

UNOFFICIAL COPY 90590457

SUBORDINATION AGREEMENT

\$22.00

This Subordination Agreement, (the "Agreement") is made as of this 30th day of November, 1990, between LASALLE NATIONAL BANK, a national banking association (the "Senior Lender") and FIRST NATIONAL BANK OF MT. PROSPECT, a national banking association (the "Subordinated Lender").

RECITALS:

A. Senior Lender has previously made a revolving construction loan (the "Loan") to Hoffman Homes, Inc., a Delaware corporation in the original principal amount of Five Million Four Hundred Thousand and no/100 Dollars (\$5,400,000.00) for the purpose of constructing 76 single family homes (individually, a "Unit") on a certain parcel of real property located in Schaumburg, Illinois, legally described on Exhibit A attached hereto and made a part hereof (the "Property"). The Property has been subdivided into 76 lots (individually, a "Lot") pursuant to a plat of subdivision dated February 15, 1990 and recorded with the Cook County Recorder's office on May 11, 1990 as Document No. 90219579.

B. To evidence the Loan, Senior Lender is the owner and holder of a certain Mortgage Note (the "Senior Note") of even date herewith in the original principal amount of Five Million Four Hundred Thousand and No/100 Dollars (\$5,400,000.00) made by Borrower payable to the order of Senior Lender.

C. Senior Lender is also the owner and holder of the following documents securing the Senior Note:

- (i) a certain Mortgage (the "Senior Mortgage") of even date herewith made by Borrower to Senior Lender encumbering the Property;
- (ii) a certain Collateral Assignment of Leases and Rents of even date herewith made by Borrower;
- (iii) a certain Collateral Assignment of Major Subcontracts and Permits of even date herewith made by Borrower to Senior Lender;
- (iv) a certain Collateral Assignment of Architect's Contract, Plans and Specifications and Tests of even date herewith made by Borrower to Senior Lender;
- (v) a certain Collateral Assignment of Engineer's Contract of even date herewith made by Borrower to Senior Lender;
- (vi) a certain Guaranty of Payment and Performance of even date herewith made by The Hassinger Companies, Inc., an Illinois corporation to Senior Lender;
- (vii) a Letter of Credit of even date herewith issued by Subordinated Lender to Senior Lender; and
- (viii) UCC-1 and UCC-2 Financing Statements made by Borrower for the benefit of Senior Lender.

The Senior Note, Senior Mortgage and all of the foregoing documents and instruments, together with all other documents and instruments evidencing and securing the Senior Note are hereinafter collectively referred to as the "Senior Loan Documents."

THIS INSTRUMENT PREPARED BY AND AFTER RECORDING RETURN TO:
James L. Beard, Esq.
RUDNICK & WOLFE
203 North LaSalle Street, Suite 1800
Chicago, Illinois 60601

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D. Subordinated Lender is the owner and holder of two (2) certain Promissory Notes (collectively, the "Subordinated Note") each dated November 30, 1990, in the original principal amount of Two Million Five Hundred Thousand and no/100 Dollars (\$2,500,000.00) and One Million and no/100 Dollars (\$1,000,000.00) respectively, made by Borrower payable to the order of Subordinated Lender.

E. Subordinated Lender is also the owner and holder of the following documents securing the Subordinated Note:

- (i) a certain Mortgage (the "Subordinated Mortgage") dated November 30, 1990, in favor of Subordinated Lender encumbering the Property;
- (ii) a certain Loan Agreement dated November 30, 1990 executed by and between Subordinated Lender and Borrower;
- (iii) a certain Borrower Reimbursement Agreement ("Reimbursement Agreement") dated as of November 30, 1990 by and between Subordinated Lender and Borrower; and
- (iv) a certain Assignment of Leases and Rents dated November 30, 1990 by Borrower in favor of Lender encumbering the Property.

The above listed documents evidencing and securing the Subordinated Note are herein after collectively referred to as the "Subordinated Loan Documents."

F. All obligations of Borrower to Senior Lender now existing or hereafter arising, due or to become due, under the Senior Note and the Senior Loan Documents are herein called the "Senior Liabilities."

G. All obligations of Borrower to Subordinated Lender now existing or hereafter arising, due or to become due, under the Subordinated Note and the Subordinated Loan Documents are herein called the "Subordinated Liabilities."

H. Senior Lender has agreed to make the loan evidenced by the Senior Note on the condition that Subordinated Lender enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and as an inducement to Senior Lender to make the Loan, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto represent, warrant and agree as follows:

1. **Warranties of Subordinated Lender.** Subordinated Lender represents and warrants that true, correct and complete copies of all documents evidencing and securing the Subordinated Liabilities have heretofore been delivered to Senior Lender and are described in Recital paragraph E above.

2. **Subordination of Liens.** Subordinated Lender hereby agrees that the liens and security interests created by the Subordinated Loan Documents are and shall be subject and subordinate to the liens and security interests created by the Senior Loan Documents and to any and all amendments, modifications, extensions, replacements or renewals of the Senior Loan Documents, and to any and all advances heretofore made or hereafter to be made under the Senior Loan Documents, as the same may be modified or amended from time to time.

3. **Release of Subordinated Liens.** Subordinated Lender hereby agrees that it shall execute and deliver partial releases of the lien and security interest created by the Subordinated Loan Documents concurrently with the closing of the sale of a Unit, provided that Subordinated Lender shall simultaneously receive a sum of cash from such closing equal to two percent (2%) of the Sale Price (as hereinafter defined) of such Unit, to be applied to the debt evidenced by the Subordinated Note. As used herein, "Sale Price" shall mean the gross sale price actually paid to Borrower by a purchaser of a Unit, as evidenced by a fully executed purchase contract between Borrower and such purchaser.

4. **Constructive Trust.** In the event that Subordinated Lender receives any payment or other distribution of any kind or character from the proceeds or distributions of the sale of any Unit or Lot or any portion of the Property in respect to any of

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the Subordinated Liabilities, other than monthly interest payments under the Subordinated Note, annual fees for the letter of credit (as provided in the Reimbursement Agreement) and as otherwise expressly permitted by the terms of this Agreement, such payment or other distribution shall be received and shall be held by Subordinated Lender in trust for Senior Lender and promptly turned over by Subordinated Lender to Senior Lender. Each party shall execute such further documents or instruments and take such further action as the other party may reasonably require from time to time to carry out the intent of this Agreement.

5. **Waiver by Subordinated Lender.** Subordinated Lender hereby waives (a) notice of the existence, creation or nonpayment of all or any of the Senior Liabilities; and (b) all diligence in collection, protection of or realization upon the Senior Liabilities or any security therefor.

6. **Covenants of Subordinated Lender.** Subordinated Lender shall not, without prior written notice to Senior Lender, modify, amend or consent to any modification or amendment of any document evidencing or securing the Subordinated Liabilities. In addition, Subordinated Lender shall not, without prior written consent of Senior Lender, (a) commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to Borrower; (b) seek to appoint a receiver for (i) the Property, (ii) any part thereof or (iii) Borrower, or seek to obtain possession of the Property, or seek any accounting from Senior Lender in respect to the proceeds of the Property; or (c) take any action affecting any lease of the Property in which Senior Lender claims a security interest (including without limitation any action to subordinate any such lease to the Subordinated Loan Documents, or any of them).

7. **Bankruptcy of Borrower.** In the event of any dissolution, winding-up, liquidation, readjustment, reorganization or other similar proceedings relating to Borrower, Borrower's creditors, or to Borrower's property (whether voluntary or involuntary, partial or complete, and whether in bankruptcy, insolvency or receivership, or upon an assignment to benefit creditors, or any other marshalling of the assets and liabilities of Borrower, or any sale of all or substantially all of the assets of Borrower, or otherwise), the Senior Liabilities shall be paid first in full, with respect to any payment or distribution of proceeds derived from any Unit or Lot or the Property before Subordinated Lender shall be entitled to receive and to retain any payment or distribution of the same with respect to the Subordinated Liabilities.

8. **Notices of Default.** Subordinated Lender hereby agrees to give Senior Lender, contemporaneously with the giving thereof to the Borrower, copies of any notices given to Borrower regarding any default under the Subordinated Loan Documents or which notice would, following the passage of time and failure to cure, result in the occurrence of a "default" or "event of default" under the Subordinated Loan Documents; provided, however, that failure of Subordinated Lender to give any such notice to Senior Lender shall not adversely affect the validity or enforceability of such notice with respect to Borrower. Subordinated Lender hereby agrees that no remedies under the Subordinated Loan Documents shall be pursued with respect to the Property unless (a) in the case of default in the payment of a sum of money due under the Subordinated Loan Documents and after expiration of all applicable grace periods, Senior Lender shall have been given written notice of such failure and Senior Lender shall have failed to pay or cause to be paid such sum of money within thirty (30) days following such written notice; or (b) in the case of any other default under the Subordinated Loan Documents, Senior Lender shall fail to cure or cause to be cured such default within the period which is thirty (30) days beyond the longest of the applicable cure period provided to Borrower to cure such default; provided, however, that with respect to any default which by its nature cannot be cured within the foregoing time periods, Senior Lender shall be entitled to such additional time as may be reasonably necessary to cure such default so long as Senior Lender commences the cure within such time period and is diligently proceeding to cure the same. Senior Lender hereby agrees to give Subordinated Lender, contemporaneously with the giving thereof to the Borrower, copies of any notices given to Borrower regarding any default under the Senior Loan Documents or which notice would, following the passage of time and failure to cure, result in the occurrence of a "default" or "event of default" under the Senior Loan Documents; provided, however, that failure of Subordinated Lender to give any such notice to Senior Lender shall not adversely affect the validity or enforceability of such notice with respect to Borrower.

9. **Insurance Proceeds and Condemnation Awards.** Subordinated Lender agrees that in the event of a casualty to the buildings or improvements constructed on the Property or a condemnation or taking under a power of eminent domain of the

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Property, the buildings or improvements thereon, or a threat of such a condemnation or taking, all adjustments of insurance claims, condemnation claims and settlements in anticipation of such a condemnation or taking shall be prosecuted, at Senior Lender's election, by Senior Lender and all payments and settlements of insurance claims or condemnation awards or payments in anticipation of condemnation or a taking shall be paid to Senior Lender. Subordinated Lender hereby assigns to Senior Lender all of its interests in any such claims, settlements or awards (collectively, the "Award"). In the event the amount of the Award is in excess of all amounts due under the Senior Liabilities, Senior Lender agrees that such excess Award shall be paid to or held for the benefit of Subordinated Lender or such party as may be legally entitled to such Award.

10. **Consent to Easements and Plats of Subdivision.** In the event Borrower requests that Senior Lender and all other mortgagees or trustees under trust deeds of record execute any easements or plats of subdivision or similar documents in connection with the construction, development, operation or maintenance of the Property, and Senior Lender executes the same, Subordinated Lender agrees to reasonably review and, in its reasonable discretion, consent to such documents and instruments as its interests appear, if requested to do so by Senior Lender or Borrower.

11. **Acquisition of Fee Title by Senior Lender.** Subordinated Lender hereby agrees that an acquisition of fee title to the Property by Senior Lender, its nominee, or any other person or entity through a foreclosure of the Senior Mortgage (where such foreclosure does not extinguish the security interests created by the Subordinated Loan Documents) or through a deed in lieu of foreclosure is not a "sale or disposition" and will not constitute an event of default under the Subordinated Loan Documents.

12. **Subrogation.** Until such time as the Senior Liabilities have been paid in full, Subordinated Lender waives and releases any and all rights of subrogation which it has against the Property and which subrogation would result in Subordinated Lender obtaining a priority equal or superior to the priority of the Senior Loan Documents for any funds which Subordinated Lender may advance either to cure defaults under security instruments or pay liens encumbering the Property or otherwise protect the lien of the Subordinated Loan Documents or any of them. Notwithstanding the foregoing sentence, Subordinated Lender does not waive or release its rights of subrogation against the Property to the extent that Subordinated Lender shall advance any funds to repay or release a lien against the Property which lien would have a priority superior to the priority of the Senior Loan Documents, provided, however, the Subordinated Lender shall give Senior Lender five (5) days prior notice before advancing any such funds to repay or release such superior lien.

13. **Permitted Actions by Senior Lender.** Senior Lender may, from time to time, in its sole discretion and without notice to or consent of Subordinated Lender, take any or all of the following actions: (a) retain or obtain a security interest in any property to secure any of the Senior Liabilities; (b) retain or obtain the primary or secondary obligation of any other obligor or obligors with respect to any of the Senior Liabilities; (c) extend or renew for one or more periods of time (whether or not longer than the original period), alter or modify any of the Senior Liabilities, or release or compromise any obligation of any nature of any obligor with respect to any of the Senior Liabilities; or (d) release its security interest in, or surrender, release or permit any substitution or exchange for all or any part of the property securing any of the Senior Liabilities, or extend or renew for one or more periods of time (whether or not longer than the original period) or release, compromise, alter or modify any obligation of any nature of any obligor with respect to any such property. In addition, Senior Lender may, from time to time, in its sole discretion and without the consent of Subordinated Lender but after five (5) days prior written notice to Subordinated Lender, (i) increase the Senior Liabilities and (ii) modify, amend, alter or revise the Senior Loan Documents.

14. **Assignment.** Senior Lender may, from time to time, without notice to Subordinated Lender, assign or transfer any or all of the Senior Liabilities or any interest therein; and notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Senior Liabilities shall be and remain Senior Liabilities for the purpose of this Agreement; and every immediate and successive assignee or transferee of any of the Senior Liabilities or of any interest therein shall, to the extent of the interest of such assignee or transferee in the Senior Liabilities, be entitled to the benefits of this Agreement to the same extent as if such assignee or transferee were Senior Lender hereunder, provided that such assignee or transferee shall assume the obligations of Senior Lender which accrue under the Senior Liabilities from and after the date of such assignment or transfer and provided, further, that unless Senior Lender shall otherwise consent in writing, Senior Lender shall have the unimpaired right, prior

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and superior to that of any such assignee or transferee, to enforce this Agreement for the benefit of Senior Lender as to those of the Senior Liabilities which Senior Lender has not assigned or transferred.

15. **Successors and Assigns.** This Agreement shall be binding upon Subordinated Lender and its respective successors and assigns whether immediate or remote.

16. **No Waiver by Senior Lender.** Senior Lender shall not be prejudiced in its rights under this Agreement by any act or failure to act by Borrower or Subordinated Lender, or any non-compliance of Borrower or Subordinated Lender with any agreement or obligation, regardless of any knowledge thereof which Senior Lender may have or with which Senior Lender may be charged; and no action of Senior Lender permitted hereunder shall in any way affect or impair the rights of Senior Lender and the obligations of Subordinated Lender under this Agreement. No delay on the part of Senior Lender in the exercise of any rights or remedies shall operate as a waiver thereof, and no single or partial exercise by Senior Lender of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this Agreement be binding upon Senior Lender except as expressly set forth in a writing duly signed and delivered on behalf of Senior Lender.

17. **Notice.** Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally with a receipt requested therefor or by cable or telex or sent by a recognized overnight courier service or by United States registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth below, and the same shall be effective (a) upon receipt or refusal if delivered personally, by courier, or by cable or telex; (b) one (1) business day after depositing with such an overnight courier service or (c) two (2) business days after deposit prepaid, in the mails, if mailed as aforesaid. A party may change its address for receipt of notices by service of a notice of such change in accordance herewith. All notices by cable or telex shall be subsequently confirmed by U.S. certified or registered mail, return receipt requested.

If to Senior Lender:

LaSalle National Bank
120 South LaSalle Street
Chicago, Illinois 60603
Attn: Ms. Catherine Cahill

with a copy to:

Rudnick & Wolfe
203 North LaSalle Street, Suite 1800
Chicago, Illinois 60601
Attn: James L. Beard, Esq.

If to Subordinated Lender:

First National Bank of Mt. Prospect
One First Bank Plaza
Mt. Prospect, Illinois 60056
Attn: Michael Garcia, Vice President

with a copy to:

Levenfeld, Eisenberg, Janger, Glassberg
Samotny & Halper
33 West Monroe Street
21st Floor
Chicago, Illinois 60606
Attn: Edward J. Halper, Esq.

18. **Construction and Interpretation of this Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

19. **Termination.** This Agreement shall terminate upon full and final payment of any and all amounts due under the Senior Liabilities, provided that all rights of Subordinated Lender hereunder shall automatically terminate at such time as the Subordinated Liabilities have been paid in full.

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20. **Third Parties.** Neither Borrower nor any other party shall be deemed to be a direct or indirect third party beneficiary of this Agreement.

21. **Counterparts.** This Agreement may be executed in execution counterparts and each such counterpart shall have the force and effect of an original.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first written above.

SENIOR LENDER:

LASALLE NATIONAL BANK, a national banking association

By: _____

Name: _____

Title: _____

SUBORDINATED LENDER:

FIRST NATIONAL BANK OF MT. PROSPECT

By: _____

Name: Michael F. Garcia

Title: VICE PRESIDENT

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

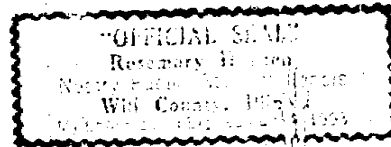
I, Rosemary Heyner, a Notary Public in and for said County, in the State aforesaid, do hereby certify that JOHN C. HEIN personally known to me to be a COM. LOAN OFFICER of LaSalle National Bank, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act and deed of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30th day of November, 1990.

Rosemary Heyner
Notary Public

My Commission expires:

3-4-93



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STATE OF ILLINOIS

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) SS.
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COUNTY OF COOK

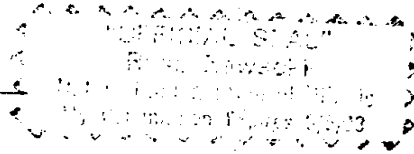
I, Russ Zawack, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Michael F. Garcia, of First National Bank of Mt. Prospect appeared before me this day in person and acknowledge that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 30th day of November, A.D., 1990.

Russ Zawack
Notary Public

My Commission expires:

8-15-93



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CONSENT AND AGREEMENT OF OWNER

The undersigned hereby acknowledges the terms of and consent to the foregoing Agreement and agrees for itself and its respective successors and assigns, for the benefit of Senior Lender, its successors and assigns, that (i) said Agreement does not constitute a waiver or partial waiver by Senior Lender of any of its rights under the Senior Loan Documents, or in any way release the undersigned from its obligations to comply with the terms and conditions contained in the Senior Loan Documents (including without limitation the obligation to refrain from any further encumbering of the Property without the prior written consent of Senior Lender); and (ii) the undersigned will not take any action contrary to or inconsistent with said Agreement.

HOFFMAN HOMES, INC., a Delaware corporation

By:


Name: William M. Lester
Title: Senior Vice President

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STATE OF ILLINOIS

COUNTY OF COOK

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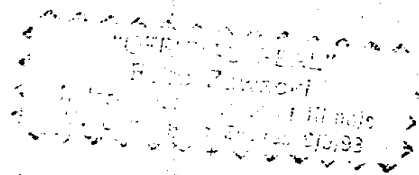
I, Rose Zawack, a Notary Public in and for said County, in the State aforesaid, do hereby certify that William M. Layton, personally known to me to be the Senior Vice President of Hoffman Homes, Inc., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30th day of November, 1990.

Rose Zawack
Notary Public

My Commission expires:

11-15-93



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EXHIBIT A

LEGAL DESCRIPTION

LOTS 1 TO 28, BOTH INCLUSIVE, AND LOTS 59 TO 106, AND OUTLOTS C, D, G AND H, ALL INCLUSIVE, IN PARK ST. CLAIRE UNIT 1, BEING A SUBDIVISION IN THE NORTH EAST 1/4 OF SECTION 23 AND THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 24, ALL IN TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 11, 1990 AS DOCUMENT NUMBER 90219579, IN COOK COUNTY, ILLINOIS

PIN: 07-24-100-001
07-24-102-001

Address:

Intersection of Schaumburg and Meacham Roads, Schaumburg, Illinois

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