

# UNOFFICIAL COPY

92197181

## MORTGAGE

This Mortgage ("Mortgage") is made as of this 10 day of March, 1992 by Peoples Housing, an Illinois not-for-profit corporation ("Mortgagor"), to NCB Development Corporation, a District of Columbia corporation ("Mortgagee"), and pertains to the real estate described in Exhibit "A," which is attached hereto and hereby made a part hereof.

### ARTICLE I RECITALS

1.1 **Reference to Note.** Mortgagor has executed and delivered to Mortgagee a Note of even date herewith (the "Note") in the principal sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00). The Note bears interest and is payable and due as set forth in the Note. The indebtedness evidenced by the Note shall be deemed the "Loan."

1.2 **Reference to Loan Agreement.** Mortgagor has also executed and delivered to Mortgagee a Loan and Security Agreement of even date herewith (the "Loan Agreement").

. DEPT-01 RECORDING \$77.00  
. T4444 TRAN 5859 03/25/92 11:37:00  
. #2279 # D \*-92-197181  
. COOK COUNTY RECORDER

### ARTICLE II THE GRANT

NOW, THEREFORE, to secure the payment of the principal indebtedness under the Note and interest and premiums, if any, on the principal indebtedness under the Note (and all replacements, renewals and extensions thereof, in whole or in part) according to its tenor and effect, and to secure the payment of all other sums which may be at any time due and owing or required to be paid under the Note or this Mortgage and to secure the performance and observance of all the covenants, agreements and provisions contained in this Mortgage, the Note, the Loan Agreement or any other agreement made in connection with the Loan (the "Collateral Documents"), and to secure performance by Mortgagor under the Collateral Documents, and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and

92197181

This instrument was prepared by and after recording should be returned to:

Michael S. Mandell, Esq.  
Horwood, Marcus & Braun  
333 West Wacker Drive  
Suite 2800  
Chicago, Illinois 60606-1227  
(312) 606-3200

Box 430

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

sufficiency whereof is hereby acknowledged, the Mortgagor DOES HEREBY GRANT, REMISE, RELEASE, ALIEN, MORTGAGE AND CONVEY unto Mortgagee, its successors and assigns forever, the land located in the State of Illinois and legally described in Exhibit "A" attached hereto and made a part hereof (the "Premises") and the following described property, rights and interests (which, together with the Premises, are referred to herein collectively as the Property or the "Mortgaged Property"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Premises, and not secondarily:

(a) all buildings and other improvements of every kind and description now or hereafter situated, erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Premises;

(b) All right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, sidewalks and alleys adjoining the Premises;

(c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties, and privileges of the Premises or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise, or license and the reversions and remainders thereof;

(d) All rents, issues, deposits, royalties, revenues, income and profits accruing and to accrue from the Premises and the avails thereof; and

(e) All fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Premises or the aforesaid improvements thereon, including without limitation any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be

# UNOFFICIAL COPY

attached to such improvements, it being intended, agreed, and declared that all such property owned by Mortgagor and placed by it on the Premises or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purpose of this Mortgage to be part of the real estate constituting and located on the Premises and covered by this Mortgage, and as to any of the aforesaid property that is not part of such real estate or does not constitute a "fixture," as such term is defined in the Uniform Commercial Code of the state in which the Premises are located, this Mortgage shall be deemed to be, as well, a security agreement under such Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as "secured party," as such term is defined in such Code;

(f) All proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Mortgagor hereby authorizes, directs and empowers Mortgagee, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as credit upon any portion, as selected by Mortgagee, of the Loan, notwithstanding the fact that the same may not be due and payable or that the Loan is otherwise adequately secured; and

(g) All right, title and interest of Mortgagor in and to any leases now or hereafter on or affecting the Premises whether oral or written together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect rentals under any lease.

To have and to hold the same unto Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

If and when Mortgagor has paid the principal amount of the Note and all interest as provided thereunder, has paid any and all other amounts required under the Collateral Documents, and has performed all of the agreements contained in the Collateral Documents, then this Mortgage shall be released at the cost of Mortgagor, but otherwise shall remain in full force and effect.

92197181

# UNOFFICIAL COPY

## ARTICLE III GENERAL AGREEMENTS

3.1 **Principal and Interest.** Mortgagor shall pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner provided in the Note, this Mortgage, or any of the other Collateral Documents.

3.2 **Other Payments.** Upon request, Mortgagor shall deposit with Mortgagee or a depository designated by Mortgagee, in addition to the monthly installments required by the Note, monthly until the principal indebtedness evidenced by the Note is paid:

(a) A sum equal to all real estate taxes and assessments ("taxes") next due on the Mortgaged Property, all as estimated by Mortgagee, divided by the whole number of months to elapse before the month prior to the date when such taxes will become due and payable; and

(b) A sum equal to an installment of the premium or premiums that will become due and payable to renew the insurance as required in Paragraph 3.5 hereof, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed.

All such payments described in this Paragraph 3.2 shall be held by Mortgagee or a depository designated by Mortgagee, in trust, without accruing, or without any obligation arising for the payment of, any interest thereon. If the funds so deposited are insufficient to pay, when due, all taxes and premiums as aforesaid, Mortgagor shall, within ten (10) days after receipt of demand therefor from Mortgagee or its agent, deposit such additional funds as may be necessary to pay such taxes and premiums. If the funds so deposited exceed the amounts required to pay such items, the excess shall be applied on a subsequent deposit or deposits.

Neither Mortgagee nor any such depository shall be liable for any failure to make such payments of insurance premiums or taxes unless Mortgagor, while not in default hereunder, has requested Mortgagee or such depository, in writing, to make application of such deposits to the payment of particular insurance premiums or taxes, accompanied by the bills for such insurance premiums or taxes; provided, however, that Mortgagee may, at its option, make or cause such depository to make any such application of the aforesaid deposits without any direction or request to do so by Mortgagor.

# UNOFFICIAL COPY

3.3 **Property Taxes.** Mortgagor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and any other charges that may be asserted against the Mortgaged Property or any part thereof or interest therein, and to furnish to Mortgagee duplicate receipts therefor within thirty (30) days after payment thereof. Provided, however, that unless any waiver by Mortgagee of the monthly deposits required by Paragraph 3.2(a) and (b) hereof is then in effect, Mortgagee, at its option, either may make such deposits available to Mortgagor for the payments required under this Paragraph 3.3 or may make such payments on behalf of Mortgagor. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that:

(a) Such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Mortgaged Property or any part thereof or interest therein to satisfy the same;

(b) Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same before any tax or assessment has been increased by any interest, penalties, or costs; and

(c) Mortgagor has deposited with Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money or other security acceptable to Mortgagee that, when added to the monies or other security, if any, deposited with Mortgagee pursuant to Paragraph 3.2 hereof, is sufficient, in Mortgagee's judgment, to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Mortgagee's judgment, to pay in full such contested tax and assessment, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's judgment, such increase is advisable.

Mortgagee may, at its option, apply the monies and liquidate any securities deposited with Mortgagee in payment of, or on account of, such taxes and assessments, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, either deposit with Mortgagee a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Mortgagee has applied funds on deposit on account of such taxes and assessments, restore such deposit to an amount satisfactory to Mortgagee. Provided that Mortgagor is not then in default hereunder or under the Note, Mortgagee shall, if so requested in writing by Mortgagor, after final disposition of such

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

contest and upon Mortgagor's delivery to Mortgagee of an official bill for such taxes, apply the money so deposited in full payment of such taxes and assessments of that part thereof then unpaid, together with all penalties and interest thereon.

**3.4 Tax Payments by Mortgagee.** Mortgagee is hereby authorized to make or advance, in the place and stead of Mortgagor, any payment relating to taxes, assessments, water and sewer charges, and other governmental charges, fines, impositions, or liens that may be asserted against the Property, or any part thereof, and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien, sale, forfeiture, or title or claim relating thereto. Mortgagee is further authorized to make or advance, in the place and stead of Mortgagor, any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Paragraph 3.4, whenever, in its judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Mortgagee is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All such advances and indebtedness authorized by this Paragraph 3.4 shall constitute additional indebtedness secured hereby and shall be repayable by Mortgagor upon demand with interest at the "Default Rate" (as that term is defined in the Note).

**3.5 Insurance and Casualty.** Mortgagor will insure the Mortgaged Property against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

(a) Comprehensive public liability insurance with minimum limits of \$1,000,000.00 on account of personal injuries to or death of one person and \$3,000,000.00 on account of personal injuries to or death of more than one person as a result of any one accident or disaster and \$1,000,000.00 on account of damage to property; and

(b) All-risks insurance on the Premises for full replacement value during the term of this Mortgage against loss or damage by fire, tornado, windstorm and extended coverage perils and such other hazards as may reasonably be required by Mortgagee (including flood hazard insurance if the Mortgaged Property is located in a flood hazard area).

In the event Mortgagor has not maintained or procured the policies of insurance required above, in addition to all other remedies of



# UNOFFICIAL COPY

Mortgagee hereunder in the event of a Default Mortgagee may, at any time thereafter and in its sole discretion, procure and substitute for any and all of the policies of insurance required above, such other policies of insurance, in such amounts, and carried in such companies, as it may select, and in such event, those policies of insurance shall be included within the definition of "Insurance Policies" set forth herein.

All Insurance Policies shall be in form, companies and amounts satisfactory to Mortgagee. All Insurance Policies insuring against casualty, rent loss and business interruption and other appropriate policies shall include non-contributing mortgagee endorsements in favor of and with loss payable to Mortgagee, as well as standard waiver of subrogation endorsements, shall provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Mortgagee and shall provide that no claim shall be paid thereunder without ten (10) days prior to the date of expiration. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies. In the event of foreclosure of the Mortgage or assignment hereof by Mortgagee or transfer of title to the Mortgaged Property, all right, title and interest of Mortgagor in and to the policies then in force shall pass to the Mortgagee, purchaser, grantee or assignee.

Upon the occurrence of a "Major Casualty" (as hereinafter defined):

(a) Full power is hereby conferred on Mortgagee:

(1) to settle and compromise all claims under all policies;

(2) to demand, receive and receipt for all monies becoming due and/or payable under all policies;

(3) to execute, in the name of Mortgagor or in the name of Mortgagee, any proofs of loss, notices or other instruments in connection with all claims under all policies; and

(4) to assign all policies in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property.

(b) In the event of payment under any of the policies, the proceeds of the policies shall be paid by the insurer to Mortgagee and Mortgagee, in its sole and absolute discretion, may apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorneys' fees, either (i) toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof;

# UNOFFICIAL COPY

or (ii) as a payment on account of Mortgagor's liabilities under the Note (without affecting the amount or time of subsequent installment payments required to be made by Mortgagor to Mortgagee under the Note), whether or not then due or payable;

Upon the occurrence of a fire or other casualty to the Mortgaged Property that does not constitute a Major Casualty, and notwithstanding any provision to the contrary contained in this Mortgage, Mortgagor shall restore the improvements on the Mortgaged Property satisfying all of the following conditions:

(a) All proceeds for rebuilding or restoring the improvements shall be deposited by the insurance carrier into an account (the "Escrow") at a title insurance and escrow company acceptable to Mortgagee (the "Title Company") pursuant to an Escrow Trust Agreement between Mortgagor, Mortgagee, and the Title Company which insures that the proceeds are disbursed only as work is completed to the Mortgaged Property and only after a review of the condition of title to the Property by the Title Company verifying that (i) the title policy issued to Mortgagee in connection with the Loan is continued through the date of such disbursement with certification over mechanic lien claims in the amount of the proceeds disbursed to date and (ii) no exceptions to title arise that are asserted to be superior to the lien of this Mortgage.

(b) No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Mortgagee in its sole and exclusive judgment.

For purposes of this Agreement, a "Major casualty" shall be deemed to consist of the following: (i) a fire or other casualty loss to the Mortgaged Property, if hereafter improved that results in damage to the Mortgaged Property of \$25,000.00 or more in the opinion of a licensed architect or engineer acceptable to Mortgagee; or (ii) a fire or other casualty loss to the Mortgaged Property necessitating reconstruction or rebuilding that (a) in the opinion of a licensed architect or engineer acceptable to Mortgagee cannot be completed within four (4) months from the date of such casualty loss, or (b) the repair of which will result in a material alteration in the configuration, design or appearance of the Mortgaged Property from the configuration, design or appearance of the Mortgaged Property immediately prior to the fire or other casualty loss. In addition to the foregoing:

(a) The funds deposited into the Escrow shall be sufficient at all times to complete the restoration. If the funds become insufficient during the course of the

# UNOFFICIAL COPY

reconstruction to complete the restoration, Mortgagor shall within ten (10) days of notice from the Title Company or Mortgagee of the deficiency, deposit the amount of the deficiency into the Escrow;

(b) The provisions of the Escrow shall require that all costs associated with the Escrow, including, without limitation, examination of title and issuance of title policy endorsements, shall be paid by Mortgagor;

(c) The Mortgaged Property shall be restored and reconstructed to substantially the same condition and value as before the casualty loss; and

(d) The reconstruction and rebuilding shall be in compliance with all applicable building codes, environmental obligations and zoning ordinances.

3.6 **Condemnation and Eminent Domain.** Any and all awards heretofore or hereafter made or to be made to the present, or any subsequent, owner of the mortgaged Property, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property, any improvement located thereon, or any easement thereon or appurtenance thereof (including any award from the United States Government at any time after the allowance of a claim therefor, the ascertainment of the amount thereof, and the issuance of a warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, which awards Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises, or any easement thereon or appurtenance thereof (including severance of, consequential damage to, or change in grade of streets), and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute, and deliver to Mortgagee, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. Any and all awards received by Mortgagee shall be applied toward payment of Mortgagor's liabilities under the Note; provided, at Mortgagee's option, all or any part of such award may be applied to restoring the improvements, in which event the same shall be paid out in the same manner as is provided with respect to insurance proceeds in Paragraph 3.5.

# UNOFFICIAL COPY

**3.7 Maintenance of Property.** Mortgagor shall promptly repair, restore, or rebuild any building or other improvement now or hereafter situated on the Premises that may become damaged or destroyed. Any such building or other improvement shall be so repaired, restored, or rebuilt so as to be of at least equal value and of substantially the same character as prior to such damage or destruction.

Mortgagor further agrees to permit, commit, or suffer no waste, impairment, or deterioration of the Mortgaged Property or any part thereof; to keep and maintain the Mortgaged Property and every part thereof in good repair and condition, to effect such repairs as Mortgagee may reasonably require, and, from time to time, to make all necessary and proper replacements thereof and additions thereto so that the Premises and such buildings, other improvements, fixtures, chattels, and articles of personal property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

**3.8 Compliance with Laws.** Except as previously disclosed to Mortgagee by Mortgagor in the Loan Agreement, Mortgagor shall comply with all statutes, ordinances, regulations, rules, orders, decrees, and other requirements relating to the Mortgaged Property or any part thereof by any federal, state or local authority; and shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions, nonconforming uses, environmental and pollution laws, statutes, ordinances and regulations), privileges, franchises, and concessions that are applicable to the Mortgaged Property or that have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Property.

**3.9 Liens.** Without Mortgagee's prior written consent, Mortgagor shall not create, suffer, or permit to be created or filed against the Mortgaged Property or any part thereof hereafter any mortgage lien or other lien superior or inferior to the lien of this Mortgage, provided that Mortgagor may, within ten (10) days after the filing thereof, contest any lien claim arising from any work performed, material furnished, or obligation incurred by Mortgagor upon furnishing Mortgagee security and indemnification satisfactory to Mortgagee for the final payment and discharge thereof. In the event Mortgagor hereafter otherwise suffers or permits any superior or inferior lien to be attached to the Mortgaged Property or any part thereof without such consent and Mortgagor has not provided Mortgagee with adequate security as previously set forth in this section, Mortgagee shall have the unqualified right, at its option, to make or advance, in the place and stead of Mortgagor, any payment relating to any such lien or to accelerate the maturity of the Note, causing the entire principal

# UNOFFICIAL COPY

balance thereof and all interest accrued thereon to be immediately due and payable, without notice to Mortgagor.

**3.10 Transfers.** Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, consent to, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties, rights or interests which occurs, is granted, accomplished, attempted or effectuated without the prior written consent of Mortgagee shall constitute a "Prohibited Transfer":

(a) The Mortgaged Property;

(b) All or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a Trustee;

(c) All or any part of the stock of Mortgagor, if Mortgagor is a corporation, all or any part of the partnership or joint venture interests of Mortgagor if Mortgagor is a partnership or joint venture, and the stock partnership or joint venture interest, or other ownership interest in any entity which holds an ownership interest in Mortgagor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise, excluding transfers caused by the death or incapacity of any of the general partners of the Mortgagor. In the event Mortgagor hereafter suffers or permits a Prohibited Transfer, Mortgagee shall be entitled to receive the entire principal balance of the Note and all interest accrued thereon, as well as all other additional amounts as set forth in the Note.

Any waiver by Mortgagee of the provisions of this Paragraph 3.10 shall not be deemed to be a waiver of the right of Mortgagee in the future to insist upon strict compliance with the provisions hereof.

**3.11 Subrogation to Prior Lienholder's Rights.** If the proceeds of the Loan secured hereby, any part thereof, or any amounts paid out or advanced by Mortgagee are used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

0000131

# UNOFFICIAL COPY

**3.12 Mortgagee's Dealings With Transferee.** In the event of the sale or transfer, by operation of law, voluntarily, or otherwise, of all or any part of the Mortgaged Property, Mortgagee shall be authorized and empowered to deal with the vendee or transferee with regard to the Mortgaged Property, the indebtedness secured hereby, and any of the terms or conditions hereof as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from its covenants hereunder.

**3.13 Stamp Taxes.** If at any time the United States Government, or any federal, state, or municipal governmental subdivision, requires Internal Revenue or other documentary stamps, levies, or any tax on this Mortgage or on the Note, then such indebtedness and all interest accrued thereon shall be and become due and payable, at the election of the Mortgagee, thirty (30) days after the mailing by Mortgagee of notice of such election to Mortgagor, provided, however, that such election shall be unavailing, and this Mortgage and the Note shall be and remain in effect, if Mortgagor lawfully pays for such stamps or such tax, including interest and penalties thereon, to or on behalf of Mortgagee and Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and any penalties thereon.

**3.14 Change in Tax Laws.** In the event of the enactment, after the date of this Mortgage, of any law of the state in which the Premises are located deducting from the value of the Premises, for the purpose of taxation, the amount of any lien thereon, or imposing upon Mortgagee the payment of all or any part of the taxes, assessments, charges, or liens hereby required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagor's interest in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holder thereof, then Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges, or liens or reimburse Mortgagee therefor. Provided, however, that if, in the opinion of counsel for Mortgagee, it might be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may elect, to declare all of the indebtedness secured hereby to become due and payable. Provided, further, that nothing contained in this Paragraph 3.14 shall be construed as obligating Mortgagee to pay any portion of Mortgagor's federal income tax.

**3.15 Inspection of Property.** Mortgagor shall permit Mortgagee and its representatives and agents to inspect the Mortgaged Property from time to time during normal business hours and as frequently as Mortgagee considers reasonable.

# UNOFFICIAL COPY

**3.16 Acknowledgement of Debt.** The parties hereto shall furnish from time to time, within fifteen (15) days after the other party's request, a written statement, duly acknowledged, specifying the amount due under the Note and this Mortgage.

**3.17 Other Amounts Secured.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures in addition to any loan proceeds disbursed from time to time, and in addition to any advances pursuant to Paragraphs 3.4, 3.5 and 3.9 hereof, litigation and other expenses pursuant to Paragraphs 4.4 and 4.5 hereof, and any other amounts as provided herein, the payment of any and all loan commissions, service charges, liquidated damages, expenses, and advances due to or paid or incurred by Mortgagee in connection with the loan commitment issued in connection with this transaction, if any, and the other Collateral Documents.

**3.18 Assignments of Rents and Leases.** As additional security hereunder, Mortgagor hereby assigns to Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of or any agreement for the use or occupancy of the Mortgaged Property, or any part thereof, which may be made or agreed to by the Mortgagee, it being the intention hereby to establish an absolute transfer and assignment of all the said leases and agreements, and all the avails thereof to Mortgagee, provided the Mortgagor, prior to Default, shall have the right to collect and retain such rents as they become due and payable.

**3.19 Assignments of Licenses, Permits and Maintenance Management and Service Documents.** AS additional security hereunder, Mortgagor hereby assigns to Mortgagee all of its rights, title and interest under any and all licenses and permits relating to the Mortgaged Property and any and all management, maintenance and service contracts or agreements relating to the use and operation of the Mortgaged Property, currently in effect or to be executed by Mortgagor after the date hereof, together with any and all extensions, modifications, amendments and renewals thereof (the "Contracts"), provided, the Mortgagor, prior to Default, shall have the sole right to enter into such Contracts.

**3.20 Security Instruments.** Mortgagor shall execute, acknowledge, and deliver to Mortgagee, within ten (10) days after requested by Mortgagee, a security agreement, financing statements, and any other similar security instrument required by Mortgagee, in form and of content satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor that, in the sole opinion of Mortgagee, is essential to the operation of the Mortgaged Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the state in which the Premises are located. Mortgagor shall further execute,

00000001

# UNOFFICIAL COPY

acknowledge, and deliver any financing statement, affidavit, continuation statement, certificate, or other document as Mortgagee may request in order to perfect, preserve, maintain, continue, and extend such security instruments. Mortgagor further agrees to pay to Mortgagee all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing, and refiling of any such document.

**3.21 Releases.** Mortgagee, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the lien any part of the Mortgaged Property, or release from liability any person obligated to repay any indebtedness secured hereby, without in any way affecting the liability of any party to the Note, this Mortgage, or any of the other Collateral Documents, including without limitation any guaranty given as additional security for the indebtedness secured hereby, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person entity obligated personally to repay the indebtedness secured hereby, in the Mortgaged Property.

**3.22 Interest Laws.** It being the intention of Mortgagee and Mortgagor to comply with the laws of the District of Columbia, it is agreed that notwithstanding any provision to the contrary in the Note, this Mortgage, or any of the other Collateral Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage, or any of the other Collateral Documents, then in such event (a) the provisions of this Paragraph 3.22 shall govern and control; (b) Mortgagor shall not be obligated to pay any Excess Interest; (c) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the rate of interest under the Note shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Note, this Mortgage, and the other Loan documents shall be deemed to have been, and shall be, reformed and modified to reflect such reduction in the rate of interest; and (e) Mortgagor shall not have any action against Mortgagee for any damages whatsoever arising out of the payment or collection of any Excess Interest.



# UNOFFICIAL COPY

3.23 **Financial Information.** Mortgagor shall deliver, without expense to Mortgagee, the following financial and other information during the term of the Loan:

(a) **Annual Operating Budget.** Within thirty (30) days of the beginning of each fiscal year, copies of the proposed operating budget (the "Annual Operating Budget") for the current year of operation of the Mortgaged Property, which shall list, among other things, all anticipated items of income and expenditures for the Mortgaged Property, and shall be in reasonable detail and be certified by Mortgagor;

(b) **Financial Statements.** Within one hundred twenty (120) days after the end of each fiscal year, a detailed annual statement of income and expenses of the Mortgagor containing a balance sheet as at the close of such fiscal year and an income statement for such fiscal year, which shall be in the form and contain information of the type customary in businesses of the kind conducted by Mortgagor and shall be prepared in accordance with generally accepted accounting principals consistently applied, and shall be in reasonable detail and be certified by Mortgagor and at the request of Mortgagee, and the sole expense of Mortgagor, certified by an independent certified accountant acceptable to Mortgagee. In addition, Mortgagor shall deliver within thirty (30) days after the end of each fiscal quarter, copies of statements of income and expenses and balance sheets from Mortgagor for the applicable fiscal quarter, which shall be in form and contain such information as reasonably required by Mortgagee; and

(c) **Monthly Reports.** Within ten (10) days following the end of each month, a report describing in reasonable detail the progress of completion of pre-development tasks associated with the development of the Mortgaged Property and Mortgagor's progress in fulfilling all of the conditions related to the closing of the Bank Construction Loan and the DOH Loan (as such terms are defined in the Loan Agreement) and any other construction, interim or permanent loan commitments for the Mortgaged Property. In addition, Mortgagor shall deliver copies of any and all monthly income and expense statements and monthly reports prepared in relation to the Mortgaged Property.

Mortgagor hereby agrees that, during the term of the Loan, Mortgagor shall make no expenditure in connection with the operation of the Mortgaged Property which is not specifically contemplated by the Annual Operating Budget or any expenditure for any item which exceeds the amount allocated therefor in the Annual Operating Budget by more than ten percent (10%), without the prior written consent of Mortgagee provided, however, that the foregoing restriction shall not apply to expenditures for real estate taxes

# UNOFFICIAL COPY

or insurance premiums resulting from increases in such taxes or insurance premiums beyond Mortgagor's control.

**3.24 Leases of the Mortgage Property.** As used in this paragraph 3.24, the word "lease" shall mean "sublease" if this Instrument is on a leasehold. Mortgagor shall comply with and observe Mortgagor's obligations as landlord under all leases of the Mortgaged Property or any part thereof. Mortgagor will not lease any portion of the Mortgaged Property for non-residential use except with the prior written approval of Mortgagee. Mortgagor, at Mortgagee's request, shall furnish Mortgagee with executed copies of all leases now existing or hereafter made of all or any part of the Mortgaged Property, and all leases now or hereafter entered into will be in form and substances subject to the approval of Mortgagee. All leases of the Mortgaged Property shall specifically provide that such leases are subordinate to this Mortgage; that the tenant attorns to Mortgagee, such attornment to be effective upon Mortgagee's acquisition of title to the Mortgaged Property; that the tenant agrees to execute such further evidences of attornment as Mortgagee may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; and that Mortgagee may, at Mortgagee's option, accept or reject such attornments. Mortgagor shall not, without Mortgagee's written consent, execute, modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter made of all or any part of the Property providing for a term of three years or more, permit an assignment or sublease of such a lease without Mortgagee's written consent, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Instrument. If Mortgagor becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Mortgagor shall (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) notify Mortgagee thereof and of the amount of said set-offs, and (iii) within ten days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off deduction.

**3.25 Representations and Warranties.** Mortgagor hereby makes to Mortgagee the following representations and warranties:

(a) Except as previously disclosed to Mortgagee in Section V of the Loan Agreement, Mortgagor is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it. Mortgagor warrants and stipulates that it is duly created and validly existing under the laws of the state where the Property is located.

93297181

57

# UNOFFICIAL COPY

(b) The execution and delivery of, and performance by Mortgagor (and, if applicable, other parties such as endorsers, sureties and/or guarantors) under, the Note and the other documents evidencing, securing and/or pertaining to the indebtedness secured by the Note: (i) are within the legal powers of the Mortgagor (and, if applicable, other parties such as endorsers, sureties and/or guarantors), (ii) have been duly authorized by all requisite legal action, (iii) have received all necessary governmental approval, and (iv) will not violate any provision of law, any order of any court or articles of incorporation of Mortgagor (or such other party) or any indenture agreement or other instrument to which Mortgagor (or such other party) is a party or by which it or the Property is bound, or result in a breach of or constitute a default under such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of the above-referenced documents. The said documents and the Note constitute the legal, valid and binding obligations of Mortgagor and other obligors named therein, if any, in accordance with their respective terms.

(c) All other information, financial statements, reports, papers and data given to Mortgagee with respect to Mortgagor or others obligated under the terms of the above-referenced security documents are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Mortgagee true and accurate knowledge of the subject matter.

(d) Mortgagor has good and marketable title in fee simple to the Property and good and marketable title to the other property encumbered hereby, and any and all other fixtures and personalty considered by Mortgagee in deciding to make the loan to which this instrument applies.

(e) Mortgagor has filed all Federal, state, county and municipal income tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments required by it, and Mortgagor does not know of any basis for additional assessment in respect of such taxes.

(f) There is not now pending against or affecting Mortgagor, nor, to the knowledge of Mortgagor, is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency which, if adversely determined, would materially affect or

922071031

# UNOFFICIAL COPY

impair Mortgagor's financial condition or operation, or the Property.

(g) Nothing contained herein or in any other document evidencing, securing and/or pertaining to the indebtedness evidenced by the Note shall be construed to mean that Mortgagee is a partner or joint venturer of Mortgagor. Mortgagor will indemnify and hold harmless Mortgagee from any and all damages and costs resulting from construction of the relationship between Mortgagor and Mortgagee as a partnership or joint venture.

(h) Neither borrower nor any other person or legal entity has committed waste with respect to the Property or any part thereof.

(i) Mortgagor has not pledged, hypothecated, transferred or assigned any of its interest in and to the Property or its improvements, fixtures or personalty, except as required in the above-referenced security documents or expressly permitted by the Mortgagee.

## ARTICLE IV DEFAULTS AND REMEDIES

4.1 **Defaults.** If one or more of the following events (hereinafter called "Defaults") shall occur:

(a) If default is made by Mortgagor in the payment of any monies required to be paid hereunder which payment shall not be made within ten (10) days of receipt of written notice from NCBDC of such failure to pay such amounts;

(b) If any default is made by any party in the due and punctual payment of monies required under the Note or under the Collateral Documents, as and when the same is due and payable which payment shall not be made within ten (10) days of receipt of written notice from NCBDC of such failure to pay such amounts;

(c) If any default shall exist under any other document or instrument regulating, evidencing, securing or guarantying any of the Loan hereby secured including, but not limited to, the Collateral Documents in each case after the expiration of any period of grace expressly allowed for the cure of such default in such other document or instrument;

(d) The occurrence of a Prohibited Transfer;

(e) If default shall continue for thirty (30) days after notice thereof by Mortgagee to Mortgagor in the due and

# UNOFFICIAL COPY

punctual performance or observance of any other agreement or condition herein contained;

(f) If:

(1) Mortgagor shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect;

(2) Mortgagor shall file an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay its debts as they mature;

(3) Within thirty (30) days after the filing against Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar law, state or federal, now or hereafter in effect, such proceedings shall not have been vacated;

(4) All or a substantial part of Mortgagor's assets are attached, seized, subject to a writ or distress warrant, or are levied upon;

(5) Mortgagor shall be adjudicated a bankrupt;

(6) Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises;

(7) Any order appointing a receiver, trustee or liquidator of Mortgagor of any or a major part of Mortgagor's property or the Premises is made;

(8) Mortgagor shall die, be adjudicated and incompetent, or shall be dissolved, terminated or merged;

then Mortgagee is hereby authorized and empowered, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Mortgagee hereunder, to declare, without further notice, the Loan hereby secured to be immediately due and payable with interest thereon at the Default Rate, whether or not such Default be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage and/or to exercise any right, power or remedy provided by this Mortgage, the Note, or by law or in equity or any other document or instrument regulating, evidencing, securing or guarantying any of the Loan hereby secured.

# UNOFFICIAL COPY

**4.2 Foreclosure of Mortgage.** Upon the occurrence of any Default, or at any time thereafter, Mortgagee may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Premises are located. Any failure by Mortgagee to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

**4.3 Mortgagee's Continuing Remedies.** The failure of Mortgagee to exercise either or both of its remedies to accelerate the maturity of the indebtedness secured hereby and to foreclose the lien hereof following any Default as aforesaid, or to exercise any other remedy granted to Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments of such indebtedness, shall neither constitute a waiver of any such Default or of Mortgagee's remedies hereunder nor establish, extend, or affect any grace period for payments due under the Note, but such remedies shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may at Mortgagee's option be rescinded by written acknowledgement to that effect by Mortgagee and shall not affect Mortgagee's right to accelerate maturity upon or after any future Default.

**4.4 Litigation Expenses.** In any proceedings to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under the Note, this Mortgage, and the other Collateral Documents, or in any other proceeding whatsoever in connection with any of the Collateral Documents or any of the Mortgaged Property in which Mortgagee is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee, including without limitation, attorney's fees, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and any similar data and assurances with respect to title to the Mortgaged Property as Mortgagee may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the Premises or the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon, including without limitation the reasonable fees of any attorney employed by Mortgagee in any litigation affecting the Note, this Mortgage, or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor with interest thereon at the Default Rate.

# UNOFFICIAL COPY

**4.5 Performance by Mortgagee.** In the event of any Default, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Mortgaged Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including reasonable attorney's fees, and any other monies advanced by Mortgagee to protect the Mortgaged Property and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the Default Rate. Inaction of Mortgagee shall never be construed to be a waiver of any right accruing to Mortgagee by reason of any default by Mortgagor.

**4.6 Right of Possession.** In any case in which, under the provisions of this Mortgage or the other Collateral Documents, Mortgagee has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after sale thereunder, Mortgagor shall, forthwith upon demand of Mortgagee and subject to applicable law, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agent or attorneys, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

(a) Hold, operate, manage, and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor; and

(b) Make all necessary or proper repairs, complete construction, decoration, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Property and all risks incidental to Mortgagee's possession, operation, and

92207181

01

# UNOFFICIAL COPY

management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom.

**4.7 Priority of Payments.** Any rents, revenues, issues, deposits, profits, and avails of the Mortgaged Property received by Mortgagee after taking possession of all or any part of the Mortgaged Property, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage or any of the other Collateral Documents, shall be applied in payment of or on account of the following, in such order as Mortgagee or, in case of a receivership, as the court, may determine:

(a) Operating expenses of the Mortgaged Property (including reasonable compensation to Mortgagee, any receiver of the Mortgaged Property, any agent or agents to whom management of the Mortgaged Property has been delegated, and also including sale commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized):

(b) Taxes, special assessments, and water and sewer charges now due or that may hereafter become due on the Mortgaged Property, or that may become a lien thereon prior to the lien of this Mortgage;

(c) Any and all repairs, complete construction, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Mortgaged Property (including without limitation the cost, from time to time, of installing or replacing ranges, refrigerators, and other appliances and other personal property therein, and of placing the Mortgaged Property in such condition as will, in the judgment of Mortgagee or any receiver thereof, make it readily rentable or salable);

(d) Any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and

(e) Any remaining funds to Mortgagor or its successors or assigns, as their interests and rights may appear.

**4.8 Receiver.** Upon the filing of any complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint a receiver of the Mortgaged Property. Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any employee or agent thereof may be



# UNOFFICIAL COPY

appointed as such receiver. Such receiver shall have the power to collect the rents, revenues, issues and profits of the Mortgaged Property during the pendency of any foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, revenues, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the Mortgaged Property during the whole of any such period. The court may, from time to time, authorize the receiver to apply the net income from the Mortgaged Property in payment in whole or in part of: (a) the Loan hereby secured or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale or deficiency.

**4.9 Foreclosure Sale.** In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

**4.10 Application of Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incidental to the foreclosure proceedings, including all such items as are mentioned in Paragraphs 4.4 and 4.5 hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the Default Rate; (c) all interest of whatever type remaining unpaid under the Note; (d) all principal remaining unpaid under the Note; and (e) any overplus to Mortgagor, or its successors or assigns, as their interests and rights may appear.

**4.11 Application of Deposits.** In the event of any Default, Mortgagee shall apply any monies or securities that constitute deposits made to or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Mortgagor's or the Mortgagor's obligations under the Note, this Mortgage, or any of the other Collateral Documents, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Mortgaged Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Note and any other indebtedness secured hereby and shall be held to be applied irrevocably by such depository for the purposes for which made

92407181

# UNOFFICIAL COPY

hereunder and shall not be subject to the direction or control of Mortgagor.

**4.12 Waiver of Right of Redemption or Other Rights.** To the full extent permitted by law, Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, any stay, exemption or extension law or any so-called "Moratorium Laws" nor or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note.

## ARTICLE V MISCELLANEOUS

**5.1 Notices.** Any notice that Mortgagee or Mortgagor may desire or be required to give to the other shall be in writing and shall be mailed or delivered to the intended recipient thereof at its address hereinbelow set forth, or at such other address as such intended recipient may, from time to time, by notice in writing, designates to the sender pursuant hereto. Any such notice shall be deemed to have been delivered two (2) business days after mailing by United States registered or certified mail, return receipt requested, postage prepaid addressed to a party at its address set forth below or such other address as the party to receive such

92407181

# UNOFFICIAL COPY

notice may have designated to all other parties by notice in accordance herewith or when delivered in person.

(a) If to Mortgagor:

PEOPLES HOUSING  
1607 West Howard Street  
Suite 207  
Chicago, Illinois 60626  
Attn: Donna Smithey

with a copy to:

DAVID L. GOLDSTEIN, ESQ.  
35 East Wacker Drive  
Site 1750  
Chicago, Illinois 60601

(b) If to Mortgagee:

NCB DEVELOPMENT CORPORATION  
1630 Connecticut Avenue, N.W.  
Washington, D.C. 20009-1004  
Attn: Noreen A. Beiro

and after March 30, 1992, to:

NCB DEVELOPMENT CORPORATION  
1401 I Street, N.W.  
Suite 700  
Washington, D.C. 20005  
Attn: Noreen A. Beiro

with a copy to:

HORWOOD, MARCUS & BRAUN CHARTERED  
333 West Wacker Drive  
Suite 2800  
Chicago, Illinois 60606-1227  
Attn: Michael S. Mandell, Esq.

5.2 **Time of Essence.** It is specifically agreed that time is of the essence of this Mortgage.

5.3 **Covenants Run With Land, Successor Owners.** All of the covenants of this Mortgage shall run with the land and be binding on any successor owners of the Premises. In the event that the ownership of the Premises or any portion thereof becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Loan hereby secured in the same manner as with Mortgagor without in any

18146536

Office

# UNOFFICIAL COPY

way releasing or discharging Mortgagor from its obligations hereunder. Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph shall vary or negate the provisions of Paragraph 3.10 hereof.

**5.4 Governing Law.** This Mortgage shall be governed by the laws of the State of Illinois. To the extent that this Mortgage may operate as a security agreement under the Uniform Commercial Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein.

**5.5 Rights and Remedies Cumulative.** All rights and remedies set forth in this Mortgage are cumulative, and the holder of the Note and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

**5.6 Severability.** If any provision of this Mortgage, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstance, is held invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

**5.7 Non-Waiver.** Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by any interested party referred to herein, to or of any breach or default by any other interested party referred to herein, in the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.

**5.8 Headings.** The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof.

**5.9 Grammar.** As used in this Mortgage, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

**5.10 Deed in Trust.** If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

# UNOFFICIAL COPY

5.11 **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon Mortgagor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through Mortgagor, and the word "Mortgagor," when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Notes or this Mortgage. The word "Mortgagee," when used herein, shall include Mortgagee's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note.

5.12 **Only Mortgagor/Mortgagee Relationship.** Nothing contained in this Mortgage or any of the other Collateral Documents shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Mortgagor and Mortgagee, it being expressly understood and agreed that neither the method of computation of the amounts due under the Collateral Documents nor any act of the parties hereto shall be deemed to create any relationship between Mortgagor and Mortgagee other than the relationship of mortgagor and mortgagee.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the date hereinafter first written.

MORTGAGOR:

PEOPLES HOUSING, an Illinois non-for-profit corporation

By: Wanda J. Smith

Its: Executive Director

ATTEST:

By: \_\_\_\_\_

Its: \_\_\_\_\_



UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 29, 30, 31 AND 32 (EXCEPT THE SOUTH 2 FEET OF LOT 32) IN BIRCHWOOD ADDITION TO EVANSTON IN SECTION 30, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING A SUBDIVISION OF THAT PART OF THE SOUTH 6.25 CHAINS OF THE NORTH EAST QUARTER LYING EAST OF RIGHT OF WAY OF THE CHICAGO MILWAUKEE AND ST. PAUL RAILROAD (EXCEPT THE SOUTH 33 FEET THEREOF CONVEYED TO THE CITY OF EVANSTON FOR STREET PURPOSES) IN COOK COUNTY, ILLINOIS.

PIN . 11-30-218-021, 11-30-218-022, 11-30-218-023  
11-30-218-02A

C.K.A. 7616 N. Marshfield, Chicago, Illinois



UNOFFICIAL COPY

Property of Cook County Clerk's Office

02/29/18