

**Regulatory Agreement**  
Housing for the Elderly or Handicapped  
(Nonprofit)

Section 202 of the Housing Act of 1959

U.S. Department of Housing  
and Urban Development  
Office of Housing

Section 8  
Housing Assistance Payments Contract



Project Number <b>062-EH263</b>		Amount of Mortgage Note <b>\$1,788,400.00</b>	Date <b>May 31, 1991</b>
Mortgage Recorded in: State <b>Alabama</b>	County <b>Shelby</b>	Date <b>May 31, 1991</b>	

This Agreement entered into this **31<sup>st</sup>** day of **May**, 1991 between **Shelby Senior Housing, Inc.**

whose address is **2000-B Southbridge Parkway, Suite 200, Birmingham, Alabama 35283**  
hereinafter called Mortgagor, and the undersigned Secretary of Housing and Urban Development hereinafter called HUD.

In consideration of the making of the loan by HUD and the disbursement of any part thereof, and in order to comply with the requirements of the Housing Act of 1959, and the Regulations adopted by the Secretary pursuant thereto, the Mortgagor agrees for itself, its successors and assigns, and any owner of the mortgaged property, that in connection with the mortgaged property and the project operated thereon and so long as the loan is outstanding.

- (1) Mortgagor shall promptly make all payments due under the Note and Mortgage.
- (2) Mortgagor will establish and maintain a special fund to be known as the revenue fund account in a bank which is a member of the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund, into which will be deposited all rentals, charges, income and revenue arising from the operation or ownership of the project. Expenditures shall be made from the revenue fund account only in accordance with the operating budget submitted to and approved by HUD.
- (3) Not later than 30 days prior to the beginning of each fiscal year, the Mortgagor shall submit an operating budget for that fiscal year to HUD. The budget shall include all necessary operating expenses, current maintenance charges, expenses of reasonable upkeep and repairs, taxes and special assessment levies, prorated amounts required for insurance and all other expenses incident to the operation of the project; and shall show the expected revenues to pay such expenses, including annual debt service requirements and reserve fund deposits. The expenses incurred and disbursements shall not exceed the reasonable and necessary amount thereof, and the Mortgagor will not expend any amount or incur any obligations in excess of the amounts approved in the annual operating budget except upon written certification by the Mortgagor to HUD that such expenses were unanticipated and are necessary and provided further, that nothing in this section shall limit the amount which the Mortgagor may expend from funds obtained from some other source than project revenues or other funds required of the Mortgagor pursuant to this Agreement or the Building Loan Agreement.
- (4) As security for the loan, for the required payments under this Agreement into the reserve fund for replacements, and for all other obligations of the Mortgagor under this Agreement, the Mortgagor hereby assigns, pledges and mortgages to HUD all its rights to the income and charges of whatever sort which it may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents or project income in the mortgage referred to herein. Until a default occurs under this Agreement, however, permission is granted to Mortgagor to collect and retain under the provisions of this Agreement such rents, profits, income and charges, but upon default this permission is terminated, as to all rents, profits, income and charges due or collected thereafter.
- (5) (a) Mortgagor will establish and maintain a reserve fund for replacements in a separate account in a bank which is insured by the Federal Deposit Insurance Corporation, Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund. Concurrently with the effective date of the HAP Contract, the Mortgagor will deposit an amount equal to \$ **548.42** per month unless a different date or amount is approved in writing by HUD. Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be subject to the control of HUD. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after the consent in writing of HUD. In the event of a default in the terms of the mortgage, HUD may demand the full or partial application of the balance in such fund to the amount due on the mortgage debt..
- (b) Mortgagor will deposit the minimum capital investment with an escrow agent acceptable to HUD pursuant to Regulations.
- (c) Within 60 days after the end of each fiscal year, any residual receipts realized from the operation of the mortgaged property shall be deposited in a separate residual receipts account. Residual receipts shall be under the control of HUD and shall be disbursed only at the discretion of HUD for such purpose as it may determine to be necessary or appropriate.
- (6) The real property covered by the mortgage and this Agreement is described in Schedule A attached hereto.
- (7) Mortgagor shall not without the written approval of the Secretary:
  - (a) Transfer, dispose of or encumber any of the mortgaged property. Any such transfer shall be only to a person or persons or corporation satisfactory to and approved by HUD, who shall, by legal and valid instrument in writing, to be recorded or filed in the same recording office in which conveyances of the property covered by the mortgage are required to be filed or recorded, duly assume all obligations under this Agreement and under the Note and Mortgage;
  - (b) Assign, transfer, dispose of, or encumber any personal property, including rents or charges, and shall not disburse or pay out any funds except as provided herein and in the Building Loan Agreement;
  - (c) Remodel, reconstruct, add to, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;
  - (d) Pay any compensation or make any distribution of income or other assets to any of its officers, directors or stockholders;
  - (e) Enter into any contract or contracts for supervisory or managerial services;

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- (f) Require, as a condition of occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent (the gross family contribution in Section 8 units) plus a security deposit in an amount not in excess of one month's rent, or \$50 whichever is greater, to guarantee the performance of the covenants of the lease. Any funds collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account;
- (g) Permit the use of the dwelling accommodations of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by HUD;
- (h) Amend its articles of incorporation or by-laws other than as permitted under the terms of the articles of incorporation approved by HUD.
- (8) Mortgagor shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good and substantial repair and condition: PROVIDED THAT, in the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the mortgage.
- (9) Mortgagor shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors; or permit an adjudication in bankruptcy, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within 45 days.
- (10) Mortgagor shall from funds other than project income immediately satisfy or release any mechanic's lien, attachment, judgement lien, or any other lien which attaches to the mortgaged property or any personal property used in the operation of the project, and shall dismiss or have dismissed or vacated any receivership, or petition in bankruptcy or assignment for benefit of creditors, creditors bill or insolvency proceeding involving the project or the mortgaged property.
- (11) (a) If the Mortgagor has or comes to have any nonproject funds, all income and other funds of the mortgaged project shall be segregated from any such funds of the Mortgagor and segregated from any funds of any other corporations or persons. Income and other funds pledged to the mortgaged project shall be expended only for the purposes of the project.
- (b) Mortgagor shall provide for the management of the project satisfactory to HUD. Any management contract entered into by the Mortgagor involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by HUD addressed to the Mortgagor and the management agent. Upon receipt of such request the Mortgagor shall immediately move to terminate the contract within a period of not more than 60 days and shall make arrangements satisfactory to HUD for continuing proper management of the project.
- (c) Neither Mortgagor nor its agents shall make any payment for services, supplies, or materials unless such services are actually rendered for the project or such supplies or materials are delivered to the project and are reasonably necessary for its operation. Payments for such services, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.
- (d) The mortgaged property, equipment, buildings, plans, offices, devices, books, apparatus, contracts, records, documents, and all other

papers relating thereto shall at all times be maintained in reasonable condition for proper audit and subject to examination and inspection at any reasonable time by HUD and its duly authorized agents. Mortgagor and its successors, assigns or its agents shall retain copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by HUD or its duly authorized agents.

(e) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of HUD.

(f) Within 60 days following the end of each fiscal year HUD shall be furnished with a complete annual financial report based upon an examination of the books and records of Mortgagor prepared in accordance with the requirements of HUD, certified to by an officer of the Mortgagor and, when required by HUD, prepared and certified by a Certified Public Accountant, or other person acceptable to HUD.

(g) At the request of HUD, its agents, employees, or attorneys, the Mortgagor shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the Mortgage and any other information with respect to the Mortgagor or the mortgaged property and of the project which may be requested.

(h) All receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by the F.D.I.C., Savings Association Insurance Fund, or the National Credit Union Share Insurance Fund. Such funds shall be withdrawn only in accordance with the provisions of this agreement for expenses of the project. Any person receiving funds of the project shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any persons receiving property of the project in violation of this Agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust.

(i) Mortgagor shall at all times, if required by the laws of the jurisdiction, maintain in full force and effect a license to operate the project from the state and/or other licensing authority. Mortgagor shall lease any portion of the project only on terms approved by HUD.

(j) The Mortgagor shall not collect from tenants or occupants or prospective tenants or occupants of the project any admission fee, founder's fee, life-care fee, or similar payment pursuant to any agreement, oral or written, whereby the Mortgagor agrees to furnish accommodations or services in the project to persons making such payments.

(k) No officer, director, trustee, member, stockholder nor authorized representative of the Mortgagor shall have any financial interest in any contractual arrangement entered into by the Mortgagor in connection with rendition of services, the provision of goods or supplies, management of the project, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever.

(12) (a) Mortgagor will limit public occupancy of the project to elderly, and handicapped persons and families as defined in Section 202 of the Housing Act of 1959 and applicable HUD Regulations. The criteria governing eligibility of tenants for admission to Section 8 units and the conditions of continued occupancy shall be in accordance with the Housing Assistance Payments Contract.

(b) Except as provided in (d) below Mortgagor will make its dwelling accommodations and services available to eligible occupants at charges established in accordance with a schedule to be approved in writing by HUD. Such accommodations shall not be rented for a period less than 30 days nor more than 3 years. Commercial facilities,

if any, shall be rented only in accordance with a schedule of charges fixed by the Mortgagor and approved in writing by HUD. Subleasing of dwelling accommodations or commercial facilities shall be permitted only upon the terms and conditions approved by HUD in writing.

(c) Upon prior written approval by the Secretary, Mortgagor may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Mortgagor for any facilities and/or services which may be furnished by the Mortgagor or others to such tenant upon his request, in addition to the facilities and services included in the approved rental schedule.

(d) The Secretary will at any time entertain a written request for a rent increase properly supported by substantiating evidence and within a reasonable time shall:

- (i) Approve a rental schedule that is necessary to compensate for any net increase occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance cost over which Mortgagor has no effective control, or
- (ii) Deny the increase stating the reasons therefor.

(e) The criteria governing eligibility of tenants for admission to Section 8 units and the conditions of continued occupancy shall be in accordance with the Housing Assistance Payments Contract.

(f) The maximum rent that may be charged for occupancy of a Section 8 unit shall be in accordance with the provisions of the Housing Assistance Payments Contract and adjustments in such rents shall be made in accordance with the terms of the Housing Assistance Payments Contract.

(g) Nothing contained in the Agreement shall be construed to relieve the Mortgagor of any obligations under the Housing Assistance Payments Contract.

Mortgagor will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, creed, age, sex, handicap, familial status or national origin, including Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Age Discrimination Act of 1975 (42 U.S.C. 6101) and Executive Order 11063 (27 F.R. 11527), and all requirements imposed by or pursuant to the regulations of the Department of Housing and Urban Development (24 CFR) issued pursuant to Title VI, Title VIII, the Rehabilitation Act, the Age Discrimination Act or Executive Order 11063.

(14) No litigation seeking the recovery of a sum in excess of \$5,000 nor any action for specific performance or other equitable relief shall be instituted nor shall any claim for a sum in excess of \$5,000 be settled or compromised by the Mortgagor unless prior written consent thereto has been obtained from HUD. Such consent may be subject to such terms and conditions as HUD may prescribe.

(15) Upon a violation of any of the above provisions of this Agreement by Mortgagor, HUD may give written notice, thereof, to Mortgagor, by registered or certified mail, addressed to the address stated in this Agreement, or such other address as may subsequently, upon appropriate written notice thereof to HUD, be designated by the Mortgagor as its legal business address. If such violation is not corrected to the satisfaction of HUD within 30 days after the date such notice is mailed or within such further time as HUD determines it is necessary to correct the violation, without further notice HUD may declare a Default under this Agreement effective on the date of such declaration of default and upon such Default HUD may:

- (1) Take possession of the project, bring any action necessary to enforce any rights of the Mortgagor growing out of the project operation, and operate the project in

accordance with the terms of this Agreement until such time as HUD in its discretion determines that the Mortgagor is again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the Note and Mortgage.

- (2) Collect all rents and charges in connection with the operation of the project and use such collections to pay the Mortgagor's obligations under this Agreement and under the Note and Mortgage, and the necessary expenses of preserving the property and operating the project.
- (3) Declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage.
- (4) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the property in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

(16) (a) Mortgagor has executed an Agreement to enter into a Housing Assistance Payments Contract. The terms of the Housing Assistance Payments Contract, when executed, shall be incorporated by reference into this Regulatory Agreement;

(b) A violation of the Housing Assistance Payments Contract may be construed to constitute a default hereunder in the sole discretion of HUD;

(c) In the event said Housing Assistance Payments Contract expires or terminates before the expiration or termination of this Agreement, the provisions of this paragraph and any other reference to said contract, to Section 8 and to Section 8 units contained herein shall be self-cancelling and shall no longer be effective as of the date of the expiration or termination of the Housing Assistance Payments Contract.

(17) As used in this Agreement the term:

- (a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage" and any other security for the Note identified herein;
- (b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;
- (c) "Mortgaged Property" includes property, real, personal, or mixed, covered by the mortgage or mortgages securing the note held by HUD;
- (d) "Project" includes the mortgaged property and all its other assets or whatsoever situate, used in or owned by the business conducted on said mortgaged property;
- (e) "Distribution" means any withdrawal or taking of cash or other assets of the project other than for mortgage payments or for payment of reasonable expenses incident to its construction, operation and maintenance;
- (f) "Default" means a default declared by HUD when a violation of this Agreement is not corrected to its satisfaction within the time allowed by this Agreement or such further time as may be allowed by HUD after written notice;
- (g) "Residual Receipts" means any cash remaining after:

(1) The Payment of:

- (i) All sums due or currently required to be paid under

the terms of any mortgage or note held by the Secretary of Housing and Urban Development;

(ii) All amounts required to be deposited in the reserve fund for replacements;

(iii) All obligations of the project other than the mortgage held by HUD unless funds for payment are set aside or deferment of payment has been approved by HUD; and

(2) The segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project;

(ii) All tenant security deposits held.

(h) "Section 8 Units" refers to units assisted under Section 8 of the United States Housing Act of 1937 pursuant to a Housing Assistance Payments Contract.

(i) "Housing Assistance Payments Contract" refers to a written contract between the Mortgagor and HUD, or the Mortgagor and a Public Housing Agency, or the Mortgagor and a Housing Finance Agency for the purpose of providing housing assistance payments to the Mortgagor on behalf of eligible families under Section 8 of the United States Housing Act of 1937.

(18) HUD shall not be liable for any of its actions hereunder except for flagrant misfeasance.

(19) This instrument shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest, and assigns, and all owners of the mortgaged property, so long as the loan is outstanding.

(20) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(21) Mortgagor warrants that it has not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereto, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

(22) Mortgagor does not assume personal liability for payments due under the note and mortgage or for payments to the reserve for replacement fund. However, the Mortgagor's willingness and ability to prevent or cure mortgage defaults or place defaulted mortgages under an arrangement acceptable to HUD will have a bearing on the Mortgagor's future participation in HUD's programs.

(23) Mortgagor shall have available necessary equipment or devices and make reasonable accommodation to meet the needs of persons with visual and/or hearing impairments in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(Seal)

Secretary of Housing and Urban Development

By:

Name of Mortgagor: Shelby Senior Housing, Inc.

Attest:

(Secretary)

By:

(President)



STATE OF ALABAMA  
SHELBY COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert G. Wilkerson and William S. Roth, whose names as President and Secretary respectively of Shelby Senior Housing, Inc., a Corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and official seal this 31<sup>st</sup> day of May, 1991.

Susan M. Hall  
NOTARY PUBLIC

My Commission Expires: 10/13/92

STATE OF ALABAMA  
COUNTY OF SHELBY

On this 31<sup>st</sup> day of May, 1991, before me appeared Robert E. Lunsford, to me personally known and known to me to be duly appointed Authorized Agent and the person who executed the foregoing instrument by virtue of the authority vested in him by 24 C.F.R. 100.118 and acknowledged that he executed and delivered the aforesaid instrument for and on behalf of the Federal Housing Commissioner, for the purposes therein expressed.

Susan M. Hall  
NOTARY PUBLIC

My Commission Expires: 10/13/92

STATE OF ALABAMA  
SHELBY COUNTY

EXHIBIT A

A parcel of land situated in the N.E. 1/4 of Section 26, Township 21 South, Range 1 West, City of Columbiana, Shelby County, Alabama, being more particularly described as follows:

Commence at an iron pin found at the intersection of the South right of way margin of Butler Street and the West right of way margin of Collins Street in the Town of Columbiana, Alabama, said point being the POINT OF BEGINNING; thence proceed westerly along said South right of way margin of Butler Street for 424.87 feet to an iron pin found on the Easterly line of "J. H. Compton Subdivision" as recorded in Map Book 3, Page 16 in the office of the Judge of Probate, Shelby County, Alabama; thence turn an angle left of 110°52'32" and proceed Southeasterly along said Easterly line of "J. H. Compton Subdivision" for 759.48 feet to a point; thence turn an angle right of 36°36'21" and proceed Southwesterly 70.28 feet to a point on the Northerly right of way margin of Depot Street; thence turn an angle left of 73°29'33" and proceed Southeasterly along said Northerly right of way margin of Depot Street for 205.25 feet to an iron pin found on the Westerly right of way margin of Collins Street; thence turn an angle left of 122°15'31" and proceed Northerly along said Westerly margin of Collins Street for 886.77 feet to the POINT OF BEGINNING.

Containing 226,165 ± square feet or 5.19 acres, more or less

Subject to any easements or rights of way that may exist.

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1	Deed Tax	
2		
3		15.00
4		2.00
5		
6		1.00
Total		19.00

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

91 MAY 31 PM 12:36

*Thomas H. Anderson, Jr.*  
JUDGE OF PROBATE