

BOLD CORP., as Trustee for MASSPA  
 REALTY TRUST, t/d/b/a LANCASTER  
 HOST RESORT AND CONFERENCE  
 CENTER; INN MANAGEMENT  
 SERVICES USA, INC., t/d/b/a EDEN RESORT  
 INN AND CONFERENCE CENTER;  
 FIRST DFI PARTNERSHIP, L.P., t/d/b/a  
 THE RAMADA INN; CONTINENTAL  
 INNS OF AMERICA, INC., t/d/b/a  
 CONTINENTAL INN; HISTORIC  
 REALTY, INC., t/d/b/a HISTORIC  
 STRASBURG INN; FAMILY TIME OF  
 HERSHEY FARMS, INC., t/d/b/a  
 HERSHEY FARM RESTAURANT &  
 MOTOR INN; DOMMEL'S HOTEL  
 MANAGEMENT, INC., t/d/b/a COUNTRY  
 INN OF LANCASTER; KIM-MOTEL  
 CORPORATION, t/d/b/a QUALITY INN  
 & SUITES; HISTORIC REVERE  
 TAVERN & MOTOR INN, INC., t/d/b/a  
 BEST WESTERN REVERE;  
 PENTIDATILLO CORPORATION,  
 t/d/b/a ITALIAN VILLA HOTEL; AND  
 ARA MOTEL,

Plaintiffs

v.

COUNTY OF LANCASTER;  
 REDEVELOPMENT AUTHORITY  
 OF THE CITY OF LANCASTER;  
 LANCASTER COUNTY CONVENTION  
 CENTER AUTHORITY;  
 COMMONWEALTH OF PENNSYLVANIA,  
 DEPARTMENT OF COMMUNITY AND  
 ECONOMIC DEVELOPMENT; and  
 PENN SQUARE PARTNERS,

Defendants

IN THE COMMONWEALTH COURT  
 OF PENNSYLVANIA

No. \_\_\_\_\_ M.D. 2002

**COMPLAINT IN EQUITY AND  
ACTION FOR DECLARATORY RELIEF**

Plaintiffs, Bold Corp., as Trustee for MASSPA Realty Trust, t/d/b/a Lancaster

Host Resort and Conference Center; Inn Management Services USA, Inc., t/d/b/a Eden Resort Inn and Conference Center; First DFI Partnership, L.P., t/d/b/a the Ramada Inn; Continental Inns of America, Inc., t/d/b/a Continental Inn; Historic Realty, Inc., t/d/b/a Historic Strasburg Inn; Family Time of Hershey Farms, Inc., t/d/b/a Hershey Farm Restaurant & Motor Inn; Dommel's Hotel Management, Inc., t/d/b/a Country Inn of Lancaster; Kim-Motel Corporation, t/d/b/a Quality Inn & Suites; Historic Revere Tavern & Motor Inn, Inc., t/d/b/a Best Western Revere; Pentidattilo Corporation, t/d/b/a Italian Villa Hotel; and ARA Motel, by their Attorneys Mette, Evans & Woodside and Cozen O'Connor, file this Complaint and in support thereof aver as follows:

**Parties**

1. Plaintiff, Bold Corp., as Trustee for MASSPA Realty Trust, t/d/b/a Lancaster Host Resort and Conference Center (the "Host"), is the trustee of a realty trust organized and existing under the laws of the Commonwealth of Massachusetts with a registered address of 1 Washington Street, Wellesley, Massachusetts 02481. Host owns and operates a resort hotel and convention center in Lancaster County known as the Lancaster Host Resort and Conference Center at 2300 Lincoln Highway East, Lancaster, Pennsylvania 17602.
2. Plaintiff, Inn Management Services USA, Inc., t/d/b/a Eden Resort Inn & Conference Center (the "Eden Resort"), is a business corporation owned and operated under the laws of the Commonwealth of Pennsylvania with a registered address of 260 Brook Farm Road, Lancaster, Pennsylvania 17601. Eden Resort operates a hotel and restaurant complex at 222 Eden Road, Lancaster, Pennsylvania 17601.

3. Plaintiff, First DFI Partnership, L.P., t/d/b/a The Ramada Inn ("The Ramada Inn"), is a limited partnership organized and existing under the laws of the Commonwealth of Pennsylvania with a registered address of 2250 Lincoln Highway East, Lancaster, Pennsylvania 17602. The Ramada Inn owns and operates a hotel facility at 2250 Lincoln Highway East, Lancaster, Pennsylvania 17602.

4. Plaintiff, Continental Inns of America, Inc., t/d/b/a Continental Inn ("Continental Inn"), is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a registered address of 2285 Lincoln Highway East, Lancaster, Pennsylvania 17602. Continental Inn owns and operates a hotel facility at 2285 Lincoln Highway East, Lancaster, Pennsylvania 17602.

5. Plaintiff, Historic Realty, Inc., t/d/b/a Historic Strasburg Inn ("Historic Strasburg Inn"), is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a registered address of 1 Historic Drive, Strasburg, Pennsylvania 17579. Historic Strasburg Inn owns and operates a hotel facility at 1 Historic Drive, Strasburg, Pennsylvania 17579.

6. Plaintiff, Family Time of Hershey Farms, Inc., t/d/b/a Hershey Farm Restaurant & Motor Inn ("Hershey Farms") is a corporation organized and operating under the laws of the Commonwealth of Pennsylvania with a registered address of P.O. Box 159, Strasburg, Pennsylvania 17579. Hershey Farms owns and operates a hotel and restaurant complex at 240 Hartman Bridge Road, Ronks, Pennsylvania 17572.

7. Plaintiff, Dommel's Hotel Management, Inc., t/d/b/a Country Inn of Lancaster ("Country Inn"), is a corporation organized and existing under the laws of the

Commonwealth of Pennsylvania with a registered address of 2133 Lincoln Highway East, Lancaster, Pennsylvania 17602. Country Inn operates a hotel facility at 2133 Lincoln Highway East, Lancaster, Pennsylvania 17602.

8. Plaintiff, Kim-Motel Corporation, t/d/b/a Quality Inn and Suites ("Quality Inn"), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a registered address of 2363 Oregon Pike, Lancaster, Pennsylvania 17601. Quality Inn owns and operates a hotel facility at 2363 Oregon Pike, Lancaster, Pennsylvania 17601.

9. Plaintiff, Historic Revere Tavern and Motor Inn, Inc., t/d/b/a Best Western Revere ("Best Western Revere"), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a registered address of P.O. Box 336, Paradise, Pennsylvania 17562. Best Western Revere owns a hotel facility at P.O. Box 336, Paradise, Pennsylvania 17562.

10. Plaintiff, Pentidattilo Corporation, t/d/b/a Italian Villa Hotel ("Italian Villa"), is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a registered address of 2331 Lincoln Highway East, Lancaster, Pennsylvania 17602. Italian Villa owns and operates a hotel facility at 2331 Lincoln Highway East, Lancaster, Pennsylvania 17602.

11. Plaintiff, ARA Motel ("ARA"), is a sole proprietorship organized and existing under the laws of the Commonwealth of Pennsylvania with a registered address of 115 Sadsburg Avenue, Christiana, Pennsylvania 17509. ARA owns and operates a motel facility at 115 Sadsburg Avenue, Christiana, Pennsylvania 17509.

12. Defendant, the County of Lancaster (the "County"), is a Third Class County, as defined in Section 210 of The County Code, 16 P.S. § 101, *et seq.*, and a political subdivision of the Commonwealth of Pennsylvania with an address of 50 North Duke Street, Lancaster, Pennsylvania 17602.

13. Defendant, Redevelopment Authority of the City of Lancaster ("RACL"), is an incorporated municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania with an address of 120 North Duke Street, Lancaster, PA 17602.

14. Defendant, the Lancaster County Convention Center Authority (the "Authority"), is a municipal authority organized and existing under the enabling statute, the Third Class County Convention Center Authority Act, 16 P.S. §13101, *et seq.* The Authority has a registered address of 50 North Duke Street, Lancaster, Pennsylvania 17602.

15. Defendant, the Commonwealth of Pennsylvania, Department of Community and Economic Development ("DCED") is a state agency established pursuant to 71 P.S. § 1709.101 *et seq.* with offices on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Floors, Forum Building, Harrisburg, PA 17120.

16. Defendant, Penn Square Partners ("PSP") is a Pennsylvania partnership with a mailing address of Post Office Box 10008, Lancaster, PA 17605-0008. PSP is comprised of Penn Square General Corporation, the general partner, and limited partners High Real Estate Group, Lancaster Newspapers, Inc., and Fulton Financial Corp. Based on information and belief, PSP is an indispensable party in this suit.

**Jurisdiction and Venue**

17. Plaintiffs bring this action to redress violations by the Defendants of Plaintiffs' rights under the Constitution of the United States and the Constitution of the Commonwealth of Pennsylvania.

18. Jurisdiction over the claims raised in this Complaint is conferred upon this Court pursuant 42 Pa.C.S.A. § 761 and this Court is empowered to issue a declaratory judgment pursuant to Pennsylvania Declaratory Judgment Act, 42 Pa.C.S.A. 7531 *et seq.*

**Summary of Relief Sought**

19. As more fully described below, Plaintiffs are required to collect and pay a hotel room rental tax imposed by the County pursuant to Lancaster County Ordinance No. 45. Thus the Ordinance will directly and substantially affect Plaintiffs.

20. As a result of the violations of their constitutional rights, Plaintiffs request that this Court:

- a. enter a Declaratory Judgment holding that County Ordinance No. 45 violates Plaintiffs' Federal and State Constitutional Rights;
- b. issue a permanent injunction against Defendants, prohibiting the application and enforcement of Ordinance No. 45;
- c. order restitution of all taxes paid by Plaintiffs pursuant to Ordinance No. 45 to the County of Lancaster;
- d. enter a Declaratory Judgment holding that PSP must repay to RACL the monies lent for the hotel;
- e. enter a Declaratory Judgment holding that the Commonwealth of Pennsylvania, Department of Community and Economic

Development shall make no further grants whose proceeds are earmarked for the development of the convention center hotel in Lancaster, Pennsylvania owned by PSP; and

- f. enter a Declaratory Judgment holding that the RACL shall make no further loans for the development of the convention center hotel.

### Factual Background

#### History of the Convention Center Project

- 21. The City of Lancaster ("City") is the County seat of the County of Lancaster.
- 22. Prior to September 19, 1999, the City and County jointly announced their intention to form an authority pursuant to the Convention Center Act for purposes of building a publicly owned 61,000 square foot convention center in downtown Lancaster City.
- 23. This announcement was widely publicized in the local media which reported that:
  - a. the proposed project would be publicly financed through the combination of grants under the Pennsylvania Redevelopment Assistance Program and the issuance of tax-exempt bonds backed by the imposition of a hotel room excise tax;
  - b. the proposed 61,000 square foot publically financed convention center would cost approximately \$30,000,000 to construct;
  - c. the proposed convention center would adjoin a proposed \$45,000,000, 280+ room, four-star hotel that was to be privately financed.
- 24. As proposed, the Lancaster County Convention Center, which would be exempt from the County's tax base and which would be financed by public funds, would be in direct competition with the Host's existing privately-owned and financed 72,000 square foot

convention center, which convention center contributes substantial dollars to the County's tax base.

25. On September 14, 1999, the Council of the City of Lancaster ("Council") enacted Administration Ordinance No. 5-1999 signifying its intention and desire to organize the Convention Center Authority under the Convention Center Authority Act jointly with the County. Administrative Ordinance No. 5-1999 authorized and directed the Mayor and the City Clerk to execute and file Articles of Incorporation to effect the incorporation of the Authority.

26. On September 15, 1999, the Lancaster County Board of Commissioners ("Commissioners") enacted Ordinance No. 44, signifying its intention and desire to organize a Convention Center Authority under the Convention Center Authority Act jointly with the City. Ordinance No. 44 authorized and directed the Chairman of the Board of Commissioners and the Chief Clerk to execute and file Articles of Incorporation to effect the incorporation of the Authority.

27. Articles of Incorporation incorporating the Authority were filed with the Pennsylvania Department of State on or about September 16, 1999.

28. On September 15, 1999, the Commissioners enacted Ordinance No. 45, a copy of which is attached as Exhibit "A."

29. Ordinance No. 45 imposes tax in the amount of 3.9% on the consideration received by each hotel located within the County of Lancaster from the rental of hotel rooms ("hotel room tax"). Pursuant to Ordinance No. 45, the class taxed is the hotel owners and operators in Lancaster County.



30. Of the 3.9% hotel room tax, 20% of the amount collected goes for general tourist promotion.

31. The remaining 80% of the hotel room tax goes to the Authority for the convention center project, including:

- a. debt service on a bond issue to match a \$15 million state grant;
- b. funding the projected annual losses of the convention center project; and
- c. cost of development, construction, financing, operation and management applicable to the convention center project.

#### The Prior Suit

32. The hotel room rental tax imposed by Ordinance No. 45 took effect on January 1, 2000 and has been collected by the County since then.

33. High Associates, Ltd., a division of High Industries, Inc., serves as the developer for the both the convention center project to be funded from the proceeds raised by the 80% portion Ordinance No. 45 and of the hotel project which is to be connected to the convention center and which hotel will be funded, in part, by grants from DCED as well as subsidies from the Authority.

34. PSP owns the premises on which the proposed convention center hotel is to be built and will be the owner and developer of that proposed hotel.

35. The hotel room rental tax was challenged in a suit filed by the Plaintiffs herein captioned Bold Corp., et al. v. County of Lancaster, et al., Court of Common Pleas of Lancaster County, No. CI-00-02944 filed on March 24, 2000.

36. At the time the suit was filed, based on information and belief, the Plaintiffs described the convention center project in their Complaint, at paragraph 66, as follows:

... the Convention Center Project is to include a 280+ room four star hotel which will be connected to the convention center. On information and belief, the Authority has requested a private party, Penn Square Partners (a partnership consisting of High Real Estate Group, Lancaster Newspapers, Inc., and Fulton Financial Corp.), to seek a hotel operator, who will also manage the convention center. Upon information and belief, the hotel operator will be entitled to receive profitable management fees as an incentive for its investment in the proposed hotel. Further, on information and belief, it is anticipated that the hotel operator will not be required to make any capital investment in the Convention Center Project, but will profit from public tax revenue in connection with operation and management thereof.

37. The description set forth in paragraph 36 summarized Plaintiffs' understanding of the convention center project at the time the initial complaint was filed up to and through the time of trial in December 2000.

38. When the prior suit was filed, Plaintiffs believed that PSP owned the Watt & Shand Building that it hoped to use as a convention center hotel.

39. When the prior suit was filed, Plaintiffs understood PSP's role to be two-fold: to seek a hotel owner and/or operator and to serve as the developer of the proposed convention center hotel.

40. At trial, the evidence presented by the defendants, City, County and Authority (the "Lancaster Defendants"), was that the Convention Center and hotel were separate projects.

41. Although denied by the Lancaster Defendants in the prior litigation, the trial court found and Plaintiffs herein do aver, that the development of the convention center and the development of the hotel are interdependent in the sense that the development of the convention center is conditioned upon the building of the hotel, and *vice versa*.

42. In the prior suit, the evidence produced by the Lancaster Defendants during discovery and adduced by the Plaintiffs at trial was that the hotel portion of the project was to be funded completely by private monies. Indeed, the trial court specifically found: "However, the hotel will be built entirely with private financing and the Authority will not be involved in its operation." The trial court thereafter predicated its benefit/burden analysis expressly based on that finding.

43. The Lancaster Defendants' expert noted in his report (the PricewaterhouseCoopers report) that the hotel room rental tax "would strictly be used for the support of the convention facility and not for the support of the proposed 281-room hotel."

44. At the time of trial, the Authority chair testified that joint management of the convention center and hotel had not been decided upon.

45. The trial court issued a decree *nisi*, made final on April 23, 2001, wherein it held that the Plaintiffs did not prove that the hotel room tax created a palpably disproportionate burden without concomitant benefits.

46. On appeal, following briefing and oral argument, this Honorable Court on January 23, 2002, ordered that the case be remanded to the trial court for a proper

benefit and burden analysis.

47. The Lancaster Defendants then filed a Petition for Allowance of Appeal which was granted by the Supreme Court.

48. On July 16, 2002, the Supreme Court affirmed the trial court's judgment on the benefit/burden analysis and remanded the undecided appellate issues to this Court.

49. Following briefing and oral argument, this Court subsequently entered an Order on October 4, 2002, affirming the trial court's Order of April 23, 2001.

50. The Plaintiffs filed an application for reargument of the Commonwealth Court's October 4, 2002 order, which was denied on December 2, 2002.

#### The Grants/Loans

51. In 2000, the RACL received a \$2 million Community Revitalization Grant from the DCED, purportedly for the development of the convention center hotel.

52. The RACL then loaned the \$2 million to PSP, the hotel developer ("Loan 1") for use in connection with the development of the supposedly purely privately financed hotel.

53. Loan 1 is without interest and calls for no repayment until 2020. Loan 1 is subordinated to any other PSP borrowing from any source for the hotel project and is without recourse, not collateralized, and waives any right to foreclose.

54. Loan 1 from the RACL to PSP is an improper use of public funds for the development of the supposedly privately financed hotel.

55. In 2002, the RACL received a second \$2 million grant from the DCED,

purportedly for the development of the convention center hotel.

56. The RACL then loaned the \$2 million to PSP, the hotel developer ("Loan 2").

57. Loan 2 has the same material terms and conditions as Loan 1.

58. Loan 2 from RACL to PSP is an improper use of public funds for the development of the supposedly privately financed hotel.

59. Currently pending is a RACL grant application for an additional \$3.5 million which, based on information and belief, is to be funded and then loaned to PSP, again, under the same terms and conditions as Loans 1 and 2. This funding will be yet a further misuse of public funds for the supposedly privately-financed hotel.

#### The Current Effects of the Hotel Room Tax

60. Prior to the construction of the convention center and hotel, the tourist promotion portion of the hotel room tax (20% of the 3.9% tax) is being expended solely for the promotion of Lancaster County as a tourist destination.

61. Despite the increased spending to promote Lancaster County, the Lancaster County hotel occupancy level for 2001 was up merely 1.9% over 2000. Based on information and belief, occupancy for 2002 will likely be less than that of 2001 and may not reach 60% for the year.

62. Based on information and belief, upon the opening of the convention center, the tourist promotion component of the hotel room tax may be expended to promote the convention center and not the county.

New Developments

63. In addition to the facts set forth in paragraphs 50 through 61, above, subsequent to the final decree *nisi*, Plaintiffs learned of new information and agreements entered into after trial which substantially changed the convention center project and the benefit/burden analysis.

64. In January 2002, it was announced by PSP that the convention center hotel would be franchised by Marriott and managed by Interstate Hotels Company, neither having an economic investment in the hotel.

65. PSP demanded various subsidies and/or concessions from the Authority including, *inter alia*:

- a. Instead of the hotel building meeting and banquet space, the convention center would build the meeting and banquet space and lease it to the hotel for 99 years at \$100 per year. Thus, the convention center would subsidize the hotel by building the meeting and banquet space which is normally built and owned by a hotel.
- b. The hotel operator would provide all food service to the convention center but pay over to the Authority a below-industry standard commission of 5% (the industry standard is approximately 20% to 25%).
- c. The hotel will share management personnel, some operating expenses, and marketing with the convention center. This will allow the convention center to subsidize the hotel and blur the lines between the supposedly separate but interdependent parts of the convention center project.

66. PSP threatened to withdraw from the project if its demands were not met by the Authority.

67. In August 2001, the Authority's Tourist Industry Task Force issued a

recommendation that SMG, one of the largest operators of public meeting space in the United States, be selected as the convention center operator.

68. PSP then threatened to abandon the hotel project unless the Authority chose as its convention center manager the same entity that would be managing the hotel for PSP - Interstate Hotels Company.

69. Despite expressing disappointment at this threat by PSP, the Authority capitulated to PSP's demands. Thus, contrary to the facts as they existed during the prior suit, there will be interlocking management and operation of the hotel and convention center leading to the inevitable conclusion that each will be managed and operated for the benefit of the other to the detriment of Plaintiffs' properties.

70. After the conclusion of trial, PSP demanded that certain contractual arrangements be made to satisfy its demands. These consist of the following:

- a. Presentation by PSP to the Authority (Exhibit "B");
- b. Letter of August 17, 2001 from PSP to James Pickard, Chair of the Authority (Exhibit "C");
- c. Letter of September 6, 2001 from Robert Canton, PricewaterhouseCoopers to James B. Pickard, Authority Chair (Exhibit "D")
- d. Joint Development Agreement between Authority and PSP dated December 20, 2001 (Exhibit "E");
- e. Professional Services Development Agreement between the Authority and High Associates dated December 20, 2001 (Exhibit "F");
- f. Food and Beverage Concession Agreement between the Authority and PSP dated December 20, 2001 (Exhibit "G");

- g. Reciprocal Easement, Operating and Use Agreement between the Authority and PSP dated December 20, 2001 (Exhibit "H");
- h. Outline of Booking Policy and room Block Agreement Lancaster County Convention Center (Exhibit "I");
- i. Qualified Convention Center Management Agreement for Lancaster County Convention Center between the Authority and Interstate Hotels Company dated January 23, 2002 (Exhibit "J");
- j. Lease Agreement between the Authority and PSP dated as of January 23, 2002 (Exhibit "K").

71. In the Joint Development Agreement (Exhibit "E"), the Authority and PSP contract to engage a common developer for the convention center and the hotel.

72. In the Professional Services Development Agreement (Exhibit "F"), the Authority contracts with High Associates, Ltd. to be the common developer for the convention center and the hotel.

73. As set forth in the Qualified Convention Center Management Agreement (Exhibit "J"), the convention center hotel will be managed by Interstate Hotels Company which will also manage the convention center.

Plaintiffs' Prior Efforts to Bring the New Developments to the Attention of the Court

74. Upon learning of the certain new information, Plaintiffs initially sought remand of its appeal in this Honorable Court to permit the trial court to examine certain of the new information and agreements and to redetermine the benefit/burden analysis.



75. In the Opinion of January 23, 2002, this Court granted remand for a redetermination of the benefit/burden analysis.

76. The Supreme Court granted the Lancaster Defendants' Petition for Allowance of Appeal and, following briefing, overruled this Court and affirmed the trial court's decision on the benefit/burden analysis but remanded the other appellate issues to this Court for expeditious determination. Plaintiffs also sought remand in the Supreme Court based on new evidence set forth in paragraph 70, but the Supreme Court did not reach this issue.

77. Upon remand to this Court, Plaintiffs again sought remand to the trial court based on the new evidence. On October 4, 2002, this Court subsequently entered an Order affirming the trial court's Order of April 23, 2001. This decision did not consider the new evidence. However, at oral argument on September 11, 2002, this Court stated that a new action, as opposed to a remand, was perhaps the proper procedure to be followed by the Plaintiffs, with respect to the new information and evidence.

#### Improper Subsidies and Harm to Public Interest

78. Based on information and belief, the new hotel connected to the convention center built by the Authority will derive a direct subsidy by way of the tax revenues paid by the hotel owners and operators and used to finance and operate the convention center.

79. Specifically, the convention center hotel will be subsidized by its use of the convention center banquet, conference and kitchen space (12,000-15,000 square feet) which the hotel will lease for 99 years at the base rent of \$100 per year from the Authority,

thus permitting the hotel to be constructed without these facilities and for substantially less than the cost of a hotel which has to build, finance, maintain, and insure banquet, conference, and kitchen space.

80. PSP has estimated that the cost of the banquet, kitchen and meeting spaces is \$5.5 to \$6.5 million.

81. The subsidies described in paragraphs 78 through 80, above, are in addition to the \$4 million of public funds already made available to PSP, interest free, and an additional \$3.5 million which is proposed to be loaned to PSP, interest free.

82. Based on information and belief, the banquet, conference and kitchen space described above will save PSP \$5.5 million to \$6.5 million in construction costs which costs will be borne by the Authority. Despite this, the space will be leased to PSP as an inducement to get PSP to agree to the project.

83. The convention center hotel, by virtue of the space provided to it by the convention center, will have lower initial construction costs and lower operating costs, thereby giving it an unfair advantage in being able to lower the pricing of its rooms, banquets, meetings, etc., over its competitors, including Plaintiffs.

84. PSP contracted with the Authority to provide catering services to the convention center, paying to the Authority a substantially below-market rate of 5% of the gross catering revenues up to the revenue threshold (defined as \$7.3 million per fiscal year with 3% increases compounded annually following the first fiscal year when gross catering revenues exceed \$7.3 million) and 10% of gross catering revenues in excess of the threshold.

85. Based on information and belief, Plaintiffs aver that the percentages

paid to the convention center in gross catering revenues are lower than the industry standard and provides PSP, the hotel owner, with an additional subsidy from the convention center and an increase in operating losses to the Authority.

86. Based on information and belief, the hotel will be further subsidized by the no-interest "loans" from the RACL, described above, making the development of the hotel less costly.

87. By virtue of PSP's no-interest loans and the lower development, building, and operations costs, which hotel costs and expenses will be reduced by the leased space and concession/catering subsidy and shared operating expenses and the hotel will be able to offer highly competitive rates for rooms, meetings, and/or banquets.

88. Moreover, as set forth below, the additional business that is expected to be generated by the convention center will not be nearly enough to offset the competitive advantage that the hotel will enjoy over Plaintiffs because of these public subsidies.

89. The convention center will be severely challenged to attract convention business from competitors such as Hershey, Harrisburg, Philadelphia, Pittsburgh, Baltimore and Washington, D.C.

90. The predominant convention season for Lancaster, weekends in mid-April through mid-June and mid-September through mid-November, will not bring visitors to Lancaster during other times of the year when hotel occupancy is low and visitors are needed to fill the hotel rooms.

91. The hotel will be challenged to be successful where the Lancaster County hotel market is seasonal and has an historically low occupancy rate (60%-62%) as

compared to other markets in the state and the United States.

92. Since 1970, the City has not successfully supported a hotel, and the only existing City hotel, a recently renovated, 220-room Ramada was not financially viable and is currently owned by the mortgage holder under a deed in lieu of foreclosure.

93. Based on studies done by the Authority the convention center will generate only 30,000 new room nights per year. These studies were undertaken prior to the entry into the agreement to jointly manage the hotel and convention center, the making of the loans from RACL, described above, and entry into the agreement to construct banquet facilities, meeting rooms and kitchen for the hotel.

94. Of those 30,000 room nights the convention center is projected to generate, the Authority's studies show that approximately 15,000 of the room nights will stay at the convention center hotel.

95. The remaining approximately 15,000 room nights will go to all other hotels in the county market.

96. The entire Lancaster County hotel market now sells approximately 1.4 million room nights per year.

97. Based on the study undertaken by the Authority, the projected room night increase for all other county hotels (excluding the convention center hotel) as a result of the convention center is approximately 1%.

98. The proposed 281-room convention center hotel will increase the entire Lancaster County hotel room supply by 4¼%.

99. The convention center hotel will need to sell another 50,000 to 55,000

hotel room nights in order to break even. These 50,000 to 55,000 hotel room nights will be taken from the existing Lancaster County hotel market.

The Hotel Room Tax Harms the Hotel Industry in Lancaster County

100. Upon information and belief, the imposition alone of the hotel room tax adversely impacts the Lancaster County hotel industry and hotel room revenues.

101. Upon information and belief, imposition of the hotel room tax depresses demand and has a significant impact upon occupancy rates.

102. The cost of the convention center project has increased from approximately \$30 million to approximately \$54 million.

103. Upon information and belief, the convention center, whose size has now been increased from a proposed 61,000 square feet at the time of trial to 181,000 square feet to 200,000 square feet and to a possible 250,000 square feet, will require more tax money and an increase in the hotel room tax to support the project and the Authority's increased operating losses, thus imposing an even greater burden on the Plaintiffs.

104. The increased cost of the convention center project will likely require additional taxes to support the project.

105. Upon information and belief, the actions by the Defendants will result in direct economic harm to Plaintiffs, will result in the funding of private enterprises in a competing convention center and hotel operator with public monies, and will result in the expenditure of substantial public funds on a speculative and financially infeasible project.

106. The hotel room tax will continue in existence even after construction and start up of the convention center and requires Plaintiffs to cover expenses, including

losses, experienced by the convention center without any end.

### **COUNT I**

#### **Plaintiffs v. County of Lancaster and Lancaster County Convention Center Authority**

#### **Declaratory and Injunctive Relief Violation of the Substantive Due Process Requirements of the United States Constitution**

107. Paragraphs 1 through 106 above, are incorporated by reference.
108. County Ordinance No. 45, facially and as applied to Plaintiffs, constitutes arbitrary, capricious, irrational and unreasonable regulations and legislation which violates Plaintiffs' substantive due process rights as secured by the Fourteenth Amendment to the Constitution of the United States in that:

- (a) the effect of the Ordinance is the implementation of a specific tax, the hotel room tax, which imposes a substantial burden on Plaintiffs without a corresponding benefit or with a disproportionately low benefit from the tax revenues; and/or
- (b) the creation of the hotel room tax, does not effectuate a public purpose; instead the taxes benefit only the proprietary interests of the County of Lancaster and the City of Lancaster and the owner and operator of the adjoining hotel.

**COUNT II**

**Plaintiffs v. County of Lancaster and  
Lancaster County Convention Center Authority**

**Declaratory and Injunctive Relief  
Violation of the Due Process Requirements of the  
Constitution of the Commonwealth of Pennsylvania**

109. Paragraphs 1 through 108, above, are incorporated by reference.

110. County Ordinance No. 45, facially and as applied to Plaintiffs violates the due process provisions of the Constitution of the Commonwealth of Pennsylvania and Article I, Sections 1 and 11 in that:

- (a) the effect of the Ordinance is the implementation of a specific tax, the hotel room tax, which imposes a substantial burden on Plaintiffs without a corresponding benefit or with a disproportionately low benefit from the tax revenues,
- (b) the creation of the hotel room tax, does not effectuate a public purpose; instead the taxes benefit only the proprietary interests of the County of Lancaster and the City of Lancaster and the owner and operator of the adjoining hotel.

**COUNT III**

**Plaintiffs v. County of Lancaster and  
Lancaster County Convention Center Authority**

**Declaratory and Injunctive Relief  
Violation of the Equal Protection Clause  
of the Fourteenth Amendment of the United States  
Constitution**

111. Paragraphs 1 through 110 above, are incorporated by reference.
112. County Ordinance No. 45 creates an improper and unreasonable classification between privately owned and operated convention centers and publicly financed and operated convention centers.
113. There is no rational basis to discriminate in favor of a publicly owned convention center and against a privately owned convention center.
114. County Ordinance No. 45 creates an improper, unreasonable and overly broad classification by taxing all County hotels when the building of an additional convention center and its adjoining hotel will not benefit all County hotels.
115. County Ordinance No. 45 creates an improper and unreasonable classification by permitting third class counties to build a convention center when private convention centers, sufficient to meet the County's needs, exist.
116. County Ordinance No. 45 is in violation of the equal protection clause of the Constitution of the United States.



**COUNT IV**

**Plaintiffs v. County of Lancaster and  
Lancaster County Convention Center Authority**

**Declaratory and Injunctive Relief  
Violation of the Uniformity of Taxation Requirement of the  
Constitution of the Commonwealth of Pennsylvania  
Article VIII, Section 1**

117. Paragraphs 1 through 116 above, are incorporated by reference.
118. County Ordinance No. 45 is in violation of the uniformity of taxation clause of the Constitution of the Commonwealth of Pennsylvania.

**COUNT V**

**Plaintiffs v. City of Lancaster Redevelopment Authority and  
Commonwealth of Pennsylvania, Department of Community and  
Economic Development**

**Declaratory and Injunctive Relief**

119. Paragraphs 1 through 118, above, are incorporated by reference.
120. If County Ordinance No. 45 is unconstitutional, it will no longer support the convention center project which will fail as a result.
121. Without the convention center, the hotel will not be built.
122. The Plaintiffs seek a declaration that if the hotel room tax is unconstitutional, there can be no further grants to the RACL and no loans from the RACL to PSP.
123. Plaintiffs further seek a declaration that the outstanding loans become payable to the RACL.

**COUNT VI****Plaintiff Host v. County of Lancaster and  
Lancaster County Convention Center Authority****Violation of 42 U.S.C. Section 1983**

124. Paragraphs 1 through 123, above, are incorporated by reference.

125. The County and Authority are "persons" within the ambit of 42 U.S.C.A. §1983.

126. The actions of the County with respect to the enactment of the hotel room tax and the Authority with respect to construction of a convention center in the City constitute actions taken "under color of any statute, ordinance, regulation, custom or, or usage" within the ambit of 42 U.S.C.A. §1983.

127. The construction of the convention center where a private convention center already exists deprives Plaintiff Host of its rights, privileges and immunities secured by the Constitution and laws, causing Plaintiff Host significant damages.

128. The enactment and collection of the hotel room tax causes Plaintiff Host to collect taxes from its patrons to fund its own competition in the form of the new convention center and hotel.

129. The effect of the actions by the County in enacting and enforcing the hotel room tax and the Authority in constructing a convention center that has increased in proposed size from 61,000 square feet to 180,000 square feet to a potential 250,000 square feet will result in the direct diminution in the value of Plaintiff Host's Convention Center and, unless otherwise enjoined, a significant reduction in annual revenues due solely to

publicly financed competition in the form of the proposed convention center and hotel.

130. The Authority has contracted with the hotel developer to provide food and beverage concessions to the convention center at a commission rate payable to the Authority that is less than industry standard.

131. The Authority has contracted with the hotel developer to build banquet, conference and kitchen space within the convention center for the use of the hotel which saves PSP the cost of building those spaces, a cost estimated by PSP to be \$5.5 million to \$6.5 million.

132. As a result of this agreement, the hotel developer does not have to construct the space described above but will lease it from the Authority for 99 years at \$100 per year.

133. The concession and facility construction agreements will cost the Authority countless dollars in lost revenues and, based on information and belief, cause the convention center to incur losses in excess of those projected by the existing studies.

134. Plaintiff Host will suffer a multi-prong detriment as a result of these agreements: (a) it will suffer a diminution of its business; (b) it will be forced to collect taxes, possibly in increasing amounts, to support its competition; and, (c) it will suffer losses as a result of the Authority's subsidies to the hotel developer.

135. The effect of the Authority contracting with the hotel developer on terms favorable to the hotel developer and detrimental to Plaintiff Host deprives Plaintiff Host of its rights, privileges and immunities secured by the Constitution and laws, causing Plaintiff Host significant damages.

136. Plaintiff Host is entitled to injunctive relief halting the convention center project as well as reasonable attorneys' fees pursuant to 42 U.S.C. §1988.

## COUNT VI

### Plaintiffs v. Lancaster County Convention Center Authority

#### Declaratory and Injunctive Relief

137. Paragraphs 1 through 136, above, are incorporated by reference.

138. The Plaintiff facilities all pay county real estate taxes to the County.

139. The Authority is not authorized to engage in projects that are private in nature.

140. The Authority, by its agreement with PSP to provide meeting, banquet and kitchen space in the convention center for use by the hotel, thus providing publicly constructed and financed space for use by PSP, a private entity, has exceeded its statutory authority.

141. The construction and lease-back of the spaces described above, with an estimated cost of \$5.5 million to \$6.5 million, will diminish the value of the convention center hotel and will reduce real estate tax revenues. Plaintiffs, as taxpayers, will suffer as a result.

142. The reduction of the tax base which results from an exemption of property from taxation has the same effect upon the taxpayer as an expenditure of funds.

143. By leasing the meeting, banquet and kitchen space, PSP will be enabled to avoid significant construction costs and, through the medium of public financing,

will enjoy all the significant public benefits not generally available to other private commercial developers while avoiding all the financial risks.

144. PSP, through the lease of the meeting, banquet and kitchen space, is able to save \$5.5 million to \$6.5 million from its investment. At the same time, the taxable real estate will be reduced in that amount, depriving the County of taxes to that extent.

145. The Authority may not cloak a private interest with benefits so grossly disproportionate to the benefits accorded to the public.

146. Plaintiffs are entitled to injunctive relief and a declaration that the Authority has exceeded its statutory authority.

#### **COUNT VII**

#### **Plaintiffs v. Lancaster County and Lancaster County Convention Center Authority**

#### **Waste/Abuse of Discretion**

147. Paragraphs 1 through 146, above, are incorporated by reference.

148. The actions of the County and the Authority authorize and support a project which is financially infeasible, ill-conceived and/or unreasonable and will result in a waste of the hotel room tax dollars.

149. The actions of the Authority in entering into an agreement with PSP to provide meeting, banquet and kitchen space to the convention center hotel is a funding of a private enterprise with public monies and is waste, mismanagement ill-conceived and/or unreasonable.

150. The actions of the Authority in entering into a concession agreement

with PSP whereby the Authority gets only a 5% commission on concessions as opposed to a 20%-25% commission is further waste, mismanagement ill-conceived and/or unreasonable.

151. The actions of the County and the Authority constitute waste and an abuse of discretion and must be declared invalid.

### COUNT VIII

#### **Plaintiffs v. Lancaster County and Lancaster County Convention Center Authority**

#### **Restitution**

152. Paragraphs 1 through 151, above, are incorporated by reference.

153. Effective January 1, 2000, the Ordinance requires Plaintiff to collect and pay the hotel room tax to the County.

154. Plaintiffs are entitled to restitution of the taxes they have paid under the Ordinance because it is unconstitutional and unlawful.

WHEREFORE, Plaintiffs pray that this Honorable Court award the following relief:

- A.. An injunction permanently enjoining the County of Lancaster from enforcing the hotel room tax;
- B. An injunction permanently enjoining the Authority from constructing a convention center;
- C. A declaration that the Authority has exceeded its statutory authority in its agreement to construct banquet, meeting and kitchen space for use by the convention center hotel and the lease-back to the hotel for \$100 per year for 99 years;

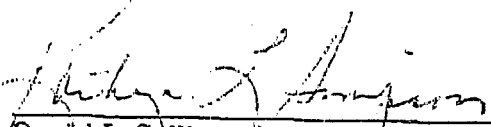
- D. Enter an Order that the County of Lancaster make restitution to Plaintiffs in the form of a refund all hotel room taxes collected by the County;
- E. Enter an Order that the Redevelopment Authority of the City of Lancaster and the Commonwealth of Pennsylvania, Department of Community and Economic Development cease making any further grants/loans to PSP for the convention center hotel;
- F. Enter an Order that Penn Square Partners repay the proceeds of any convention center hotel loans made by the Redevelopment Authority of the City of Lancaster;
- G. Grant costs and attorneys fees; and
- H. Grant such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

MEITE, EVANS & WOODSIDE

COZEN O'CONNOR

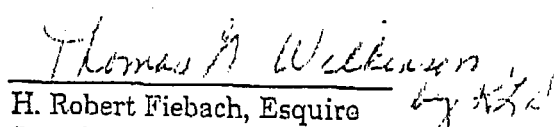
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