be held by Mortgagee, without interest, unless interest is required by applicable law, for the purposes of paying such premiums, taxes and assessments. Any excess reserve shall, at the discretion of Mortgagee, be credited by Mortgagee on subsequent reserve payments or subsequent payments to be made on the Note by the maker thereof, and any deficiency shall be paid by Mortgagor to Mortgagee on or before the date when such premiums, taxes, and assessments shall become delinquent. Transfer of legal title to the Mortgaged Property shall automatically transfer the interest of Mortgagor in all sums deposited with Mortgagee under the provisions hereof or otherwise. If there is a default under any of the provisions of this Mortgage resulting

**UNOFFICIAL COPY 6 5**

in a sale of such property otherwise after default, the Mortgagee shall apply, at the time the property is otherwise acquired, the balance then remaining of the funds accumulated under this provision as a credit against the amount then remaining unpaid under the Note. No interest shall accrue or be allowed on any payments made under the provisions of this paragraph.

(6) All judgments, decrees and awards for injury or damage to the Mortgaged Property, and all awards pursuant to proceedings for condemnation thereof, are hereby assigned in their entirety to Mortgagee, who may apply the same to the indebtedness hereby secured in such manner as it may elect; and Mortgagee is hereby authorized, in the name of Mortgagor to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. In the event Mortgagee, as a result of any such judgment, decree or award, believes that the payment or performance of any obligation secured by this Mortgage is impaired, Mortgagee may, without notice, declare all of the indebtedness secured hereby immediately due and payable.

(7) If while this Mortgage is in force the interest of Mortgagee in the Mortgaged Property hereby conveyed or any part thereof, shall be endangered or shall be attacked directly or indirectly, Mortgagor hereby authorizes the Mortgagee, at Mortgagor's expense, to take all necessary and proper steps for the defense of said interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against said interest. At any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage or upon any rights, titles, liens or security interests created hereby, or upon the Note, or any part thereof, Mortgagor shall immediately pay all such taxes; provided that, in the alternative, Mortgagor may, in the event of the enactment of such a law, and must, if it is unlawful for Mortgagor to pay such taxes, prepay the Note in full within sixty (60) days after demand therefor by Mortgagee. Mortgagor shall at any time and from time to time, furnish promptly, upon request, a written statement or affidavit, in such form as may be required by Mortgagee, stating the unpaid balance of the Note, and that there are no offsets or defenses against full payment of the Note and performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

(8) If, in pursuance of any covenant herein contained or in any other instrument executed in connection with the loan evidenced by the Note or in connection with any other indebtedness hereby secured, the Mortgagee shall expend any money chargeable to Mortgagor or subject to reimbursement by Mortgagor under the terms of said covenant or agreement, mortgagor will repay the same to Mortgagee immediately at the place where the Note or other indebtedness hereby secured is payable, together with interest thereon at the rate of interest payable on account of the Note or such other indebtedness in the event of a default thereunder from and after the date of Mortgagee's making such payment. The sum of each such payment shall be added to the indebtedness hereby secured and thereafter shall form a part of the same; and it shall be secured by this Mortgage and by subrogation to all the rights of the person or entity receiving such payment.

(9) Mortgagor will keep every part of the Mortgaged Property in first-class condition and presenting a first-class appearance, making promptly all repairs, renewals and replacements necessary to such end, and doing promptly all else necessary to such end; but Mortgagor will discharge all claims for labor performed and material furnished therefor, and will not suffer any lien of mechanics or materialmen to attach to any part of the Mortgaged Property; and Mortgagor will guard every part of the Mortgaged Property from removal, destruction and damage, and will not do or suffer to be done any act whereby the value of any part of such Mortgaged Property may be lessened.

(10) It shall be a default hereunder if Mortgagor shall, without the prior written consent of Mortgagee, create, effect, contract for, consent to, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties, rights or interests which occurs, is granted, accomplished, attempted or effectuated without the prior written consent of Mortgagee shall constitute a "Prohibited Transfer":

- (a) the Mortgaged Property or any part thereof or interest therein, excepting only sales or other dispositions of items of personalty (herein called "Obsolete Collateral") no longer useful in connection with the operation thereof, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by adequate substitutes of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;
- (b) all or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a trustee;
- (c) any shares of capital stock of a corporate Mortgagor, a corporation which is a beneficiary of a trustee Mortgagor, a corporation which is a general partner in a partnership Mortgagor, a corporation which is a general partner in a partnership beneficiary of a trustee Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealer's Automated Quotation System);
- (d) all or any part of the partnership or joint venture interest, as the case may be, of any Mortgagor or any direct or indirect beneficiary of a trustee Mortgagor if Mortgagor or such beneficiary is a partnership or a joint venture;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Paragraph 10 shall not apply (i) to liens securing the indebtedness hereby secured, (ii) to the lien of current taxes and assessments not in default, or (iii) to any transfers of the Mortgaged Property, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives. If Mortgagee should consent to any sale or conveyance of the Mortgaged Property, Mortgagor will not sell all or any portion of the Mortgaged Property unless the purchaser, as a part of the consideration, shall either (a) expressly agree to assume the payment of the indebtedness hereby secured or (b) expressly agree that the title and rights of such purchaser are and shall remain unconditionally subject to all of the terms of this Mortgage for the complete fulfillment of all obligations of the Mortgagor hereunder, and unless also, the deed shall expressly set forth such agreement of the purchaser; nor will Mortgagor grant any easement whatever with respect to any of the Mortgaged Property without the joinder therein of Mortgagee, or rent or lease any of the

**UNOFFICIAL COPY 6 5**

Mortgaged Property for any purpose whatever without the prior written consent of Mortgagee.

(11) Mortgagor shall be in default hereunder if there is a default in the prompt payment when due of the indebtedness secured hereby, or any part thereof; or if Mortgagor shall fail to keep and perform any of the covenants or agreements contained herein or contained in an other instrument securing or related to the obligations of Mortgagor under the Note; or if Mortgagee discovers that any statement, representation, or warranty in the Note, this Mortgage or in any writing delivered to Mortgagee in connection with the indebtedness secured hereby is false, misleading or erroneous in any material respect; or if Mortgagor, or any person liable for the indebtedness secured hereby, or any part thereof, including any guarantor or surety for the performance of any obligation hereunder, files a voluntary petition in bankruptcy; makes an assignment for the benefit of any creditor; is adjudicated a bankrupt or insolvent; admits in writing its inability to pay its debts generally as they become due; applies for or consents to the appointment of a receiver, trustee, or liquidator of Mortgagor or of any such guarantor or surety or of all or a substantial part of its assets; takes advantage of or seeks any relief under any bankruptcy, reorganization, debtor's relief or other insolvency law now or hereafter existing, files an answer admitting the material allegations of, or consenting to, or defaulting in, a petition against Mortgagor or any such guarantor or surety, in any bankruptcy, reorganization, or other insolvency proceedings; institutes or voluntarily is or becomes a party to any other judicial proceedings intended to effect a discharge of the debts of Mortgagor or of any guarantor or surety, in whole or in part, or to effect a postponement of the maturity or the collection thereof, or to effect a suspension of any of the rights or powers of Mortgagee granted in the Note, this Mortgage or in any other instrument evidencing or securing the indebtedness hereby secured; or if an order, judgment or decree shall be entered by any court of competent jurisdiction appointing a receiver, trustee or liquidator of Mortgagor or of any guarantor or surety or of all or any substantial part of the assets of Mortgagor or any such guarantor or surety or if Mortgagor or any guarantor or surety shall fail to pay any money judgment against it at least ten (10) days prior to the date on which the assets of Mortgagor or any such guarantor or surety may be sold to satisfy such judgment; or if Mortgagor or any such guarantor or surety shall fail to have discharged within a period of ten (10) days after the commencement thereof any attachments, sequestration, or similar proceedings against any assets of Mortgagor or of any guarantor or surety; or if the Mortgaged Property is placed under control or in the custody of any court; or if Mortgagor abandons any of the Mortgaged Property; or if a determination is made by Mortgagee that the condition of the Mortgaged Property has deteriorated; or if Mortgagor shall have concealed, removed, or permitted to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance, or similar law; or if there shall occur the liquidation, termination, merger, dissolution, or death of Mortgagor; or if Mortgagor is a partnership, there shall occur a default by any general partner under the partnership agreement creating and governing Mortgagor; or if there shall exist any collusion, fraud, dishonesty or bad faith by or with the acquiescence of Mortgagor or Guarantor which in any way relates to or affects the loan made pursuant to the Note or the construction improvements on the Property; or if a notice of lien, levy or assessment is filed of record with respect to all or any part of the property of Mortgagor by the United States, or any other governmental authority, unless contestable and actually and diligently contested in accordance herewith; or if there occurs a material adverse change in the financial condition of Mortgagor or any Guarantor. Upon the occurrence of any such default, the Mortgagee, at its option, without notice, may declare the entire

87691665

**UNOFFICIAL COPY** 7 6 3 6 5

indebtedness secured hereby immediately due and payable, and the same, with interest thereon and with all other costs and charges, shall thereupon be collectible by a suit at law or foreclosure of this Mortgage and/or exercise of any right, power or remedy provided by this Mortgage, the Note, the Loan Agreement (as defined in Paragraph 33 hereof) or by law or in equity or any other document or instrument evidencing, securing or guarantying the indebtedness secured hereby in the same manner as if the whole of said principal sum had been made payable at the time when any such failure shall occur as aforesaid.

(12) If Mortgagor shall perform faithfully each of the covenants and agreements herein contained, then, and then only, this conveyance shall become null and void and shall be released in due form, at Mortgagor's expense; otherwise it shall remain in full force and effect. No release of this conveyance, or of the lien, security interest or assignment created and evidenced hereby, shall be valid unless executed by Mortgagee. Any part of the Mortgaged Property may be released by Mortgagee without affecting the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the indebtedness hereby secured. The taking of additional security, or the extension or renewal of the indebtedness hereby secured or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any permitted junior lienholder; and this Mortgage, as well as any instrument given to secure any renewal or extension of the indebtedness hereby secured, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the indebtedness hereby secured is paid.

(13) If default is made hereunder, the holder of the indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item conducting the sale as provided by law.

(14) In the event of the passage after the date of this Mortgage of any law of the State of Illinois, deducting from the value of the land for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages or debts secured thereby, for state or local purposes, or the manner of the collection of any such taxes so as to affect the interest of Mortgagee, then and in such event, if Mortgagor shall not pay the full amount of such taxes, or if for any reason payment by Mortgagor of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the loan or indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of the Note, or the within Mortgage, or otherwise, Mortgagee may, at its option, declare the whole sum secured by this Mortgage with interest thereon to be immediately due and payable.

(15) Mortgagor hereby agrees, in its behalf and in behalf of his heirs, executors, administrators, successors, personal representatives and assigns, that any and all statements of fact or other recitals made in any deed of conveyance given by the Mortgagee with respect to the identity of Mortgagee, or with respect to the occurrence or existence of any default, or with respect to the acceleration of the maturity of any indebtedness secured hereby, or with respect to the request to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms, and manner of sale, and receipt, distribution, and application of the money realized therefrom, and, without being limited by the foregoing, with respect to any other act or thing having been duly done by the Mortgagee, shall be taken by all courts of law and equity as

prima facie evidence that the statements or recitals state facts and are without further question to be so accepted, and Mortgagor hereby ratifies and confirms every act that Mortgagee may lawfully do in the premises by virtue hereof.

(16) The purchaser at any foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made, in violation of any provision of this Mortgage and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental or lease contract.

(17) Mortgagee may bid and become the purchaser of all or any part of the Mortgaged Property at any foreclosure sale hereunder.

(18) If any of the indebtedness hereby secured shall become due and payable, the Mortgagee shall have the right and power to proceed by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Mortgaged Property under the judgment or decree of any court or courts of competent jurisdiction, or for the appointment of a receiver pending any foreclosure hereunder or the sale of the Mortgaged Property under the order of a court or courts of competent jurisdiction or under executory or other legal process, or for the enforcement of any other appropriate legal or equitable remedy. The Mortgagor agrees, to the full extent that it lawfully may, that in case one or more of the defaults hereunder shall have occurred and shall not have been remedied, then, and in every such case, the Mortgagee shall have the right and power to enter into and upon and take possession of all or any part of the Mortgaged Property in the possession of the Mortgagor, its successors or assigns, or its or their agents or servants, and may exclude the Mortgagor, its successors or assigns, and all persons claiming under the Mortgagor, and its or their agents or servants, wholly or partly therefrom; and, holding the same, the Mortgagee may use, administer, manage, operate and control the Mortgaged Property and conduct the business thereof to the same extent as the Mortgagor, its successors or assigns, might at the time do and may exercise all rights and powers of the Mortgagor, in the name, place and stead of the Mortgagor, or otherwise as the Mortgagee shall deem best; and in the exercise of any of the foregoing rights and powers Mortgagee shall not be liable to Mortgagor for any loss or damage thereby sustained unless due solely to the willful misconduct or gross negligence of Mortgagee.

(19) Any part of the Mortgaged Property may be released by the Mortgagee without affecting the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights hereby granted shall not affect or be affected by any other security taken for the same indebtednesses or any part thereof. The taking of additional security, or the extension or renewal of the indebtedness secured hereby or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder; and this Mortgage, as well as any instrument given to secure any renewal or extension of the indebtedness secured hereby, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the indebtedness secured hereby is completely paid.

(20) To the extent that Mortgagor may lawfully do so, Mortgagor agrees that Mortgagor shall not assert and hereby expressly waives, any right under any statute or rule of law pertaining to the marshalling of assets, the exemption of homestead, the administration of estates of decedents, or other matter whatever to defeat, reduce or affect the right of

Mortgagee, under the terms of this Mortgage, to sell the Mortgaged Property for the collection of the indebtedness secured hereby (without any prior or different resort for collection) or the right of Mortgagee, under the terms of this Mortgage, to the payment of such indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). Mortgagor expressly waives and relinquishes any right or remedy which it may have or be able to assert pertaining to the rights and remedies of sureties. Mortgagor expressly waives to the full extent provided by law any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of the Mortgagee and each and every person, except decree or judgment creditors of the Mortgagor acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage.

(21) All of the rents, royalties, issues, profits, revenue, income and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto (hereinafter called the "Rents and Profits") are hereby absolutely and unconditionally assigned, transferred, conveyed and set over to Mortgagee to be applied by Mortgagee in payment of the principal and interest and all other sums payable on the Note, and any other indebtedness hereby secured. Prior to the occurrence of any default hereunder, Mortgagor shall collect and receive all Rents and Profits as trustee for the benefit of Mortgagee and Mortgagor, and Mortgagor shall apply the funds so collected first to the payment of the principal and interest and all other sums payable on the Note and in payment of all other indebtedness hereby secured and thereafter, so long as no default hereunder has occurred, the balance shall be distributed to the account of Mortgagor. With respect to any lease approved by Mortgagee, Mortgagor will not (i) execute an assignment of any of its right, title or interest in the Rents and Profits, or (ii) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Mortgaged Property or any part thereof, now or hereafter existing having an unexpired term of one year or more except that any lease may be cancelled, provided that promptly after the cancellation or surrender thereof a new lease is entered into with a new lessee having a credit standing, in the judgment of Mortgagee, at least equivalent to that of the lessee whose lease was cancelled, on substantially the same terms as the terminated or cancelled lease, or (iii) modify any amount of the rent payable thereunder, or (iv) accept prepayments of any installments of rent to become due under any of such leases in excess of one month, except prepayments in the nature of security for the performance of the lessee thereunder, or (v) in any other manner impair the value of the Mortgaged Property or the security of this Mortgage, or (vi) execute any lease of all or any substantial portion of the Mortgaged Property for occupancy by anyone other than the named lessee thereunder. With respect to any lease approved by Mortgagee, Mortgagor shall: (i) furnish to Mortgagee, within ten days after a request by Mortgagee to do so, a written statement containing the names of all lessees of the Mortgaged Property, the terms of their respective leases, the spaces occupied and the rentals payable thereunder; (ii) perform all of its obligations under any leases and give prompt notice to Mortgagee of any failure to do so; (iii) give immediate notice to Mortgagee of any notice Mortgagor receives from any tenant or subtenant under any leases, specifying any claimed default by any party under such leases; (iv) enforce the tenant's obligations under the leases; (v) defend, at Mortgagor's expense, any proceeding pertaining to the leases, including, if Mortgagee so requests, any such proceeding to which Mortgagee is a party; and (vi) neither create nor permit any encumbrance upon its interest as lessor of the leases, except this Mortgage and any other encumbrances permitted by this Mortgage.

87681665

**UNOFFICIAL COPY 6 5**

(22) Mortgagor will not, without the prior written consent of Mortgagee, execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property (hereinafter called "Subordinate Mortgage"). In the event of consent by Mortgagee to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable by the provisions of any applicable law, Mortgagor will not execute or deliver any Subordinate Mortgage unless there shall have been delivered to Mortgagee not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect:

(a) That the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien, security interest and assignment evidenced by this Mortgage and each term and provision hereof;

(b) That if any action or proceeding shall be instituted to foreclose the Subordinate Mortgage, no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Mortgagee;

(c) That the Rents and Profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the obligations secured by this Mortgage, including principal and interest due and owing on or to become due and owing on the Note and other indebtedness hereby secured and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements incurred in connection with the ownership, operating and maintenance of the Mortgaged Property; and

(d) That if any action or proceeding shall be brought to foreclose the Subordinate Mortgage, written notice of the commencement thereof will be given to Mortgagee contemporaneously with the commencement of such action or proceeding.

(23) To the extent that proceeds of the Note or any other indebtedness hereby secured are used to pay any outstanding lien, charge or encumbrance against or affecting the Mortgaged Property, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to all lawful rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges and encumbrances, irrespective of whether such liens, charges or encumbrances are released of record; provided, however, that the provisions of this Mortgage and the Note secured hereby shall supersede the provisions of any Deed of Trust or Mortgage to which Mortgagee is subrogated hereunder and of any note or other document evidencing any indebtedness secured thereby,

(24) The invalidity or unenforceability in particular circumstances of any provision of this Mortgage shall not extend beyond such provision or such circumstances; no other provision of this instrument shall be affected thereby. All agreements between Mortgagor and Mortgagee whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand or acceleration of the maturity of the indebtedness hereby secured or otherwise, shall the interest paid or agreed to be paid to Mortgagee exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Mortgagee at a rate in excess of that permitted under applicable law, then the interest payable to Mortgagee shall be reduced to the maximum amount permitted under applicable law, and if from any circumstance Mortgagee shall ever receive anything of value deemed interest by applicable law which would exceed interest at the highest lawful rate, an

## UNOFFICIAL COPY 6 5

amount equal to any excessive interest shall be applied to the reduction of the principal amount owing under the Note and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Note, such excess shall be refunded to Mortgagor, or to the maker of the Note or other evidence of indebtedness if other than Mortgagor. All interest paid or agreed to be paid to the Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full period until payment in full of the principal so that the rate of interest on such indebtedness is uniform throughout the term thereof. This Paragraph (24) shall control all agreements between Mortgagor and Mortgagee.

(25) No waiver of any default on the part of Mortgagor or breach of any of the provisions of this Mortgage or of any other instrument executed in connection with the indebtedness secured hereby shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. If any provision of this Mortgage is held to be illegal, invalid, or unenforceable under present or future laws effective while this Mortgage is in effect, the legality, validity, and enforceability of the remaining provisions of this Mortgage shall not be affected thereby, and in lieu of each such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Mortgage a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable. If any of the liens, security interest or assignment of rents created by this Mortgage shall be invalid or unenforceable, the unsecured portion of the indebtedness secured hereby shall be completely paid prior to the payment of the remaining and secured portion of such indebtedness and all payments made on account of such indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of such indebtedness.

(26) In the event that there be a foreclosure hereunder and if at the time of such foreclosure Mortgagor occupies the portion of the Mortgaged Property so sold or any part thereof, Mortgagor shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Property so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Property and premises, and this agreement shall constitute a lease and agreement under which the tenant's possession, each and all, arose and continued,

(27) With respect to any portion of the Mortgaged Property which constitutes personal property or fixtures governed by the Uniform Commercial Code of the State of Illinois (hereinafter called the "Code"), this Mortgage shall constitute a security agreement between Mortgagor, as the Debtor, and Mortgagee, as the Secured Party, and Mortgagor hereby grants to Mortgagee a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Mortgagee hereunder, Mortgagee shall have all of the rights conferred upon secured parties by the Code. Mortgagor will execute and deliver to Mortgagee all financing statements that may from time to time be required by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and shall bear all costs and expenses of any searches reasonably required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Code with

## UNOFFICIAL COPY 6 5

respect to such property, and it is expressly agreed that if upon default Mortgagee should proceed to dispose of such property in accordance with the provisions of the Code, ten (10) days notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Mortgagee may at its option dispose of such property in accordance with Mortgagee's rights and remedies with respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the Code.

Mortgagor shall give advance notice in writing to Mortgagee of any proposed change in Mortgagor's name, identity, or corporate structure and will execute and deliver to Mortgagee, prior to or concurrently with the occurrence of any such change, all additional financing statements that Mortgagee may require to establish and maintain the validity and priority of Mortgagee's security interest with respect to any Mortgaged Property described or referred to herein.

Some of the items of Mortgaged Property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Mortgagee, as secured party, at the address of Mortgagee stated above. The mailing address of the Mortgagor, as Debtor, is as stated above.

(28) Mortgagor shall, upon request of Mortgagee, deliver to Mortgagee, within sixty days after the end of each calendar year, then current annual statements, in form and content satisfactory to Mortgagee, itemizing the income and expenses of the Mortgaged Property and financial statements of Mortgagor (and each of them) all in detail satisfactory to Mortgagee.

(29) The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural and the singular, and the use of any gender shall be applicable to all genders. The term "Mortgagor" shall include in their individual capacities and jointly, all parties hereinabove named a Mortgagor. The term "Mortgagee" shall include any lawful owner, holder, pledgee or assignee of any indebtedness secured hereby. The duties, covenants, conditions, obligations and warranties of Mortgagor in this Mortgage shall be joint and several obligations of Mortgagor and each Mortgagor, if more than one, and Mortgagor's heirs, personal representatives, successors and assigns. Each party who executes this Mortgage (other than Mortgagee), and each subsequent owner of the Mortgaged Property, or any part thereof, covenants and agrees that it will perform, or cause to be performed, each condition, term, provision, and covenant of this Mortgage.

(30) If there is a default hereunder, all unpaid indebtedness and interest secured hereby shall, at the election of Mortgagee and without notice, be immediately due and payable, with interest from the date of such default at the maximum lawful rate or if no maximum rate is established by applicable law, then at five percent (5%) per annum in excess of the Applicable Rate, as provided, in the Note, and be collectible by foreclosure of the lien hereof or other lawful action or proceeding, and all expenses paid or incurred by Mortgagee in that behalf, including reasonable attorneys' and appraisers' fees, stenographers' charges, costs of obtaining evidence, title examinations, and abstract of title, Torrens registration or title insurance covering the date of the delivery of any deed

**UNOFFICIAL COPY 5**

pursuant to any judgment, decree or order entered in such action or proceeding (which said expenses may be estimated as to such as are not determinable until after the entry of such judgment, decree or order), shall be so much additional indebtedness hereby secured and, with interest thereon at the maximum lawful rate or if no maximum rate is established by applicable law, then at 18% per annum, from the date of payment thereof by Mortgagee, be included in and ordered paid by such judgment, decree or order.

(31) Upon the institution of any action to foreclose the lien hereof, the court shall, upon the application of Mortgagee at any time thereafter and without notice and as a matter of strict right and without regard to the solvency or insolvency, at the time of such application, of the person or persons liable for the payment of said indebtedness and without regard to the then value of said real estate or whether it or any part thereof shall then be occupied by the owner thereof as a homestead, appoint a receiver of and for said real estate during the pendency of said action and until the expiration of the time allowed by law for redemption from any sale made pursuant to a judgment or decree entered in such action, and such court may, from time to time, either before or after such payment, in whole or in part, do: (1) the aforesaid indebtedness or that found due or ordered paid by any judgment or decree entered in such action; and (2) any tax, assessment or lien which may be or become superior to the lien hereof or to the judgment or decree foreclosing said lien.

(32) This Mortgage creates a first lien, security interest, and assignment of rents in the Mortgaged Property.

(33) Mortgagor has executed and delivered to and with Mortgagee a construction loan agreement ("Loan Agreement") of even date herewith relating to the construction of certain improvements upon the Property and the disbursement of all or part of the indebtedness hereby secured for the purpose of financing a portion of the costs thereof. The Loan Agreement is hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length. This Mortgage secures all funds advanced pursuant to the Loan Agreement (which advances shall constitute part of the indebtedness hereby secured, whether more or less than the principal amount stated in the Note) and the due and punctual performance, observance and payment by Mortgagor of all of the terms, conditions, provisions and agreements provided in the Loan Agreement to be performed, observed or paid by Mortgagor. Mortgagor hereby agrees duly and punctually to perform, observe and pay all of the terms, conditions, provisions and payments provided for in the Loan Agreement to be performed, observed or paid by Mortgagor. In the event of express and direct contradiction between any of the terms and provisions contained in the Loan Agreement and any of the terms and provisions contained herein, then the terms and provisions contained in the Loan Agreement shall control. Any warranties, representations and agreements made in the Loan Agreement by Mortgagor shall survive the execution and recording of this Mortgage and shall not merge herein.

(34) At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the indebtedness hereby secured the payment of any and all loan commissions, service charges, liquidated damages, attorney's fees, expenses and advances due to or incurred by Mortgagee in connection with the indebtedness hereby secured, all in accordance with the Note, this Mortgage, and the Loan Agreement; provided, however, that in no event shall the total amount of the indebtedness hereby secured, including loan proceeds disbursed plus any additional charges, exceed 500% of the face amount of the Note.

87681665

# UNOFFICIAL COPY

(35) Time is of the essence of the Note, this Mortgage, and any other document or instrument evidencing or securing the indebtedness hereby secured.

(36) If the payment of the indebtedness hereby secured, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Mortgaged Property or any part thereof or any interest therein, shall take the said lien subject to the rights of Mortgagee to amend, modify, extend or release the Note, this Mortgage or any other document or instrument evidencing, securing or guarantying the indebtedness hereby secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

(37) At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Mortgaged Property upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the Mortgaged Property are situated, of a unilateral declaration to that effect.

(38) The place of negotiation, execution, and delivery of this Mortgage and the location of the Mortgaged Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State.

IN WITNESS WHEREOF, Mortgagee has hereunto affixed its signature and seal.

LAKE ARLINGTON TOWNE HOUSING PARTNERSHIP,  
AN ILLINOIS LIMITED PARTNERSHIP

BY: KIMBALL HILL, INC.

BY: *David K. Hill, Jr.*

DAVID K. HILL, JR., PRESIDENT

Attest:

*Barbara J. Cooley*  
Secretary

This Document Prepared By (and after recording should be returned to):

**BOX 333 - WJ**

LOMAS & NETTLETON COMPANY  
ONE LINCOLN CENTRE, SUITE 1340  
OAKBROOK TERRACE, ILLINOIS 60181  
Attn: Ronald L. Cowan

Street Address Of The Property: 2128, 2108, 2187 and 2167 Lake Shore Dr.

Permanent Real Estate Index Number(s): 03-16-400-005-0000

STATE OF ILLINOIS )  
                          ) SS.  
COUNTY OF COOK )

I, JOANN M. MAY, a notary public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DAVID K. HILL, JR., President of Kimball Hill, Inc., the Sole General Partnership of Lake Arlington Towne Housing Partnership, an Illinois Limited Partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said Corporation, and as the free and voluntary act of said limited partnership for the uses and purposes therein set forth.

*W ANN BARBARA C Cooley, Secretary*

Given under my hand and notarial seal this 18th day of December 1987.

Joann M. May  
Notary Public in and for  
Cook County

My Commission Expires:  
8/13/89

COOK COUNTY, ILLINOIS  
RECORDS SECTION  
NOV DEC 30 PM 2:40

87681665

87681665

# UNOFFICIAL COPY 1 5 6 5

L & N Co. Loan No. 526809

## PROPERTY DESCRIPTION

### PARCEL 1A:

(LAKE ARLINGTON, UNIT 3-VILLAGE) LOTS 1, 3, 18 AND 20 IN LAKE ARLINGTON UNIT 3, A SUBDIVISION IN THE SOUTH EAST 1/4 OF SECTION 16, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

### PARCEL 1B:

EASEMENT FOR THE BENEFIT OF PARCEL 1A OVER LOT 31 IN LAKE ARLINGTON UNIT 3 SUBDIVISION, AFORESAID, FOR INGRESS AND EGRESS AS SET FORTH OF THE PLAT OF SUBDIVISION RECORDED JULY 29, 1986 AS DOCUMENT 86322992 AND AS CREATED BY MORTGAGE RECORDED DECEMBER 17, 1986 AS DOCUMENT 86605063.

Property of Cook County Clerk's Office

EXHIBIT "A"

87681665