

OCCUPANCY AGREEMENT TILSNER ARTISTS' COOPERATIVE

THIS AGREEMENT, is made and entered into this _____ day of _____, 19____, by and between TILSNER ARTISTS' COOPERATIVE (the "Cooperative"), a Minnesota cooperative association having its principal place of business at 300 Broadway Street, St. Paul, Minnesota and _____ ("Member");

WHEREAS, the Cooperative has been formed for the purpose of leasing and operating housing development (the "Development") to located at 300 Broadway Street, St. Paul, Minnesota, 55101 with the intent that its members shall have the right to occupy its housing units under the following terms and conditions;

WHEREAS, the Member is the owner and holder of a certificate of membership in the Cooperative and intends to live in a unit as Member's principal residence;

WHEREAS, the Cooperative proposes to lease a unit in the Development to Member; and

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

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Cooperative hereby lets to the Member, and the Member hereby hires and takes from the Cooperative, dwelling unit number _____, located at 300 Broadway Street, St. Paul, Minnesota in TILSNER ARTISTS' COOPERATIVE.

TO HAVE AND TO HOLD said dwelling unit unto the Member, his or her authorized executors, administrators and assigns, on the terms and conditions set forth herein and in the Articles and Bylaws of the Cooperative and any rules and regulations of the Cooperative now or hereafter adopted pursuant thereto, from the date of this Agreement, for a term terminating on _____, 19____, renewable thereafter for successive one-year periods under the conditions provided for herein. Provided, however, that the term hereunder shall, in any event, end on the date when the Cooperative's lease of the Development from Tilsner Building Limited Partnership ("Owner") to the Cooperative dated _____ March _____, 19⁹³ (the "Lease") ends.

ARTICLE 1. MONTHLY HOUSING CHARGES.

Commencing on _____, 199_____, the Member agrees to pay to the Cooperative a monthly sum referred to herein as the "Monthly Housing Charge," which shall initially be \$_____ per month.

ARTICLE 2. WHEN PAYMENT OF MONTHLY HOUSING CHARGE TO COMMENCE.

After thirty (30) days notice by the Cooperative 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 a Monthly Housing Charge payment covering the unexpired balance of the month. Thereafter, the Member shall pay the Monthly Housing Charge in advance on the first day of each month.

ARTICLE 3. INCREASE IN MONTHLY HOUSING CHARGE.

The Board of Directors shall determine the amount of the Monthly Housing Charge annually, but may do so more frequently, as necessary. No increase in the Monthly Housing Charge shall be effective until at least sixty (60) days after the Board notifies the Member of such increase. The Monthly Housing Charge must be established at a level high enough to cover all of the Cooperative's expenses. The term operating expenses as used herein shall mean all expenses and costs (but not specific costs which are separately billed to and paid by specific tenants) of every kind and nature which the Cooperative shall pay or become obligated to pay because of or in connection with the lease and operation of the Development and supporting facilities and such additional facilities as may be determined by the Cooperative to be necessary to the Development, including but not limited to, the Following:

- (1) Wages, salaries, and related expenses of all employees engaged in the operation, maintenance and security of the Development.
- (2) All supplies and materials used in the operation and maintenance of the Development.
- (3) Cost of utilities, including water and power, heating, and lighting, except for utilities billed directly to the Cooperative's members.
- (4) Management costs, including all marketing and legal expenses, maintenance and service agreements for the Development and the equipment therein.
- (5) Accounting and legal costs.

- (6) Costs of all insurance, including but not limited to, fire, casualty, liability, and rental abatement insurance applicable to the Development and Cooperative's personal property used in connection therewith.
- (7) Costs of repairs, replacements and general maintenance (excluding repairs and general maintenance paid by proceeds of insurance or other third parties).
- (8) Any and all common area maintenance costs related to public areas of the Development.
- (9) All taxes, service payments in lieu of taxes, excises, levies, fees, or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority upon the Development, its operations or the Monthly Housing Charge provided for in this Agreement.
- (10) Amortization of capital improvements made to the Development subsequent to the commencement date of the Lease which will improve the operating efficiency of the Development.
- (11) Maintenance of operating reserves and replacement reserves.

ARTICLE 4. LIMITATION ON MONTHLY CHARGE INCREASES.

Notwithstanding Article 3 of this Agreement, in the event that any increase in monthly charges that would violate any of the requirements or restrictions of any of the mortgages, or any other agreement entered into by the Owner, to which the Lease is subordinated, the effect of the increase hereunder shall be abated by the amount necessary to avoid violation of such requirements or restrictions.

ARTICLE 5. MEMBER'S OPTION FOR AUTOMATIC RENEWAL; RIGHT TO TERMINATE ON SIXTY (60) DAYS' NOTICE.

The parties agree that the term herein granted shall be extended and renewed by the parties for further periods of one (1) year each from the expiration of the term stated in this Agreement unless: (1) the Cooperative gives the Member notice at least sixty (60) days prior to the expiration of the current lease term of its intent to modify or terminate the Occupancy Agreement; or (2) notice of the Member's election not to renew shall have been given

to the Cooperative in writing at least sixty (60) days prior to the expiration of the then current term, and the Member shall have on or before the expiration of said term (a) endorsed his membership certificate for transfer in blank and deposited it with the Cooperative, and (b) met all member's obligations and paid all amounts due under this Agreement up to the time of said expiration, and (c) vacated the premises, leaving them in a good state of repair. Upon compliance with the provisions of this Article, the Member shall have no further liability under this Agreement and shall be entitled to no payment from the Cooperative except the transfer value plus the amount of the security deposit paid by the Member, with interest, less any deductions as provided in the Cooperative's Bylaws. The Cooperative shall give notice to Member of the Member's option to terminate on sixty (60) days notice and of the automatic renewal provision of this Agreement as required by Minnesota Statutes 504.21 not less than seventy-five (75) nor more than ninety (90) days prior to expiration of the term of this agreement.

ARTICLE 6. PREMISES TO BE USED FOR RESIDENTIAL PURPOSES ONLY.

The Member shall occupy the dwelling unit governed by this Agreement as a private dwelling unit for Member and/or Member's immediate household and for no other purpose, and may enjoy the use in common with other members of the Cooperative the use of all community property and facilities of the Development so long as Member continues to own a membership certificate of the Cooperative, occupies his or her dwelling unit, and abides by the terms of this Agreement. Notwithstanding the foregoing, the Member may engage in a home occupation in the dwelling unit if permitted by all applicable laws, ordinances, rules and regulations, if approved in writing by the Board of Directors, and provided no more than four patrons of the home occupation proprietor visit the dwelling unit on any one day.

The Member shall not permit anything to be done or kept upon the 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 or she commit or permit any nuisance on the premises or commit or permit any immoral or illegal act to be committed on the premises. If by reason of the occupancy or use of 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.

If contraband or a controlled substance manufactured, distributed, or acquired in violation of Minnesota law is seized in the Member's dwelling unit incident to a lawful search or arrest, and if the Member has no defense under Minnesota Statutes section 509.5317, the Member shall have no further right to possession of

his or her dwelling unit, and the Cooperative shall bring and eviction action against the Member, if necessary, to regain possession of the dwelling unit.

Each Member shall maintain his or her unit in a clean condition at all times to prevent insect and rodent infestations. No Member shall sweep, throw, or in any other manner dispose of any substance or article except in accordance with the rules of the Cooperative.

ARTICLE 7. MEMBER'S RIGHT TO PEACEABLE POSSESSION.

In return for the Member's continued fulfillment of the terms and conditions of this Agreement, the Cooperative promises that the Member may at all times while this Agreement remains in effect, enjoy for his or her sole benefit the dwelling unit described above, after obtaining occupancy, and may enjoy in common with all other members of the Cooperative the use of all community property and facilities of the Development.

ARTICLE 8. NO SUBLETTING.

The Member hereby agrees not to assign this Agreement or to sublet his or her dwelling unit. The liability of the Member under this Occupancy Agreement shall continue notwithstanding the fact that he or she may have attempted to sublet the dwelling unit, and the Member shall be responsible to the Cooperative for the conduct of Member's alleged sublessee. Any subleasing shall, at the option of the Cooperative, result in the termination and forfeiture of the Member's rights under this Occupancy Agreement.

Non-paying guests of any Member, i.e. those not subletting the dwelling unit, may occupy the Member's unit under such conditions as may be prescribed by the Board of Directors in the rules and regulations, but in no event for more than thirty (30) days at any one time or ninety (90) days in any one year without the written consent of the Board of Directors. Any guest occupying the Member's unit with the written consent of the Board of Directors for longer than the periods just described must be screened by the Board, must become a member, and must execute this Agreement as a Member.

ARTICLE 9. TRANSFERS.

Neither this Agreement nor the Member's right of occupancy shall be transferrable except in the same manner as may now or later be provided for the transfer of memberships in the Bylaws of the Cooperative.

ARTICLE 10. MANAGEMENT, TAXES AND INSURANCE.

The Cooperative shall provide necessary management, operation and administration of the Development; pay or provide for the

payment of all taxes or assessments levied against the Development, procure and pay or provide for the payment of fire insurance and extended coverage, and other insurance as required on property in the Development, and such other insurance as the Cooperative may deem advisable on the property in the Development, all as is required under the Lease of the Development. **The Cooperative will not, however, provide insurance on the Member's interest in the dwelling unit or on Member's personal property.**

ARTICLE 11. UTILITIES.

The Cooperative shall provide heat for the common areas of the Development and city water for each unit. The Member shall pay directly to the supplier all amounts owed for all other utilities supplied to the unit.

ARTICLE 12. REPAIRS.

(A) By Member. The Member agrees to reimburse the Cooperative for the cost of repairs and to maintain Member's dwelling at his or her own expense as follows:

- (1) Any repairs or maintenance necessitated by Member's own negligence or misuse, intentional or unintentional, whether caused by fire or any other mishap or negligence; and
- (2) Any redecoration of Member's own dwelling unit except as may be provided by the Cooperative.

(B) By Cooperative. The Cooperative shall provide all necessary repairs, maintenance and replacements, except as specified in clause (a) of this Article. The cost of repairs or replacements for which the Member is responsible shall be billed to the Member and paid as part of the next Monthly Housing Charge payment. The officers and employees of the Cooperative 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 after giving appropriate notice, and in the event of emergency at any time without notice.

ARTICLE 13. ALTERATIONS AND ADDITIONS.

Except as permitted by the Cooperative's rules and regulations, the Member shall not, without the prior written consent of the Cooperative, make any 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 ceases to be an occupant of the premises, he or she shall surrender possession of the premises to the Cooperative, including any alterations, additions, fixtures and improvements.

The Member shall not, without the prior written consent of the Cooperative, install or use in his or her dwelling unit any air conditioning equipment, water bed or power tools, except for hand tools. The Member agrees that the Cooperative may require the prompt removal of any such equipment at any time, and that Member's failure to remove such equipment upon request shall constitute a default within the meaning of ARTICLE 14 of this Agreement.

ARTICLE 14. DEFINITION OF DEFAULT BY MEMBER AND EFFECT OF DEFAULT.

It is mutually agreed as follows: At any time after the happening of any of the events specified in clauses (a) to (m) of this Article, the Cooperative may, at its option, give to the Member a notice that this Agreement will expire at a date not less than thirty (30) days later. If the Cooperative gives such notice, all of the Member's rights under this Agreement will expire on the date fixed in such notice, unless in the meantime the default has been cured in a manner satisfactory to the Cooperative.

Upon expiration, it shall be lawful for the Cooperative to re-enter the dwelling unit and to remove all persons and personal property from the unit, 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 and to repossess the dwelling unit in its former state as if this agreement has 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 Cooperative.

(b) In case the Member attempts to transfer to assign this Agreement in a manner inconsistent with the provisions of the bylaws of the Cooperative.

(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 any of the membership of the Cooperative owned by the Member shall be duly levied upon and sold under the process of any Court.

(g) In case of the Member fails to effect and/or pay for repairs and maintenance as provided for in ARTICLE 12.

(h) In case the Member shall fail to pay any sum due pursuant to the provisions of ARTICLE 1 or ARTICLE 11.

(i) In case the Member or the Member's guest shall default in the performance of any of the Member's obligations under this Agreement or under the Member's Subscription Agreement.

(j) In case at any time during the term of this Agreement continued occupancy by Member will result in a violation by the Cooperative of any term of the Lease with the Owner or of a note, mortgage or other agreement to which the Lease or this Occupancy Agreement is subordinate.

(k) In case at any time during the term of this Agreement, the Member fails to comply promptly with all requests by the Cooperative or other appropriate parties for information and certifications concerning the income of the Member and of the Member's family, the composition of the Member's family, student status of the Member's household and other eligibility requirements for occupancy in the Development or if there is a material misrepresentation with respect to any such information. The Member agrees to recertify the Member's household income annually, or otherwise upon the Cooperative's request.

(l) In case at any time during the term of this Agreement the Member fails to maintain the Member's membership in the Cooperative in good standing by failing to follow the Cooperative's requirements regarding attendance at the Cooperative's meetings, active participation on a standing committee of the Cooperative, and participation in the Cooperative's work projects.

(m) In case at any time during the term of this Agreement the Member's household income or composition (e.g., a household containing all students, none of whom is entitled to file a joint tax return or is enrolled in a qualifying job training program) shall cause the Member's dwelling unit to fail to qualify as a low income unit for the purpose of calculating the low income tax credit under Section 42 of the Internal Revenue Code.

The Member hereby expressly waives any and all right of redemption in case he or she shall be dispossessed by judgement or warrant of any court or judge. The words "enter," "re-enter," and "re-entry," as used in this Agreement are restricted to their technical legal meaning as determined by the courts and the legislature of the State of Minnesota, among others, and in the event of a breach or threatened breach by the Member of any of the terms of this Agreement, the Cooperative 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 provided for in this Agreement.

The Member 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 provision of this Agreement, there shall be available to the Cooperative all legal remedies available to a landlord for the breach or threatened breach by a tenant of any provision of a lease or rental agreement.

The failure on the part of the Cooperative to use any of the remedies given under this Agreement shall not waive nor destroy the right of the Cooperative to use such remedies for similar or other breaches on the part of the Member.

ARTICLE 15. MEMBER TO COMPLY WITH ALL COOPERATIVE REGULATIONS.

The Member promises that he or she will preserve and promote the cooperative ownership principles on which the Cooperative has been founded, abide by the articles, bylaws, rules and regulations of the Cooperative and any amendments to them, and by Member's acts of cooperation with its other members bring about for Member and his or her co-members a high standard in home and community conditions. The Cooperative agrees to make its rules and regulations known to the Member by delivery of them to Member or by promulgating them in such other manner as to constitute adequate notice. The Member hereby ratifies all agreements executed by the Cooperative on or before the date of this Agreement.

ARTICLE 16. SECURITY DEPOSIT.

The Member has given the Cooperative \$_____ under the Member's Subscription Agreement as a security deposit. If the Member violates any provision of this Agreement, the Cooperative may use the security deposit for payment of money that the Cooperative may spend or damages that the Cooperative may suffer. The Cooperative may use the security deposit to pay for any damage to the Development caused by the Member or the Member's guests. The security deposit may also be used to pay any monthly housing charges that the Member owes to the Cooperative upon termination of this Agreement. If the Cooperative uses any portion of the security deposit during the term of this Agreement as

permitted above, the Member agrees to restore the security deposit to its original amount.

ARTICLE 17. EFFECT OF FIRE LOSS ON INTERESTS OF MEMBER.

Subject to the requirements of the documents described at Article 19, 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 Cooperative 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.

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

ARTICLE 18. INSPECTION OF DWELLING UNIT.

The Member agrees that the representatives of any mortgagee holding a mortgage on the property of the Development, the Owner, or its successors or assigns, the officers and employees of the Cooperative, and with the approval of the Cooperative, the employees of any contractor, utility company, municipal agency or others, shall have the right to enter the dwelling unit of the Member after giving notice, except in case of an emergency, at least 24 hours in advance and make inspections thereof at any reasonable hour of the day and at any time in the event of emergency.

ARTICLE 19. SUBORDINATION CLAUSE.

It is specifically understood and agreed by the parties to this Agreement that this Agreement and all rights, privileges and benefits created by this Agreement are and shall be at all times subject and subordinate to all notes, mortgages, and other agreements executed, assumed or subordinated to by the Cooperative in connection with the Lease including those described in Exhibit A attached.

ARTICLE 20. LATE CHARGES AND OTHER COSTS IN CASE OF DEFAULT.

The Member 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 Cooperative a late charge as provided in the Cooperative's rules and regulations.

If a Member defaults in making a payment of Monthly Housing Charges or in the performance or observation of an provisions of

this Agreement, and the Cooperative has hired an attorney with respect to the defaults involved, the Member promises to pay to the Cooperative any costs or fees involved, including reasonable attorneys' 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 all other costs and fees.

ARTICLE 21. NOTICES.

Whenever the provisions of law or the bylaws of the Cooperative or this Agreement require notice to be given to either party to this Agreement, any notice by the Cooperative shall be deemed to have been given, and any demands by the Cooperative upon the Member shall be deemed to have been made if the same is delivered to the Member at his or her unit or to the Member's last know address; and any notice or demand by the Member to the Cooperative shall be deemed to have been given if delivered to an officer of the Cooperative. 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 Cooperative, 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 22. ORAL REPRESENTATIONS NOT BINDING.

No representations other than those contained in this Agreement, the articles and the bylaws of the Cooperative shall be binding upon the Cooperative.

IN WITNESS WHEREOF, the parties here caused this Agreement to be signed and sealed the day and year first above written.

TILSNER ARTISTS' COOPERATIVE

By _____

Its _____

MEMBER(S):

EXHIBIT A

Loan Made by First National Association to Tilsner Building Limited Partnership (the Partnership) in the approximate principal amount of \$1,064,000.

Loan made by Lowertown Redevelopment Corporation to the Partnership in the approximate principal amount of \$200,000.

Loan made by the Family Housing Fund of Minneapolis and Saint Paul to the Partnership in the approximate principal amount of \$650,000.

Loans made by the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota in the approximate aggregate amount of \$970,000.

And to any and all modifications, extensions and renewals thereof and to any mortgage, covenant, lease or agreement made in replacement thereof and to any mortgage, covenant, lease or agreement which may at any time hereafter be placed on the Development or any part thereof. The Member hereby agrees to execute, at the Cooperative's request and expense, any instrument which the Cooperative or any lender may deem necessary or desirable to effect the subordination of this Agreement to any such mortgage, covenant, lease or agreement and the Member hereby appoints the Cooperative and each and every officer hereof, and any future officer, the Member's 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, covenant, lease or agreement which may be required by law.