

ORDINANCE NO. 8384-21

AN ORDINANCE

APPROVING AND AUTHORIZING THE EXECUTION OF A GROUND LEASE
WITH OPTION TO PURCHASE LEASED PREMISES AND FINANCING AGREEMENT

WHEREAS, in the opinion of at least three-fourths (3/4ths) of the City Council of the City of Urbana, it is no longer necessary, appropriate or in the best interests of the City of Urbana, for governmental purposes or proprietary activity of the City, to retain for the term thereof the following generally described real estate that is herein authorized to be leased from the City:

An area of land approximately 16 feet by 360 feet located in the southernmost portion of the Elm Street right-of-way between Broadway Avenue and Race Street.

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

Section 1. That the City Council of the City of Urbana, Illinois finds as fact the recital hereinabove set forth.

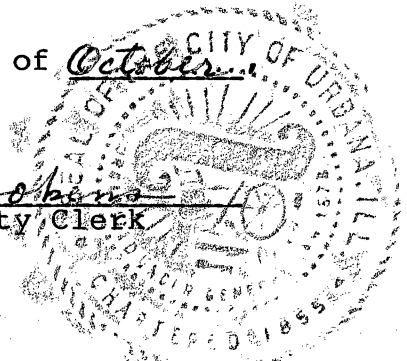
Section 2. That the "Ground Lease With Option To Purchase Leased Premises And Financing Agreement", dated June 1, 1983, by and between the City of Urbana, Illinois and Jumer's Castle Lodge, Inc., in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 3. That the Mayor of the City of Urbana, Illinois be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is hereby authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of three-fourths (3/4ths) of the members of the corporate authorities of the City of Urbana, Illinois, then holding office, at a regular meeting of said Council.


PASSED by the City Council this 17th day of October, 1983.

Ruth S. Brookens
Ruth S. Brookens, City Clerk



1983.

APPROVED by the Mayor this 21st day of October.

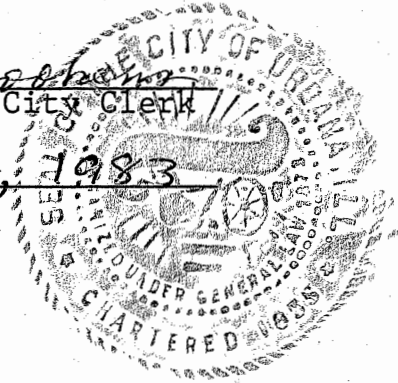


Jeffrey T. Markland, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN
ORDINANCE NO. 8384-21 AND IS INCORPORATED
THEREIN BY REFERENCE.

Ruth S. Brookens
Ruth S. Brookens, City Clerk

October 19, 1983
Date



**GROUND LEASE WITH OPTION TO PURCHASE
LEASED PREMISES AND FINANCING AGREEMENT**

THIS LEASE AND FINANCING AGREEMENT is made and entered into this 1st day of June, 1983, by and between the **CITY OF URBANA, ILLINOIS**, a municipal corporation of the State of Illinois, with its principal office at 400 South Vine Street, Urbana, Illinois 61801 (the "Lessor"), and **JUMER'S CASTLE LODGE, INC.**, a Delaware corporation duly qualified to do business in the State of Illinois, with its principal offices at 3126 S.W. Adams Street, Peoria, Illinois 61601 (the "Lessee"),

W I T N E S S E T H:

WHEREAS, pursuant to "An Agreement To Provide For Parking And For Parking Validation Payments -- Jumer's Castle Lodge Project" duly made and entered into as of the 7th day of December, 1981 (the "Parking Agreement"), Lessor and Lessee hereto have previously agreed, among other things, to enter into a Lease Agreement for the lease of certain premises owned by the Lessor for the purpose of providing surface area parking for Lessee's guests and customers; and

WHEREAS, said Parking Agreement anticipates and provides the general parameters for the basic terms and conditions of this Lease and Financing Agreement (sometimes referred to herein as the "Lease").

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants and agreements herein contained, and of the lease payments to be made by Lessee, and of the performance of each and all of the terms, covenants and conditions hereof, and of the acceptance by the Lessor of the hereinafter described Note, the Lessor and Lessee agree as follows:

Section 1. Demise; description of premises.

Lessor leases to Lessee and Lessee hires from Lessor, those certain premises with appurtenances, situated in the City of Urbana, County of Champaign, State of Illinois, generally described as:

An area of land approximately 16 feet by 360 feet located in the southernmost portion of the Elm Street right-of-way between Broadway Avenue and Race Street,

which such area is more particularly described in Exhibit "A" and depicted on the survey in Exhibit "B", both of which such exhibits are attached hereto and made a part hereof. As used herein, the term "Premises" refers to the real property above described and to any improvements located thereon from time-to-time during the term hereof.

Section 2. Term.

The term of this Lease shall be for a period of ten (10) years commencing on June 1, 1983, and ending on May 31, 1993.

Section 3. Rent.

The total rent for and during the term of this Lease shall be One Hundred Dollars (\$100.00) per year, which Lessee shall pay to Lessor, without deduction or offset, at such place or places as may be designated from time-to-time by Lessor, in annual installments on the first day of each June during the term hereof, but with the first such installment being due and payable on the actual date of execution and delivery of this Lease by Lessee.

Section 4. Certain alterations and improvements.

It is mutually acknowledged and agreed by and between the parties hereto that the certain alterations and improvements, including resurfacing and landscaping, (the "Improvements"), have heretofore been made or caused to be made to and upon the Premises pursuant to the Parking Agreement by the Lessor, and that the actual cost of the Improvements has been determined to be \$45,174.00. Lessor will advance the necessary funds required to complete and pay for the Improvements at such cost and Lessee will reimburse the Lessor for the same in accordance with Section 5 hereof.

Section 5. Financing and repayment.

The obligation of Lessee to so reimburse the Lessor shall be evidenced by Lessee issuing to Lessor its promissory note (the "Note") payable to the order of the Lessor in an aggregate principal amount equal to the actual cost of the Improvements as agreed upon in Section 4 hereof. The Note shall be substantially in the form attached as Exhibit "C" hereof; shall be dated the first day of June, 1983; shall be payable to the order of the Lessor; shall bear interest on the unpaid principal amount thereof outstanding from time-to-time at the rate of eleven and six tenths percent (11.6%) per annum; and shall be due and payable, if not sooner paid in full in accordance with Sections 7, 8 and 9 of this Agreement, on or before May 31, 1993. Both the principal of and interest on the Note shall be payable in immediate available funds at the principal office of the Lessor. Lessee shall have the option at any time to prepay the Note in whole or in part.

Section 6. Maintenance and use of the Premises.

Lessee, at its own expense, will at all times have and keep the Premises in good condition and repair. If any alterations, additions or changes are required as a result of Lessee's use of the Premises, Lessee will make the payment and bear all expenses connected therewith. It is mutually agreed by and between the parties that the Premises are leased to Lessee for access and surface area parking for Lessee's guests and customers and Lessee agrees not to use the Premises or to permit its use or the use of any part of said Premises for any other purpose, without obtaining the prior written consent of Lessor.

During the continuance of this Lease, the Premises shall not be used for any purpose in violation of any federal, state or municipal statute or ordinance, or of any regulation, order or directive of a governmental agency, as such statutes, ordinances, regulations, orders or directives now exist or may hereafter provide, concerning the use and safety of the Premises.

Section 7. Option to purchase leased Premises.

Lessor hereby grants to Lessee an exclusive option and right to purchase, during the term of this Lease, the leased Premises, provided Lessee shall have made all payments required by this Lease to that time, including payment in full of both principal and interest on the Note, and no "Event of Default" by Lessee, as defined in Section 9 of this Lease, shall have occurred and be continuing. In the event of the exercise of this option as herein provided, the Lessor agrees to convey the Premises to Lessee by way of a vacation ordinance under which the title to the Premises shall vest in the then current owner of the land abutting thereon according to law, with Lessor hereby agreeing to reserve no interest, easement or restriction in the Premises other than those that may be necessary or desirable for utilities actually in place.

Whenever Lessee shall desire to exercise this option, Lessee shall give the Lessor written notice thereof. Such notice shall be sent to the Mayor with a copy to the City Attorney. Within a reasonable time after the receipt of such notice, Lessor will take such steps as are legally necessary to cause the Premises to be vacated. In the event Lessee so elects to exercise this option, the Lessee shall pay additional compensation to Lessor in such total amount as is equal to the price of \$4.00 per square foot of the Premises, which such total amount is, in the judgment of the corporate authorities of the Lessor, a total amount equal to the benefits which will accrue to the Lessee by reason of such act of vacation.

No portion of the rent paid by Lessee prior to Lessee's exercise of its option hereunder shall be applied towards the purchase price specified above. The obligations of Lessee under this Lease shall cease on and after the effective date of the vacation ordinance as provided for herein.

Section 8. Lessee's right to terminate.

Provided Lessee is not in default and has otherwise paid in full both the principal and interest due on the Note, this Lease Agreement may be cancelled and terminated by Lessee at any time. Such cancellation and termination shall be effective sixty (60) days after Lessee gives to Lessor written notice of such termination. However, the giving of such notice shall not release Lessee from full and faithful performance of all covenants of this Lease during the period between the giving of notice and the effective date of cancellation and termination.

Section 9. Defaults; Events of Default.

If any one or more of the following events occur, it is hereby defined as and declared to be an "Event of Default":

(a) Default for thirty (30) days, after receipt by Lessee of written notice specifying such nonpayment, in the due and punctual payment by Lessee of the annual rent due as provided by Section 3 of this Lease.

(b) Default by Lessee, as so defined as a default under the terms and provisions of any note or loan agreement secured by any of Lessee's mortgages on its hotel facilities in Urbana, Illinois or the Note provided for herein.

(c) Default in the performance or observance of any other of the covenants, agreements, representations or conditions on the part of the Lessor or Lessee in this Lease or in the Note, and the continuance thereof for a period of thirty (30) days after receipt by the Lessor or Lessee of written notice specifying such default and requesting that it be corrected. If such default be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted within such period and diligently pursued until the default is corrected and such default is timely and diligently corrected.

(d) Lessee shall: (i) become insolvent; or (ii) be unable, or admit in writing its inability, to pay its debts as they mature; or (iii) make a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property;; or (iv) be adjudicated a bankrupt; or (v) file a petition in bankruptcy or to effect a plan or other arrangement with creditors; or (vii) apply to a court for the appointment of a receiver for any of its assets; or (viii) have a receiver appointed for any of its assets (with or without the consent of the Lessee) and such receiver shall not be discharged within sixty (60) days after its appointment.

Any such occurrence of an Event of Default as set forth above shall constitute a breach of this Lease, and in such event, either Lessor or Lessee shall be entitled to exercise all remedies herein provided as well as any and all remedies provided in law or in equity. In the event of any such breach by Lessee, Lessor may, at its option, continue the Lease in force or declare the Lease forfeited, reenter the Premises, and remove all persons and Lessee's property therefrom. Additionally, in the event of any such breach by Lessee, the entire principal and interest due on the Note shall then become immediately due and payable.

Section 10. Additional rent.

If the City is compelled to incur any expenses, including reasonable attorneys' fees, in instituting or prosecuting any action or proceeding by reasons of any Event of Default of Lessee hereunder, the sum or sums so incurred by the Lessor,

with all interest, costs and damages, shall be deemed to be additional rent hereunder and shall be due from Lessee to the Lessor on the first day of the month following the incurring of such respective expenses.

In the event that this Lease is terminated for any reason other than Lessee's exercise of its option to purchase as provided in Section 7 hereof, Lessee shall reimburse the Lessor for the cost of restoring the improvements on the Elm Street right-of-way to substantially the same condition as those improvements so existing prior to the point in time at which any of the improvements made by the respective parties pursuant to the Parking Agreement were made, which such total amount thereof shall be deemed to be additional rent hereunder and shall be due from Lessee to the Lessor prior to the effective date of such termination.

Section 11. Indemnification of Lessor.

Lessor shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by Lessee or by any person who may at any time be using or occupying or visiting the demised Premises or be in, on, or about the same, whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Lessee or of any occupant, subtenant, visitor, or user of any portion of the Premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth. Lessee shall indemnify Lessor against all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death, or damage. Lessee hereby waives all claims against Lessor for damages to the building and improvements that are now on or hereafter placed or built on the premises and to the property of Lessee in, on, or about the Premises, and for injuries to persons or property in or about the Premises, from any cause arising at any time. The three preceding sentences shall not apply to loss, injury, death, or damage arising by reason of the sole negligence of Lessor, its agents, or employees.

Section 12. Insurance.

Lessee shall maintain in effect throughout the term of this Lease personal liability insurance covering the Premises and its appurtenances in the amount of \$1,000,000.00 with additional umbrella coverage in the amount of \$2,000,000.00. Such insurance shall specifically insure Lessee in a standard all-risk clause and shall specifically insure Lessor as an additional insured.

Section 13. Assignment, transfer or sublease.

Lessee shall not assign or transfer this Lease Agreement or the Note, or any interest therein, or sublet the leased Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any person other than Lessee and its agents, employees and guests, to occupy or use the Premises or any part thereof,

without first obtaining Lessor's written consent thereto, unless such assignment, transfer or sublease otherwise is made pursuant to each of the terms and conditions specified in Sections 5.1, 5.5 or 5.7 of a certain Loan Agreement, dated December 1, 1981, by and between the parties hereto. It is mutually recognized and agreed by and between the parties hereto that Lessee is a party to a certain agreement with Urbana Central Development Company, a Delaware corporation, dated January 11, 1977, as amended, (the "Urbana Central Agreement"), wherein Lessee has agreed to subject any additional real estate constituting a part of the "Jumer's tract", as therein more particularly defined, to the provisions of the Urbana Central Agreement, and Lessor agrees that Lessee may, subject in all respects to the terms, covenants or conditions of this Agreement, the provisions of which shall supersede and prevail over anything to the contrary in the Urbana Central Agreement, cause the Premises to be so subjected in accordance with the Urbana Central Agreement.

Section 14. Remedies cumulative.

All remedies hereinbefore and hereinafter conferred on Lessor shall be deemed cumulative and no one exclusive of the other or any other remedies conferred by law.

Section 15. Waiver.

The waiver by Lessor of or the failure of Lessor to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or subsequent breach of the same, or any other term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

Section 16. Parties bound.

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators, and assignees of all the parties hereto, and all the parties hereto shall be jointly and severally liable hereunder.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease Agreement to be executed and attested in their respective corporate names by their duly authorized officers and their respective corporate seals to be hereunto affixed, all as of the date first above written, but actually executed and delivered on the date shown below.

LESSOR:

CITY OF URBANA, ILLINOIS

By: Jeffrey T. Markland, Mayor

ATTEST:

Ruth S. Brookens, City Clerk

LESSEE:

JUMER'S CASTLE LODGE, INC.

By: Its

ATTEST:

Its

Executed and delivered this ____ day of _____, 1983.

EXHIBIT C

PROMISSORY NOTE

\$____,____

June 1, 1983

FOR VALUE RECEIVED, the undersigned, **JUMER'S CASTLE LODGE, INC.**, a Delaware corporation duly qualified to do business in the State of Illinois, with its principal offices at 3126 S.W. Adams Street, Peoria, Illinois 61601 (hereinafter referred to as the "Borrower"), which term shall be construed to include the successors and assigns of the Borrower, promises to pay to the order of the **CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS** (hereinafter referred to as the "Municipality"), on or before May 31, 1993, the principal sum of _____

(\$____,____) with interest thereon from the date hereof until the entire indebtedness evidenced by this Note is fully paid, at the rate of eleven and six-tenths percent (11.6%) per annum on such amount as may, from time-to-time, remain unpaid.

Both principal and interest on this Note shall be payable in immediately available funds at the principal office of the City of Urbana, Illinois, 400 South Vine Street, Urbana, Illinois. Borrower reserves the right at any time to prepay in whole, or in part, the principal and interest owing on this Note. Said payments of principal and interest shall first be applied to interest and then, if at all, to principal. Receipt of all payments on account of principal and interest on this Note that may be made by Borrower prior to maturity shall, if and when made, be endorsed on the reverse side of this Note and duly acknowledged by both the Borrower and the Municipality.

This Note constitutes the Note issued under a Ground Lease With Option To Purchase Leased Premises And Financing Agreement dated as of June 1, 1983, made by and between the Borrower (described as "Lessee" therein) and the Municipality (described as "Lessor" therein), to which said Agreement reference is hereby made for a statement of the terms and conditions on which the debt evidenced hereby was made, for a description of the circumstances under which the Borrower is entitled to be released of liability hereunder and for a description of the terms and conditions upon which this Note may be prepaid, in whole or in part, or its maturity accelerated. The provisions of the Ground Lease With Option To Purchase Leased Premises And Financing Agreement are incorporated herein by this reference thereto.

The principal of this Note is subject to prepayment in whole or in the manner and under the circumstances set forth in the said Agreement, at a price equal to 100% of the principal amount hereof to be prepaid plus accrued and unpaid interest hereon to the date fixed for prepayment.

The Borrower pledges its full faith and credit to the timely and full payment of the principal of and interest on this Note and all other amounts respectively owing by it hereunder and under the said Agreement.

All principal installments of this Note or portion thereof designated for prepayment will cease to bear interest on the specified prepayment date, provided funds for their prepayment are effectively made at the place of payment at that time.

BORROWER

JUMER'S CASTLE LODGE, INC.

By: _____
Its _____

ATTEST:

Its _____