

Execution Counterpart

WHEN RECORDED PLEASE MAIL TO:

Inst # 1997-20724

Roger N. Simon, Esq.  
Katten Muchin & Zavis  
1025 Thomas Jefferson Street  
East Lobby, 7th Floor  
Washington, DC 20007-5201

07/02/1997-20724  
12:23 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
018 SNA 51.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT\* (the "Agreement") is made and entered into as of the 27 day of June, 1997, among: (i) GMAC COMMERCIAL MORTGAGE CORPORATION ("Mortgagee"), a California corporation having an address at 100 South Wacker Drive, Suite 400, Chicago, IL 60606; (ii) CANDLEWOOD BIRMINGHAM, LLC ("Owner"), a Delaware limited liability company having an address at Candlewood Hotel Company, Inc., 9342 East Central, Wichita, KS 67208 and (iii) CANDLEWOOD HOTEL COMPANY, INC., ("Management Company"), a Delaware corporation having an address at 9342 East Central, Wichita, KS 67208.

#### RECITALS

1. Owner is the owner of the Hotel (defined in Section 1), and Mortgagee is the holder of the Mortgage (defined in Section 1) which encumbers the Hotel.
2. Management Company, an affiliate of Owner, and Owner have entered into the Management Agreement (defined in Section 1), pursuant to which Management Company will manage the Hotel on behalf of Owner.
3. Mortgagee has required this Agreement as a condition to making the loan secured by the Mortgage, and Mortgagee and Management Company desire to provide for Management Company's continued management of the Hotel pursuant to the Management Agreement, notwithstanding any default by Owner under the Mortgage or the Management Agreement, upon the terms and conditions set forth in this Agreement.

#### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree and covenant as follows:

1. **Definitions.** Any capitalized term which is not specifically defined in this Agreement shall have the meaning set forth in the Management Agreement. The following terms when used in this Agreement shall have the meanings indicated:

**"Foreclosure"** shall mean any exercise of the remedies available to the holder of the Mortgage, upon a default under the Mortgage, which results in a transfer of title to or possession of the Hotel. The term **"Foreclosure"** shall include, without limitation: (i) a transfer by judicial foreclosure; (ii) a transfer by deed in lieu of foreclosure; (iii) the appointment by a court of a receiver to assume possession of the Hotel; (iv) a transfer of either ownership or control of the Owner, by exercise of a stock pledge or otherwise; (v) a transfer resulting from an order given in a bankruptcy, reorganization, insolvency or similar proceeding; or (vi) any similar judicial or non-judicial exercise of the remedies held by the holder of the Mortgage.

**"Foreclosure Date"** shall mean the date on which title to or possession of the Hotel is transferred by means of a Foreclosure.

**"Hotel"** shall mean that certain hotel to contain approximately 74 studios and 24 suites which is to be constructed by Owner on the site described in Exhibit "A" hereto, together with the fixtures, furnishings, equipment and other real and personal property associated therewith.

**"Management Agreement"** shall mean that certain management agreement, dated January 29, 1997 between Owner and Management Company, pursuant to which Management Company has agreed to manage the Hotel on behalf of Owner. The term **"Management Agreement"**, as used in this Agreement, shall include any permitted amendments, modifications, supplements, replacements or extensions of the original Management Agreement.

**"Mortgage"** shall mean that certain Mortgage, Assignment of Leases and Profits, Security Agreement and Fixture Filing from Owner, as mortgagor, for the benefit of Mortgagee, securing the indebtedness and obligations described therein, including that Mortgage Note of substantially even date herewith payable by Owner to Mortgagee in the original principal sum of Four Million Four Hundred Fifty Thousand Dollars (\$4,450,000), which Mortgage is being recorded in the appropriate land records of Shelby County, Alabama contemporaneously with this Agreement. The Mortgage encumbers the Hotel. The term **"Mortgage"**, as used in this Agreement, shall include: (i) any amendments, modifications, supplements, replacements, extensions or refinancings of the original **"Mortgage"** described above, including, without limitation, any permanent loan refinancings; and (ii) any existing or future financing by Mortgagee which is solely secured by the Hotel.

**"Mortgagee"** shall mean any of the following: (i) the entity identified as the **"Mortgagee"** in the Preamble; (ii) any successors or assigns of that entity; (iii) any nominee or designee of that entity (or any other entity described in this definition); (iv) any initial or subsequent assignee of all or any portion of the interest of that entity in the Mortgage; or (v) any entity which



is a participant in the financing secured by the Mortgage, or otherwise acquires an equitable interest in the Mortgage.

"*Subsequent Owner*" shall mean any individual or entity which acquires title to or possession of the Hotel at or through a Foreclosure (together with any successors or assigns thereof), including, without limitation, (i) Mortgagee, (ii) any purchaser of the Hotel from Mortgagee, or any lessee of the Hotel from Mortgagee, or (iii) any purchaser of the Hotel at Foreclosure.

2. ***Subordination of Management Agreement.*** The Management Agreement and all right, title and interest of Management Company in and to the Hotel and the rents, issues and profits therefrom are and shall be subject and subordinate to the lien of the Mortgage; provided, however, that, notwithstanding the foregoing subordination, neither Mortgagee nor any Subsequent Owner shall name Management Company as a defendant in any Foreclosure (unless the same is required under applicable law to effect the Foreclosure) or otherwise take steps which are inconsistent with Section 3 of this Agreement. Management Company hereby acknowledges that all provisions of the Management Agreement relating to the application of insurance proceeds and/or condemnation awards are subject to and junior and inferior to, the terms and provisions of the Mortgage. In furtherance of the foregoing, Management Company agrees that, following receipt of a Loan Default Notice from Mortgagee as described in Section 7 of this Agreement and until any Subsequent Owner comes into possession of or acquires title to the Hotel at or following a Foreclosure, the Management Fee under the Management Agreement and any interest thereon are hereby expressly subordinated to the repayment in full to Mortgagee of the loan secured by the Mortgage.

3. ***Non-Disturbance.*** In the event any Subsequent Owner comes into possession of or acquires title to the Hotel either at or following a Foreclosure, Mortgagee agrees (which agreement shall be binding on all Subsequent Owners) that if, at such time, (i) the Management Agreement has not expired or otherwise been earlier terminated in accordance with its terms, and (ii) no event has occurred and no condition exists which would entitle Owner to terminate the Management Agreement, then Mortgagee and all Subsequent Owners shall recognize Management Company's rights under the Management Agreement, and Management Company shall not be named as a party in any Foreclosure action or proceeding, and Management Company shall not be disturbed in its right to manage the Hotel pursuant to the Management Agreement. Notwithstanding the foregoing, if, after the Foreclosure Date, an event has occurred or condition exists which would have entitled Owner to terminate the Management Agreement before the Foreclosure Date, the Subsequent Owner shall have such remedies as are available to Owner under Article III of the Management Agreement, including termination of the Management Agreement. A Subsequent Owner acquiring possession of or title to the Hotel at or following a Foreclosure will not be (a) liable for any action or omission of Owner under the Management Agreement, (b) subject to any offsets, claims or defenses which Management Company might be entitled to assert against Owner, or (c) liable for any indemnification obligations of Owner under the Management Agreement for acts or omissions prior to the Foreclosure Date. The preceding sentence shall not prevent Subsequent Owner from being liable for or otherwise subject to any prior state of events which continues after the Foreclosure Date, to the extent that such state of events would give rise to liability had it occurred on or after the

Foreclosure Date. By way of example, any failure by Owner prior to the Foreclosure Date to fund or address any shortfalls in the Accounts, or to repair physical damage to the hotel would not absolve Subsequent Owner of the obligation to correct such shortfall or repair such damage after the Foreclosure Date in accordance with the provisions of the Management Agreement, as supplemented by the cure provisions described in Section 5 below.

4. *Attornment/Termination.*

A. Management Company agrees that, upon a Foreclosure of the Mortgage, provided that the Management Agreement has not expired or otherwise been earlier terminated in accordance with its terms for reasons other than such Foreclosure, Management Company shall attorn to any Subsequent Owner and shall remain bound by all of the terms, covenants and conditions of the Management Agreement, for the balance of the remaining term thereof (and any renewals thereof which may be effected in accordance with the Management Agreement) with the same force and effect as if such Subsequent Owner were the "Owner" under the Management Agreement and without the payment by such Subsequent Owner of any fees arising from such succession to the interests of Owner; provided, however, that Management Company shall be under no such obligation to so attorn unless such Subsequent Owner, within ninety (90) days after the Foreclosure Date assumes all of the obligations of the "Owner" under the Management Agreement which arise from and after the Foreclosure Date (or such later date of acquisition of title to the Hotel), pursuant to a written assumption agreement which shall be delivered to Management Company.

B. In lieu of assuming the obligations of the "Owner" under the Management Agreement, the Subsequent Owner may, during the above described ninety (90) day period, elect to terminate the Management Agreement, and Management Company agrees that such termination may be made without payment of any termination fees, liquidated damages or other fees and charges under the Management Agreement. Upon any such termination of the Management Agreement by Mortgagee or other Subsequent Owner under Section 4A above, Management Company hereby agrees that, following satisfaction of any delinquent amounts owing to Management Company under the Management Agreement (other than liquidated damages or Management Fees arising after a Loan Default Notice), Management Company shall promptly remit to Mortgagee or other Subsequent Owner an accounting of, and all sums then held in, any Accounts maintained by Management Company under the Management Agreement, including without limitation, the Hotel Operating Account, Property Tax and Insurance Escrow Account, Equipment Replacement Reserve Account and Owner's Sweep Account. Management Company and Owner hereby acknowledge that none of such sums shall be delivered to Owner upon any such termination of the Management Agreement by Mortgagee or other Subsequent Owner. Upon any such termination, Management Company shall afford to Mortgagee or other Subsequent Owner all rights and benefits provided to Owner under the Management Agreement, including, without limitation, assigning to Mortgagee or such Subsequent Owner all operating licenses and permits for the Hotel then issued in Management Company's name. If such assignment of licenses and permits is not permitted under applicable law, Management Company shall cooperate with, and provide assistance to, Mortgagee or such



Subsequent Owner in its efforts to obtain food, liquor and other licenses and permits for the normal use and operation of the Hotel. Upon the written request of Mortgagee or other Subsequent Owner, Management Company shall periodically execute and deliver a statement, in a form reasonably satisfactory to Mortgagee or such Subsequent Owner, reaffirming Management Company's obligation to attorn as set forth in this Section 4.

5. *Notice and Opportunity to Cure.*

A. In the event of a failure in the performance or observance of any of Owner's duties or covenants set forth in the Management Agreement, and in the event that Management Company gives written notice thereof to Owner pursuant to Section 3.3e of the Management Agreement, Management Company shall also give a duplicate copy (herein referred to as the "*First Notice*") of such notice to Mortgagee, in accordance with Section 8 of this Agreement. In addition, in the event that such failure of performance is not cured within the applicable cure period under Section 3.3e of the Management Agreement, and Management Company intends to exercise its remedy of terminating the Management Agreement, Management Company shall send a second notice (the "*Second Notice*") to Owner and Mortgagee, in accordance with Section 8 hereof, stating Management Company's intention to terminate the Management Agreement. Notwithstanding any provisions in the Management Agreement to the contrary, Management Company shall forbear from taking any action to terminate the Management Agreement for a period of thirty (30) days after the service of the First Notice, and for an additional period of thirty (30) days after the service of the Second Notice (if such Second Notice is required, as set forth above), except that, following the Second Notice, if any, and as to non-monetary defaults or breaches not reasonably susceptible to cure within such thirty (30) day period (including without limitation, a bankruptcy filing by or against Owner), Mortgagee shall have such additional cure period as may be reasonably required, through the use of continuous and diligent efforts by Mortgagee, to cure such failure of performance.

B. No notice given by Management Company to Owner shall be effective as a notice under Section 3.3e of the Management Agreement unless the applicable duplicate notice to Mortgagee which is required under subsection A hereof (either the First Notice or the Second Notice, as the case may be) is given to Mortgagee in accordance with this Agreement. It is understood that any failure by Management Company to give such a failure of performance notice (either the First Notice or the Second Notice, as the case may be) to Mortgagee shall not be a failure of performance by Management Company either under this Agreement or under the Management Agreement, but rather shall operate only to void the effectiveness of any such notice by Management Company to Owner under Section 3.3e of the Management Agreement.

C. Management Company agrees to accept performance by Mortgagee with the same force and effect as if same were performed by Owner, in accordance with the provisions and within the cure periods prescribed in the Management Agreement (except that Mortgagee shall have such additional cure periods, not available to Owner, as are set forth in Section 5(A) above).

D. Except as specifically limited in the foregoing paragraphs, nothing herein shall preclude Management Company from exercising any of its rights or remedies against Owner with respect to any default by Owner under the Management Agreement.

6. **Notice to Management Company.** Mortgagee shall give Management Company a copy of any notice of default under the Mortgage which Mortgagee sends to Owner, provided that the failure to give such notice shall not affect the validity of such notice by Mortgagee to Owner under the Mortgage and shall not impose any liability on Mortgagee or affect any of Mortgagee's rights and remedies under the Mortgage or under this Agreement.

7. **Assignment of Management Agreement.** Owner has, pursuant to the applicable provisions of the Mortgage, collaterally assigned to Mortgagee, as additional security for the indebtedness secured by the Mortgage, all of Owner's right, title and interest in and to the Management Agreement, including the right to funds transferred to any Owners's Sweep Account in accordance with Section 4.10a of the Management Agreement and all rights of Owner in and to the Hotel Operating Account, Property Tax and Insurance Escrow Account, and Equipment Replacement Reserve Account. Management Company hereby acknowledges that it has been given a copy of the foregoing assignment, and Management Company hereby consents thereto. If, pursuant to such assignment (or subsequent loan documentation entered into between Owner and Mortgagee with a similar purpose), Management Company may receive (from time to time) a notice (a "Loan Default Notice") from Mortgagee directing Management Company to pay to Mortgagee the funds which would otherwise be transferred to any Owner's Sweep Account, at such times as set forth in Section 4.10a, Management Company shall comply with any such notice. Management Company shall continue to make payments in compliance with any such Loan Default Notice from Mortgagee until Management Company receives written instructions to the contrary from Mortgagee. Owner hereby gives its consent to any such payments by Management Company to Mortgagee which are in compliance with any such Loan Default Notice. This consent by Owner shall be deemed to be irrevocable until the entire debt secured by the Mortgage has been discharged, as evidenced either by the recordation of a satisfaction or release executed by Mortgagee and delivered to Management Company, or by the delivery of a written statement to that effect from Mortgagee to Management Company. Upon receipt of the foregoing, all of the Management Company's obligations under this Agreement, other than those post-Foreclosure agreements set forth in Sections 4 and 15 hereof, shall automatically terminate. It is understood that Management Company shall comply with the direction set forth in any such Loan Default Notice without any necessity to investigate Mortgagee's reasons for sending such notice, or to confirm whether or not Owner is in fact in default under the terms of the Mortgage. In addition to the foregoing, Management Company further agrees that from and after receipt of any such Loan Default Notice from Mortgagee and until a Subsequent Owner comes into possession of or acquires title to the Hotel at or following a Foreclosure, Management Company (a) shall subordinate any claims for payment of its Management Fee to the extent provided in Section 2 hereof until it receives from Mortgagee a written notice indicating that the default specified in the Loan Default Notice has been cured or waived (which Mortgagee agrees to give to Management Company if such cure has been effected or waived), (b) shall use all Accounts, including without limitation, the Hotel Operating Account,



Property Tax and Insurance Escrow Account, and Equipment Replacement Reserve Account solely for the respective purposes and in the manner stipulated in the Management Agreement and shall not reallocate funds from any such Account to another Account or use such funds for any other purpose (e.g., the funds in the Equipment Replacement Reserve Account shall be used solely for necessary and appropriate Equipment replacements and routine repairs and maintenance) and (c) upon the further request of Mortgagee, Management Company shall, on behalf of Owner, directly pay to Mortgagee all principal, interest and other sums periodically owing under the loan secured by the Mortgage, to the extent such sums are available to Management Company and are not otherwise payable to Management Company as its Management Fee.

8. **Notices.** Notices, statements and other communications to be given under the terms of this Agreement shall be in writing and (a) delivered by hand against receipt, (b) sent by certified or registered mail, postage prepaid, return receipt requested, or (c) sent by a nationally recognized overnight courier service:

*To Mortgagee:*

GMAC Commercial Mortgage Corporation  
100 South Wacker Drive, Suite 400  
Chicago, IL 60606  
Attention: Phillip J. Keel, Vice President

*With a Copy to:*

GMAC Commercial Mortgage Corporation  
8614 Westwood Center Drive, Suite 630  
Vienna, Virginia 22182  
Attention: David B. Post, Senior Vice President

*To Owner:*

Candlewood Birmingham, LLC  
c/o Candlewood Hotel Company, Inc.  
9342 East Central  
Wichita, Kansas 67208  
Attention: Warren D. Fix

*To Management Company:*

Candlewood Hotel Company, Inc.  
9342 East Central  
Wichita, Kansas 67208  
Attention: Kent L. Brown

or at such other address as is from time to time designated by the party receiving the notice. Any such notice which is properly delivered shall be deemed to have been served (a) on the date of hand delivery, (b) three (3) days after posting by certified or registered mail, or (c) on the business day following deposit with a nationally recognized overnight courier service, as the case may be.

9. ***Estoppel Certificates/Estoppel.***

A. Management Company shall, at any time and ~~from time~~ to time upon not less than thirty (30) days' prior written notice from Mortgagee, execute, acknowledge and deliver to Mortgagee, or to any third party specified by Mortgagee, a statement in writing: (1) certifying (i) that the Management Agreement is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and (ii) the date through which the Management Fee due under the Management Agreement has been paid; (2) stating whether or not to the actual knowledge of Management Company (i) there is a continuing failure by Owner in the performance or observance of any covenant, agreement or condition contained in the Management Agreement, or (ii) there shall have occurred any event or condition which, with the giving of notice or passage of time or both, would become such a failure of performance, and, if so, specifying each such failure of performance or occurrence of which Management Company may have knowledge; and (3) stating such other information as Mortgagee may reasonably request. Such statement shall be binding upon Management Company and may be relied upon by Mortgagee and/or such third party specified by Mortgagee as aforesaid.

B. Management Company hereby represents and warrants to Mortgagee as follows: (1) the Management Agreement, as modified by this Agreement, is otherwise unmodified and is in full force and effect; (2) the Management Fee and all cost reimbursements due and payable under the Management Agreement have been paid through the date hereof; (3) to the actual knowledge of Management Company (i) there is no failure in the performance or observance of any covenant, agreement or condition contained in the Management Agreement, and (ii) there is no event or condition, which, with the giving of notice or the passage of time or both, would become such a failure of performance; (4) Management Company has received no written notice from Owner indicating that Management Company has failed to perform any covenant, agreement or condition of the Management Agreement and, to the actual knowledge of Management Company, no such failure of performance on the part of Management Company currently exists; and (5) there are no outstanding loans or advances from Management Company or its affiliates to Owner or its affiliates.

10. ***Replacement Reserve.*** Management Company agrees that, following its receipt of any Loan Default Notice from Mortgagee, Management Company shall not pay to Owner or transfer to any Owner's Sweep Account any sums in the Hotel Operating Account, Tax and Insurance Escrow Account, or Equipment Replacement Reserve Account, including any funds payable to Owner upon a termination of the Management Agreement.

11. ***Insurance.*** Management Company covenants and agrees to obtain and maintain in full force and effect all insurance which Management Company is required to obtain under Article



VIII of the Management Agreement, including any blanket insurance policies obtained by Management Company, and to promptly deliver to Mortgagee evidence thereof. All such policies of insurance shall name Mortgagee as an additional insured or loss payee, as appropriate. Management Company shall promptly deliver to Mortgagee certificates of insurance as to all required insurance coverages. Management Company acknowledges that, following any casualty loss to the Hotel, insurance proceeds will be made available by Mortgagee for the repair and restoration of the Hotel only upon satisfaction of the conditions and under the terms and provisions set forth in the Mortgage.

12. ***Taxes and Impositions.*** Management Company agrees that at the request of Mortgagee, Management Company shall promptly provide to Mortgagee evidence of the payment of all real estate and personal property taxes and assessments and other charges of every kind imposed by any governmental authority having jurisdiction, including interest and penalties thereon.

13. ***Reports.*** Owner hereby authorizes Management Company, and Management Company hereby agrees, upon Mortgagee's request (after Mortgagee has requested and failed to obtain such materials from Owner), to provide Mortgagee with contemporaneous copies of all written reports (including, but not limited to, the Operating Budget and Capital Budget prepared by Manager for each Fiscal Year and the financial reports to be prepared by Manager and provided to Owner pursuant to Section 4.11 of the Management Agreement) and other written material (other than incidental or insignificant material) provided by Management Company to Owner under any provision of the Management Agreement.

14. ***Additional Management Company Covenants.*** Management Company further covenants and agrees as follows:

A. Management Company shall not collect any payment or reimbursement due to Management Company under the Management Agreement (including without limitation, the Management Fee) in advance of when such payment is due.

B. Management Company shall not, without Mortgagee's prior written consent, not to be unreasonably withheld or delayed, (i) reduce or consent to the reduction of the initial or renewal term of the Management Agreement, (ii) increase or consent to the increase of the Management Fee, or (iii) otherwise modify, change, supplement, alter or amend the Management Agreement in any material respect; and Management Company acknowledges that Owner has assigned and transferred to Mortgagee, pursuant to the Mortgage, any rights which Owner may have to amend the Management Agreement, so that any such purported amendment to the Management Agreement shall be null and void as to Mortgagee unless it has granted its prior written consent thereto.

C. Without obtaining the prior written consent of Mortgagee, Management Company and its affiliates shall not loan or advance funds to Owner or its affiliates. To the extent that Mortgagee consents to any such loans or advances, Management Company acknowledges that

repayment of the same shall be subordinated to repayment in full of the loan secured by the Mortgage.

15. **Licenses and Permits.** Management Company covenants and agrees to promptly notify Mortgagee after Management Company has obtained any food, beverage and liquor licenses used at the Hotel, and to execute and deliver, to the extent legally permissible, such additional pledges, security agreements and other documents as may be reasonably requested by Mortgagee in order to afford Mortgagee the protections of a first-lien secured creditor in and to all such permits and licenses, to the extent permitted under applicable law. Management Company agrees that after any Foreclosure and prior to any termination by the Subsequent Owner of the Management Agreement, Management Company shall use its best efforts to maintain in full force and effect all permits and licenses obtained or maintained by Management Company in connection with the use and operation of the Hotel, including without limitation, any food, liquor and other beverage licenses. If, following any termination of the Management Agreement in accordance with Section 4 of this Agreement or otherwise permitted under the Management Agreement, Management Company is not permitted under applicable law to assign any such licenses, Management Company shall cooperate with, and provide assistance to, Mortgagee in its efforts to obtain food, liquor and other Licenses for the normal use and operation of the Hotel.

16. **No Assumption.** Management Company expressly acknowledges that Mortgagee assumes no obligations or liabilities of Owner under the Management Agreement and that Mortgagee will have no obligation to Management Company to exercise its rights under this Agreement or the Mortgage, but that the right and option to exercise such rights rests in the sole and absolute discretion of Mortgagee.

17. **Indemnification.** Owner agrees to indemnify Mortgagee and defend and hold Mortgagee harmless from and against any and all liabilities, claims, demands, losses, damages, costs and expenses (including but not limited to reasonable attorney's fees) which Mortgagee may incur under the Management Agreement or this Agreement and from any alleged or actual obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Management Agreement. This indemnification will not apply to actions taken by Mortgagee subsequent to Mortgagee's acquisition of title by Foreclosure. This provision shall survive any termination of the Management Agreement and any Foreclosure.

18. **Bankruptcy.** Management Company and Mortgagee agree that in the event of Owner's bankruptcy, and notwithstanding an effective rejection by Owner or any bankruptcy trustee of this Agreement in any such bankruptcy proceeding, the terms and provisions of this Agreement will remain in full force and effect between Management Company and Mortgagee. This provision shall constitute an independent agreement between Management Company and Mortgagee and is intended by the parties to survive any rejection of this Agreement in bankruptcy by Owner or any bankruptcy trustee.



19. ***Limitation on Owner's Liability.*** Notwithstanding any provision in the Management Agreement to the contrary, the liability of Owner and any Subsequent Owner of the Hotel (including but not limited to, Mortgagee or its designee following a Foreclosure) is limited to their interest in the Hotel and the income and proceeds thereof. In no event will Management Company or any person claiming under Management Company have the right to seek recourse against any other assets of Owner or such Subsequent Owner or their respective officers, directors or stockholders for satisfaction of any liability or obligation of Owner. Any judgment obtained by Management Company against Owner or a Subsequent Owner shall be enforceable solely against the Hotel and the income and proceeds thereof and not against any other assets of Owner or Subsequent Owner, or their respective officers, directors, employees or beneficial interest holders.

20. ***Confirmatory Documentation.*** The provisions of all Sections of this Agreement are and shall be fully effective and binding between the parties, upon the occurrence of the conditions, if any, set forth in such Sections, without the execution of any further instruments by any party. Notwithstanding the foregoing, each party to this Agreement shall have the right (from time to time, for so long as this Agreement is in effect) to request either or both of the other parties to execute documentation (in form reasonably satisfactory to all signing parties) confirming (if true) that such conditions (if any) have been satisfied and that the provisions of this Agreement or specified portions thereof have been implemented. In such event, each of the parties which are requested to execute such confirmatory documentation agrees to execute it within a reasonable period of time (not to exceed thirty (30) days) after its receipt of such request.

21. ***Miscellaneous.***

A. This Agreement may be executed in a number of identical counterparts. If so executed, all of such counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart, provided that photocopy or facsimile copies of all signatures are produced.

B. The terms and conditions of this Agreement shall inure to the benefit of, and be binding upon, the respective successors, heirs, legal representations and assigns of each of the parties hereto.

C. Notwithstanding anything herein to the contrary, the commencement and prosecution of foreclosure proceedings under the Mortgage is a matter entirely within the discretion of Mortgagee.

D. The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

E. In the event the Management Agreement shall be amended, modified or supplemented, the Management Agreement, as so amended, modified or supplemented, shall

continue to be subject to the provisions of this Agreement without the necessity of any further act by the parties hereto; provided, however, Management Company shall use its best efforts to give Mortgagee a copy of any such amendment, modification or supplement to the Management Agreement, with the understanding that the failure to do so shall not impose any liability on Management Company or affect any of Management Company's rights and remedies under such amendment or supplement or under this Agreement. The foregoing provision shall not invalidate or limit the applicability and enforceability of any restrictions or conditions in Section 14 of this Agreement or in the Mortgage regarding, respectively, Management Company's and Owner's ability to amend, modify or supplement the Management Agreement without the prior written consent of Mortgagee, all of which provisions Management Company and Owner hereby respectively acknowledge remain in full force and effect.

F. The provisions of this Agreement shall not be modified, amended, waived, discharged or terminated except by a written document signed by all of the parties hereto.

G. This Agreement and its validity, interpretation and enforcement shall be governed by the laws of the State of Alabama.

H. Captions of Sections herein are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Sections to which they refer.

I. Owner and Management Company hereby acknowledge and agree to the provisions of this Agreement and agree that, to the extent there is an inconsistency between the terms and provisions of this Agreement and the Management Agreement, the terms and provisions of this Agreement shall prevail. The performance by the Management Company hereunder shall not be deemed a breach of any of its obligations to Owner under the Management Agreement. Notwithstanding the foregoing, nothing herein shall be deemed a waiver of the choice of governing law provisions set forth in the Management Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement under seal as of the day and year first above written.

***Mortgagee:***

Witness:

GMAC COMMERCIAL MORTGAGE  
CORPORATION

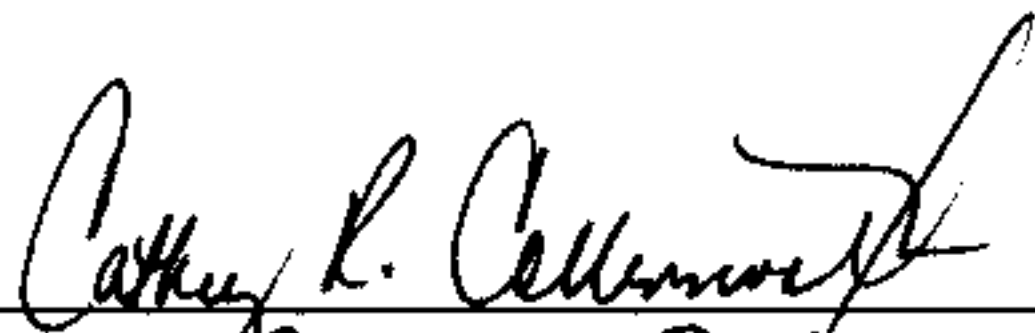
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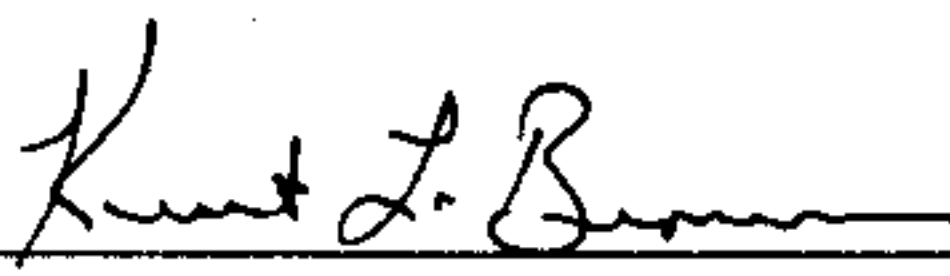
By: \_\_\_\_\_ (SEAL)  
Phillip J. Keel, Vice President

***Management Company:***

Witness:

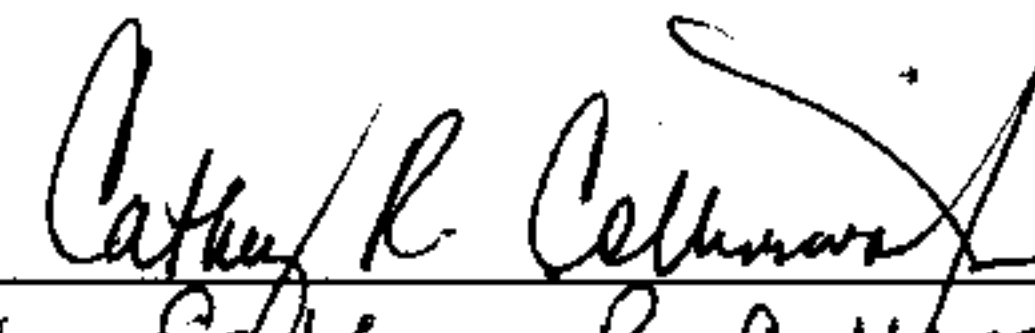
CANDLEWOOD HOTEL COMPANY, INC.

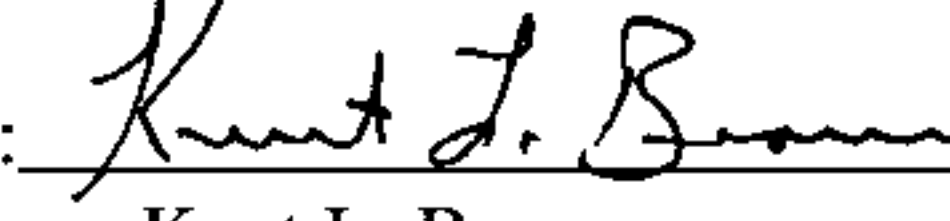
  
Name: Cathy R. Collinsworth

By:  (SEAL)  
Name: Kent L. Brown  
Title: Vice President-Controller

Witness:


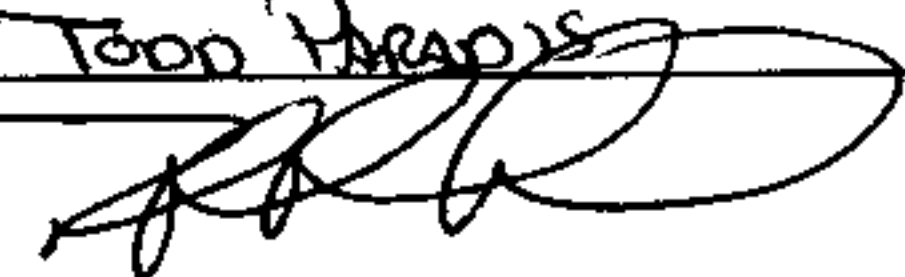
CANDLEWOOD BIRMINGHAM, LLC,

  
Name: Cathy R. Collinsworth

By: Candlewood Hotel Company, Inc., a  
Delaware corporation, as Manager  
By:  (SEAL)  
Name: Kent L. Brown  
Title: Vice President-Controller

IN WITNESS WHEREOF, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement under seal as of the day and year first above written.

Witness:

  
Name: Todd Parsons  
  
FRANK J. GUZAUSKAS

Witness:

\_\_\_\_\_  
Name: \_\_\_\_\_

Witness:

\_\_\_\_\_  
Name: \_\_\_\_\_

***Mortgagee:***

GMAC COMMERCIAL MORTGAGE  
CORPORATION

By:  (SEAL)  
Phillip J. Keel, Vice President

***Management Company:***

CANDLEWOOD HOTEL COMPANY, INC.

By: \_\_\_\_\_ (SEAL)

Name: Kent L. Brown  
Title: Vice President-Controller

***Owner:***

CANDLEWOOD BIRMINGHAM, LLC,

By: Candlewood Hotel Company, Inc., a  
Delaware corporation, as Manager

By: \_\_\_\_\_ (SEAL)

Name: Kent L. Brown  
Title: Vice President-Controller



STATE OF ILLINOIS       )  
                                      )  
COUNTY OF COOK                        )

On this 24<sup>th</sup> day of June, 1997, I, Todd Paradis, a Notary Public in and for said county and in said state, hereby certify that Phillip J. Keel, known, whose name as the Vice President of GMAC COMMERCIAL MORTGAGE CORPORATION, a ~~California~~ corporation, is signed to the foregoing instrument, and who is know to me, acknowledged before me that, being informed of the contents of the conveyance, he, as such office and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal of office.

Todd Paradis  
Notary Public

AFFIX SEAL

My commission expires: 02/05/00



STATE OF KANSAS       )  
                                      )  
COUNTY OF SEDGWICK                        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1997, I \_\_\_\_\_, a Notary Public in and for said county and in said state, hereby certify that Kent L. Brown, whose name as Vice President-Controller of CANDLEWOOD HOTEL COMPANY, INC., a Delaware corporation, is signed to the foregoing instrument, and who is know to me, acknowledged before me that, being informed of the contents of the conveyance, he, as such office and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal of office.

\_\_\_\_\_  
Notary Public

AFFIX SEAL

My commission expires: \_\_\_\_\_

STATE OF ILLINOIS       )  
                                  )  
COUNTY OF COOK               )

On this \_\_\_\_ day of \_\_\_\_\_, 1997, I, \_\_\_\_\_, a Notary Public in and for said count and in said state, hereby certify that Phillip J. Keel, known, whose name as the Vice President of GMAC COMMERCIAL MORTGAGE CORPORATION, a California corporation, is signed to the foregoing instrument, and who is know to me, acknowledged before me that, being informed of the contents of the conveyance, he, as such office and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal of office.

\_\_\_\_\_  
Notary Public

AFFIX SEAL

My commission expires: \_\_\_\_\_

STATE OF KANSAS       )  
                                  )  
COUNTY OF SEDGWICK       )

On this 25th day of JUNE, 1997, I Cathy R. Collinsworth a Notary Public in and for said county and in said state, hereby certify that Kent L. Brown, whose name as Vice President-Controller of CANDLEWOOD HOTEL COMPANY, INC., a Delaware corporation, is signed to the foregoing instrument, and who is know to me, acknowledged before me that, being informed of the contents of the conveyance, he, as such office and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal of office.

Cathy R. Collinsworth  
Notary Public

AFFIX SEAL

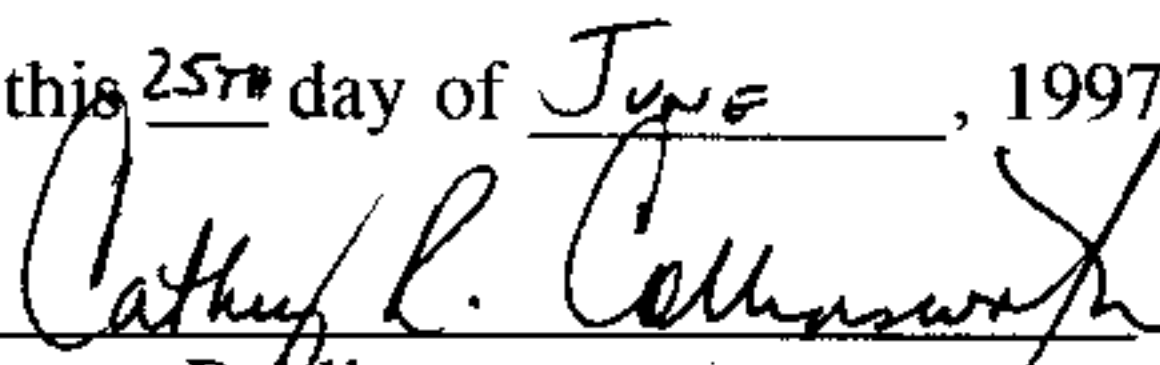
My commission expires: 27 MARCH 2001



STATE OF KANSAS                    )  
  )  
COUNTY OF SEDGWICK            )

I, the undersigned, a Notary Public in and for said county in said State, hereby certify that Kent L. Brown, whose name as Vice President-Controller of Candlewood Hotel Company, Inc., a Delaware corporation, the manager of CANDLEWOOD BIRMINGHAM, LLC, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such Vice President-Controller of such manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 25<sup>th</sup> day of June, 1997.

  
Notary Public

AFFIX SEAL

My commission expires: 24 MARCH 2001

This Instrument Prepared By:

Roger N. Simon  
Katten Muchin & Zavis  
1025 Thomas Jefferson Street, N.W.  
Washington, D.C. 20007

EXHIBIT "A"

TO NON-DISTURBANCE AND ATTORNMENT AGREEMENT

Legal Description of the Site

Land in the City of Hoover, Shelby County, Alabama, described as follows:

Lot 2D-1, according to the Map of The Resurvey of Lot 2D, Meadow Brook Corporate Park Phase I, as recorded in Map Book 21, page 92, in the Probate Office of Shelby County, Alabama.

Tax parcel identification numbers: 03-9-31-0-002-019.002 and 09-3-06-0-001-001.065

Inst # 1997-20724

07/02/1997-20724  
12:23 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
018 SNA 51.00