

# UNOFFICIAL COPY

92197182

## ASSIGNMENT OF LEASES, RENTS, ISSUES AND PROFITS

THIS ASSIGNMENT OR LEASES, RENTS, ISSUES AND PROFITS ("Assignment"), made this 20 day of March, 1992, by Peoples Housing, an Illinois not-for-profit corporation ("Assignor"), having an office at 1607 West Howard Street, Suite 207, Chicago, Illinois, to NCB Development Corporation, a District of Columbia corporation ("NCBDC").

DEPT. OF RECORDING & ADMINISTRATION  
 174444 TRAN 5859 03/25/92 11:38:00 \$43.00  
 : #2280 # D \*-92-197182  
 COOK COUNTY RECORDER

### R E C I T A L S

WHEREAS, Assignor and NCBDC are parties to a Loan and Security Agreement of even date herewith (the "Loan Agreement") pursuant to which NCBDC has agreed to make a loan to Assignor, in the aggregate principal amount of up to \$500,000.00 (the "Loan") on the terms and conditions set forth in the Loan Agreement and for the purposes set forth therein; and

WHEREAS, as evidence of the indebtedness incurred under the Loan, Assignor has executed and delivered to NCBDC a Note of even date herewith, payable to NCBDC, in the original principal amount of \$500,000.00 (the "Note"), payment of which is secured by, among other things, a Mortgage of even date herewith (the "Mortgage") from Assignor covering the real estate described therein as well as other security; and

WHEREAS, the execution and delivery of this Assignment is a condition precedent to the performance by NCBDC of its obligations under the Loan Agreement.

### A G R E E M E N T

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, Assignor agrees as follows:

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby unconditionally and absolutely transfers, assigns and sets over to NCBDC, its successors and assigns, from and after the date hereof, all of Assignor's right, title and interest in and to (a) all leases, subleases, licenses, rental contracts and other agreements, now existing or hereafter entered into, relating to the occupancy and affecting that certain real property located at 7616 North Marshfield Avenue, Chicago, Illinois as more fully described in Exhibit A attached hereto and made a part hereof (the "Premises"), together with all guarantees, modifications, extensions and renewals thereof which now exist or may hereafter be made (collectively, the "Leases"), and (b) all rents, issues, profits, income and proceeds due or to become due from tenants of the

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Premises, including but not limited to, rentals under all present and future Leases, together with all deposits of tenants thereunder, including, without limitation, security deposits, now or hereafter held by Assignor in connection with the Premises (collectively, the "Rents").

In connection with and as part of the foregoing assignment, Assignor hereby makes the following grants, covenants, agreements, representations and warranties:

1. Subject to the provisions of Paragraph 3 below granting Assignor a revocable, limited license, NCBDC shall have the right, power and authority: (a) to collect Rents and to notify any and all tenants and other obligors on Leases that the same have been assigned to NCBDC and that all Rents are to be paid directly to NCBDC (and such tenants are hereby authorized to make such payments to NCBDC without inquiry of any kind), whether or not NCBDC shall have foreclosed or commenced foreclosure proceedings against the Premises and whether or not NCBDC has taken possession of the Premises, (b) to settle, compromise or release, on terms acceptable to NCBDC, in whole or in part, any amounts owing under any Leases and any Rents; (c) to enforce payment of Rents and to prosecute any action or proceeding, and to defend legal proceedings, with respect to any and all Rents and Leases and to extend the time of payment, make allowances, adjustments and discounts; (d) to enter upon, take possession of and operate the Premises; (e) to lease all or any part of the Premises, and/or (f) to enforce all other rights of the lessor under the Leases. Notwithstanding anything herein to the contrary, NCBDC shall not be obligated to perform or discharge, and NCBDC does not undertake to perform or discharge under or by reason of this Assignment, any obligation, duty or liability (including, without limitation, liability under any covenant of quiet enjoyment contained in any Lease or under the law of any state in the event that any tenant shall be joined as a party defendant in any action to foreclose the Mortgage, and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Premises) with respect to the Leases or the Rents. This Assignment shall not operate to place responsibility for the control, care, maintenance or repair of the Premises upon NCBDC, or to make NCBDC responsible or liable for any waste committed on the Premises by any tenant or other person, for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises. Nothing contained in this Assignment shall be construed as constituting NCBDC a trustee or mortgagee in possession.

2. NCBDC shall have the right, power and authority to use and apply any Rents received hereunder (a) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this Assignment or the rights of NCBDC hereunder, and collecting any Rents, and (b) for the operation and maintenance of the Premises and the payment of all costs and

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expenses in connection therewith, in such order and manner as NCBDC shall determine, including, without limitation, the payment of (i) rentals and other charges payable by Assignor under any ground lease affecting the Premises, (ii) interest, principal or other amounts with respect to any and all loans secured by mortgages on the Premises, including, without limitation, the Mortgage, (iii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Premises or any part thereof, (iv) insurance premiums, (v) costs and expenses with respect to any litigation affecting the Premises, the Leases or the Rents, (vi) wages and salaries of employees, commissions of agents and attorneys' fees, and (vii) all other carrying costs, fees, charges and expenses whatsoever relating to the Premises. To the extent not paid pursuant to the immediately preceding sentence, after the payment of all such costs and expenses and after NCBDC shall have set up such reserves as it, in its reasonable discretion, shall deem necessary for the proper management of the Premises, NCBDC shall apply all remaining Rents collected and received by it to the reduction of the Indebtedness (as defined in the Loan Agreement). Exercise or nonexercise by NCBDC of the rights granted in this Assignment, or collection and application of Rents by NCBDC or its agent shall not be a waiver of any default by Assignor under this Assignment, the Mortgage, the Loan Agreement, the Note or any other Collateral Document (as defined in the Loan Agreement). No action or failure to act by NCBDC with respect to any of the obligations of Assignor under the Collateral Documents, to any security or guarantee given for the payment or performance thereof, or to any other document or instrument evidencing or relating to such obligations, shall in any manner affect, impair or prejudice any of NCBDC's rights and privileges under this Assignment or discharge, release or modify any of Assignor's duties or obligations hereunder. This Assignment is intended by Assignor and NCBDC to create, and shall be construed to create, an absolute assignment to NCBDC, subject only to the terms and provisions hereof, and not an assignment as security for the payment of the Indebtedness and performance of the obligations evidenced by the Collateral Documents, or for any other indebtedness of Assignor.

3. Assignor shall have a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Such license may be revoked by NCBDC, without notice to Assignor, upon the occurrence of an Event of Default (as defined in the Loan Agreement) or upon default by Assignor of its agreements, obligations, representations or warranties under this Assignment. Unless and until such license is so revoked, Assignor agrees to apply the proceeds of Rents to the payment of debt service on the Premises and of taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Premises or any part thereof, insurance premiums, tenant finish and other obligations of Assignor as lessor under the Leases, and to

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operation and maintenance charges relating to the Premises which are due and payable at the time of collection of such proceeds of Rents before using such proceeds for any other purpose. Assignor agrees that (i) as between Assignor and NCBDC (and their successors and assigns), the Leases shall remain in full force and effect irrespective of any merger of the interest of the lessor and lessee thereunder; (ii) that none of the rights or remedies of NCBDC under the Mortgage shall be delayed or in any way prejudiced by this Assignment; and (iii) notwithstanding any variation of the terms of the Mortgage or any extension of time for payment thereunder or any release of any portion of the Mortgaged Premises (as defined in the Mortgage), the assignment of Leases and benefits made pursuant hereto shall remain in full force and effect until the obligations set forth in Paragraph 4 of this Assignment have been satisfied. Assignor shall (a) observe and perform faithfully every obligation which Assignor is required to perform under the Leases; (b) enforce, or secure the performance of, at its sole cost and expense, every obligation to be performed by the tenants under the Leases; (c) promptly give notice to NCBDC of any notice of default received by Assignor from any tenant under the Leases, and any notice of default given by Assignor to any tenant under the Leases together with a copy of such notices; (d) not collect any Rents for more than thirty (30) days in advance of the time when the same shall become due, or permit any payments under any of the Leases, except for bona fide security deposits not in excess of an amount equal to two (2) month's rent; (e) not discount any future accruing Rents; (f) not further assign any of the Leases or the Rents; (g) except with NCBDC's prior written consent, not waive, condone or in any manner discharge any tenants from their obligations under the Leases; (h) not cancel, abridge or accept surrender or termination of any of the Leases unless Assignor shall have entered into a Lease for the space to be vacated as a result thereof upon terms (including, without limitation, rentals and term) at least as favorable to Assignor and commencing within thirty (30) days after such cancellation, abridgment, surrender or termination unless such surrender or termination is a result of the default of the tenant, thereunder; (i) not modify or amend, by sufferance or otherwise, any of the Leases or any of the terms, provisions or covenants thereof or grant any concessions in connection therewith; (j) execute any further leases of any portion of the Premises without the prior written approval of NCBDC; (k) provide in all Leases executed after the date hereof that any cancellation, abridgment, surrender, modification or amendment of such Leases, without the prior written consent of NCBDC, shall be voidable as against NCBDC, at its option; (l) comply with all laws, rules, orders, ordinances and requirements of all governmental authorities relating to the Premises; (m) deliver to NCBDC copies of all Leases and amendments to Leases promptly after the execution of such Lease or amendment, as the case may be; (n) appear in and defend against, at Assignor's sole cost and expense, any action or proceeding arising under, or in any manner connected with the Leases, the Rents or the obligations, duties or liabilities of the lessor, tenants or



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guarantors thereunder; and (o) furnish loss of rents insurance to NCBDC in accordance with the terms of the Mortgage.

4. This Assignment shall continue in full force and effect until (a) all sums due and payable under the Collateral Documents shall have been fully paid and satisfied, together with any and all other sums which may become due and owing under this Assignment, and (b) all other obligations of Assignor under the Collateral Documents have been satisfied. At such time, this Assignment and the authority and powers herein granted by Assignor to NCBDC shall cease and terminate and Assignor shall assume payment of all unmatured or unpaid charges, expenses or obligations incurred or undertaken by NCBDC, if any, in connection with the management of the Premises.

5. Assignor hereby represents and warrants the following to NCBDC:

(a) The Leases which now affect the Premises, if any, are valid, subsisting and in full force and effect, and have been duly executed and unconditionally delivered by Assignor and, to the best of Assignor's knowledge and belief, have been duly executed and unconditionally delivered by the tenants under the Leases; (b) Assignor has good right to sell, assign, transfer and set over the Leases as provided herein and to grant and confer upon NCBDC the rights, interest and powers granted and conferred herein; (c) Assignor has not executed or granted any modifications or amendments of the Leases either orally or in writing not previously exhibited to and approved by NCBDC; (d) there are no material defaults now existing under any of the Leases and, to the best of Assignor's knowledge and belief, there are no defaults now existing under any of the Leases and no event has occurred which, with the delivery of notice or the passage of time or both, would constitute such a default or which would entitle the lessor under the Leases or the tenants thereunder to cancel the same or otherwise avoid their obligations thereunder; (e) Assignor has not assigned or pledged any of the Leases or its right, title and interest therein; (f) that no rents have been paid by any tenant for more than one installment in advance, and that the payment of none of the Rents to accrue under the Leases has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Assignor; and (g) that no security deposit has been made by any tenant under the Leases except as shown on Exhibit B attached hereto.

6. Assignor hereby irrevocably constitutes and appoints NCBDC its true and lawful attorney in fact, to undertake and execute any or all of the rights or powers described herein with the same force and effect as if undertaken or executed by Assignor, and Assignor hereby ratifies and confirms any and all things done or omitted to be done by NCBDC, its agents, servants, employees or

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attorneys in, to or about the Premises. The foregoing power of attorney is coupled with an interest.

7. NCBDC shall not in any way be liable to Assignor or any other party for any act done or anything omitted to be done to the Premises, the Leases or the Rents by or on behalf of NCBDC in good faith in connection with this Assignment except for the consequences of its own gross negligence or willful misconduct. NCBDC shall not be liable for any act or omission of its agents, servants, employees or attorneys, provided that reasonable care is used by NCBDC in the selection of such agents, servants, employees and attorneys. NCBDC shall be accountable to Assignor only for monies actually received by NCBDC pursuant to this Assignment.

8. Assignor shall indemnify, defend and hold NCBDC and its officers, directors, employees and agents harmless from and against any and all liability, loss, damage, cost or expense, including attorneys' fees, which it may incur under any of the Leases, or with respect to this Assignment or any action or failure to act of NCBDC hereunder, and from and against any and all claims and demands whatsoever which may be asserted against NCBDC by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants and conditions of any of the Leases or with respect to any Rents, except to the extent caused by or resulting from the gross negligence or willful misconduct of NCBDC, its agents, employees or representatives or the failure of NCBDC to materially comply with the terms hereof. In the event that NCBDC incurs any such liability, loss, damage, cost or expense, the amount thereof, together with interest thereon from the date such amount was suffered or incurred by NCBDC until the same is paid by Assignor to NCBDC at a rate equal to the Default Rate (as defined in the Note) shall be payable by Assignor to NCBDC immediately upon demand, or at the option of NCBDC, NCBDC may reimburse itself therefor out of any Rents collected by NCBDC.

9. Any amounts received by Assignor or its agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification, or amendment of any of the Leases prohibited by the terms of this Assignment and any amounts received by Assignor as rents, income, issues, or profits from the Premises from and after the occurrence of an Event of Default under the Loan Agreement, Mortgage or default hereunder, shall be held by Assignor as trustee for NCBDC and all such amounts shall be accounted for to NCBDC and shall not be commingled with other funds of Assignor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for NCBDC as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith; by way of example and not of limitation, such notice may be given by an instrument recorded with the Recorder of Deeds of Cook County stating that

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Assignor has received or will receive such amounts in trust for NCBCDC.

10. This Assignment is intended to be supplementary to and not in substitution for or in derogation of any assignment of rents to secure said indebtedness contained in the mortgage or in any other document. Any provision in the Loan Agreement that pertains to this Assignment shall be deemed to be incorporated herein as if such provision was fully set forth in this Assignment. In the event of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail. A provision in this Assignment shall not be deemed to be inconsistent with the Loan Agreement by reason of the fact that no provision in the Loan Agreement covers such provision in this Assignment.

11. Upon issuance of a deed or deeds pursuant to foreclosure of the Mortgage, all right, title and interest of Assignor in and to the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Assignor

12. All notices, demands, requests and other communications which are required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given when delivered or mailed in the manner set forth in the Loan Agreement.

13. Upon request of NCBCDC, Assignor shall execute and deliver to NCBCDC, such further instruments as NCBCDC may deem necessary to effect this Assignment and the covenants of Assignor contained herein. Assignor shall cause such further instruments to be recorded in such manner and in such places as may be required by NCBCDC.

14. This Assignment shall be assignable by NCBCDC to any assignee of NCBCDC under the Loan Agreement, and all of the representations, warranties, covenants, agreements and provisions in this Assignment shall bind and inure to the benefit of NCBCDC and Assignor and their respective legal representatives, successors and assigns.

15. This Assignment may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

16. This Assignment shall be governed by, construed and enforced in accordance with the laws of the State of Illinois.

17. It is expressly intended, understood and agreed that this Assignment, and the other Collateral Documents, are made and entered into for the sole protection and benefit of Assignor and

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NCBDC, and their respective successors and assigns; that no other person shall have any right at any time to action hereon or rights to the proceeds of the Loan, that the Loan proceeds do not constitute a trust fund for the benefit of any third party; that no third party shall under any circumstances be entitled to any equitable lien on any undisbursed Loan proceeds at any time; and that NCBDC shall have a lien upon and right to direct application of any undisbursed Loan proceeds as provided in the Collateral Documents.

18. The relationship between Assignor and NCBDC is solely that of a lender and borrower, and nothing contained herein or in any of the Collateral Documents shall in any manner be construed as making the parties hereto partners, joint venturers or any other relationship other than lender and borrower.

19. Assignor and NCBDC intend and believe that each provision in this Assignment comports with all applicable local, state or federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Assignment is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision or public policy, and if such court should declare such portion, provision or provisions of this Assignment to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Assignor and NCBDC that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Assignment shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein and that the rights, obligations and the interests of Assignor and NCBDC under the remainder of this Assignment shall continue in full force and effect.



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IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed and delivered on the date first above written.

BORROWER:

PEOPLES HOUSING, an Illinois not-for-profit corporation

ATTEST:

By:

Don P. Smith  
Its: Executive Director

By:

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

THIS INSTRUMENT WAS PREPARED BY  
AND AFTER RECORDING SHOULD BE  
RETURNED TO:

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

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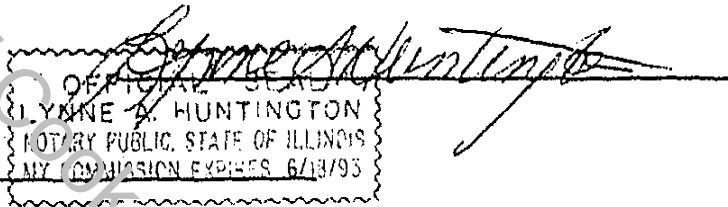
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STATE OF ILLINOIS )  
                          ) SS  
COUNTY OF C O O K )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donna Smithley, as Executive Director of PEOPLES HOUSING, and \_\_\_\_\_, as \_\_\_\_\_ of PEOPLES HOUSING, who are known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as a free and voluntary act, and as the free and voluntary act of PEOPLES HOUSING, an Illinois not-for-profit corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 20<sup>th</sup> day of March, 1992.

My commission expires:



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## 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  
11-30-218-027

C/K/A 7616 N. Marshfield, Chicago, IL

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## EXHIBIT B

### Schedule of Security Deposits

None

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