

STATE OF ALABAMA
County of Shelby

THIS INSTRUMENT WAS PREPARED BY:
ALABAMA HOUSING FINANCE AUTHORITY
2000 Interstate Park, Suite 408
P.O. Box 230909
Montgomery, Alabama 36123-0909

Inst # 1999-42707

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS
FOR ALABAMA'S HOME PROGRAM**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR ALABAMA'S HOME PROGRAM, dated as of June 11, 1999, by and between Housing Investors Columbiana II, Ltd. and Alabama Housing Finance Authority, an instrumentality of the State of Alabama and a public corporation, joined in by Regions Bank ("Mortgagee"). Certain capitalized terms are defined in Section 1 of this Declaration.

WITNESSETH:

WHEREAS, the Owner is or shall be the owner of the Project, a rental housing development located or to be located on lands in the City of Columbiana, County of Shelby, State of Alabama, more particularly described in Exhibit A hereto, known as or to be known as Clear Spring Apartments; and

WHEREAS, AHFA has been designated by the Governor of the State of Alabama as the administrator for the State of Alabama's HOME Program; and

WHEREAS, the Owner has represented to AHFA in the Application that Owner shall lease the Units in the Project to Low-Income Tenants as indicated in Section 4 of this Declaration; and

WHEREAS, the Owner agrees to maintain the HOME Program rent and income restrictions for the Affordability Period; and

WHEREAS, the HOME Program requires, as a condition precedent to the allocation of the HOME Program funds, that the Owner and AHFA execute, deliver and record this Declaration in the real estate records of the Probate Office of the county in which the Project is located in order to create certain covenants running with the Project for the purpose of enforcing the requirements of the HOME Program, the Project Occupancy Restriction, and the Building Occupancy Restriction by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Owner, by this Declaration, intends, declares and covenants that the restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project for the Declaration Term and are binding upon all subsequent owners of the Project for such term, and are not merely personal covenants of the Owner; and

WHEREAS, Mortgagee joins in this Declaration for the purpose of acknowledging the restrictions and covenants herein and the requirements of the HOME Program.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1- DEFINITIONS

The following terms shall be defined as follows:

- a) "Act" means the National Affordable Housing Act of 1990, as from time to time amended and the regulations relating thereto,
- b) "Affordability Period" means the 20-year period commencing upon the Completion of the Project,
- c) "AHFA" means the Alabama Housing Finance Authority, an instrumentality of the State of Alabama and a public corporation, and any successor to its functions.
- d) "Applicable Fraction" means 100% of the Units with respect to the Building as defined in Section 4(c) of this Declaration.
- e) "Application" means Owner's Alabama's HOME Program Application dated March 08, 1999.

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- f) "Area Median Income" means "area median income" as determined by the Secretary of HUD with adjustments for smaller or larger families.
- g) "Building" means any building that is or is to be a part of the Project.
- h) "Building Occupancy Restriction" means the obligation of Owner (1) to restrict occupancy of the Units in the Building such that sufficient Units shall be Low-Income Units to satisfy the Applicable Fraction set out in Section 4(c) of this Declaration and (2) to comply with Section 3(m) of this Declaration.
- i) "Completion of the Project" means the date of issuance of both the permanent certificate(s) of occupancy for the entire Project and certificates from the Owner's architect that the Project has been built to code and according to the plans, drawings, and specifications which are approved in writing by AHFA.
- j) "Declaration" means this Declaration of Land Use Restrictive Covenants for Alabama's HOME Program as from time to time amended, restated, or supplemented.
- k) "Declaration Term" means the term of this Declaration, namely, the Affordability Period.
- l) "HOME Program" means the federal housing program created by Title II of the National Affordable Housing Act of 1990, as from time to time amended, and applicable regulations including, without limitations 24 CFR Parts 58 and 92, which program is administered in the State of Alabama by AHFA pursuant to the State of Alabama HOME Program 1998 Plan, the State of Alabama's Comprehensive Housing Affordability Strategy or Consolidated Plan, and the all amendments thereto.
- m) "HUD" means the United States Department of Housing and Urban Development and any successor thereto.
- n) "Low-Income Portion" means the portion of the Building equal to the Applicable Fraction.
- o) "Low-Income Requirement" means the requirement that tenants of Low-Income Units have incomes not exceeding the maximum income set out in Section 4 of this Declaration and made applicable by the Project Occupancy Restriction.
- p) "Low-Income Tenant" means an individual or family whose income satisfies the Low-Income Requirement.
- q) "Low-Income Unit" means a Unit as to which HOME Program funds were expended at any time during the Affordability Period and includes all Units that must be leased to a Low-Income Tenant to satisfy the Project Occupancy Restriction or Building Occupancy Restriction.
- r) "Owner" means Housing Investors Columbiana II, Ltd. and any person now or hereafter owning any interest (other than solely as a creditor) in the Project or any portion thereof.
- s) "Project" means the certain tract of land in the City of Columbiana, County of Shelby, State of Alabama, more particularly described in Exhibit A hereto, and a rental housing development located or to be located on such land, known as or to be known as Clear Spring Apartments, including the Building.
- t) "Project Occupancy Restriction" means the obligation of Owner to restrict occupancy of a percentage of the Units in the Project to satisfy Section 4(a) of this Declaration.
- u) "Project Rent Restriction" means the obligation of the Owner that rents charged Low-Income Tenants in Low-Income Units shall not exceed the maximum rent that may be imposed on occupancy of such Unit, pursuant to 24 CFR Section 92.252.
- v) "Transfer," and any derivation thereof, includes a sale or exchange other than a technical assignment of title pursuant to a mortgage (but a foreclosure of a mortgage is a "transfer").
- w) "Unit" means a residential apartment unit of the Project as determined in accordance with the HOME Program.

All words and phrases defined in the HOME Program and HUD regulations pertaining thereto and/or promulgated thereunder shall have the same meanings in this Declaration.

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE PROJECT

- a) Upon execution and delivery by the parties hereto, the Owner shall cause this Declaration and all amendments hereto to be recorded and filed in the real estate records in the Probate Office of the county in which the Project is located and shall pay all fees and charges incurred in

connection therewith. Prior to recording, the Owner shall provide AHFA with an executed copy of this Declaration. Upon recording, the Owner shall provide AHFA with the executed original of the recorded Declaration showing the Probate Office's time and date stamp and all pertinent recording data.

- b) The covenants contained in this Declaration (i) shall be and are covenants running with the Project, encumbering the Project for the Declaration Term, binding upon the Owner's successors in title and all subsequent owners and operators of the Project or of any part thereof, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner and its successors and assigns during the Declaration Term. All parties hereto hereby agree that any and all requirements of the laws of the State of Alabama to be satisfied in order for the provisions of this Declaration to constitute valid, binding and enforceable restrictive covenants running with the Project shall be deemed to be satisfied in full or, in the alternative, that an equitable servitude has been created to ensure that these restrictions run with the Project.
- c) For the Declaration Term, each and every mortgage, lease, deed or other instrument hereafter executed conveying or encumbering the Project or any portion thereof shall expressly provide that such conveyance or encumbrance is subject to this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such mortgage, lease, deed or other instrument hereafter executed conveying or encumbering the Project or any portion thereof provides that such conveyance is subject to this Declaration.

SECTION 3 – REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents, covenants, and warrants to AHFA as follows:

- a) The Owner is a (i) Limited Partnership, duly organized, existing and in good standing under the laws of the State of Alabama, and is qualified to transact business under the laws of the State of Alabama, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Declaration.
- b) The execution, delivery and performance of this Declaration by the Owner (i) will not violate any provision of law, rule or regulation, or any order of any court or other agency or governmental body and (ii) will not violate any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound.
- c) The Owner has good and marketable fee simple title to the Project and the covenants imposed on the Project by this Declaration are not inconsistent with the terms of any lien, mortgage, or other encumbrance or restrictive covenant, easement or servitude.
- d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting the Owner or the Project, or any of the Owner's properties or rights, which, if adversely determined, would materially impair the Owner's right to carry on business substantially as now conducted (and as contemplated by this Declaration) or which would materially and adversely affect its financial condition or which would impair the use of the Project as contemplated by this Declaration.
- e) Throughout the Affordability Period, the Project shall constitute a qualified low-income housing project, as required in Section 4 of this Declaration. Throughout the Affordability Period, the Building shall constitute a qualified low-income building as required in Section 4 of this Declaration.
- f) Each Unit shall, throughout the Affordability Period, contain complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy or transitional housing for the homeless under the HOME Program) which are to be used on other than a transient basis.
- g) During the Affordability Period, each Low-Income Unit shall be suitable for occupancy and shall be used only other than on a transient basis.
- h) Subject to the requirements of the HOME Program and this Declaration, the Owner may transfer the entire Building at any time, but the Owner shall, as a condition precedent to such

transfer (other than a transfer by foreclosure), obtain and deliver to AHFA at least thirty (30) days in advance of such transfer the written agreement of any prospective transferee that such transfer is subject to this Declaration and the HOME Program. The Owner shall make no transfer of less than all the Building such that no portion of the Building shall be transferred to any person unless the entire Building is transferred to such person. This provision shall not act to waive any other restriction on transfer of Building in favor of AHFA. If the transferee fails or refuses to provide such written agreement, such transfer (and all subsequent transfers which occur during the Declaration Term) shall nonetheless be subject to this Declaration and the requirements of the HOME Program.

- i) The Owner agrees to notify AHFA in writing at least thirty (30) days in advance of any transfer (other than a transfer by foreclosure) of the entire Project or any portion of the Project. Within thirty (30) days of the closing of such transfer, the Owner shall provide AHFA a complete copy of all the closing documents (with evidence of recording satisfactory to AHFA on all recorded documents). The Owner agrees to notify AHFA immediately upon notice of the intent of any person to foreclose any mortgage or lien on the Project or any part of the Project.
- j) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any Unit for any purpose other than rental housing during the Affordability Period unless required by law.
- k) If during the Affordability Period the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner shall use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration. If the Building or any Units are damaged, destroyed, acquired for public use, or condemned and not rebuilt, the Building Occupancy Restriction shall be applied to the remaining Units in the Building as though no reduction in total number of Units had occurred and the Project Occupancy Restriction shall be applied to the remaining Units in the Project as though no reduction in the total number of Units had occurred.
- l) The Owner has not executed, and shall not execute, any other agreement with provisions contradictory to, or in opposition to this Declaration. This Declaration is paramount and controlling as to the rights and obligations herein set forth and supersedes any other requirements in conflict herewith.
- m) Throughout the Declaration Term, the Owner shall not evict or terminate the tenancy of a Low-Income Tenant other than for good cause or increase gross rent with respect to a Low-Income Unit other than as permitted under the HOME Program.
- n) The Owner agrees to provide owner-financed project-based rental assistance of at least fifty dollars (\$50.00) per unit per month for a minimum of twenty percent (20%) of the total low-income units (rounded up) for at least five (5) consecutive years.

SECTION 4 – EXTENDED LOW-INCOME HOUSING COMMITMENT

In order to satisfy the Project Occupancy Restriction, the Owner shall assure that throughout the Affordability Period and by no later than the last day of the first year of the Affordability Period:

- a) At least forty percent (40%) of the Units shall be both subject to the Project Rent Restriction and occupied by individuals whose income is fifty percent (50%) or less of Area Median Income and at least sixty percent (60%) of units shall be occupied by individuals whose income is sixty percent (60%) or less of Area Median Income. One hundred percent (100%) of the units shall be subject to rents at the fifty percent (50%) rent level or fair market value whichever is less. Both the Project Rent and Income Restrictions are applied on a Building by Building basis and not by Project.
- b) The determination of whether a Low-Income Tenant meets the Low-Income Requirement shall be made by the Owner at least annually on the basis of the then current income of such Low-Income Tenant and the guidelines established by the HOME Program.

- c) The Applicable Fraction of the Building shall not be less than one hundred percent (100%) at any time during the Affordability Period and the Owner shall at all times comply with the Building Occupancy Restriction and the Project Rent Restriction in such a manner as to cause the Building to have the Applicable Fraction.

SECTION 5 – AHFA EXTENDED OCCUPANCY RESTRICTIONS (optional)

This section is intended to make enforceable those extended use covenants which the Owner represented to the AHFA in its Application.

(Check one)

- x Not applicable.
The Owner hereby extends the Extended Use Period 0 additional years after the Compliance Period and the 20-year minimum extension of the Compliance Period. (Any election under this paragraph will cause the Extended Use Period to be twenty (20) years plus the additional elected term.)

SECTION 6 – ENFORCEMENT OF OCCUPANCY RESTRICTIONS

- a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative or designated agent of AHFA, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants or which pertain to compliance with the occupancy restrictions specified in this Declaration.
- b) The Owner shall submit any other information, documents or certifications requested by AHFA which AHFA shall deem necessary to substantiate the Owner's continuing compliance with the provisions of the Building Occupancy Restriction, Project Occupancy Restriction and any other Occupancy Restrictions specified in this Declaration.

SECTION 7 – ENFORCEMENT OF HOME PROGRAM RESTRICTIONS

- a) The Owner covenants that it shall not knowingly take or permit any action that would result in a violation of the requirements of the HOME Program, or this Declaration. Moreover, Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of AHFA) to comply fully with the HOME Program, and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by HUD or other governmental agency from time to time pertaining to Owner's obligations under the HOME Program and affecting the Project.
- b) The Owner and AHFA each acknowledge that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Declaration is to assure compliance of the Project and the Owner with the HOME Program, AND BY REASONS THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING FUNDING UNDER THE HOME PROGRAM FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT AHFA SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- c) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by AHFA and all persons interested in Project compliance under the HOME Program and this Declaration.
- d) The Owner agrees to all actions reasonably necessary and required by AHFA to substantiate the Owner's compliance with the HOME Program occupancy restrictions or AHFA occupancy restrictions.
- e) The Building Occupancy Restriction of this Declaration is hereby made enforceable in any court of the State of Alabama by any prospective, present, or former occupant of the Building or the Project who meets the income requirement for occupancy in a Low-Income Unit.

However, this Declaration may be amended or terminated by AHFA and Owner without notice to or consent of any such person.

SECTION 8 - REPORTING REQUIREMENT

The Owner will provide AHFA with a monthly reconciliation of the income and expenses of the Project. The Owner also agrees to on an annual basis to provide AHFA with a copy of the proposed project budget for the upcoming year and provide AHFA with explanations of any unusual expenditures. The Owner hereby agrees to provide AHFA with tenant certifications and income verification documents for each tenant within twenty (20) days of such tenant's moving into a Unit.

SECTION 9 - MISCELLANEOUS

- a) Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.
- b) Notices. All notices to be given pursuant to this Declaration shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

TO THE AUTHORITY:

Alabama Housing Finance Authority
Attn: Executive Director
Post Office Box 230909
Montgomery, AL 36123-0909

TO THE OWNER:

Housing Investors Columbiana II, Ltd.
Attn: Phyllis Alexander
496 Highway 67 South
Decatur, AL 35603

TO THE MORTGAGEE:

Regions Bank
ATTN: David Mathews
Post Office Box 2229
Decatur, Alabama 35609

AHFA and Owner may, by notice give hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- c) Amendment. The Owner agrees that it shall take all actions necessary to effect amendment of this Declaration as may be necessary to comply with the HOME Program and any and all applicable rules, regulations, policies, procedures, and rulings or other official statements pertaining to the HOME Program.
- d) Governing Law. This Declaration shall be governed by the laws of the State of Alabama and, where applicable, the laws of the United States of America.
- e) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the funding of the HOME Program loan and shall not be deemed to terminate or merge with the funding of the loan.
- f) Recovery of Attorney's Fees. If AHFA shall incur legal fees or other expenses in enforcing its rights and/or remedies, or the Owner's obligations, under this Declaration, the Owner shall reimburse AHFA for those fees and other expenses within ten (10) days of receipt of written demand therefor.
- g) Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.
- h) Construction. This Declaration shall be construed and enforced to preserve the purposes of the HOME Program.

- i). Other Declaration. This Declaration is in addition to, and is not in lieu of, any other declaration of restrictive covenants (the "Other Declaration") which the Owner may have heretofore executed, or may simultaneously herewith or hereafter execute, with respect to the Project. The Owner must abide by this Declaration and by the Other Declaration, if any, each of which stands on its own.

IN WITNESS WHEREOF, the parties have caused this Declaration to be signed by their respective duly authorized representatives, as of the day and year first written above.

Housing Investors Columbiana II, Ltd.

By: Housing Investors, Inc.
Its: General Partner

By: W. M. Dinsmore
W. M. Dinsmore
Its: President

Alabama Housing Finance Authority

By: Haywood M. Sport
Haywood M. Sport
Its: Multifamily Administrator

Regions Bank

(Mortgagee)

By: David Mathem, EVP
Its: Executive Vice-President

STATE OF ALABAMA

COUNTY OF Morgan

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that W. M. Dinsmore, whose name as President of the G. P. of Housing Investors Columbiana II, Ltd., a Limited Partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, (s)he, as such President of the G.P. and with full authority, executed the same voluntarily for and on behalf of said Limited Partnership.

Given under my hand and official seal this the 23 day of July, 199 9

[SEAL]

Phyllis B. Alexander
Notary Public
My Commission Expires:

Phyllis B. Alexander
Notary Public, Morgan County, AL
My Commission Expires Aug. 22, 2000.

[For Individuals]

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name(s) is (are) signed to the foregoing instrument, and who is (are) known to me, acknowledged before me on this day that, being informed of the contents of such instrument, (s)he (they) executed the same voluntarily on the date hereof.

Given under my hand and official seal this the _____ day of _____, 199__.

[SEAL]

Notary Public
My Commission Expires:

STATE OF ALABAMA
COUNTY OF MORGAN

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that W. M. DINSHORE, whose name as President of the G. P. of HOUSING INVESTORS, INC., an Alabama Corporation, a general partner of Housing Investors Columbiana II, Ltd., an Limited Partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, (s)he, as such President of the G.P. and with full authority, executed the same voluntarily for and on behalf of said Corporation acting in its capacity as general partner of said Limited Partnership on the date hereof.

Given under my hand and official seal this the 23 day of July, 1999.

Phyllis B. Alexander

Notary Public

My Commission Expires:

Phyllis B. Alexander

Notary Public, Morgan County, AL
My Commission Expires Aug. 22, 2000.

[SEAL]

STATE OF ALABAMA

COUNTY OF MONTGOMERY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Haywood M Sport, whose name as Multifamily Administrator of the Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he as such Multifamily Administrator and with full authority, executed the same voluntarily for and on behalf of said corporation.

Given under my hand and official seal this the 11th day of June, 1999.

Barbara H. Dallas
Notary Public

My Commission Expires: MY COMMISSION EXPIRES
APRIL 24, 2000

[SEAL]

[For Mortgagee]

STATE OF Alabama
COUNTY OF Morgan

I, the undersigned, a Notary Public in and for said State, hereby certify that David Mathews, whose name as Exec. Vice President of Regions Bank, a Alabama Banking Corp., is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, (s)he, as such Officer and with full authority, executed the same voluntarily for and on behalf of said Regions Bank.

Given under my hand and official seal this the 23 day of July, 1999.

Shelly Harris
Notary Public

My Commission Expires: 07/16/2001

[SEAL]

EXHIBIT A

The below-described property located in the City of Columbiana, Shelby County, Alabama:

A part of the SE-1/4 of Section 26, Township 21 South, Range 1 West, Shelby County, Alabama, and being more particularly described as follows: Commence where the Southeast right of way line of Alabama Highway No. 25 intersects the West right of way line of Egg and Butter Road; thence S49°59'02"W 514.43 feet along the Southeast right of way line of Alabama Highway No. 25 to the point of beginning; thence S29°40'13"E 196.89 feet; thence 63°26'03"W 40.00 feet; thence S26°33'57"E 25.00 feet; thence S63°26'03"W 72.13 feet; thence S0°45'19"E 226.53 feet; thence S81°13'24"E 8.34 feet; thence S15°59'44"W 325.29 feet; thence N81°11'07"W 186.66 feet; thence N17°33'26"W 448.99 feet to a point on the Southeast right of way line of Alabama Highway No. 25; thence N49°59'02"E 509.17 feet along said right of way line to the point of beginning. Containing 4.9 acres, more or less. Subject to existing rights of way for public roads, utility lines, easements and restrictions of record, if any.

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