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TDHCA #: 02470

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS/LAND USE RESTRICTION AGREEMENT FOR LOW-INCOME HOUSING CREDITS**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS/LAND USE RESTRICTION AGREEMENT FOR LOW-INCOME HOUSING TAX CREDITS (this "Declaration"), dated as of July 6, 2005, is made by and between The Shire Apartments, Ltd. (together with its successors and assigns, the "Project Owner") and The Texas Department of Housing & Community Affairs, an instrumentality of the State of Texas and a public corporation (together with any successor to its rights, duties and obligations, the "Department"), and is given by Project Owner as a condition precedent to [the determination that the Project, as defined herein, satisfies the requirements of the State of Texas's Qualified Allocation Plan] the allocation of low-income housing tax credits (the "Tax Credits"), pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto (the "Code"), by the Department. This Declaration incorporates the extended low-income housing commitment required by Section 42(h)(6) of the Code and is promulgated in accordance with the provisions of Chapter 2306, Tex. Gov. Code, (the "Act"), as may be amended from time to time.

**WITNESSETH:**

WHEREAS, the Project Owner is or shall be the Project Owner of a low income rental housing development, known as or to be known as The Shire Apartments (the "Project Improvements"), on real property located in the City of Port Arthur County of Jefferson, State of Texas, more particularly described in Exhibit A hereto (the "Project Land") (the Project Improvements and the Project Land being collectively referred to herein as the "Project");

WHEREAS, the Department has been designated by the Governor of the State of Texas as the housing credit agency for the State of Texas for the allocation of Tax Credits;

WHEREAS, the Project Owner has applied to the Department for (check which applies):

- an allocation of Tax Credits to the Project in an amount not to exceed \$ \_\_\_\_\_ Tax Credit dollars annually;
- a determination that the Project satisfies the requirements of the State of Texas's Qualified Allocation Plan for Tax Credits in an amount not to exceed \$ 561,170 Tax Credit dollars annually;

WHEREAS, the Project Owner has represented to the Department in the Project Owner's Low-Income Housing Tax Credit Application (the "Application"), authorized by the Department's Low-Income Rental Housing Tax Credit Rules (the "Department Rules"), that the Project Owner shall lease 100 % of the units in the Project to individuals or families whose income is 60 % or less of the area median gross income (including adjustments for family size), as more specifically provided herein;

WHEREAS, the Department has determined that the Project would support an annual allocation of Tax Credits in the amount of \$ 554,837;

WHEREAS, the Project Owner has represented to the Department in the Application that it will impose additional rent and occupancy restrictions as shown in Appendix A of this document (Check box if applicable) ;

WHEREAS, the Project Owner is subject to the regulatory powers of the Department and other terms and conditions of chapter 2306, Tex. Gov. Code;

WHEREAS, the Code requires as a condition precedent to the allocation of Tax Credits that the Project Owner execute, deliver and record in the real property records of the county in which the Project is located this Declaration in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Project Owner, under this Declaration, 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 Land for the Term stated herein, are binding upon all subsequent owners and operators of the Project during such Term, and are not merely personal covenants of the Project Owner.

NOW, THEREFORE, in consideration of the premises set forth above, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Project Owner and the Department agree as follows:

## SECTION 1 - DEFINITIONS

(a) Unless the context otherwise requires, and in addition to those terms defined in the recitals set forth above, capitalized terms used in this Declaration shall have the following meanings:

"Act" means the Texas Government Code, Chap. 2306, as amended or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time.

"Area Median Gross Income" means the median gross income of the area in which the Project is located as determined by the Secretary of Housing and Urban Development for purposes of Section 42 of the Code, including adjustments for family size.

"Assumption Agreement" shall have the meaning assigned in Section 3(i) hereof.

"Board" means the governing Board of the Department.

"Compliance Period" means the period of 15 consecutive taxable years beginning with the first taxable year of the Credit Period, unless a longer period shall be elected at Appendix A hereto.

"Credit Period" means, with respect to any building in the Project, the period of ten taxable years beginning with the taxable year in which such building is placed in service or (at the election of the Owner) the following taxable year.

"Department Compliance Monitoring Procedures" means those procedures and requirements adopted or imposed by the Department, and modified by the Department from time to time, for the purpose of discharging its responsibilities pursuant to Section 42(m)(1)(B)(iii) of the Code to monitor compliance by the Project Owner and the Project with the provisions of Section 42 of the Code and to notify the Service of instances of noncompliance.

"Extended Use Period" means the period beginning with the first day of the Compliance Period and ending on the date which is 15 years after the end of the Compliance Period, unless a later date shall be set forth at Appendix A hereto or unless terminated earlier in accordance with Section 5 hereof.

"Gross Rent" means all amounts paid by a Tenant for rent, determined in a manner consistent with Section 42(g)(2) of the Code. If the Tenant pays utilities directly, Gross Rent shall include any utility allowance prescribed by the Secretary.

"Income" means the income of a Tenant determined in a manner consistent with the requirements of Section 42(d)(2)(B) of the Code.

"Low-Income" means, with respect to any Tenant, an income level not exceeding 50% or 60% of Area Median Gross Income, adjusted for family size, as provided in Section 4 hereof, unless an alternative income level shall be set forth at Appendix A hereto.

"Low-Income Tenant" means a Tenant who, when the Tenant originally occupied the Unit, had an Income qualifying as Low-Income. For so long as the Tenant occupies the particular Unit, the Tenant will remain a Low-Income Tenant if the Tenant's Income, upon the most recent income certification, does not exceed 140% of the applicable Low-Income level.

"Low-Income Unit" means a Unit in the Project that is occupied by a Low-Income Tenant, is Rent-Restricted and meets the other requirements of Section 42 of the Code, in particular, Section 42(i)(3).

"Minimum Applicable Fraction" means the percentage with respect to a building in the Project, calculated as the lesser of the percentage of Units in such building which are Low-Income Units or the percentage of floor space of all Units in such building which is in Low-Income Units, all calculated as required pursuant to Section 42(c)(1) of the Code, which serves as the basis for the Department's allocation of Tax Credits to the building as provided in Section 4(c) hereof.

"Principal" means any person or entity that holds an ownership interest in the Project Owner and (i) has the power to direct any aspect of the operations of the Project Owner or (ii) is entitled to at least a [25%] share in any of the profits, losses, cash flow or residual value of the Project.

"Rent-Restricted" means, with respect to any Unit, that the Gross Rent with respect to such Unit is not more than 30% of the imputed income limitation applicable to such Unit pursuant to Section 42(g)(2)(C) of the Code.

"Secretary" means the Secretary of the Treasury of the United States.

"Service" means the United States Internal Revenue Service and any successor thereto.

"State" means the State of Texas.

"Tenant" means the individual or individuals entitled to occupy a Unit in the Project by lease or other legal relationship with the Project Owner.

"Term" shall have the meaning set out in Section 5 hereof.

"Unit" means any residential rental unit in the Project consisting of an accommodation containing separate and complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation; provided, however, that single room occupancy housing used on a non-transient basis may be treated as one or more Units.

(b) Any term or phrase which is used in this Declaration and not defined herein shall have the meaning, if any, assigned thereto in Section 42 of the Code, and if no meaning is assigned thereto in Section 42 of the Code, the meaning, if any, assigned in the Department Rules. Any term or phrase which is defined herein shall, unless the context shall clearly indicate otherwise, be interpreted in a manner consistent with the provisions and requirements of Section 42 of the Code.

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

(a) The Project Owner shall cause this Declaration and all amendments hereto to be recorded and filed in the official public land deed records of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Project Owner shall immediately transmit to the Department an executed original of the recorded Declaration showing the date, deed book and page numbers of record. The Project Owner agrees that the Department will not issue the Internal Revenue Service Form 8609, evidencing final allocation of the Tax Credits, unless and until the Department has received the recorded executed original of the Declaration.

(b) The Project Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Project during the Term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project Land, encumbering the Project Land for the Term of this Declaration and binding upon the Project Owner's successors in title and all subsequent owners and operators of the Project Land, and (ii) shall bind the Project Owner (and the benefits shall inure to the Department and any past, present or prospective Tenant of the Project) and its respective successors and assigns during the Term of this Declaration. The Project Owner hereby agrees that any and all requirements of the laws of the State of Texas to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project Land. For the Term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.

(c) The Project Owner shall obtain the written consent of any existing lienholder of record (each an "Existing Lienholder") on the Project to this Declaration and the requirements hereof, including specifically the requirements of Section 5(b)(1) and Section 5(c) with respect to provisions which survive or may be revived after foreclosure, and such consent shall be in a form promulgated by the Department from time to time and shall be a condition precedent to the issuance by the Department of Internal Revenue Service Form 8609, evidencing final allocation of the Tax Credits. The Project Owner represents and warrants to the Department that attached hereto as Addendum A and made a part hereof is an executed and acknowledged Lienholder's Consent from each Existing Lienholder, if any, as of the effective date hereof.

### SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE PROJECT OWNER

The Project Owner hereby represents, covenants and warrants as follows:

(a) The Project Owner (i) is a Limited Partnership, duly organized and validly existing under the laws of the State of Texas, and is duly authorized and qualified to transact in the State any and all business contemplated by this Declaration and the Department Rules; (ii) possesses all requisite power, authority, licenses and permits to own its properties and assets and to conduct its business; and (iii) has all legal right, power and authority to execute and deliver this Declaration.

(b) The execution and performance of this Declaration by the Project 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 department of the State or governmental body, (ii) will not violate or, as applicable, have not violated, any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which the Project 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 Project Owner has, at the time of execution and delivery of this Declaration, good and indefeasible fee simple title to [or a leasehold interest extending at least ten years beyond the end of the Extended Use Period in] the premises constituting the Project, free and clear of any lien or encumbrance, except those created by any loan documents relating to the Project, those which are created pursuant to this Declaration and those which are otherwise permitted encumbrances, as specifically set forth at Exhibit B hereto.

(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 Project 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 Declaration) or would materially adversely affect its financial condition.

(e) The Project constitutes or will constitute, and the Project Owner covenants, that commencing with the last day of the first year of the Credit Period and continuing throughout the Term of this Declaration, it shall maintain the Project as a "qualified low-income housing project", as defined in Section 42(g) of the Code.

(f) Each Unit in the Project contains separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project) which is to be used on other than a transient basis as provided in Section 42(i)(3) of the Code.

(g) The Project Owner will comply fully and at all times with the Department Rules.

(h) During the Term of this Declaration, the Project Owner covenants, agrees and warrants that each Low-Income Unit is and will remain suitable for occupancy in accordance with regulations prescribed by the Secretary, taking into account local health, safety, and building codes.

(i) The Project Owner covenants that it will not sell, transfer or exchange any portion of any building in the Project unless it sells, transfers or exchanges the entire building to the same person. Subject to the requirements of Section 42 of the Code and this Declaration, the Project Owner may sell, transfer or exchange the entire Project or any building in the Project at any time, provided that the Project Owner shall require, as a condition precedent to any such sale, transfer or exchange, that the successor owner and operator assume, in writing, in an Assumption Agreement acceptable to the Department, the Project Owner's obligations hereunder and under Section 42 of the Code, which Assumption Agreement shall be delivered to the Department in executed, recordable form prior to any such sale, transfer or exchange. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any building in the Project. The Project Owner agrees that the Department may void any sale, transfer or exchange of the Project if the successor owner and operator fails to execute and deliver an Assumption Agreement or if the Project Owner or the successor owner and operator otherwise acts in contravention of this Section 3(i). This Declaration and the covenants contained herein shall survive and be effective regardless of whether any such successor owner and operator or intended successor owner and operator shall have assumed them pursuant to an executed Assumption Agreement.

(j) The Project Owner agrees to notify the Department in writing prior to any sale, transfer or exchange of the entire Project or any building therein, and to provide to the Department the name(s) and address(es) and financial reports, as applicable, of the prospective successor owner and operator of the Project or building, so the Department can determine the economic viability of such prospective successor and such Project or building and whether such prospective successor is acceptable as Project Owner under the Department Rules. The Project Owner further agrees to notify the Department in writing prior to any change in the identity of a General Partner or other Principal of the Project Owner, and to provide to the Department the name(s) and address(es) and financial reports, as applicable, of any successor or additional General Partner or Principal, so the Department can determine whether such party is acceptable in such role with the Project Owner under the Department Rules.

(k) The Project 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 Term of this Declaration, unless required by law.

(l) The Project 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 Project 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 or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.

(m) The Project 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 Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(n) The Project Owner agrees, warrants, and covenants to comply with all law, ordinances, statutes, codes, orders, rules, regulations and decrees of the United States, the State and any other Governmental Authority applicable to the Owner of the Project, including, without limitation, the following: the Civil Rights Act of 1964 (42 U.S.C. 2000(d); Executive Order 11-63, as amended by Executive Order 12259; Executive Order 11246; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); Fair Housing Act (42 U.S.C. 3601 et seq.); the Americans with Disabilities Act of 1990 (P.L. 101-336: Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.); Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11625, 12432 and 12138, as amended; the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 et seq.); the Davis-Bacon Act (40 U.S.C. § 276a et seq.); Sections 103 and 107 of the Work Hours and Safety Standards Act, (40 U.S.C. § 327 et seq.); the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4201 et seq.); the Housing and Community Development Act of 1974; the National Environmental Policy Act (42 U.S.C. § 4321 et seq.); ("NEPA"); the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4321 et seq.); the State of Texas Senate Bill 1356; Title 8, and Chapter 92 of the Texas Property Code; Solid Waste Disposal Act TEX. HEALTH & SAFETY CODE Ann. Ch. 361 (Vernon's 1992); Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, TEX. HEALTH & SAFETY CODE Ann. Ch 363 (Vernon's 1992); County Solid Waste Control Act, TEX. HEALTH & SAFETY CODE Ann. Ch 364 (Vernon's 1992); Texas Clean Air Act, TEX. HEALTH AND SAFETY CODE Ann. Ch. 382 (Vernon's 1992); and Hazardous Communication Act, TEXAS HEALTH AND SAFETY CODE Ann. Ch. 502 (Vernon's 1992); and such Governmental Requirements as may be from time to time amended or superseded and all of their implementing regulations, as may be amended.

(o) The Project Owner agrees to apply for and accept renewal of any rent subsidy contracts from which the Project benefits, if such subsidies are sufficient to maintain the economic viability of the Project.

#### SECTION 4 - INCOME RESTRICTIONS/RENTAL RESTRICTIONS

The Project Owner represents, warrants and covenants throughout the Term of this Declaration and in order to satisfy the requirements of Section 42 of the Code that:

(a) (1)  At least 20% or more of the Units in the Project [are and] will continuously be maintained as both Rent-Restricted and occupied by individuals whose income is 50% or less of Area Median Gross Income.

(2)  At least 40% or more of the Units in the Project [are and] will continuously be maintained as both Rent-Restricted and occupied by individuals whose income is 60% or less of Area Median Gross Income.

*(Check applicable percentage election)*

(b) The determination of whether a Tenant is a Low-Income Tenant shall be made by the Project Owner at least annually on the basis of the current income of such Low-Income Tenant. The Project Owner shall utilize forms as permitted from time to time by the Department for providing this certification. If, upon any such annual certification, the Tenant of a Low-Income Unit who was, at the last annual income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, such Unit will continue to be treated as a Low-Income Unit until the next available Unit of comparable or smaller size in the building in which such Unit is located is rented to a person who is not a Low-Income Tenant. A Low-Income Unit that has been vacated will continue to be treated as a Low-Income Unit, provided that (i) reasonable attempts are made to rent the Unit and (ii) no other Units of comparable or smaller size in the Project are rented to persons who are not Low-Income Tenants. In no case will a Unit be treated as a Low-Income Unit if all the Tenants of the Unit are students (as determined under Section 151(c)(4) of the Code); provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(D) of the Code.

(c) The Project will contain a total of 310 Units (including Units occupied by a resident manager or other employee, such that they are not treated as "residential rental units" for purposes of Section 42 of the Code), of which at least 100 percent of the Units treated as residential rental units will be Low-Income Units. The amount of Tax Credits allocated to the Project is based on the requirement that the Minimum Applicable Fraction for each building in the Project will be as specified, building-by-building, at Appendix A hereto. During the Term of this Declaration, Units at the Project shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants, such that each building in the Project shall at all times satisfy the Minimum Applicable Fraction for such building. The Project Owner's failure to ensure that each building in the Project complies with such requirement will cause the Department to report such fact to the Service and may result in the reduction and recapture by the Service of Tax Credits, as well as other enforcement action.

(d) The Project and the Project Owner are subject to additional and/or modified requirements, if any, set forth at Appendix A, which requirements are incorporated herein and made a part hereof.

(e) The Project Owner shall not discriminate on the basis of race, creed, sex, age or national origin in the lease, use or occupancy of the Project Improvements or in connection with the employment or application for employment of persons for the operation and management of the Project and shall not deny admission to any person exclusively on the basis of such person receiving rent assistance payments under a local, state, federal or other housing assistance program, including, but not limited to, Section 8 of the United States Housing Act of 1937 as amended.

(f) The Project Owner acknowledges that whether a Tenant is a Low-Income Tenant is a matter of fact, to be determined in accordance with applicable law, and the Project's Owner's determination as to such matter is not binding upon the Department or the Service.

#### SECTION 5 - TERM OF DECLARATION

(a) This Declaration shall become effective with respect to a building in the Project on the first day of the Compliance Period for such building and shall terminate on the last day of the Extended Use Period, unless this Agreement is earlier terminated pursuant to Section 5(b) hereof (the "Term").

(b) Notwithstanding subsection (a) above, but subject to any modified or additional requirements set forth in Appendix A, in which event the terms of this Agreement shall be modified as applicable, this Declaration shall terminate:

(1) with respect to any building in the Project, on the date such building is acquired by foreclosure (or instrument in lieu of foreclosure), upon the recorded declaration of termination of the party so acquiring the building, unless the Secretary or his delegate determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period. If any party acquiring a building by foreclosure (or instrument in lieu of foreclosure) fails to record a declaration terminating this Declaration, the building shall remain subject to this Declaration, and the eligibility of such party to receive Tax Credits shall not be adversely affected, if such party continues to comply with Section 42 of the Code and the terms of this Declaration; or

(2) following the end of the Compliance Period, but not earlier than 30 years following the date upon which the Project was first placed in service pursuant to the requirements of this Declaration, if the Project Owner has properly requested that the Department assist in procuring a "Qualified Contract", as defined in the Code, for the acquisition of a building and the Department is unable to present a Qualified Contract. To properly request the Department's assistance in procuring a Qualified Contract for the acquisition of a building, the Project Owner must submit a written request to the Department no earlier than one (1) year prior to the expiration of the Compliance Period, or on the last day of any subsequent year of the Extended Use Period. The Department will have one (1) year from the date of the Project Owner's written request to find a buyer to acquire the Project Owner's interest in the building. The Department will attempt to procure a Qualified Contract for the acquisition of any building only once during the Extended Use Period.

(3) following the end of the Compliance Period, subject to the consent of the Department, upon the acquisition of the Project by the Tenants of the Project, a qualified nonprofit organization or a government agency pursuant to a right of first refusal under Section 42(i)(7) of the Code.

(c) If this Declaration is terminated pursuant to subsection (b) above and notwithstanding anything herein to the contrary, the Tenant of any Low-Income Unit on the date of such termination shall be entitled to occupy such Unit in accordance with the provisions of this Declaration for a period of three years following such termination date, provided, however, that upon a showing of good cause, such Tenant's tenancy may be terminated or such Tenant evicted.

## SECTION 6 - ENFORCEMENT, ADMINISTRATION AND COMPLIANCE

(a) The Project 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 and this Declaration. Moreover, the Project Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary in the opinion of the Department) to comply fully with 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, the Service, or the United States Department of Housing and Urban Development, from time to time, pertaining to the Project Owner's obligations under Section 42 of the Code and affecting the Project.

(b) The Project Owner acknowledges that the primary purpose for requiring compliance by the Project Owner with the restrictions provided in this Declaration is to assure compliance of the Project and the Project Owner with Section 42 of the Code and the Department Rules, AND BY REASON THEREOF, THE PROJECT OWNER, IN CONSIDERATION FOR RECEIVING THE TAX CREDITS FOR THIS PROJECT, HEREBY AGREES THAT THE DEPARTMENT AND ANY INDIVIDUAL WHO MEETS THE APPLICABLE INCOME LIMITATION UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER TENANT) 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 PROJECT OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Project Owner hereby further specifically acknowledges that the beneficiaries of the Project Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. The Project Owner, still further, acknowledges and agrees that any party which brings an action to enforce any requirement of this Declaration, whether by specific performance or otherwise, shall be entitled, if successful, to recover such party's reasonable attorney's fees.

(c) The Project Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Department and all persons interested in Project compliance under Section 42 of the Code.

(d) The Project Owner acknowledges that the Department is required, pursuant to Section 42(m)(1)(B)(iii) of the Code, (i) to monitor the Project Owner's and the Project's compliance with the requirements of Section 42 of the Code, and (ii) to notify the Service of any noncompliance which is found. The Project Owner agrees (I) to maintain records that substantiate and document such compliance, (II) to take all actions required by the Department pursuant to the Department Compliance Monitoring Procedures to assist or cooperate with the Department in monitoring such compliance, and (III) to pay the fee prescribed by the Department with respect to such monitoring.

(e) The Project Owner agrees that the Department may enforce all state and federal law, the Department Rules and the terms of any allocation of Tax Credits through this Declaration, and utilize for such purposes any and all

remedies available to the Department including but not limited to administrative or judicial action, appointment of trustee or receiver, or assume the management and operations of the Development.

(f) The Project Owner agrees the Department may, at reasonable times and upon adequate notice at any time during the construction, rehabilitation, or operation of the Project, enter and inspect the Project to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance.

(g) The Project Owner agrees the Department may, at reasonable times and upon adequate notice, examine all books and records, and request and receive from the Project Owner one or more reports, relating to the ownership, operations, capitalization, reserve funds, income, expenses and other financial and regulatory matters of the Project or the Project Owner.

(h) The Project Owner agrees that the Department may at any time order it and/or its managing agent or Project manager to do whatever is necessary to comply with or refrain from violating an applicable law, ordinance, Department Rules, or term of an agreement regarding the Project, and that the Department may file and prosecute a complaint against a managing agent, Project manager, or the Project Owner for a violation of any applicable law or ordinance. The Project Owner acknowledges and agrees that, in the event that the Project Owner is found to have violated an applicable law, ordinance, Department Rules, or term of an agreement regarding the Project, the Department shall have the right, among other remedies and without limitation, to limit or deny participation by the Project Owner in any of the programs operated or administered by the Department.

(i) Upon a determination by the Department that the Project Owner has failed to maintain the Project in good and habitable condition and suitable for occupancy as hereinabove required, the Project Owner agrees, upon the Department's direction, to establish a reserve for replacement and repairs to the Project in such initial amount and with such monthly deposits as the Department may direct. Such reserve shall be held for the benefit of the Project Owner and the Project by such party as the Department shall direct, and disbursements shall be made there from only upon direction of or approval by the Department.

(j) The Project Owner agrees to indemnify and hold harmless the Board members, Department officers, directors and employees from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Department as a result of any material inaccuracy in any of the representations and warranties contained in this Declaration, or as a result of any action by the Project Owner, including claims by third parties.

(k) The Project Owner agrees that should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Department which arise out of any of the matters relating to this Declaration, Project Owner will cooperate fully with the Department in the defense or other disposition thereof.

(l) The Project Owner agrees to furnish the Department with copies of all correspondence between the Project Owner and the Service with respect to the Project, other than tax returns and routine, periodic reports filed with the Service.

(m) The Project Owner agrees to notify the Department if any federal grant or loan of below market rate federal funds is received with respect to the Project at any time during the Compliance period.

## **SECTION 7 - FEES**

(a) To compensate the Department for its responsibilities pursuant to the Act and the Code, the Project Owner shall pay to the Department an annual compliance monitoring fee for the first twelve month period of this Declaration in the amount of \$25 per Low-Income Unit in the Project. In no event shall the fee be less than \$100.

(b) In addition to the compliance monitoring fee required by Section 7(a), the Project Owner shall pay to the Department a building inspection fee for any inspections that the Department requires or performs. The amount of such fee(s) will be determined by the Department in accordance with Department Rules.

(c) If the Department shall find the Project not to be in compliance with the terms hereof, the Project Owner shall pay to the Department (i) an additional administrative fee in an amount prescribed from time to time by the Department, which amount for the first twelve month period of this Declaration, shall not exceed \$25 per Unit (without regard to the number of Low-Income Units), for additional monitoring and enforcement activities undertaken with respect to the Project and (ii) all amounts required to reimburse the Department for its expenses in performing such additional monitoring and enforcement activities. The administrative fee payable in the event of noncompliance shall be in addition to, and distinct from, the amount due pursuant to Section 7(a), as well as any reimbursements of costs and legal fees to which the Department may be entitled as a result of judicial enforcement action, and such fee shall be payable without respect to whether the Department undertakes or succeeds in judicial enforcement activities, and any right to be compensated therefore, for a period of up to three years following its most recent finding of noncompliance with respect to the Project.

(d) For each successive twelve month period following the initial twelve month period of this Declaration, the administrative fees payable to the Department hereunder shall be the amounts established for the most recent administrative fee, multiplied by the increase in the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor (or generally recognized successor to such Index) for the same twelve month period of time.

(e) The Project Owner agrees that it will pay the annual compliance monitoring fee and the building inspection fee(s) at the times required by the Department therefore and that it will pay all additional charges, fees, and expenses assessed hereunder by the Department within ten (10) days of receipt of written notice of any such assessment.

#### SECTION 8 - MISCELLANEOUS

(a) Severability. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

(b) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, delivered by hand, or delivered by any other method permitted by law, 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 Department:** Texas Department of Housing & Community Affairs  
507 Sabine, Suite 400  
Austin, Texas 78701  
Attn: Low Income Housing Tax Credit Program

**To the Project Owner:** The Shire Apartments, Ltd.  
Attn: William P. Wenson  
7010 Hwy 71 West, Suite 340-354  
Austin, TX 78735

The Department, and the Project 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. This Agreement may not be amended or modified except by written instrument signed by Project Owner and approved by Department, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the real property records in the county where the Property is located. Upon request by the Department, the Project Owner agrees that it will take all actions necessary to effect any amendment of this Declaration which may be necessary in the Department's sole discretion to comply with the Code, and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Tax Credits.

(d) Governing Law. This Declaration shall be governed by the laws of the State of Texas, and, where applicable, the laws of the United States of America.

(e) Survival of Obligations. The obligations of the Project Owner as set forth herein and in the Application shall survive the allocation of the Tax Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

(f) Interpretation. The Department's interpretation of this Declaration shall be controlling for purposes of determining whether (i) the Compliance Period and/or Credit Period shall have commenced, (ii) this Declaration shall have been terminated in accordance with Section 5 hereof, and (iii) the Additional Use Restrictions elected at Appendix A hereto, if any, shall have been complied with.

IN WITNESS WHEREOF, the Project Owner has caused this Declaration to be signed by its duly authorized representative, as of the day and year first written above.

**PROJECT OWNER:**

**THE SHIRE APARTMENTS, LTD.**, a Texas limited partnership

By: The Shire Apartments GP, LLC, a Texas limited liability company, its general partner

By: W & A Investments, Ltd., a Texas limited partnership, its manager

By: Wenson Management, LLC, a Texas limited liability company, its general partner

By: *Michelle M. Wenson*  
Name: Michelle M. Wenson  
Title: Manager

This instrument was acknowledged before me on the 19 day of August, 2005, by Michelle M. Wenson, manager of Wenson Management, LLC, a Texas limited liability company, general partner of W & A Investments, Ltd., a Texas limited partnership, manager of The Shire Apartments GP, LLC, a Texas limited liability company, general partner of **THE SHIRE APARTMENTS, LTD.**, a Texas limited partnership, on behalf of said company and limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of said limited partnership, and that she executed the same as the act of such limited partnership for the purposes and consideration therein addressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 19 day of August, 2005.

(Seal)

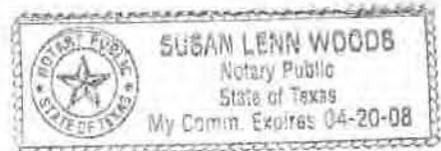
*Tracy M. Machler*  
Notary Public, State of Texas



**DEPARTMENT:**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, an instrumentality of the State of Texas and a public corporation

By: *Edwina P. Carrington*  
Name: Edwina P. Carrington  
Title: Executive Director



This instrument was acknowledged before me on the 23<sup>rd</sup> day of September, 2005, by Edwina P. Carrington, Executive Director of the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, an instrumentality of the State of Texas and a public corporation, on behalf of said department.

(Seal)

*Susan Lenn Woods*  
Notary Public, State of Texas

ADDENDUM A TO DECLARATION - CONSENT AND SUBORDINATION OF LIENHOLDER

[To be executed by each lien holder on the project as of the effective date of the declaration.]

The undersigned lien holder ("Lien holder") hereby consents to the execution by Project Owner of the foregoing Declaration for The Shire Apartments (the "Project Improvements").

Lien holder hereby subordinates its lien(s) to the rights and interests created pursuant to Section 5(c) of the Declaration such that a foreclosure of its lien(s) shall not extinguish such rights and interests.

Lien holder acknowledges and agrees that, pursuant to Section 5(b)(1) of the Declaration, the Declaration will terminate on the date the Project is acquired by foreclosure or deed in lieu of foreclosure, upon the recorded declaration of the party so acquiring the building (unless it is determined that such acquisition is part of an arrangement with Borrower a purpose of which is to terminate such period); provided, however, Lien holder hereby acknowledges and agrees that the acquisition of the Project by any party by foreclosure or instrument in lieu of foreclosure shall be subject to the provisions of Section 5(c) of the Declaration, which provisions shall continue in full force and effect for a period of three (3) years from the date of such acquisition; provided, further, that such provisions shall not apply during such period if and to the extent that compliance therewith is not possible as a consequence of damage, destruction, condemnation or similar event with respect to the project.

Executed to be effective the 18 day of July, 2005.

LIENHOLDER: Wells Fargo Bank, N.A. as Trustee  
successor by merger to Wells Fargo Bank Texas, N.A.

By: Deirdre H. Ward

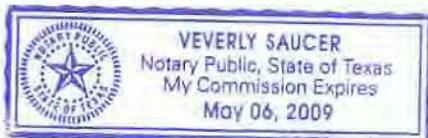
Name: Deirdre H. Ward

Title: Vice President

STATE OF Texas

COUNTY OF Harris

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Deirdre H. Ward, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, being informed of the contents of such document, executed the same voluntarily. Given under my hand, official seal this 18 day of July, 2005.



Veverly Saucer  
Notary Public

My Commission expires: May 6, 2009.

**EXHIBIT A TO DECLARATION - LEGAL DESCRIPTION**

REPORTS.4\NF4P2911C

## EXHIBIT "A"

## Tract I:

BEING a 7.084 acre tract of land out of and a part of Lot 6 and Lot 7, Block 13, Range H. of the Port Arthur Land Company Subdivision as recorded in Volume 1, Page 22 of the Map Records of Jefferson County, Texas and being that same called 7.0801 acre tract of land conveyed to Lamplighter Venture by deed recorded in Film Code No. 101-25-0227 of the Official Public Records of Jefferson County, Texas. Said 7.084 acre tract of land being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod found at the point of intersection of the Northerly line of Lamplighter Lane, 60 feet wide, right-of-way with the Easterly line of Form to Market Road 365, 200 feet wide, right-of-way (FM 365).

THENCE North 40 degrees 31 minutes 32 seconds East (called North 40 degrees 31 minutes East) along and with the Easterly line of said FM 365 right-of-way, a distance of 616.67 feet (called 616.75 feet) to a 1/2 inch iron rod found for corner, same being the Southwest corner of that called 7.0793 acre tract of land conveyed to Lamplighter Investments by deed recorded in Volume 1727, Page 198 of the Deed Records of Jefferson County, Texas.

THENCE South 49 degrees 29 minutes 08 seconds East (called South 49 degrees 30 minutes East) along and with the Southerly line of said called 7.0793 acre tract, a distance of 500.25 feet (called 500.00 feet) to a 1/2 inch iron rod found for corner in the Westerly line of Block 2 in the Stonegate Manor Section 1 subdivision as recorded in Volume 11, Pages 54 and 55 of said Map Records;

THENCE South 40 degrees 30 minutes 00 seconds West (Reference Bearing) along and with the Westerly line of said Block 2, Stonegate Manor subdivision, a distance of 616.69 feet (called 616.75 feet) to a 5/8 inch iron rod found for corner in the Northerly line of said Lamplighter Lane right-of-way;

THENCE North 49 degrees 28 minutes 59 seconds West (called North 49 degrees 30 minutes West) along and with the Northerly line of said Lamplighter Lane right-of-way, a distance of 500.53 feet (called 500.00 feet) to the PLACE OF BEGINNING, containing 308,580 Square Feet, or 7.084 Acres of land, more or less.

NOTE: THE COMPANY DOES NOT REPRESENT THAT THE ABOVE ACREAGE OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.

REPORTS.#NF4P2911C

## Tract II:

BEING a 7.080 acre tract of land out of and a part of Lot 7 and Lot 8, Block 13, Range H, of the Port Arthur Land Company Subdivision as recorded in Volume 1, Page 22 of the Map Records of Jefferson County, Texas and being that same called 7.0793 acre tract of land conveyed to Lamplighter Investments by deed recorded in Volume 1727, Page 199 of the Deed Records of Jefferson County, Texas. Said 7.080 acre tract of land being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found at the point of intersection of the Southerly line of Toro Lane, 60 feet wide, right-of-way with the Easterly line of Form to Market Road 365, 200 feet wide, right-of-way (FM 365);

THENCE South 49 degrees 29 minutes 20 seconds East (called South 49 degrees 30 minutes East) along and with the Southerly line of said Toro Lane right-of-way, a distance of 499.98 feet (called 500.00 feet) to a 3/4 inch iron pipe found for corner in the Westerly line of Block 2 in the Stonegate Manor Section 1 subdivision as recorded in Volume 11, Page 54 and 55 of said Map Records;

THENCE South 40 degrees 30 minutes 00 seconds West (Reference Bearing) along and with the Westerly line of said Block 2, Stonegate Manor subdivision, a distance of 616.69 feet (called 616.75 feet) to a 1/2 inch iron rod found for corner, same being the Northeast corner of that called 7.0801 acre tract of land conveyed to Lamplighter Venture by deed recorded in Film Code No. 101-25-0227 of the Official Public Records of Jefferson County, Texas;

THENCE North 49 degrees 29 minutes 08 seconds West (called North 49 degrees 30 minutes West) along and with the Northerly line of said called 7.0801 acre tract, a distance of 500.25 feet (called 500.00 feet) to a 1/2 inch iron rod found for corner in the Easterly line of said FM 365 right-of-way;

THENCE North 40 degrees 31 minutes 32 seconds East (called North 40 degrees 30 minutes East) along and with the Easterly line of said FM 365 right-of-way, a distance of 616.66 feet (called 616.75 feet) to the PLACE OF BEGINNING, containing 308,408 Square Feet, or 7.080 Acres of land, more or less.

NOTE: THE COMPANY DOES NOT REPRESENT THAT THE ABOVE ACREAGE OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.

**APPENDIX A - ADDITIONAL USE RESTRICTIONS**  
(Check all restrictions which were elected at the time of Application.)

**Additional Rent and Occupancy Restrictions**

At least \_\_\_\_\_ Units in the Project must be occupied by Tenants at or below \_\_\_\_\_% of Area Median Gross Income, with rents for these Units no higher than the allowable tax credit rents at such AMGI level. [IF COMMITMENT IS TO PROVIDE UNITS AT DIFFERENT INCOME LEVELS, SET FORTH EACH.] If at re-certification the Tenant's household income exceeds the applicable limit, then the Unit remains as a Unit restricted at the specified level of AMGI until the next available Unit of comparable or smaller size is designated to replace this Unit. Once the Unit exceeding the specified AMGI level is replaced, then the rent for the previously qualified Unit may be increased, subject to applicable Tax Credit requirements, lease provisions and local tenant-landlord laws.

**Additional Rent and Occupancy Restrictions for Developments with below market rate HOME funding included in the total eligible basis and utilizing the "9%" Applicable Percentage**

At least 40% Units in the Project must be occupied by Tenants at or below 50% of Area Median Gross Income.

**Longer Compliance Period and Extended Use Period**

The Compliance Period shall be a period of \_\_\_\_\_ consecutive taxable years and the Extended Use Period shall be a period of \_\_\_\_\_ consecutive taxable years, each commencing with the first year of the Credit Period.

**Material Participation by Qualified Nonprofit Organization**

Throughout the Compliance Period, a "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall hold a controlling interest in the Project as required by the Department Rules, shall materially participate (within the meaning of Section 469(h) of the Code) in the development and operation of the Project and shall otherwise meet the requirements of Section 42(h)(5) of the Code. At the time this Declaration is filed, the qualified nonprofit organization which shall own such interest and shall so materially participate in the development and operation of the Project is \_\_\_\_\_ and is the  [managing General Partner]  [Managing Member] of the Project Owner. The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified nonprofit organization.

**Joint Venture with Qualified Nonprofit Organization**

Throughout the Compliance Period, a "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall materially participate as one of the General Partners or Managing Members in the development and operation of the Project. At the time this Declaration is filed, the qualified nonprofit organization which shall own such interest and shall so materially participate in the development and operation of the Project is \_\_\_\_\_ and is a  [General Partner]  [Managing Member] of the Project Owner. The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified nonprofit organization.

**Historically Underutilized Businesses (HUB)**

Throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall hold an ownership interest in the Project. The HUB must also maintain regular, continuous, and substantial participation in the development and operation of the Project. At the time this Declaration is filed, the HUB which holds an ownership interest in the Project is \_\_\_\_\_ . The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified HUB.

**Supportive Services**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project Owner has contracted for the provision of the following special supportive services that would not otherwise be available to Tenants: \_\_\_\_\_

GED training, computer classes, youth tutoring and activities

At the time this Declaration is filed, the organization(s) providing these services is Sheltering a Nation, Inc.

The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified provider.

**Transitional Housing for the Homeless**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide transitional housing for homeless persons, on a non-transient basis, with supportive services designed to assist Tenants in locating and retaining permanent housing.

**Public Housing Waiting Lists**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project Owner shall consider prospective Tenants referred to from the waiting list of the Housing Authority of Port Arthur

**QUALIFIED ELDERLY DEVELOPMENTS<sup>1</sup>**

**Qualified Elderly Projects (2000 and later)**

Throughout the Compliance Period, unless otherwise permitted by the Department, this project must conform to the Federal Fair Housing Act and must be a project which:

- (i) is intended for, and solely occupied by Persons 62 years of age or older; or
- (ii) is intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one person who is 55 years of age or older; and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for persons 55 years of age or older.

<sup>1</sup> Note: The Federal Fair Housing Act requires, generally, that projects which are limited to occupancy by older persons either (i) be restricted to households in which all members are 62 years or older or (ii) to households in which at least one member is 55 years or older. See 24 C.F.R. §§100.300-100.304 for exact requirements. All tax credit projects must comply with these requirements, as applicable under Federal law, in addition to the Declaration.

**Special Housing Development**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project Owner shall operate the Project exclusively as one or more of the following:

- housing for persons with mental health/mental retardation issues;
- group home;
- transitional housing;
- congregate care facility;
- housing for persons with HIV/AIDS;
- [OTHER – SPECIFY] \_\_\_\_\_.

**APPENDIX A - ADDITIONAL USE RESTRICTIONS - HANDICAPPED ACCESSIBILITY**

(Only Projects which made the applicable Handicapped Accessibility election should include this page as part of this Declaration.)

**Handicapped Accessibility for 1999 Allocations, Option §50.6(c)(6)(B)(i) and 2000 Allocations, Option §49.6(c)(6)(B)(i)**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project Owner agrees to set aside Units for Persons with Disabilities. The Department will require a minimum of nine months during which the set aside Units must either be occupied by Tenants who are physically or mentally disabled or held vacant while being marketed to such tenants. The nine month period will begin on the date that each building receives its certificate of occupancy. For buildings which do not receive a certificate of occupancy, the nine month period will begin on the placed in service date as provided in the Cost Certification Manual. When a qualified Tenant is located, the Project Owner will be responsible for adapting the Unit per the tenant's requirements. The cost of adapting the Unit will be borne by the Project Owner. If the Project Owner is unable to locate qualified Persons with Disabilities following a good-faith effort throughout the nine month set aside period, then the Units may be rented to tenants without disabilities, provided that the next available Unit (from among those set aside for Persons with Disabilities) shall first be made available to Persons with Disabilities. To comply with this provision, the Project Owner must maintain a waiting list of qualified Tenants with disabilities throughout the Compliance Period. Each time a Unit set aside for Persons with Disabilities becomes available, the Project Owner must contact persons on the waiting list and/or provide notice to local service providers that such Units are available. If the waiting list or the local service provider cannot locate a qualified Tenant for the next available Unit, then the Unit may be rented to a Tenant without disabilities.

(a) For physical disabilities, such Units must be designed to meet American National Standards for buildings and facilities providing accessibility and usability for Persons with Disabilities (ANSI A117.1 - 1986) and will conform to the Fair Housing Act.

(b) For persons with mental disabilities, there must be a contract to provide appropriate supportive services for persons with mental disabilities between the Project Owner and an experienced service provider.

- At least 7% of the Units are set-aside for persons with physical or mental disabilities; or  
 at least 10% of the Units are set-aside for persons with physical or mental disabilities.

**Handicapped Accessibility for 1999 Allocations, Option §50.6(c)(6)(B)(ii) and 2000 Allocations, Option §49.6(c)(6)(B)(ii)**

The Project provides Units specifically accessible to persons with physical, visual or hearing disabilities as required by §504 of the Rehabilitation Act of 1973. As required by §504, a one time inspection and corresponding Accessibility Transition Plan will be required upon completion of construction. Project Owners making this election must also comply with the Fair Housing Act.

- At a minimum, 5% of the Units must be usable for persons with mobility impairments and 2% of the Units shall be made accessible for people with hearing or visual impairments; or  
 at a minimum 10% of the Units must be usable for persons with mobility impairments and 2% of the Units shall be made accessible for people with hearing or visual impairments.

**Handicapped Accessibility for 2001 Allocations, Option §50.7(d)(1)(C)**

For up to 5% of all LIHTC restricted units, the Project Owner shall provide reasonable accommodation(s) or modification(s) on a one-time basis in conformance with ANSI A117.1-1986 construction standards as requested by the tenant with a disability. The Project Owner shall incur the related expense(s) for the reasonable accommodation(s) and/or modification(s). For properties that are designed as townhouse units, the Project Owner must include one bathroom and one bedroom on the ground level of 5% of the LIHTC Units and meet Fair Housing standards.

**Handicapped Accessibility for 2002 and later Allocations**

The Development will comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C. **A minimum of five percent of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for persons with mobility impairments.**

A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS), meets this requirement. An additional two percent of the total dwelling Units, or at least one Unit, whichever is greater, shall be accessible for persons with hearing or vision impairments. Additionally, for Developments where some Units are two-story dwelling Units, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and include a minimum of one bedroom and one bathroom or powder room at the entry level.

**APPENDIX A - MINIMUM APPLICABLE FRACTION BY BUILDING**

Building Number	Building Identification Number (BIN)	Minimum Applicable Fraction
1.	TX- 02-47001	100%
2.	TX- 02-47002	100%
3.	TX- 02-47003	100%
4.	TX- 02-47004	100%
5.	TX- 02-47005	100%
6.	TX- 02-47006	100%
7.	TX- 02-47007	100%
8.	TX- 02-47008	100%
9.	TX- 02-47009	100%
10.	TX- 02-47010	100%
11.	TX- 02-47011	100%
12.	TX- 02-47012	100%
13.	TX- 02-47013	100%
14.	TX- Office	0%
15.	TX- 02-47015	100%
16.	TX- 02-47016	100%
17.	TX- 02-47017	100%
18.	TX- 02-47018	100%
19.	TX- 02-47019	100%
20.	TX- 02-47020	100%
21.	TX-	
22.	TX-	
23.	TX-	
24.	TX-	
25.	TX-	
26.	TX-	
27.	TX-	
28.	TX-	
29.	TX-	
30.	TX-	
31.	TX-	
32.	TX-	
33.	TX-	
34.	TX-	
35.	TX-	
36.	TX-	
37.	TX-	
38.	TX-	

~~Return to:~~

Texas Department of Housing and Community Affairs  
Attn: Wendy Quackenbush  
P.O. Box 13941  
Austin, TX 78711-3947

Return To:

THE SHIRE APARTMENTS LTD  
ATTN WILLIAM P WENSON  
7010 HWY 71 WEST SUITE  
340-354  
AUSTIN TX 78735

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Carolyn L Guidry*

2005 Nov 02 02:08 PM

2005039185

WILLIAMS \$96.00

CAROLYN L. GUIDRY COUNTY CLERK  
JEFFERSON COUNTY TEXAS

STATE OF TEXAS COUNTY OF JEFFERSON

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the Official Public Records of Real Property at Jefferson County, Texas.

NOV 02 2005



*Carolyn L Guidry*

County Clerk, Jefferson County, Texas