

THE GREENBRIAR TOWNHOUSES
OCCUPANCY AGREEMENT
Amended 2019

THIS AGREEMENT is made and entered into this day _____ by and between THE GREENBRIAR TOWNHOUSES (hereinafter referred to as the "Corporation"), a corporation having its principal office and place of business in the City of Albuquerque, Bernalillo County, New Mexico, 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 the offices at 1212 Nakomis Drive NE, Albuquerque, New Mexico, 87112, with the intent that its Members shall have the right to occupy the dwelling unit 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; and

WHEREAS, the Member has certified to the accuracy of the statement made in his/her 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/her initial and continuing occupancy; the Corporation and the Member agree to execute an Occupancy Agreement in consideration of \$ _____ for Dwelling Unit # _____, a [two bedroom/ three bedroom] townhouse, located at _____ Nakomis Drive NE, Albuquerque, New Mexico 87112, the receipt of which is hereby acknowledged.

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 Articles of Incorporation and Bylaws of the Corporation and any Rules and Regulations of the Corporation now or hereafter adopted pursuant thereto, a one -year term from the date of this Agreement renewable thereafter for successive one-year periods pursuant to Article 3, under the conditions provided for herein.

ARTICLE 1. EARNEST MONEY DEPOSIT AND MONTHLY CARRYING CHARGES UNDER OCCUPANCY AGREEMENT

Prior to the execution of this Occupancy Agreement the Member has paid to the Corporation the sum of \$500.00 (this initial payment being defined in the Greenbriar Rules and Regulations, Section II: Move-Ins, Point 1, as the "Earnest Money Deposit").

Commencing at the time indicated in ARTICLE 2 below, the member agrees to pay to the Corporation a monthly sum referred to herein as "Monthly 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 community or other facilities which the Member is entitled to utilize, including but not limited to the following terms:

- (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 assessment levied against the project of the Corporation for 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 affect or as may be required by any mortgage on the property.

- (e) The cost of all utilities furnished by the Corporation, (See Article 9 for listing of those utilities which are to be furnished by the Corporation).
- (f) All reserves are 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 replacement of the project property to be made by the Corporation.
- (h) The amount of any mortgage including principal, interest, mortgage insurance premiums and other required payments.
- (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 Monthly Carrying Charges annually, but may do so at more frequent intervals, should circumstances so require. No member shall be charged more than his/her proportionate share thereof as determined by the Board of Directors. The amount of the Monthly Carrying Charges required for payment on the principle of mortgage of the corporation 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.

The current Monthly Carrying Charges for the above-mentioned dwelling unit shall be \$_____.

ARTICLE 2. WHEN PAYMENT OF MONTHLY CARRYING CHARGES TO COMMENCE

After thirty days notice by the Corporation to the effect that the dwelling unit is or will be available for occupancy, or upon acceptance of occupancy, whichever is earlier, the Member shall make payment for Monthly Carrying Charges covering the unexpired balance of the month. Thereafter, the member shall pay Monthly Carrying Charges in advance on the first day of each month.

ARTICLE 3. MEMBER'S OPTION FOR AUTOMATIC RENEWAL

It is covenanted that the one-year term granted in this agreement shall be extended and automatically renewed for further periods of one year from the expiration of the term, under the same conditions unless:

- (1) the Member provides notice to the Corporation in writing at least one month prior to the expiration of the current terms of their intent not to renew and
- (2) the Member shall have on or before the expiration of said term:
 - (a) met all his/her obligations and paid all amounts due under this agreement up to the time of said expiration.
 - (b) vacated the premises, leaving them in a good state of repair.

Upon compliance with provisions (1) and (2) of this Article, the member shall have no further liability under this agreement.

ARTICLE 4. PREMISES TO BE USED FOR MEMBER'S RESIDENTIAL PURPOSES ONLY

The Member shall occupy the dwelling unit covered by this agreement as a private dwelling unit as their primary residence for residential purposes only. The Member may enjoy the use of all community property and facilities so long as the Member occupies the dwelling unit and abide by the terms of the Occupancy Agreement, Rules and Regulations and Bylaws

The Member shall not permit or suffer anything to be done or kept upon said premises which will:

- Increase the rate of insurance for the Corporation.
- Obstruct or interfere with the rights of other occupants or annoy them with unreasonable noises or otherwise.
- 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 the requirements of the Board of Health and of all other governmental authorities with respect to the said premises. If the Member is found negligent, a penalty such as a fine may be applied as determined by the Board of Directors.

ARTICLE 5. 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 always while this agreement remains in effect, have, and enjoy for his/her sole use, the dwelling unit hereinabove described, after obtaining occupancy. The Member then 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 6. PROHIBITION AGAINST RENTING OR SUBLEASING A UNIT

No unit shall be rented or subleased by a Membership certificate owner to any person. Subleasing or renting shall result in the termination and forfeiture of one’s Membership and shall be grounds for expulsion pursuant to Bylaws of the Corporation, Article III, Section 9. A membership certificate owner must reside in the unit.

ARTICLE 7. TRANSFER OF RIGHT OF OCCUPANCY

The Member’s right of occupancy (the membership) shall be transferable only in the manner as defined in the Bylaws of the Corporation, Article III, Section 7. Pursuant to Bylaws of the Corporation Article III, Section 1, any transfer of membership shall be non-discriminatory.

ARTICLE 8. MANAGEMENT, TAXES, AND INSURANCE

The Corporation shall provide:

- Necessary management, operation, and administration of the Cooperative.
- Pay or provide for the payment of all taxes or assessments levied against 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 the property, and such other insurance as the Corporation may deem advisable on the property.

The Corporation does not provide insurance on the Member’s personal property in the unit. It is the responsibility of the Member to obtain Renter’s Insurance to insure against the risk of personal property loss and personal liability claims and provide Greenbriar a certificate of insurance that is effective as of the date of the membership closing. All Members are required to carry such insurance, naming The Greenbriar Townhouses as an Additional Insured.

Members do not own any real property in Greenbriar, they have a Membership in a non-profit residential Cooperative.

ARTICLE 9. UTILITIES AND SERVICES

The Corporation shall pay:

- All utilities and services in all common areas
- City Services (trash, sewage etc.)
- Water
- Other services (pest control, security, etc.)

The Member shall pay directly to the supplier for all other utilities and services. Gas and electricity services must always be maintained in the occupancy unit.

ARTICLE 10. REPAIRS

(A) **By Member.** The Member agrees to repair or maintain his/her unit at their own expense for:

1. Any repairs, maintenance, or replacement necessitated by his/her own negligence or misuse.
2. Any redecoration of his/her own dwelling unit.
3. Any repairs, maintenance or replacement required on items not furnished by the Corporation.
4. Any repairs, maintenance or replacement required due to failure by the member to report issues that result in damages, infestation, and mold/mildew.

(B) **By Corporation.** The Corporation shall provide and pay for all necessary repairs, maintenance, and replacement except as specified in item (A) of this Article. Management and employees of the Corporation shall have the right to enter the dwelling unit of the Member to effect necessary repairs, maintenance, and replacement and to authorize entrance for such purposes by contractors, utilities, municipal agency, or others at any reasonable hour of the day and in the event of emergency at any time.

(C) **Member's failure to effect repair, maintenance, or replacement.** In case the Member shall fail to effect the repairs, maintenance or replacement specified in item (A) of this Article in a manner satisfactory to the Corporation and pay for same, the Corporation will add the cost thereof to the Member's next Monthly Carrying Charges payment.

ARTICLE 11. ALTERATIONS, ADDITIONS AND UPGRADES KNOWN AS NON-STANDARD EQUIPMENT

All Members are subject to the "Rules and Regulations Section IV" on alterations, additions and upgrades and its attached addendum titled "List of Standard Equipment Provided by the Corporation" which includes a list of non -standard equipment that is allowed with approval or not allowed.

A Member shall not make any structural alterations, additions, or upgrades to the interior/exterior premises or in the water, gas or steam pipes, electrical conduits, plumbing or walls/ceilings.

The Member will not at any time remove existing alterations, additions, or upgrades without approval from the Manager. When a Member shall cease to be a member of the Corporation they shall surrender to the Corporation possession thereof any alterations, additions, or upgrades.

If a Member fails to comply with these rules the Corporation shall require the prompt removal, at any time, of any unapproved/not allowed non-standard equipment, and his/her failure to remove such equipment upon request shall constitute a default within the meaning of Article 12 of this agreement.

ARTICLE 12. DEFINITION OF DEFAULT BY MEMBER AND EFFECT THEREOF

The Member expressly agrees that there exists under this Occupancy Agreement a Landlord-Tenant relationship governed by the New Mexico Uniform Owner Resident Relations Act and not an interest in real property. 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.

The Corporation may in its option give the Member notice that this agreement will expire at a date not less than ten (10) days thereafter. The Member's rights under this agreement will expire on the date so fixed unless the default has been resolved in a manner deemed satisfactory by the Corporation.

If the default has not been resolved, it shall be lawful for the Corporation to reenter the dwelling unit and to remove all persons and personal property.

The Member will be in default in the following cases:

- (a) The Member shall cease to be the owner and legal holder of a membership of the Corporation.
- (b) The Member attempts to transfer or assign this agreement in a manner inconsistent with the provision of the Bylaws.
- (c) The Member shall be declared bankrupt under the laws of the United States.
- (d) A receiver of the Member's property shall be appointed under any of the laws of the United States or any State.
- (e) The member shall make a general assignment for the benefit of creditors.
- (f) The Membership rights of a Member in the Corporation shall be duly levied upon and sold under the process of any court.
- (g) The member fails to effect and/or pay for repairs and maintenance as provided for in Article 10 hereof.
- (h) The member shall fail to pay any sum due pursuant to the provisions of Article 1 or Article 9 hereof, or shall fail to pay any charge which, if not paid, could become a lien against the project.
- (i) The Member shall default in the performance of any of his/her obligations under this agreement.

The Member hereby expressly waives all right of redemption in case he shall be dispossessed by judgment or warrant of any Court or Judge. The words "enter" and "re-enter" and "re-entry", as used in this agreement are not restricted to their technical legal meaning. 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 of any remedy allowed at law or in equity, as if re-entry, summary proceedings, and other remedies were not herein provided for.

The failure on the part of the Corporation to avail itself of any of the remedies given under this agreement shall not waive or destroy the right of the Corporation to avail itself of such remedies for similar or other breaches on the part of the Member.

ARTICLE 13. MEMBER TO COMPLY WITH ALL CORPORATE REGULATIONS

The Member covenants he/she will preserve and promote the cooperative ownership principles on which the Corporation has been founded, as found in the Articles of Incorporation, Bylaws, and Rules and Regulations of the Corporation and any amendments thereto, and by his/her 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/her and by promulgating them in such other manner as to constitute adequate notice.

ARTICLE 14. EFFECT OF CATASTROPHIC LOSS ON INTERESTS OF MEMBER

In the event of catastrophic loss or damage by fire, water, or other casualty to the above-mentioned dwelling unit, absent any fault or negligence of the member, the Corporation shall determine whether to restore the damaged premises. The Corporation shall further determine, in the event such premises are not restored, the amount which shall be paid to the Member to redeem the membership of the member which will not exceed the value of the current membership.

In the event of catastrophic loss or damage by fire, water or other casualty to the above-mentioned dwelling unit is the fault or negligence of the member, the member's renters insurance policy may cover the member's personal losses, and the Board of Directors will determine what action to take regarding damage to the structure, and for any reimbursement due from the at-fault member, to the Corporation, and to neighbors whose property may have been affected by said damage.

The Corporation will abide by the New Mexico Uniform Owner Resident Relations Act, Chapter 47, Article 8, Subsection 31 (47:8:31): Resident rights following fire or casualty. <https://codes.findlaw.com/nm/chapter-47-property-law/>

ARTICLE 15. 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 16. SUBORDINATION CLAUSE

In the event the Corporation assumes another mortgage, 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 or deed of trust 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 agrees to execute, at the Corporations request and expense, any instrument which the Corporation or any lender 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 all notices of default and notices of foreclosure of any possible mortgage which may be required by law. In the event a waiver of such notice is not legally valid, the Member does hereby constitute the Corporation as his/her agent to receive and accept such notices on the Member's behalf.

ARTICLE 17. 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 when Carrying Charges are more than 10 days in arrears as detailed in Rules and Regulation Section VI.

If a Member defaults in making a payment of Monthly Carrying Charges or in the performance or observance of any provisions 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 cost or fees involved, including reasonable attorney's fees, notwithstanding the fact that a suit has not yet been instituted. in the case a suit is instituted, the Member shall also pay the costs of the suit in addition to other aforesaid costs and fees.

ARTICLE 18. NOTICES

Whenever the provision of law or the Bylaws of the Corporation or this agreement requires notice to be given to either party hereto, any notice by the Corporation to the member OR any demand by the Corporation upon the Member shall be deemed to have been duly given by the following means:

Corporation to Member-

- delivered to the Member at his unit.
- delivered to the Member's last known address.
- delivered by email from the Member to Corporation.
- delivered to an officer or President of the Corporation in person or delivered by U.S. mail or email.

ARTICLE 19. ORAL REPRESENTATION NOT BINDING

No representations other than those contained in this agreement, the Articles of Incorporation, the Rules and Regulations, and the Bylaws of the Corporation shall be binding upon the Corporation.

ARTICLE 20. 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 right or remedies 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.

THE GREENBRIAR TOWNHOUSES

Date: _____

By: _____

Greenbriar Management Signature

(seal)

THE MEMBER(S)

Member Signature

Co-Member Signature