

ORDINANCE NO. 8384-22

AN ORDINANCE  
GRANTING CERTAIN CONSENTS AND WAIVERS IN  
CONNECTION WITH THE SALE, TRANSFER AND ASSIGNMENT OF  
CERTAIN HOTEL FACILITIES OWNED BY JUMER'S CASTLE LODGE, INC.

WHEREAS, the City of Urbana, Illinois, a municipal corporation of the State of Illinois, (the "City") and Jumer's Castle Lodge, Inc., a Delaware corporation duly qualified to do business in the State of Illinois, (the "Company"), from and after January, 1977, have entered into various agreements as herein more specifically described for the acquisition, lease or use and maintenance of certain real estate surrounding, and the financing of, certain existing hotel facilities, together with an addition thereto, all owned by the Company and located adjacent to the Lincoln Square Shopping Mall in the Central Business District of the City of Urbana (all such real estate or any interest therein so owned or held by the Company, together with any and all improvements thereto, being collectively referred to herein as the "Company's Urbana Hotel Facilities"); and

WHEREAS, pursuant to the terms of an "Agreement" dated January 13, 1977, between the City and the Company, which said Agreement was executed and delivered by the City pursuant to Ordinance No. 7677-72, the City and the Company entered into certain "Articles of Agreement for a Warranty Deed" dated February 18, 1977, as said Articles of Agreement were amended by an Amendment thereto executed February 18 and 25, 1977, respectively, which said Amendment was executed and delivered by the City pursuant to Ordinance No. 7677-80 (collectively, the "Agreement for Deed"), the City agreed to sell to the Company the following described real estate, all in accordance with the terms therein provided:

Lot 8 of Central Business Addition, Urbana,  
Illinois as per plat recorded in Plat Book "O"  
at page 1, situated in the City of Urbana, in  
Champaign County, Illinois;

and

WHEREAS, Section 13-101 of Article 13 of said Agreement for Deed provides that the Company shall not assign that Agreement for Deed or any portion thereof without the prior written consent of the City, and that the City's refusal to grant such consent shall be conclusive; and

WHEREAS, pursuant to the terms of an "Agreement for the Improvement and Maintenance of a Portion of Green Street", dated May 18, 1979, between the City and the Company, which said

Agreement was executed and delivered by the City pursuant to Resolution No. 7778-R22, as said Agreement was amended by an Amendment thereto dated October 19, 1979, which said Amendment was executed and delivered by the City pursuant to Resolution No. 7980-R10 (collectively, the "Green Street Agreement"), the City, subject to certain interests retained by the City and certain interests and rights of the public, granted to the Company the right to make certain improvements to, and the Company agreed to maintain, the following described portion of Green Street, all in accordance with the terms therein provided:

Commencing 6.00 feet East of the Southeast corner of Lot 8 of the Central Business Addition to the City of Urbana, thence West 178.76 feet; thence South 50.00 feet; thence East 178.76 feet; thence North 50.00 feet to the point of beginning, commonly known as a portion of the "100" block of West Green Street;

and

WHEREAS, Section 8 of said Green Street Agreement provides that if the Company shall sell, assign or mortgage said Green Street Agreement, the City may elect to terminate said Green Street Agreement in accordance with its terms; and

WHEREAS, pursuant to the terms of a certain "Loan Agreement" dated December 1, 1981, between the City and the Company, which said Agreement was executed and delivered by the City pursuant to Ordinance No. 8182-45 (the "Loan Agreement"), and duly assigned pursuant to Section 4.4 of the Loan Agreement to the First National Bank of Springfield, a national banking association duly organized and existing under and by virtue of the laws of the United States, as Trustee (the "Trustee"), under a certain Indenture of Trust dated December 1, 1981, between the City and the Trustee (the "Indenture"), the City agreed to issue its Economic Development Revenue Bonds in the principal amount of \$3,030,000 (the "Bonds") to finance in part the cost of the Project consisting of an addition to the Company's existing hotel facilities (the "Existing Facilities"), located adjacent to the Lincoln Square Shopping Mall in the Central Business District of the City of Urbana, as therein more specifically described (the "Project"), and to loan the proceeds therefrom to the Company upon such terms as would produce revenues and receipts sufficient to provide for the prompt payment by the Company at maturity of the principal, interest and redemption premiums, if any, on the Bonds; in addition, the City has irrevocably pledged its full faith, credit and resources, including, as 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; all as more specifically set forth under the terms and provisions of the said Loan Agreement,

Indenture and other related documents in connection therewith, including a certain "Agreement", dated December 14, 1981, by and among the City, the Company, the Trustee, and Busey First National Bank, a national banking association ("Busey"), American National Bank and National Bank of Urbana (the "Mortgages' Agreement"), which contains provisions regarding the operation, foreclosure and disposition of sale proceeds in connection with the Company's Urbana Hotel Facilities if a default occurs in connection with any of said loans, it being recognized that the obligations of the Company under the Loan Agreement are secured by a first mortgage lien on all real property and fixtures in the Project and a security interest in all machinery and equipment acquired with the proceeds of the Bonds and by a second mortgage lien on and security interest in the Existing Facilities (collectively, the "Mortgage"), with Busey and the said other financial institutions having a first mortgage lien on and a security interest in the Project to secure a loan by such institutions in connection with the acquisition and improvement of the Existing Facilities (collectively, the "Busey Mortgage"); and

WHEREAS, Section 5.5 of said Loan Agreement provides that the Company may without the City's or the Trustee's consent, assign any or all of its rights and interest under the Loan Agreement and may lease the Project or the Existing Facilities, subject, however, to each of the following conditions: (a) No such assignment or lease shall relieve the Company from primary liability for its obligations under the Loan Agreement; (b) the assignee or lessee, as the case may be, shall assume in writing the Company's obligations under the Loan Agreement; and (c) executed counterparts of such assignment and assumption or lease and assumption, as the case may be, shall be delivered promptly to the City and the Trustee; and

WHEREAS, pursuant to the terms of a certain UDAG Loan Agreement dated December 1, 1981, between the City and the Company, which said Agreement was executed and delivered by the City pursuant to Resolution No. 8182-R29 (the "UDAG Loan Agreement"), the City agreed to loan to the Company a portion of an urban development action grant designated Grant No. B-81-AA-17-0012 in accordance with the terms of a UDAG Grant Agreement bearing a preliminary approval date of October 9, 1980, between the City and the United States Secretary of Housing and Urban Development, which said loan was to be in a principal amount not to exceed \$285,000, to be used to pay for a portion of the construction costs comprising a part of the Project, as therein more specifically described, and to be upon such terms under which said loan would be repaid by the Company, together with interest thereon, in annual installments in an amount equal to the sum necessary to amortize said loan over a twenty-year period, all as more specifically set forth under the terms and provisions of said UDAG Loan Agreement and other related UDAG documents in connection therewith; and

WHEREAS, pursuant to Section 14 of said UDAG Loan Agreement, the Company agreed that during the term of said UDAG Loan Agreement the Company would not suffer or permit, without the written permission or consent of the City being first had and obtained, a sale, assignment or transfer of any right, title or interest in and to the property or any portion thereof which was secured by the mortgage as provided for in said UDAG Loan Agreement; and

WHEREAS, pursuant to the terms of "An Agreement to Provide for Parking and for Parking Validation Payments -- Jumer's Castle Lodge Project", dated December 7, 1981, between the City and the Company, which said Agreement was executed and delivered by the City pursuant to Resolution No. 8182-R11 (the "Parking Agreement"), the City agreed to provide and make available certain public parking facilities in and around the vicinity of the Company's Urbana Hotel Facilities and to make provision for the payment by the Company, at its option, of certain parking validation payments for and on behalf of the Company's guests and customers; and

WHEREAS, Section 10 of said Parking Agreement provides that the Company shall not assign or transfer its rights in the Parking Agreement without the prior written consent of the City, however, the Company may assign or lease to any transferee, or any surviving or resulting corporation, its rights under the Parking Agreement as provided by Sections 5.1, 5.5, and 5.7 of the Loan Agreement, dated December 1, 1981, between the parties; and

WHEREAS, pursuant to the terms of a "Ground Lease With Option to Purchase Leased Premises and Financing Agreement", dated June 1, 1983, between the City and the Company, which said Agreement was executed and delivered by the City pursuant to Ordinance No. 8384-21, (the "Lease--Option--Financing Agreement"), the City agreed to lease to the Company certain premises situated in the City of Urbana, Illinois, generally described as follows:

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 said Lease--Option--Financing Agreement, and further agreed to grant to the Company an exclusive option and right to purchase during the term thereof the leased premises, all under such terms of and as more specifically described in said Lease--Option--Financing Agreement; and

WHEREAS, Section 13 of said Lease--Option--Financing Agreement provides that the Company shall not assign or transfer the Lease--Option--Financing Agreement, or sublet the leased

premises or any part thereof, or any right or privilege appurtenant thereto, or allow any person other than Company and its agents, employees and guests, to occupy or use the leased premises or any part thereof, without first obtaining the City's written consent thereto, unless such assignment, transfer or sublease otherwise is made pursuant to each of the terms and conditions specified in Section 5.5 of a certain Loan Agreement, dated December 1, 1981, by and between the parties thereto; and

WHEREAS, pursuant to the terms of an "Agreement Of Purchase And Sale", dated May 16, 1983, between the Company and HOTEL PROPERTIES OF AMERICA-ILLINOIS, INC., which has been duly assigned to OPPENHEIMER HPA PARTNERS, a New York limited partnership (the "Partners"), by its managing general partner, Oppenheimer HPA Properties, Inc., a corporation organized and existing under and by virtue of the laws of Delaware and authorized to do business in Illinois (the "General Partner"), the Company has agreed to sell, transfer and assign any and all of its right, title and interest in and to the Company's Urbana Hotel Facilities, together with such rights and interests of the Company as are more specifically provided under the terms of the various agreements detailed herein, to Partners (collectively the "Assignment"); and

WHEREAS, the City has been fully informed of the nature of the Assignment, including specific and detailed information concerning (1) the names and location of the thirteen other hotels contemplated and represented to be involved in the purchase by Partners; (2) the commitment by Balcor Pension Investors IV to loan a total of \$12,600,000.00 in thirteen separate cross-collateralized and cross-defaulted mortgage loans, and the terms thereof; (3) the formation of the limited partnership and the General Partner, and the sale and financing of limited partnership interests totaling \$42,500,000.00; (4) Jumer's purchase money mortgage to be obtained from Partners; (5) the Partners' assumption without recourse to any individual partner of various agreements, including the Loan Agreement; and (6) the Company's (or a corporation to be owned by D. James Jumer) submanagement agreement with the General Partner; and

WHEREAS, in connection with the Assignment, the Company and Busey have entered into or are about to enter into certain agreements entitled "Amendment to Notes" and "Loan Modification Agreement" under which Busey has agreed to permit the assumption of the existing Company indebtedness to Busey by Partners, provided that the Company remains liable thereon, and further provided that certain of the terms of said indebtedness, including the interest payable thereon, the amortization thereof, and the final due date are modified in accordance with said agreements (the "Assumption"), and the City and the Trustee, given the cross collateralization of the Mortgage and the Busey Mortgage, must now agree to the Assumption in order to permit the priorities of the Busey Mortgage to remain the same

as it existed prior to the Assumption and the Assignment, and must further agree regarding the operation, foreclosure and disposition of sale proceeds in connection with the Company's Urbana Hotel Facilities if a default occurs in connection with any of said loans, all of which shall be pursuant to a certain "Agreement and Consent To Loan Modification", a certain "Security Interest Agreement", and a certain "Amendment To (Mortgagee's) Agreement Dated December 14, 1981", copies of the forms of which said documents have been presented to and are before this meeting.

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

Section 1. That pursuant to Section 13-101 of Article XIII of the Agreement for Deed, the City Council, subject to the provisions of Section 7 of this Ordinance, hereby consents to the Assignment of the Agreement for Deed and to any subsequent collateral assignment by Partners to the Company as additional security for the Assignment.

Section 2. That pursuant to Section 8 of the Green Street Agreement, the City Council, subject to the provisions of Section 7 of this Ordinance, hereby consents to the Assignment of the Green Street Agreement and specifically waives its right to terminate the Green Street Agreement in accordance with its terms as the result of such Assignment.

Section 3. That pursuant to Section 5.5 of the Loan Agreement, the City Council, subject to the provisions of Section 7 of this Ordinance, hereby finds that the Assignment, as contemplated and represented to the City Council, is in conformity with said Section 5.5 and that the City Council hereby approves of and waives any objection to the Assignment as the same pertains to the Loan Agreement, and insofar as said approval and waiver applies to the City's unassigned rights under Section 4.4 of the Loan Agreement and its irrevocable pledge of its full faith, credit and resources pursuant to the Loan Agreement and the Indenture. Nothing contained in this section shall be deemed or construed as any approval or waiver of any matter requiring the approval or waiver of the Trustee in connection with the Loan Agreement, the Indenture, or any other document pertaining to the Bonds.

Section 4. That pursuant to Section 10 of the Parking Agreement and Section 13 of the Lease--Option--Financing Agreement, the City Council, subject to the provisions of Section 7 of this Ordinance, hereby finds that the Assignment, as contemplated and represented to the City Council, is in conformity with Section 5.5 of the Loan Agreement, as referenced herein, and that the City Council hereby approves of and waives any objection to the Assignment as the same pertains to the Parking Agreement and the Lease--Option--Financing Agreement.

Section 5. That the City Council acknowledges the promise and assurance of the Company that the entire principal and interest due on the loan secured by the UDAG Loan Agreement will be fully paid in accordance with the terms of said UDAG Loan Agreement at or prior to the time of closing for the Assignment and, accordingly, the City Council, pursuant to and in accordance with Section 14 of the UDAG Loan Agreement, specifically withholds and does not grant its permission or consent for the Assignment as the same pertains to the UDAG Loan Agreement.

Section 6. The "Agreement and Consent to Loan Modification", the "Security Interest Agreement", and the "Amendment to (Mortgagee's) Agreement Dated December 14, 1981", in substantially the forms submitted to this meeting are, subject to the provisions of Section 7 of this Ordinance, hereby authorized and approved; the Mayor of the City is hereby authorized and directed to execute and deliver the said agreements and the City Clerk of the City is authorized and directed to attest such execution and to affix the seal of the City to such documents, both with such changes therein as are not inconsistent with this Ordinance and as approved by the Mayor, the execution or acceptance thereof, as the case may be, to constitute conclusive evidence of such approval. Nothing contained in this section or those documents shall be deemed or construed as any agreement to or approval or waiver of any matter requiring the agreement, approval or waiver of the Trustee in connection with the Loan Agreement, the Indenture, the Mortgage or any other document pertaining to the Bonds, it being the intent of the City that the authorization and approval herein granted shall apply only to the City's unassigned rights under Section 4.4 of the Loan Agreement and its irrevocable pledge of its full faith and credit pursuant to the Loan Agreement and the Indenture.

Section 7. That each of the various consents waivers and approvals for the Assignment granted herein by this City Council as provided in Sections 1 to 6 inclusively of this Ordinance are subject in all respects to each and every one of the following terms and conditions being met at or prior to the time of closing for the Assignment:

a) That no event of default by the Company shall have occurred or be continuing and that all payments required to be made by the Company have been made under the terms and provisions of the Agreement for Deed, the Green Street Agreement, the Loan Agreement, the UDAG Loan Agreement, the Parking Agreement and the Lease--Option--Financing Agreement;

b) That the Partners shall assume in writing and agree to perform each and all of the Company's obligations under the terms and provisions of the Agreement for Deed, the Green Street Agreement, the Loan Agreement, the Parking Agreement and the Lease--Option--Financing Agreement;



c) That conformed copies of all contracts, deeds and other documents and instruments concerning the Assignment shall be delivered to the City at or prior to the time of closing for the Assignment;

d) That the entire principal and interest due on the loan secured by the UDAG Loan Agreement be fully paid in accordance with the terms of said UDAG Loan Agreement at or prior to the time of closing for the Assignment;

e) That, in connection with the Assignment of the Parking Agreement, both the Company and the Partners expressly waive any default of the City that may have occurred and be continuing with respect to the provision of public parking by the City under the terms thereof from and after the date of the opening of the Project, as therein more particularly described, it being mutually acknowledged and agreed by and between the City, the Company and the Partners that the City specifically does not admit that any such default has in fact occurred, but that the City has nonetheless used its best efforts to otherwise provide public parking in accordance with the terms of such Parking Agreement for and on behalf of the Company's guests and customers during the interim period between the time of the opening of the Project and the time the Premises, as therein more particularly described, shall be opened by the City for public parking; and

f) That the Partners have good title to the real property described in the Mortgage evidenced by an original standard ALTA mortgage loan policy payable to the Trustee, in the face amount of the Bonds insuring the lien of the Mortgage upon the Project and the Existing Facilities, subject only to Permitted Encumbrances as defined in the Loan Agreement, or a binding commitment therefor. The policy is to be delivered to the Trustee when issued, with a copy to the City, at or prior to the time of closing for the Assignment.

Compliance with each and every one of the above terms and conditions at or prior to the time of closing for the Assignment shall be acknowledged and confirmed for and on behalf of the City by its City Attorney, who is hereby authorized to require such other certificates, documents, instruments and other writings and showings, including a written opinion from a nationally recognized Bond Counsel, as such City Attorney may require in order to make such acknowledgment and confirmation and to thereby give effect to this Ordinance.

Section 8. That the Mayor of the City is hereby authorized and directed to execute and deliver, and the City Clerk of the City is authorized and directed to attest such execution and to affix the seal of the City to all documents



and instruments which may be desirable or necessary in connection with the Assignment in order to give effect to this Ordinance.

Section 9. That all acts and doings of the officials of the City which are in conformity with the purposes and intent of this Ordinance and in furtherance of the Assignment pursuant hereto be, and the same are, in all respects, approved and confirmed.

Section 10. That the provisions of this Ordinance are hereby declared to be separable and if any section, phrase and provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereof.

Section 11. That all ordinances, resolutions, orders and any parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

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 17th day of October, 1983.

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

Ruth S. Brookens  
Ruth S. Brookens, City Clerk

APPROVED by the Mayor this 21<sup>st</sup> day of October, 1983.

Jeffrey T. Markland  
Jeffrey T. Markland, Mayor