

ORDINANCE NO. 8182-21

AN ORDINANCE
APPROVING THE FORM, TERMS AND PROVISIONS OF
A MORTGAGE AND NOTE (JUMER'S CASTLE LODGE PROJECT)

WHEREAS, pursuant to Ordinance No. 8182-19, entitled, "An Ordinance Authorizing The Financing Of Economic Development Facilities Constituting An 'Economic Development Project' Within The Meaning Of Ordinance No. 8182-9, Authorizing The Issuance Of Not To Exceed \$3,030,000 Economic Development Revenue And Tax Supported Bonds, Series 1981 (Jumer's Castle Lodge Project) In Connection Therewith; Authorizing The Execution And Delivery Of A Loan Agreement Between The City Of Urbana, Illinois, And Jumer's Castle Lodge, Inc.; Authorizing The Execution And Delivery Of An Indenture Of Trust Securing Said Bonds; Authorizing The Execution Of A Purchase Contract Providing For The Sale Of Said Bonds To The Purchasers Thereof, Authorizing The Execution And Delivery Of A Mortgagees' Agreement And Related Matters", duly adopted by the City Council of the City of Urbana, Illinois, the City duly authorized the financing of certain economic development facilities (Jumer's Castle Lodge Project) and the issuance of not to exceed \$3,030,000 Economic Development Revenue and Tax Supported Bonds, Series 1981, for such Project; and

WHEREAS, pursuant to Section 6 of said Ordinance and in further consideration of the authorization by this City Council of such issuance, Jumer's Castle Lodge, Inc., a Delaware corporation authorized to do business in the State of Illinois, has agreed to provide the City with a Mortgage on its hotel and restaurant facilities located in Bettendorf, Iowa.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That the form, terms and provisions of the proposed Indenture of Mortgage between Jumer's Castle Lodge, Inc. and the City of Urbana, Illinois and the corresponding Promissory Note issued in connection therewith, copies of which said Indenture of Mortgage and Promissory Note are attached hereto and hereby incorporated by reference, be, and they hereby are, in all respects approved and that the Mayor and the City Clerk of the City of Urbana, Illinois be and they are hereby, authorized and empowered to accept such instruments in the name and on behalf of the City of Urbana, Illinois; that the Indenture of Mortgage and Promissory Note are to be in substantially the forms attached hereto and hereby approved, with such changes therein as shall be approved by the officials of the City of Urbana accepting the same, their acceptance thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the forms of the Indenture of Mortgage and Promissory Note hereby approved; and that from and after the execution, delivery, and acceptance of such instruments, the officials, agents and employees of the City of Urbana are hereby authorized and empowered to do all such acts and things and to accept all such documents as may be necessary to carry out and comply with the provisions of such instruments as executed, delivered and accepted.

Section 2. That the provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or

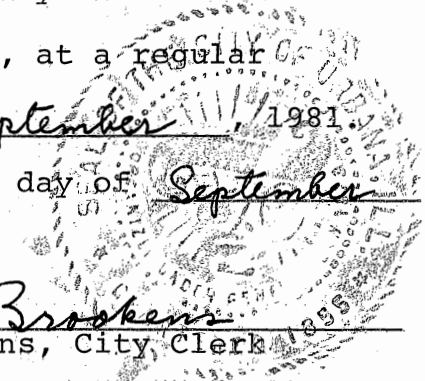
provision shall, for any reason, be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

Section 3. That all ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict, hereby repealed.

Section 4. That this Ordinance shall be in full force and effect upon its passage and approval.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council on the 8th day of September, 1981.

PASSED by the City Council this 8th day of September, 1981.


Ruth S. Brookens
Ruth S. Brookens, City Clerk

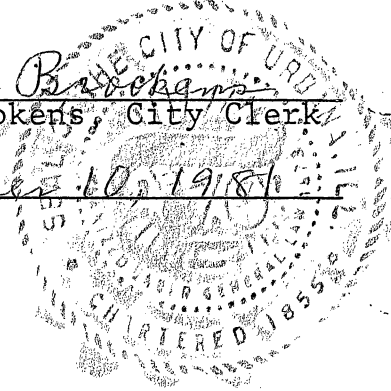
APPROVED by the Mayor this 11th day of September, 1981.


Jeffrey T. Markland, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN
ORDINANCE NO. 8182-21 AND IS INCORPORATED
THEREIN BY REFERENCE.

Ruth S. Brookens
Ruth S. Brookens, City Clerk

September 10, 1981
Date



MORTGAGE

THIS INDENTURE OF MORTGAGE, between JUMER'S CASTLE LODGE, INC. (the "Mortgagor"), a Delaware corporation authorized to do business in the State of Illinois, with its principal office located in the City of Peoria, Illinois, and the City of Urbana, Illinois, an Illinois home rule municipal corporation. (the "City")

W I T N E S S E T H:

WHEREAS, the City has issued, sold and delivered its Economic Development Revenue and Tax Supported Bonds, Series of 1981 (Jumer's Castle Lodge Project) (the "Bonds"), in the principal amount of \$3,030,000 under and pursuant to the Indenture of Trust dated September 1, 1981, (the "Indenture") between the Trustee for the Bonds (the "Trustee") and the City.

WHEREAS, the City has irrevocably pledged its full faith, credit and resources, including, if necessary, the levy of taxes on all taxable property within the City, without limitation as to rate or amount, for the prompt payment of the principal of, premium, if any, and interest on the Bonds; and

WHEREAS, as security therefore, the Mortgagor is justly indebted to the City in the principal sum of \$3,030,000, evidenced by a certain Note of the Mortgagor payable to the order of the City of even date herewith and delivered, in and by which said Note the Mortgagor promises to pay to the City on the fifteenth day of each month (or day) commencing with the fifteenth day of _____, 1981 and thereafter, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum equal to not less than one-sixth of the interest and one-twelfth of the principal amount payable on the next succeeding March 1 or September 1, as the day may be, as principal (whether at maturity or upon redemption), premium, if any, and interest upon the Series 1981 Bonds as provided in the Indenture; and

WHEREAS, any payment made by the Mortgagor pursuant to the Series 1981 Note, dated as of September 1, 1981, provided for in the Loan Agreement dated as of September 1, 1981 (the "Loan Agreement") by and between the City and the Mortgagor, also shall be a payment on the Note secured by this Mortgage; and

WHEREAS, the Note is prepayable only upon the terms set forth

in Article VII of the Loan Agreement; and

WHEREAS, the mortgagor has also mortgaged certain property in the City of Urbana, Champaign County, Illinois to the trustee under the Indenture under a certain mortgage of even date herewith securing said property as therein more specifically defined, which such property shall hereinafter be referred to as the "Urbana premises".

NOW, THEREFORE, to secure (1) the payment by the Mortgagor of said Note and said interest thereon in accordance with the terms, provisions and limitations of the Loan Agreement and Note, (2) the performance by the Mortgagor of the covenants and agreements contained in the Loan Agreement and the Note, and (3) the payment by the Mortgagor of any Additional Notes pursuant to the Loan Agreement with interest thereon, the Mortgagor does hereby MORTGAGE, CONVEY, WARRANT AND CREATE A SECURITY INTEREST unto the City its successors and assigns, the Real Estate described in Schedule 1 hereto and all of the Mortgagor's estate, right, title and interest therein, which, with the property hereinafter described are referred to herein as the "premises".

TOGETHER with all improvements, tenements, easements, fixtures, and appurtenances thereto belonging, and all rents, issues and profits thereof for so long and during all such times as the Mortgagor may be entitled thereto (which are pledged primarily on a parity with said real estate and not secondarily), and all apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing), screens, window shades, storm doors and windows, floor coverings, awnings, stoves and water heaters; all of which foregoing are declared to be a part of said real estate whether physically attached thereto or not, it being agreed that all similar apparatus, equipment or articles hereafter placed in the premises by the Mortgagor or its successors or assigns shall be considered as constituting part of the real estate;

TO HAVE AND TO HOLD the premises unto the City and its successors forever, for the purposes, and upon the uses and the trusts herein set forth.

The Mortgagor covenants and agrees so long as the indebtedness secured hereby remains outstanding and unpaid as follows:

(1) the Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed (subject to the provisions of paragraph (3) hereof); (b) keep said premises in good condition and repair, without

waste, and free from Mechanics' or other liens or claims for lien not expressly subordinate to the lien hereof; (c) complete within a reasonable time any building or buildings now or at any time in process of erection upon said premises; (d) comply with all requirements of law or municipal ordinances with respect to the premises and the use thereof unless the Mortgagor is contesting the validity of any such law or ordinance in a judicial or administrative proceeding and its failure to comply therewith does not materially adversely affect the operation of the facility located on the premises;

(2) The Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due. To prevent default hereunder the Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which the Mortgagor may desire to contest.

(3) The Mortgagor shall keep all buildings and improvements now or hereafter situated on said premises insured against loss or damage by fire, lightning or windstorm under policies providing for payment by the insurance companies of moneys sufficient either to pay the cost of replacing or repairing the same or to pay in full the indebtedness secured hereby.

(4) In case of default herein, the City may, but need not, make any payment or perform any act hereinbefore required of the Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encombrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by the City to protect the mortgaged premises and the lien hereof, plus reasonable compensation to the City for each matter concerning which action herein authorized may be taken, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the highest rate borne by the Bonds. Inaction of the City shall never be considered as a waiver of any right accruing to it on account of any default hereunder on the part of the Mortgagor.

(5) The City in making any payment hereby authorized relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale forfeiture, tax lien or title or claim thereof.

(6) The Mortgagor shall pay each item of indebtedness herein mentioned, both principal and interest, when due according to the terms of such indebtedness and the Loan Agreement.

(7) When the indebtedness hereby secured shall become due, the City shall have the right to proceed to protect and enforce the rights of the City hereunder by a suit or suits in equity or at law or for the specific performance of any covenant or agreement contained herein or in the Loan Agreement or in aid of the execution of any power or right herein or in the Loan Agreement granted, for the foreclosure of this Mortgage or for the enforcement of any other appropriate legal or equitable remedy, subject, however, to the requirement that before a foreclosure proceeding may be brought under this mortgage, the Trustee under the Indenture or the City, as the case may be, must first have instituted foreclosure proceedings upon the Urbana Premises, and must have pursued all applicable guarantees as provided in the Loan Agreement for payment on the bonds. The proceeds of any such remedy and security shall act to satisfy the indebtedness secured by this mortgage. In any suit to foreclose or to enforce any other appropriate legal or equitable remedy, there shall be allowed and included as additional indebtedness in the decree for sale or relief all expenditures and expenses incurred for exercising rights arising under this mortgage; such expenditures and expenses as may be paid or incurred by or on behalf of the City for attorneys' fees, Trustee's fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, guarantee policies and similar data and assurances with respect to title as the City may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional indebtedness secured hereby and immediately due and payable, with interest thereon at the highest rate borne by the Bonds.

(8) Upon, or at any time after the filing of a suit to foreclose this Mortgage, the court in which such suit is filed may appoint a receiver of said premises. Such appointment may be made either before or after sale without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then value of the premises. Such receiver shall have power to collect the rents, issues and profits of said premises during the pendency of such foreclosure and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when the Mortgagor except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection,

possession, control, management and operation of the premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

(9) No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the indebtedness hereby secured.

(10) Any and all property hereafter acquired which is of the kind or nature herein provided to be and become subject to the lien hereof shall ipso facto, and without any further conveyance, assignment or act on the part of the Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless the Mortgagor shall from time to time if requested by the City, execute and deliver any and all such further assurances, conveyances and assignments thereof as the City may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage any and all such property.

(11) The Mortgagor will cause this Mortgage, all mortgages supplemental hereto, financing statements with respect to any personal property, machinery, equipment and fixtures forming a part of the premises and appropriate continuation statements with respect to such financing statements at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law in order fully to preserve and protect the rights of the City, and will furnish to the City promptly after the execution and delivery of this Mortgage (and of each supplemental mortgage, if any, at any time executed and delivered by the Mortgagor), financing statements and continuation statements, an opinion of counsel stating that in the opinion of such counsel this Mortgage, such supplemental mortgage, such financing statements or such continuation statements, as the case may be, have been properly recorded or filed for record so as to make effective of record the lien intended to be created hereby.

(12) The City agrees that this Mortgage will be automatically subrogated to a later mortgage on the premises provided that such later Mortgage is to secure a loan, the entire proceeds of which the Company will use for improving the premises, and that the increase in value (at cost) of the premises (real and personal) resulting from such improvement, will be equal to or greater than the amount of the later mortgage.

(13) The City agrees that, so long as no default shall have occurred and be continuing with respect to the indebtedness secured hereby, this mortgage may further be subrogated, upon the written consent of the City, to a mortgage to secure additional debt of the Company which is incurred by the Company for purposes other than the improvement of the premises, where such additional debt does not exceed the total amount of \$300,000.00 during the first three (3) years from and after the date of the execution of this Mortgage, \$500,000.00 during the fourth and fifth years from and after such date, and \$700,000.00 thereafter. Provided the Company is able to demonstrate by means of a written financial plan submitted to the City, which such plan is prepared in accordance with generally recognized financial planning principles, that the incurring of such debt will benefit both the overall corporate status of the Company and, more particularly, the Company's ability to promptly repay any and all amounts secured hereby, such consent shall not be unreasonably withheld by the City.

(14) If and so long as no default shall have occurred and be continuing with respect to the indebtedness secured hereby, the Mortgagor may, at the Mortgagor's expense, obtain the release of any part of the vacant land constituting a part of the premises (although transportation or utility facilities may be located thereon), at any time and from time to time, provided that it furnishes the City with the following:

(a) A notice in writing containing (i) an adequate legal description of that portion of the land to be released, and (ii) a statement that the Mortgagor intends to exercise its option to obtain a release of such land on a date stated, which shall not be more than ninety days from the date of such notice.

(b) A certificate of an independent engineer who is acceptable to the City, dated not more than ninety days prior to the date of the notice and stating that in the opinion of the person signing such certificate, (i) the portion of the land with respect to which the option is exercised is not needed for the operation of the premises as a hotel and restaurant facility, and (ii) the release will not impair the usefulness of the premises as a hotel and restaurant and will not destroy the means of ingress thereto and egress therefrom.

The City agrees that upon receipt of the notice and certificate required in the paragraph to be furnished to it by the Mortgagor, it will execute a release from the lien of this Mortgage of such portion of the land with respect to which the Mortgagor shall have exercised the option granted to it in this paragraph.

(15) If and so long as no default shall have occurred and be continuing with respect to the mortgage indebtedness secured hereby, the City shall release this mortgage and the lien hereof by proper instrument seven (7) years after the date of the execution of this mortgage, or sooner upon presentation of satisfying evidence that:

(a) all mortgage debt on the Urbana premises totals less than seventy percent (70%) of the "certified appraised value" of such premises. For the purposes of this provision, the term "certified appraised value" shall mean an appraisal by an appraiser mutually agreed upon by the mortgagor and the City, which such appraisal places a value upon the Urbana premises taking into account all three of the following valuation approaches: 1) market value, 2) replacement value and 3) income; and based on all of those three approaches, the "certified appraised value" would be the final value which, in the opinion of such appraiser, the Urbana premises are worth on that date, which such opinion takes into account all three approaches as specified herein, and gives weight to each approach as the appraiser deems appropriate.

(b) all indebtedness secured by this mortgage has been fully paid or provision for such payment has been made pursuant to Article VII of the Indenture; and the City shall execute and deliver a release hereof to and at the request of any person who shall, either before or after maturity thereof, produce and exhibit to the City the note, representing that all indebtedness hereby secured has been paid, which representation the City may accept as true without inquiry.

(16) This Mortgage and all provisions hereof shall extend to and be binding upon the Mortgagor and all persons claiming under or through the Mortgagor, and the "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note, and Additional Note or this Mortgage.

IN WITNESS WHEREOF, Jumer's Castle Lodge, Inc. has caused its name to be subscribed hereto by its duly authorized _____ and attested by its duly authorized _____ identified below, and the City has accepted this Mortgage by causing its corporate name to be hereunto subscribed and attested under its official seal by its duly authorized officers identified below, all as of September 1, 1981, but actually executed and delivered on the dates shown by the acknowledgements.

JUMER'S CASTLE LODGE, INC.
Mortgagor

BY: _____
Its _____

(SEAL)

ATTEST:

its _____

THE CITY OF URBANA, ILLINOIS

BY: _____
Jeffrey T. Markland, Mayor

(SEAL)

ATTEST:

Ruth S. Brookens, its City Treasurer

JUMER'S CASTLE LODGE, INC.

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, Jumer's Castle Lodge, Inc., ("Company"), a corporation organized and existing under the laws of the State of Delaware and authorized to do business in the State of Illinois, hereby promises to pay to the City of Urbana, Illinois, ("City") in funds readily available on the next succeeding business day in Urbana, Illinois: (a) a sum which, together with other moneys available therefor, in the Company Bond Fund created under the Indenture of Trust (the "Indenture"), dated as of September 1, 1981, between the Issuer and _____, Illinois, as trustee (the "Trustee") until the City's \$ _____ Economic Development Revenue and Tax Supported Bonds Series of 1981, (Jumer's Castle Lodge Project) (the "Bonds") issued under the Indenture shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, will equal the amount payable on the next succeeding March 1, or September 1, as principal, premium, if any, and interest on the Bonds, as provided in the Indenture; and (b) at least one business day before the date fixed for redemption of Bonds, pursuant to the Indenture; a sum which together with other moneys available therefor in the Company Bond Fund created under the Indenture will equal the principal amount of bonds to be redeemed, plus premium, if any, interest thereon to the redemption date, and any other amounts due thereon on such redemption date or with respect to such redemption.

The Promissory Note is issued in further consideration of the loan made under the Loan Agreement dated as of September 1, 1981 ("Loan Agreement") between the City and Company and to evidence the obligations of the Company set forth in Section 4.1(a) thereof. This Promissory Note is secured by a Mortgage of even date hereof by and between the City and the Company (the "Mortgage"), and all of the terms, conditions, and provisions of the Indenture, the Loan Agreement, and the Mortgage are, by this reference thereto, incorporated herein as a part of this Promissory Note.

It is intended by the Company that the payments of principal, premium, if any, and interest hereon shall at all times be sufficient

to pay the total amount of interest and principal (whether at maturity or upon redemption) and premium, if any, payable on the Bonds on the next succeeding March 1, or September 1, as the case may be; provided that each payment made pursuant to the Promissory Note issued pursuant to the Loan Agreement shall be credited against payment due hereon on such date; and provided that the Excess Amount (as hereinafter defined) held by the Trustee in the Company Bond Fund created under the Indenture on a payment date shall be credited against the payment due hereon on such date; and provided further that, subject to the provisions of the next succeeding sentence, if at any time the amount held by the Trustee in the Company Bond Fund should be sufficient (and remain sufficient) to pay at the times required the principal of, interest and premium, if any, on the Bonds then remaining unpaid, the Company shall not be obligated to make any further payments hereunder. Notwithstanding the provisions of the preceding sentence, if on any date the Excess Amount held by the Trustee in the Company Bond Fund is insufficient to make the then required payments of principal (whether at maturity or upon redemption), interest and premium, if any, on the Bonds on such date, the Company shall forthwith pay such deficiency hereunder. The term "Excess Amount" as of any date shall mean the amount in the Company Bond Fund on such date in excess of the amount required for payment of the principal of the Bonds which have matured at maturity or on a redemption date, premium, if any, on such Bonds and past due interest in all cases where Bonds or coupons have not been presented for payment. The total payments to be made by the Company shall be sufficient to pay when due (whether upon maturity or redemption) the principal, premium, if any, and interest on the Bonds. As provided in Sections 4.1(b), 4.2, and 7.1 of the Loan Agreement, the Company may deliver Bonds to the Trustee in satisfaction of its obligation to pay principal hereunder.

In the event the Company should fail to make any of the above payments, the payment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid, and the Company agrees to pay the same with interest to the extent permitted by law at the coupon rate of interest on the respective Bonds.

This Promissory Note is entitled to the benefits and is subject to the conditions of the Loan Agreement. The obligations of the Company to make the payments required hereunder shall be absolute and unconditional, without any defense or right of set-off counterclaim, or recoupment by reason of any default by the City under the Loan Agreement or under any other agreement between the Company and the City or out of any indebtedness or liability at any time owing to the Company by the City or for any other reason.

This Promissory Note is subject to prepayment under the terms and conditions, and in the amounts provided in Article VII of the Loan Agreement.

No recourse, except as provided in the Guarantee by D. James Jumer of even date herewith, shall be had for the payment of this Promissory Note, or for any claim based hereon or on the Loan Agreement, against any officer, director, or stockholder past, present, or future of the Company under any constitutional provision, statute, or rule of law, or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise.

All terms used in this Promissory Note which are defined in the Loan Agreement shall have the meaning assigned to them in the Loan Agreement.

IN WITNESS WHEREOF, Jumer's Castle Lodge, Inc., has caused this Promissory Note to be duly executed, attested, and delivered as of September 1, 1981.

JUMER'S CASTLE LODGE, INC.

By: _____
D. James Jumer, President

(SEAL)

Attest:

Its Secretary