



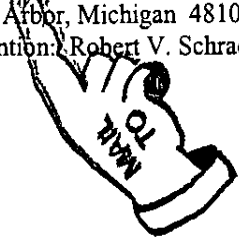
98-09356 5 of 7

Prepared By:

Kristin A. Hermann, Esq.
Miller, Canfield, Paddock & Stone, P.L.C.
101 North Main Street, Seventh Floor
Ann Arbor, Michigan 48104-1400

When Recorded Return To:

Captec Financial Group, Inc.
24 Frank Lloyd Wright Drive
Lobby L, Fourth Floor
P.O. Box 544
Ann Arbor, Michigan 48106-0544
Attention: Robert V. Schrader



Loan No. 8617
686 W. 14th Street
Chicago Heights, Illinois 60422

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made this ^{6th} day of January 1999, by **CHI-CO, INC.**, a Colorado corporation, whose address is 4101 East Louisiana Ave., Suite 200, Denver, Colorado 80222 ("Assignor"), in favor of **CAPTEC FINANCIAL GROUP, INC.**, a Michigan corporation, whose address is 24 Frank Lloyd Wright Drive, Lobby L, 4th Floor, P.O. Box 544, Ann Arbor, Michigan 48106-0544 (together with its successors, assigns and transferees, "Assignee"). This instrument shall become effective on February 2, 1999.

PRELIMINARY STATEMENT

This Assignment is made to secure all of the following (individually and collectively the "Indebtedness"):

A. Payment in the sum of Four Hundred Three Thousand and 00/100 Dollars (\$403,000.00), together with interest, costs and all other sums, to be paid according to that certain Promissory Note ("Note"), by Assignor to Assignee, made as of the date of this Assignment by Assignor, together with any and all extensions, renewals, modifications, substitutions or replacements thereof; and the performance of the covenants and obligations of Assignor due or to become due to Assignee under this Assignment or under any other documents securing payment of all amounts due under the Note (collectively, the "Loan Documents"), and the repayment of all sums expended by Assignee in connection with performance of those covenants and obligations.

Lawyers Title Insurance Corporation

T.R.

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B. If the Note, Assignee's interest in this Assignment and the Loan Documents are assigned to a trust sponsored by Lender or any of its affiliates to securitize its loan receivables (the "Trust"), "Indebtedness" shall also include the payment of all other sums (together with interest and costs thereon) concurrently or subsequently loaned to Assignor by Captec Financial Group, Inc., Captec Financial Group Funding Corporation, a Michigan corporation, or by Captec Leasing Company, a California corporation (each an "Originator"), as evidenced and/or secured by certain notes and other documents of Assignor with respect to such amounts and which notes and other documents are assigned to the Trust, together with any and all extensions, renewals, modifications, substitutions or replacements thereof; and the performance of the covenants and obligations of Assignor due or to become due under such notes and other documents assigned to the Trust, and the repayment of all sums expended in connection with performance of those covenants and obligations (collectively, the "Trust Obligations").

C. If the Note, Assignee's interest in this Assignment and the Loan Documents are not assigned to the Trust, "Indebtedness" shall also include the payment of all other sums (together with interest thereon) concurrently or subsequently loaned to Assignor by an Originator, as evidenced and secured by certain notes and/or other documents of Assignor which are not assigned to the Trust, together with any and all extensions, renewals, modifications, substitutions or replacements thereof; and the performance of the covenants and obligations of Assignor due or to become due under such notes and other documents, and the repayment of all sums expended in connection with performance of those covenants and obligations (collectively, the "Retained Obligations").

1. **ASSIGNMENT.** For consideration received and as security for the purposes stated in this Assignment, Assignor unconditionally and irrevocably grants, transfers, assigns and sets over to Assignee all of the right, title and interest of Assignor in and to:

(a) **Leases.** All existing and future leases (or subleases if Assignor is the owner of the primary leasehold estate), whether written or oral, applying to all or any part of the Mortgaged Property (as defined below), together with all extensions, renewals or replacements of such leases (or subleases) (collectively, "Leases"). For purposes of this Assignment, "Mortgaged Property" shall mean Assignor's interest in the real property located in the County of Cook, State of Illinois, more particularly described on the attached Exhibit A, together with all present and future privileges, easements, appurtenances, and other rights belonging thereto, all present and future buildings and improvements located thereon, and rents, profits and proceeds of sale therefrom.

(b) **Guarantees.** Any and all guarantees of performance under any of the Leases.

(c) **Rent.** The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits due or to become due or to which Assignor is now or in the future (including the period of redemption, if any) entitled to or may demand or claim, arising with respect to the Leases or the Mortgaged Property; including, without limit, minimum rents, additional rents, percentage rents, parking, maintenance, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents and liquidated damages following default, the premium payable by any lessee upon the exercise of cancellation privilege provided in any Lease, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Mortgaged Property or any part thereof, together with any and all rights and claims of any kind which Assignor may have against any lessee under any Lease or any subtenants or occupants of the Mortgaged Property (collectively, "Rents").

(d) **Security Deposits.** All security deposits, damage deposits and other funds paid to Assignor by any lessee under any Lease, whether paid in a lump sum or installments.

2. **GRANT OF SECURITY.** This Assignment is made and intended to secure the Indebtedness.

3. **GRANT OF LICENSE.** So long as no Event of Default (defined below) exists, Assignor is granted a license to collect the Rents arising under the Leases. Assignor shall receive all Rents, and shall hold all Rents, as well as the right and license to receive all Rents, in trust for the benefit of Assignee. Assignor covenants to apply all Rents: first, to the payment of taxes and assessments; second, to the payment of insurance premiums and

maintenance and repairs of the Mortgaged Property; third, to the satisfaction of all obligations under the Leases; and fourth, to the payment of interest and principal becoming due on the Indebtedness.

4. **REPRESENTATIONS AND WARRANTIES.** Assignor represents and warrants that:

(a) **Title.** Assignor is the owner in fee simple of the Mortgaged Property, or if Assignor is lessee under a ground lease, that Assignor has a valid leasehold estate. Assignor has good title to the Leases and Rents, and good right to assign the same. No other person or entity has any right, title or interest in the Leases or Rents.

(b) **Performance.** Assignor has duly and punctually performed all terms, covenants, conditions and warranties under the Leases on Assignor's part to be performed.

(c) **Valid Leases.** The Leases are valid, unmodified and in full force and effect.

(d) **No Prior Assignment.** Assignor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents.

(e) **Collection of Rents.** The Rents from the Mortgaged Property for any period subsequent to the date of this Assignment have not been collected and payment of the Rents has not been waived, released, discounted, set-off or otherwise discharged or compromised.

(f) **Deposits.** Assignor has not received any deposit from any lessee under any Lease.

(g) **No Default.** The lessees under the Leases are not in default under any of the terms of the Leases.

5. **AFFIRMATIVE COVENANTS.** Assignor covenants and agrees as follows:

(a) **Performance.** To perform all obligations, terms, covenants, conditions and warranties under the Leases on Assignor's part to be performed, and to give prompt written notice to Assignee of any failure on Assignor's part to perform the same.

(b) **Notice of Assignment.** To notify, in writing, and direct each lessee or occupant of the Mortgaged Property that any security deposit or other deposits delivered to Assignor have been retained by Assignor or have been assigned and delivered to Assignee, as the case may be.

(c) **Enforcement.** To enforce the performance by each lessee of each and every obligation, term, covenant, condition and agreement in the Leases to be performed.

(d) **Notice of Default.** To give Assignee written notice of default by any lessee under any Lease.

(e) **Actions.** To appear in and defend any action or proceeding arising under, or in any manner connected with, the Leases or the obligations, duties or liabilities of Assignor or any lessee under the Leases, and upon request by Assignee, do so in the name and on behalf of Assignee, but at the expense of Assignor.

(f) **Costs.** To pay all costs and expenses of Assignee, including reasonable attorneys' fees with respect to the Assignment or the enforcement of Assignee's rights under this Assignment.

(g) **Settlement.** In the event any lessee or guarantor of any Lease should be the subject of any bankruptcy proceeding or any other federal, state or local statute which provides for the possible termination or rejection of any Lease, or any guarantee of any Lease, and in the event such Lease is rejected or guarantee terminated, Assignor will make no damages settlement without the prior written consent of Assignee.

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(h) **Delivery of Leases.** Until the Indebtedness is paid and performed in full, to deliver to Assignee, within ten (10) days of the date of execution of a Lease, an executed copy thereof, and to transfer and assign future Leases upon the same terms and conditions as contained in this Assignment, and to make, execute and deliver, upon Assignee's demand, any and all assignments and other instruments sufficient for that purpose.

6. **NEGATIVE COVENANTS.** Assignor further covenants and agrees as follows:

(a) **Collection of Rents in Advance.** Not to receive or collect Rents from any lessee for a period of more than one (1) month in advance, nor pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents.

(b) **Waivers.** Not to waive, excuse, discount, compromise or in any manner release or discharge any lessee from any obligations, covenants, conditions or agreements arising under any Lease.

(c) **Modifications.** Not to cancel, terminate or consent to any surrender of any Lease nor modify or in any way alter the terms of any Lease.

7. **EVENTS OF DEFAULT.** The occurrence of a default or an event of default under any document evidencing or securing the Indebtedness shall constitute an Event of Default under this Assignment.

8. **REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default, Assignee, at its option, shall have the rights, power and authority under this Assignment to exercise and enforce any or all of the following rights and remedies:

(a) **Termination of License.** To terminate the license granted to Assignor to collect the Rents, and thereafter, without taking possession, in Lender's name, to demand, collect, receive, sue for, attach and/or levy the Rents, to give proper receipts, releases and acquittances for the Rents, and after deducting all necessary and proper costs and expenses of operation and collection, as determined by Assignee, including reasonable attorneys' fees, to apply the net proceeds, upon the Indebtedness in such manner as Assignee may determine.

(b) **Acceleration of Indebtedness.** To declare all or part of the Indebtedness immediately due and payable.

(c) **Actions of Lender.** Without regard to the adequacy of the security, with or without legal action or proceeding, through any person or agent, or by a receiver appointed by court, and irrespective of Assignor's possession of the Mortgaged Property, to enter upon, take possession of, manage and operate the Mortgaged Property; make, modify, enforce, cancel or accept surrender of any Lease; remove and evict any lessee; increase or decrease rents; decorate, clean and repair; and otherwise do any act or incur any costs or expense as Assignee shall deem proper to protect the security of this Assignment as fully and to the same extent as Assignor could do if in possession; and, in such event, to apply the Rents collected to the operation and management of the Mortgaged Property, but in such order as Assignee shall deem proper (including the payment of reasonable management, brokerage and attorneys' fees) and to the payment of Indebtedness in such manner as Assignee may determine.

(d) **Secured Party.** Exercise all rights, remedies and privileges afforded a "secured party" under Article 9 of the Illinois Uniform Commercial Code.

(e) **No Obligation by Lender.** Acceptance by Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Mortgaged Property by Assignee, be deemed or construed to constitute Assignee a mortgagee in possession, nor thereafter or at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases or to the Mortgaged Property, or to take any action under this Assignment, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any lessee and not

assigned and delivered to Assignee; nor shall Assignee be liable in any way for any injury or damage to any person or property sustained in or about the Mortgaged Property.

(f) **No Waiver.** The collection of the Rents and application as provided in this Assignment and/or the entry upon and taking possession of the Mortgaged Property shall not cure or waive any default or waive, modify or affect any notice of default under any document evidencing or securing the Indebtedness or invalidate any act done pursuant to such notice, and the enforcement of any such right or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect, notwithstanding that the collection and application of the Rents may have cured for the time the original default. If Assignee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy under this Assignment may be reasserted at any time and from time to time following any subsequent default.

(g) **Additional Remedies.** Assignee shall have all the rights and remedies provided by law or equity or by agreement of the parties. The remedies of Assignee are cumulative and not exclusive.

9. **POWER OF ATTORNEY.** Assignor constitutes and appoints Assignee the true and lawful attorney of Assignor, coupled with an interest, and in the name, place and stead of Assignor:

(a) **Collection Upon Cancellation.** To demand, sue for, attach, levy, recover and receive any premium or penalty payable upon the exercise, by any lessee under any Lease, of a privilege of cancellation originally provided in any Lease.

(b) **Collection of Rents.** To give proper receipts, releases and acquittances for the collection of Rents and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion of the Indebtedness. Assignor authorizes and directs each lessee to deliver payment to Assignee in accordance with the foregoing.

(c) **Subordination.** To subject and subordinate any Lease affecting the Mortgaged Property to the lien of any mortgage on (or any ground lease of) the Mortgaged Property.

The foregoing appointment is irrevocable and continuing so long as any part of the Indebtedness shall remain unpaid or unperformed.

10. **HOLD HARMLESS.** Assignor agrees to indemnify and hold Assignee harmless from all liability, loss, damage or expense which Assignee may incur under or by reason of this Assignment, or for any action taken by Assignee under this Assignment, or by reason or in defense of any and all claims and demands asserted against Assignee arising out of the Leases. Should Assignee incur any such liability, loss, damage or expense, the amount thereof (including reasonable attorneys' fees), with interest thereon at the highest default rate provided for under the Indebtedness, shall be payable by Assignor immediately, without demand.

11. **NO MERGER.** So long as any of the Indebtedness shall remain unpaid or unperformed, unless Assignee shall otherwise consent in writing, the fee title and the leasehold estates on the Mortgaged Property shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Assignor or in any lessee or in any third party by purchase or otherwise.

12. **MISCELLANEOUS.**

(a) **Governing Law.** This Assignment shall be construed in accordance with the laws of the State of Illinois.

(b) **Successors and Assigns.** Assignee may freely assign its interest in and to this Assignment without notice to or consent by Assignor. Assignor hereby waives all defenses which Assignor may be entitled to assert against any future assignee of Assignee with respect to liability accruing hereunder prior to the effective date of any assignment of Assignee's interest herein. This Assignment shall be binding upon the successors and assigns of Assignor including, without limit, any debtor in possession or trustee in bankruptcy for

Assignor, and the rights and privileges of Assignee under this Assignment shall inure to the benefit of its successors and assigns. This shall not be deemed a consent by Assignee to a conveyance by Assignor of all or any part of the Mortgaged Property, any Lease or of any ownership interest in Assignor.

(c) **Notices.** Notice from one party to another relating to this Assignment shall be deemed effective if made in writing (including telecommunications) and delivered to the recipient's address, telex number or telecopier number set forth in this Assignment by any of the following means: hand delivery, registered or certified mail, postage prepaid, express mail or other overnight courier service, or telecopy, telex or other wire transmission with request for assurance of receipt in a manner typical with respect to communications of that type. Notice made in accordance with these provisions shall be deemed delivered on receipt if delivered by hand or wire transmission, on the third business day after mailing if mailed by registered or certified mail, or on the next business day after mailing or deposit with the postal service or an overnight courier service if delivered by express mail or overnight courier. Assignor's telecopier number is (303) 756-7344, and Assignee's telecopier number is (313) 994-1376.

(d) **Amendments.** Any amendment of this Assignment shall be in writing and shall require the signature of Assignor and Assignee.

(e) **Partial Invalidity.** The invalidity or unenforceability of any provision of this Assignment shall not affect the validity or enforceability of the remaining provisions of this Assignment.

(f) **Inspections.** Any inspection, audit, appraisal or examination by Assignee or its agents of the Mortgaged Property or of information or documents pertaining to the Mortgaged Property, including, without limit, the Leases, is for the sole purpose of protecting Assignee's interests under this Assignment and is not for the benefit or protection of Assignor or any third party.

(g) **Joint and Several Liability.** In the event that more than one person or entity executes this Assignment, the obligations of each person or entity shall be joint and several.

(h) **Automatic Reinstatement.** Notwithstanding any prior revocation, termination, surrender or discharge of this Assignment, the effectiveness of this Assignment shall automatically continue or be reinstated, as the case may be, in the event that any payment received or credit given by Assignee in respect of the Indebtedness is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of trust funds, or otherwise under any applicable state or federal law, including, without limit, laws pertaining to bankruptcy or insolvency, in which case this Assignment shall be enforceable as if the returned, disgorged or rescinded payment or credit had not been received or given, whether or not Assignee relied upon this payment or credit or changed its position as a consequence of it.

In the event of continuation or reinstatement of this Assignment, Assignor agrees upon demand by Assignee to execute and deliver to Assignee those documents which Assignee determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of Assignor to do so shall not affect in any way the reinstatement or continuation. If Assignor does not execute and deliver to Assignee upon demand such documents, Assignee and each officer of Assignee is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of Assignor (with full power of substitution) to execute and deliver such documents in the name and on behalf of Assignor.

(i) **WAIVER OF JURY TRIAL.** ASSIGNOR AND ASSIGNEE ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS ASSIGNMENT OR THE INDEBTEDNESS.

(j) **Securitization.** Assignor understands and agrees that Assignee may, from time to time, assign its rights and powers under the Note, this Assignment and any other Loan Documents, in whole or in part, in connection with a securitization program. Assignor agrees to enter into an amendment to the Note, this Agreement and any other Loan Documents if such amendments are required by a nationally recognized rating agency in connection with a securitization program sponsored by Assignee and in which the Note, this Assignment and any other Loan Documents are to be included; provided, however, that Borrower shall not be obligated to enter into any amendment which adversely affects Borrower or adversely alters any of the financial terms of the Note, this Assignment or the other Loan Documents.

(k) **Release of Assignment.** Notwithstanding anything contained herein to the contrary, Lender shall execute and deliver to Borrower or Borrower's designee, within ten (10) business days after the written request of Borrower, a release in recordable form whereby this Assignment shall be fully released as a lien against the Mortgaged Property ("Release"), provided that (a) Borrower shall not be in default under any of the terms, covenants or conditions of any document or instrument evidencing or securing the Indebtedness; (b) the outstanding principal balance of the Note, together with interest, premiums, costs and all other sums on that amount, shall be paid in full; and (c) the Release shall be prepared by Lender at Borrower's expense.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the day and year first noted above.

ASSIGNOR:

CHI-CO, INC.

By: [Signature]
Its: [Signature]

STATE OF COLORADO)
COUNTY OF DENVER) ss.

I, VICTORIA L. OTT a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that GARY GARRISON, who is personally known to me to be the SR. V.P. of CHI-CO, INC., a Colorado corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 6 day of JANUARY, 1999.

Notary Public [Signature]

My commission expires: _____

My Commission Expires
09-23-2001

(SEAL)

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EXHIBIT A

LOT 16 (EXCEPTING THEREFROM THAT PORTION TAKEN BY PROCEEDINGS HAD IN CASE NO. 84L50876, CIRCUIT COURT OF COOK COUNTY, ILLINOIS) IN THE HILLTOP LAND COMPANY'S SUBDIVISION OF THE NORTH ½ OF THE SOUTHWEST ¼ AND THE WEST 25 ACRES OF THE NORTH ½ OF THE SOUTHEAST ¼ OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Street Address: 686 W. 14th Street, Chicago Heights, Illinois 60422
Tax Parcel No.: 32-19-300-007 and 32-19-300-006
AALIB:303894.3\014194-00181

Property of Cook County Clerk's Office