

CITATION GARDENS CO-OPERATIVE CORPORATION NO. 2 OCCUPANCY AGREEMENT

Building D & E * 1439 & 1447 South Jones Boulevard * Tucson, AZ 85713

This AGREEMENT, made and entered into this ____ day of _____, 20__ by and between **CITATION GARDENS CO-OPERATIVE CORPORATION NO. 2** (hereinafter referred to as the Corporation), a non-profit Arizona corporation having its principal office and place of business at **the address of the current Property Management Office** and: _____

WHEREAS, the Corporation was formed for the purpose of acquiring, owning and operating a cooperative housing project to be located at **1447 and 1439 South Jones Boulevard**, Tucson, AZ 85713 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 one (1) share of common capital stock of the Corporation and has a bona fide intention to reside in the project;

NOW, THEREFORE, in consideration of One Dollar (\$1.00) the receipt of which is hereby acknowledged, and in further consideration of the mutual promises contained herein, the Corporation hereby leases to the Member, and the Member hereby rents from the Corporation, dwelling unit number _____, located at _____, Tucson, Arizona 85713.

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 and the Code of Procedures and Practices of the Corporation now or hereafter adopted pursuant thereto, from the date of this Agreement, for a term terminating three (3) years from the date of this Occupancy Agreement, renewable thereafter for successive three year periods under the conditions provided for herein.

ARTICLE 1. MONTHLY CARRYING CHARGES.

Commencing at the time indicated in Article 2 hereof, the Member agrees to pay 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, including but not limited to the following items

- a) The cost of all operating expenses of the Corporation and services furnished.
- b) The cost of necessary management and administration.
- c) The amount of all taxes and assessments levied against the Corporation of which it is required to pay, and ground rent, if any.
- d) The cost of fire and extended coverage insurance on the Corporation property and such other insurance as the Corporation may effect or as may be required by any mortgage on the Corporation.
- e) The cost of furnishing water, electricity, heat, gas, garbage and trash collection and other utilities, if furnished by the Corporation.
- f) All reserves set up by the board of Directors, including the General Operating Reserve and the Reserve for Replacements.
- g) The estimated cost of repairs, maintenance and replacements of the property of the Corporation.
- h) The amount of principal, interest, mortgage insurance premiums, if any, 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. The 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 written 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 notice by the corporation to the effect that the dwelling unit is available for Occupancy, or upon acceptance of the 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/her proportionate share of such sums as he has paid 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 FOR AUTOMATIC RENEWAL.

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 the said term (a) endorsed all his/her shares for transfer in blank and deposited same with the Corporation, and met all his/her obligations and paid all amounts that are currently due under this Occupancy Agreement and (b) 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 Occupancy Agreement and shall be entitled to no payment of refunds from the Corporation.

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

The Member shall occupy the dwelling unit covered by this Occupancy Agreement as a private dwelling and for no other purpose for him/her self and the immediate family members listed herewith, and may enjoy the use, in common with the other Members of the Corporation, of all common property and facilities of the Corporation, so long as he/she continues to own a share of the Corporation, occupies his/her dwelling unit, and abides by the terms of this Occupancy Agreement. Any sublease 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 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 said premises. If by reason of the Occupancy or use of said premises by the Stockholder the rate of insurance on the building shall be increased, the Member shall become personally liable for the additional insurance premiums.

The immediate family members that shall occupy the dwelling in addition to the Member are:

ARTICLE 6. MEMBER'S RIGHT TO PEACEABLE POSSESSION.

In return for the Member's continued fulfillment of the terms and conditions of this Occupancy Agreement, the Corporation covenants that the Member may at all times while this Occupancy Agreement remains in effect, have and enjoy for his sole use and benefit the property herein above described, after obtaining Occupancy, and may enjoy in common with all other Members of the Corporation the use of all common property and facilities of the Corporation.

ARTICLE 7. NO SUBLETTING WITHOUT CONSENT OF CORPORATION.

The Member hereby agrees not to assign this Agreement nor to sublet his/her dwelling unit without the written consent of the Corporation on a form approved by the Department of Housing and Urban Development. The liability of the Member under this Occupancy Agreement shall continue notwithstanding the fact that he/she may have sublet the dwelling unit with the approval of the Corporation and the Stockholder shall be responsible to the Corporation for the conduct of his/her 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. Non-paying guest(s) of the Member may occupy a Member's unit under such conditions as may be prescribed by the Board of Directors.

ARTICLE 8. TRANSFERS.

Neither this Occupancy 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 by the Corporation for the transfer of common stock.

The Member hereby certifies that neither he/she nor anyone authorized to act for him/her will refuse to sell his common share certificate, after the making of a bona fide offer, or refuse to negotiate for the sale of, or otherwise make unavailable or deny the common share certificate to any person because of race, color, religion, sex, handicap, familial status, or national origin. Any restrictive covenant on cooperative property relating to race, color, religion, sex, handicap, familial status, or national origin is recognized as being illegal and void and is hereby specifically disclaimed. Civil action for preventive relief may be brought by the Attorney General in any appropriate US District Court against any person responsible for a violation of this certification.

ARTICLE 9. MANAGEMENT, TAXES AND INSURANCE.

The Corporation shall provide necessary management, operation and administration of the property of the Corporation, pay or provide for the payment of all taxes or assessments levied against the property of the Corporation; procure and pay or provide for the payment of fire insurance and extended coverage, and other insurance as required by any mortgage on property

of the Corporation, and such other insurance as the Corporation may deem advisable on the property in the Corporation. 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 Member shall pay for all utilities, including deposits for same, not provided by the Corporation

ARTICLE 11. REPAIRS.

- (A) **By Member.** The Member agrees to repair and maintain in his/her dwelling unit at his/her own expense as follows:
- (1) Any repairs or maintenance necessitated by his/her own negligence or misuse; and
 - (2) Any redecoration of his/her own dwelling unit; and
 - (3) Any alterations, repairs, maintenance or replacements as required from time to time by the Board of Directors.
- (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 alterations in the structure of the premises or in the water or 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.

The Member shall not, without the prior written consent of the Corporation, install or use in his/her dwelling unit any washing machine where facilities are not provided, clothes dryer, or air conditioning equipment. The Member agrees that the Corporation may require the prompt removal of any such equipment at any time, and that his/her failure to remove such equipment upon request shall constitute a default within the meaning of Article 13 of this Occupancy Agreement.

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

It is hereby mutually agreed as follows: if at any time after this 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 Occupancy Agreement will expire at a date not less than thirty (30) days thereafter, this Occupancy Agreement and all of the Member's rights under this Occupancy 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 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 Occupancy Agreement had not been made:

- (A) In case at any time during the term of this Occupancy Agreement the member shall cease to be the owner and legal holder of a share of the Corporation.
- (B) In case the member attempts to transfer or assign this Occupancy Agreement in a manner inconsistent with the provisions of the Corporation.
- (C) In case at any time during the continuance of this Occupancy Agreement the Member shall be declared bankrupt in a court of law.
- (D) In case at any time during the continuance of this Occupancy 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 Occupancy Agreement the Member shall make a general assignment for the benefit of creditors.
- (F) In case at any time during the continuance of this Occupancy Agreement any of the share of the Corporation owned by the Member 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 hereof or any other fees due and payable to the Corporation under the terms of this Occupancy Agreement.
- (I) In case the Member shall default in the performance of any of his obligations under this Occupancy 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 Occupancy 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 and Corporation expressly agree that a landlord and tenant relationship is created by this Occupancy Agreement. Notwithstanding the foregoing, the parties further agree that the terms and provisions of the Arizona Residential Landlord and Tenant Act (A.R.S Sections 33-

1301 et seq.), as it may be amended from time to time (the "Act") are not applicable to the relationship created by this Occupancy Agreement as provided for by A.R.S Sections 33-1308(7). In the event of a breach or threatened breach by the Member of any covenant or provision of this Occupancy Agreement, there shall be available to the Corporation such remedy or remedies now or hereafter available to a landlord at law or in equity for the breach or threatened breach by a tenant of any covenant or provision of a lease or rental Agreement.

The failure on the part of the Corporation to avail itself of any of these remedies given under this Occupancy 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/she will preserve and promote the cooperative ownership principles on which the Corporation was founded, abide by the Charter, By-laws, and the Code of Procedures and Practices of the Corporation and any amendments thereto, and by his acts of cooperation with its other Member bring about for himself and his/her co-Members a high standard in home and community conditions. The Corporation agrees to make its Code of Procedures and Practices known to the Member by delivery of same to him/her or by promulgating them in such other manner as to constitute adequate notice.

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 common share of the Member and to reimburse him/her for such loss as he/she 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 upon a minimum of forty-eight (48) hours written notice 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 any time without written notice in the event of an emergency.

ARTICLE 17. SUBORDINATION CLAUSE.

The cooperative housing property, of which the above-mentioned dwelling unit is a part, was 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 Occupancy 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 **September 1, 1962**, payable to Federal Housing

Administration or its survivor agency in the principal sum of \$356,800.00 with interest at 5.25 per centum, and 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 property of the Corporation 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 Occupancy 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 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 Occupancy 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. The date(s) for levying late charge, or establishing other fees to be determined by the Board of Directors.

If a Member defaults in making a payment of Carrying Charges or in the performance or observance of any provision of this Occupancy 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 the event of any action, suit or proceeding at law or in equity is instituted by the parties with respect to this Occupancy Agreement or the enforcement thereof, the prevailing party shall be entitled to an award of reasonable attorney's fees, expenses and court costs incurred therein against the other party.

ARTICLE 19. NOTICES.

Whenever the provisions of law or the documents of the Corporation or this Occupancy 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/her dwelling unit or to the Member's last known address; and any such notice or demand by the Member to the Corporation shall be deemed to have been duly given if delivered to a member of the Board of Directors or the Property Manager of the Corporation. Such notices by either party hereto 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 or the Property Manager of the corporation, as the case may be, and the time of mailing shall be deemed to be the time of such notice.

ARTICLE 20. ORAL REPRESENTATION NOT BINDING.

No representations other than those contained in this Occupancy Agreement, the charter, the By-Laws, and the Code of Procedures and Practices of the Corporation shall be binding upon the Corporation.

IN WITNESS WHEREOF, the parties hereto have caused this Occupancy Agreement to be

signed the day and year first above written.

CITATION GARDENS COOPERATIVE CORPORATION NO. 2

By _____
Name Title

Member

Member

Member