

STATE OF ALABAMA
County of Shelby

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

DECLARATION OF LAND USE RESTRICTIVE COVENANTS
FOR LOW-INCOME HOUSING TAX CREDITS

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS, dated as of December 14, 2001 by and between Ashbury Associates, Ltd. and Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama, joined in by Alabama Multifamily Loan Consortium ("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 Alabaster, County of Shelby, State of Alabama, more particularly described in Exhibit A hereto, known as or to be known as Ashbury Apartments; and

WHEREAS, AHFA has been designated by the Governor of the State of Alabama as the housing agency for the State of Alabama for the allocation of low-income housing tax credit dollars; and

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

WHEREAS, the Owner has represented to AHFA in the Application that it will covenant to maintain the Section 42 rent and income restrictions for an Extended Use Period extending 15 years after the close of the Compliance Period; and

WHEREAS, Section 42 requires, as a condition precedent to the allocation of the Credit, 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 Section 42, 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 Section 42.

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) "AHFA" means the Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama, and any successor to its functions.
- (b) "Applicable Fraction" means the applicable fraction with respect to the Building as defined in Section 4 (c) of this Declaration.
- (c) "Application" means Owner's Application dated September 07, 2001.
- (d) "Area Median Income" means "area median income" as such term is defined and used in Section 42.

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- (e) "Building" means any building that is or is to be part of the Project.
- (f) "Building Occupancy Restriction" means the obligation of Owner (1) to restrict occupancy of a percentage 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.
- (g) "Code" means the Internal Revenue Code of 1986, as from time to time amended, and Treasury Regulations relating thereto. References to particular provisions of the Code include such provisions as from time to time amended, recodified, renumbered, or reorganized.
- (h) "Compliance Period" means the 15-year period commencing the first taxable year of the Credit Period with respect to the Project.
- (i) "Credit" means the low-income housing tax credit as determined under Section 42.
- (j) "Credit Period" means the period during which the Credit is claimed by the Owner with respect to the Building.
- (k) "Declaration" means this Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits, as from time to time amended, restated, or supplemented.
- (l) "Declaration Term" means the term of this Declaration, to-wit, the Extended Use Period plus, if applicable, the three-year term described in Section 6(c) of this Declaration.
- (m) "Extended Use Period" means the term commencing at the beginning of the Compliance Period and ending (i) 15 years after the close of the Compliance Period plus (ii) such additional term as may be specified in Section 5 of this Declaration. However, the Extended Use Period will end on the earlier of (i) the date specified in the preceding sentence, (ii) the date the Building is acquired by foreclosure or instrument in lieu of foreclosure, or (iii) the expiration of the one-year period specified in Section 6(b) of this Declaration if AHFA fails to find a buyer for the Low-Income Portion of the Building under Section 6(b) of this Declaration during such period. However, the early termination of the Extended Use Period under clauses (ii) and (iii) of the preceding sentence shall only occur if Owner complies with its obligations in Section 6(c) of this Declaration for three years after such termination.
- (n) "HUD" means the United States Department of Housing and Urban Development and any successor thereto.
- (o) "Low-Income Portion" means the portion of the Building equal to the Applicable Fraction as determined under Section 42(h)(6)(H).
- (p) "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.
- (q) "Low-Income Tenant" means an individual or family whose income satisfies the Low-Income Requirement.
- (r) "Low-Income Unit" means a Unit as to which the Owner claims a Credit at any time during the Compliance Period and includes all Units that must be leased to a Low-Income Tenant to satisfy the Project Occupancy Restriction or Building Occupancy Restriction.
- (s) "Owner" means Ashbury Associates, Ltd. and any person now or hereafter owning any interest (other than solely as a creditor) in the Project or any portion thereof.
- (t) "Project" means the certain tract of land in the City of Alabaster, 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 Ashbury Apartments, including the Building.
- (u) "Project Occupancy Restriction" means the obligation of Owner to restrict occupancy of a percentage of the Units in the Project such that sufficient Units shall be Low-Income Units to satisfy Section 42(g)(1)(A) or Section 42(g)(1)(B), as specified in Section 4(a) of this Declaration.
- (v) "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 in order for the Unit to qualify for the Credit or, after the first ten (10) years of the Compliance Period, would qualify for the Credit but for the fact that the first ten (10) years of the Compliance Period have expired.
- (w) "Qualified Contract" means "qualified contract" as defined in Section 42(h)(6)(F).
- (x) "Section 42" (and all variations thereof) mean Section 42 of the Code and applicable Treasury Regulations relating thereto.

- (y) "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").
- (z) "Treasury" means the United States Department of Treasury.
- (aa) "Unit" means a residential apartment unit/single family home of the Project as determined in accordance with Section 42.

All words and phrases defined in Section 42 and by Treasury or 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 longer of the period the Credit is claimed or 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 or leasehold] 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 Extended Use Period, the Project shall constitute a qualified low-income housing project, as defined in Section 42(g)(1). Throughout the Extended Use Period, the Building shall constitute a qualified low-income building, as defined in Section 42(c)(2).
- (f) Each Unit shall, throughout the Extended Use 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 Section 42) which are to be used on other than a transient basis.
- (g) During the Extended Use 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 Section 42 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 Section 42. 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 Section 42.
- (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 containing Low-Income Units. 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 Extended Use Period unless required by law.
- (k) If during the Extended Use 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, such that no reduction in the number of Units leased to Low-Income Tenants in the Building or the Project shall occur.
- (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 Section 42. For a Building financed through a Section 515 loan of the USDA Rural Development formerly, Farmers Home Administration as a part of their rural rental housing program, termination shall be considered "for good cause" if consistent with applicable USDA Rural Development formerly, FmHA regulations relating to termination of such tenancies.
- (n) During the Compliance Period, the Owner will furnish to AHFA within 60 days after the close of each fiscal year, a consolidated balance sheet, income and expense statements and rent roll; said items to be dated as of the end of such fiscal year and signed by the Owner.

- (o) Owner agrees to provide owner-financed project-based rental assistance of at least twenty five dollars (\$25.00) per unit per month for a minimum of twenty five percent (25%) of the total low-income units (rounded up) for at least ten consecutive years..

SECTION 4 – EXTENDED LOW-INCOME HOUSING COMMITMENT

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

- (a) One hundred percent (100%) of the rental residential units in this project shall be rent restricted at or below the sixty percent (60%) rent level or fair market value, whichever is less, as defined by the rent limits published by HUD.
One hundred percent (100%) of the rental residential units in this project shall be rent restricted and occupied by individuals whose income is sixty percent (60%) or less of the area median income.
- (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 Section 42.
- (c) The Applicable Fraction of the building shall not be less than one hundred percent (100%) at any time during the Extended Use 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 (15% set aside for mentally ill/mentally retarded tenants).

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)

Not applicable.

- ☒ The Owner hereby extends the Extended Use Period for 5 additional years after the Compliance Period and the 15-year minimum extension of the Compliance Period. (Any election under this paragraph will cause the Extended Use Period to be thirty (30) years plus the additional elected term.)

SECTION 6 – OPTION TO TERMINATE EXTENDED USE PERIOD

- (a) The Owner may request to terminate the Extended Use Period by notifying AHFA by registered mail. This written request for termination may be submitted any time after the end of the 19th year of the Extended Use Period (which is also the 19th year of the Compliance Period).
- (b) From the date of receipt of the request to terminate, AHFA has a one-year period to find a buyer willing to purchase the Building under a Qualified Contract and maintain the Building Occupancy Restriction at the price determined by the formula price outlined in Section 42(h). If AHFA finds such a buyer, Owner shall either (i) sell the Building to the Buyer at such price pursuant to the terms of the Qualified Contract or (ii) continue to own the building subject to this Declaration and the Extended Use Period shall not be caused to thereby expire.
- (c) If (i) the owner makes the request to terminate and AHFA is unable to locate a buyer during the aforesaid one-year period or if (ii) the Building is transferred by foreclosure or instrument in lieu of foreclosure, for a period of three years following the expiration of the Extended Use Period thereby resulting, the Owner shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit other than for good cause and shall not increase the gross rent with respect to any such Low-Income Unit other than as permitted under Section 42.

SECTION 7 – ENFORCEMENT OF OCCUPANCY RESTRICTIONS

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative 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 Building Occupancy Restriction, Project Occupancy Restriction and any other occupancy restrictions specified in this Declaration.

SECTION 8 – ENFORCEMENT OF SECTION 42 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 Section 42 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 Section 42 and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Treasury, the Internal Revenue Service, HUD, or other governmental agency from time to time pertaining to Owner's obligations under Section 42 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 Section 42, AND BY REASONS THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING TAX CREDITS 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 Section 42 and this Declaration.
- (d) The Owner agrees that, if at any point following execution of this Declaration, Section 42 requires AHFA to monitor the Section 42 occupancy restrictions, or, alternatively, AHFA chooses to monitor Section 42 occupancy restrictions or AHFA occupancy restrictions, the Owner shall take any and all actions reasonably necessary and required by AHFA to substantiate the Owner's compliance with the Section 42 occupancy restrictions or AHFA occupancy restrictions and shall pay a reasonable fee to AHFA for such monitoring activities performed by AHFA.
- (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 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: Multifamily Administrator
Post Office Box 230909
Montgomery, AL 36123-0909

TO THE OWNER:

Ashbury Associates, Ltd.
Attn: Sandy Goff
1624 Blount Ave.
Guntersville, AL 35976

TO THE MORTGAGEE:

AL Multifamily Loan Consortium
Po Box 311
Montgomery, AL 36101-0311

- 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 Section 42 (or any other applicable provisions of the Code), and any and all applicable rules, regulations, policies, procedures, and rulings or other official statements pertaining to the Credit.
 - (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 allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.
 - (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 Section (42)(h)(6) and preserve the eligibility of the Building for the Credits allocated to the Building by AHFA and any term hereof that is inconsistent with the foregoing shall be reformed to effectuate such intent.
 - (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.

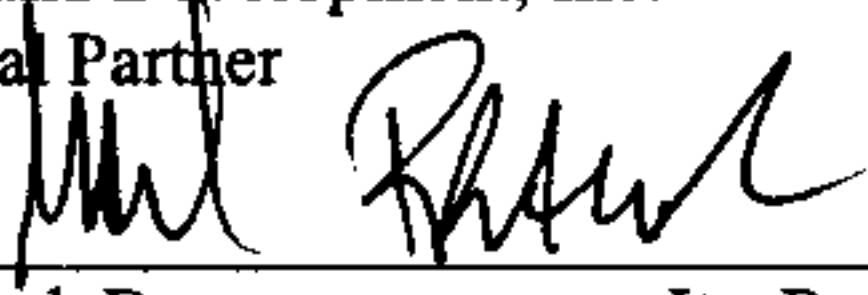
IN WITNESS WHEREOF, the parties have caused this Declaration to be signed by their respective duly authorized representatives, as of the day and year first written above.

Ashbury Associates, Ltd.


By: 
Mark Beaver A: General Partner

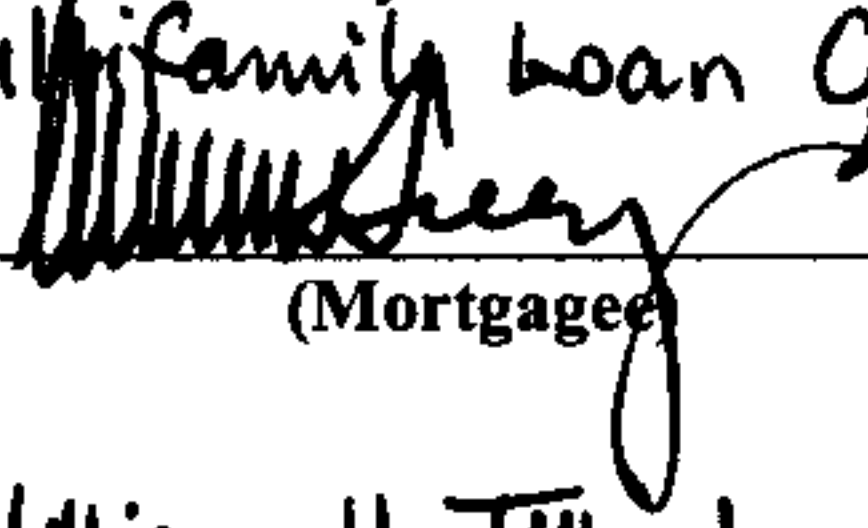
By: Pacific Land Development, Inc.

A: General Partner

By: 
Mark Beaver Its: President

Alabama Housing Finance Authority

By: 
Haywood M. Sport
Its: Multifamily Administrator

AL Multifamily Loan Consortium, Inc.

(Mortgagee)

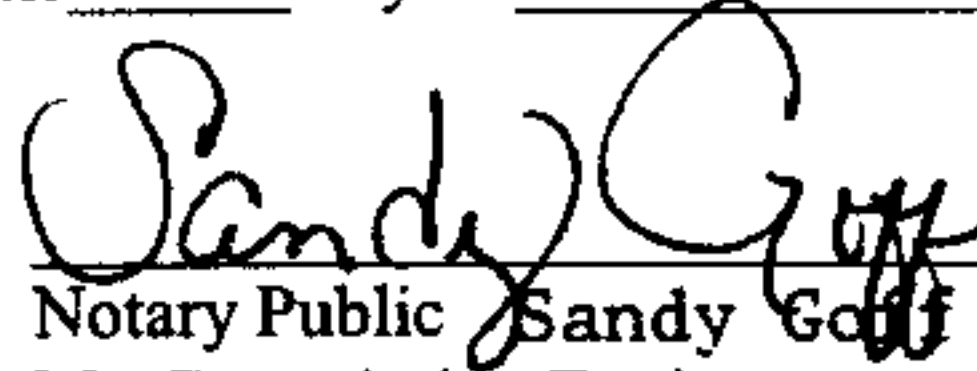
By: William H. Tilly, Jr.
Its: Executive Director

STATE OF ALABAMA
COUNTY OF SHELBY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Mark Beaver, whose name as General Partner of Ashbury Associates, 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 General Partner and with full authority, executed the same voluntarily for and on behalf of said Limited Partnership on the date hereof.

Given under my hand and official seal this the 20th day of December, 2001.

[SEAL]


Notary Public Sandy Goff

My Commission Expires: 11/29/05

STATE OF ALABAMA
COUNTY OF _____

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of Ashbury Associates, 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 _____ and with full authority, executed the same voluntarily for and on behalf of said Limited Partnership on the date hereof.

Given under my hand and official seal this the _____ day of _____, 200__.

[SEAL]

Notary Public
My Commission Expires:

[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 _____, 200__.

[SEAL]

Notary Public
My Commission Expires:

STATE OF ALABAMA

COUNTY OF SHELBY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Mark Beaver, whose name as President of Pacific Land Dev, Inc. an Alabama corporation, a general partner of Ashbury Associates, 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 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 20th day of December, 2001.

[SEAL]



Notary Public Sandy Goff
My Commission Expires: 11/29/05

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 on the date hereof.

Given under my hand and official seal this the 14TH day of December 2001.

Barbara L. Odean

[SEAL]

Notary Public

My Commission Expires:

My Commission Expires April 17, 2004

[For Mortgagee]

STATE OF Alabama
COUNTY OF Montgomery

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William H. Tilly, Jr., whose name as Executive Director of AL Multifamily Loan Consortium, a non-profit corporation 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 corporation on the date hereof.

Given under my hand and official seal this the 10 day of April, 2002.

Barbara Russell Brown

[SEAL]

Notary Public

My Commission Expires:

**NOTARY PUBLIC, ALABAMA, STATE AT LARGE
MY COMMISSION EXPIRES AUGUST 10, 2003**

EXHIBIT A

The below-described property located in the city of Alabaster, Shelby County, Alabama:

Starting at the intersection of the north line of SW 1/4 of the SE 1/4 of Section 26, T-21-S, R-3-W, Shelby County, Alabama and the east right of way of Alabama Highway 119 (80' row), run along the north line of the SW 1/4 of the SE 1/4 and the SE 1/4 of the SE 1/4, South 89°-46'-53" East, 837.31 feet to the POINT OF BEGINNING; thence from said point of beginning, continue along the north line of the SE 1/4 of the SE 1/4, South 89°-46'-53" East, 600.00 feet; thence South 01°-03'-15" West, 677.85 feet to the south line of the N 1/2 of the SE 1/4 of the SE 1/4; thence along said south line, North 89°-56'-43" West, 843.03 feet; thence North 04°-45'-57" East, 228.71 feet; thence North 89°-59'-27" West, 571.67 feet to the east right of way of said Alabama Highway 119; thence along the east right of way of said highway, along a curve concave to the west (property line radius 2334.76 feet) a chord of North 01°-20'-03" East, 50.01 feet; thence South 89°-59'-27" East, 799.84 feet; thence North 01°-03'-15" East, 401.41 feet to the point of beginning.

Said parcel lying in the SE 1/4 of Section 26, T-21-S, R-3-W, Shelby County, Alabama and containing 11.491 acres, more or less.

SUPPORTIVE HOUSING AGREEMENT

THIS SUPPORTIVE HOUSING AGREEMENT ("this Agreement") is executed by the **ALABAMA HOUSING FINANCE AUTHORITY**, a public corporation and instrumentality of the State of Alabama acting solely in its capacity as administrator of the State of Alabama's HOME Investment Partnerships Program and Low-Income Housing Tax Credit Program (the "AHFA") and the **Ashbury Associates, Ltd.**, an Alabama limited partnership (the "Owner").

Recitals

WHEREAS, AHFA has been designated by the State of Alabama (the "State") to serve as administrator of the low-income housing tax credits (the "Tax Credits") allocated annually to the State by the United States Department of the Treasury and to serve as administrator of the HOME Investment Partnerships Program funds (the "HOME Funds") allocated annually to the State by the United States Department of Housing and Urban Development.

WHEREAS, AHFA administers the Tax Credits and HOME Funds in accordance with its 2001 Qualified Allocation Plan for Low-Income Housing Tax Credits and the 2001 Qualified Allocation Plan for HOME Investment Partnerships Program (together, the "Qualified Allocation Plan").

WHEREAS, the Qualified Allocation Plan requires that a portion of the Tax Credits and HOME Funds allocated during the 2001 application cycle be used for the construction, rehabilitation and development of decent, safe and affordable housing with supportive services sufficient to permit citizens with mental illness or mental retardation to live independently.

WHEREAS, AHFA has allocated Tax Credits and/or HOME Funds to Owner in accordance with the Qualified Allocation Plan for the development of Ashbury Apartments located in **Shelby County, Alabaster, Alabama** (the "Project") provided, among other things, that Owner enters into this Agreement in order to set forth Owner's responsibilities with respect to the supportive housing requirements of the Qualified Allocation Plan.

Agreement

NOW, THEREFORE, in consideration of AHFA's allocation of Tax Credits and/or HOME Funds to Owner pursuant to the terms of the Qualified Allocation Plan, Owner's acceptance of such allocation, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby agrees as follows:

1. **Participation in Supportive Housing Program.** Owner acknowledges that the success and effectiveness of the supportive housing program set forth in the Qualified Allocation Plan depends upon a cooperative effort among project owners, AHFA, local supportive service providers, developers, lenders and investors in affordable housing. Owner hereby covenants and agrees with respect to the Project to use its best efforts to coordinate with the Project's local supportive service providers, developers, contractors, lenders and equity investors in order to facilitate the supportive housing program.

2. **Preference for Supportive Housing.** Not less than 15% of the units in the Project shall be subject to a preference for persons eligible for supportive housing. As used herein, "persons eligible for supportive housing" means tenants who are eligible to rent a supportive housing unit in accordance with AHFA's form of tenant eligibility certificate in effect from time to time. As used herein, a "preference" for persons eligible for supportive housing shall mean the following:

(a) If 15% of the units in the Project cannot be rented to persons eligible for supportive housing within sixty (60) days of initial lease up at a rental rate not exceeding the maximum rent for supportive housing units then in effect for the Lender, such unit may be rented to an otherwise income-eligible tenant, regardless of the tenant's eligibility for supportive housing.

(b) Following initial lease up, Borrower agrees to establish and maintain separate waiting lists for persons eligible for supportive housing (the "Supportive Housing Waiting List") and for other income-eligible tenants (the "Waiting List"). If at the time of any vacancy following initial lease-up the Project is renting fewer than 15% of its units to persons eligible for supportive housing, Borrower acknowledges and agrees that the Project must thereafter rent each unit that becomes available to the next income-eligible tenant on the Supportive Housing Waiting List until the Project is leasing not less than 15% of its units to persons eligible for supportive housing. If there are no income-eligible tenants on the Supportive Housing Waiting List at the time of the vacancy, Borrower may rent to the next income-eligible person on the Waiting List, regardless of the person's eligibility for supportive housing.

(c) Any time that the last person is removed from the Supportive Housing Waiting List, whether due to renting a unit or ineligibility for supporting housing or otherwise, so that there are no names on the Supportive Housing Waiting List, Borrower agrees (i) to publish notice of the availability of the supportive housing units in a newspaper of general circulation in the city or county in which the Project is located, or if such a newspaper does not exist, in a newspaper of general circulation for an adjoining city or county from which Borrower may reasonably expect to obtain tenants, and (ii) to deliver notice of the availability of such units by United States mail to (A) each supportive service provider that has notified Borrower in writing that it provides supportive services to tenants of the Project and has provided Borrower with an address to which notices can be sent, (B) the Alabama Department of Mental Illness and Mental Retardation, 100 North Union Street, Suite 536, Montgomery, Alabama 36130-1410, Attention: Director, and (C) the Alabama Housing Finance Authority at 2000 Interstate Park Drive, Suite 408, Montgomery, Alabama 36109.

3. **Fair Housing and Equal Opportunity.** Owner shall develop, operate and manage the Project in compliance with the following as they may be amended and/or superseded from time to time: Fair Housing Act (24 CFR 100); Executive Order 11063 (24 CFR 107); Section 504 of the Rehabilitation Act of 1973 (24 CFR 8); Age Discrimination Act of 1975 (24 CFR 146); Executive Order 11246 (41 CFR 60); Title IV Civil Rights Act of 1964 (24 CFR 1); and Section 3 of the Housing and Urban Development Act of 1968 (12 U. S. C. 1701u). Owner acknowledges that it is responsible at its own expense for obtaining such professional advice and counsel as it deems necessary in order to maintain compliance with this paragraph.

4. **Records.** Borrower shall maintain records, and provide legible copies thereof to AHFA upon request, which reflect the extent to which tenants have applied for occupancy of a supportive housing unit, have occupied a supportive housing unit, or have terminated occupancy of a supportive housing unit and include reason(s) for termination. Such information shall include a record of all persons whose names have appeared on the Supportive Housing Waiting List, when names were removed from such list and the reason(s) for removal, e.g., whether such person rented a supportive housing unit, a non-supportive housing unit or was ineligible to occupy a unit.

5. **Leasing Documentation.** Prior to leasing any supportive housing unit, Owner shall have in hand an eligibility certificate in the form required from time to time by AHFA confirming the tenant's eligibility to occupy a supportive housing unit.

6. **Supportive Services.** Owner will cooperate reasonably with local supportive service providers who identify themselves as available to provide supportive services to residents of the Project in order to facilitate the provision of such supportive services.

7. **Marketing of Supportive Housing Units.** Owner agrees to use best efforts to market the Project to tenants eligible for supportive housing units and to pursue any referrals of tenants who may be eligible for such units as may be received from the Department of Mental Illness and Mental Retardation, from local supportive service providers or from other persons.

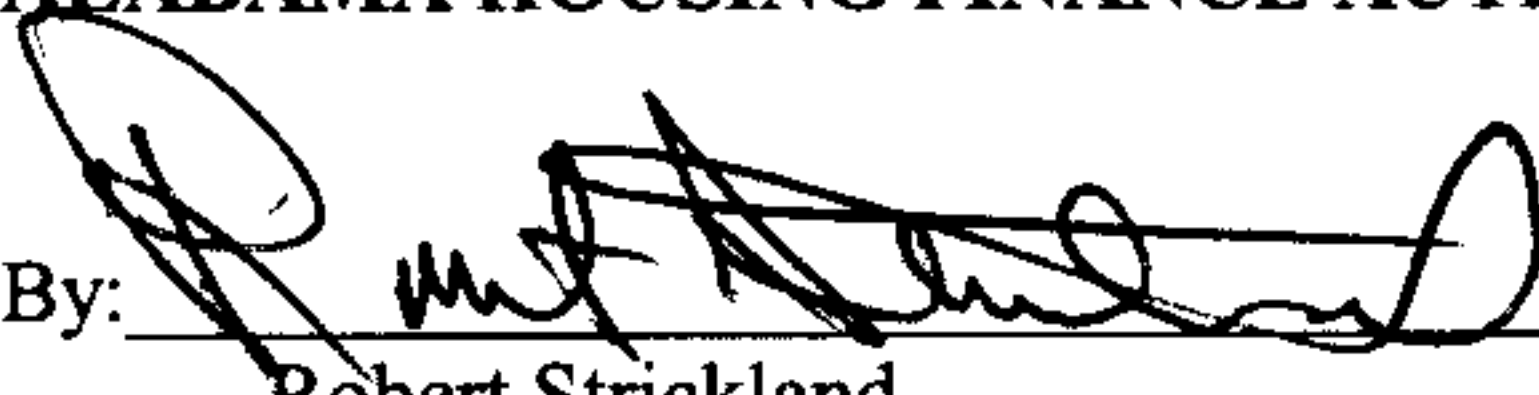
8. **Compliance with Applicable Laws.** The Tax Credits and HOME Funds must be administered in accordance with applicable law. It is AHFA's intention and belief that the Qualified Allocation Plan, including the supportive housing requirements, comply in all respects with applicable law. Should any part of the program be deemed in violation of applicable law, however, Owner agrees to cooperate reasonably with AHFA or any other governmental authority with jurisdiction to alter, amend or modify the supportive housing program to the extent necessary to regain compliance with such laws.

9. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of AHFA and Owner. There are no third party beneficiaries of this Agreement, and no party shall possess a cause of action to enforce the terms and conditions of this Agreement except AHFA and Owner or their designated representatives.


10. **Term of Agreement.** This Agreement shall remain in full force and effect until completion and termination of (a) the "Compliance Period" set forth in the Declaration of Land Use Restrictive Covenants for Low-income Housing Tax Credits executed between AHFA, Owner and Owner's mortgagee with respect to the Tax Credits allocated to the Project and (b) completion and termination of the "Affordability Period" set forth in the Declaration of Land Use Restrictive Covenants for Alabama's HOME Program executed between AHFA, Owner and Owner's mortgagee with respect to the HOME Funds allocated to the Project, it being the intention of the parties that this Agreement shall terminate automatically upon the foregoing, as they may be extended pursuant to the terms of the respective declarations.

IN WITNESS WHEREOF, the undersigned have executed this Agreement by and through their authorized officers.

ALABAMA HOUSING FINANCE AUTHORITY

By: 
Robert Strickland
Its Executive Director

Ashbury Associates, Ltd.

By: 
Mark Beaver A: General Partner

By: Pacific Land Development, Inc.

A: General Partner

By: 
Mark Beaver Its: President

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