

UNOFFICIAL COPY

99517503

1004/0184 04 001 Page 1 of 10

1999-05-28 13:00:53

Cook County Recorder 39.00



99517503

7813131 DE CA

ASSIGNMENT OF LEASES AND RENTS

THIS AGREEMENT, made this 27th day of May, 1999, by and between TINLEY PARK HOTEL & CONVENTION CENTER, LLC, an Illinois limited liability company, hereinafter referred to as "Borrower", and CITIZENS FINANCIAL SERVICES, FSB, Munster, Indiana, hereinafter referred to as "Lender",

WITNESSETH THAT:

WHEREAS, the Lender has agreed to lend the Borrower the sum of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), upon certain terms and conditions, to be evidenced by the Borrower's Promissory Note ("Note"), and by a valid Mortgage ("Mortgage") on the real estate hereinafter described (hereinafter called "Subject Property"), given to secure the payment of said Note, which real estate is legally described as follows:

10

BOX 333-CTI

UNOFFICIAL COPY

99517503

SEE EXHIBIT "A" attached hereto and incorporated herein as if fully set forth,

and, known as vacant land at 183rd Street and Harlem Avenue, (NE corner of I-80 and Harlem Avenue) Tinley Park, Illinois.

WHEREAS, the Borrower may enter into certain Lease and/or Sub-Lease Agreements, of all or part of the Subject Property and improvements above described; and,

WHEREAS, the Borrower desires to further secure the Lender for the full and complete performance of each of the covenants, agreements and promises contained in the Note, the Mortgage, and all other instruments which secure the indebtedness from Borrower to Lender;

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00), in hand paid to the Borrower, the receipt whereof is hereby acknowledged, the Borrower does hereby assign, transfer and set over as further security for the payment of said Note, its entire position as Lessor with respect to any Lease and/or Sub-Lease Agreement (hereinafter collectively called "Subject Leases"), whether heretofore or hereafter created, pertaining to all or any portion of the Subject Property, together with all its rights, title and interest in and to all rents, issues and profits now due or to become due and derived from the Subject Property, until the obligation above referred to shall have been fully paid and satisfied or until the Lender

shall be entitled to such possession by order of court or operation of law.

The Borrower also warrants that the payment of the rents to accrue under the Subject Leases has not been, nor shall be, waived, released, reduced, discounted or otherwise discharged or compromised by the Borrower, directly or indirectly; and that the Borrower has not heretofore assigned or pledged the same or any interest therein, excepting existing encumbrances, liens and easements of record.

The Borrower does hereby constitute and appoint the Lender its Attorney-in-Fact, irrevocably in its name, to receive, collect and receipt for all sums due or owing and to become due or owing for the use and occupation of the Subject Property, or any part thereof, and to do each and every thing necessary for proper management of the Subject Property; provided, however, that so long as there shall exist no default by the Borrower in the payment of any indebtedness secured hereby, or in the performance of any obligation of the Borrower herein, or the Mortgage above described or any other instrument securing said indebtedness, the Borrower shall have the right to collect all rents, issues and profits from the Subject Property and to retain, use and enjoy the same.

PROVIDED, NEVERTHELESS, that if the Borrower shall well and truly pay or cause to be paid to the Lender the whole of the debt with interest thereon according to the conditions of the Note,

then this Assignment of Leases and Rents shall be void; otherwise it is to be and remain in full force and effect.

The Borrower hereby further agrees as follows:

1. That all stipulations and provisions of said Note and all the covenants and conditions of said Mortgage and any security agreement or other collateral documents securing the same shall remain in full force and effect to the same extent as if this Assignment had not been made.

2. That the Lender shall be liable for only so much of said rents as are actually received by it, and applied on account of said Mortgage indebtedness.

3. That the Borrower will, if requested, furnish the Lender, as promptly as possible, copies of all the Subject Leases not heretofore furnished.

4. That the Subject Leases shall remain in full force and effect irrespective of any merger of the interest of the Lessor and Lessee thereunder.

5. To use all reasonable efforts to obtain and maintain full occupancy of the improvements which are a part of the Subject Property at rentals at least equal to those payable for similar projects in the geographic area of the Subject Property.

6. To provide to Lender for its prior written approval as to form and content, a copy of each Lease Agreement prior to its becoming effective, and not to discount any future accruing rents, in any manner.

7. To not execute any other assignments, for the purpose of securing any indebtedness, of the Subject Leases, or any interest therein, or any of the rents thereunder, except in connection with the sale of the Subject Property.

8. To materially perform all of the Borrower's covenants and agreements as Lessor under the Subject Leases.

9. If so requested by the Lender, to enforce the Subject Leases and all remedies to the Borrower against the Lessees.

10. That none of the rights or remedies of the Lender under the Mortgage shall be delayed, or in any way be prejudiced, by this or any other assignment.

11. That notwithstanding any variation of the terms of the Mortgage or any extension of time for payment thereunder or any release of part of the Subject Property, the Subject Leases and benefits hereby assigned shall continue as additional security in accordance with the terms hereof.

12. Not to request, consent to, agree to or accept a subordination of the Subject Leases to any mortgage or other encumbrance now or hereafter affecting the Subject Property, or any portion thereof, without the prior written approval of the Lender, which approval will not be unreasonably withheld.

13. Not to exercise any right of election, whether specifically set forth in the Subject Leases or otherwise, which would in any way diminish the Lessee's liability or have the effect of shortening the stated term of the Subject Leases.

14. Nothing herein contained shall be construed as constituting the Lender as trustee or mortgagee in possession.

15. Upon issuance of a deed or deeds pursuant to foreclosure of the Mortgage, all right, title and interest of the Borrower in and to the Subject 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 further act or assignment by the Borrower. The Borrower hereby irrevocably appoints the Lender and its successors and assigns, as its agent and Attorney-in-Fact solely to execute all instruments of assignment or further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose. But nothing contained herein shall prevent the Lender from terminating any subordinate lease through such foreclosure.

16. Except as provided herein, in the exercise of the power herein granted the Lender, no liability shall be asserted or endorsed against the Lender, all such liability being hereby expressly waived and released by the Borrower. The Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Subject Leases, or under or be reason of this Assignment, and the Borrower shall and does hereby agree to indemnify the Lender for and to hold it harmless of and from any and all liability, loss or damage which it may or might incur under the Subject Leases or under or by reason of this Assignment

and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Subject Leases, except for Lender's gross negligence or willful misconduct and for all such acts of Lender that occur subsequent to Lender acting as Landlord under the Subject Leases. Should the Lender incur any such liability, loss or damage under the Subject Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney fees, shall be secured hereby, and the Borrower shall reimburse the Lender therefor immediately upon demand.

17. It is the intention of the parties that this instrument shall be a present assignment, and this Assignment shall constitute a direction to and full authority to the Lessee to pay all rents and other amounts due under the Subject Leases to the Lender. The Lessee is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by the Lender for the payment to the Lender of any rental or other sums which may be or thereafter become due under the Subject Leases, or for the performance of any of Lessee's undertaking under the Subject Leases and shall have no right or duty to inquire as to whether there exists a default by the Borrower in the payment of any indebtedness secured hereby or

in the performance of any obligation of the Borrower herein or in the Mortgage above described or any other instrument securing said indebtedness; provided, that nothing stated herein shall entitle Lender to demand or request Lessee to pay rents and other amounts due under the Subject Leases directly to Lender unless and until Borrower shall have defaulted under the Note, Mortgage or any other instrument securing indebtedness from Borrower to Lender.

18. This Assignment is intended to be supplementary to and not a substitution for, or in derogation of, any assignment of rents contained in the Mortgage, or in any other document.

19. This Assignment shall include any extensions and renewals of the Subject Leases and any reference therein to the Subject Leases, shall be construed as including any such extensions and renewals.

20. This instrument shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. The words "Borrower", "Lender", and "Lessee" wherever used herein, shall include the persons named herein and designated as such and their respective successors and assigns, and all words and phrases shall be taken to include the singular or plural and masculine, feminine or neuter gender as may fit the case. This Assignment of Leases and Rents shall be governed by the substantive laws of the State of Illinois.

UNOFFICIAL COPY

99517503

IN WITNESS WHEREOF, the Undersigned have executed this Agreement as of the date first above written.

BORROWER:

TINLEY PARK HOTEL & CONVENTION CENTER, LLC

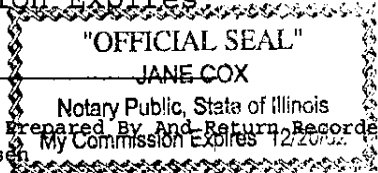
By: LAKECORP MANAGEMENT COMPANY
Its: Manager

By: [Signature]
Its: President

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

BE IT REMEMBERED, that on this 27th day of May, 1999, came before me, GERALD A. STILLMAN President of Lakecorp Management Company, Manager of Tinley Park Hotel & Convention Center, LLC, who being duly sworn upon oath, did acknowledge execution and delivery of the within instrument to be the act and deed of said limited liability company for the purposes therein contained.

My Commission Expires:



[Signature], Notary Public
County of Residence: DuPage

This Instrument Prepared By And Return Recorded Instrument To:
James L. Jorgensen
HOEPFNER WAGNER & EVANS LLP
103 E. Lincolnway
P.O. Box 2357
Valparaiso, Indiana 46384
Telephone: (219) 464-4961

UNOFFICIAL COPY

99517503

EXHIBIT A

THAT PART OF LOT 2 IN MAUDES SUBDIVISION, A SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 35 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, NORTH OF THE INDIAN BOUNDARY LINE, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE MOST NORTHWESTERLY CORNER OF SAID LOT 2; THENCE SOUTH 04 DEGREES 01 MINUTES AND 56 SECONDS EAST ON THE WEST LINE OF SAID LOT 2, A DISTANCE OF 514.58 FEET TO A POINT; THENCE SOUTH 03 DEGREES 58 MINUTES AND 34 SECONDS EAST ON THE WEST LINE OF SAID LOT 2, A DISTANCE OF 500.75 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88 DEGREES 52 MINUTES AND 50 SECONDS ON A LINE PARALLEL WITH THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 483.30 FEET TO A POINT; THENCE SOUTH 60 DEGREES 38 MINUTES AND 37 SECONDS EAST, A DISTANCE OF 156.67 FEET TO A POINT; THENCE SOUTH 29 DEGREES 21 MINUTES AND 23 SECONDS WEST, A DISTANCE OF 159.71 FEET TO A POINT; THENCE SOUTH 01 DEGREES 07 MINUTES AND 09 SECONDS EAST, A DISTANCE OF 267.03 FEET TO A POINT; THENCE SOUTH 88 DEGREES 52 MINUTES AND 50 SECONDS WEST ON A LINE PARALLEL WITH THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 230.37 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 2; THENCE (THE FOLLOWING THREE COURSES BEING ALONG THE WESTERLY LINE OF SAID LOT 2 IN MAUDES SUBDIVISION) NORTH 47 DEGREES 41 MINUTES AND 09 SECONDS WEST, A DISTANCE OF 265.58 FEET TO A POINT ON A CURVE; THENCE NORTHWESTERLY ALONG SAID CURVE CONVEX TO THE SOUTHWEST, HAVING A RADIUS OF 425 FEET, CHORD BEARING OF NORTH 27 DEGREES 40 MINUTES AND 19 SECONDS WEST A DISTANCE OF 299.69 FEET TO A POINT; THENCE NORTH 03 DEGREES 58 MINUTES AND 34 SECONDS WEST A DISTANCE OF 30.51 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

(CONTAINING 5 ACRES MORE OR LESS)

31-06-100-015

VACANT 183RD & HARLEM AVY, TINGLEY PARK
(NE corner of 1-80 + Harlem Av)