

03-12-2002

Form PTO-1594

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings



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U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Torrey Park, LLC

2-11-02

- Individual(s)
- General Partnership
- Corporation-State
- Other limited liability company
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: \_\_\_\_\_, 2002

2. Name and address of receiving party(ies)

Name: National City Bank of Michigan/Illinois

Internal

Address: Attn: Steven C. Applegate, VP

Street Address: 301 S.W. Adams

City: Peoria State: IL Zip: 61652

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State

Other National Banking Association

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 1,257,991  
1,018,527  
1,669,830  
1,669,831

Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Steven C. Applegate, VP

Internal Address: National City Bank of Michigan/Illinois

Street Address: 301 S.W. Adams Street

City: Peoria State: IL Zip: 61652

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41).....\$ 115

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

Not applicable

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Steven C. Applegate, VP  
Name of Person Signing

[Signature]  
Signature

Feb 8, 2002  
Date

Total number of pages including cover sheet, attachments, and document: 9

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

03/12/2002 AHMED1 00000025 1257991

01 FC:481  
02 FC:482

40.00 OP  
75.00 OP

TRADEMARK  
REEL: 002458 FRAME: 0885

**SECURITY AGREEMENT,  
MORTGAGE AND  
LICENSE OF  
TRADEMARKS**

Document prepared by and  
after recording return to:

Timothy J. Howard  
Howard & Howard Attorneys  
One Technology Plaza  
211 Fulton Street, Suite 600  
Peoria, IL 61602

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**SECURITY AGREEMENT, MORTGAGE AND LICENSE OF TRADEMARKS**

This Security Agreement, Mortgage and License of Trademarks is dated as of the 8<sup>th</sup> day of February, 2002, by and between Torrey Park, LLC (the "Debtor") and National City Bank of Michigan/Illinois (the "Lender").

**RECITALS**

Debtor and Lender acknowledge the following:

A. Debtor is indebted to Lender pursuant to the terms and conditions of a Promissory Note of this date evidencing the "Indebtedness" owed to the Lender.

B. Pursuant to which Debtor has also executed certain security agreements, mortgages and other instruments, agreements and documents in favor of Lender to secure the Indebtedness (the "Loan Documents") including, without limitation, a Commercial Security Agreement pursuant to which Debtor has granted to Lender a security interest in Debtor's assets including, without limitation, all of its accounts, inventory, equipment, fixtures and general intangibles (including, but not limited to, trademarks, trademark applications, tradenames, service marks, logos, slogans, copyrights, all registration pertaining to the foregoing, all goodwill related thereto and all licenses therein (collectively, the "Collateral").

C. Debtor and Lender now wish to enter into this Security Agreement, Mortgage and License of Trademarks to provide further evidence of Lender's security interest in the Trademarks Licenses and Goodwill (as each such term is defined herein) to secure the Indebtedness.

**AGREEMENTS**

NOW, THEREFORE, in consideration of the recitals and mutual agreements which follow, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor and Lender agree as follows:

1. Incorporation of Loan Documents. All of the terms and provisions of the Loan Documents are incorporated herein by reference in their entirety. The capitalized terms used herein shall have the meaning assigned to them in the Loan Documents.

2. Mortgage of Trademarks and Licenses. To secure the complete and timely satisfaction of all of Debtor's Indebtedness to Lender and to further evidence Lender's security interest in the Collateral, Debtor hereby irrevocably pledges and mortgages to Lender all of the following items now owned or hereafter acquired or arising:

(a) All trademarks, service marks, logos, slogans, trademark and service mark registrations, trade names, service mark and trademark applications, listed on Schedule A attached hereto; and

(i) All renewals of any of the foregoing;

(ii) All income, royalties, damages and payments now or hereafter due and/or payable with respect to such trademarks, including, without limitation, all damages and payments for past or future infringements of such trademarks;

(iii) All rights to sue for the past, present and future infringements of such trademarks; and

(iv) All rights corresponding to such trademarks throughout the world to the extent available to Debtor;

(All of the foregoing are collectively referred to hereinafter as the "Trademarks"); and

(b) All licensing, distribution, publishing and exclusive dealing agreements with any other person or entity, including, without limitation, the licenses and agreements (if any) (hereinafter the "Licenses"), and the right to prepare for sale, sell and advertise for sale, all goods (as defined in the Illinois Uniform Commercial Code), wherever located, now or hereafter owned by Debtor covered by such Licenses to the extent, and only to the extent, Debtor is permitted to collaterally pledge the Licenses pursuant to the underlying agreements relating thereto; and

(c) The goodwill and trade secrets of each of Debtor's businesses connected with and/or symbolized by the Trademarks and Licenses (hereinafter "Goodwill").

Debtor hereby agrees that Lender's rights in and to the Trademarks and Licenses now or hereafter pledged to Lender shall be worldwide to the extent of Debtor's rights with respect thereto

3. Restrictions on Future Agreements. Debtor agrees that until the Indebtedness shall have been satisfied in full and all financing arrangements between Debtor and Lender shall have been terminated, Debtor will not, without Debtor's prior written consent, enter into any

agreement (for example, a license agreement) which is inconsistent with Debtor's obligations under this Agreement and Debtor further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would affect the validity or enforcement of the rights transferred to Lender under this Agreement.

4. Disposition of Intellectual Property. After written notice of default or demand for payment under the Loan Documents and pursuant to the Uniform Commercial Code as applied in Illinois, Lender may sell, assign or convey any or all of the Trademarks and/or Licenses, with corresponding Goodwill, to any purchaser(s) who would require some or all of such intellectual property as a condition to purchasing Debtor's business or any of the inventory, equipment and/or product lines of Debtor. Lender shall have no right to sell, assign or convey any or all of the Trademarks and Licenses, with corresponding Goodwill, on any basis independent or apart from a sale in connection with Debtor's business or the sale of inventory, equipment and/or product lines of Debtor (or a part thereof).

5. License to Use Trademarks and Licenses. In addition to Lender's other rights and interests herein, Debtor grants to Lender an exclusive, royalty-free, transferable license and right to use the Trademarks and Licenses for the purpose of permitting Lender to manufacture and/or dispose of the Collateral for a period of 180 days commencing on the date Lender obtains the right to dispose of the Collateral and physical possession thereof. Such 180 day period shall be tolled to the extent Lender shall be unable to liquidate and/or dispose of the Collateral due to bankruptcy or insolvency proceedings brought by or against Debtor.

6. Waiver of Payments by Lender. Lender shall have no liability to Debtor or any other party for any royalties or other charges arising from Lender's use or disposition of the Trademarks and/or Licenses (including from any use pursuant to the licenses granted above). Debtor hereby indemnifies Lender from any royalties, expenses, charges, and/or liabilities incurred by Lender under this Agreement (or otherwise) and from any litigation, claims, actions and/or proceedings against Lender regarding the use and/or disposition of the Trademarks and/or Licenses (including, but not limited to, reasonable attorneys' fees).

7. Termination of this Security Agreement, Mortgage and License. The security interest, mortgage and license granted pursuant to this Agreement is for collateral purposes only. The term of the mortgage and license granted to Lender herein shall expire upon the earlier of:

(a) The expiration each of the respective Trademarks and Licenses pledged hereunder (including any renewals thereof); or

(b) Full satisfaction of all of Debtor's Indebtedness to Lender.

Upon payment in full of the Indebtedness, Lender shall execute and deliver to Debtor all satisfactions and other instruments as may be necessary or proper to release Lender's interest in and to the Trademarks and Licenses (subject to any disposition thereof which may have been made by Lender during the term of this Agreement in accordance with the terms hereof).

8. Grant of License to Debtor. Unless and until an "Event of Default" (as defined in the Loan Documents) shall have occurred, Debtor shall have the exclusive, non-transferable right and license (the "Special License") to:

- (a) Use the Trademarks; and
- (b) Exercise rights under the Licenses;

for Debtor's own benefit and account subject to any applicable restrictions or conditions set forth herein. Debtor agrees not to sell or assign its interest in the Sublicense or grant any sublicense in its interest in Trademarks or Licenses or grant any sublicense in the Trademarks or Licenses, without the prior written consent of Lender. From and after the acceleration of the Indebtedness, Debtor shall have no further rights under the Special License.

9. Duties of Debtor. Debtor shall have the unconditional duty to:

- (a) Pay all taxes, fees or other amounts necessary to maintain in full force and effect all of the Trademarks and Licenses;
- (b) Prosecute diligently any Trademark rights and/or application acquired by Debtor now or hereafter until the Indebtedness shall have been paid in full;
- (c) Make application on all Trademarks, as appropriate;
- (d) Preserve and maintain all of Lender's rights in and to the Trademark(s) and Licenses(s); and
- (e) Promptly notify Lender in writing of any material change in the status of Debtor's interests in any Trademark or License.

All expenses incurred in fulfilling Debtor's duties hereunder shall be borne solely and exclusively by Debtor. Lender shall have no obligation or liability to pay any taxes or fees regarding the Trademarks or Licenses, or Lender's use thereof; nor shall Lender have any duties in connection with application for, protection and/or maintenance of the Trademarks or Licenses. Debtor shall not abandon any rights in and to any Trademark without the prior written consent of Lender.

10. Lender's Rights to Protect the Trademarks and Licenses. Lender shall have the right, but shall in no way be obligated, to bring suit in its own name or otherwise to enforce its rights (or those of Debtor) in the Licenses and Trademarks. If Lender shall commence any such suit, Debtor shall, at the request of the Lender, do all lawful acts and execute all proper documents required by Lender in aid of such enforcement. Debtor shall promptly, upon demand, reimburse and indemnify Lender for all costs and expenses incurred by Lender in the exercise of its rights under this Agreement. In the event Lender incurs any expense or cost in protecting and/or enforcing its rights under this Agreement (or its rights and interests in and to the Trademarks and Licenses) such expense and cost shall be deemed "Indebtedness" under the Loan Documents and subject to all the provisions thereof. Upon the request of Lender, Debtor shall

promptly provide such other documents, certificates or information as may be necessary for Lender to property record or evidence this pledge and mortgage with the appropriate governmental authority.

11. Lender's Right to Inspect. Lender shall have the right, at any time and from time to time, to inspect Debtor's premises and to examine Debtor's books, records and operations. From and after the occurrence of an Event of Default and the provision by Lender of written notice to Debtor of Lender's intention to enforce its rights and claims against any of the Trademarks, Debtor agrees that Lender, or a conservator appointed by Lender, shall have the right to establish such additional product quality controls as Lender, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Debtor under the Trademarks. Debtor agrees (v) not to sell or assign its interest in, or grant any license under, the Trademarks, without the prior written consent of Lender; (vi) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof; (vii) not to change the quality of said products without Lender's express written consent; and (viii) upon request, to provide Lender with a certificate of an officer of Debtor certifying Debtor's compliance with the foregoing.

12. Cumulative Remedies; Power of Attorney; Effect on Loan Documents. All of Lender's rights and remedies with respect to the Trademarks, whether established hereby, by the Loan Documents, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Debtor hereby authorizes Lender to make, constitute and appoint any officer or agent of Lender as Lender may select, in its sole discretion, as Debtor's true and lawful attorney-in-fact, with power (a) at any time, to (i) endorse Debtor's name on all applications, documents, papers and instruments necessary or desirable for Lender in the use of the Trademarks or (ii) take any other actions with respect to the Trademarks as Lender deems in the best interest of Lender; and (b) from and after the occurrence of an Event of Default and the provision by Lender of written notice to Debtor of Lender's intention to enforce its rights and claims against any of the Trademarks, to (i) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone, or (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone. Lender hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until Debtor's Indebtedness shall have been satisfied in full and all financing arrangements between Debtor and Lender have been terminated. Debtor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Lender under the Loan Agreement or any other agreement between Debtor and Lender but rather is intended to facilitate the exercise of such rights and remedies. Lender shall have, in addition to all other rights and remedies given it by the terms of this Assignment, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located.

13. Waivers. No course of dealing between Debtor and Lender, nor any failure to exercise, or any delay in exercising, on the part of Lender, any right or privilege hereunder shall operate as a waiver of such right or privilege, or preclude Lender from any other or further exercise of any right or privilege.

14. Severability. The provision of this Agreement are severable. If any clause or provision shall be held invalid and unenforceable in whole (or in part) in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision (or part thereof) in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.


15. Entire Agreement. This Agreement constitutes the entire agreement of the parties. No provision of this Agreement may be waived or modified in any manner (including this paragraph) without the prior written consent of Debtor and Lender.

16. Beneficiaries. This Agreement shall be binding upon the Debtor, and its successors and assigns and shall inure to the benefit of Lender, and its respective successors and assigns.

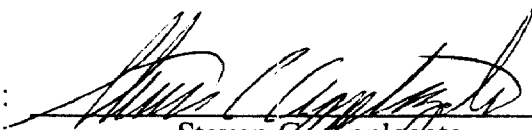
17. Choice of Law and Forum. The validity, interpretation and enforcement of this Agreement shall be governed by the internal laws of the State of Illinois (irrespective of such State's rules on conflicts of laws) except to the extent expressly superseded by federal laws. Debtor and Lender consent to the personal jurisdiction of any state or federal court in Peoria County, Illinois, regarding any claims arising, directly or indirectly, under this Agreement, and waive any objection based on forum non conveniens and trial by jury.

Dated this 8<sup>th</sup> day of February, 2002, at Peoria, Illinois.

TORREY PARK, LLC

By:  \_\_\_\_\_  
Frank Pedulla,  
Its Manager

NATIONAL CITY BANK OF  
MICHIGAN/ILLINOIS

By:  \_\_\_\_\_  
Steven C. Applegate,  
Vice President

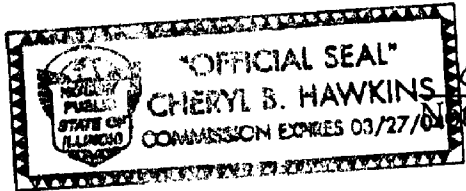
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF PEORIA )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of February, 2002 by Frank Pedulla, Manager of Torrey Park, LLC, on behalf of the company.

*Cheryl B. Hawkins*  
Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF PEORIA )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of February, 2002 by Steven C. Applegate, Vice President of National City Bank of Michigan/Illinois, on behalf of said Bank.

 *Cheryl B. Hawkins*  
Notary Public

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**SCHEDULE A  
SERVICE MARKS/TRADEMARKS**

REGISTRATION NO. (Note if principal register/ supplemental registry)	DATE & PLACE OF REGISTRATION	NAME/ DESCRIPTION OF MARK	GOODS/SERVICES CLASSIFICATIONS OF MARK	DATE OF FIRST USE	PRESENT OWNER	RENEWAL DATE	EXPIRATION DATE	FOREIGN LICENSES/PRIOR ASSIGNMENTS & FOREIGN RIGHTS AND REGISTRATIONS
1,257,991	11-15-83 U.S.	Jumer's Continental Inn	Lodging, Restaurant and Cocktail Lounge Services Int. 42, US 100	2/22/82	Jumer's Castle Lodge, Inc.			
1,018,527	8/19/75 U.S.	Jumer's Castle Lodge	Lodging, Restaurant and Cocktail Lounge Services Int. 42, US 100	5/1/70	Jumer's Castle Lodge, Inc.	8/19/95		
1,669,830	12/24/91 U.S.	Jumer Hotels	Lodging, Restaurant and Cocktail Lounge Services Int. 42, US 100	1973	Jumer's Castle Lodge, Inc.			
1,669,831	12/24/91 U.S.	Jumer's Chateau	Lodging, Restaurant and Cocktail Lounge Services Int. 42, US 100	6/18/88	Jumer's Castle Lodge, Inc.			

**TRADE MARK**

NOTE: ATTACH A COPY OF EACH TRADEMARK/SERVICE MARK REGISTRATION, RENEWAL, AFFIDAVIT OF USE AND EXISTING LICENSE(S) OR PRIOR ASSIGNMENT(S) TO THIS SCHEDULE.