

THIS IS A CORRECTIVE MORTGAGE TO CORRECT A SCRIVINER'S ERROR IN THAT CERTAIN MORTGAGE PREVIOUSLY RECORDED ON MAY 2, 1994 AS INSTRUMENT # 1994-14281 IN THE PROBATE COURT OF SHELBY COUNTY, ALABAMA

**MORTGAGE** 06/23/1994-19919  
08:24 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
009 MCD 29.50

THIS MORTGAGE ("Security Instrument") is given on April 29, 1994. The grantor is Homes/Plus, Inc., an Alabama corporation ("Borrower"). This Security Instrument is given to Southwest Investments, Inc. ("Southwest"), an Alabama corporation ("Lender"). Borrower owes Lender the principal sum of Ninety Eight Thousand Three Hundred and Twenty Dollars (U.S. \$98,320).

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all advances, renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 6 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument, the Note, the Construction Loan Agreement (CLA) executed simultaneously herewith, and the Agreement between the Lender and Borrower dated April 29, 1994. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in Shelby County, Alabama: which has the address of Lot 63, Cambridge Point, Second Sector, Shelby County, Alabama ("Property Address"); more particularly described as:

Lot 63, according to the 2nd Phase of Cambridge Point, 2nd Sector, as recorded in Map Book 18 page 24 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

This debt is evidenced by Borrower's Promissory Note ("Note") dated the same date as this Security Instrument which provides for monthly interest payments and satisfaction of the principal on the date of the closing of the property or not later than October 1, 1994 which ever event occurs first.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered. Borrower warrants and will defend the title to the Property against all claims and demands.

THIS SECURITY INTEREST combines uniform covenants for national use and non-

*C. A. Baker, Jr.*

Inst # 1994-19919

uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment, late charges or finance charges due under the Note.

**2. Taxes and Insurance.** The Borrower shall pay, until the Note is paid in full: (a) taxes and assessment which may attain priority over this Security Instrument as a lien on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) general liability, hazard or property insurance premiums; and (d) flood insurance premiums, and assessments which may attain priority over this Security Instrument as a lien on the Property.

**3. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations on time directly to the person owed payment. Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinate the lien to this Security Instrument. If Lender determines that any part of the property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien and the Borrower shall satisfy the lien or take one or more of the actions set forth above within 5 days of the giving of notice.

**4. General Liability, Hazard or Property Insurance.** Borrower shall provide general liability insurance naming the Lender as an additional insured and shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding. This insurance shall be maintained in the amount agreed upon by the Lender in writing. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval, which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights and any liability arising out of the Property in accordance with paragraph 6.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to the restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower does not answer within 10 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 10-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 19 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to the Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

**5. Preservation, Maintenance and Protection of the Property.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest.

Borrower may cure such default and reinstate, as provided in paragraph 16, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest.

**6. Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument or any other agreements to which the Borrower is a party, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), the Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs.

Any amounts disbursed by Lender under this paragraph 6 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment or the date of closing, whichever occurs first.

**7. Inspection.** Lender or its agent may make reasonable entries upon and

inspections of the Property.

**8. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless the Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be considered proceeds and distributed under the Agreement between Southwest and Homes/Plus, Inc. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 10 days after the date of the notice is given, Lender is authorized to collect any apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the payments referred herein or change the amount of such payments.

**9. Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

**10. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of this Agreement. Borrower's covenants and agreements shall be joint, several and individual. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument; (b) is personally obligated to pay the sums secured by this Security Instrument; and (c) agrees

that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

**11. Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits then; (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prior prepayment charged under the Note.

**12. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it in person or by mailing it by first class mail. The notice shall be directed to the address Borrower designates by notice to Lender as the address of Homes/Plus, Inc. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

**13. Governing Law; Severability.** This Security Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**14. Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

**15. Transfer of the Property or a Beneficial Interest in Borrower.** No part of the Property, or any interest in it or its entirety may be sold or transferred (nor may a beneficial interest in Borrower be sold or transferred) without Lender's prior written consent.

**16. Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. This condition is that Borrower: pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred.

**17. Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with the agreement above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payment should be made. The notice will also contain any other information required by applicable law.

**18. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 18, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law, including, but not limited to, the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 18, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**19. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 10 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all

sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 19, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give a copy of a notice to Borrower in the manner provided herein. Lender shall publish the notice of sale once a week for three consecutive weeks in a newspaper published in the county where the property is situated, Alabama, and thereupon shall sell the Property to the highest bidder at public auction at the front door of the County Courthouse of such County. Lender shall deliver to the purchaser Lender's deed conveying the Property. Lender or its designee may purchase the Property at any sale. Borrower covenants and agrees that the proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

**20. Release.** Upon payment of all sums secured by this Security Interest, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

**21. Waivers.** Borrower waives all rights of homestead exemption in the Property and relinquishes all rights of curtesy and dower in the Property.

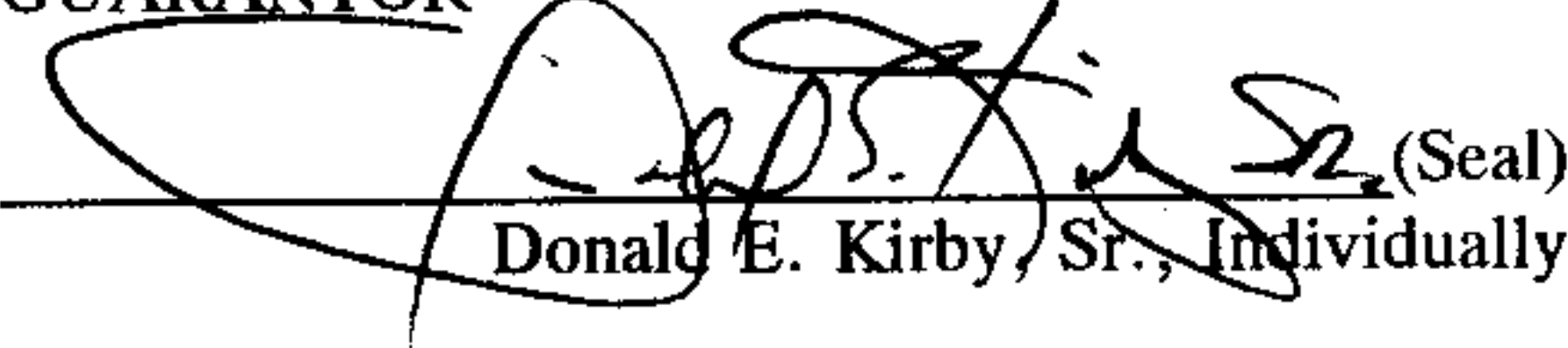
**22. Future Advances.** All amounts owed under the above agreement are secured even though not all amounts may yet be advanced. Future advances under the agreement are contemplated and will be secured and will have priority to the same extent as if made on the date this Mortgage is executed.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

### PERSONAL GUARANTEE

The undersigned, Donald E. Kirby, Sr., individually and severally, guarantee the performance of each and every obligation and satisfaction of each and every warranty and representation made by Homes/Plus, Inc. in the foregoing Mortgage, waiving notice and all extensions or forbearance given by Southwest Investments, Inc.; and any requirement that suit first be brought against Homes/Plus, Inc. in order to enforce any of such obligations against the undersigned.

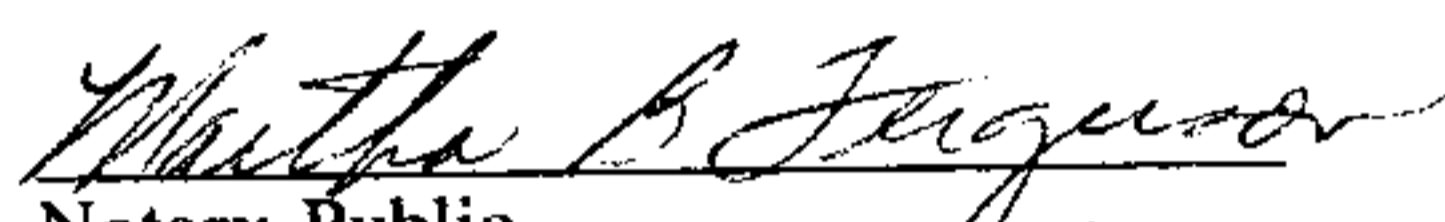
GUARANTOR

  
Donald E. Kirby, Sr., Individually (Seal)

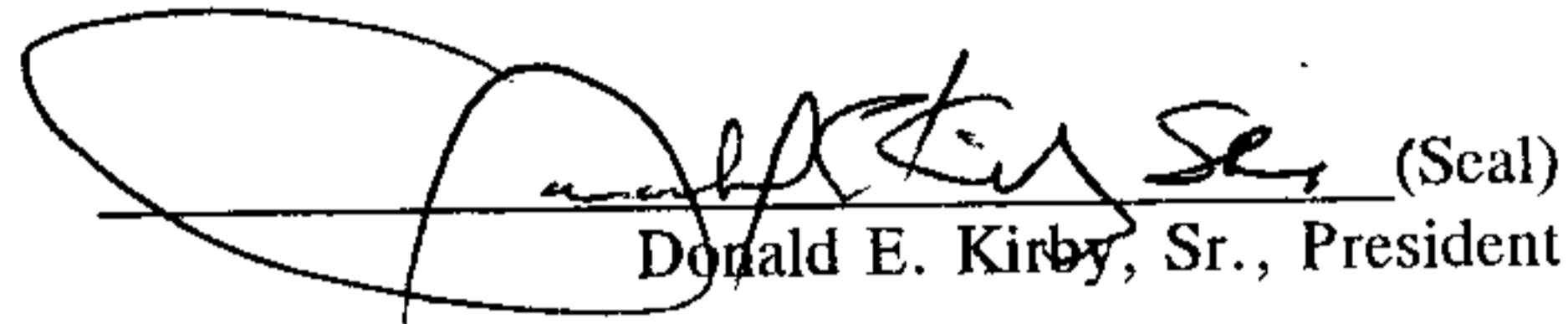
STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public, in and for said County in said State hereby certify that DONALD E. KIRBY, SR., individually as a guarantor, whose name is signed to the foregoing, and who is known to me acknowledged before me on this day, that being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 22 day of June, 1994.

  
Notary Public  
My Commission Expires: 9/26/96


HOMES/PLUS, INC.

  
Donald E. Kirby, Sr., President

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

On this \_\_\_\_\_ day of June, 1994, I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Donald E. Kirby, Sr., whose name as President of Homes/Plus, Inc., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me that, being informed of the contents of the conveyance, he executed the same voluntarily and as her act on the day same bears date.

Given under my hand and seal this 22 day of June, 1994.

  
Notary Public  
My Commission Expires: 9/26/96

THIS INSTRUMENT PREPARED BY:

Michael G. Kendrick  
GORHAM, STEWART, KENDRICK,  
BRYANT & BATTLE, P.C.  
2101 Sixth Avenue North  
Suite 700  
Birmingham, Alabama 35203  
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