

Inst # 1995-29141

10/13/1995-29141
08:53 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE
006 MCD 22.00

1995-29141

**FIRST SUPPLEMENTAL REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

among

TURTLE LAKE, LTD.,
an Alabama limited partnership
Owner

and

ALABAMA HOUSING FINANCE AUTHORITY

and

FIRST ALABAMA BANK
Trustee

Dated as of September 1, 1995

Relating to

\$15,755,000 original principal amount
Alabama Housing Finance Authority
Multi-Family Residential Development Bonds
1985 Series Q
(Alabama Federal Savings & Loan Association)

**FIRST SUPPLEMENTAL REGULATORY AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

THIS FIRST SUPPLEMENTAL REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (the "First Supplemental Regulatory Agreement") made and entered into as of September 1, 1995 by and among **TURTLE LAKE, LTD.**, an Alabama limited partnership, the Owner named on the identification page immediately following the cover page of the Regulatory Agreement made and entered into as of May 8, 1986 (the "Original Regulatory Agreement"), its successors and assigns (the "Owner"), **ALABAMA HOUSING FINANCE AUTHORITY**, a public corporation and instrumentality of the State of Alabama, duly created, organized and existing under and pursuant to the laws of the State of Alabama (the "Authority") and **FIRST ALABAMA BANK**, an Alabama banking corporation, in its capacity as successor trustee (the "Trustee") to Union Bank & Trust Company as trustee (the "Original Trustee").

W I T N E S S E T H:

WHEREAS, the Authority has been created and organized pursuant to and in accordance with the provisions of Chapter 1A of Title 24 of the Code of Alabama of 1975, as amended (the "Act"), for the purpose of providing a means of financing the costs of safe and sanitary single and multi-family dwelling units for citizens of the State of Alabama with low and moderate income; and

WHEREAS, the Owner executed a Mortgage, Security Agreement and Assignment of Rents dated as of May 30, 1986, granting Alabama Federal Savings & Loan Association as Lender (the "Lender"), a security interest in and mortgage on the land, buildings and equipment comprising Turtle Lake Apartments (the "Mortgage") which Mortgage is recorded in Real Volume 074, page 615 in the Probate Office of Shelby County, Alabama; and

WHEREAS, pursuant to an Assignment of Mortgage Loan recorded in Real Volume 074, page 926, in the Probate Office of Shelby County, Alabama, the Lender assigned all of its right, title and interest in the Mortgage to the Trustee; and

WHEREAS, the Owner, the Trustee and the Authority entered into a Regulatory Agreement and Declaration of Restrictive Covenants dated as of May 8, 1986, and recorded in Real Volume 075, Page 104 in the Probate Office of Shelby County, Alabama (the "Original Regulatory Agreement") in which the Owner agreed to operate Turtle Lake Apartments in accordance with the requirements of the Regulatory Agreement and the Mortgage; and

WHEREAS, the Lender has heretofore assigned all of its right, title and interest in the Original Regulatory Agreement to the Trustee; and

WHEREAS, the Owner and Balboa Investment Group II, a California general partnership ("Balboa"), have executed a Contract for Sale of Real Estate dated June 30, 1995, for the sale of Turtle Lake Apartments to Balboa subject to the Mortgage and the requirements of the Original Regulatory Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREINAFTER SET FORTH, AND OF OTHER VALUABLE CONSIDERATION, THE AUTHORITY, THE TRUSTEE AND THE OWNER AGREE AS FOLLOWS:

Section 1. **Definitions.** All terms capitalized but not defined in this First Supplemental Regulatory Agreement shall have the meanings assigned to such terms in the Original Regulatory Agreement, as applicable.

Section 2. **Amendment of Section 8 of the Regulatory Agreement.** Section 8 of the Original Regulatory Agreement is hereby amended to read as follows:

Section 8. **Transfer Restrictions.** In addition to any other requirement imposed by the Mortgage, the Mortgage Note or this Regulatory Agreement, the Owner further represents, covenants and agrees not to sell, transfer or otherwise dispose of the Development during the term of this Regulatory Agreement without obtaining the prior written consent of the Authority and the Trustee, which consent shall be conditioned upon:

(i) receipt of evidence satisfactory to the Authority and the Trustee that the Owner's purchaser or transferee has, at the election of such purchaser or transferee, either (1) assumed in writing the Owner's duties and obligations under this Regulatory Agreement and the Mortgage Loan, or (2) agreed in writing (in lieu of such assumption) to operate the Development in compliance with the requirements of this Regulatory Agreement and the Mortgage,

(ii) the Authority's and Trustee's reasonable satisfaction that the proposed purchaser and transferee is capable (both financially and operationally) of performing such duties and obligations or performing such operation of the Development, as applicable, and

(iii) payment of any reasonable transfer charges then imposed by the Authority.

It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Development in violation of this Section 8 shall be null, void and without effect, shall cause a reversion of title to the Owner and shall be ineffective to relieve the Owner of its obligations under this Regulatory Agreement.

Section 3. **Severability.** The invalidity of any clause, part or provision of this First Supplemental Regulatory Agreement shall not affect the validity of the remaining portions thereof.

Section 4. **Multiple Counterparts.** This First Supplemental Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

Section 5. **Recordation.** This First Supplemental Regulatory Agreement shall be recorded and filed in such manner and in such places as the Authority and/or the Trustee may reasonably request, and the Owner shall pay all fees and charges incurred in connection therewith.

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

TURTLE LAKE, LTD.

By: Montford Savannah, L.P.
Its: General Partner

By: Montford Savannah, Inc.
Its: General Partner

By W. W. Miller
W. W. Miller
Its Vice President

FIRST ALABAMA BANK, as Trustee
and as assignee of the Lender

By [Signature]
Its Vice President & CEO

ALABAMA HOUSING FINANCE AUTHORITY

By [Signature]
Its Vice Chairman

ACKNOWLEDGMENT OF OWNER

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that W. W. MILLER, whose name as Vice President of Montford Savannah, Inc., a Delaware corporation, acting in its capacity as general partner of Montford Savannah, L.P., a Delaware limited partnership, which is acting in its capacity as general partner of Turtle Lake, Ltd., an Alabama 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 the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Turtle Lake, Ltd., as aforesaid.

GIVEN under my hand and seal, this 11th day of October, 1995.

[NOTARIAL SEAL]

James K. Miller II
Notary Public

My Commission Expires: 2-17-99

ACKNOWLEDGMENT OF TRUSTEE

STATE OF ALABAMA)
 :
COUNTY OF MONTGOMERY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Robert B. Rinehart, whose name as Vice-president & CTO of FIRST ALABAMA BANK, an Alabama banking corporation, as Trustee and assignee of the Lender, 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 the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation, in its said capacity as Trustee and assignee of the Lender.

GIVEN under my hand and seal, this 10th day of October, 1995.

[NOTARIAL SEAL]

Melissa Ann White
Notary Public

My Commission Expires: 1/22/96

ACKNOWLEDGMENT OF AUTHORITY

STATE OF ALABAMA)
 :
COUNTY OF MONTGOMERY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Ted B. Watts, whose name as Vice chairman of Alabama Housing Finance Authority, a public corporation under the laws 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 the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

GIVEN under my hand and seal, this 10th day of October, 1995.

[NOTARIAL SEAL]

Melissa Ann White
Notary Public

My Commission Expires: 1/22/96

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