

Execution Counterpart

**MORTGAGE,
ASSIGNMENT OF LEASES AND PROFITS, SECURITY AGREEMENT
AND FIXTURE FILING**

from

CANDLEWOOD BIRMINGHAM, LLC
as Mortgagor

to

GMAC COMMERCIAL MORTGAGE CORPORATION
as Mortgagee

Dated: as of June 27, 1997

Inst # 1997-20723
07/02/1997-20723
12:23 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
064 SNA 6841.00

PREPARED BY AND AFTER RECORDATION RETURN TO:

Katten Muchin & Zavis
1025 Thomas Jefferson Street, N.W.
Suite 700E
Washington, DC 20007-5201
Attn: Roger N. Simon

EXHIBIT A

Legal Description of Land

K:\DATA\REALSTAT\07511\00035-3\MORTGAGE.2

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

TABLE OF CONTENTS

Section	Page
1. <u>Defined Terms</u>	- 6 -
2. <u>The Loan</u>	- 10 -
3. <u>Warranty of Title</u>	- 10 -
4. <u>Insurance</u>	- 11 -
5. <u>Payment of Taxes</u>	- 15 -
6. <u>Escrow Fund</u>	- 16 -
7. <u>Compliance With Laws</u>	- 17 -
8. <u>Condemnation</u>	- 17 -
9. <u>Leases and Profits</u>	- 19 -
10. <u>Representations Concerning Loan</u>	- 21 -
11. <u>Single Purpose Entity; Authorization</u>	- 25 -
12. <u>Maintenance of Property</u>	- 27 -
13. <u>Transfer or Encumbrance of the Property</u>	- 28 -
14. <u>Estoppel Certificates; Affidavits</u>	- 29 -
15. <u>Changes in the Laws Regarding Taxation</u>	- 30 -
16. <u>No Credits on Account of the Debt</u>	- 30 -
17. <u>Documentary Stamps</u>	- 31 -
18. <u>Controlling Agreement</u>	- 31 -
19. <u>Books and Records</u>	- 31 -

20.	<u>Performance of Operating Agreements</u>	- 33 -
21.	<u>Further Assurances</u>	- 33 -
22.	<u>Recording of Mortgage</u>	- 35 -
23.	<u>Reporting Requirements</u>	- 35 -
24.	<u>Events of Default</u>	- 35 -
25.	<u>Late Payment Charge; Servicing Fees</u>	- 37 -
26.	<u>Right to Cure Defaults</u>	- 38 -
27.	<u>Remedies</u>	- 38 -
28.	<u>Right of Entry</u>	- 41 -
29.	<u>Security Agreement</u>	- 41 -
30.	<u>Actions and Proceedings</u>	- 42 -
31.	<u>Waiver of Setoff and Counterclaim</u>	- 43 -
32.	<u>Contest of Certain Claims</u>	- 43 -
33.	<u>Recovery of Sums Required to Be Paid</u>	- 43 -
34.	<u>Marshaling and Other Matters</u>	- 45 -
35.	<u>Hazardous Substances</u>	- 45 -
36.	<u>Asbestos</u>	- 46 -
37.	<u>Environmental Monitoring</u>	- 46 -
38.	<u>Management of the Property</u>	- 47 -
39.	<u>Handicapped Access</u>	- 49 -
40.	<u>ERISA</u>	- 49 -
41.	<u>Indemnification</u>	- 50 -

42.	<u>Notice</u>	- 51 -
43.	<u>Authority</u>	- 51 -
44.	<u>Waiver of Notice</u>	- 52 -
45.	<u>Remedies of Mortgagor</u>	- 52 -
46.	<u>Sole Discretion of Mortgagee</u>	- 52 -
47.	<u>Non-Waiver</u>	- 52 -
48.	<u>No Oral Change</u>	- 53 -
49.	<u>Liability</u>	- 53 -
50.	<u>Inapplicable Provisions</u>	- 53 -
51.	<u>Section Headings</u>	- 53 -
52.	<u>Counterparts</u>	- 53 -
53.	<u>Homestead</u>	- 54 -
54.	<u>Assignments</u>	- 54 -
55.	<u>SUBMISSION TO JURISDICTION</u>	- 54 -
56.	<u>Service of Process</u>	- 54 -
57.	<u>WAIVER OF JURY TRIAL</u>	- 55 -
58.	<u>CHOICE OF LAW</u>	- 55 -
59.	<u>Time of Essence</u>	- 55 -
60.	<u>Survival</u>	- 55 -
61.	<u>No Third-Party Beneficiary Rights Created</u>	- 56 -
62.	<u>Discharge</u>	- 56 -

63.	<u>Maintaining Priority of Mortgage</u>	- 56 -
64.	<u>Usury Savings</u>	- 56 -
65.	<u>Costs</u>	- 57 -
66.	<u>State Provisions</u>	- 57 -

MORTGAGE,
ASSIGNMENT OF LEASES AND PROFITS, SECURITY AGREEMENT
AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF LEASES AND PROFITS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is dated ~~as of the~~ ____ day of June, 1997, from **CANDLEWOOD BIRMINGHAM, LLC**, a Delaware limited liability company having an address at c/o Candlewood Hotel Company, Inc., 9342 East Central, Wichita, Kansas 67206 ("Mortgagor"), to **GMAC COMMERCIAL MORTGAGE CORPORATION**, a California corporation, having an address at 100 South Wacker Drive, Suite 400, Chicago, IL 60606, Attn.: Phillip J. Keel ("Mortgagee"). The Mortgagee is the holder of the indebtedness secured by this Mortgage, and the address at which communications may be mailed or delivered to the Mortgagee is as set forth in the preceding sentence.

MORTGAGOR, in consideration of the indebtedness herein recited and the mortgage herein created, and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid by Mortgagee, the receipt of which is hereby acknowledged, does hereby irrevocably grant, bargain, sell, pledge, assign, warrant, transfer, mortgage and convey to Mortgagee and its successors and assigns forever, all of Mortgagor's right, title and interest in and to certain lands in Hoover, Alabama, more particularly described in Exhibit A attached hereto and made a part hereof (collectively, the "Land"; together with all of the following described property, collectively, the "Property");

TOGETHER WITH all machinery, furnishings and equipment including, without limitation, all furnaces, boilers, oil burners, radiators and piping, coal stokers, refrigeration and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, awnings, window shades, kitchen cabinets, plants and shrubbery and all other equipment and machinery, appliances, fittings and fixtures of every kind in or used in the operation of the Land and the Improvements (hereinafter defined), together with any and all replacements thereof and additions thereto, fixtures (including, without limitation, all heating, air conditioning, plumbing and bathroom, lighting, communications and elevator fixtures), inventory and articles of personal property and accessions thereof and renewals, replacements thereof and substitutions therefor (including, without limitation, beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, clock radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines,

dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washer and dryers), other customary equipment and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the buildings, structures and improvements now or hereafter erected or located thereon or appurtenant thereto, including without limitation that "Candlewood" hotel to be constructed on the Land and all related amenities and improvements (collectively, the "Improvements"), and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all equipment, materials and supplies of any nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Mortgage and all proceeds and products of the above; Mortgagor acknowledges that, as of the date hereof, it has entered into a certain letter agreement with Mortgagee (the "FF&E Side Letter") confirming, among other things, that after Mortgagor has acquired all Personal Property necessary to operate the Property, it shall execute such additional security agreements, UCC-1 financing statements and other instruments as may be reasonably requested by Mortgagee to reflect that Mortgagee holds a valid, perfected first-lien security interest in all such Personal Property;

TOGETHER WITH all accounts (including, without limitation the Equity Deposit, as defined in the Loan Agreement (hereinafter defined), and all right, title and interest of Mortgagor in and to the Hotel Operating Account, Property Tax and Insurance Escrow Account, Equipment Replacement Reserve Account, Owner's Sweep Account and all other accounts as defined or described in the Management Agreement), escrows (including, without limitation, the Escrow Fund), documents, instruments, chattel paper, claims, deposits and general intangibles of Mortgagor, as such terms are defined in the Uniform Commercial Code, and all agreements, contracts, certificates, instruments, and other documents, now or hereafter entered into, including, without limitation, the Management Agreement, and all proceeds, substitutions and replacements thereof, all of Mortgagor's interest in contract rights, insurance proceeds, security deposits, franchises, books, records, appraisals, architectural and engineering plans, specifications, environmental and other reports relating to the Land, trademarks (to the extent assignable), trade names (to the extent assignable), service marks, logos, copyrights, goodwill, symbols, permits, licenses (to the extent assignable), approvals, actions, tenant or guest lists, advertising materials and telephone exchange numbers as identified in such materials, all refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Land as a result of tax certiorari or any applications or proceedings for reduction, and causes of action which now or hereafter relate to, are derived from or are used in connection with the Land, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, "Intangibles");

TOGETHER WITH all leases and other agreements affecting the use, enjoyment or occupancy of the Land or the Improvements heretofore or hereafter entered into (including, without limitation, subleases, licenses, concessions, tenancies and other occupancy agreements covering or encumbering all or any portion of the Land), together with any guarantees, supplements, amendments, modifications, extensions and renewals of any thereof, and all additional remainders, reversions, and other rights and estates appurtenant thereto, as the same may be amended from time to time (collectively, "Leases"); in the ordinary course, an extended stay by a hotel guest in the Improvements shall not constitute a Lease hereunder;

TOGETHER WITH all of Mortgagor's right, title and interest in and to the Operating Agreements (defined herein), together with any amendments, modifications, extensions and renewals of any thereof, and all subordinations, estoppels and other rights in connection therewith;

TOGETHER WITH all agreements (including, without limitation, the Management Agreement and all agreements now or hereafter entered into for the use and enjoyment of all food, liquor and other beverage licenses), contracts (including, without limitation, all Construction Agreements, Plans and Property Agreements as defined and described in the Document Assignment), certificates, instruments, franchises, permits, licenses (including, without limitation, food, liquor and other beverage licenses, to the extent assignable), plans, specifications and other documents, now or hereafter entered into, together with any amendments, modifications, extensions and renewals of any thereof, and all subordinating estoppel rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, while an Event of Default remains uncured, to receive and collect any sums payable to Mortgagor thereunder;

TOGETHER WITH all of Mortgagor's right, title and interest in and to any easements and appurtenances affecting the Property;

TOGETHER WITH the right, in the name and on behalf of Mortgagor, to commence any action or proceeding to protect the interest of Mortgagee in the Property and while an Event of Default remains uncured, to appear in and defend any action or proceeding brought with respect to the Property;

TOGETHER WITH all (i) income, rents, room rates, receipts, issues, profits, revenues (including all oil and gas or other mineral royalties and bonuses), deposits and other benefits now due or which may become due or to which Mortgagor is now or hereafter may become entitled or which Mortgagor may demand or claim arising or issuing from or out of the operation of the business at the Land or any part thereof and all amounts paid as rents for such Land or the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels or other lodging facilities, including, without limitation, all revenues and credit card

receipts collected from guest rooms, restaurants, bars, mini-bars, meeting rooms, banquet rooms, recreational facilities and otherwise; and (ii) receivables, customer obligations, installment payment obligations and other payment obligations whether already accrued, now accruing or to accrue in the future for the occupancy or use of the Property or any part thereof, or arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Land or personalty located thereon, or the rendering of services by Mortgagor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others including, without limitation, from the rental of any office space, retail space, commercial space, parking space, guest rooms or other space, halls, stores or offices, including any deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Land, regardless of whether the revenues described in the preceding clauses (i) and (ii) are paid or accrued before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, "Profits");

TOGETHER WITH all additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land that may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Mortgage;

TOGETHER WITH all awards heretofore and hereafter made to Mortgagor for taking by eminent domain the whole or any part of the Land or any easement therein, including any awards for changes of grade of streets; and

TOGETHER WITH any and all other rights of Mortgagor in and to the foregoing.

TO HAVE AND TO HOLD the Property unto Mortgagee and unto its successors and assigns forever with all appurtenances hereunto belonging, together with all Profits therefrom.

PROVIDED, HOWEVER, that upon full payment of all indebtedness hereby secured, and upon performance of all covenants, obligations and indemnities hereby secured, these presents and the estate hereby granted shall cease, terminate and be void.

TO SECURE to Payee:

(a) Payment of all indebtedness evidenced by an interest-bearing loan and debt in the original principal sum of Four Million Four Hundred Fifty Thousand and No/100 Dollars (\$4,450,000.00) (the "Loan") evidenced by that certain Mortgage Note dated as of the date hereof from Mortgagor, as Maker, to Mortgagee, as Payee (the "Note"), the terms of which are incorporated herein by reference as well as all renewals, extensions, modifications and recastings of the Note.

(b) The performance of all covenants, obligations, indemnities and agreements required of Mortgagor under the Note, this Mortgage, any indemnity executed in connection with the Loan, and all other agreements, documents and instruments evidencing or securing the indebtedness hereby secured (the Note, the Loan Agreement, this Mortgage, the Document Assignment, the Financing Statements, the Environmental Agreement, the Guaranty Agreement, the Replacement Reserve Agreement, and all such other agreements, documents and instruments are hereinafter referred to collectively as the "Loan Documents").

(c) The payment of (i) interest, default interest, late charges and other sums as provided in the Loan Documents; (ii) any Extension Fee or Deferred Financing Fee (as each such term is defined in the Note); and (iii) all other monies agreed or provided to be paid by Mortgagor in the Loan Documents.

(d) The payment of any and all future advances made to Mortgagor hereunder or under any Loan Document.

(e) The performance of all obligations of any surety, guarantor or indemnitor of any of the obligations of Mortgagor under the Loan Documents.

(f) The payment of all costs and expenses, including court costs, attorneys' fees, witness fees (including fees of expert witnesses), paid, advanced or incurred by Mortgagee pursuant to the Loan Documents to protect or preserve the Property or the validity or priority of this Mortgage or to enforce the remedies of Mortgagee as provided for herein or in the other Loan Documents.

(g) The payment of all indebtedness evidenced by any note, mortgage note, promissory note or other evidence of indebtedness now or hereafter outstanding and owing by Mortgagor or any entity for which Candlewood is a manager, member or principal equity owner or any other of Mortgagor's Affiliates to Mortgagee or any of its Affiliates, including, without limitation, that certain deed of trust loan from Mortgagee, as beneficiary, to Candlewood Hampton, LLC, a Delaware limited liability company, as grantor, that certain mortgage loan from Mortgagee, as mortgagee, to Candlewood Jeffersontown, LLC, a Delaware limited liability company, as mortgagor, that certain mortgage loan from Mortgagee, as mortgagee, to Candlewood Blue Ash, LLC, a Delaware limited liability company, as mortgagor, that certain mortgage loan from Mortgagee, as mortgagee, to Candlewood Southfield, LLC, a Delaware limited liability company, as mortgagor, including principal, interest, commitment fees, deferred financing fees, extension fees, default interest, late charges, collection costs and other sums now or hereafter outstanding from any such entities (all indebtedness described in this clause (g) being hereinafter referred to as the "Cross-Collateralized Indebtedness"). By its acceptance of this Mortgage, Mortgagee hereby acknowledges that so long as no default or event of default exists under any of the Cross-Collateralized Indebtedness, this Mortgage shall be released of record upon satisfaction of all sums described in clauses (a) through (f) above.

The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of loan advances made after this Mortgage is delivered for recording in the public land records. Such loan advances are and will be evidenced by the Note of Mortgagor. The maximum amount of unpaid loan indebtedness (which shall consist of unpaid balances of loan advances made either before or after, or before and after, this Mortgage is delivered for recording in the public land records), exclusive of interest thereon, late charges, unpaid fees and collection expenses, which may be outstanding at any time is FOUR MILLION FOUR HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$4,450,000.00);

This Mortgage is given for the purpose of securing loan advances which Mortgagee is obligated to make to Mortgagor for the construction of improvements on the Land pursuant to the terms of the Loan Agreement (as hereinafter defined), which Loan Agreement is incorporated herein and made a part hereof by this reference;

1. Defined Terms

The following terms shall have the following meanings:

- (a) "Access Laws" has the meaning set forth in Section 39(a) hereof.
- (b) "Affiliate" means, with respect to a specified person or entity, another person or entity who: (i) directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control, with the specified person or entity; (ii) is a partner, director, officer or trustee of the specified person or entity or of any person or entity described in clause (i) above; (iii) is a partner of a partnership or joint venture which owns, or is a beneficiary or trustee of a trust which owns, or other owner of any stock or other evidences of beneficial ownership in, the specified person or entity or any person or entity as described in clause (i) above; or (iv) is related to the specified person by blood (including grandparents of the specified person and of his or her spouse and all lineal descendants of such grandparents) or marriage to the specified person or to any person described in (i) above or of the spouse of any of the foregoing persons. For purposes of this definition, the term "control" with respect to a specified person or entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the specified person or entity, whether through the ownership of voting stock, by contract or otherwise.
- (c) "Applicable Laws" has the meaning set forth in Section 7(a) hereof.
- (d) "Asbestos" has the meaning set forth in Section 36 hereof.
- (e) "Budget" means the budget for the use and application of the Loan and gross income derived from the operation of the Property, as set forth in the budget delivered by Mortgagor to Mortgagee on the date hereof with respect to the balance of the current calendar year, and the

annual budget to be delivered in accordance with the terms hereof for each subsequent calendar year for so long as any portion of the Debt (defined herein) remains outstanding.

(f) "Business Day" means a day on which commercial banks are not authorized or required by law to close in the State of Alabama.

(g) "Candlewood" means Candlewood Hotel Company, Inc., a Delaware corporation.

(h) "Collateral" has the meaning set forth in Section 29 hereof.

(i) "Condemnation" has the meaning set forth in Section 8(a) hereof.

(j) "Debt" means the outstanding principal balance of the Note from time to time, with all accrued and unpaid interest thereon, and all other sums now or hereafter due under the Loan Documents.

(k) "Default Rate" has the meaning set forth in Section 25(b) hereof.

(l) "Document Assignment" has the meaning set forth in Section 2(b) hereof.

(m) "Environmental Agreement" has the meaning set forth in Section 2(b) hereof.

(n) "Environmental Laws" has the meaning set forth in Section 35 hereof.

(o) "ERISA" has the meaning set forth in Section 40(a) hereof.

(p) "Escrow Fund" has the meaning set forth in Section 6 hereof.

(q) "Event of Default" has the meaning set forth in Section 24 hereof.

(r) "FF&E Side Letter" has the meaning set forth in the recitals of this Mortgage.

(s) "Financing Statements" means any and all UCC financing statements filed by or on behalf of Mortgagee as additional security hereunder.

(t) "Guarantor" has the meaning set forth in Section 2(b) hereof.

(u) "Guaranty Agreement" has the meaning set forth in Section 2(b) hereof.

(v) "Hazardous Substances" has the meaning set forth in Section 35 hereof.

(w) "Indemnified Parties" has the meaning set forth in Section 41(b) hereof.

- (x) "Improvements" has the meaning set forth in the recitals of this Mortgage.
- (y) "Insurance Premiums" has the meaning set forth in Section 4(d) hereof.
- (z) "Insured Casualty" has the meaning set forth in Section 4(e)(ii) hereof.
- (aa) "Intangibles" has the meaning set forth in the recitals of this Mortgage.
- (bb) "Investor" has the meaning set forth in Section 21(b) hereof.
- (cc) "Land" has the meaning set forth in the recitals of this Mortgage.
- (dd) "Leases" has the meaning set forth in the recitals of this Mortgage.
- (ee) "Loan" has the meaning set forth in the recitals of this Mortgage, together with any renewals, extensions, amendments, modifications, supplements or restatements of such loan.
- (ff) "Loan Agreement" has the meaning set forth in Section 2(b) hereof, together with any renewals, extensions, amendments, modifications, supplements or restatements of such instrument.
- (gg) "Loan Documents" has the meaning set forth in the recitals of this Mortgage, together with any renewals, extensions, amendments, modifications, supplements or restatements of such instrument.
- (hh) "Management Agreement" means the Management Agreement dated as of January 29, 1997 between Mortgagor and Manager, as modified by that Subordination, Non-Disturbance and Attornment Agreement dated as of substantially even date herewith, among Mortgagor, Manager and Mortgagee.
- (ii) "Manager" means Candlewood Hotel Company, Inc., a Delaware corporation.
- (jj) "Maturity Date" means the Applicable Maturity Date (as such term is defined in the Note) or any earlier acceleration of sums due under the Note pursuant to Mortgagee's declaration of an Event of Default.
- (kk) "Mortgage" has the meaning set forth in the recitals of this Mortgage, together with any renewals, extensions, amendments, modifications, supplements or restatements hereof.
- (ll) "Mortgagee" has the meaning set forth in the preamble to this Mortgage as well as the last paragraph of this Section.

(mm) "Mortgagor" has the meaning set forth in the preamble to this Mortgage as well as the last paragraph of this Section.

(nn) "Note" has the meaning set forth in the recitals of this Mortgage, together with any renewals, extensions, amendments, modifications, supplements or restatements of such instrument.

(oo) "Operating Agreements" has the meaning set forth in Section 20 hereof.

(pp) "Other Charges" has the meaning set forth in Section 5 hereof.

(qq) "Personal Property" has the meaning set forth in the recitals of this Mortgage.

(rr) "Policies" has the meaning set forth in Section 4(d) hereof.

(ss) "Principal" means the managing member of Mortgagor, Candlewood Hotel Company, Inc., a Delaware corporation.

(tt) "Property" has the meaning set forth in the recitals of this Mortgage as well as the last paragraph of this Section.

(uu) "Remedial Work" has the meaning set forth in Section 37 hereof.

(vv) "Securities" has the meaning set forth in Section 21(b) hereof.

(ww) "Servicer" means the servicer of the Loan designated by Mortgagee, in its sole and absolute discretion, from time to time.

(xx) "Taxes" has the meaning set forth in Section 5 hereof.

(yy) "UCC Financing Statements" has the meaning set forth in Section 2(b) hereof.

(zz) "Uniform Commercial Code" means the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Property is located.

(aaa) "Uniform System of Accounts" has the meaning set forth in Section 10(h) hereof.

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Note.

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form.

and the word "Mortgagor" shall mean "each Mortgagor or any part thereof or any interest therein", the word "Mortgagee" shall mean "Mortgagee, its successors and assigns, and any subsequent holder of the Note", the word "Debt" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage", the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority and any other entity, and the words "Property" shall include any portion of the Property and any interest therein and the words "attorneys' fees" shall include any and all attorneys' fees, paralegal and law clerk fees including, without limitation, fees at the pretrial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Property and Collateral and enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

2. The Loan

(a) Upon and subject to the terms and conditions herein set forth, Mortgagee agrees to lend to Mortgagor and Mortgagor agrees to borrow from Mortgagee, a sum not to exceed Four Million Four Hundred Fifty Thousand and No/100 Dollars (\$4,450,000.00). Mortgagor will pay the Debt at the time and in the manner provided in the Note, this Mortgage and the other Loan Documents. All payments made to Mortgagee in respect of the Debt after payment of principal and interest due and payable under the Note shall be applied by Mortgagee in such order of priority as Lender shall determine in its sole discretion.

(b) All the covenants, conditions and agreements contained in the Note, the Building Loan Agreement dated as of the date hereof between Mortgagor and Mortgagee governing disbursements of the Loan and the construction of the Improvements (the "Loan Agreement"), the Assignment of Construction Agreements, Plans and Property Agreements dated as of the date hereof from Mortgagor to Mortgagee (the "Document Assignment"), the Environmental Indemnity Agreement dated as of the date hereof among Mortgagee, Mortgagor and Principal (the "Environmental Agreement"), the Guaranty Agreement (the "Guaranty Agreement") dated as of the date hereof from Borrower and Principal (individually, a "Guarantor" and collectively, the "Guarantors") to Mortgagee, Uniform Commercial Code Financing Statement(s) dated as of the date hereof from Mortgagor for the benefit of Mortgagee (the "UCC Financing Statements"), the Replacement Reserve Agreement dated as of the date hereof from Mortgagor for the benefit of Mortgagee (the "Replacement Reserve Agreement"), and the other Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

3. Warranty of Title

Mortgagor represents and warrants generally that Mortgagor (a) has good indefeasible fee simple title to the Property as specified in the title insurance policy insuring the lien of this Mortgage, (b) has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage and to encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey,

confirm, pledge, assign, hypothecate and grant a security interest in the Property, (c) possesses and is seised of an unencumbered fee simple estate in the Land and the Improvements, and (d) owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions approved by Mortgagee and shown in the title insurance policy insuring the lien of this Mortgage. Mortgagor further represents and warrants that this Mortgage is and will remain a valid and enforceable first lien on and security interest in the Property, subject only to such exceptions. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend such title, validity and priority to Mortgagee against the claims of all persons whomsoever.

4. Insurance

(a) Mortgagor, at its sole cost and expense, will keep the Property insured during the entire term of this Mortgage for the mutual benefit of Mortgagor and Mortgagee in accordance with the terms and provisions of this Section against loss or damage by fire and against loss or damage by other risks and hazards covered by a standard extended coverage insurance policy including, without limitation, riot and civil commotion, vandalism, malicious mischief, burglary and theft. The insurance policy shall contain option perils and income loss endorsements and if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, a law and ordinance endorsement. Such insurance shall be in an amount equal to the greater of: (A) the original principal amount of the Loan (in no event less than the minimum amount required to compensate for damage or loss on a replacement cost basis), or (B) the then full replacement cost of the Improvements and the Personal Property, without deduction for physical depreciation; provided, however, that such insurance shall be in an amount such that the insurer would not deem Mortgagor a co-insurer under such policies. The deductible in respect of such insurance shall not exceed the lesser of: (1) Ten Thousand and No/100 Dollars (\$10,000.00); and (2) one percent (1%) of the face value of such policy, unless a higher deductible is required by law. The premiums for the insurance carried in accordance with this Section shall be paid annually in advance and each policy shall contain the "Replacement Cost Endorsement" with a waiver of depreciation.

(b) Mortgagor shall also obtain and maintain during the entire term of this Mortgage, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, the following policies of insurance:

(i) Flood insurance if any part of the Property is currently or at any time in the future located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any amendment or successor act thereto) in an amount at least equal to the lesser of: (A) the outstanding principal amount of the Note; or (B) the maximum limit of coverage available with respect to the Improvements and the Personal Property under such act;

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and "Dram shop" or other liquor liability coverage if alcoholic beverages are sold from or may be consumed at the Property, and containing minimum limits per occurrence of Three Million and No/100 Dollars (\$3,000,000.00) and Six Million and No/100 Dollars (\$6,000,000.00) general aggregate for the Land and the Improvements, or such greater amount as may be required under the Management Agreement;

(iii) During the course of any construction of or repairs to any Improvements, builder's completed value risk insurance against "all risks of physical loss," (A) including collapse and transit coverage, in a nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished, and (B) including a full installation floater to insure all materials stored on the Land but not yet part of the permanent installation;

(iv) Business income insurance: (A) with loss payable to Mortgagee, its successors and/or assigns, as their respective interests may appear; (B) covering all risks required to be covered by the insurance provided for in Section 4(a); and (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and all personal property has been repaired, the continued loss of income will be insured until the Property is restored (or if such income is not as of the date of restoration at the same level it was at prior to the loss, then until two (2) months following the restoration date), or the expiration of twelve (12) months from the date of the loss, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on the provisions of this subsection. All insurance proceeds payable to Mortgagee pursuant to this Section shall be held by Mortgagee and shall be applied to the obligations secured hereunder from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Mortgagor of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Note except to the extent such amounts are actually and timely paid out of the proceeds of such business income insurance;

(v) Insurance, in an amount equal to the lesser of the original principal amount of the Loan or the insurable value of the Improvements and the Personal Property, against loss or damage from: (A) leakage of sprinkler systems; and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements;

(vi) Worker's compensation insurance with respect to any employees of Mortgagor, as required by any governmental authority or legal requirement;

(vii) Motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles, containing minimum limits per occurrence of One Million and No/100 Dollars (\$1,000,000.00) with minimum limits of Four Million and No/100 Dollars (\$4,000,000.00) liability umbrella coverage or such greater amount as may be required under the Management Agreement;

(viii) Blanket crime and fidelity insurance coverage insuring against losses resulting from dishonest or fraudulent acts committed by Mortgagor's or Manager's personnel;

(ix) Earthquake insurance(including subsidence), if the Property is located in an earthquake prone region, insuring to replacement cost with a maximum deductible of no greater than five percent (5%) of the Property value; and

(x) Such other insurance as may from time to time be reasonably required by Mortgagee or as may be required by the Management Agreement.

(c) Mortgagor shall increase the amount of insurance required to be provided hereunder at the time that each such policy is renewed (but, in any event not less frequently than once during each twelve (12) month period) by using the F.W. Dodge Building Index to determine whether there has been an increase in the replacement cost of the improvement since the most recent adjustment of any such policy and, if there has been any such increase, the amount of insurance required to be provided hereunder shall be adjusted accordingly.

(d) All policies of insurance required pursuant to this Section (collectively, the "Policies") shall: (i) be issued by an insurer fully licensed in the State of Alabama with an investment grade rating for claims paying ability by Moody's Investors Service, Inc. and Standard & Poor's Rating Group, if rated (or, if not rated investment grade by any of the foregoing, a cut through endorsement will be required); (ii) contain a standard noncontributory mortgagee clause naming Mortgagee, its successors and/or assigns, as their respective interests may appear, as the person to which all payments made by such insurance company shall be paid; (iii) be maintained throughout the term of this Mortgage without cost to Mortgagee; (iv) be assigned and delivered to Mortgagee; (v) contain such provisions as Mortgagee deems reasonably necessary or appropriate to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer thereunder, and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation; (vi) be satisfactory in form and substance to Mortgagee, and be approved by Mortgagee as to amounts, form, risk coverage, deductible, loss payees and insureds; (vii) name Mortgagee as an additional insured and as a Loss Payee; and (viii) waive Mortgagor's right of subrogation against Mortgagee. Mortgagor shall pay or cause Manager to pay the premiums for the Policies (the "Insurance Premiums") as they become due and payable. Not later than thirty (30) days prior to the expiration date of each of the Policies, Mortgagor will deliver to Mortgagee satisfactory evidence of the renewal of each Policy. Notwithstanding anything herein to the contrary, in the event that the

Management Agreement requires (1) greater amounts of coverage for any insurance required hereunder, or (2) additional types of insurance coverage, then the Management Agreement insurance requirements shall prevail. In the event Mortgagor fails to provide, maintain, keep in force, or deliver and furnish to Mortgagee the Policies, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will reimburse Mortgagee for all premiums paid by Mortgagee, together with interest thereon from the date paid at the Default Rate, promptly upon demand by Mortgagee. Until such payment is made by Mortgagor, the amount of all such premiums, together with interest ~~thereon~~, shall be secured by this Mortgage.

(e) After the occurrence of any casualty or damage in excess of One Hundred Thousand Dollars (\$100,000) to the Property, or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee. All proceeds of insurance from such casualty or damage to the Property in excess of One Hundred Thousand Dollars (\$100,000) shall be payable to Mortgagee to the extent of all Debt then secured hereby, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds in excess of One Hundred Thousand Dollars (\$100,000) directly to Mortgagee. Mortgagor shall have the right to settle and adjust any claims, in the amount of One Hundred Thousand Dollars (\$100,000) or less for loss, damage, or destruction under any Policy or Policies of insurance, given final approval by Mortgagee, not to be unreasonably withheld. Mortgagee is hereby authorized and empowered by Mortgagor to participate with Mortgagor in the settlement, adjustment, or compromise of claims in excess of One Hundred Thousand Dollars (\$100,000), provided, however, that following any default hereunder, Mortgagee is authorized and empowered to settle, adjust or compromise such claims without the consent of, and on behalf of, Mortgagor. Mortgagee shall have the option, in its sole discretion, of applying all or part of the insurance proceeds resulting from casualty or property damage (i) to the Debt secured hereby in such order as Mortgagee may determine, or (ii) to the repair and restoration of the Property upon such terms and conditions as Mortgagee may determine ("Restoration"). Nothing contained herein shall be deemed to excuse Mortgagor from repairing or maintaining the Property or from completing the Restoration of the Property, regardless of whether or not the insurance proceeds are made available for such purpose or whether or not any such proceeds are sufficient for such purpose. The application by Mortgagee of any insurance proceeds to the Debt secured hereby shall not cure or waive any Event of Default under this Mortgage.

(f) Notwithstanding subparagraph(e) above, Mortgagee agrees to make available to Mortgagor any insurance proceeds it may receive on account of any damage or destruction to the Property, provided Mortgagee reasonably determines, in its sole discretion, that it is economically feasible to repair and restore the Property to its previous condition prior to the maturity date of the Note and, provided further, that all of the following conditions are satisfied:

(i) Mortgagor is not in default under any of the Loan Documents or the Management Agreement;

(ii) The total cost of repairing and restoring the Property to its condition immediately prior to such damage or destruction, as estimated by an architect approved by Mortgagee, shall not be greater than the amount of such insurance proceeds together with any sums of cash that Mortgagor deposits with Mortgagee in advance for the purpose of paying for the costs of such repairs and restoration; and

(iii) Mortgagor shall have provided Mortgagee with evidence or additional security satisfactory to Mortgagee, in Mortgagee's sole discretion, demonstrating Mortgagor's ability to repay the Note.

If Mortgagee shall make said proceeds available to Mortgagor, such proceeds shall be made available in the manner and under the conditions that Mortgagee may require, including, without limitation, (A) approval by Mortgagee of the plans and specifications for such work before such work is commenced; (B) the making of progress payments to Mortgagor as the work progresses; (c) the furnishing by Mortgagor of suitable completion or performance bonds and builder's all risk insurance; and (D) written confirmation from the Manager that the Management Agreement shall not be terminated as a result of such casualty or during the course of such Restoration; further, no insurer shall claim any rights of participation and/or assignment of rights with respect to the indebtedness secured hereby. The Property and Improvements thereon shall be repaired and restored so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If such proceeds are made available by Mortgagee to Mortgagor, any surplus which may remain out of said insurance proceeds after payment of all costs and expenses of such repairs and restoration shall, at the option of Mortgagee, be applied on account of the Debt secured hereby in such order as Mortgagee may determine.

(g) Mortgagor shall not carry separate insurance, concurrent in kind or form or contributing in the event of loss, with any insurance required under this Section. Notwithstanding the foregoing, Mortgagor may carry insurance not required under this Mortgage, provided any such insurance affecting the Property shall be for the mutual benefit of Mortgagor and Mortgagee, as their respective interests may appear, and shall be subject to all other provisions of this Section.

(h) In the event this Mortgage is foreclosed, or title to the Property is transferred in extinguishment, in whole or in part, of the Debt secured hereby, all right, title and interest of Mortgagor in and to all Policies shall inure to the benefit of and pass to the successor in interest of Mortgagor or the purchaser or grantee of the Property.

5. Payment of Taxes

Mortgagor shall pay all taxes, assessments (including, without limitation, all assessments imposed under any declaration of covenants, owner's associations or special improvement districts affecting the Property), water rates and sewer rents, now or hereafter levied, assessed or imposed against the Property or any part thereof (collectively, the "Taxes") and all ground rents, maintenance charges, other governmental impositions, and other charges including,

without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied, assessed or imposed against the Property or any part thereof (collectively, the "Other Charges") as they become due and payable. Mortgagor will deliver to Mortgagee evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid, or are not then delinquent, no later than thirty (30) days following the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid. Mortgagor shall not suffer, and shall promptly cause to be paid and discharged, any lien or charge whatsoever which may be or become a lien or charge against the Property, and shall promptly pay for all utility services provided to the Property. Upon request, Mortgagor shall furnish to Mortgagee or its designee receipts for the payment of the Taxes, Other Charges and charges for utility services prior to the date that such obligations shall become delinquent. Mortgagor shall be entitled to contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount of any Taxes or Other Charges. Notwithstanding the preceding sentence, during the pendency of any such contest Mortgagor shall pay or cause to be paid all Taxes and Other Charges as and when due and payable, or otherwise in accordance with Section 32 hereof.

6. Escrow Fund

On the date hereof, Mortgagor shall make an initial deposit to the Escrow Fund (hereinafter defined) in an amount which, when added to the monthly amounts to be deposited as specified below, will be sufficient in Mortgagee's estimation, to satisfy the next due Taxes and Other Charges and the next due Insurance Premiums. Mortgagor shall thereafter pay to Mortgagee on the first (1st) day of each calendar month, sufficient funds (as estimated from time to time by Mortgagee) to permit Mortgagee to pay the Taxes and Other Charges and the Insurance Premiums payable at least thirty (30) days prior to the due date thereof (the foregoing amounts being hereinafter collectively referred to as the "Escrow Fund"). The Escrow Fund and the monthly installments of principal and interest payable under the Note shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. The Escrow Fund shall be held in an account in Mortgagee's name, and Mortgagor hereby pledges and grants to Mortgagee a security interest in any and all monies now or hereafter deposited in the Escrow Fund as additional security for the payment of the Debt. Mortgagee will apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant to Sections 4 and 5 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 4 and 5 hereof, Mortgagee shall, in its discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Escrow Fund. If the Escrow Fund is not sufficient to pay the Taxes and Other Charges and the Insurance Premiums when the same are due and payable, Mortgagor shall promptly pay to Mortgagee, within fifteen (15) days following demand, an amount which Mortgagee shall reasonably estimate as sufficient to make up the deficiency. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then comprising the Escrow Fund to the payment of the Debt in any order in its sole discretion. Until expended or applied as above provided, any amounts in the Escrow Fund shall constitute additional security for the Debt. To the extent permitted by applicable law, the Escrow Fund shall not constitute a trust fund and may

be commingled with other monies held by Mortgagee. No earnings or interest on the Escrow Fund shall be payable to Mortgagor.

7. Compliance With Laws

(a) Mortgagor shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting the Property, or the use thereof ("Applicable Laws").

(b) Mortgagor shall from time to time, upon Mortgagee's request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee that the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws.

(c) Notwithstanding any provisions set forth herein or in any document regarding Mortgagee's approval of alterations of the Property, Mortgagor shall not alter the Property in any manner which would materially increase Mortgagor's responsibilities for compliance with Applicable Laws without the prior written approval of Mortgagee. Mortgagee's approval of the plans, specifications, or working drawings for alterations of the Property shall create no responsibility or liability on behalf of Mortgagee for their completeness, design, sufficiency or their compliance with Applicable Laws. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt of a certificate of compliance with Applicable Laws from an independent architect, engineer, or other person acceptable to Mortgagee.

(d) Mortgagor shall give prompt notice to Mortgagee of the receipt by Mortgagor of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

(e) After prior written notice to Mortgagee, Mortgagor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the Applicable Laws affecting the Property, provided that (i) no Event of Default has occurred and is continuing under the Note, this Mortgage or any of the other Loan Documents; (ii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor is subject and shall not constitute a default thereunder; (iii) neither the Property nor any part thereof or interest therein nor any of the tenants or occupants thereof shall be affected in any material adverse way as a result of such proceeding; and (iv) Mortgagor shall have furnished to Mortgagee all other items reasonably requested by Mortgagee.

8. Condemnation

(a) Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation, governmental taking or eminent domain proceeding of which Mortgagor has knowledge or receives notice with respect thereto (a

"Condemnation") and shall deliver to Mortgagee copies of any and all papers served in connection with such proceedings. Mortgagee is hereby irrevocably appointed as Mortgagor's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment for such Condemnation and to make any compromise or settlement in connection with such proceeding, subject to the provisions of this Mortgage; provided, however, that so long as Mortgagor is not in default hereunder or under the Loan Documents, Mortgagee shall not be entitled to exercise said appointment. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, without limitation, any ~~transfer~~ made in lieu of or in anticipation of the exercise of such taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for in the Note, this Mortgage, and the other Loan Documents, and the Debt shall not be reduced until any award or payment therefor shall have been actually received after expenses of collection and applied by Mortgagee to the discharge of the Debt. Mortgagee shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided in the Note.

(b) All proceeds received by Mortgagee in respect of any Condemnation of all or part of the Property, or in respect of damage to all or any part of the Property from governmental action not resulting in a taking of the Property, shall be applied first to reimburse Mortgagee for all costs and expenses, including attorneys' fees, incurred in connection with the collection of such proceeds. The balance of such proceeds may be applied, at the option of Mortgagee, to the Debt secured hereby in such manner and order as Mortgagee may determine, or toward the Restoration of the Property, upon such conditions as Mortgagee may determine.

(c) Notwithstanding subparagraph(b) above, Mortgagee agrees to make available to Mortgagor any Condemnation proceeds for the repair and restoration of the Property, including without limitation, the purchase of such additional adjoining property as may be necessary in order to comply with all Applicable Laws, provided Mortgagee reasonably determines, in its sole discretion, that it is economically feasible to make such repair and restoration of the Property and, provided further, that all the following conditions are satisfied:

(i) Mortgagor is not in default under any of the Loan Documents or the Management Agreement;

(ii) The total cost of repairing and restoring the Property to its condition immediately prior to such Condemnation, as estimated by an architect approved by Mortgagee, shall not be greater than the amount of such insurance proceeds together with any sums of cash that Mortgagor deposits with Mortgagee in advance for the purpose of paying for the costs of such repairs and restoration; and

(iii) Mortgagor shall have provided Mortgagee with evidence or additional security satisfactory to Mortgagee, in Mortgagee's sole discretion, demonstrating Mortgagor's ability to repay the Note.

If Mortgagee shall make said proceeds available to Mortgagor, such proceeds shall be made available in the manner and under the conditions that Mortgagee may require, including, without limitation, (A) approval by Mortgagee of the plans and specifications for such work before such work is commenced; (B) the making of progress payments to Mortgagor as the work progresses; (C) the furnishing by Mortgagor of suitable completion or performance bonds and builder's all risk insurance; and (D) written confirmation from the Manager that the Management Agreement shall not be terminated as a result of such Condemnation or during the course of such restoration; further, no insurer shall claim any rights of participation and/or assignment of rights with respect to the indebtedness secured hereby. The Property and Improvements thereon shall be repaired and restored so as to be of at least equal value and substantially the same character as prior to such Condemnation. If such proceeds are made available by Mortgagee to Mortgagor, any surplus which may remain out of said insurance proceeds after payment of all costs and expenses of such repairs and restoration shall, at the option of Mortgagee, be applied on account of the Debt secured hereby in such order as Mortgagee may determine.

9. Leases and Profits

(a) In connection with the Loan, Mortgagor hereby absolutely and unconditionally assigns to Mortgagee all of Mortgagor's right, title and interest in all current and future Leases and Profits, it being intended by Mortgagor that such assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise to impose any obligation upon Mortgagee. Mortgagor shall execute and deliver to Mortgagee such additional instruments, in form and substance reasonably satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section, Mortgagee has granted to Mortgagor a revocable license to operate and manage the Property and to collect the Profits. Mortgagor shall hold the Profits, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon the occurrence of an Event of Default, the license granted to Mortgagor shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Profits, whether or not Mortgagee enters upon or takes control of the Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Profits. Any Profits collected after revocation of the license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem appropriate.

(b) Mortgagor shall furnish Mortgagee with executed copies of all Leases and all amendments thereto. All renewals of Leases and all proposed Leases shall provide for rental rates comparable to existing local market rates and shall be arms-length transactions. All proposed Leases shall be subject to the prior approval of Mortgagee except that proposed Leases which: (i) do not individually or in the aggregate alter the ratio of office/retail space to hotel space as presently utilized in the Property; (ii) are the result of an arms-length transaction with a bona fide, independent

third-party; (iii) provide for rental rates comparable to existing market rates; (iv) do not contain any terms which would affect Mortgagee's rights under the Note, this Mortgage or the other Loan Documents; and (v) are for less than 375 square feet, shall not be subject to the prior approval of Mortgagee. All Leases shall provide that they are subordinate to this Mortgage and that the lessee agrees to attorn to Mortgagee. Mortgagor shall: (A) observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (B) promptly send to Mortgagee copies of all notices of default which Mortgagor shall send or receive thereunder; (C) enforce all of the material terms, covenants and conditions contained in the Leases on the part of the lessee thereunder to be observed or performed, short of termination thereof; (D) not collect any Profits more than one (1) month in advance; (E) not execute any other assignment of the lessor's interest in the Leases or Profits; (F) other than de minimis non-financial amendments, not alter, modify or change the terms of the Leases without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld), or, except if a lessee is in default, cancel or terminate the Leases or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; provided, however, that any Lease may be canceled if at the time of the cancellation thereof a new Lease is entered into with a bona fide, independent third-party on substantially the same terms or more favorable terms as the canceled Lease; (G) not alter, modify or change the terms of any guaranty of the Leases or cancel or terminate such guaranty without the prior written consent of Mortgagee; (H) not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Mortgagee; and (I) execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Property as Mortgagee shall from time to time request. In the ordinary course, an extended stay by a hotel guest in the Improvements shall not constitute a Lease hereunder.

(c) All security deposits of lessees, whether held in cash or any other form, shall not be commingled with any other funds of Mortgagor and, if cash, shall be deposited by Mortgagor into a separate account. Any bond or other instrument which Mortgagor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Mortgagee, shall, if permitted pursuant to any legal requirements, name Mortgagee as payee or mortgagee thereunder (or at Mortgagee's option, be fully assignable to Mortgagee) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Mortgagee. Mortgagor shall, upon request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee of Mortgagor's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Mortgagor shall, upon Mortgagee's request, if permitted by any applicable legal requirements, turn over to Mortgagee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Property, to be held by Mortgagee subject to the terms of the Leases.

10. Representations Concerning Loan

Mortgagor represents, warrants and covenants as follows:

(a) Mortgagor is duly organized and validly existing in good standing under the applicable laws of the state of its creation as a limited liability company, and Mortgagor is qualified to do business in and is in good standing in the state in which the Property is located, with full power, right, authority and legal capacity to enter into this Mortgage, the Loan and the Loan Documents and to operate the Property as contemplated hereunder.

(b) The execution, delivery and performance of the Loan Documents executed or delivered by Mortgagor and the consummation of the transactions contemplated thereby: (i) have been duly authorized by all requisite actions; (ii) have been approved or consented to by all of their respective constituent entities whose approval or consent is required to be obtained; (iii) do not require the approval or consent of any governmental authority having jurisdiction over any of Mortgagor or the Property; (iv) do not and will not constitute a violation of, or default under, the governing instruments of Mortgagor or any applicable requirement of a governmental authority; and (v) will not be in contravention of any court or administrative order or ruling applicable to Mortgagor or the Property, or any mortgage, indenture, agreement, commitment or instrument to which Mortgagor is a party or by which it or its assets are bound, nor create or cause to be created any mortgage, lien, encumbrance, or charge against the assets of Mortgagor other than those permitted by the Loan Documents.

(c) There are no actions, suits or proceedings pending, or, to the knowledge of Mortgagor, threatened, nor any pending or, to the knowledge of Mortgagor, threatened labor disputes, against or affecting Mortgagor or the Property, or any other collateral covered by the Loan Documents, or involving the validity or enforceability of the Loan Documents or the priority of the liens created or to be created thereby, at law or in equity, or before or by any governmental authority, which, if adversely determined, would, in the determination of Mortgagee, either individually or in the aggregate, have a material adverse affect on (i) the operation of the Property as contemplated hereunder, (ii) the ability of Mortgagor to pay all of its liabilities or to perform all of its obligations in the manner and within the time periods required under the Loan Documents, (iii) the validity, enforceability or consummation of the Loan Documents or the transactions contemplated thereby, or (iv) the title to the Property, the permitted uses of the Property or the value of the security provided by the Loan Documents.

(d) The Note, this Mortgage and the other Loan Documents are the legal, valid and binding obligations of Mortgagor and are not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor would the operation of any of the terms of the Note, this Mortgage, and the other Loan Documents, or the exercise of any right thereunder, render this Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(e) To Mortgagor's best knowledge, and except as disclosed on the survey of the Property delivered to Mortgagee in connection with this Mortgage, all of the Improvements which were considered in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, no improvements on adjoining properties encroach upon the Property, and no easements or other encumbrances upon the Land encroach upon any of the Improvements, so as to affect the value or marketability of the Property.

(f) The Property is not subject to any leases, licenses or other use or occupancy agreements other than the Leases described in the rent roll delivered to Mortgagee in connection with this Mortgage. No person has any possessory interest in the Property or right to occupy any portion thereof except under and pursuant to the provisions of the Leases or transient hotel guests in the ordinary course of Mortgagor's business.

(g) The survey of the Property delivered to Mortgagee in connection with this Mortgage has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Property is situated, and to Mortgagor's best knowledge, does not fail to reflect any material matter affecting the Property or the title thereto.

(h) The financial statements of Mortgagor and Principal heretofore furnished to Mortgagee are, as of the date specified therein, complete and correct in all material respects and fairly present the financial condition of Mortgagor and Principal and to Mortgagor's best knowledge are prepared (i) in accordance with the Uniform System of Accounts for hotel and motel properties as approved by the American Hotel and Motel Association (as in effect from time to time, the "Uniform System of Accounts") applied on a consistent basis or (ii) in accordance with other accounting standards, consistently applied, and acceptable to Mortgagee. Mortgagor does not on the date hereof have any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments which in each case are known to Mortgagor and which, in Mortgagor's opinion, are reasonably likely to result in a material adverse effect on the Property or the operation thereof as a hotel, except as referred to or reflected or provided for in the financial statements heretofore furnished to Mortgagee or as otherwise disclosed to Mortgagee herein. Since the last date of such financial statements, there has been no material adverse change in the financial condition, operations or business of Mortgagor from that set forth in such financial statements as of the dates thereof.

(i) The Management Agreement is in full force and effect and there is no default, breach or violation existing thereunder by any party thereto and no event (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach or violation by any party thereunder.

(j) Neither the execution and delivery of the Loan Documents, Mortgagor's performance thereunder, nor the recordation of this Mortgage will adversely affect (i) Mortgagor's rights under the Management Agreement or (ii) the licenses, registrations, permits, certificates, authorizations and approvals necessary for the operation of the Property as a hotel.

(k) The Leases are in full force and effect and to Mortgagor's best knowledge, there is no default, breach or violation existing thereunder by any party thereto and no event (other than payments due but not yet delinquent) which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach or violation by any party thereunder.

(l) Since the date of the last inspection of the Property by Mortgagee: (i) no portion of the Property has been damaged and not repaired to Mortgagee's satisfaction or has been taken in condemnation or other similar proceedings; and (ii) no change has occurred in the structure or physical condition of the Property other than customary wear and tear.

(m) Since the date of the information and documentation relating to the Property furnished to Mortgagee, no material change in the Property has occurred.

(n) No default has occurred and is continuing in the performance of any obligation of Mortgagor or any affiliate of Mortgagor which would be deemed an Event of Default under the Loan Documents if they were in effect, or any instruments evidencing, securing or guaranteeing any other loan.

(o) There exists no fact, event or disclosure in connection with the Loan that reasonably could be expected to cause the Loan to become delinquent or otherwise have a material adverse affect on the Loan or the Property.

(p) Except as otherwise previously disclosed to Mortgagee in writing, no notice of violation of any municipal ordinances have been filed against the Property by any municipal department.

(q) Mortgagor has no knowledge of any latent or patent defects in the roof, foundations, sprinkler mains, structural, mechanical and HVAC systems and masonry wall in any of the Improvements.

(r) No portion of the Property or Improvements is located in an area identified by the Secretary of Housing and Urban Development, the Federal Emergency Management Act or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended, or any successor law, or, if any portion of the Property or Improvements is now or at any time in the future located within any such area, Mortgagor has obtained and will maintain the insurance prescribed in Section 4 hereof. Mortgagor hereby acknowledges that this provision is operative insofar as the triggering condition specified in the first sentence hereof is satisfied.

(s) Mortgagor has obtained, or within thirty (30) days after completion of the construction of the Improvements will obtain and provide to Mortgagee, true and correct copies of

all necessary certificates, permits, licenses and other approvals, governmental and otherwise, necessary for the legal use, occupancy and operation of the Property as a hotel, including, without limitation, any applicable food, beverage and liquor licenses, certificate of completion and occupancy permit and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are either in full force and effect as of the date hereof or will be promptly obtained when appropriate after the date hereof and thereafter maintained in full force and effect, and are not or will not be subject to revocation, suspension, forfeiture or modification.

(t) The Property, the Improvements and the present and contemplated use and occupancy thereof are in full compliance with all applicable zoning ordinances, building codes, land use and Environmental Laws and other similar laws.

(u) The Property is, or after completion of construction of the Improvements will be, served by all utilities required for the current or contemplated use thereof. All utility service is or will be provided by public utilities and the Property has accepted such utility service or is or will be equipped to accept such utility service.

(v) The Property is contiguous to (or has access through a perpetual easement) and has access to a physically and legally open all-weather public street, all public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been (or will be) completed prior to the hotel on the Property opening for business, are (or will be) serviceable and all-weather prior to the opening for business and are (or will be) physically and legally open for use by the public prior to the hotel on the Property opening for business, and all such rights to streets are (or will be) irrevocable and are not (or will not be) subordinate to any mortgage other than this Mortgage. Mortgagor has (or will have) all necessary permits and approvals for ingress and egress prior to the hotel on the property opening for business.

(w) The Property is free from damage caused by fire or other casualty and is in good repair.

(x) No construction of the Improvements has commenced prior to the date hereof, or if such construction has commenced, all costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full and the title insurance company has received such additional assurances, bond or other comfort it may require in order to provide Mortgagee with an acceptable title insurance policy having no title exception for mechanics' or materialmen's liens or potential liens.

(y) Mortgagor either has paid and is the owner of, or will have paid and be the owner of, all furnishings, fixtures and equipment (other than tenants' property) now or hereafter located on or used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby and any security interest expressly permitted by Mortgagee.

(z) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

(aa) Mortgagor has received no notice of an actual or threatened condemnation or eminent domain proceeding by any public or quasi-public authority affecting the Property.

(bb) The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements owned by Mortgagor or any other person not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

(cc) Mortgagor has disclosed to Mortgagee all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading. Each of the representations and the warranties made by each Guarantor herein or in any other Loan Document(s) is true and correct in all material respects.

(dd) No portion of the Property has been or will be purchased, improved, fixtured, equipped or furnished with proceeds of any criminal or other illegal activity and to the best of Mortgagor's knowledge, there are no illegal activities or activities relating to controlled substance at the Property.

11. Single Purpose Entity; Authorization

Mortgagor represents and warrants, and covenants for so long as any obligations secured by this Mortgage remain outstanding, as follows:

(a) Mortgagor does not and will not own any asset or property other than: (i) the Property; and (ii) personal property necessary for the ownership or operation of the Property.

(b) Mortgagor does not and will not engage in any business other than the ownership, management and operation of the Property, and Mortgagor will conduct and operate its business in all material respects as presently conducted and operated and will not change the use of the Property.

(c) Mortgagor will not enter into any contract or agreement with Principal or an Affiliate, except upon terms and conditions that are substantially similar to those that would be available on an arms-length third-party basis.

(d) Mortgagor has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than: (i) the Debt, and (ii) trade and operational debt incurred in the ordinary course of business with trade creditors and in amounts as are customary and reasonable under the circumstances. Except with Mortgagee's prior written approval in each instance, no indebtedness other than the Debt is or

shall be secured by the Property. Mortgagee's approval shall be granted or withheld at Mortgagee's sole discretion. In connection with any such financing approved by Mortgagee, Mortgagor shall be required to obtain and deliver to Mortgagee a subordination and standstill agreement from such Mortgagee which shall be in form and substance satisfactory to Mortgagee in its sole discretion.

(e) Mortgagor has not made and will not make any loans or advances to any third party (including any constituent party, Principal or any affiliate of Mortgagor, of any constituent party or of Principal), except in de minimis amounts in the ordinary course of business and of the character of trade or operational expenses.

(f) Mortgagor has done or caused to be done, and will do or cause to be done, all things necessary to preserve its existence, and Mortgagor will not, nor will Mortgagor permit any constituent party or Principal, to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, trust or other organizational documents, as the case may be, of Mortgagor or such constituent party or Principal in a manner which would adversely affect the Mortgagor's existence as a single purpose entity.

(g) Mortgagor will maintain books and records and bank accounts separate from those of its Affiliates and any constituent party, and Mortgagor and Principal each will file or cause to be filed separate tax returns. The requirements of the preceding sentence may, at the sole discretion of Mortgagee, be waived by Mortgagee to the extent it has received from Mortgagor and has notified Mortgagor in writing that Mortgagee has accepted evidence, in the form of dispositive judicial determinations, rating agency publications, legal opinions or otherwise, that controlling court decisions no longer hold that the covenants set forth in the preceding clause are material or significant elements in a Borrower maintaining its "single purpose" nature and avoiding a potential consolidation into the bankruptcy or reorganization of an affiliated entity. Mortgagor shall not change the principal place of its business or the jurisdiction of formation without the prior written consent of Mortgagee.

(h) Mortgagor is and will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate or constituent party of Mortgagor or any Affiliate, or constituent party of Principal), and will use and conduct its business in its own name.

(i) Neither Mortgagor nor any constituent party will cause or seek the dissolution or winding up, in whole or in part, of Mortgagor.

(j) Mortgagor will not commingle its funds and other assets with those of, or pledge its assets for the benefit of, any Affiliate or constituent party of Mortgagor, any Affiliate or constituent party of Principal, or any other person.

(k) Mortgagor does not or will not hold itself out to be responsible for the debts or obligations of any other person and does not or will not pay another person's liabilities out of its own funds.

(l) Mortgagor will not consent to the filing of any petition to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, and Mortgagor will not make an assignment for the benefit of its creditors.

12. Maintenance of Property

(a) Mortgagor shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the prior written consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Property, or the use thereof, subject to Mortgagor's right to contest the same as provided in this Mortgage. Mortgagor shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated, or which may be affected by any proceeding of the character referred to in Section 8 hereof, and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Except as expressly permitted in writing by Mortgagee, Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the prior written consent of Mortgagee. Mortgagor shall not: (a) change the use of the Land as currently configured and utilized; (b) permit or suffer to occur any waste on or to the Property or to any portion thereof; or (c) take any steps whatsoever to convert the Property, or any portion thereof, to a condominium or cooperative form of ownership. Mortgagor shall not enter into any license, easement, covenant or other agreement affecting the Property without the prior written consent of Mortgagee.

(b) Mortgagor shall not commit or suffer any waste on or to the Property or to any portion thereof or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any steps to convert the Property or any portion thereof to a condominium or cooperative form of ownership, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Mortgage. Mortgagor will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

(c) Mortgagor will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except as otherwise expressly permitted by Mortgagee.

13. Transfer or Encumbrance of the Property

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor and its general partners, principals and (if Mortgagor is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the loan secured by this Mortgage, and that Mortgagee will continue to rely on Mortgagor's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Property. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Property or any part thereof, or permit the Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Section shall be deemed to include: (i) an installment sales agreement wherein Mortgagor agrees to sell the Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Profits; (iii) if Mortgagor, Principal, or any general partner of Mortgagor or Principal is a corporation, the voluntary or involuntary sale, exchange, conveyance, pledge or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock, in one or a series of transactions by which an aggregate of more than forty-nine percent (49%) of such corporation's stock shall be legally or beneficially vested in a party or parties who are not now legal or beneficial stockholders; (iv) if Mortgagor, Principal or any general partner or managing member of Mortgagor or Principal is a limited or general partnership or joint venture, the change, removal or resignation of a general partner, managing partner or joint venturer or the transfer of the partnership interest of any general partner, managing partner or joint venturer; and (v) if Mortgagor, any Guarantor, or any general partner or managing member of Mortgagor or any Guarantor is a limited liability company, the change, removal or resignation of a managing member (or if no managing member, any member) or the transfer of all or any portion of the membership interest of a managing member (or if no managing member, any member) or any profits or proceeds relating to such membership interest.

(c) No sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property, or of any interest therein, shall be permitted during the term of the Loan without Mortgagee's prior written approval (except for leases in the ordinary course of business entered into in accordance with the terms of this Mortgage). Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property.

(d) Mortgagee's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property shall not be deemed to be a waiver of Mortgagee's right to require such consent in the future. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Property made in contravention of this Section shall be null and void and of no force or effect.

(e) Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including, without limitation, Mortgagee's out-of-pocket attorney's fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval or disapproval, and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

14. Estoppel Certificates: Affidavits

(a) Within ten (10) days after request by Mortgagee, Mortgagor shall furnish Mortgagee or any proposed assignee of the Loan with a statement, duly acknowledged and certified, setting forth: (i) the amount of the original principal amount of the Note; (ii) the then outstanding principal balance of the Note; (iii) the most recent rate of interest of the Note of which Mortgagor has received notice; (iv) the terms of payment and maturity date of the Note; (v) the date on which installments of interest and/or principal were last paid; (vi) except as provided in such statement, there are no defaults or events with which the passage of time or the giving of notice or both would constitute an event of default under any of the Loan Documents; (vii) any offsets or defenses to the payment of the Debt to Mortgagor's best knowledge; (viii) that the Note, this Mortgage and the other Loan Documents are valid, legal and binding obligations of Mortgagor, which have not been modified or if modified, giving particulars of such modification; (ix) that after completion of the construction of the Improvements, all Leases and other agreements necessary for the use and operation of the Property, including without limitation, all food, liquor and other beverage licenses and all other necessary permits and governmental approvals, are (or will be prior to the hotel on the Property opening for business) in full force and effect, have not been modified (or if modified, setting forth all modifications), and are not, to the best knowledge of Mortgagor, in default or if any of such agreements are in default, setting forth the specific nature of all such defaults; (x) that the Management Agreement is in full force and effect, has not been modified and is not, to the best

knowledge of Mortgagor, in default, or if in default, setting forth the specific nature of such default; and (xi) as to any other matters reasonably requested by Mortgagee and reasonably related to the Management Agreement, the Leases, the obligations secured hereby, the Property or this Mortgage.

(b) Within thirty (30) days after request by Mortgagee, Mortgagor shall furnish Mortgagee or any proposed assignee of the Loan with a certificate reaffirming all representations and warranties of Mortgagor set forth herein and in the other Loan Documents as of the date requested by Mortgagee or, to the extent of any changes to any such representations and warranties, so stating such changes.

(c) Mortgagor shall use its best efforts to deliver to Mortgagee upon request, an estoppel certificate from the Manager attesting to such facts regarding the Management Agreement as Mortgagee may require, including, but not limited to, attestations that such agreement is in full force and effect with no defaults thereunder on the part of Manager or, to Manager's best knowledge, any other party, stating the amount of base management fees, incentive management fees and all other fees and sums payable by Mortgagor under the Management Agreement, and that the Manager claims no defense or offset against the full and timely performance of its obligations under the Management Agreement in form and substance reasonably satisfactory to Mortgagee; provided, however, that Mortgagor shall not be required to deliver such certificates more frequently than once in any consecutive twelve (12) month period except upon any sale or transfer (or proposed sale or transfer) of the Loan by Mortgagee.

15. Changes in the Laws Regarding Taxation

If any law is enacted, adopted or amended after the date of this Mortgage which imposes a tax (other than income taxes), either directly or indirectly, on the Debt or Mortgagee's interest in the Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee or its counsel determines that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

16. No Credits on Account of the Debt

Mortgagor will not claim, demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

17. Documentary Stamps

If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Mortgage or any of the other Loan Documents, or shall impose any other tax or charge on the same or as a condition of recordation of the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

18. Controlling Agreement

It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in this Mortgage and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Debt (or, if the Note and all other Debt have been or would thereby be paid in full, refunded to Mortgagor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Mortgagee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

19. Books and Records

(a) Mortgagor shall keep and maintain full and adequate books and records of account in accordance with methods acceptable to Mortgagee in its sole discretion, consistently applied. Mortgagor will furnish, or cause to be furnished to Mortgagee, within thirty (30) days after the close of each calendar month, the following items, each certified by a senior financial officer of Mortgagor as true, correct and complete as of the end of and for such period (subject to normal year-end adjustments), and as having been prepared in accordance with the Uniform System of

Accounts, consistently applied: (i) a written occupancy statement dated as of the last day of the most recently ended calendar quarter identifying each of the Leases by the term, space occupied, rental required to be paid, security deposit paid, any rental concessions, and identifying any defaults or payment delinquencies thereunder; (ii) monthly and year to date operating statements detailing the total revenues received and total expenses incurred in connection with the ownership and operation of the Property, including a comparison of the budgeted income and expenses and the actual income and expenses for such month and the year to date (which operating information shall include the Improvements); and (iii) a written statement dated as of the last day of the most recently ended month showing the percentage of hotel or motel rooms rented and occupied during such month and the average daily room rate charged during such month. Upon request by Mortgagee, Mortgagor will provide a detailed explanation of any variances of ten (10%) percent or more between budgeted and actual amounts for such periods. Mortgagor shall furnish, within ninety (90) days following the end of each calendar year, a statement of the financial affairs and condition of the Property, including a statement of profit and loss and a balance sheet for the Property and Mortgagor for the immediately preceding fiscal year, prepared by financial professionals in a manner consistent with those financial statements supplied to Mortgagee prior to the date hereof, and all certified as true and correct without qualification by Mortgagor or, if required by Mortgagee, an independent certified public accountant acceptable to Mortgagee. Mortgagor shall deliver to Mortgagee on or before December 31 of each calendar year an itemized operating budget and capital expenditure budget for the Property and a management plan for the Property for the next succeeding calendar year in such detail as Mortgagee may reasonably request. Mortgagor shall promptly after receipt deliver to Mortgagee copies of all quality inspection reports or similar reports or inspection results that are delivered to it by Candlewood. All information required to be furnished to Mortgagee pursuant to this Section shall be on the form approved in advance by Mortgagee. Mortgagee shall have the right to conduct an independent audit of any of the above financial information at its own expense at any time. In the event that an error in excess of two percent (2%) of the amount being audited is discovered, the cost of the audit shall be borne by Mortgagor.

(b) Mortgagor and its affiliates shall furnish Mortgagee with such other additional financial or management information as may, from time to time, be reasonably required by Mortgagee in form and substance satisfactory to Mortgagee.

(c) Mortgagee, its advisors shall have the right upon prior written notice to examine the records, books, management and other papers of Mortgagor or of any Guarantor which reflect upon their financial condition, during reasonable business hours at the Property or at any office regularly maintained by Mortgagor or any Guarantor where the books and records are located. Mortgagee and its advisors shall have the right upon notice to make copies and extracts from the foregoing records and other papers. In addition, Mortgagee, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Mortgagor or of any Guarantor pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Mortgagor or any Guarantor where the books and records are located. Mortgagee shall use reasonable efforts, and shall cause its advisors to use reasonable efforts, not to disclose confidential or proprietary information of Mortgagor and any Guarantor reviewed pursuant hereto.

20. Performance of Operating Agreements

(a) Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any agreement or instrument affecting or pertaining to the Property (collectively, the "Operating Agreements"). Upon reasonable request by Mortgagee, Mortgagor shall deliver to Mortgagee estoppel certificates from each party to the Operating Agreements in form and substance reasonably satisfactory to Mortgagee; provided, however, that Mortgagor shall not be required to deliver such certificates ~~more~~ more frequently than once in any consecutive twelve (12) month period except upon any sale or transfer (or proposed sale or transfer) of the Loan by Mortgagee.

(b) Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of the Operating Agreements and shall:

(i) diligently proceed to cure any default and satisfy any demand made upon it pursuant to the Operating Agreements;

(ii) promptly notify Mortgagee in writing of any default under the Operating Agreements and provide Mortgagee with copies of any notices delivered in connection therewith;

(iii) promptly enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by the other party under the Operating Agreements; and

(iv) grant Mortgagee the right, but Mortgagee shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Operating Agreements on the part of Mortgagor to be performed or observed to be promptly performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagor in, to and under said Operating Agreements shall be kept unimpaired and free from default.

21. Further Assurances

(a) Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, perfecting and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing,

registering or recording this Mortgage. Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this Section.

(b) Mortgagor acknowledges that Mortgagee may (i) sell or transfer interests in the Loan and Loan Documents to one or more participants or special purpose entities, (ii) pledge Mortgagee's interests in the Loan and the Loan Documents as security for one or more loans obtained by Mortgagee, or (iii) sell the Loan evidenced by the Note and the Loan Documents to a party who may pool the Loan with a number of other loans and to have the holder of such loans grant participation therein or issue one or more classes of Mortgage-Backed, Pass-Through Certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). The Securities may be rated by one or more national rating agencies. Mortgagor acknowledges and agrees that Mortgagee may, at any time, sell, transfer or assign the Note, this Mortgage and the other Loan Documents, and any or all servicing rights with respect thereto, or grant participation therein or issue Securities evidencing a beneficial interest in a rated or unrated public offering or private placement. In this regard, Mortgagor agrees to make available to Mortgagee all information concerning its business and operations which Mortgagee reasonably requests. Mortgagee may share such information with the investment banking firms, rating agencies, accounting firms, law firms and other third-party advisory firms involved with the Loan or the Securities. Mortgagee may forward to each purchaser, transferee, assignee, servicer, participant or investor in such securities or any credit rating agency rating such Securities (collectively, the "Investor") and each prospective Investor, all documents and information which Mortgagee now has or may hereafter acquire relating to Mortgagor and the Property, whether furnished by Mortgagor or otherwise, as Mortgagee determines necessary or desirable consistent with full disclosure for purposes of marketing and underwriting the Loan; provided, however, that Mortgagee shall obtain agreement from any such reviewing party to keep such information strictly confidential to itself and its advisors. Mortgagor shall furnish and hereby consents to Mortgagee furnishing to such Investors or such prospective Investors any and all information concerning Mortgagor and the Property as may be requested by Mortgagee, any Investor or any prospective Investor in connection with any sale, transfer or participation interest. It is understood that the information provided by Mortgagor to Mortgagee may ultimately be incorporated into the offering documents for the Securities and thus such information may be disclosed to Investors and prospective Investors. Mortgagee and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Mortgagor. Upon any transfer or proposed transfer contemplated above and by the Loan Documents, at Mortgagee's request, Mortgagor shall provide an estoppel certificate to the Investor or any prospective Investor in such form, substance and detail as Mortgagee may reasonably require.

22. Recording of Mortgage

Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien thereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest thereof upon, and the interest of Mortgagee in, the Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental thereto, any security instrument with respect to the Property and any instrument of further assurance, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental thereto, any security instrument with respect to the Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

23. Reporting Requirements

Mortgagor agrees to give prompt written notice to Mortgagee of the insolvency or bankruptcy filing of Mortgagor or any constituent thereof, or the insolvency or bankruptcy filing of Principal.

24. Events of Default

The term "Event of Default" as used herein shall mean the occurrence or happening, at any time and from time to time, of any one or more of the following:

- (a) if any portion of the Debt is not paid prior to the fifth (5th) day after the date such payment is due or if the entire Debt is not paid on or before the Maturity Date;
- (b) subject to Mortgagor's right to contest as provided herein, if any of the Taxes or Other Charges are not paid when due and payable;
- (c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Mortgagee upon request;
- (d) if Mortgagor transfers or encumbers any portion of the Property in a manner inconsistent with the terms of this Mortgage;
- (e) if any representation or warranty of Mortgagor, or of Principal, made herein, in any Loan Document, any guaranty, or in any certificate, report, financial statement or other

instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made or shall become so at any time prior to repayment in full of the debt;

(f) if Mortgagor or Principal shall make an assignment for the benefit of creditors, or if Mortgagor or Principal shall generally not be paying its debts as they become due;

(g) if a receiver, liquidator or trustee of Mortgagor or of Principal shall be appointed, or if Mortgagor or Principal shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or Principal or if any proceeding for the dissolution or liquidation of Mortgagor or of Principal shall be instituted; provided, however, that such appointment, adjudication, petition or proceeding, if involuntary and not consented to by Mortgagor or Principal, shall constitute an Event of Default only if not being discharged, stayed or dismissed within ninety (90) days;

(h) if Mortgagor shall be in default under any other mortgage or security agreement covering any part of the Property, whether it be superior or junior in lien to this Mortgage (Mortgagor acknowledging, however, that this provision shall not be deemed to modify any provision in this Mortgage prohibiting or restricting any such other mortgages, deeds of trust or security agreement);

(i) subject to Mortgagor's right to contest as provided herein, if the Property becomes subject to any mechanic's, materialman's or other lien or encumbrance except a lien or encumbrance for local real estate taxes and assessments not then due and payable;

(j) if Mortgagor fails to cure promptly any violations of laws, ordinances or regulations affecting the Property or pertaining to its use or operation;

(k) except as permitted in this Mortgage, the actual or threatened alteration, improvement, demolition or removal of any of the Improvements without the prior written consent of Mortgagee;

(l) if there shall occur any damage to the Property in any manner which is not covered by insurance solely as a result of Mortgagor's failure to maintain insurance required in accordance with this Mortgage;

(m) if without Mortgagee's prior written consent: (i) the Manager under the Management Agreement resigns or is removed; (ii) there is any material change in or amendment to the Management Agreement; or (iii) there is a cancellation, expiration, surrender or termination, for any reason, of the Management Agreement;

(n) if a default has occurred and continues beyond any applicable cure period under the Management Agreement;

(o) if Mortgagor ceases to operate a hotel on the Property or terminates such business for any reason whatsoever (other than temporary cessation in connection with any renovations to the Property or restoration of the Property after casualty or condemnation or similar force majeure event);

(p) if Mortgagor operates the Property under the name of any hotel chain or system other than "Candlewood Hotel" without the prior written consent of Mortgagee;

(q) if Mortgagor fails to provide Mortgagee with written evidence of receipt of all required permits and licenses (including, without limitation, food, liquor and other beverage licenses) in connection with Mortgagor's ownership and operation of the Property within thirty (30) days after the date hereof;

(r) if Mortgagor or Principal shall be in default beyond any applicable cure period under any term, covenant, or condition of this Mortgage or any of the other Loan Documents;

(s) if Mortgagor, or any entity for which Candlewood is a managing member or principal equity owner, or any other Affiliate of Mortgagor defaults under any promissory note, mortgage, guaranty, other security agreement or other loan document entered into by Mortgagor or any Affiliate of Mortgagor under any loan now or hereafter held or owned, in whole or in part, by Mortgagee or any of its affiliates, including, without limitation, the Cross-Collateralized Indebtedness; and

(t) if for more than thirty (30) days after receipt of written notice from Mortgagee, Mortgagor shall continue to be in default under any term, covenant, or condition of this Mortgage, or any of the other Loan Documents other than as specified in any of the subsections of this Section; provided, however, that if the cure of any such default cannot reasonably be effected within such thirty (30) day period and Mortgagor shall have promptly and diligently commenced to cure such default within such thirty (30) day period, then the period to cure shall be deemed extended for up to an additional thirty (30) days (for a total of sixty (60) days from Mortgagee's default notice) so long as Mortgagor diligently and continuously proceeds to cure such default to Mortgagee's satisfaction.

25. Late Payment Charge; Servicing Fees

(a) If any portion of the Debt is not paid prior to the fifth (5th) day after the date such payment is due or if the entire Debt is not paid on or before the Maturity Date, Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of: (i) the maximum amount permitted by applicable law, and (ii) five percent (5%) of such overdue portion of the Debt, to defray the expense incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be secured by this Mortgage, and the other Loan Documents.

(b) Mortgagor will pay, from and after the date of the occurrence of an Event of Default through the earlier of the date upon which the Event of Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at a per annum rate equal to the lesser of (a) the variable Applicable Interest Rate, as defined in the Note, then in effect on the Debt calculated monthly as set forth in the Note plus five percent (5%) per annum, or (b) the maximum interest rate which by law Mortgagor may pay or Mortgagee may charge and collect (the "Default Rate")

26. Right to Cure Defaults

Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, take such action as Mortgagee may deem necessary to protect its security for the Loan and the making of such payment or doing of such act shall not waive or constitute an estoppel with respect to any Event of Default then existing. Mortgagee is authorized to enter upon the Property for such purposes or to appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including Mortgagee's attorneys' fees to the extent permitted by law), with interest at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage, and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

27. Remedies

(a) Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any action as herein provided, Mortgagee may take such action, without any obligation to do so and notice or demand, except for any notice which may not be waived pursuant to applicable law or which is expressly provided for herein, and without releasing Mortgagor from any obligation hereunder, as Mortgagee deems advisable to protect and enforce its rights against Mortgagor and in and to the Property including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute judicial proceedings or nonjudicial proceedings, by notice and advertisement or otherwise under a power sale hereby granted to the extent required by law, for the complete foreclosure of this Mortgage in which case the Property or any interest therein may be sold for cash, upon credit or otherwise in one or more parcels or in several interests or portions and in any order or manner;

(iii) sell for cash, upon credit or otherwise the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and, to the extent permitted by applicable law, rights of redemption thereof, pursuant to the power of sale contained herein or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(iv) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents;

(v) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;

(vi) apply for the appointment of a trustee, receiver, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Mortgagor, Principal or of any person, firm or other entity liable for the payment of the Debt;

(vii) revoke the license granted to Mortgagor to collect the Profits and other sums due under the Leases and enforce Mortgagee's interest in the Leases and Profits and enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may to the maximum extent permitted, or not restricted, under applicable law: (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (B) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Property; (D) exercise all rights and powers of Mortgagor with respect to the Property, whether in the name of Mortgagor or otherwise including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Profits, earnings, revenues, and other income of the Property and every part thereof; and (E) apply the receipts from the Property to the payment of the Debt, after deducting therefrom all expenses (including Mortgagee's attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments insurance and other charges in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(viii) require Mortgagor to pay monthly in advance to Mortgagee or any receiver appointed to collect the Profits, the fair and reasonable rental value for the use and occupancy of any portion of the Property occupied by Mortgagor and require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, evict Mortgagor by summary proceedings or otherwise; and

(ix) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code, including the right to establish a lock box for all Profits and other receivables of Mortgagor relating to the Property.

In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Mortgage shall continue as a lien on the remaining portion of the Property.

(b) The proceeds of any sale made under or by virtue of this Section, together with any other sums which then may be held by Mortgagee under this Mortgage or the other Loan Documents, whether under the provisions of this Section or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which such sale shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Mortgagee or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Any sale or sales made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this Section, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Section at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort for the payment of the Debt to any remedies and the security given by the Note, this Mortgage or the other Loan Documents in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note, this Mortgage or the other Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in the Note, this Mortgage or the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note, this Mortgage or the other Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated.

(i) The interests and rights of Mortgagee under the Note, this Mortgage or the other Loan Documents shall not be impaired by any indulgence, including: (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt; (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

(j) Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its obligations under any of the Loan Documents.

28. Right of Entry

Mortgagee and its agents shall have the right to enter and inspect the Property during normal business hours upon reasonable notice.

29. Security Agreement

This Mortgage is a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Property. By executing and delivering this Mortgage, Mortgagor has granted and thereby grants to Mortgagee, as security for

the Debt, a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code (such portion of the Property so subject to the Uniform Commercial Code being called in this Section the "Collateral"). Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may from time to time reasonably consider necessary to create, perfect or preserve Mortgagee's security interest therein granted. This Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code. All or part of the Property are or are to become fixtures. If an Event of Default, shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code including, without limitation, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including Mortgagee's attorneys' fees, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper. In the event of any change in name, identity or structure of any Mortgagor, such Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Note, this Mortgage, the Assignment, the Environmental Agreement, the Principal's Agreement and the other Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.

30. Actions and Proceedings

After the occurrence and during the continuance of an Event of Default, Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Property. Mortgagee shall,

at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

31. Waiver of Setoff and Counterclaim

All amounts due under this Mortgage, the Note and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever. Mortgagor hereby waives the right to assert a counterclaim (other than a mandatory or compulsory counterclaims) in any action or proceeding brought against it by Mortgagee, or arising out of or in any way connected with this Mortgage, the Note, any of the other Loan Documents, or the Debt.

32. Contest of Certain Claims

Notwithstanding the provisions of Sections 5 and 24(I) hereof, Mortgagor shall not be in default for failure to pay or discharge Taxes, Other Charges or a mechanic's or materialman's lien asserted against the Property if, and so long as: (a) Mortgagor shall have notified Mortgagee of such nonpayment and the reasons therefor within ten (10) days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest such Taxes, Other Charges or lien by appropriate legal proceedings which shall operate to prevent the enforcement or collection thereof and the sale of the Property or any part thereof, in satisfaction thereof; (c) Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety reasonably satisfactory to Mortgagee, in the amount of the Taxes, other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Property or any part thereof; (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; and (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claim does not constitute a default under any other Mortgage, mortgage or security interest covering or affecting any part of the Property. Notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Mortgagee, the Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, canceled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established.

33. Recovery of Sums Required to Be Paid

Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as they become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring

an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

34. Marshaling and Other Matters

Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force, and all rights of marshaling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives and renounces, to the extent permitted by applicable law, any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

35. Hazardous Substances

Mortgagor hereby represents and warrants to Mortgagee, based upon an environmental Phase I site assessment of Property and information that Mortgagor knows, that: (a) the Property is not in direct or indirect violation of any local, state, federal or other applicable governmental authority, statute, ordinance, code, order, decree, law, rule or regulation or common law pertaining to or imposing liability or standards of conduct concerning the protection of human health, environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, and any state super-lien and environmental clean-up statutes (collectively, "Environmental Laws"); (b) the Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to hazardous and/or toxic, dangerous and/or regulated substances, solvents, wastes, materials, pollutants or contaminants, petroleum, tremolite, anthophyllite or actinolite or polychlorinated biphenyls (including, without limitation, any raw materials which include hazardous constituents) and any other substances, materials or solvents which are included under or regulated by Environmental Laws, including, without limitation, Asbestos (collectively, "Hazardous Substances"); (c) no Hazardous Substances are or have been, prior to Mortgagor's acquisition of the Property, discharged, generated, treated, disposed of or stored on, incorporated in or removed or transported from the Property other than in compliance with all Environmental Laws; and (d) no underground storage tanks exist on any of the Property. So long as Mortgagor owns or is in possession of the Property, Mortgagor shall keep or cause the Property to be kept free from Hazardous Substances (other than de minimis quantities of Hazardous Substances that are necessary and lawfully used in the operation of the Property as a hotel or motel, and which are stored and disposed of in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Substances on the Property and/or if Mortgagor shall become aware that the Property is in direct or indirect violation of any Environmental Laws and Mortgagor shall remove such Hazardous Substances and/or cure such violations, as applicable, as required by law, promptly after Mortgagor becomes aware of such Hazardous Substances or such violations, at Mortgagor's sole expense. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure. Upon Mortgagee's request, at any time and from time to time while this Mortgage is in effect (but in no event more frequently than

once in any three-year period or more frequently if specific facts and circumstances reasonably dictate, or otherwise at Mortgagee's election but at Mortgagee's expense), Mortgagor shall provide at Mortgagor's sole expense, an inspection or audit of the Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Mortgagee indicating the presence or absence of Hazardous Substances on the Property. If Mortgagor fails to provide such inspection or audit within thirty (30) days after such request, Mortgagee may order such inspection or audit, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Property and a license to undertake such inspection or audit. The cost of such inspection or audit shall be paid by Mortgagor and added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate. The obligations and liabilities of Mortgagor under this Section shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies thereunder including, without limitation, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

36. Asbestos

Mortgagor represents and warrants that no asbestos or any substance containing asbestos (collectively, "Asbestos") is located on the Property. Mortgagor shall not install in the Property, nor permit to be installed in the Property, Asbestos and shall remove any Asbestos promptly upon discovery to the satisfaction of Mortgagee, at Mortgagor's sole expense. Upon Mortgagee's request, at any time and from time to time (but in no event more frequently than once in any three-year period or more frequently if specific facts and circumstances reasonably dictate, or otherwise at Mortgagee's election but at Mortgagee's expense), Mortgagor shall provide, at Mortgagor's sole expense, an inspection or audit of the Property prepared by an engineering or consulting firm approved by Mortgagee, indicating the presence or absence of Asbestos on the Property. If Mortgagor fails to provide such inspection or audit within thirty (30) days after such request, Mortgagee may order such inspection or audit. The cost of such inspection or audit shall be paid by Mortgagor and added to the principal balance of the sums due under the Note and this Mortgage, and shall bear interest thereafter until paid at the Default Rate. The obligations and liabilities of Mortgagor under this Section shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies thereunder, including, but not limited to, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

37. Environmental Monitoring

Mortgagor shall give prompt written notice to Mortgagee of: (a) any proceeding or inquiry by any party with respect to the presence of any Hazardous Substance on, under, from or about the Property; (b) all claims made or threatened by any third party against Mortgagor or the Property relating to any loss or injury resulting from any Hazardous Substance; and (c) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property to be subject to any investigation or cleanup pursuant to any

Environmental Law. Mortgagor shall permit Mortgagee to join and participate, as a party if it so elects, in any legal proceedings or actions initiated with respect to the Property in connection with any Environmental Law or Hazardous Substance, and Mortgagor shall pay all reasonable attorneys' fees incurred by Mortgagee in connection therewith. In the event that any environmental site assessment report prepared for the Property recommends that an operations and maintenance plan be implemented for Asbestos or any Hazardous Substance, Mortgagor shall cause such operations and maintenance plan to be prepared and implemented at Mortgagor's expense upon request of Mortgagee and in accordance with the recommendation. In the event that any inspection, assessment, investigation, site monitoring, containment, cleanup, removal, restoration, corrective action or other work of any kind to prevent, cure or mitigate any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Substances through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata, or which is reasonably necessary or desirable under an applicable Environmental Law ("Remedial Work") is recommended, Mortgagor shall, at its sole cost and expense, commence and thereafter diligently prosecute to completion all such Remedial Work within thirty (30) days after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under applicable law).

38. Management of the Property

Mortgagor further covenants and agrees with Mortgagee as follows:

(a) Mortgagor shall cause the hotel located on the Property to be operated pursuant to the Management Agreement.

(b) Mortgagor shall:

(i) pay all sums required to be paid by Mortgagor under the Management Agreement and promptly perform and/or observe all of the covenants and agreements required to be performed and observed by it under the Management Agreement and do all things necessary to preserve and to keep unimpaired its material rights thereunder;

(ii) promptly notify Mortgagee in writing of any default under the Management Agreement of which it is aware and provide Mortgagee with copies of any notices delivered in connection therewith;

(iii) promptly deliver to Mortgagee a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Management Agreement;

(iv) promptly enforce the performance and observance of all of the covenants and agreements required to be performed and/or observed by the Manager under the Management Agreement;

(v) assign, and does hereby assign and transfer, to Mortgagee any right it may have to modify, amend or supplement the Management Agreement, such that any attempted modification, amendment or supplement of the Management Agreement without the prior written consent of Mortgagee shall be null and void and have no legal force or effect;

(vi) grant Mortgagee the right, but Mortgagee shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Management Agreement on the part of Mortgagor to be performed or observed to be promptly performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagor in, to and under the Management Agreement shall be kept unimpaired and free from default;

(vii) use its reasonable efforts to obtain, from time to time, from the Manager such certificates of estoppel with respect to compliance by Mortgagor with the terms of the Management Agreement as may be requested by Mortgagee;

(viii) exercise each individual option, if any, to extend or renew the term of the Management Agreement upon demand by Mortgagee made at any time within one year of the last day upon which any such option may be exercised, and Mortgagor hereby expressly authorizes and appoints Mortgagee its attorney-in-fact to exercise any such option in the name of and upon behalf of Mortgagor, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest; provided, however, that so long as Mortgagor is not in default hereunder or under any of the Loan Documents, Mortgagee shall not be entitled to exercise the foregoing appointment; and

(ix) promptly notify Mortgagee in writing and provide Mortgagee with copies of any notices delivered to Mortgagor, including, without limitation, any notice of violation of any laws, regulations, or ordinances or other notice from any governmental or quasi-governmental authority, or any notice of default under the Leases, the Management Agreement or any other document or agreement relating to the Property, which contain information that, if true, might materially adversely affect the value, use or operation of the Property.

(c) Mortgagor shall not, without Mortgagee's prior written consent: (i) surrender, terminate or cancel the Management Agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; (iv) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under the Management Agreement in any material respect; or (v) operate the Property under the name of any hotel chain or system other than "Candlewood."

(d) Mortgagor shall not, without Mortgagee's prior written consent, enter into

transactions with any Affiliate including, without limitation, any arrangement providing for the management of the hotel on the Property, the rendering or receipt of services or the purchase or sale of inventory, except any such transaction in the ordinary course of business of Mortgagor if the monetary or business consideration arising therefrom would be substantially as advantageous to Mortgagor as the monetary or business consideration which would obtain in a comparable transaction with a person not an Affiliate of Mortgagor.

(e) Mortgagor irrevocably authorizes and directs Manager to deliver to Mortgagee: (i) all operating information concerning the Property submitted by Mortgagor to Manager; (ii) the written results of all quality assurance inspections of the Property performed by Manager; and (iii) such other information that Mortgagee or Mortgagee's agents may reasonably request, from time to time, including any information in the possession of Manager relating to Mortgagor not included in the reports referred to above.

39. Handicapped Access

(a) Mortgagor agrees that the Property shall at all times strictly comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively, "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Property, Mortgagor shall not alter the Property in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer or other person acceptable to Mortgagee.

(c) Mortgagor agrees to give prompt written notice to Mortgagee of the receipt by Mortgagor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

40. ERISA

Mortgagor covenants and agrees that it shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Mortgagee of any of its rights under the Note, this Mortgage and the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974 (or any successor legislation thereto), as amended ("ERISA").

41. Indemnification

(a) In addition to any other indemnifications provided herein, in the Environmental Agreement or in the other Loan Documents, Mortgagor shall protect, defend, indemnify and save harmless the Indemnified Parties (defined herein) from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, attorneys' fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of: (i) ownership of this Mortgage, the Property or any interest therein or receipt of any Profits; (ii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) any use, nonuse or condition in, on or about the Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iv) any failure on the part of Mortgagor or Principal to perform or comply with any of the terms of this Mortgage; (v) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (vi) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Property or any other property; (vii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos; (viii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; (ix) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or Asbestos including, without limitation, the costs and expenses of any remedial action, reasonable out-of-pocket attorney's and consultant's fees, investigation and laboratory fees, court costs, and litigation expenses; (x) any failure of the Property to comply with any Access Laws; (xi) any representation or warranty made in the Note, this Mortgage or the other Loan Documents being false or misleading in any respect as of the date such representation or warranty was made; (xii) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property or any part thereof under any legal requirement or any liability asserted against Mortgagee with respect thereto; (xiii) the claims of any lessee of all or any portion of the Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease; and (xiv) claims of any persons arising under or as a consequence of any of the Operating Agreements. Any amounts payable to Mortgagee by reason of the application of this Section shall be immediately due and payable, shall be secured by this Mortgage and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. Notwithstanding the foregoing, Mortgagor shall not be liable for any losses incurred by Mortgagee arising solely as a direct result of Mortgagee's gross negligence or willful misconduct. The obligations and liabilities of Mortgagor under this Section shall survive any termination, satisfaction or assignment of this Mortgage or the entry of a judgment of foreclosure, sale of the Property by nonjudicial foreclosure sale, or delivery of a conveyance in lieu of foreclosure.

(b) "Indemnified Parties" means Mortgagee and any person or entity who is or will have been involved in the origination of this loan, any person or entity who is or will have been

involved in the servicing of this loan, any person or entity in whose name the encumbrance created by this Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in this loan (including, but not limited to Investors or prospective Investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in this loan for the benefit of third parties) as well as the respective directors, officers, shareholders, members, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including, but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in this loan or the Property, whether during the term of this loan or as a part of or following a foreclosure of this loan and including, but not limited to any successors by merger, consolidation or acquisition of all or a substantial portion of Mortgagee's assets and business).

42. Notice

Any notice, demand, statement, request, consent or other communication made hereunder shall be in writing and shall be deemed given (a) on the next Business Day if sent by Federal Express or other reputable overnight courier and designated for next Business Day delivery, (b) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, or (c) on the third (3rd) Business Day following the day such notice is deposited with the United States postal service first class certified mail, return receipt requested, addressed to the address, as set forth above, of the party to whom such notice is to be given, or to such other address or additional party as Mortgagor, Principal or Mortgagee, as the case may be, shall in like manner designate in writing. Any notice to Mortgagee shall be likewise given to (i) GMAC Commercial Mortgage Corporation, 8614 Westwood Center Drive, Suite 630, Vienna, Virginia 22182-2233, to the attention of David B. Post, and (ii) Katten Muchin & Zavis, 1025 Thomas Jefferson Street, N.W., Suite 700 East Tower, Washington, D.C. 20007, to the attention of Christopher J. Hart, Esq.

43. Authority

Mortgagor represents and warrants that: (a) it has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed; and (b) Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and the related Treasury Department regulations, including temporary regulations. Mortgagee represents and warrants that it has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage.

44. Waiver of Notice

To the extent permitted by applicable law, neither Mortgagor nor Principal shall be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor or Principal and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor and Principal each hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor or Principal, including, without limitation, notice of default, notice of intention to accelerate sums under the Loan Documents and notice of acceleration of sums under the Loan Documents. All notices required hereunder must be in writing, delivered by certified mail (return receipt requested), personal delivery or overnight delivery.

45. Remedies of Mortgagor

In the event that a claim or adjudication is made that Mortgagee has acted unreasonably or has unreasonably delayed acting in any case where by law or under the Note, this Mortgage, the Assignment, the Environmental Agreement, the Principal's Agreement or the other Loan Documents, it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Mortgagor's and Principal's remedies shall be limited to injunctive relief or declaratory judgment.

46. Sole Discretion of Mortgagee

Wherever pursuant to this Mortgage Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

47. Non-Waiver

The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of: (a) the failure of Mortgagee to comply with any request of Mortgagor or Principal to take any action to foreclose this Mortgage or otherwise to enforce any of the provisions hereof or of the Note, the Assignment, the Environmental Agreement, the Principal's Agreement or the other Loan Documents; (b) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof; or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage, the Assignment, the Environmental Agreement, the Principal's Agreement or the other Loan Documents. Mortgagee may

resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

48. No Oral Change

This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

49. Liability

If Mortgagor or Principal consists of more than one person, the obligations and liabilities of each such person hereunder and of each of Mortgagor and Principal shall be joint and several. Subject to the provisions hereof requiring Mortgagee's consent to any transfer of the Property, this Mortgage shall be binding upon and inure to the benefit of Mortgagor, Principal and Mortgagee and their respective successors and assigns forever.

50. Inapplicable Provisions

If any term, covenant or condition of this Mortgage is held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

51. Section Headings

The headings and captions of the various Sections of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

52. Counterparts

This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original. This Mortgage may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Mortgage. The failure of any party hereto to execute this Mortgage,

or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

53. Homestead

Mortgagor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Debt, or any part thereof.

54. Assignments

Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage. Neither Mortgagor nor Principal shall, without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole discretion, assign or transfer its rights under this Mortgage or any of the Loan Documents.

55. SUBMISSION TO JURISDICTION

MORTGAGOR, PRINCIPAL AND MORTGAGEE EACH HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY ALABAMA STATE OR FEDERAL COURT SITTING IN SHELBY COUNTY, ALABAMA OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE. MORTGAGOR, PRINCIPAL AND MORTGAGEE EACH MAY, AT ITS SOLE DISCRETION, ELECT THE STATE OF ALABAMA, SHELBY COUNTY, OR THE UNITED STATES OF AMERICA FEDERAL DISTRICT COURT HAVING JURISDICTION OVER SHELBY COUNTY AS THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING. MORTGAGOR, PRINCIPAL AND MORTGAGEE EACH HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO SUCH VENUE AS BEING AN INCONVENIENT FORUM.

56. Service of Process

To the extent permitted by applicable law, process in any suit, action or proceeding of the nature referred to in Section 55 hereof may be served: (a) by registered or certified mail, postage prepaid, to Mortgagor or Principal, as applicable, at the address set forth above or to such other address of which Mortgagor or Principal, as applicable, shall have given Mortgagee written notice; or (b) if Mortgagor or Principal, as applicable, shall not have made an appearance within twenty-one (21) days after service in accordance with clause (a) of this Section, by hand delivery to the agent identified in this Section, or such successor agent as shall have been identified in accordance with this Section. Nothing in this Section shall affect the Mortgagee's right to serve process in any manner permitted by law, or limit Mortgagee's right to bring proceedings against Mortgagor or Principal in the courts of any other jurisdiction.

57. WAIVER OF JURY TRIAL

MORTGAGOR, HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

58. CHOICE OF LAW

THIS MORTGAGE SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED, AND ENFORCED IN ACCORDANCE WITH THE LAWS OF SUCH JURISDICTION WITHOUT REGARD TO ANY INTERNAL CONFLICTS OF LAWS PRINCIPLES.

59. Time of Essence

Time is of the essence of this Mortgage and of each and every term, covenant and condition herein.

60. Survival

All covenants, representations and warranties made herein shall survive the making of the Loan and the delivery of the Note and other Loan Documents. Except as hereinafter specifically set forth below, the representations and warranties, covenants, and other obligations arising under Sections 35, 36, 37 and 41 of this Mortgage shall in no way be impaired by: any satisfaction or other termination of this Mortgage, any assignment or other transfer of all or any portion of this Mortgage or Mortgagee's interest in the Property (but, in such case, shall benefit both Mortgagee and any assignee or transferee), any exercise of Mortgagee's rights and remedies pursuant hereto including, but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Mortgagor or by Mortgagee following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Mortgage, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Mortgagor from the obligations pursuant hereto. All

obligations and liabilities of Mortgagor under Sections 35, 36 and 37 of this Mortgage shall cease and terminate on the first (1st) anniversary of the date of payment to Mortgagee in cash of the entire Debt.

61. No Third-Party Beneficiary Rights Created

The parties hereto expressly declare that it is their joint and mutual intention that this Mortgage and the transactions contemplated hereby shall not be construed as creating a third party beneficiary contract, and neither this Mortgage nor any of the other Loan Documents shall be construed as giving or conferring any rights or benefits whatsoever to or upon any other persons or entities other than Mortgagor, Principal and Mortgagee.

62. Discharge

If all indebtedness secured hereby is promptly paid when due and all other provisions hereof are faithfully performed, the conveyance of the Property shall be null and void, otherwise to remain in full force and effect.

63. Maintaining Priority of Mortgage

Mortgagor shall, at its expense, cause the recordation of this Mortgage and of any other instrument evidencing or securing the Note wherever such recording would or might be required in order to protect the first lien and priority of this Mortgage or such instrument against the claims of third parties. Mortgagor hereby covenants and agrees at all times, at its sole expense, take such other action and execute and record such other instruments as may be necessary or desirable to preserve and protect the first lien and priority of this Mortgage and all other instruments evidencing or securing the Note.

64. Usury Savings

This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the Debt or loan charges at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by applicable law to contract or agree to pay. If by the terms of this Mortgage or the Note, Mortgagor is at any time required or obligated to pay interest on the Debt or loan charges at a rate in excess of such maximum rate, the rate of interest or loan charges under the Mortgage and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments or loan charges in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Debt or for loan charges shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the

Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

65. Costs

(a) Mortgagor acknowledges and confirms that Mortgagee shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of its loans, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement. Mortgagor further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Mortgagee or any governmental or quasi-governmental authority. Mortgagor hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Mortgagee from time to time, upon the occurrence of any such event or otherwise. Wherever it is provided for herein that Mortgagor pay any costs and expenses, such costs and expenses shall include, but not be limited to, all legal fees and disbursements of Mortgagee, whether of retained firms, the reimbursement for the expenses of in-house staff or otherwise.

(b) (i) Mortgagor shall pay all legal fees incurred by Mortgagee in connection with (A) the preparation of the Note, this Mortgage and the other Loan Documents; and (B) the items set forth in subsection (A) above, and (ii) Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Mortgagee until such expenses are paid by Mortgagor.

66. State Provisions

In the event of any conflict between the terms and provisions of this Section 66 and any other Section of this Mortgage, the terms and provisions of this Section 66 shall govern and control.

(a) Defeasance. This Mortgage is made upon the condition that if the Mortgagor pays the Debt, as defined in this Mortgage (which Debt includes without limitation the Loan evidenced by the Note and interest thereon and all other indebtedness, every kind and description whatsoever, due or to become due, and now existing or hereafter incurred, contracted or arising), and reimburses the Mortgagee for any amounts that the Mortgagee has advanced or paid pursuant to the

Loan Agreement and any provision of this Mortgage and that are, by the terms of this Mortgage, secured by this Mortgage and interest thereon, and fulfills all of its other obligations under this Mortgage, this conveyance shall be null and void.

(b) Foreclosure Sale. Upon the occurrence of an Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, after giving twenty-one (21) days notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part of all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Debt secured hereby shall have been paid in full.

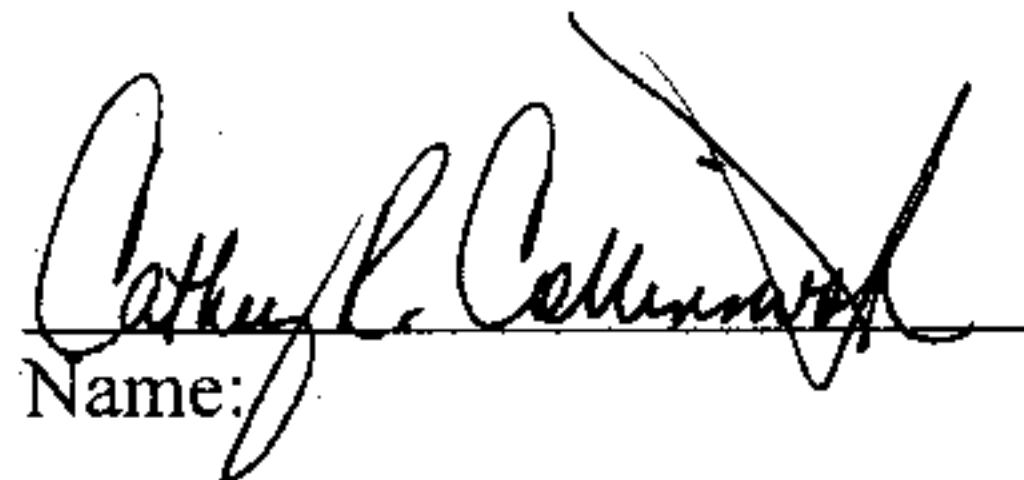
IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage, Assignment of Leases and Profits, Security Agreement and Fixture Filing under seal as of the day and year first above written.

WITNESS:

MORTGAGOR:

CANDLEWOOD BIRMINGHAM, LLC,
a Delaware limited liability company

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

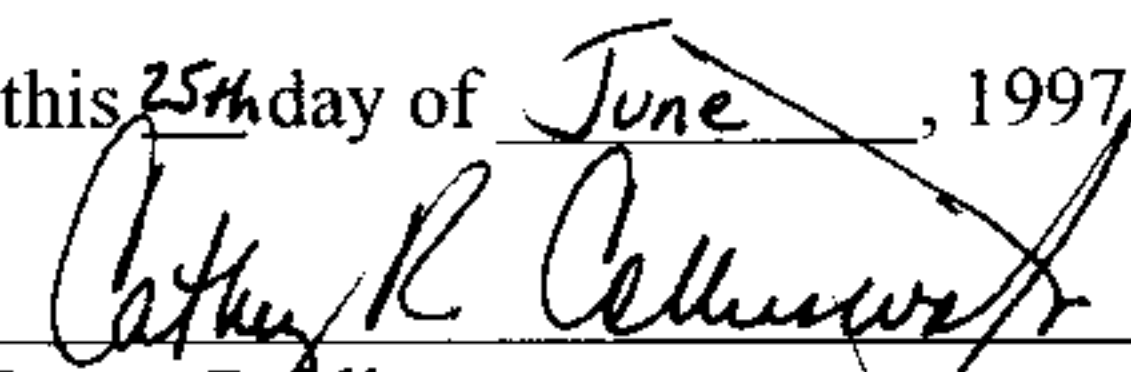

Name: _____

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

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 25th day of June, 1997.


Notary Public

AFFIX SEAL

My Commission Expires: 24 March 2001

This instrument prepared by:

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

EXHIBIT A

Legal Description of Land

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 # 1997-20723

**07/02/1997-20723
12:23 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
064 SNA 6841.00**