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10/23/91

SECOND

NOTE, MORTGAGE AND LOAN AGREEMENT MODIFICATION AGREEMENT

THIS SECOND NOTE, MORTGAGE AND LOAN AGREEMENT MODIFICATION AGREEMENT (the "Agreement") dated as of the 25th day of September, 1991, by and between Boulevard Bank National Association, a national banking association, not personally but solely as Trustee under Trust Agreement dated January 25, 1989 and known as Trust No. 8927 ("Trustee") with a mailing address of 400 North Michigan Avenue, 2 South, Chicago, Illinois 60611, Tamerlane Associates Limited Partnership, an Illinois limited partnership ("Beneficiary," and together with Trustee, the "Borrower"), with a mailing address of c/o Ruttenberg & Ruttenberg, 325 West Huron Street, Suite 806, Chicago, Illinois 60610 and LaSalle National Bank, a national banking association previously known as Exchange National Bank of Chicago ("Lender"), with a mailing address of 120 South LaSalle Street, Chicago, Illinois 60603.

WITNESSETH:

DEPT-01 RECORDING \$27.50
 74444 DEAN 7176 11/22/91 15:06:00
 #872450 ***91-616963
 COOK COUNTY RECORDER

WHEREAS, on or about December 7, 1989, Lender made a loan (the "Loan") to Borrower in the aggregate amount of Eight Million Four Hundred Thousand and no/100ths (\$8,400,000.00) for the purchase and development with a townhouse project of certain property located at 2701 North Greenview and West Wrightwood Avenues, Chicago, Illinois and legally described in Exhibit "A" attached hereto (the "Premises");

WHEREAS, to evidence the Loan, Borrower has executed and delivered to Lender (a) a Land Acquisition Promissory Note payable to Lender dated December 1, 1989 in the principal amount of \$2,400,000.00 ("Land Acquisition Note") and (b) a Land

This instrument prepared by and after recording return to:

Michael S. Kurtzon
 Miller, Shakman, Hamilton & Kurtzon
 208 South LaSalle Street
 Suite 1200
 Chicago, Illinois 60604

Permanent Index Nos.

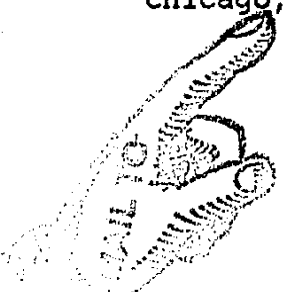
14-29-302-110 through 158

Address of Premises:

2701 North Greenview
 Chicago, Illinois

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Acquisition and Revolving Credit Promissory Note payable to Lender dated December 1, 1989 in the principal amount of \$6,000,000.00 ("Revolving Credit Note") (the Land Acquisition Note and Revolving Credit Note are hereinafter sometimes referred to as the "Notes");

WHEREAS, the Notes are secured by a certain Construction Mortgage and Security Agreement With Assignment of Rents dated as of December 1, 1989 executed by Borrower in favor of Lender, which Mortgage encumbers the Premises and was recorded in the office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office") on December 7, 1989 as Document No. 89584449 and amended by Note, Mortgage and Loan Agreement Modification Agreement dated March 1, 1991 and recorded as Document No. 91130422 (the "Mortgage");

WHEREAS, Borrower also executed, in favor of Lender, a certain Assignment of Leases and Rents dated as of December 1, 1989 and recorded in the Recorder's Office on December 7, 1989 as Document No. 89584450 and amended by Document No. 91130422 ("Assignment of Leases and Rents");

WHEREAS, Borrower and Lender also entered into a Construction Loan Agreement dated as of December 1, 1989 and amended by Document No. 91130422 ("Loan Agreement" and, together with the Notes, Mortgage, Assignment of Leases and Rents and any and all other documents securing the Loan, the "Loan Documents");

WHEREAS, Borrower has requested that Lender loan to Borrower an additional \$600,000 to finance construction of certain improvements in Phase Two of the Project, and, subject to the conditions hereinbelow set forth and the modifications to the Loan Documents herein contained, Lender is willing to do so;

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, and for other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged by Borrower, it is hereby agreed as follows:

1. The foregoing recitals are hereby incorporated by this reference into this Agreement. All defined terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

2. The Mortgage is amended as follows:

(a) The first recital on page one of the Mortgage is deleted and the following is substituted in lieu thereof:

"WHEREAS, Trustee and Beneficiary have executed and delivered to Mortgagee (a) a promissory note payable to Mortgagee bearing even date herewith in the principal amount of \$6,000,000.00, as amended to increase the principal amount thereof to \$6,250,000.00 (said note and any and all extensions

and renewals therefor is referred to herein as the "Land Acquisition and Revolving Credit Promissory Note"), (b) a promissory note bearing even date herewith payable to Mortgagee in the principal amount of \$2,400,000.00 (said note and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "Land Acquisition Promissory Note"), and (c) a Revolving Credit Promissory Note payable to Mortgagee dated September 25, 1991 in the principal amount of \$600,000.00 (said Note and any and all extensions, renewals thereof, amendments thereto and substitutions or replacements thereof is referred to herein as the "Phase Two Note") (the Land Acquisition and Revolving Credit Promissory Note, Land Acquisition Promissory Note and Phase Two Note are hereinafter sometimes referred to as the "Notes") and by which Mortgagor and Beneficiary promise to pay said principal sums (or so much thereof as may be outstanding at the maturity thereof) on December 1, 1992 together with interest on the balance of principal from time to time outstanding and unpaid thereon at the rates and at the times specified in the Notes;"

(b) The following is added after GRANTING CLAUSE VI of the Mortgage:

GRANTING CLAUSE VII

All right reserved or granted to the Mortgagor under the Declaration of Covenants, Conditions, Restrictions and Easements for Tamerlane Homeowners' Association recorded in the office of the Cook County Recorder of Deeds December 26, 1989 as Document No. 8961498, as from time to time amended and restated including, without limitation those set forth in Article IX thereof."

3. The Loan Agreement is hereby amended as follows:

(a) Paragraph 2 on page 1 of the Loan Agreement is amended by changing the number "forty-eight (48)" in the second line thereof to sixty-seven (67), and by changing the phrase "each consisting of sixteen (16)" in the last line to "consisting of eighteen (18) residences in the first phase and twenty-six (26) residences in the second phase."

(b) Paragraph 2.1 is amended by adding thereto the following definition:

"PHASE TWO NOTE - The Revolving Credit Promissory Note in the principal amount of \$600,000 evidencing the additional amount of the Loan to be disbursed for construction of Homes and associated soft costs in Phase Two of the Project."

(c) The definition of "NOTES" in Section 2.1 is amended to read as follows:

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"NOTES - The Land Acquisition and Revolving Credit Promissory Note, the Land Acquisition Promissory Note and the Phase Two Note."

(d) Section 4.2, as amended by the Note, Mortgage and Loan Agreement Modification Agreement recorded as Document No. 91130422 is hereby deleted and the following is substituted therefor:

"For purposes of this Agreement, the Loan Amount shall be allocated on the basis set forth in the Project Budget. Subject to the limitations herein provided, a maximum amount of \$6,000,000.00 shall be available for borrowing on a revolving credit basis."

(e) Section 4.3 is deleted and the following is substituted in lieu thereof:

"PHASES OF CONSTRUCTION. The Project will be constructed in three phases ("Phase One, Phase Two and Phase Three"). Phase One shall consist of the construction of eighteen (18) Homes and certain Site Improvements. Phase Two will consist of construction of twenty-six (26) Homes and certain Site Improvements. The composition of Phase Three has not yet been determined and Lender shall have no obligations in respect to Phase Three unless Lender approves in writing a proposed development plan for Phase Three and, in such event, any disbursements of the Loan in respect to Phase Three shall be subject to such conditions and requirements as lender, in its sole discretion, shall determine. The location of each Phase is set forth on the Site Plan and a description of the Site Improvements for each Phase is set forth on Exhibits "E" and "F"."

(f) Section 4.4(b) is deleted and the following is substituted in lieu thereof:

"(b) Lender has fully disbursed the entire amount of the Loan allocated to Phase One Site Improvements. Disbursement of the Loan for Phase Two Site Improvements shall be limited to the amount set forth in the Project Budget for Phase Two attached hereto as Exhibit B."

(g) Paragraph 4.4(d) is amended by substituting therefor the following:

"Notwithstanding anything to the contrary contained in this Agreement, Lender shall not be obligated to advance proceeds of the Loan for the construction of any homes in Phase Two or Phase Two Site Improvements until (i) final approval by the City of Chicago of an amendment to the Planned Unit Development Ordinance governing the Project permitting construction of homes in Phase Two of the Project pursuant to a site plan to be approved by

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Lender or other evidence satisfactory to Lender that the City of Chicago will permit construction of the Project pursuant to the modified site plan of the Project attached hereto; (ii) approval by Lender of the modified site plan for Phase Two of the Project and a proposed amendment to the Planned Unit Development Ordinance for the Project; (iii) approval by Lender of a sales price schedule for the homes to be constructed in Phase Two of the Project; and (iv) approval by Lender of the Plans and Specifications for the homes to be constructed in Phase Two of the Project. Furthermore, notwithstanding the satisfaction of the conditions set forth in subparagraph (i) through (iv) above, Lender shall not be obligated to advance any funds for construction of Homes in Phase Two except for advances made, subject to satisfaction of all of the conditions set forth in this Agreement, for (1) construction of two Homes and the exterior shell of one adjacent Home located in the crescent building delineated on the Site Plan of Phase Two attached as Exhibit C; (2) construction of pilings for six (6) Homes; (3) completion of construction of the Home designated as Lot 7 in the six unit rowhouse building and construction of the shell of the Home adjacent thereto designated as Lot 8 on Exhibit "C"; and (4) construction of additional Homes in the crescent building and of Homes in the six (6) unit rowhouse building delineated as such on Exhibit C which, in each case have been "sold". For purposes hereof, a Home shall be considered "sold" if (i) such Home is subject to a bona fide, fully executed real estate sales contract on a form previously approved by Lender that does not contain any unsatisfied contingencies and pursuant to which the purchaser has delivered to Borrower an earnest money deposit of not less than ten percent (10%) of the purchase price, and an amount in cash equal to the cost of all upgrades and extras and (ii) the purchaser has obtained a mortgage commitment (which need not lock in the interest rate) from a lending institution satisfactory to Lender. All such earnest money deposits shall be delivered to Lender and shall be held by lender in an interest bearing account with the interest credited Borrower. Lender shall not be obligated to disburse any proceeds of the Loan for construction of any Homes in Phase Three or any Phase Three Site Improvements unless and until Lender, in its sole discretion, approves any additional work in Phase Three. The portion of the Loan evidenced by the Phase Two Note shall constitute a revolving loan and, subject to the limitations and the conditions hereinbelow described, Borrower shall have the right at any time before the due date of the Phase Two Note to reborrow any revolving loan funds theretofore repaid to Lender so that the outstanding principal balance of such revolving loan may increase or decrease from time to time as a result of such repayment and reborrowing. The Borrower's right to borrow and reborrow shall be subject to the following conditions:

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(i) No Default or Event of Default shall have occurred and be continuing under any of the Notes, this Agreement or any other Loan Documents; and

(ii) Borrower shall not be entitled to borrow funds for items of Hard Costs or Soft Costs for Phase Two of the Project in excess of the amounts allocated therefor on a line item basis in the Phase Two Project Budget.

(h) The following is added at the end of paragraph 4.7(b):

"Notwithstanding anything to the contrary hereinabove contained, all disbursements by the Title Company for work and materials furnished by subcontractors and material suppliers shall be disbursed directly to such subcontractors and material suppliers and not to Borrower or the general contractor."

(i) Concurrently herewith, Borrower shall deposit with Lender the sum of \$300,000.00 in immediately available funds to be held by Lender and disbursed to (i) pay accrued interest on the Loan in the aggregate amount of \$119,691.45 for the period ending September 1, 1991, (ii) to pay interest as and when due on \$1,200,000 of the Land Acquisition Note (representing the portion of the Loan allocated by Lender and Borrower to the cost of acquisition of the portion of the Real Estate constituting Phase Three) and (iii) to pay interest as and when due on the Revolving Credit Note. Upon the occurrence of an Event of Default hereunder, any balance of said \$300,000.00 not theretofore disbursed to pay interest may be applied by Lender against any indebtedness or obligations of Borrower evidenced by the Notes or Phase Two Note or secured by the Mortgage in such order as Lender may elect.

(j) The following paragraph is added to Article IV:

"4.14 Additional Equity Requirement. Prior to the disbursement of any additional proceeds of the Loan for Work in Phase Two of the Project, Borrowers shall deposit with Lender the sum of \$250,000 in immediately available funds (the "Additional Equity"). The Additional Equity shall be disbursed by Lender through a construction escrow trust established with the Title Company for costs of development of homes in Phase Two and Phase Two Site Improvements in accordance with the approved Project Budget. The Additional Equity shall be fully disbursed prior to the disbursement of any additional proceeds of the Loan for work in Phase Two of the Project. Borrowers shall not be entitled to reimbursement from the proceeds of the Loan for the Additional Equity until repayment in full of the Loan."

(k) The Project Budget attached to the Loan Agreement is deleted and the revised Project Budget approved by Lender is substituted in lieu thereof.

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4. The modifications provided for in this Agreement shall be effective only upon fulfillment of the following conditions by Borrower:

(a) There exists no default or Event of Default hereunder or under any of the Loan Documents.

(b) Issuance by the Title Insurer of an endorsement (dated as of the date of recording of this Agreement) to the loan policy previously issued to Lender dated December 7, 1989 and bearing Policy No. N890599 insuring Lender that the Mortgage, as amended hereby, constitutes a valid first lien on the Premises, subject only to the Permitted Exceptions and liens over which the Title Insurer has insured by endorsements satisfactory to Lender and reinsured by First American Title Insurance Company of California.

(c) Delivery to Lender of an opinion of counsel for Borrower satisfactory to Lender.

(d) Delivery to Lender of a Reaffirmation of Guaranty satisfactory to Lender.

(e) Delivery to Lender of a revised Project Budget acceptable to Lender.

5. In addition to all other fees, Borrower shall pay, a loan fee in the amount of \$3,000 on the \$600,000 portion of the Loan evidenced by the Phase Two Note upon the earlier of (a) repayment of the Phase Two Note or (b) one year from the date hereof.

6. Contemporaneously with the execution and delivery hereof, Borrower shall pay or cause to be paid all closing costs and expenses, including the fees of Lender's attorneys, incurred in connection with the transactions contemplated herein.

7. Borrower hereby acknowledges that (i) as of the date hereof Borrower has no defense, offset or counterclaim with respect to the payment of any sum owed to Lender, or with respect to any covenant in the Loan Documents; (ii) Borrower hereby remakes and ratifies all representations, warranties and agreements made by it in and upon the execution and delivery of the Notes and other Loan Documents; (iii) Lender, on and as of the date hereof, has fully performed all obligations to Borrower and Beneficiary which it may have had or has on and as of the date hereof; (iv) by entering into this Agreement, Lender does not waive any condition or obligation in the Loan Documents.

8. Nothing herein contained shall impair the Notes or other Loan Documents in any way nor alter, waive, annul, vary nor affect any provision, condition or covenant herein contained except as expressly herein provided nor affect or impair any right, power or remedy of

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Lender, it being the intention of the parties hereto that the terms and provisions of the Notes and other Loan Documents shall continue in full force and effect except as expressly modified in connection herewith.

9. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

10. No extension, change, modification or amendment of any kind or nature whatsoever, to or of this Agreement shall be made or claimed by Borrower, and no notice of any extension, change, modification or amendment, made or claimed by Borrower shall have any force or effect whatsoever unless the same shall be reduced to writing and signed by the parties.

11. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.

12. This Agreement is executed by Boulevard Bank National Association, 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 contained shall be construed as creating any liability on said Trustee personally to pay the 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 Lender 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 the Notes and the owners or owners of any indebtedness accruing hereunder shall look solely to the Premises for the payment thereof, by the enforcement of the lien created by the Mortgage, in the manner therein and in the Notes or by action to enforce the personal liability of any guarantors of the indebtedness hereby secured or by proceeding against any other collateral security therefor.

13. Notwithstanding anything to the contrary contained herein, neither Beneficiary nor its partners shall have any personal liability for the obligation to pay any principal, interest or other sums payable under this instrument or for the obligation to observe, perform or discharge any of the terms, covenants or conditions contained in this instrument, and (a) no attachment, execution, writ or other process shall be sought and no judicial proceeding shall be initiated by or on behalf of the Lender against Beneficiary or its partners personally as a result of a breach or default under this instrument unless such attachment, execution, writ or judicial proceeding shall be necessary to enforce any of the rights, remedies or recourses of the Lender against or with reference to the Project; and (b) in the event that any suit is brought under this instrument whether before or after the maturity by acceleration, by passage of

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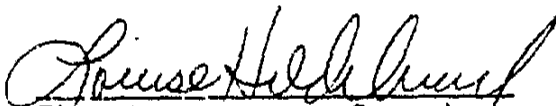
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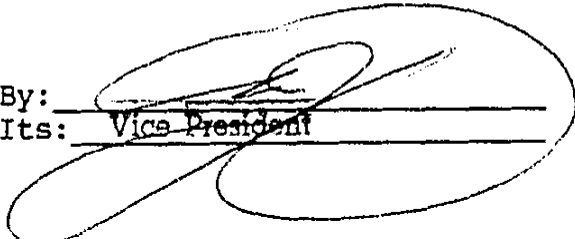
time or otherwise, any judgment obtained in or as a result of such suit shall be enforceable and/or enforced solely against the Project; provided, however, that the Lender shall have full recourse against Beneficiary and Beneficiary and its general partners shall be personally liable for and will promptly account to Lender for all rents, issues, profits and income derived from the Project that accrue from and after the occurrence of an event of default under the Note, the Mortgage or any document securing the obligations of the Borrower under this instrument and received by Beneficiary and not properly expended by Beneficiary in connection with the operation of the Project. Nothing herein contained shall be construed to: (1) be a release or impairment of the indebtedness secured by the Mortgage; (2) prevent Lender from exercising and enforcing, consistent with the provisions of this section, any other remedy allowed at law or in equity or by any statute or by the terms of the Note, this instrument or other documents securing Beneficiary's obligations under this instrument; (3) prevent Lender from enforcing the guaranty required hereunder or other available remedy against Beneficiary for any separate certificate, indemnity, bond guaranty, assignment or affidavit executed in connection with the Beneficiary's obligations under this instrument; (4) prevent Lender from recovering any funds, damages or costs (including, without limitation, legal expenses) incurred by the Lender as a result of any deliberate, intentional or willful action taken in bad faith or as a result of fraud or a misrepresentation made in bad faith of facts known by Beneficiary by or on behalf of Beneficiary; (5) prevent Lender from recovering, from any person or entity receiving or holding such proceeds, funds or payments, and condemnation or insurance proceeds, or other similar funds or payments attributable to the Project, which under the terms of this instrument or any of the other documents securing the Beneficiary's obligations under this instrument should have been, but were not, paid to the Lender.

IN WITNESS WHEREOF, the undersigned have caused these presents to be signed as of the day and year first above written.

ATTEST:

Boulevard Bank National
Association, not personally but
solely as Trustee as
aforesaid


Its: Secretary
Ass't. Vice President

By: 
Its: Vice President

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Tamerlane Associates Limited Partnership, an Illinois limited partnership

By: Belgravia Group Ltd., an Illinois corporation, the sole general partner

ATTEST:

Claud D. Lew
Its: Secretary

By: Harold Perry
Its: ~~Vice~~ President

ATTEST:

Jana A. Clark
Its: Asst. Vice Pres Secretary

LaSalle National Bank

By: C. Cahill
Its: First Vice President

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STATE OF ILLINOIS)) SS.
COUNTY OF COOK)

I HEREBY CERTIFY that on this 31st day of October, 1991, before me personally appeared H.L. Perry, Alon D. Lev President and Secretary of Belgravia Group Ltd., a corporation under the laws of the State of Illinois and the sole general partner of Tamerlane Associates Limited Partnership, an Illinois limited partnership, to me known to be the same persons who signed the foregoing instrument as their free act and deed as such officers of the corporation as the sole general partner for the use and purpose therein mentioned, and that the said instrument is the act and deed of said corporation and limited partnership.

WITNESS my signature and official seal at Chicago in the County of Cook and State of Illinois, the day and year last aforesaid.

(NOTARY SEAL)

"OFFICIAL SEAL"
DAVID W. HAYTENDERS
Notary Public, State of Illinois
My Commission Expires July 1992
[Signature]

Cook County Clerk's Office

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EXHIBIT "A"

LEGAL DESCRIPTION

Parcel 1:

The West half of Lots 2 and 3 in Block 45 in Sheffield's Addition to Chicago;

Also

Lot 7 (except the South 378 feet thereof and except the North 175 feet of the South 553 feet thereof) in the subdivision of Lot 1 in Joseph E. Sheffield's Subdivision of Block 45 in Sheffield's Addition to Chicago;

Also

The South 3 feet of the West 262.33 feet of Lot 4 in Block 45 in Sheffield's Addition to Chicago, in Section 29, Township 40 North, Range 14 East of the Third Principal Meridian, all in Cook County, Illinois.

Parcel 2:

The North 159.00 feet of the South 553.00 feet of the West 212.00 feet of Lot 7 in the subdivision of Lot 1 in Joseph E. Sheffield's Subdivision of Block 45 in Sheffield's Addition to Chicago in the West 1/2 of the South West 1/4 of Section 29, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

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EXHIBIT "B"

PROJECT BUDGET FOR PHASE TWO

The Project Budget for Phase Two described herein has been delivered to Lender and intentionally has not been attached to the recording copy of this instrument.

Property of Cook County Clerk's Office

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SITE PLAN 03

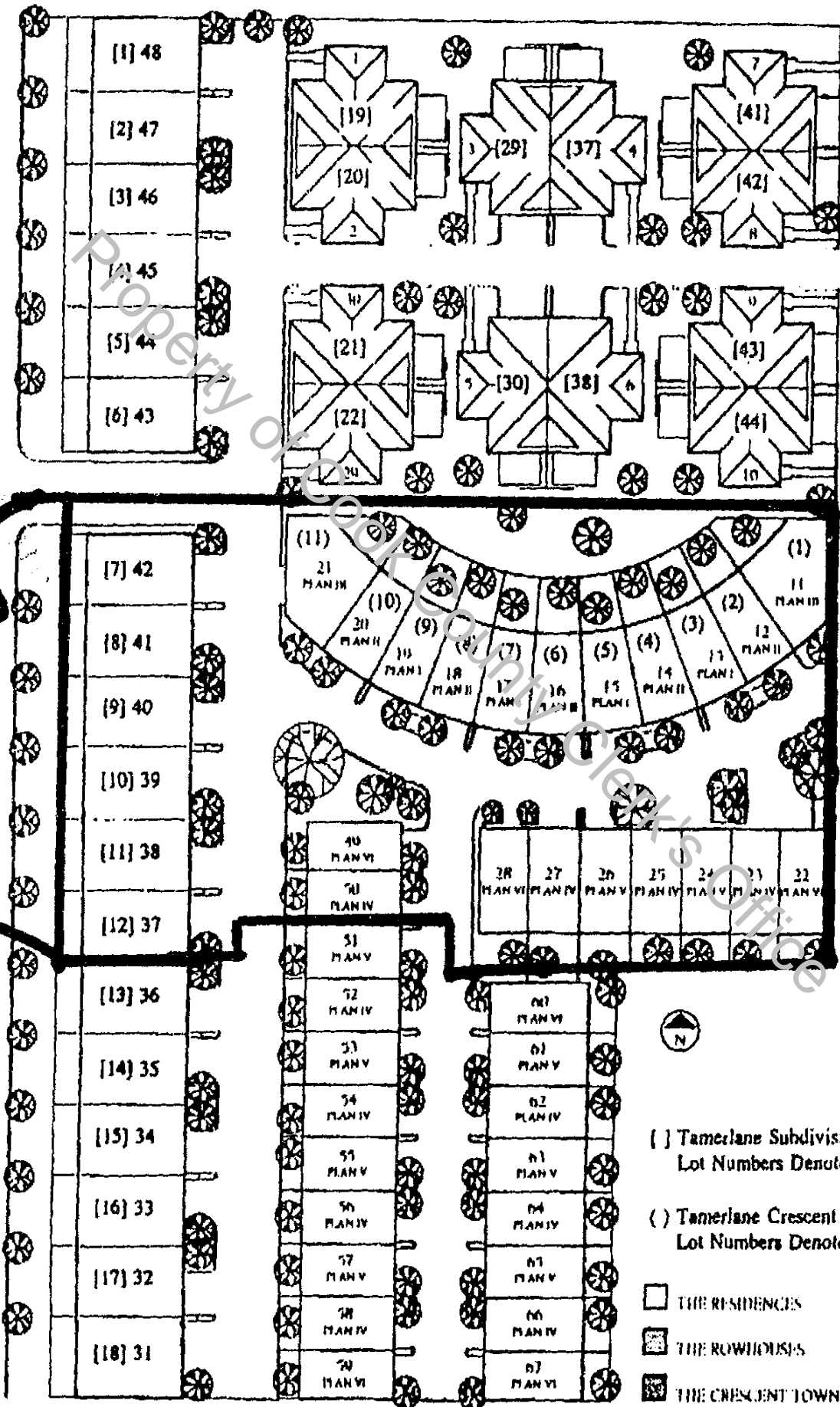
Tamerlane

2707 NORTH GREENVIEW

NORTH GREENVIEW AVENUE

JANSSEN STREET

PHASE II



[] Tamerlane Subdivision Lot Numbers Denoted

() Tamerlane Crescent Lot Numbers Denoted

□ THE RESIDENCES

▣ THE ROWHOUSES

◐ THE CRESCENT TOWNHOMES

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