St. Louis City Ordinance 62520

FLOOR SUBSTITUTE
BOARD BILL NO. [91] 344
INTRODUCED BY ALDERMAN PHYLLIS YOUNG

An ordinance recommended by the Board of Estimate and Apportionment pertaining to Union Market; approving and directing the execution of a Lease Agreement between the City of St. Louis and Convention Center Hotel, Inc. ("CCHI"), a wholly owned subsidiary of Convention Center Associates ("CCA") dated , 1992.

WHEREAS, the City of St. Louis ("City") owns certain land and improvements commonly known as Union Market located in downtown St. Louis and in close proximity to Cervantes Convention Center, including its southern and eastern expansions, the current site of the Drury Inn at Union Market and the proposed site for development of a Convention Headquarters Hotel; and WHEREAS, a hotel selection committee sponsored by St. Louis Development Corporation and representing various offices of the City of St. Louis has recommended for development a Convention Headquarters Hotel project which proposes the inclusion of Union Market and the Drury Inn into the development of a Convention Headquarters Hotel; and WHEREAS, legal control of all leasehold interests in Union Market will be necessary for the development of the Convention Headquarters Hotel; and WHEREAS, CCA, the recommended developer for the Convention Headquarters Hotel, has expressed a desire to lease Union Market pursuant to the terms and conditions reflected in the Lease Agreement attached hereto ("Lease"); and WHEREAS, during the development process for the Convention Headquarters Hotel and for other consideration, including the payment of One Hundred Twenty-Five Thousand Dollars ($125,000) and the commitment of CCA to expand the Drury Inn at Union Market to include an additional approximately ninety (90) rooms, to be completed in 1993, the City is willing to abate the rent under the Lease from February 1, 1992 through and including July 31, 1994; and WHEREAS, it is in the best interest of the City of St. Louis to enter into such Lease and to cause the Drury Inn at Union Market to be expanded:

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

Section One. The Board of Aldermen of the City of St. Louis hereby approves the Lease Agreement in substantially the form attached hereto, providing for a

fifty (50) year Lease, with additional options, of Union Market to commence on February 1, 1992.

Section Two. Such Lease shall be executed only after payment to the City of St. Louis of One Hundred Twenty Five Thousand Dollars ($125,000).

Section Three. All rental payments due the City under the Lease from February 1, 1992 through July 31, 1994 shall be abated forever without recourse or repayment; provided, however, in the event that the proposed construction of the approximately ninety (90) additional hotel rooms is not completed by December 31, 1993, then on January 1, 1994, CCHI shall commence to pay not only the monthly rent then due, but also, on a month-by-month basis in the precise order of abatement, each monthly rent, without interest, which had been abated, such that for the ensuing twenty-three (23) months, or until the ninety (90) hotel rooms are completed, CCHI will be paying two (2) monthly rents for each month.

Section Four. The Mayor and Comptroller of the City of St. Louis are hereby authorized and directed to execute the Lease in substantially the form attached hereto, together with such other documents and releases necessary to effect the mutual release and discharge from all obligations by and among the City of St. Louis, CCA, CCHI, Magna Bank and other involved parties with respect to the Union Market, other than the obligations set forth in this Board Bill. Any amendment or modification of the Lease henceforth shall be subject to and require the approval of the Board of Estimate and Apportionment.

Section Five. This being an ordinance for the preservation of public peace, health and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and shall become effective immediately upon its passage and approval by the Mayor.

LEASE AGREEMENT

BETWEEN THE CITY OF ST. LOUIS,

A MUNICIPAL CORPORATION OF THE STATE OF MISSOURI

and

CONVENTION CENTER HOTEL, INC., a Missouri corporation

THIS LEASE AGREEMENT, made and entered into as of the day of , 1992, by and between the CITY OF ST. LOUIS, a Municipal Corporation of the State of Missouri, party of the First Part, (hereinafter called the "City"), under authority of Ordinance 344, approved , 1992 and CONVENTION CENTER HOTEL, INC., a Missouri Corporation, party of the Second Part (hereinafter called "Tenant").

WHEREAS, the CITY is owner of certain land and improvements located in the City of St. Louis commonly known as the Union Market Property and described as follows:

In the City of St. Louis, Missouri a parcel of Land in City Block 121 bounded on the North by Convention Plaza Drive, bounded on the East by Broadway, on the South by Lucas Avenue, and on the West by Sixth Street, having improvements thereon consisting of a six-story brick building containing square feet, more or less, and any future improvements thereto.

WHEREAS, Tenant wishes to lease said real property and to operate the Union Market Property (hereinafter referred to as "Premises"), as a retail and commercial building (including a hotel), parking garage and use for other purposes, in conformity with all applicable local, state and federal laws, ordinances and regulations.

NOW, THEREFORE, in consideration of mutual covenants, promises, and agreements contained herein, the parties to this Agreement do hereby covenant, promise and agree with each other as follows:

1. PREMISES: The City hereby leases to Tenant the Premises, including the land and building thereon.

2. USE: Tenant shall use said Premises as a retail and commercial building (including a hotel), parking garage and for other purposes, in conformity with all applicable local, state and federal laws, ordinances and regulations.

3. TERM-RENEWAL:

A. The term of this Lease shall be for a period of Fifty (50) years from February 1, 1992, (hereinafter referred to as the "Commencement Date"), unless extended as hereinafter provided. Tenant shall have the right to enter and to occupy the Premises upon the execution of this Lease.

B. As used herein, "Lease Year" shall mean the period from and after the Commencement Date to the date one calendar year thereafter, and then "Lease Year" shall mean each succeeding twelve (12) month period.

C. The City hereby grants the Tenant the option to renew this Lease for five (5) terms of five (5) years each, upon the terms, conditions, covenants and provisions set forth herein; provided, however, Tenant shall give the City six (6) months written notice prior to the end of the initial term hereof, or any renewal term, as the case may be, of Tenant's election to exercise any applicable renewal option.

D. At the expiration of the term hereof, whether by lapse of time or otherwise, Tenant shall surrender, yield and deliver the premises to the City in such condition as same shall then be, recognizing both Tenant's right to cause the Premises to be incorporated into a convention headquarters hotel and Tenant's right, pursuant to paragraph 7 hereof, to allow for the expansion of the Premises in any event.

4. RENTAL:

(A) Payments Due. Subject to the Abatement set forth in paragraph 4B hereof, during the first year of the term of this Lease, beginning with the Commencement Date, Tenant agrees to pay to the City the sum of One Hundred Fifty Thousand Dollars ($150,000.00) to be paid in equal installments of Twelve Thousand Five Hundred Dollars ($12,500.00); Tenant agrees to pay to the City for the next five years (Lease Years 2-6) of this Lease, a sum of One Hundred Seventy-five Thousand Dollars ($175,000.00) per year, to be paid in equal monthly installments of Fourteen Thousand Five Hundred Eighty-Three and 33/100 Dollars ($14,583.33); Tenant agrees to pay to the City annually for the next fifteen (15) years of this Lease (Lease Years 7-21), the sum of Two Hundred Thousand Dollars ($200,000.00) to be paid in equal monthly installments of Sixteen Thousand Six Hundred Sixty-Six and 66/100 Dollars ($16,666.66); Tenant further agrees to pay for the next twenty (20) years of this Lease (Lease Years 22-46) the sum of $250,000.00 per year, to be paid in equal monthly installments of Twenty Thousand Eight Hundred Thirty-three and 33/100 Dollars ($20,833.33); Tenant further agrees to pay during the final four (4) years of this Lease (Lease Years 47-50) the sum of Three Hundred Thousand Dollars ($300,000) per year, to be paid in equal monthly installments of Twenty-Five Thousand Dollars ($25,000); Tenant further agrees to pay during the first sixteen (16) years of the period of time which includes the first four (4) option periods the sum of Three Hundred Thousand Dollars ($300,000) per year to be paid in equal monthly installments of Twenty-Five Thousand

Dollars ($25,000); thereafter, for the remaining nine (9) years during the last two (2) five (5) year option periods, Three Hundred Fifty Thousand Dollars ($350,000.00) per year, to be paid in equal monthly installments of Twenty-nine Thousand One Hundred Sixty-six and 66/100 Dollars ($29,166.66). Monthly rental payments shall be made in the Comptroller's Office, Room 212, City Hall, beginning on the Commencement Date.

(B) In consideration of Tenant's payment to the City of One Hundred Twenty-Five Thousand Dollars ($125,000), and of Tenant's agreement to cause its subsidiary to pursue development of a convention headquarters hotel and to add an additional ninety (90) rooms to the Premises, the rent due hereunder shall be abated for the first thirty (30) months of this Lease. Notwithstanding the foregoing, in the event that the proposed construction of approximately ninety (90) additional hotel rooms in the Premises is not completed by December 31, 1993, as described in paragraph 7 hereof, then as of January 1, 1994 Tenant shall commence to pay not only the monthly rent then due, but also, on a month-by-month basis in the precise order of abatement, each monthly rent, without interest, which had been abated, such that for the ensuing twenty-three (23) months or until the 90 rooms are completed the Tenant will be paying two (2) monthly rents for each month. (i.e., This Lease commences on February 1, 1992, and in the event that the rooms were not completed by December 31, 1993, then on January 1, 1994, Tenant would be obligated to pay both the rent for January, 1994 and February, 1992. The next month Tenant would be obligated to pay both the rent for February, 1994 and March, 1992.)

(C) The payment of rental will abate in the event of fire, earthquake, flood, Act of God, strikes or other labor disturbances, riots or civil commotions or by reason of any other matter or condition beyond the control of either party rendering performance impossible (herein collectively called "Force Majeure Cause").

5. MAINTENANCE AND IMPROVEMENTS: The maintenance operation and improvements of the Premises shall be at Tenant's cost and expense, in order to provide a retail and commercial building (including a hotel), parking garage and other facilities in conformance with regulations.

6. CITY WARRANTIES: City hereby covenants and warrants as follows:

A) The City is the fee simple owner of the Premises;

B) The City has the power and authority to execute and to deliver this Lease and to carry out and to perform all covenants to be performed by the City hereunder;

C) The Premises are zoned for commercial usage and that the current use of the Premises (including a hotel and parking garage) are permitted and authorized uses under the zoning classification and local laws and ordinances applicable to the Premises;

D) Subject to temporary obstruction caused by proposed construction, at all times, Tenant shall have unobstructed and adequate means of ingress and egress to the Premises from all abutting streets, roads and highways; and

E) Except for matters of record, as of this date, the Premises are free from any and all encumbrances, security interests, liens, mortgages, defects in title, violation of laws, leases, tenancies, easements, restrictions and agreements.

7. ASSIGNMENT AND SUBLETTING: Tenant may assign this Lease only with approval of the Board of Estimate and Apportionment of the City of St. Louis. Tenant may sublease the Premises, in whole or in part, to any individual, partnership, corporation or any other entity so long as such subleasing is for use of the Premises then allowed under zoning classification and laws and ordinances applicable to the Premises. Notwithstanding the foregoing, the City recognizes not only the current sublease to Convention Center Associates, but also hereby consents to the sublessee's desire to add an additional story to the building in order to accommodate the addition of approximately ninety (90) additional hotel rooms.

8. TAXES: Tenant agrees to pay any tax or special assessments that may in the future be levied against the Premises. Real property taxes are exempted.

9. MORTGAGES - LEASEHOLD ESTATE: Tenant and every successor and assign of Tenant (including but not limited to, any sublessee of Tenant, but only with Tenant's prior consent) is hereby given the right by the City in addition to any other rights herein granted, with the City's prior written consent by way of the Board of Estimate and Apportionment, to mortgage its interest in this Lease(s), or any part or parts thereof, and any sublease(s) under one or more lease mortgage(s) in connection with any sale of such interest, and assign this Lease, or any part or parts thereof, and any subleases(s) as collateral security for such mortgage(s). In the event that Tenant shall mortgage its leasehold estate or any portion thereof and the mortgagee(s) or holder(s) of the indebtedness secured by the leasehold mortgage or trust deed shall notify the

City, again by way of the Board of Estimate and Apportionment, in the manner hereinafter provided for giving notice of the execution of such mortgage or trust deed and the name and place for service of notice upon such mortgagees or holder of indebtedness; then, and in such event, the City hereby agrees for the benefit of such mortgagees or holders of indebtedness from time to time:

(A) That the City will give to any such mortgagee or holder of indebtedness simultaneously with service on Tenant a duplicate of any and all notices or demands given by the City to Tenant.

(B) That such mortgagee or holder of indebtedness shall have the privilege of performing any of Tenant's covenants hereunder, or of curing any default by Tenant hereunder, or of exercising any election, option, or privilege conferred upon Tenant by the terms of this Lease.

(C) That the City shall not terminate this Lease or Tenant's right of possession for any default of Tenant if within a period of twenty (20) days after the expiration of the period of time within which Tenant might cure said default, or as extended by the Board of Estimate and Apportionment, such mortgagee or holder of indebtedness commences to eliminate the cause of such default.

(D) That, except for the right to terminate contained in this Lease, no right, privilege or option to cancel or terminate this Lease available to Tenant shall be deemed to have been exercised effectively unless joined in by any such mortgagee or holder of indebtedness.

(E) No personal liability for the payment of rental or the performance of any of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any mortgagee, trustee under any deed of trust, or holder of any indebtedness secured by any mortgage or trust deed upon the leaseholder estate, all such personal liability being hereby expressly waived by the City.

(F) The City, by way of the Board of Estimate and Apportionment, agrees to cooperate with Tenant in executing and delivering to lending institutions as may be required, an Amendment of this Lease incorporating such modifications of the terms and provisions of this Lease as such Lending Institution shall require as a condition precedent to their granting of a loan or a commitment secured by the Lease. Notwithstanding the foregoing, neither the City, nor the Tenant shall be required to execute any Amendment of Lease which shall modify the provisions of this Lease relating to the amount of rent, the obligation on Tenant's part to make payment of taxes, the size and location of the Premises, and the duration of the term.

Notwithstanding the foregoing, a lien of Magna Bank, N.A. in the amount of $17,250,000 and Tenant's pledge of this Lease as collateral security therefor is hereby recognized and accepted.

10. TENANT'S DEFAULT: If Tenant shall default in the performance of any of the covenants of this Lease (including payment of rent) and such default shall continue and not be cured for a period of sixty (60) days after written notice from the City of such default or if such default (other than the payment of rent) is such that it could not reasonably be cured within such period of sixty (60) days, and Tenant does not within said period commence to cure such default, or if Tenant shall be adjudicated bankrupt or insolvent, or a petition to take advantage of any bankruptcy or insolvency law shall be approved, or if Tenant shall make an assignment for the benefit of Creditors, or if a receiver or liquidator of all or substantially all of the property of Tenant which is in the Premises shall be appointed in any proceeding against the Tenant, or if the interest of Tenant in the Premises shall be sold under any execution of other legal process, and as a result of the happening of such contingencies, the obligation of Tenant to pay any rent shall be modified or abrogated, then upon thirty (30) days prior written notice; the City may terminate this Lease, or the City may reenter the Premises and have the right to recover all rents due up to the time of such termination or reentry.

The City agrees to provide written notice of any Tenant default hereunder to any Lender of Tenant, at an address to be designated in writing to the City.

11. INSURANCE: Tenant shall obtain and provide copies to the City of St. Louis of liability insurance protection, in the minimum amount of One Million Dollars ($1,000,000.00) for death or injury to any person or persons, and fire and extended coverage insurance to protect the value of the premises site and improvements in the minimum amount of One Million Dollars ($1,000,000.00) payable to the City of St. Louis. The City shall be named insured in all such policies, and the City shall be held harmless from any and all claims resulting from the actions of the Tenant, its Tenants or the conditions of the Premises. The amount of insurance coverage shall be subject to adjustment by the Board of Estimate and Apportionment every five (5) years.

Tenant shall further obtain and carry through the terms of this agreement adequate workmen's compensation insurance for its activities and those of its tenants as required by law.

12. CONFORMITY TO LAWS AND ORDINANCES: Tenant agrees to conform to and abide by all applicable ordinances, laws, statutes, regulations,

licenses and tax provisions of the City, the State of Missouri and the United States of America which may now be in effect or may be hereafter enacted.

13. NAMES OF TENANTS: Tenant agrees to submit to the Comptroller of the City of St. Louis the full name and identity of all tenants and proposed tenants of the Premises and obtain prior clearance that all taxes, licenses and permits required of such tenant to have been applied for and paid.

14. INSPECTION BY THE CITY: The City will perform periodic inspections of all Tenants premises and equipment to determine that such are being maintained in a neat and orderly condition. Tenant will be required to make any improvements in cleaning or maintenance methods as reasonably required by the City.

15. PRESENT TENANTS: The City and Tenant acknowledge that upon the execution of this Lease the Premises will be occupied by Tenant

16. NON-DISCRIMINATION: Tenant agrees that Tenant, its agents, employees, servants, or assigns, in carrying out the provisions of this Agreement shall not discriminate or permit discrimination, directly or indirectly, against any person or group of persons on the grounds of race, color or national origin in violation of any ordinance of the City of St. Louis.

Should the City receive any written complaints relating to the violation of such ordinance by Tenant, its servants, agents and employees, the City will inform Tenant thereof of such complaints, and Tenant hereby agrees to cease and desist from such violation. Failure of Tenant or any of its employees, servants, or agents to cease and desist as provided by law shall render this agreement null and void at the option of the City, and Tenant shall vacate the premises forthwith when so ordered by the City.

17. NOTICES: Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and sent postage prepaid by the United States registered or certified mail, return receipt requested, directed to the other party at the following addresses:

City: Comptroller's Office, Room 212
City Hall, St. Louis, Missouri

Tenant: Convention Center Hotel, Inc.
c/o Druco, Inc.

8315 Drury Industrial Parkway
St. Louis, Missouri 63114

or at such other address as either party may designate by notice given from time to time.

18. Miscellaneous.

(A) This Lease constitutes the entire agreement between the Tenant and the City.

(B) This Lease shall be construed under the laws of the State of Missouri.

(C) Any amendment hereto which does not modify the provisions of this Lease relating to the amount of rent, the obligation on Tenant's part to make payment of taxes, the size and location of the Premises, and the duration of the term, shall require only the mutual consent of the City (by way of the Board of Estimate and Apportionment) and the Tenant.

IN WITNESS WHEREOF, the parties hereto have placed their hands and seals the day and year first above written.

CONVENTION CENTER HOTEL, INC.

By
, President

CITY OF ST. LOUIS

By
Vincent C. Schoemehl, Jr., Mayor

By:
Virvus Jones, Comptroller

Approved as to Form

City Counselor

ATTEST:

City Register

APPROVED:

Secretary, Board of Estimate and Apportionment

Legislative History				
1ST READING	**REF TO COMM**	**COMMITTEE**	**COMM SUB**	**COMM AMEND**
02/07/92	**02/07/92**	**W&M**	**02/11/92**	
2ND READING	**FLOOR AMEND**	**FLOOR SUB**	**PERFECTN**	**PASSAGE**
02/14/92			**02/21/92**	**02/28/91**
ORDINANCE	**VETOED**		**VETO OVR**	
62520				