

# OCCUPANCY AGREEMENT

## EASTWICK SQUARE COOPERATIVE, INC.

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between EASTWICK SQUARE COOPERATIVE, INC. (the "Corporation"), an Michigan Corporation having an office and place of business at Roseville, Michigan, and \_\_\_\_\_ (hereinafter referred to as "Member"):

WHEREAS, the Corporation has been formed for the purpose of acquiring, owning and operating a cooperative housing project in Roseville, Michigan (hereinafter referred to as "Eastwick Square Cooperative") with the intent that its members shall have the right to occupy the dwelling units thereof under the terms and conditions hereinafter set forth; and

WHEREAS, the Member is the owner and holder of a certificate of membership (hereinafter referred to as "Membership") of the Corporation and has a bona fide intention to reside in the Project; and

NOW, THEREFORE, in consideration of One Dollar (\$1.00) to each of the parties paid by the other party, the receipt of which is hereby acknowledged, and in further consideration of the mutual promises contained herein, the Corporation hereby lets to the Member, and the Member hereby hires and takes from the Corporation dwelling unit located at \_\_\_\_\_ (hereinafter referred to as "Dwelling Unit");

TO HAVE AND TO HOLD said Dwelling Unit unto the Member, his/her executors, administrators and authorized assigns, on the terms and conditions set forth herein and in the corporate Charter and By-laws of the Corporation any rules and regulations of the Corporation such as those commonly referred to as the House and Grounds Rules now or hereafter adopted pursuant thereto, from the date of this agreement for a term terminating on \_\_\_\_\_, 20\_\_\_\_, renewable thereafter for successive three year periods under the conditions provided for herein.

### **ARTICLE 1. MONTHLY CARRYING CHARGES AND DOWN PAYMENT**

On or before the date of execution of this Occupancy Agreement:

- (1) The Member has paid to the Corporation a down payment equal to 10% of the amount agreed to be paid by the purchaser for the membership; and
- (2) The Member has paid to the Corporation the subscription price for his/her membership in the amount of \$350.00.

Commencing at the time indicated in ARTICLE 2 hereof, the member agrees to pay to the Corporation a monthly sum referred to herein as "Carrying Charges," equal to one-twelfth of the Member's proportionate share of the sum required by the Corporation, as estimated by its Board of Directors, to meet its annual expenses pertaining to the Project and to the community or other facilities which the Member is entitled to utilize, including but not limited to the following items;

- (a) The cost of all operating expenses of the Project and services furnished.

- (b) The cost of necessary management and administration.
- (c) The amount of all taxes and assessments levied against the Project of the Corporation or which it is required to pay, and ground rent, if any.
- (d) The cost of fire and extended coverage insurance on the Project and such other insurance as the Corporation may effect or as may be required by any mortgage on the Project.
- (e) The cost of such utilities, if any, as may be furnished by the Corporation.
- (f) All reserves set up by the Board of Directors pertaining to the Project, including the general operating reserve and the reserve for replacements.
- (g) The estimated cost of repairs, maintenance and replacements of the Project property to be made by the Corporation.
- (h) The amount of principal, interest, mortgage insurance premiums and other required payments on the hereinafter mentioned insured mortgage.
- (i) Any other expenses of the Corporation approved by the Board of Directors, including operating deficiencies, if any, for prior periods.

The Board of Directors shall determine the Carrying Charges from time to time. Said sums shall be estimated on an annual basis and divided by the number of months remaining in the then current fiscal year; but in no event shall the Member be charged with more than his/her proportionate share thereof as determined by the Board of Directors. That amount of the Carrying Charges required for payment on the principal of the mortgage of the Corporation, if any, or any other capital expenditure shall be credited upon the books of the Corporation to the "Paid-In Surplus" account as a capital contribution by the Members.

Until further notice from the Corporation, the monthly Carrying Charges for the above-mentioned Dwelling Unit shall be \$\_\_\_\_\_.

**ARTICLE 2. WHEN PAYMENT OF CARRYING CHARGES TO COMMENCE**

After thirty days' notice by the Corporation to the effect that the Dwelling Unit is available for occupancy or upon occupancy hereunder, whichever is earlier, the Member shall make a payment for Carrying Charges covering the unexpired balance of the month. Thereafter, the Member shall pay Carrying Charges in advance of the first day of each month.

**ARTICLE 3. PATRONAGE REFUNDS**

The Corporation agrees on its part that it will refund or credit to the Member within ninety (90) days after the end of each fiscal year, his/her proportionate share of such sums as have been collected in anticipation of expenses which are in excess of the amount needed for expenses of all kinds, including reserves, in the discretion of the Board of Directors.

**ARTICLE 4. MEMBER'S OPTION TO RENEW**

It is covenanted and agreed that the term herein granted shall be extended and renewed from time to time by and against the parties hereto for further periods of three years each from the expiration of the term herein granted, upon the same covenants and agreements as herein contained unless: (1) notice of the Member's election not to renew shall have been given to the Corporation in writing at least 90 days

prior to the expiration of the then current term, and (2) the Member shall have on or before the expiration of said term (a) endorsed his/her Membership for transfer in blank and deposited same with the Corporation, and (b) met all his/her obligations and paid all amounts due under this agreement up to the time of said expiration and (c) vacated the premises, leaving same in good state of repair. Upon compliance with provisions (1) and (2) of the Article, the Member shall have no further liability under this agreement and shall be entitled to no payment from the Corporation.

#### **ARTICLE 5. PREMISES TO BE USED FOR RESIDENTIAL PURPOSES ONLY**

The Member shall occupy the Dwelling Unit covered by this agreement as a private dwelling for himself and his/her immediate family, and for no other purpose, and may enjoy the use, in common with the other Members of the Corporation, of all community property and facilities of the Corporation, so long as he continues to own a Membership of the Corporation, occupies his/her Dwelling Unit, and abides by the terms of this agreement.

The Member shall not permit or suffer anything to be done or kept upon said premises which will increase the rate of insurance on the building, or on the contents thereof, or which will obstruct or interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. The Member shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to the said premises. If by reason of the occupancy or use of said premises by the Member the rate of insurance on the building shall be increased, the Member shall become personally liable for the additional insurance premiums.

#### **ARTICLE 6. MEMBER'S RIGHT TO PEACEABLE POSSESSION**

In return for the Member's continued fulfillment of the terms and conditions of this agreement, the Corporation covenants that the Member may at all times while this agreement remains in effect, have and enjoy for his/her use and benefit the dwelling unit, after obtaining occupancy, and may also enjoy in common with all other Members of the Corporation the use of all community property and facilities of the Corporation excluding Eastwick Square Center.

#### **ARTICLE 7. NO SUBLETTING WITHOUT CONSENT OF CORPORATION**

The Member hereby agrees not to assign this agreement or sublet his/her Dwelling Unit without the written consent of the Corporation. Violation of this provision shall, at the option of the Corporation, result in termination and forfeiture of the Member's rights under this agreement. Rents under any sublease shall be assigned to the Corporation and the sublease shall be delivered to the Corporation, and the Corporation is irrevocably empowered to collect rents and apply the rents in reduction of sums due from time to time under this agreement. The sublease shall be in the form acceptable to the Corporation, shall require the subtenant to abide by the terms of the Occupancy Agreement during his/her sub-tenancy, and shall give to the Corporation an irrevocable power to dispossess or otherwise act for the sublessor in case of default under the sublease.

The Liability of the Member under this agreement shall continue notwithstanding the fact that he may have sublet the Dwelling Unit with the approval of the Corporation. The Member shall continue to

be liable for all obligations hereunder and shall be responsible to the Corporation for the conduct of his/her sublessee.

## **ARTICLE 8. TRANSFERS**

Neither this agreement nor the Member's right of occupancy shall be transferable or assignable except in the same manner as may now or hereafter be provided for the transfer of membership in the By-laws of the Corporation.

## **ARTICLE 9. MANAGEMENT, TAXES AND INSURANCE**

The Corporation shall provide necessary management, operation and administration of the Project; pay or provide for the payment of all taxes or assessments levied against the Project, procure and pay or provide for the payment of fire insurance and extended coverage, and other insurance as required by any mortgage on property in the Project, and such other insurance as the Corporation may deem advisable on the property in the Project. The Corporation will not, however, provide insurance on the Member's interest in the Dwelling Unit or on his/her personal property.

## **ARTICLE 10. UTILITIES**

The Member shall pay directly to the supplier for telephone, electricity and gas (including its use for heat).

## **ARTICLE 11. REPAIRS AND MAINTENANCE**

- (a) By Member. The Member agrees to repair and maintain his/her Dwelling Unit at his/her own expense as follows:
  - (1) The Member is responsible for his/her rear patios and front storm door.
  - (2) Any repairs or maintenance necessitated by the Member's negligence or misuse; and
  - (3) Any redecoration or his/her own Dwelling Unit; and
  - (4) Any repairs or maintenance on any other Member's Unit caused by the Member, his/her family or his/her guests.
- (b) By Corporation. The Corporation shall provide and pay for necessary repairs, maintenance and replacement, except as specified in Clause (a) of this Article. The officers and employees of the Corporation shall have the right to enter the Dwelling Unit of the Member in order to effect necessary repairs, maintenance and replacements and to authorize entrance for such purposes by employees of any contractor, utility company, municipal agency, or others, at any reasonable hour of the day and in the event of emergency at any time.
- (c) Right of Corporation to make repairs at Member's expense. In case the Member shall fail to effect the repairs, maintenance or replacements specified in clause (a) of this Article in a

manner satisfactory to the Corporation and pay for same, the latter may do so and add the cost thereof to the Member's next month's Carrying Charge payment.

## **ARTICLE 12. ALTERATIONS AND ADDITIONS**

The Member shall not, without the written consent of the Corporation, make any structural alterations in the premises or in the water, gas pipes, electrical conduits, plumbing or other fixtures connected therewith, or remove any additions, improvements, or fixtures from the premises.

If the Member for any reason shall cease to be an occupant of the premises he/she shall surrender to the Corporation possession thereof, including any alterations, additions, fixtures and improvements.

## **ARTICLE 13. DEFINITION OF DEFAULT BY MEMBER AND EFFECT THEREOF**

It is hereby mutually agreed as follows: If at any time after the happening of any of the events specified in clauses (a) to (i) of this Article, the Corporation shall give to the Member a notice that this agreement will expire at a date not less than thirty (30) days thereafter (except that in the case of the defaults specified in clause (g) of this Article, such date of the notice shall be 10 days instead of 30 days), this agreement and all of the Member's rights under this agreement will expire on the date so fixed in such notice, unless in the meantime the default has been cured in a manner deemed satisfactory by the Corporation, it being the intention of the parties hereto to create hereby conditional limitations, and it shall thereupon be lawful for the Corporation to re-enter the Dwelling Unit and to remove all persons and personal property therefrom, either by summary dispossess proceedings or by suitable action or proceeding at law or in equity or by any other proceeding which may apply to the eviction of tenants or by force or otherwise, and to repossess the Dwelling Unit in its former state as if this agreement had not been made:

- (a) In case at any time during the terms of this agreement the Member shall cease to be the owner and legal holder of a Membership in the Corporation.
- (b) In case the Member attempts to transfer or assign this agreement in a manner inconsistent with the provisions of the By-laws.
- (c) In case at any time during the continuance of this agreement, a receiver of the Member's property shall be appointed under any of the laws of the United States or of any State.
- (d) In case at any time during the continuance of this agreement, the Member shall make a general assignment for the benefit of creditors.
- (e) In case at any time during the continuance of this agreement, the Membership owned by the Member shall be duly levied upon and sold under the process of any Court.
- (f) In case the Member fails to effect or pay for repairs and maintenance as provided for in Article 11 hereof.
- (g) In case the Member fails to pay any sum due pursuant to the provisions of Articles 1 and 23 hereof.
- (h) In case the Member fails to pay any charge which, if not paid, could become a lien against the Dwelling Unit of the Project.
- (i) In case the Member shall default in the performance of any of his/her obligations under this agreement.

The Member hereby expressly waives any and all right of redemption in case he shall be dispossessed by judgment or warrant of any Court or judge; the words "enter," "re-enter," and "re-entry,"

as used in this agreement are not restricted to their technical legal meaning, and in the event of a breach or threatened breach by the Member of any of the covenants or provisions hereof, the Corporation shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, or if re-entry, summary proceedings, and other remedies were not herein provided for.

The Member expressly agrees that there exists under this Occupancy Agreement a landlord-tenant relationship and that in the event of a breach or threatened breach by the Member of any covenant or provision of this Agreement, there shall be available to the Corporation such legal remedy or remedies as are available to a landlord for the breach or threatened breach under the law by the tenant of any provision of a lessee or rental agreement.

The failure on the part of the Corporation to avail itself of any of the remedies given under this agreement shall not waive nor destroy the right of the Corporation to avail itself of such remedies for similar or other breaches on the part of the Member.

#### **ARTICLE 14. ZERO TOLERANCE ON CRIMINAL ACTIVITY**

The Member, any member of the Member's household, or a guest or other person under the Member's control shall not engage in criminal activity, including drug-related criminal activity, on or near any property owned by the Cooperative.

The Member, any member of the Member's household or a guest or other person under the Member's control shall not engage in any act intended to facilitate criminal activity including drug related criminal activity on or near any property owned by the Cooperative.

It is acknowledged and understood that unlawful activities include, but are not limited to, acts of violence that damage or destroy the dwelling unit or disturb or injure other residents or anyone else in the unit, common areas, or on its grounds: and "drug-related criminal activity" means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance (as defined by Section 102 of the Controlled Substance Act (21 U.S.C. 802)).

Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence.

Any one violation of the prohibitions contained in any paragraph of this Article shall be considered and construed as a material breach of the terms of the Occupancy Agreement and the Cooperative shall have the right to terminate the Member's right of occupancy thereunder upon a 10 day notice of termination.

#### **ARTICLE 15. MEMBER TO COMPLY WITH ALL CORPORATE REGULATIONS**

The Member covenants that he will preserve and promote the cooperative ownership principles on which the Corporation has been founded, abide by the Charter, By-laws, rules and regulations of the Corporation and any amendments thereto, and by his/her acts of cooperation with other Members bring about for himself and his/her Co-Members a high standard in home and community conditions.

**ARTICLE 16. EFFECT OF FIRE LOSS ON INTERESTS OF MEMBER**

In the event of loss or damage by fire or other casualty to the above mentioned Dwelling Unit without the fault or negligence of the Member, the Corporation shall determine whether to restore the damaged premises and shall further determine, in the event such premises shall not be restored, the amount which shall be paid to the Member to redeem the Membership of the Member and to reimburse him for such loss as he may have sustained.

If, under such circumstances, the Corporation determines to restore the premises, Carrying Charges shall abate wholly or partially as determined by the Corporation until the premises have been restored. If on the other hand the Corporation determines not to restore the premises, the Carrying Charges shall cease from the date of such loss or damage.

**ARTICLE 17. INSPECTION OF DWELLING UNIT**

The Member agrees that the representatives of any mortgagee holding a mortgage on the property of the Corporation, the officers and employees of any Corporation, and with the approval of the Corporation the employees of any contractor, utility company, municipal agency or others, shall have a right to enter the Dwelling Unit of the Member and make inspections thereof at any reasonable time.

**ARTICLE 18. SUBORDINATION CLAUSE**

It is specifically understood and agreed by the parties hereto that this agreement and all rights, privileges and benefits hereunder are and shall be at all times subject to and subordinate to the lien of a first mortgage, if any, and the accompanying documents executed by the Corporation, and to any and all modifications, extensions and renewals thereof and to any mortgage or deed of trust made in replacement thereof and to any mortgage or deed of trust which may at any time hereafter be placed on the Project or any part thereof. The Member hereby agrees to execute, at the Corporation's request and expense, any instrument which the Corporation or any lender may deem necessary or desirable to effect the subordination of this agreement to any such mortgage, or deed of trust, and the Member hereby appoints the Corporation and each and every officer thereof, and any future officer, his/her irrevocable attorney-in-fact during the term hereof to execute any such instrument on behalf of the Member. The Member does hereby expressly waive any and all notices of default and notices of foreclosure of said mortgage which may be required by law. In the event a waiver of such notices is not legally valid, the Member does hereby constitute the Corporation his/her agent to receive and accept such notices on the Member's behalf.

**ARTICLE 19. NOTICES**

Whenever the provisions of law or the By-laws of the Corporation or this agreement require notice to be given to either party hereto, such notice may be given in writing by depositing the same in a post office or letter box, in a postpaid, sealed wrapper addressed to the person to whom the notice is to be given, at his/her or her address as the name appears in the books of the Corporation, and the time when the same be mailed shall be deemed to be the time of the giving of such notice.

**ARTICLE 20. FISCAL REPORTS**

At the end of each fiscal year, the Corporation shall furnish to the Member a statement of the income and disbursements of the Corporation.

**ARTICLE 21. ORAL REPRESENTATION NOT BINDING**

No representations other than those contained in this agreement, the Charter and the By-laws of the Corporation shall be binding upon the Corporation.

**ARTICLE 22. CUMULATIVE REMEDIES**

The respective rights and remedies, whether provided by this agreement or by law, or available in equity, shall be cumulative and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise at the same or at different times of any other such rights or remedies for the same or different failures of the Member to perform or observe any provision of this agreement.

**ARTICLE 23. LATE CHARGES AND OTHER COSTS IN CASE OF DEFAULT**

The Member covenants and agrees that, in addition to the other sums that have become or will become due, pursuant to the terms of this agreement, the Member shall pay to the Corporation a late charge set by the Board of Directors for each scheduled monthly payment of Carrying Charge, or part thereof, more than 10 days in arrears.

In addition, in the event that a Member defaults in making a payment under this agreement, which results in the Corporation's obtaining the services of an attorney with respect to the said default, the Member covenants and agrees to pay to the Corporation any and all costs or fees involved, including reasonable attorneys' fees notwithstanding the fact that a suit may not have yet been instituted. In the event a suit is instituted, the Member shall also pay the costs of such suit, in addition to the other aforesaid costs and fees.

**EASTWICK SQUARE COOPERATIVE, INC.**

by \_\_\_\_\_ (Seal)

\_\_\_\_\_

\_\_\_\_\_  
Member