

DEED OF TRUST

This Deed of Trust made and entered into this 14th day of June, 1994, by and between HEARTLAND HOMES LIMITED PARTNERSHIP BY HEARTLAND HOMES, INC., GENERAL PARTNER

party of the first part (hereinafter referred to as "Grantor"), and THOMAS L. LAMB, OF SHELBY COUNTY, TN Trustee, party of the second part (hereinafter referred to as "Trustee").

WITNESSETH:

That for and in consideration of \$5.00 cash in hand paid by the Trustee to the Grantor, and the debt and trusts hereinafter mentioned, Grantor has bargained and sold, and does hereby bargain, sell, convey and confirm unto the Trustee the real estate (hereinafter sometimes called the "Property") situated and being in DESOTO COUNTY MISSISSIPPI more particularly described as follows:

Lot 104, Section B, Magnolia Gardnes Subdivision, 1st Addition in Section 34, Township 1 South, Range 6 West Desoto County, Mississippi as per plat thereof recorded in Plat Book 43, Page 5, in the office of the Chancery Clerk, Desoto County, Mississippi.

GRANTOR: HEARTLAND HOMES LIMITED PARTNERSHIP
2753 S. Mendenhall Rd.
Memphis, TN 38115
(901) 363-5016

GRANTEE: UNITED AMERICAN BANK
5384 POPLAR AVENUE
MEMPHIS, TN 38117

STATE OF MISSISSIPPI
JUN 16 9 28 AM '94

BK 711 PG 718
W.F. BELLIES CH. CLK.
By S. Cleveland

together with:

1. All the improvements now on or which may be hereafter placed on the land during the existence of the lien; and
2. All the income, rents, issues and profits arising therefrom and for the use thereof.

TO HAVE AND TO HOLD, the aforescribed real estate, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining unto the Trustee, his heirs and assigns, in trust forever; and the Grantor does hereby covenant with the Trustee, his successor in trust and assigns, that he is lawfully seized in fee of the estate hereinabove described, that he has a good right to sell and convey the same, that the same is unencumbered, and that the title and quiet possession thereto he will and his successors shall warrant and forever defend against the lawful claims of all persons, except for _____

BUT THIS CONVEYANCE IS MADE IN TRUST to secure the full, prompt and final payment of any and all indebtedness of Grantor to United American Bank of Memphis (hereinafter referred to as "Beneficiary"), whether presently existing or hereafter created, including, but not limited to, future advances, and advances made pursuant to the terms of this Deed of Trust, and whether absolute or contingent, direct or indirect, as well as all extensions and renewals thereof (hereinafter referred to as the "Indebtedness"). The Indebtedness specifically includes, but is not limited to, that certain promissory note executed by the authorized representative of the Grantors herein in favor of United American Bank of Memphis

dated June 14, 1994, in the principal amount of 49,600.00, bearing interest from date until maturity at the rate of CITIBANK PRIME PLUS 2.00% with principal and interest being payable as described therein. the terms and conditions of said note being incorporated herein by reference. Said note shall mature June 14, 1995.

1. The Grantor agrees and binds himself that so long as any part of the Indebtedness aforesaid shall remain unpaid, Grantor:

- (a) Will promptly pay when due all taxes, assessments, levies, dues and charges of every type or nature levied or assessed against the property and any claim, lien or encumbrance against the property which may be or become prior to the lien of this Deed of Trust;
- (b) Will insure the buildings and improvements on the Property against loss by fire (with extended coverage) and against such other hazards and perils (including but not limited to loss by windstorm, hail, explosion, riot, aircraft, smoke, vandalism, malicious mischief and vehicle damage) as Beneficiary, in its sole discretion, shall from time to time require, and all such insurance to be issued in such form, with such deductible provision, and for such amount (which shall, in any event be at least equal to the full replacement value of the improvements) as shall be satisfactory to Beneficiary, by some insurance company or companies approved by Beneficiary. Grantor will cause the policy or policies of insurance to be payable to Beneficiary, pursuant to a standard mortgagee clause acceptable to Beneficiary. In order to collect the benefits of such insurance, Beneficiary is hereby appointed by Grantor as his attorney-in-fact to endorse any insurance draft or check made payable to Grantor. Grantor shall at the request of Beneficiary, deposit the policy or policies of insurance with the Beneficiary as further security for the Indebtedness; it being understood that no responsibility for the approval or maintenance of any insurance required to be maintained pursuant hereto is imposed upon the Beneficiary or the Trustee. In the event of damage to or destruction of the buildings and improvements by fire or other casualty, the net proceeds of the insurance shall be applied upon the Indebtedness secured hereby in such manner as the Beneficiary may elect; or, at the option of the Beneficiary, such proceeds may be released to the Grantor to be used to restore the improvements to their former condition. Any insurance policies furnished to the Beneficiary shall become its property in the event the Beneficiary becomes the owner of the Property by foreclosure or otherwise. The Beneficiary is hereby authorized and empowered, at its option, to adjust or compromise any claims under insurance policies on the Property, and to collect and receive the proceeds from any such policy or policies;
- (c) Will protect the improvements and buildings on the Property by proper repairs, and maintain them in good repair and condition, the Property to be painted, cleaned, well-kept, and safe in all respects, it being understood that the failure to comply strictly with this covenant shall constitute a default hereunder;
- (d) Will pay such reasonable expenses and fees as may be necessary in the protection of the Property and the maintenance and execution of this Trust;
- (e) Will not do anything or suffer or permit anything to be done whereby the lien of this Deed of Trust could be impaired;
- (f) Will not remove or demolish or alter the design or structural character of any buildings or improvements now or hereafter erected upon the Property unless beneficiary shall first consent thereto in writing;
- (g) Will not commit or suffer waste thereon; and

CANCELLED BY AUTHORITY. RECORDED IN BOOK

736 PAGE 428
THIS 29th DAY OF Nov, 1994

W. E. Davis
Chancery Clerk by P. Starkey

(n) Will comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the premises, and will not suffer or permit any violation thereof.

2. The Beneficiary may, at its discretion, advance and pay such sums as may be proper to satisfy taxes, maintain insurance and make repairs, and to protect and preserve the Property, and such amounts so paid shall be held and treated as part of the expense of administering this trust, shall be repaid on demand with interest at the highest rate per annum permitted by applicable law, and shall be secured by the lien hereof. However, the making of any such payment by beneficiary shall not be construed as a waiver of any default of Grantor. Should any lien of any character be or become prior to the lien hereof or should any default of any nature occur in or under any lien affecting the Property, including, but not limited to, the lien of a Deed of Trust junior hereto, the Grantor expressly agrees such an event shall also be and constitute a default in and under this Deed of Trust; and the Beneficiary may, at its option and without notice, declare the Indebtedness hereby secured to be immediately due and payable for all purposes whether the same be otherwise then payable, or not, or it may pay any maturities or other payments due or called for under any such lien, and such payments, when and if made, shall be treated as an expense in protecting the Property, shall be repayable by Grantor on demand, shall bear interest from the date of payments made at the highest rate per annum permitted by applicable law, and any such payments together with interest shall be secured by the lien of this instrument.

3. If the Grantor shall pay the indebtedness promptly when due, and shall pay such sums as shall be necessary to discharge taxes and maintain insurance and perform repairs and costs, fees and expenses of making, enforcing and executing this trust, when they shall severally be due and payable, and shall comply with all of the covenants, terms and conditions of the aforescribed promissory note, this Deed of Trust, and any other instrument which also now or hereafter secures the Indebtedness shall become void.

4. But if the Grantor shall fail to pay any part of the Indebtedness, including, but not limited to, the aforescribed promissory note, whether principal or interest, promptly when the same becomes due whether by acceleration or otherwise, or shall fail to pay any sum necessary to satisfy and discharge taxes and assessments before they become delinquent, or to maintain insurance or repairs, or the necessary expense of protecting the Property and executing this trust, or if any of the Property be levied upon, or attached by any legal process, or if either Grantor or any other owner of the Property shall voluntarily become a party to any insolvency, bankruptcy, composition or reorganization procedure, or make any assignment for the benefit of creditors, or if any involuntary bankruptcy, insolvency, composition, or reorganization proceedings be filed against either Grantor or any other owner of the Property, and the same shall not be dismissed within 30 days after the commencement of any such involuntary proceedings, or if there shall occur any default in any of the other terms and conditions of this Deed of Trust, or in any of the terms and conditions of any agreement between the Grantor and Beneficiary, or in any of the terms and conditions of any other instrument which now or hereafter secures the Indebtedness, then, and in any such event, all of the Indebtedness herein secured shall, at the option of the owner of the Indebtedness hereby secured, and without demand or notice (the same being expressly waived), become immediately due and payable; and the Trustee is hereby authorized and empowered to enter and take possession of the Property, and before or after such entry to advertise the sale of the Property for 21 days by three consecutive weekly notices in some newspaper published in the county and state where the Property is situated, and sell the Property for cash to the highest bidder, free from equity of redemption, and any statutory or common law right of redemption, homestead, dower and all other exemptions, all of which are hereby expressly waived; provided, however, the effect of this waiver shall not be construed in a manner so as to violate the Unfair or Deceptive Acts or Practices; Credit Practices Regulation AA applicable to consumer transactions; such waiver contained herein shall be effective only to the extent as permitted by said regulations, and the Trustee shall execute a conveyance to the purchaser in fee simple, which the Grantor binds himself shall be given without obstruction, hindrance or delay. The owners of any part of the Indebtedness hereby secured may become the purchaser at any sale under this conveyance.

5. The proceeds of any sale shall be applied as follows: First, to the repayment of expenses of making, maintaining and executing this trust, the protection of the Property, including the expense of any litigation and attorney's fees, and the usual commissions to the Trustee; Second, to any advancements made by the Trustee or the Beneficiary pursuant hereto, with interest thereon; Third, to the payment of the principal of the Indebtedness herein secured or intended so to be, without preference or priority of any part over any other part, and thereafter to any interest accrued upon such Indebtedness, any balance of the Indebtedness or interest remaining unpaid shall be the subject of immediate suit; and Fourth, should there be any surplus, the Trustee shall pay it to the Grantor, or to such person as may be legally entitled thereto.

6. In the event of the death, refusal, or of inability for any cause on the part of the Trustee named herein, or any successor Trustee, to act at any time when action under the foregoing powers of trust may be required, or for any other reason satisfactory to the Beneficiary, the Beneficiary is authorized, either in its own name or through an attorney or attorney-in-fact appointed for that purpose, by written instrument duly registered, to name and appoint a successor or successors to execute this trust, such appointment to be evidenced by a writing, duly acknowledged; and when such writing shall have been registered, the substitute Trustee named therein shall thereupon be vested with all the right and title, and clothed with all the power of the Trustee named herein and such like power of substitution shall continue so long as any part of the indebtedness secured hereby remains unpaid. The Grantor, for himself, his heirs and assigns, covenants and agrees that at anytime after default in payment of any of the indebtedness hereby secured, or upon failure to perform any of the covenants to be kept and performed by him, the Trustee may enter upon and take possession of the Property and shall be required to account only for the net rents received by him; and from and after the conveyance of the Property under this Deed of Trust, the Grantor, and all persons under him, shall, if the purchaser shall so elect, be and become the tenants at will of the purchaser, at a reasonable rental per month, commencing with the date of delivery of the Trustee's deed.

7. As further security for the payment of the Indebtedness above-mentioned, and the performance of the obligations, covenants and agreements secured hereby, Grantor hereby transfers, sets over, and assigns to Beneficiary all judgments, awards of damages and settlements hereafter made as a result or in lieu of any taking of the premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Beneficiary may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and reasonable attorneys fees, on the Indebtedness secured hereby, whether due or not, in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released to the Grantor or other party lawfully entitled thereto.

8. The Trustee, or anyone acting in his stead, shall have, in his discretion, authority to employ all proper agents and attorneys in the execution of this trust and/or in the conducting of any sale made pursuant to the terms hereof, and to pay for such services rendered out of the proceeds of the sale of the trust Property, should any be realized, and if no sale be made, then Grantor hereby undertakes and agrees to pay the cost of such services rendered to the Trustee.

9. If the Trustee or Beneficiary shall be made a party to or shall intervene in any action or proceeding affecting the Property or the title thereto, or the interest of the Trustee or Beneficiary under this Deed of Trust, or if Beneficiary employs an attorney to collect any or all of the indebtedness secured hereby or to foreclose this Deed of Trust by judicial proceeding or strict foreclosure, or authorizes the Trustee to conduct a trustee's sale proceeding hereunder, the Trustee and Beneficiary shall be reimbursed by Grantor, immediately and without demand, for all reasonable costs, charges and attorneys fees incurred by them or either of them in any such case, and the same shall be secured hereby and bear interest at the highest legal rate of interest per annum allowed by applicable law and shall become a further charge and lien upon the Property.

10. If the Indebtedness secured hereby is now or hereafter further secured by chattel mortgages, deeds of trust, security agreements, pledges, contracts of guaranty, assignment of leases, or other security, Beneficiary may, at its option, exhaust its remedies under any one or more of the security instruments, and this Deed of Trust, either concurrently or independently, and in such order as Beneficiary may determine. The exercise of any rights under any of the security documents shall not constitute a release or waiver of any other security documents.

11. No waiver of a default hereunder by the Trustee or the Beneficiary shall be construed as a waiver of a subsequent or similar default or any other default by the Grantor. No delay by Beneficiary or by the Trustee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder. No failure of Beneficiary to exercise any option herein given to declare the maturity of the debt hereby secured, no forbearance by Beneficiary after the exercise of such option, and no withdrawal or abandonment of foreclosure proceedings by the Beneficiary after the exercise of such option, shall be taken or construed as a waiver of its right to exercise such option or declare such maturity by reason of any past, present or future default on the part of the Grantor; and, in like manner, the procurement of insurance, or the payment of taxes or other liens, debts, or other charges by Beneficiary, or the payment for repairs or other items by the Beneficiary shall not be taken or construed as a waiver of its right to declare the maturity of the Indebtedness hereby secured by reason of the failure of Grantor to procure such insurance or to pay such taxes, debts, liens, charges, repairs or other items.

12. Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for the payment of any Indebtedness secured hereby or for the performance of any obligations contained herein, and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time, and from time to time, either before or after the maturity of the Indebtedness above-described, and without notice or consent:

- (a) Release any person liable for payment of all or any part of the Indebtedness or for the performance of any obligations;
- (b) Make any agreement extending the time or otherwise altering the terms of payment or of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof;
- (c) Exercise or refrain from exercising any right Beneficiary may have;
- (d) Accept additional security of any kind;
- (e) Release or otherwise deal with any property, real or personal, securing the aforesaid Indebtedness, including all or a part of the Property herein described; or
- (f) Elect, by instrument duly recorded in the Shelby County Register's Office, to have and make the lien hereof prior, paramount and superior to, or alternately, junior, subordinate and inferior to, any lease of all or any part of the Property and whether or not such lease is dated, executed or recorded before or after this Deed of Trust.

13. If required by Beneficiary, Grantor will make monthly deposits with Beneficiary in a non-interest bearing account, together with and in addition to interest and principal, of a sum equal to 1/12th of the yearly taxes and assessments which may be levied against the property hereinabove described, and 1/12th of the yearly premiums for insurance required under this Deed of Trust. The amount of such taxes, assessments, and premiums, where unknown, shall be estimated by Beneficiary. Such deposits shall be used by Beneficiary to pay such taxes, assessments, and premiums when due. Grantor shall not be entitled to any interest on monies deposited in escrow, and these monies may be commingled with any other funds held by Beneficiary. Any insufficiency in such account to pay such charges when due shall be paid by Grantor to Beneficiary on demand. If, by reason of any default by Grantor under any provision of this Deed of Trust, the owner of the Indebtedness hereby secured declares the sums due and payable, Beneficiary may then apply any funds in the account against the entire Indebtedness secured hereby. Enforceability of the covenants relating to taxes, assessments and insurance premiums herein otherwise provided shall not be affected except insofar as those obligations have been met by the compliance with this paragraph.

14. If any interest in or any part of the property is sold, conveyed, transferred, leased, pledged or further encumbered by Grantor without the Beneficiary's prior written consent, then the Beneficiary may at its option, declare all of the indebtedness secured by this Deed of Trust immediately due and payable. Beneficiary shall have waived such option to accelerate it, prior to the sale, conveyance, transfer, lease, pledge or encumbrance. Beneficiary and the party to whom the property is to be sold, conveyed, transferred, leased, pledged or encumbered reach an agreement in writing that the credit of such party is satisfactory to the Beneficiary and that the interest payable on the indebtedness secured by this Deed of Trust shall be of such rate as Beneficiary shall request.

15. The holder(s) of the lien created by this instrument has not and will not consent to any contract or to any work or to the furnishing of any materials which might be deemed to create a lien or liens superior to the lien of this instrument, either under Section 64-1108 of the Tennessee Code Annotated, or otherwise.

16. Until the indebtedness secured hereby shall have been fully paid and satisfied, Beneficiary and its agents shall have the right at all reasonable times to inspect the premises and other securities for the indebtedness secured hereby, and all applicable books and financial records related thereto.

17. If any provision hereof shall be construed to be invalid or unenforceable, the remaining provisions hereof shall not be affected by such invalidity or unenforceability. Each term and provision hereof shall, however, be valid and enforceable to the fullest extent permitted by applicable law.

18. The covenants and agreements herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders, as the context may require.

19. To the extent that this Deed of Trust does by its terms secure any indebtedness hereinafter arising between the Grantor and the Beneficiary the creation of which may be governed by the Federal Truth-in-Lending law and no right of cancellation is hereafter given as to such indebtedness, the Bank does hereby waive the lien of this Deed of Trust as security for such indebtedness.

20. This Deed of Trust shall be governed and construed by the laws of the State of Tennessee.

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust the day and date first above written.

GRANTOR:
HEARTLAND HOMES LIMITED PARTNERSHIP
BY HEARTLAND HOMES, INC., GENERAL PARTNER

BY: [Signature]
RANDALL ERWIN, PRESIDENT

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the State and County aforesaid, personally appeared Randall Erwin, with whom I am personally acquainted and who, upon oath, acknowledged himself to be the President of Heartland Homes, Inc. the within named bargainor, a corporation, in that he as such President, being authorized so to do, executed the foregoing instrument for the purposes contained therein by signing the name of the corporation by himself as such President.

Further, Randall Erwin, as President, of Heartland Homes, Inc. acknowledged said corporation to be the General Partner of Heartland Homes Limited Partnership, the within name bargainor, a limited partnership, and that it as such General partner, executed the foregoing instrument for the purpose contained therein, by signing the name of the partnership by itself as General Partner.

WITNESS my hand and seal, this 14th day of June, 1994.

[Signature]
NOTARY PUBLIC

My Commission Expires:

MY COMMISSION EXPIRES JAN. 29, 1996

