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# UNOFFICE 89134900

MODIFICATION OF NOTE, MORTGAGE AND OTHER LOAN DOCUMENTS

THIS MODIFICATION AGREEMENT (the "Agreement") dated as of day of SIPKMKI, 1989, by and between American National Bank and Trust Company of Chicago, not personally but as Trustee under Trust Agreement dated May 9, 1989 and known as Trust No. 108303-05 ("Borrower") with a mailing address of 33 North LaSalle Street, Chicago, Illinois 60602, KHS Land Partnership, an Illinois general partnership ("Beneficiary"), with a mailing address of c/o Hoffman Homes, Inc., 300 Park Boulevard, Suite 515, Itasca, Illinois 60143, and Kemper Investors Life Insurance Company, an Illinois insurance corporation ("Lender"), with a mailing address of c/o Kemper Financial Services, Inc., 120 South LaSalle Street, Chicago, Illinois 60603.

#### WITNESSETH:

WHEREAS on or about May 22, 1989, Lender made a loan (the "Loan") to Borrower and Beneficiary in the amount of Twenty Nine Million and nc/) 10ths (\$29,000,000.00) of which Fourteen Million One Hundred Eighty-Five Thousand and no/100ths (\$14,185,000.00) has been disbursed for the purchase of certain property known as the Polk Parcel, it Schaumburg, Illinois ("Polk Parcel") and legally described in Exhibit "A" attached hereto; and

WHEREAS, to evidence the Loan, Hoffman Homes, Inc., a Delaware corporation ("Hoffman Homes"), executed a certain Promissory Note (the "Note") dated May 18, 1989 payable to the order of Lender in the principal sum of \$29,000,000.00, which Note is secured by a certain Mortgage, Fixture Filing and Security Agreement with Assignment of Cash Collateral ("Mortgage") dated May 18, 1989 executed by Borrower and Beneficiary in favor of Lender, which Mortgage encumbers the Polk Parcel and was recorded in the office of the Recorder of Deeds of Cook County, Illinois ("Office") on Mry 22, 1989 as Document No. 89229748; and

WHEREAS, Borrower, Beneficiary, Hoffman Homes and Lender also executed a certain Loan Agreement ("Loan lorgement") dated May 18, 1989; and

WHEREAS, the proceeds of the Note are to be reloaned by Hoffman Homes to Borrower and Beneficiary pursuant to the provisions of the Loan Agreement, which indebtedress is evidenced by a Partnership Note in the principal amount of \$29,000,000.00 from the Borrower and Beneficiary to Hoffman Homes; and

This instrument prepared by/ After recordation return to:

Scott M. Lapins Miller, Shakman, Nathan & Hamilton 208 South LaSalle Street Suite 1200 Chicago, Illinois

Box 333

7057537

Permanent Index Nos: 07-23-201-001 07-23-202-001 07-24-102-001 07-13-300-006 07-23-200-002 07-23-200-003 07-24-100-001

#### Address of Properties:

Southwest corner of Meacham and Higgins Roads, Schaumburg, Illinois (Polk Parcel)

Northwest corner of Meacham and Schaumburg Roads, Schaumburg, Illinois (Brach Parcel)

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WHEREAS, the Note, Mortgage, Loan Agreement and any and all other documents securing the Loan are hereinafter referred to as the "Loan Documents"; and

WHEREAS, Beneficiary is purchasing additional property on the Northwest corner of Meacham and Schaumburg Roads, Schaumburg, Illinois legally described in Exhibit "B" attached hereto ("Brach Parcel"), and has requested that Lender make a further disbursement under the Loan in connection with the purchase thereof.

WHEREAS, the parties desire to modify the Loan Documents to recognize the further disbursement under the Note, encumber the Brach Parcel with the Loan Documents, and such other matters provided for herein.

WHEREAS, no default or event which would constitute a default but for the passage of time or giving of notice, or both, exists under the Note or under the obligations of Borrower and/or Beneficiary pursuant to the Loan Documents.

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, the receipt and sufficiency of which are hereby acknowledged by Borrower and Beneficiary, it is hereby agreed as follows:

- 1. The preamble is incorporated by this reference in and to the main body of this Agreement.
- 2. An additional disbursement ("Additional Disbursement") and shall be made under the loan in the amount of \$7,400,856.00 in the connection with the purchase of the Brach Parcel.
- 3. The Note is hereby modified to reflect that it is secured by the Mortgage as here nafter modified, including the addition of the Brach Parcel to the Loan Documents.
- 4. Borrower hereby represents and indemnifications contained in a certain Environmental Indemnity Agreement and in an Inducement Letter, both dated May 18, 1989, from Noffman Homes to Lender remain true, correct, accurate, complete, unmodified and in full force and effect.
  - 5. The Mortgage is hereby modified as follows:
  - (a) Any reference to "Mortgaged Premisos", "Property" or "Realty" (as defined in the Mortgage) shall hereinafter include the Brach Parcel legally described on Exhibit "B" attached hereto; and
  - (b) Any reference to "Permitted Exceptions" (as defined in the Mortgage) shall hereinafter include the following for the Brach Parcel:
  - General real estate taxes for 1989 and subsequent years.
  - Rights of owners of the land bordering on the Salt Creek in respect to the water of said creek.
  - Easement for electric service as created by grant to Commonwealth Edison Company recorded as Document No. 22535082.
  - Easement for sanitary sewers as created by grant to the Metropolitan Sanitary District of Greater Chicago recorded as Document No. 21842730.
  - Rights of the public, the State of Illinois and the Municipality in and to that part of the land taken or used for Schaumburg Road.

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- Rights of the public, the State of Illinois and the Municipality in and to that part of the land taken or used for Meacham Road.
- ~ Chancery Case No. 88 CH 4883.
- Condemnation Case No. 89 L 50203.
- 6. The modifications provided for in this Agreement shall be effective only upon the following conditions being complied with by Borrower and Beneficiary:
  - (a) That the Note is and always has been maintained in good standing, free from any default, and there is no uncured event of default hereunder or under the Loan Documents, as of the date hereof.
  - Policy No. 71-94-267 issued by Chicago Title Insurance Company ("Chicago Title") previously delivered to Lender pursuant to paragraph 5.1(b) of the Loan Agreement, increasing the amount thereof to \$250 5,850.00 and insuring that as at the date of disbursement of the portion of the Loan relating to the Brach Parcel, title to the Brach Parcel is vested in Borrower and that the Mortgage is a valid first lien upon the Brach Parcel, subject only to the Permitted Exceptions. The aforesaid Loan Policy will be further amended to contain 3.0 Zoning Endorsement, a lender's Comprehensive Endorsement, a Contiguity Endorsement, and an Access Endorsement (the form and substance of which shall all be subject to Lender's approval).
  - (c) Delivery to Under of the Reaffirmation of Guaranty.
  - (d) Delivery to Lender of an opinion of counsel of Borrower and Beneficiary, in form satisfactory to Lender, opining that this Agreement is enforceable in accordance with its terms.
  - (e) Delivery to Lender of a Plat of Survey of the Brach Parcel made by a Surveyor licensed in the State of Illinois showing the legal description and area of each tract of the Brach Parcel, access to and from the Brach Parcel to a dedicated roadway, all discrepancies, conflicts, encroachments, improvements, overlapping of improvements, set-back lines, roadways, easements, fences, apparent travel ways, water courses and apparent disposal sites, that are either of record, apparent or may be discovered by visible inspection. Such Plat of Survey shall be certified to Lender, Borrower, Beneficiary and Chicago Title as naving been prepared in accordance with the Minimum Standard Detail Requirements for Land Title Surveys jointly established and adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1986 and shall further certify that no portion of the Brach Parcel lies within the 100 year flood plain or any area having special flood hazards as designated by Federal Emergency Management Agency.
  - (f) Delivery to Lender of insurance policies, with prepaid premiums, from companies, with coverage and amounts and containing Mortgagee's loss payable clauses, all satisfactory to Lender relating to the Brach Parcel;
  - (g) Delivery to Lender of a Certificate executed and sworn to by the Borrower and Beneficiary that each of the items delivered pursuant to paragraph 5.1 of the Loan Agreement and each of the representations and warranties contained in paragraph 3.1 of the Loan Agreement remain true, accurate, complete, unmodified and in full force and effect

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as of the date of the disbursement relating to the purchase of the Brach Parcel.

- 7. The Note, Mortgage and the Loan Documents are hereby modified only as set forth above and in all other respects are ratified by Borrower and Beneficiary as being in full force and effect.
- 8. Contemporaneously with the execution and delivery hereof, Borrower and Beneficiary, shall pay or cause to be paid all closing costs and expenses, including title insurance premiums and legal fees incurred by Lender, incident to the transactions contemplated herein.
- 9. Borrower and Beneficiary hereby acknowledge that (i) neither Borrower nor Beneficiary has any 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) Lender, on and as of the date hereof, has fully performed all obligations to Borrower and Beneficiary which may have had or has on and as of the date hereof; (iii) other than as expressly set forth herein, by entering into this Agreement, Lender does not waive any condition or obligation in the Loan Documents.
- 10. This Agraement shall be governed and construed in accordance with the laws of the State of Illinois.
- 11. This Agreement may be executed in one or more counterparts, which together shall comprise the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Note and Mortgage Modification Agreement as of the day and year first above written.

This instrument is accorded by the undersigned Land Triction, not personally but solely as Invitous the undersigned solely contented upon and a solely as an introduct. It is regard by the personal solely content of a 1 solely content of the personal door, a content of a 1 solely and the first of the undersigned part of the trusted area of content of a solely as a

By: SECRETARY SECRETARY

#### **BORROWER:**

American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesid

By: TRUST OFFICER

#### BENEFICIARY:

KHS Land Partnership, an Illinois general partnership

By: Hoffman Homes, Inc., a Delaware corporation, managing partner

By: Waller Was

#### LENDER:

Kemper Investors Life Insurance Company, an Illinois insurance corporation

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#### BORROWER:

ATTEST:	American National Bank and Trust Company of Chicago, not personally but as Trustee as Aftersaid
By:	By:
	BENEFICIARY
	KHS Land Parthership, an Illinois general partnership
	By: Hoffman Homes, Inc., a Delaware corporation, managing partner
	By: Its:
	LENDER:
	Kemper Investors Life Insurance Company, an Illinois insurance corporation

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#### ACKNOWLEDGEMENT

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COUNTY OF COOK	
P. M. CONTINUE	
said County, in the State afores that Claire Rosati Feley by me to be the IRUST. Off	, a Notary Public in and for ald, DO HEREBY CERTIFY personally known to me and known UEA President of American
National Bank and Trust Company	of Chicago, a national hasteretar
personally known to me to be the	William Warlah Secretary
of said association, and persona persons whose names are subscrib	ed to the foregoing instrument,
apraled before methia day cit p	erson and severally acknowledged President and
Secretary of said association as the seci of said association to	Trustee as aforesaid, and caused
authoricy given by the Board of I	Directors of said association, as
and deed of slid association, as uses and purposes therein set for	Trustee as a trust of the
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of, 1989.	ial Seal this day
	a. M. Doverski
4	Notary Public
	My Commission Expires:
"OFFICIAL SEAL"	
i. M. Sovienski Notary Public, State of Hilnots	Dir Clotti
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#### ACKNOWLEDGEMENT

STATE OF TLINOIS)
COUNTY OF (DOK.)

I APOLYN Dom, a Notary Public in and for the County and State aforesaid, do hereby certify that William M. Layrin, personally known to me to be the William M. Layrin, personally known to me to be the William Free Device Hoffman Homes, Inc., a Delaware corporation, general partner of KHS Land Partnership, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument, duly authorized on behalf of such corporation and partnership, as his free and voluntary act and the free and voluntary act of such corporation and partnership for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 15+ day of September, 1989.

"OFFICIAL SEAL"
CAROLYN M. ODOM
Notary Public,: State of Illinois
My Commission Expires Oct. 22, 1991

Notary Public Mom

My Commission Expires: October 22,149/

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Coot County Clert's Office

STATE OF ILLINOIS) SS. COUNTY OF COOK

I, Catherine A. Wallace, a notary public in and for the County, in the State aforesaid, DO HEREBY CERTIFY that F. Collechnia, Vice President and H.E. Guenther, an authorized signatory of Kemper Financial Services, Inc., a Delaware corporation (the "Company"), the authorized agent of Kemper Investors Life Insurance Company, an Illinois insurance corporation (the "Corporation"), who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and authorized signatory, appeared before me this day in person and acknowledged that they signed and delivered such instrument as their own free and voluntary act and as the free and voluntary act of the Company, as agent for the Corporation, for the uses and purposes therein sat forth.

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Cook County Clark's Office GIVEN under my hand and official seal this 1st day of September, 1989.

palderine Ch. Wallace

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#### LEGAL DESCRIPTION OF POLK PROPERTY

PARCEL 1:
THE NORTH WEST 1/4 OF THE NORTH WEST 1/4 of SECTION 24, TOWNSHIP 41
NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING
THEREFROM THAT PART DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION
OF THE WESTERLY LINE OF MEACHAM ROAD AND THE NORTH LINE OF THE NORTH
WEST 1/4 SECTION AFORESAID: THENCE SOUTH ALONG THE SAID WEST LINE OF
MEACHAM ROAD 56 FEET TO A POINT; THENCE WEST AT RIGHT ANGLES TO LAST
DESCRIBED COURSE 37 FEET TO A POINT; THENCE NORTH AT RIGHT ANGLES TO
LAST DESCRIBED COURSE 36 FEET TO NORTH LINE OF SAID NORTH WEST 1/4;
THENCE EAST ALONG SAID NORTH LINE OF SAID NORTH WEST 1/4 37 FEET TO THE
POINT OF BEGINNING; AND ALSO EXCEPTING THEREFROM THE EAST 30 FEET
THEREOF AS CONVEYED TO THE COUNTY OF COOK BY WARRANTY DEED RECORDED
JUNE 29, 1977 AS DOCUMENT 24045390, IN COOK COUNTY, ILLINOIS.

PARCEL 2:
THE NORTH 1/2 OF THE NORTH EAST 1/4 OF SECTION 23, TOWNSHIP 41 NORTH,
RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOR COUNTY, ILLINOIS
EXCEPTING THEREFROM THAT PART CONVEYED TO THE COUNTY OF COOK BY
WARRANTY DEED RECORDED JUNE 29, 1977 AS DOCUMENT 24045390 AND DESCRIBED
AS FOLLOWS: BECINNING AT THE SOUTH WEST CORNER OF SAID NORTH TO A FOIMT 1817 FEET NORTH OF THE SOUTH WEST CORNER OF
SAID NORTH EAST 1/4; THENCE EAST AT RIGHT ANGLES TO SAID WEST LINE 50
FEET; THENCE SOUTH FARALLEL WITH SAID WEST LINE TO THE SOUTH LINE OF
SAID NORTH 1/2; THENCE WEST ON SAID SOUTH LINE OF THE NORTH 1/2 TO THE
POINT OF BEGINNING, IN COCK COUNTY, ILLINOIS.

PARCEL 3:
THAT PART OF THE WEST 1/2 OF THE SOUTH WEST 1/4 OF SECTION 13, TOWNSHIP
41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF
THE SOUTHERLY LINE OF HIGGINS ROAD AS WIDENED, JU COOK COUNTY, ILLINOIS.

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# PARCEL 1:

THE MORTH ONE HALF OF THE SOUTHWEST ONE QUARTER OF THE NORTHEAST ONE QUARTER OF SECTION 23, TOWNSHIP 11 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERICIAL SEXCEPTING THEREFROM THE WEST SO FEET THEREOF) IN COOK COUNTY, ILLINDIS.

## PARCEL 2:

THE SOUTHEAST GUARIER OF THE NORTHEAST GUARTER OF SECTION 23, TOWNSHIM OF NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THE SOUTH 50.00 FEET THEREOF), IN COOM COUNTW, ILLINGIS.

# PARCEL 3:

THE SOUTHWEST GUARTER OF THE WORTHWEST SUBARTER OF SECTION (4, "OWNCHT 41, NORTH, PANGE 10 EAST OF THE THISD PRINCIPAL MEPLOIAN (EXCEPT THE EAST 50.00 FEET THEREOF LYING MOPTH 05 THE SOUTH 205.00 FEET, AS WEASURED ALONG THE EAST 11NE AND AT RIGHT ANGLES TO SAID EAST LINE, AND ALONG THE SOUTHWEST SUBAREST SHE NORTHWEST SHE SOUTHWEST SUBAREST SHE NORTHWEST SHE AND WATER OF THE SOUTHWEST SUBAREST SHE EAST LINE AND EAST LINE AND EAST LINE AND EAST LINE AND SOUTHWEST SHENCE SOUTHWEST SHENCE THE SOUTHWEST CORNER OF THE SOUTHWEST CORNER OF THE SOUTHWEST CORNER OF THE SOUTHWEST SHENCE SOUTH LINE AND ON A LINE AT MIGHT ANGLES THERETO); THENCE SOUTH LINE OF AND SOUTH LINE OF THE NORTHWEST SUBAREST SOUTH LINE OF THE NORTHWEST SUBAREST OF THE NORTHWEST SUBAREST OF THE SOUTH LINE OF THE NORTHWEST SUBAREST OF THE POINT OF BEST ALONG SAID SOUTH LINE OF THE NORTHWEST SUBAREST OF THE POINT OF BEST ALONG SAID SOUTH LINE OF THE NORTHWEST SUBAREST SOUTH LINE OF THE NORTHWEST SUBAREST SUBAREST ALONG SAID SOUTH LINE OF THE POINT OF BEST HIND OF SEIT ALONG SAID SOUTH LINE OF THE POINT OF BESINNING), IN COOK COUNTY, ILLINOIS.