

This instrument was prepared by and,
after recording, return to:

Geneva Capital Group, Inc.
240 E. Willow Avenue
Suite 102
Wheaton, Illinois 60187
Attn: Robert S. Williams

Permanent Tax Index No.:
*See **Exhibit A** attached hereto*

Property Address:
*See **Exhibit A** attached hereto*

This space reserved for Recorder's use only

NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is entered into as of _____, 2020 (the "Effective Date"), between **GENEVA CAPITAL GROUP, INC.**, its participants, successors or assigns, ("Lender"), and **CITY OF MANITOWOC**, a municipal corporation, (the "City"), with reference to the following facts:

A. The City, as lessor, and Maritime Hotel and Convention Center Associates, a limited partnership, as original lessee ("Maritime"), entered into that certain "Lease" dated October 9, 1984, and recorded October 10, 1984, as Document No. 596951 for improvements upon City owned real property (such real property, including all buildings, improvements, structures and fixtures located thereon, "Premises"), as more particularly described in **Exhibit A**, to be used by Maritime for Maritime's operating a hotel (the "Ground Lease").

B. **MANITOWOC LODGING ASSOCIATES, LLP**, an Indiana limited liability partnership, (the "Borrower") succeeded to the rights of Maritime pursuant to a bankruptcy order as part of a Plan of Liquidation of Maritime in Case no. 03-24209. Additionally, Maritime transferred their interests to the Premises to Borrower pursuant to the Special Warranty Deed dated March 2, 2004 and recorded March 22, 2004 as Document no. 962995.

C. City and Borrower further amended the Ground Lease by executing various amendments thereto, through and including Amendment No. 4 to Lease dated November 8, 2010 and recorded November 18, 2010 as Document No. 1091160. (The term "Ground Lease" means and refers to the original Ground Lease and all amendments thereto.)

D. Lender has made a loan to Borrower in the maximum principal amount of \$2,000,000.00 (the “Loan”), all as provided in and subject to the terms and conditions set forth in the Loan Documents (as hereinafter defined).

E. To secure the Loan, Borrower has encumbered Borrower’s interests in and to the Ground Lease and the Premises pursuant to a certain Leasehold Mortgage and Security Agreement in favor of Lender (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the “Mortgage”) to be recorded in the Official Records of Manitowoc County, State of Wisconsin.

F. City and Lender desire to agree upon the relative priorities of their interests in the Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration and intending to be legally bound hereby, City and Lender agree:

1. Definitions. The following terms shall have the following meanings for purposes of this Agreement.

1.1 “Foreclosure Event” means: (a) foreclosure under the Mortgage, whether by judicial action or pursuant to nonjudicial proceedings; (b) any other exercise by Lender of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or as beneficiary under the Mortgage, as a result of which any Successor Lessee becomes owner of the Premises; or (c) delivery by Borrower to Lender (or its designee or nominee) of a deed or other conveyance of Borrower’s interest in the Premises in lieu of any of the foregoing.

1.2 “Loan Documents” mean the Mortgage and any other document now or hereafter evidencing, governing, securing or otherwise executed in connection with the Loan, including any promissory note and/or loan agreement, pertaining to the repayment or use of the Loan proceeds or to any of the real or personal property, or interests therein, securing the Loan, as such documents or any of them may have been or may be from time to time hereafter renewed, extended, supplemented, increased or modified. This Agreement is a Loan Document.

1.3 “Recapture Right” means any right of City to cancel or terminate the Lease or recapture the Premises under Article IV, Section 3 of the Ground Lease.

1.4 “Rent” means any fixed rent, base rent or additional rent under the Ground Lease, and including any payment in lieu of taxes as set forth in the Ground Lease.

1.5 “Successor Lessee” means any party that becomes owner of the Premises as the result of a Foreclosure Event.

1.6 “Termination Right” means any right of City or Borrower to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Borrower’s breach or default under the Ground Lease.

2. Nondisturbance; Recognition; and Attornment.

2.1 Nondisturbance and Attornment. If the Ground Lease has not been terminated on account of an Event of Default by Borrower, then, when Successor Lessee takes title to the Premises: (a) City shall not terminate or disturb Successor Lessee's possession of Premises under the Ground Lease, except in accordance with the terms of the Ground Lease and this Agreement; (b) Successor Lessee shall be bound to City under all the terms and conditions of the Ground Lease (except as provided in this Agreement); (c) City shall recognize Successor Lessee as the "Lessee" under the Ground Lease as affected by this Agreement; and (d) the Ground Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Lessee and City.

2.2 Further Documentation. The provisions of this Article shall be effective and self-operative without any need for Successor Lessee or City to execute any further documents. City and Successor Lessee shall, however, confirm the provisions of this Article in writing upon request by either of them.

3. Protection of Successor Lessee. Notwithstanding anything to the contrary in the Ground Lease or the Mortgage, Successor Lessee shall not be liable for or bound by any of the following matters:

3.1 Claims Against Borrower. Any right that City may have against Borrower relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Borrower that occurred before the date of attornment.

3.2 Acts or Omissions of Borrower. Any act, omission, default, misrepresentation, or breach of warranty, of Borrower or any guarantor of Borrower's obligations or obligations accruing prior to Successor Lessee's actual ownership of the Property, except to the extent that such obligations constitute ongoing or continuing defaults of the Successor Lessee in the performance of its obligations under the Ground Lease to maintain the Premises in the manner required by the Ground Lease in which case Successor Lessee shall be responsible to perform such obligations after Successor Lessee succeeds to the interest of Borrower under the Ground Lease, provided that Successor Lessee received notice of such default and the opportunity to cure in accordance with the terms hereof.

3.3 Modification; Amendment; or Waiver. Any modification or amendment of the Ground Lease, or any waiver of any terms of the Ground Lease, made without Lender's written consent.

3.4 Surrender; Etc. Any consensual or negotiated surrender, cancellation, or termination of the Ground Lease, in whole or in part, agreed upon between City and Borrower, unless effected unilaterally by City pursuant to the express terms of the Ground Lease, subject to this Agreement.

4. Exculpation of Successor Lessee. Notwithstanding anything to the contrary in this Agreement or the Ground Lease, upon any attornment pursuant to this Agreement the Ground Lease shall be deemed to have been automatically amended to provide that Successor

Lessee's obligations and liability under the Ground Lease shall never extend beyond Successor Lessee's (or its successors' or assigns') interest, if any, in Premises from time to time, including insurance and condemnation proceeds, Successor Lessee's interest in the Ground Lease, and the proceeds from any sale or other disposition of Premises by Successor Lessee (collectively, "Successor Lessee's Interest"). City shall look exclusively to Successor Lessee's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Lessee under the Ground Lease as affected by this Agreement. If City obtains any money judgment against Successor Lessee with respect to the Ground Lease or the relationship between Successor Lessee and City, then City shall look solely to Successor Lessee's Interest (or that of its successors and assigns) to collect such judgment. City shall not collect or attempt to collect any such judgment out of any other assets of Successor Lessee. In addition to any limitation of liability set forth in this Agreement, Lender, Successor Lessee, and/or their respective successors and assigns shall under no circumstances be liable for any incidental, consequential, punitive, or exemplary damages.

5. Waiver of Certain Rights. So long as the Successor Lessee has paid all Rent due and owing under the Ground Lease from and after the date Successor Lessee succeeds in interest to the rights of the Borrower under the Ground Lease, City shall not enforce the Recapture Right.

6. Lender's Right to Cure.

6.1 Notice to Lender. Notwithstanding anything to the contrary in the Ground Lease or this Agreement, before exercising any Termination Right or Recapture Right, City shall provide Lender with notice of the breach or default by Borrower giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 Lender's Cure Period. After Lender receives a Default Notice, Lender shall have a period of thirty (30) days beyond the time available to Borrower in which to cure the breach or default by Borrower. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Borrower, except to the extent that Lender agrees or undertakes otherwise in writing.

6.3 Extended Cure Period. In addition, as to any breach or default by Borrower the cure of which requires possession and control of the Premises, provided only that Lender undertakes to City by written notice to City within thirty (30) days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this Section, Lender's cure period shall continue for such additional time (the "Extended Cure Period") as Lender may reasonably require to either (a) obtain possession and control of the Premises and thereafter cure the breach or default with reasonable diligence and continuity, or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

7. Miscellaneous.

7.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Notices shall be effective the next business day after being sent by overnight courier service, and five (5) business days after being sent by certified mail (return receipt requested).

7.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Lessee, and its successors and assigns. If Lender assigns the Mortgage, then upon delivery to City of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

7.3 Entire Agreement. This Agreement constitutes the entire agreement between Lender and City regarding the rights and obligations of Lender and City as to the subject matter of this Agreement.

7.4 Interaction with Ground Lease and with Mortgage; Severability. If this Agreement conflicts with the Ground Lease, then this Agreement shall govern as between the parties and any Successor Lessee, including upon any attornment pursuant to this Agreement. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, such provision shall be considered severed from the rest of this Agreement and the remaining provisions shall continue in full force and effect as if such provision had not been included.

7.5 Lender's Rights and Obligations. Except as expressly provided for in this Agreement, Lender shall not have any obligations to City with respect to the Ground Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Lender under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Lessee provided for in this Agreement.

7.6 Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the State in which the Premises are located; provided that to the extent any of such laws may now or hereafter be preempted by Federal law, Federal law shall so govern and be controlling.

7.7 Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

7.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7.9 Lender's and City's Representation. Lender and Borrower represent to the other party that each has the full authority to enter into this Agreement, and each party's respective entry into this Agreement has been duly authorized by all necessary actions.

7.10 Reliance by Lender. City acknowledges the right of Lender (as well as any Successor Lessee) to rely upon the certifications and agreements in this Agreement in making the Loan to Borrower.

[Signatures on the following page]

IN WITNESS WHEREOF, this Agreement has been duly executed by Lender and City as of the Effective Date.

LENDER:

GENEVA CAPITAL GROUP, INC.

By: _____
Name: _____
Its: _____

CITY:

CITY OF MANITOWOC

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

LENDER

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the _____ of GENEVA CAPITAL GROUP, INC. (the "Lender"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____, he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Lender, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of _____, 2020.

Notary Public

(SEAL)

My Commission Expires: _____

CITY

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the _____ of the City of Manitowoc and _____ of the City of Manitowoc (the "City"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____, he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of _____, 2020.

Notary Public

(SEAL)

My Commission Expires: _____

BORROWER'S CONSENT

Borrower consents and agrees to the foregoing Agreement, which was entered into at Borrower's request. The foregoing Agreement shall not alter, waive or diminish any of Borrower's obligations under the Loan Documents or the Ground Lease. Borrower is not a party to the above Agreement.

Dated: _____, 2020

BORROWER:

[_____]

By: _____

Name: _____

Its: _____

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, the _____ of _____ ("Borrower"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____, he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Borrower, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ___ day of _____, 2020.

Notary Public

(SEAL)

My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION