

# OCCUPANCY AGREEMENT

HIGHLEAH TOWNHOUSES, INC.

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between HIGHLEAH TOWNHOUSES, INC. (hereinafter referred to as the Corporation), a corporation having its principal office and place of business at Holke Road, Independence, Missouri \_\_\_\_\_, and \_\_\_\_\_ (hereinafter referred to as Member);

WHEREAS, the Corporation has been formed for the purpose of acquiring, owning and operating a cooperative housing project to be located at North of Highway 78 at Holke Road, Independence, Missouri \_\_\_\_\_, 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 of the Corporation and has a bona fide intention to reside in the project;

WHEREAS, the Corporation proposes to develop Highleah Townhouses in four sections (all of which sections are hereinafter collectively referred to as the "entire cooperative community"), which will involve a total of approximately 330 dwelling units, with Section \* thereof involving \* of such dwelling units (Section \* is hereinafter referred to as the "Project"); and

WHEREAS, the Member has certified to the accuracy of the statements made in his application and family income survey and agrees and understands that family income, family composition and other eligibility requirements are substantial and material requirements of his initial and of his continuing occupancy;

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 number \_\_\_\_\_, located at \_\_\_\_\_;

TO HAVE AND TO HOLD said dwelling unit unto the Member, his executors, administrators and authorized assigns, on the terms and conditions set forth herein and in the corporate Charter and By-Laws of the Corporation and any rules and regulations of the Corporation now or hereafter adopted pursuant thereto, from the date of this agreement, for a term terminating on \_\_\_\_\_, \_\_\_\_\_, renewable thereafter for successive three-year periods under the conditions provided for herein.

## ARTICLE 1. MONTHLY CARRYING CHARGES AND DOWNPAYMENTS

On or before the date of execution of this Occupancy Agreement the Member has paid to the Corporation: (1) a downpayment in the amount of \$ 95.00 (which downpayment is referred to in the ByLaws of the Corporation as the "Value of Occupancy Agreement"); and (2) the subscription price for his membership in the amount of \$ 75.00.

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:

- \*Section One—44 units
- Section Two—72 units
- Section Three—94 units
- Section Four—120 units

- (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 furnishing all utilities, if such utilities are furnished by the Corporation. (See Article 10 for a listing of those utilities which are to be furnished by the Corporation.)
- (f) All reserves set up by the Board of Directors pertaining to the Project.
- (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, 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 amount of the Carrying Charges annually, but may do so at more frequent intervals, should circumstances so require. No member shall be charged with more than his 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 or any other capital expenditures 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 \$\_\_\_\_\_.

The Member agrees, however, that if during the term of this agreement the total income of his family exceeds the limitations for occupancy which may be established from time to time by the Federal Housing Administration, he will pay to the Corporation, at the option of the Corporation and upon 30 days' written notice, additional Monthly Carrying Charges in an amount commensurate with the amount of his family income in excess of the FHA income limitations, pursuant to a plan previously developed by the Corporation and approved by the Federal Housing Administration. In no event shall the total Monthly Carrying Charge, including such additional charges for excess income, exceed that which would have been applicable had the mortgage of the Corporation borne interest at the rate of 5-1/4 percent per annum and a mortgage insurance premium of 1/2 of 1 percent been required.

#### 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 acceptance of occupancy, 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 on 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 proportionate share of such sums as have been collected in anticipation of expenses which are in excess of the amounts 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 four months 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 membership certificate for transfer in blank and deposited same with the Corporation, and (b) met all his 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 this 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 unit for himself and/or his immediate family and for no other purpose, and may enjoy the use in common with other members of the corporation of all community property and facilities of the entire cooperative community so long as he continues to own a membership of the Corporation, occupies his dwelling unit, and abides by the terms of this agreement. Any sublessee of the Member, if approved pursuant to Article 7 hereof, may enjoy the rights to which the Member is entitled under this Article 5.

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 sole use and benefit the dwelling unit hereinabove described, after obtaining occupancy, and may enjoy in common with all other members of the Corporation the use of all community property and facilities of the entire cooperative community.

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

The Member hereby agrees not to assign this agreement nor to sublet his dwelling unit without the written consent of the Corporation on a form approved by the Federal Housing Administration. The liability of the Member under this Occupancy Agreement shall continue notwithstanding the fact that he may sublet the dwelling unit with the approval of the Corporation and the Member shall be responsible to the Corporation for the conduct of his sublessee. Any unauthorized subleasing shall, at the option of the Corporation, result in the termination and forfeiture of the member's rights under this Occupancy Agreement.

#### ARTICLE 8. TRANSFERS

Neither this agreement nor the Member's right of occupancy shall be transferrable or assignable except in the same manner as may now or hereafter be provided for the transfer of memberships 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 personal property.

## ARTICLE 10. UTILITIES

The Corporation shall provide water in amounts which it deems reasonable. The Member shall pay directly to the supplier for all other utilities.

## ARTICLE 11. REPAIRS

(a) By Member. The Member agrees to repair and maintain his dwelling unit at his own expense as follows:

- (1) Any repairs or maintenance necessitated by his own negligence or misuse;
- (2) Any redecoration of his own dwelling unit; and
- (3) Any repairs, maintenance or replacements required on items not furnished by the Corporation.

(b) By Corporation. The Corporation shall provide and pay for all necessary repairs, maintenance and replacements, 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 or steam 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 shall surrender to the Corporation possession thereof, including any alterations, additions, fixtures and improvements.

The Member shall not, without the prior written consent of the Corporation, install or use in his dwelling unit any air conditioning equipment, washing machine, clothes dryer, electric heater, or power tools. The Member agrees that the Corporation may require the prompt removal of any such equipment at any time, and that his failure to remove such equipment upon request shall constitute a default within the meaning of Article 13 of this agreement.

## 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 (1) of this Article the Corporation shall give to the Member a notice that this agreement will expire at a date not less than ten (10) days thereafter, 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 dispossession proceedings or by suitable action or proceeding at law or in equity or by any other proceedings 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 term of this agreement the Member shall cease to be the owner and legal holder of a membership of 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 the Member shall be declared a bankrupt under the laws of the United States.
- (d) 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.
- (e) In case at any time during the continuance of this agreement the Member shall make a general assignment for the benefit of creditors.
- (f) In case at any time during the continuance of this agreement the membership rights of a Member in the Corporation shall be duly levied upon and sold under the process of any Court.
- (g) In case the Member fails to effect and/or pay for repairs and maintenance as provided for in Article 11 hereof.
- (h) In case the Member shall fail to pay any sum due pursuant to the provisions of Article 1 or Article 10 hereof.
- (i) In case the Member shall default in the performance of any of his obligations under this agreement.
- (j) In case the Member shall fail to pay any charge which if not paid, could become a lien against the Project.
- (k) In case at any time during the term of this agreement the limitations for occupancy which may be established from time to time by the Federal Housing Administration are exceeded and the Corporation has elected to terminate this agreement.
- (l) In case at any time during the term of this agreement, the Member fails to comply promptly with all requests by the Corporation or the Federal Housing Commissioner for information and certifications concerning the total current income of the Member and his family, the composition of the Member's family and other eligibility requirements for occupancy in the Project.

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, as 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 a tenant of any provision of a lease 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. 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 acts of cooperation with its other members bring about for himself and his co-members a high standard in home and community conditions. The Corporation agrees to make its rules and regulations known to the Member by delivery of same to him or by promulgating them in such other manner as to constitute adequate notice. The member hereby ratifies all agreements executed by the cooperative corporation on or before the date hereof.

#### ARTICLE 15. 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 16. 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 the Corporation, and with the approval of the Corporation the employees of any contractor, utility company, municipal agency or others, shall have the right to enter the dwelling unit of the Member and make inspections thereof at any reasonable hour of the day and at any time in the event of an emergency.

#### ARTICLE 17. SUBORDINATION CLAUSE

The Project, of which the above-mentioned dwelling unit is a part, was or is to be constructed by the Corporation with the assistance of a mortgage loan advanced to the Corporation by a private lending institution with the understanding between the Corporation and the lender that the latter would apply for mortgage insurance under the provisions of the National Housing Act. Therefore, 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 and the accompanying documents executed by the Corporation under date of \_\_\_\_\_, (or to be executed by the Corporation) payable to Farm and Home Savings Association in the principal sum of \$ \* with interest at three (3) per centum, and insured or to be insured under the provisions of the National Housing Act, 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 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 agent to receive and accept such notices on the Member's behalf.

#### ARTICLE 18. 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 in an amount to be determined from time to time by the Board of Directors for each payment of Carrying Charges, or part thereof, more than 10 days in arrears.

If a Member defaults in making a payment of Carrying Charges or in the performance or observance of any provision of this Agreement, and the Corporation has obtained the services of any attorney with respect to the defaults involved, the Member covenants and agrees to pay to the Corporation any costs or fees involved, including reasonable attorney's fees, notwithstanding the fact that a suit has not yet been instituted. In case a suit is instituted, the Member shall also pay the costs of the suit, in addition to other aforesaid costs and fees.

\*Section One—\$647,700; Section Two—\$1,099,500; Section Three—\$1,375,800; Section Four—\$1,795,600.00.

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, any notice by the Corporation to the Member shall be deemed to have been duly given, and any demand by the Corporation upon the Member shall be deemed to have been duly made if the same is delivered to the Member at his unit or to the Member's last known address; and any notice or demand by the Member to the Corporation shall be deemed to have been duly given if delivered to an officer of the Corporation. Such notice may also be given by depositing same in the United States mails addressed to the Member as shown in the books of the Corporation, or to the President of the Cooperative, as the case may be, and the time of mailing shall be deemed to be the time of giving of such notice.

ARTICLE 20. 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 21. REMEDIES

The exercise of any of the rights or remedies as herein provided with respect to any default shall not preclude or affect the subsequent exercise of such rights or remedies at different times for different defaults.

The respective rights or 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 defaults, or for the same or different failures of the Member to perform or observe any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed and sealed the day and year first above written.

WITNESS:

HIGHLEAH TOWNHOUSES, INC.

\_\_\_\_\_  
  
\_\_\_\_\_

By \_\_\_\_\_ (SEAL)

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member