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FOR REGISTRATION REGISTER OF DEEDS
REBECCA T. CHRISTIAN
NEW HANOVER COUNTY, NC
2004 AUG 16 01:31:36 PM
BK: 4453 PG: 468-479 FEE: \$44.00

INSTRUMENT # 2004043957

RETURN TO
ALLEN, MACDONALD & DAVIS
1508 MILITARY CUTOFF ROAD
SUITE 102
WILMINGTON, NC 28403

Prepared by: Mark H. Shelburne
Mail after recording to: NCHFA, Attn. Rental Investment, PO Box 28066, Raleigh, NC 27611-8066

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 (the "Agreement"), dated as of July 15, 2004 by WHITE OAK APARTMENTS, LP, and its successors and assigns (the "Owner") is given as a condition to the allocation of low-income housing credits by the North Carolina Federal Tax Reform Allocation Committee, an instrumentality of the State of North Carolina (together with any successor to its rights, duties and obligations, the "NCTRAC").

WITNESSETH:

WHEREAS, the Owner is the owner of a rental housing development located in the City of WILMINGTON, County of NEW HANOVER, North Carolina, more particularly described in Exhibit A attached hereto and incorporated herein by reference, known as or to be known as WHITE OAK APARTMENTS (the "Project"); and

WHEREAS, the NCTRAC has been designated as the housing credit agency for the State of North Carolina for the allocation of low-income housing credits (the "Credit"); and

WHEREAS, Owner has applied to the NCTRAC for an award of Credit under the 2003 Qualified Allocation Plan ("QAP");

WHEREAS, Owner received an allocation of Credit as described in the carryover allocation agreement entered into between the NCTRAC and Owner ("Allocation"); and

WHEREAS, the Owner recognizes that it must maintain certain rent and income restrictions under Section 42 of the Code of the Internal Revenue Code of 1986, as amended or as may be amended from time to time, and applicable regulations ("Section 42 of the Code") for the Extended Use Period as defined herein and in the Code;

WHEREAS, the Owner understands that the representations made to the NCTRAC in its application for Credits ("Application") are conditions and requirements of the Allocation and that it is bound by these to the same extent as all other rules, regulations, restrictions and otherwise, including an agreement to not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code during the Extended Use Period; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and 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 term stated herein and binding upon all subsequent owners of the Project for such term, and are not merely personal covenants of the Owner.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees as follows:

SECTION 1 - DEFINITIONS

All words and phrases defined in the QAP, Section 42 of the Code and all applicable rules, rulings, policies, proceedings, regulations, or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, or the United States Department of Housing and Urban Development or the United States Department of Agriculture pertaining thereto shall have the same meanings in this Agreement.

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

- (a) The owner will cause this Agreement to be recorded as provided hereunder no later than the end of the first taxable year in which Credits allocated to this Project are taken. Upon execution, acknowledgement, and delivery by the Owner, the Owner shall cause this Agreement and all amendments hereto to be recorded and filed in the office of the Register of Deeds of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. The original recorded executed Agreement shall be transmitted to NCTRAC as soon as it is available from the Register of Deeds. The Owner agrees that the NCTRAC will not issue the Internal Revenue Service Form(s) 8609 constituting final allocation of the Credit unless and until the NCTRAC has received the recorded executed original of the Agreement.
- (b) The Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project during the term of this Agreement, that this Agreement and the covenants and restrictions set forth in this Agreement (i) shall be and are covenants running with the Project, encumbering the Project for the term of this Agreement, binding upon the Owner, the Owner's successors in title and all subsequent owners and operators of the Project, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner and its respective successors and assigns, and the benefits shall inure to the NCTRAC and any former, present or prospective tenant of the Project during the term of this Agreement. The Owner hereby agrees that any and all requirements of the laws of the State of North Carolina to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the Project and which touch and concern the Project shall be deemed to be satisfied in full, that any requirements of privity of estate are intended to be satisfied, and that an equitable servitude in the form of a negative easement has been created to insure that these restrictions run with the land. For the longer of the period this Credit is claimed or the term of this Agreement, each and every contract, option, memorandum of option, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement; provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, option, memorandum of option, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

- (c) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to be bound by the terms of this Agreement, and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form(s) 8609 constituting final allocation of the Credit.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents, covenants and warrants as follows:

- (a) The Owner (i) is validly existing and qualified to transact business under the laws of North Carolina, (ii) has the full 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 Agreement.
- (b) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, partnership agreement, operating agreement, corporate charter, corporate resolution, bylaws, or other instrument to which the Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Owner will, at the time of execution, acknowledgement, and delivery of this Agreement, have good and marketable title to the Project free and clear of any lien or encumbrance other than: (i) the encumbrance created pursuant to this Agreement, (ii) any loan documents relating to financing of the construction of the Project that by its terms will be cancelled within one year of the last building in the project being placed in service, and (iii) matters for which consent is obtained as provided under Section 2(c) above.
- (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 it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition or which would impair the use of the Project as contemplated by this Agreement.
- (e) The Project constitutes or will constitute a qualified low-income building(s) and qualified low-income project as defined in Section 42 of the Code.
- (f) Each unit in the Project contains or will contain, upon completion of construction, complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis.
- (g) During the term of this Agreement, the Owner covenants, agrees and warrants that (i) all units eligible for the Credit shall be leased and rented or made available to members of the general public who qualify as low-income tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g)(1) of the Code ("Low-Income Tenants"), (ii) the Owner shall not refuse to lease any residential unit in the Project to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder and (iii) each residential unit is and will remain suitable for occupancy as defined by the NCTRAC.
- (h) The Owner agrees to itself comply, and ensure the Project complies, with the requirements of federal, state and local laws and regulations (including the Fair Housing Act as it may from time to time be amended).

- (i) The Owner will not substantially convert, alter, reduce or otherwise change any common areas used by the tenants or that are considered as part of the Project's eligible basis without the NCTRAC's prior written consent. This limitation includes conversion of any manager's unit(s) or office space.
- (j) Subject to the requirements of Section 42 of the Code and this Agreement, the Owner may not sell, transfer or exchange the Project or any material portion at any time during the Extended Use Period without the prior written approval of NCTRAC. Such approval may be withheld at NCTRAC's reasonable discretion, and NCTRAC may require submission of any documentation related to the buyer, seller, Project or otherwise relating to the transaction. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any low-income portion of the Project, including, but not limited to, the restriction under Section 42(h)(6)(B)(iii) of the Code that no portion of any building in the Project may be sold, transferred or exchanged unless all of the building is sold, transferred or exchanged to the transferee. Within thirty (30) days of the closing of such sale, transfer or exchange, the Owner shall provide the NCTRAC a complete copy of all the closing documents.
- (k) 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 residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law.
- (l) The Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage, destruction, or condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement.
- (m) The Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- (n) The Owner represents, warrants and agrees that all information, reports and exhibits furnished by it to the NCTRAC in connection with the Application is accurate and the Owner has not made any material misstatement of fact or omitted to state a material fact. Furthermore, the Owner understands that NCTRAC has relied on the truth and completeness of representations in the Application. Any subsequent discovery of material misstatements or omissions will entitle the NCTRAC to exercise every available remedy including, without limitation, revoking the Allocation.
- (o) The Owner acknowledges that the following constitute conditions to the Allocation:
 - (i) accuracy of the facts and compliance with representations contained in the Application and Allocation documentation,
 - (ii) completion of construction as depicted on the site layout, floor plan and elevations submitted with the Application,
 - (iii) adherence to the QAP, and
 - (iv) provision and maintenance of those certain unit and project amenities for the benefit of the tenants described in the Application.

The Owner's or Project's failure to comply with all such conditions without prior written authorization from the NCTRAC will entitle the NCTRAC, in its discretion, to deem the Allocation to be cancelled by mutual consent. After any such cancellation, Owner acknowledges that neither it nor the Project will have any right to claim Credits pursuant to the Allocation. The NCTRAC reserves the right, in its discretion, to modify and/or waive any such failed condition.

SECTION 4 - INCOME AND RENT RESTRICTIONS

The Owner represents, warrants and covenants to the NCTRAC throughout the term of this Agreement and in order to satisfy the requirements of the occupancy restrictions of Section 42 of the Code ("Section 42 Restrictions") that:

- (a) **Minimum Set-Aside:** At least forty percent (40%) or more of the residential units in the Project are both rent-restricted and occupied (or if unoccupied, held for occupancy only) by individuals whose income is sixty percent (60%) or less of area median gross income (subject to any exceptions permitted under Section 42 of the Code for tenants whose income increases after initially meeting such restriction).
- (b) **Rental Production Program (HOME eligibility):** At least forty percent (40%) of the qualified units are occupied by households with incomes less than fifty percent (50%) of median income.
- (c) **Non-profit set-aside:** no applicable requirements
- (d) The **applicable fraction** for the project as defined in Section 42(c)(1)(B) for each taxable year of the Extended Use Period will be no less than one hundred percent (100%).
- (e) Except as may be otherwise provided under Section 42 of the Code or by the Internal Revenue Service, the determination of whether a tenant meets the low-income requirement shall be made by the Owner at least annually on the basis of the current income of such Low-Income Tenant.

SECTION 5 – STATE HOUSING POLICY RESTRICTIONS

The Owner represents, warrants and covenants that it will satisfy the requirements indicated below (the "State Housing Policy Restrictions") throughout the term of this Agreement:

- (a) **State Housing Credit:** The project is in a Moderate Income County pursuant to the QAP.

At least fifty percent (50%) of qualified units are affordable to households with incomes at or below fifty percent (50%) of county median income.

- (b) **Qualified Allocation Plan:** The project is in a Moderate Income County pursuant to the QAP.

At least twenty-five percent (25%) of qualified units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.

At least fifty percent (50%) of qualified units are affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.

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SECTION 6 - TERM OF AGREEMENT

- (a) For the purposes of this Agreement the term "Compliance Period" means, with respect to any building, the period of fifteen (15) taxable years beginning with the first taxable year of the credit period with respect thereto as defined in Section 42(f) of the Code.
- (b) Except as hereinafter provided, this Agreement and the Section 42 Restrictions shall commence with the first day on which any building which is part of the Project is placed in service and shall end on the date which is fifteen (15) years after the end of the Compliance Period. The period from the beginning of the Compliance Period until fifteen (15) years after the end of the Compliance Period (or such earlier date as may be determined under subsection (c) below) is the extended use period (the "Extended Use Period").
- (c) The Extended Use Period for any building which is part of this Project shall terminate, if earlier than the end of the Extended Use Period, on the date the Project is acquired by foreclosure or instrument in lieu of foreclosure, unless the Internal Revenue Service determines that such acquisition is part of an arrangement with the Owner in which a purpose of such arrangement is the termination of the Extended Use Period. The Owner will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code during the Extended Use Period.
- (d) Notwithstanding subsection (c) above, for the purposes of the covenants made in Section 3(g) of this Agreement, the term of this Agreement shall continue for a period of three years following any termination of the Extended Use Period pursuant to the procedures specified in subsection (c) above. During such three-year period, 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 above the maximum allowed under Section 42 of the Code with respect to such low-income unit.

SECTION 7 - ENFORCEMENT

- (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the NCTRAC to inspect any books and records of the Owner regarding the Project with respect to the incomes, rent levels, and housing costs of Low-Income Tenants which pertain to compliance with this Agreement.
- (b) The Owner shall submit any other information, documents or certifications requested by the NCTRAC which the NCTRAC shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement.
- (c) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code or this Agreement. Moreover, Owner covenants and agrees to take any lawful action (including amendment of this Agreement as may be necessary, in the opinion of the NCTRAC) to comply fully with Section 42 of the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, or the United States Department of Housing and Urban Development or the United States Department of Agriculture from time to time pertaining to Owner's obligations under Section 42 of the Code and affecting the Project.
- (d) The Owner and the NCTRAC acknowledge that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with representations made in the Application, the applicable QAP and Section 42 of the Code, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE NCTRAC AND ANY LOW-INCOME TENANT OR INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 OF THE CODE (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT OF THE PROJECT) SHALL BE

ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO OBTAIN SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT OF COMPETENT JURISDICTION HEREOF IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY. 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.

- (e) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the NCTRAC and all persons interested in Project compliance under Section 42 of the Code.
- (f) The Owner acknowledges that Section 42 of the Code requires the NCTRAC (or an agent or other contractor of the NCTRAC) to monitor the Section 42 Restrictions, and the Owner hereby agrees to take any and all actions reasonably necessary and required by the NCTRAC (or any agent of, or other contractor hired by, the NCTRAC) to substantiate the Owner's compliance with the Section 42 Restrictions or the State Housing Policy Restrictions.

SECTION 8 - MISCELLANEOUS

- (a) Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.
- (b) Notices. All notices to be given pursuant to this Agreement shall be in writing and 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 North Carolina Federal Tax Reform Allocation Committee:

c/o North Carolina Housing Finance Agency
PO Box 28066
Raleigh, NC 27611-8066

To the Owner: White Oak Apartments, LP
 Attn: Jonathan L. Mason
 P.O. Box 10284
 Wilmington, NC 28404-0284

The NCTRAC and the Owner, may, by notice given 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 will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with Section 42 of the Code (or any other applicable provisions of the Internal Revenue Code of 1986) and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Credit. Upon proper recordation of this Agreement in the county registry, the Owner agrees that no amendment(s) to the terms or conditions of this Agreement shall apply or have effect unless the written consent to or acknowledgement of such amendment(s) shall have been given on behalf of the NCTRAC.
- (d) Governing Law. This Agreement shall be governed by the laws of the State of North Carolina 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 the NCTRAC shall incur legal fees or other expenses in enforcing its rights and/or remedies, or the Owner's obligation, under this Agreement, the Owner shall reimburse the NCTRAC for those fees and other expenses within a reasonable time after receipt of written demand therefore.
- (g) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the NCTRAC and the successors and assigns of the Owner.
- (h) **Successor Statutes and Agencies.** Any references in this Agreement to specific statutory provisions, specific regulatory provisions or specific governmental agencies or entities shall include any successor statutory provision, regulatory provision or governmental agency or entity, as the case may be.

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IN WITNESS WHEREOF, the Owner, a partnership, has caused this Agreement to be signed under seal in its partnership name by its duly authorized general partner(s), as of the day and year first written above.

White Oak Apartments, LP a North Carolina limited partnership

By White Oak, LLC, its general partner

Mason's Associates, LLC - Manager

By: Jonathan L. Mason

ATTEST: (if applicable)

[Corporate Seal]

Name: Jonathan L. Mason

(if applicable)

Title: Operating Manager

Date: July 15, 2004

Secretary

SEAL-STAMP NORTH CAROLINA, New Hanover County.

I, a Notary Public of the County and state aforesaid, certify that Jonathan L. Mason personally

appeared before me this day and acknowledged that he/she is operating manager of

Mason's Associates, LLC, a limited liability company ~~limited partnership~~

authority duly given and as an act of the ~~limited partnership~~ company, the foregoing instrument was signed under

~~seal in its name by its~~ seal. Witness my hand and official stamp or

seal, this 15th day of July, 2004.

My Commission expires: 6/15/2008 Marie V. Rayner Notary Public



The foregoing Certificate(s) of _____

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

REGISTER OF DEEDS FOR _____ COUNTY

By _____ Deputy/Assistant-Register of Deeds.

EXHIBIT "A"

BEING ALL OF PARCEL 1, CONSISTING OF 6.725 ACRES, MORE OR LESS, AS MORE PARTICULARLY SHOWN ON THAT MAP RECORDED IN MAP BOOK 46, PAGE 63 OF THE NEW HANOVER COUNTY REGISTRY.



REBECCA T. CHRISTIAN
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 08/16/2004 01:31:36 PM
Book: RE 4453 Page: 468-479
Document No.: 2004043957
DECL 12 PGS \$44.00

Recorder: MICAH PHELPS

State of North Carolina, County of New Hanover

The foregoing certificate of MARIE V RAYNOR Notary is certified to be correct. This 16TH of August 2004
REBECCA T. CHRISTIAN , REGISTER OF DEEDS

By: 
Deputy/Assistant Register of Deeds

YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

2004043957

2004043957