

INST. # 1995-29142
10/13/1995-29142
8:53 AM CERTIFIED
Shelby Co. Judge of Probate

005 MCD 19.50

FIRST SUPPLEMENTAL TRUST INDENTURE

by and between

ALABAMA HOUSING FINANCE AUTHORITY

and

FIRST ALABAMA BANK

as Trustee

Dated as of September 1, 1995

Relating to

\$15,755,000

**Alabama Housing Finance Authority
Multi-Family Residential Development Bonds
1985 Series Q
(Alabama Federal Savings & Loan Association)**

H. L. Tittle

FIRST SUPPLEMENTAL TRUST INDENTURE

THIS FIRST SUPPLEMENTAL TRUST INDENTURE (the "First Supplemental Indenture") is made and entered into as of September 1, 1995, by and between the ALABAMA HOUSING FINANCE AUTHORITY (together with any successor to its rights, duties and obligations hereunder, the "Authority"), a public corporation and instrumentality duly created, organized and existing under the laws of the State of Alabama, 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 Authority and the Original Trustee heretofore entered into a Trust Indenture dated as of December 1, 1985 (the "Original Indenture"), to provide for the issuance of the Alabama Housing Finance Authority Multi-Family Residential Development Bonds, 1985 Series Q, and the Original Indenture provides that certain matters may be provided for in a Supplemental Indenture; and

WHEREAS, on December 23, 1985, the Authority issued its Multi-Family Residential Development Bonds, 1985 Series Q (Alabama Federal Savings & Loan Association), in the original principal amount of \$15,755,000 (the "Bonds") to finance, among other multi-family residential developments, Turtle Lake Apartments in Shelby County, Alabama ("Turtle Lake Apartments"); and

WHEREAS, the requirements imposed by Section 103(b)(4)(A) of the Internal Revenue Code of 1954 and the regulations promulgated thereunder (the "Code") must be complied with in order for the interest on the Bonds to be and remain exempt from Federal income taxation; and

WHEREAS, Turtle Lake, Ltd., an Alabama limited partnership (the "1986 Owner"), Alabama Federal Savings & Loan Association, in its capacity as Lender (the "Lender"), the Original 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 "Regulatory Agreement") in which the 1986 Owner agreed to operate Turtle Lake Apartments in accordance with the requirements of the Regulatory Agreement and the Mortgage dated as of May 30, 1986 (the "Mortgage"); and

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

WHEREAS, the 1986 Owner and 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 Regulatory Agreement;

**NOW, THEREFORE,
KNOW ALL PERSONS BY THESE PRESENTS,
THIS FIRST SUPPLEMENTAL INDENTURE**

W I T N E S S E T H:

The Authority, in consideration of the premises and the acceptance by the Trustee of the trust created hereby and by the Original Indenture, the Authority and the Trustee mutually covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 **Definitions.** Unless the context clearly otherwise requires, each capitalized word or phrase appearing herein that is defined in the Original Indenture shall have the same meaning in this First Supplemental Indenture that is given it in the Original Indenture.

Section 1.2 **Rules of Interpretation.** This First Supplemental Indenture shall be construed and interpreted according to the rules of interpretation stated in Section 1.03 of the Original Indenture.

ARTICLE II

AMENDMENT OF ORIGINAL INDENTURE

Section 2.1 **Amendment to Article XII of the Original Indenture.** Article XII of the Original Indenture is hereby amended by the addition of the following SECTION 12.06:

"SECTION 12.06 Transfers. In any case in which a Development is about to be conveyed by the Owner, the Trustee is authorized to consent to the conveyance (without releasing the Owner) and to take and enter into an operating agreement with the proposed transferee of the Development, but only if the following conditions are met:

- (1) The Trustee has determined that the Owner has satisfied the requirements of Section 8 of the Regulatory Agreement;
- (2) The Authority has received payment of its then customary charges;

(3) The proposed transferee of the Development has agreed in such operating agreement to operate the Development in compliance with the requirements of the Regulatory Agreement and the Mortgage; and

(4) There has been delivered to the Trustee an opinion of nationally-recognized bond counsel to the effect that such conveyance and operating agreement will not adversely affect the exemption of interest on the Bonds from Federal income taxation."

ARTICLE III

MISCELLANEOUS PROVISIONS

Section 3.1 Severability. If any provision of this First Supplemental Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or state or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of one or more phrases, sentences, clauses or paragraphs in this First Supplemental Indenture contained shall not affect the remaining portions of this First Supplemental Indenture or any part thereof.

Section 3.2 Governing Law. This First Supplemental Indenture shall be governed in all respects, including validity, interpretation and effect, by, and shall be enforceable in accordance with, the laws of the State of Alabama.

Section 3.3 Execution in Several Counterparts. This First Supplemental Indenture may be simultaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

IN WITNESS WHEREOF, the Authority and the Trustee have caused this Indenture to be signed, sealed and attested on their behalf of their duly authorized representatives, all as of the date first hereinabove written.

ALABAMA HOUSING FINANCE AUTHORITY

By Ted B. Wall
Its Vice Chairman

ATTEST:

[Signature]
Its Assistant Secretary
[SEAL]

FIRST ALABAMA BANK,
as Trustee

By [Signature]
Its Vice President

ATTEST:

Walter L. Darby, Jr.
Its SENIOR VICE PRESIDENT
CORPORATE TRUST
TRUST OPERATIONS MANAGER
[SEAL]

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 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 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

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, in its capacity as Trustee of the within-mentioned 1985 Series Q Bonds, 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.

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