

CASE LOMBARDI & PETTIT

A LAW CORPORATION

David G. Brittin
Lisa K. Broulik
Michelle J. Chapman
Matthew A. Cohen
James M. Cribley
Stacey W.E. Foy
Adelbert Green

Michael L. Lam
Dennis M. Lombardi†
Jon M.H. Pang
Ted N. Pettit, Ph.D.
Lauren R. Sharkey
Mark G. Valencia
Nancy J. Youngren

† A Law Corporation
Daniel H. Case (1925-2016)

PACIFIC GUARDIAN CENTER, MAUKA TOWER
737 BISHOP STREET, SUITE 2600
HONOLULU, HAWAII 96813-3283

TELEPHONE: (808) 547-5400
FACSIMILE: (808) 523-1888
E-mail: info@caselombardi.com
<http://www.caselombardi.com>

Ka'ōnohiokalā J. Aukai IV
Jackie Ching
Elaine T. Chow
Travis T. Moon
James W. Rooney
Stephanie M. Teece
Steven E. Tom
Maria Amparo V. McCormick

Of Counsel
Gregory M. Hansen
Michael R. Marsh
Frederick W. Rohlifing III

June 14, 2022

State of Hawaii
Board of Land and Natural Resources
Chairperson, Suzanne D. Case
P.O. Box 621
Honolulu, Hawaii 96809

Via Email: blnr.testimony@hawaii.gov

RE: Lessee's Request for Consent to Mortgage with Estoppel Certificate, General Lease No. S-5844 ("**Lease**"), WHR LLC, Lessee; Waiakea, South Hilo, Hawaii, Tax Map Keys: 3rd/ 2-1-01:12 and 2-1-05:13, 16, 17, 27, 32, and 46

Dear Chairperson Case:

On behalf of WHR LLC ("**WHR**"), Lessee under the above-referenced Lease and owner of the Grand Naniloa Hotel Doubletree by Hilton (the "**Hotel**"), we write to you with respect to WHR's Request for Consent to Mortgage, which will refinance the existing \$50,000,000 loan (the "Existing Loan") currently held by Wilmington Trust National Association, as Trustee for the Benefit of the Holders of Bank 2018-BNK-14, Commercial Mortgage Series 2018-BNK 14 ("**Existing Lender**") with a \$62,000,000 loan ("**New Loan**") from a special purpose entity affiliate of Sculptor Capital Management, Inc. ("**Sculptor**").

As an initial matter, we apologize on behalf of WHR for the miscommunication with respect to the hearing on June 9, 2022 for WHR's prior request for a Consent to Mortgage. The principals of WHR mistakenly believed that the hearing was to be held at the end of the following week, and not on the Thursday before King Kamehameha Day. Ed Bushor of WHR intended to appear at the hearing, but based on the internal misunderstanding, was traveling at the time the hearing took place. We apologize on his behalf to you and the members of the Board for the inadvertent absence.

We have reviewed the minutes of the June 9, 2022 hearing, and we wish to address certain points that were made, as we believe that there is a fundamental misunderstanding of the events that have occurred that have led WHR to need to refinance its existing loan, and the terms and conditions of the loan with Sculptor.

A. The Existing Lender Created a Mess By Failing to Pay Vendors After it Took Over Cash Management in October 2021

The Board is aware of the issues that all hospitality related companies faced during the past two years due to the COVID-19 pandemic. Prior to the travel shut down in March 2020, the Hotel was financially sound, and all payments were being timely made. Unfortunately, as with many other businesses, WHR was unable to make its loan payments during the worst months of the pandemic. However, as travel rebounded, WHR was able to successfully position the Hotel, and beginning in September 2021, this performance allowed WHR to commence making payments under the Loan. WHR made loan payments from September through December 2021, and since September 2021, revenue from the Hotel has been sufficient to pay the operating costs and debt service of the Hotel. However, in October 2021 the Existing Lender, and its special servicer, Rialto Capital Advisors, LLC ("**Rialto**"), declared a Cash Trap Event under the Loan assumed cash management of the Hotel. and demanded that WHR consent to the appointment of a receiver. WHR did not believe that appointment of a receiver was warranted because the Hotel was profitable. However, because of the Cash Management Agreement, to this day, all cash generated by the Hotel has been swept into accounts exclusively under the control of Rialto. Rialto then ratcheted up the pressure on WHR to appoint a receiver by simply refusing to pay any of the utilities, vendors, suppliers, hotel management, employee payroll and the Hotel franchise fee to Hilton. All of the monetary defaults from October 2021 forward were manufactured by Rialto through its control of the Hotel's cash as a mechanism to force WHR to allow a receiver to take over the Hotel, notwithstanding the fact that the Hotel's financial performance has generated sufficient cash to pay Hotel obligations as they become due.

B. The Existing Lender Forced a Receiver on the Hotel

C. The Existing Lender Insisted On The Refinancing

Rialto declared an event of default, accelerated all amounts due under the Existing Loan, refused to reinstate the Existing Loan, and demanded that WHR immediately pay off the entirety of the Existing Loan. In order to permit time to find a lender and negotiate loan documents, and to allow for use of cash generated by the Hotel to pay all of the Hotel expenses, WHR entered into a letter agreement whereby it consented to the appointment of receiver if the Loan was not repaid by a date certain. WHR promptly found a new lender in Sculptor, and began the arduous process of refinancing the Existing Loan. Unfortunately, closing the New Loan has proved especially difficult because Rialto continues to insist on retroactively imposing default interest for a nonmonetary default that allegedly occurred days after it was assigned the loan by Wells Fargo, and for which WHR was never provided notice and an opportunity to cure.

Due to the fact that Rialto has refused to give up its claims for the improper default interest, the loan negotiation process has taken much longer than originally anticipated. WHR was prepared to close the loan refinancing upon obtaining the Board's consent at the hearing on May 31, 2022. However, shortly before the hearing, Rialto informed the Hotel manager that it

would not fund the payroll for employees until and unless a receiver was appointed. Because the Board continued the consideration of the Request for Consent, at the court hearing on June 3, 2022, the Court felt it had no choice but to appoint the receiver, as otherwise all of the Hotel employees would not have been paid, and the Hotel would have faced an immediate shutdown. The order appointing the receiver is enclosed attached as Exhibit "A". The order states, among other things that:

- "3. Plaintiff is instructed to promptly release funds as directed by the Receiver to ensure the continued operations at the hotel property; and
4. The Receiver is directed to cooperate with the Defendant's efforts to refinance Plaintiff's loan."

WHR has filed a counterclaim with respect to the strong-arm behavior of the Existing Lender and Rialto, which WHR believes to be predatory, but certainly effective in cutting off all of WHR's financial resources in order to cram down a receiver. Importantly, however the Court ordered that the receiver cooperate with WHR with respect to the refinancing of the Existing Loan. Thus, WHR continues to believe that the loan refinancing can occur upon obtaining the Board's consent. With the DLNR's consent and closing the New Loan, the receiver will be discharged. We believe that this is the best possible outcome for all parties, as it eliminates the ongoing uncertainty with respect to Hotel operations and provides for the continued employment for Hotel staff, and payments to local vendors and suppliers.

D. WHR Was Not Party To The Assignment Of The Loan

WHR understands that the Board has concerns as to whether the assignment of the Loan from Wells Fargo to the Existing Lender conforms with the requirements of the Lease. WHR was not a party to the loan assignment discussions, and was unaware at the time that the loan was being assigned to the Existing Lender. WHR has no information on whether the Existing Lender sought the consent of the Board in connection with its assignment, or whether such an assignment was required. From a plain reading of the Lease, if the Existing Lender did not properly obtain the required consent, it would not be an Authorized Mortgagee, nor would it be entitled to any of the mortgagee protections under the Lease, including, without limitation, the protections afforded a foreclosing mortgagee, which is all the more reason that the Board should consent to the refinancing.

E. The Terms Of The New Loan Are Commercially Reasonable

1. The New Loan is commercially reasonable given the impacts of Covid pandemic, all market factors, the actions of the Existing Lender and market terms and rates in today's lending world.

There are numerous factors why this New Loan is commercially reasonable and we will attempt to outline some of the reasons below.

2. The Current Income Supports the New Loan as Underwritten by a National Lending Institution.

In response to the questions raised regarding whether the terms of the New Loan are commercially reasonable, we note that Sculptor is a nationally recognized real estate lending institution which is in the business of making real estate loans of this type. The terms of the loan are customarily, and similar to the loans that DLNR has previously approved. 3.

3. Debt Service Has Adequate Revenues.

In order to demonstrate that WHR will be able to afford the debt service on a monthly basis, we will shortly provide a two-year pro forma for expected Hotel operations under separate cover, as the pro forma is confidential and proprietary. The trailing 12 month data that was previously submitted (which we have also attached for your convenience as Exhibit "B") covered a period of time in which travel restrictions were in place, and thus the Hotel operations were depressed. By all accounts, travel is expected to rapidly recover over the next two years, and based on the conservative estimates included in the pro forma, WHR anticipates that it will have no trouble paying the debt service going forward. We also wish to reiterate that all interruptions in payment for the last eight months have been due to the fact that Rialto trapped all of the Hotel cash as part of its gambit to cram down the receiver.

4. The Loan includes a \$2,000,000 Interest Reserve. The New Loan has a \$2,000,000 Interest Reserve for any month that revenues may have an unexpected dip.

Additionally, the New Loan has a built in Interest Reserve of \$2,000,000 in order to cushion the month-to-month vagaries of the travel market.

5. The New Loan has an Interest Rate Cap.

With respect to the interest rate, the calculation is somewhat complex, but note that under the loan, WHR is (i) required to purchase an interest rate cap, limiting the maximum amount SOFR (the floating rate index) can float to, and the (ii) terms of the interest only loan only require WHR to pay SOFR (currently 1.27865%) + 7.25% (spread on a monthly basis), which, at the current rate, equates to approximately \$440,646.92 a month. The remainder of the accruing interest is due at maturity. While the rate floats monthly and may drift up in a rising market, the interest rate cap that is being purchased ensures that the rate cannot go up indefinitely.

6. Hilton has Approved the Form of Comfort Letter for the New Loan.

As further evidence that the new loan is commercially reasonable, WHR recently obtained approval from Hilton of a comfort letter that will be executed at closing. Hilton routinely reviews and analyzes loans for property subject to its franchise agreements. Hilton is under no obligation to consent to a loan it does not deem commercially reasonable, but in this event, Hilton had no problem consenting to the proposed refinancing. A copy of the Hilton comfort letter is attached hereto as Exhibit "C".

7. DLNR security in its Lessor interest is much more secure with a New Loan.

Furthermore, WHR believes that Sculptor will be a better partner for the Hotel, and DLNR, as the Existing Lender has taken actions that have significantly harmed the local economy through its use of hardball tactics that pay no mind to the impact on local families, vendors and suppliers. While such tactics may be customary for large-scale mainland financial institutions that buy and sell collateralized mortgage securities, those living in and working Hilo pay the price.

F. Composition of WHR Post-Closing

A comment was also made at the June 9, 2022 hearing as to whether the fact that one of the partners will be bought out of the limited liability company as part of the refinancing would trigger the requirement under the terms of the Lease for the Board to consent to an assignment of more than 20% of the ownership of WHR. We do not believe that the assignment provision is triggered, as the party in question holds well below the 20% threshold. WHR is a manager-managed limited liability company, and the manager of WHR, Tower Development, Inc., is not changing.

G. The Sculptor SPE will be an Authorized Mortgagee

As is customary in commercial loans of the size, Sculptor is establishing a special purpose entity, Hilo Hotel Funding LLC, a wholly-owned subsidiary of Sculptor, to be the lender under the loan documents. The Lease states in pertinent part at Section 20(a) that:

Lessee may from time to time with the prior consent of the Chairperson, **which consent shall not be unreasonably withheld**, assign this lease by way of mortgage (an "Authorized Mortgage") to any bank, insurance company, **or other lending institution legally permitted to make mortgage loans in the State of Hawaii**, as mortgagee (an "Authorized Mortgage").

(Emphases added).

Hilo Hotel Funding LLC is a Delaware limited liability company. We are unaware of any formal requirements (i.e. licensing or registration) that a Delaware limited liability company must obtain in order to make a commercial mortgage loan in Hawaii. Thus, once consent of the Board is obtained, we believe that Hilo Hotel Funding LLC will be in full compliance with the Authorized Mortgage requirement quoted above. Should you believe otherwise, we are happy to review any licensing or registration requirements and advise Sculptor accordingly.

H. Any Permitted Equity Transfer is subject to the Lease

The definition of “Permitted Equity Transfers” in the Loan Agreement was discussed at the last meeting. This definition and its usage in the New Loan Agreement do not overwrite the transfer restrictions listed in Section 13 of the Lease. Those still apply, even if consent to the mortgage is provided.

I. Repayment of Capital.

The subject of whether WHR had repaid members their capital was also raised at the June 9, 2022 hearing. In fact, WHR did use a portion of the proceeds from prior loans to repay portions of the capital invested by members of WHR. Such repayment of capital is customary for Hotel investors. Without the ability to execute on its business plan and repay capital contributions, WHR would be unable to attract the capital to make the type of reinvestment in the community that has occurred in this situation. While Rialto has tried to make an issue of the timing of payments to members of WHR as part of its push to take over the Hotel, at the time the payments were made, WHR had no idea that the COVID-19 pandemic would grow into the worldwide catastrophe that we have all observed. Most observers thought the pandemic would be a short-term incident, without lingering effects. It should also be noted that Rialto has used this fact in its effort to cram down a receiver while at the same time Rialto has been willing to withhold payment from local vendors, employees, suppliers, DLNR and Hilton, and without any thought for the lives affected, and damaged the Hotel and its reputation in the community, in order to achieve this objective. Notwithstanding the fact that WHR did repay capital, it also stood by its employees through the depths of the last two years, and ensured that its people were taken care of and had jobs. WHR and its principals have worked tirelessly to promote Hilo, the Big Island, and the State of Hawaii, and have taken a property that was a run-down eyesore and turned it into the jewel of Banyan drive. At Rialto's request, WHR used its best efforts to secure the New Loan to ensure that the Hotel will continue to operate without disruption. WHR is simply asking the Board to consent to a new loan that it, Sculptor, and Hilton deem reasonable and appropriate, that the best financial projections show is financially sustainable, and that everyone but Rialto and the Existing Lender wish to consummate¹.

¹ The Existing Lender and Rialto assess WHR approximately \$6000 per day in default interest.

J. Equity Pledge

A question was raised with respect to the equity pledge of the membership interests in WHR. An equity pledge is a customary feature of institutional loans transactions, and virtually no loans of this size are made to a limited liability company without such a pledge. Typically, a pledge and security agreement is required to be executed by each of the equity holders of the borrower for the benefit of the lender securing a loan agreement, the note and all obligations of borrower in connection with the loan, and granting lender a security interest in 100% of the issued and outstanding equity interests in borrower and all rights and benefits attributable thereto and all proceeds therefrom. We note that the Board previously approved an equity pledge in a loan agreement when it consented to WHR's Construction Loan in 2015 issued by Hall Structured Finance. There is no negative impact on the ground lessor, as a lender foreclosing on the real estate or foreclosing on a pledge agreement results in the lender taking over the borrower's position whether through the mortgage or the pledge, and in neither case does the ground lessor lose any rights.

An initial version of the estoppel agreement in favor of Sculptor included a reference to the pledge agreement, however more recent drafts (including the most recent draft submitted to the Board) have removed any reference to the pledge agreement. Thus, the Board is merely consenting to the Loan. We have enclosed the current draft of the estoppel as Exhibit "D".

K. Amount of Secured Mortgage Debt

The Staff Report submitted prior to the May 31, 2022 hearing stated that Staff was opposed to consent for the proposed loan because the increase in the principal amount of the proposed mortgage debt from \$50 million to \$62 million was not in the best interest of the State of Hawaii. Given the inflated claims for default interest under the Existing Loan, which accrue on a daily basis, the new principal amount of debt is not sufficiently higher than the existing mortgage to cause concern about increased amount of the mortgage debt, especially given the Hotel's ongoing profitability. Recently the Hotel was appraised for insurance purposes at \$91 Million, and we have attached as Exhibit "E" a copy of the insurance certificate noting a value of \$93 Million. . In approving the loan, Sculptor has estimated that the \$62 million loan amount is between 60-70% of the value of the Hotel property (which is well within the current market for loan to value ratios for hotel properties). If the Hotel property was privately-owned, the loan would be approved without hesitation as "reasonable."

L. Bankruptcy Issues

At the May 31, 2022 hearing, certain comments were made regarding the potential impacts that a bankruptcy by WHR would have. The undersigned is an actively practicing bankruptcy attorney with over 35 years of bankruptcy experience in commercial bankruptcy and chapter 11 reorganization cases in Hawai'i. WHR has no plans to file a bankruptcy proceeding, and is committed to the new proposed financing with Sculptor, with the Board's consent.

State of Hawaii
Board of Land And Natural Resources
Chairperson, Suzanne D. Case
June 14, 2022
Page 8 of 8

However, in order to give the Board the best information possible in order for it to make its determination, we wish to clarify the following points.

At the May 31 hearing, Mr. Tsuji commented on the effect on the Lease if a bankruptcy is filed by the Lessee. He implied that the Bankruptcy Court can "cram down" the DLNR and the Lease to the detriment of the DLNR. He was apparently giving his opinions on the impact of a bankruptcy on the Lease and assumption and assignment of the Lease to a new lessee. *First*, the Lease is an executory contract governed in large part by 11 U.S.C. § 365. In order for a debtor in bankruptcy to assume and assign a lease to a buyer, the entire lease is assigned and any outstanding defaults, both monetary and non-monetary, must be cured. *Second*, there is an exception for real property leases that contain unreasonable provisions for assignment by a bankruptcy debtor such as the ability of a lessor to unreasonably withhold consent or demand payment of any premium to be paid for the assignment of the lease. The Bankruptcy Code does not enforce these kinds of restrictions so that the debtor's bankruptcy estate and its creditors may benefit from any assumption, assignment and sale of a leasehold interest. The lease must be cured before creditors participate in any surplus sales proceeds. *Third*, among other lessor protection provisions, the assignee of the lease must provide adequate assurance of future performance under the lease.

M. The Board's Consent To The Refinancing Is Appropriate and Reasonable, And In The Best Interest Of The State and Community

At all times, WHR has protected the interests of Hilo and its community, the employees and trade creditors of the Hotel. The Lease rent is current. The Hilton franchise fee is current. The real property taxes are current. Sculptor is ready willing and able to fund the refinancing, and WHR is able to make loan payments going forward. The court-appointed receiver is required to cooperate in the closing of the New Loan. Thus, all of the pieces are in place to move forward with a new partner that will allow WHR to continue operating what has, due to WHR's efforts, become a highly profitable operation that brings an enormous benefit to the local community, the Big Island, and State of Hawaii. As such, we believe that the Board's consent to the refinancing is both reasonable and appropriate, and is the best outcome for all parties, as it avoids the time, expense, and uncertain outcomes that a foreclosure would have.

Thank you for your consideration of these matters.

Very truly yours,

CASE LOMBARDI & PETTIT

/s/ Ted N. Pettit

TED N. PETTIT

DAVID G. BRITTIN

Enclosures
Cc: Client

EXHIBIT A

MEHEULA LAW, LLLC
A Limited Liability Law Company

WILLIAM MEHEULA (2277)
D. KAENA HOROWITZ (9836)
Pacific Guardian Center, Makai Tower
733 Bishop Street, Suite 2900
Honolulu, Hawai'i 96813
Telephone: (808) 599-9554
bill@meheulalaw.com; kaena@meheulalaw.com

Electronically Filed
THIRD CIRCUIT
3CCV-21-0000360
07-JUN-2022
10:40 AM
Dkt. 121 ORD

GREGORY A. CROSS (*pro hac vice*)
HEATHER DEANS FOLEY (*pro hac vice*)
Venable LLP
750 East Pratt Street, Suite 900
Baltimore, Maryland 21202
Telephone: (410) 244-7400
Facsimile: (410) 244-7742
hdfoley@venable.com; gacross@venable.com

Attorneys for Plaintiff
WILMINGTON TRUST NATIONAL ASSOCIATION
AS TRUSTEE FOR THE BENEFIT OF THE
HOLDERS OF BANK 2019-BNK14, COMMERCIAL
MORTGAGE SERIES 2018-BNK14, by and through
its Special Servicer Rialto Capital Advisors, LLC

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
HILO DIVISION
STATE OF HAWAI'I

WILMINGTON TRUST NATIONAL
ASSOCIATION AS TRUSTEE FOR THE
BENEFIT OF THE HOLDERS OF BANK
2019-BNK14, COMMERCIAL MORTGAGE
SERIES 2018-BNK14, by and through its
Special Servicer Rialto Capital Advisors,
LLC,

Plaintiff,

vs.

WHR LLC, a Hawaii limited liability
company, JOHN DOES 1-50, JANE DOES

CIVIL NO.: 3CCV-21-0000360
(Foreclosure)

ORDER RE: (1) PLAINTIFF'S *EX PARTE*
MOTION FOR APPOINTMENT OF A
RECEIVER; AND (2) DEFENDANT WHR
LLC'S MOTION FOR (A) STAY OF
ENFORCEMENT OF CONSENT ORDER
APPOINTING RECEIVER AND (B) OTHER
RELIEF

HEARING:

Date: June 3, 2022

Time: 8:00 a.m.

Judge: The Honorable Henry T. Nakamoto

EXHIBIT A

1-50, DOE PARTNERSHIPS 1-50, DOE
CORPORATIONS 1-50, DOE ENTITIES
1-50 and DOE GOVERNMENTAL UNITS
1-50,

Defendants.

Trial Date: None

ORDER RE: (1) PLAINTIFF'S EX PARTE MOTION FOR APPOINTMENT
OF A RECEIVER; AND (2) DEFENDANT WHR LLC'S MOTION FOR
(A) STAY OF ENFORCEMENT OF CONSENT ORDER APPOINTING
RECEIVER AND (B) OTHER RELIEF

Plaintiff's *Ex Parte* Motion for Appointment of a Receiver, filed herein on December 29, 2021 [Dkt. 17] ("Receiver Motion") and Defendant WHR LLC's Motion for (A) Stay of Enforcement of Consent Order Appointing Receiver and (B) Other Relief, filed May 18, 2022 [Dkt. 89] ("Motion for Stay") came on for hearing before the Honorable Henry T. Nakamoto via Zoom remote conferencing on June 3, 2022 at 8:00 a.m. Gregory A. Cross, Esq., Heather Deans Foley, Esq., William Meheula, Esq. and D. Kaena Horowitz, Esq. appeared on behalf of Plaintiff. Ted N. Pettit, Esq. and David G. Brittin, Esq. appeared on behalf of Defendant WHR, LLC.

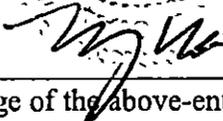
The Court, having duly considered the Receiver Motion and the Motion for Stay, the written memoranda and exhibits filed by the parties, the argument of counsel at the hearing, the record and files in this matter, and being fully apprised of the circumstances of the case, and good cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion for Stay is hereby DENIED;
2. The Court will enter the Consent Order Granting Plaintiff's *Ex Parte* Motion for Appointment of a Receiver (the "Consent Order") granting the Receiver Motion;
3. Plaintiff is instructed to promptly release funds as directed by the Receiver to ensure the continued operations at the hotel property; and

4. The Receiver is directed to cooperate with the Defendant's efforts to refinance Plaintiff's loan.

DATED: Hilo, Hawai'i, _____



Judge of the above-entitled Court

HENRY T. NAKAMOTO Div. 2

Wilmington Trust National Association as Trustee for the Benefit of the Holders of Bank 2018-BNK14, Commercial Mortgage Series 2018-BNK14 v. WHR LLC, et al.; Civil No. 3CCV-21-0000360; ORDER RE: (1) PLAINTIFF'S EX PARTE MOTION FOR APPOINTMENT OF A RECEIVER; AND (2) DEFENDANT WHR LLC'S MOTION FOR (A) STAY OF ENFORCEMENT OF CONSENT ORDER APPOINTING RECEIVER AND (B) OTHER RELIEF

EXHIBIT B

Grand Naniloa Resort
Consolidated Statement of Operations

	Jun 2021	Jul 2021	Aug 2021	Sep 2021	Oct 2021	Nov 2021	Dec 2021	Jan-22	Feb-22	Mar-22	Apr-22	May-22	May T12
	Actual	Budgeted	Budgeted	Totals									
Occupancy%	91.4%	98.9%	77.0%	63.7%	75.9%	74.7%	80.1%	71.6%	86.50%	86.20%	78.50%	81.70%	80.23%
Total Operating Revenue	1,955,162	2,151,343	1,724,370	1,472,076	1,742,218	1,808,611	2,472,447	1,931,527	2,192,915	2,483,706	2,225,811	2,271,553	24,431,740
Operating Expenses	1,135,820	1,126,219	941,223	1,142,260	1,124,250	1,240,482	1,548,595	1,315,511	1,374,780	1,526,296	1,585,000	1,591,955	15,652,390
Income before Non Op Inc & Exp	819,343	1,025,124	783,148	329,816	617,968	568,129	923,852	616,016	818,135	957,410	640,811	679,598	8,779,350
Rent Expenses	(82,041)	49,356	49,356	49,356	48,356	49,356	49,356	49,356	49,356	41,356	50,146	50,146	453,454
Property And Other Taxes	29,611	29,611	29,611	29,611	29,611	29,611	29,611	29,611	29,611	29,611	29,611	29,611	355,330
Insurance Expenses	69,590	50,108	47,691	37,541	49,779	29,158	(15,822)	29,158	-42,407	181,102	56,667	56,667	549,233
Non Op Inc & Exp	17,160	129,074	126,658	116,508	127,745	108,125	63,144	108,125	36,560	252,069	136,424	136,424	1,358,017
EBITDA	802,182	896,049	656,490	213,308	490,223	460,004	860,708	507,891	781,575	705,341	504,387	543,174	7,421,333
Interest	167	162	-	278	-	-	363	106	99	92	500	500	2,267
Depreciation	3,676	3,676	3,676	3,676	3,676	3,676	3,676	3,676	3,676	3,676	3,750	3,750	44,262
Other Expense	3,843	3,839	3,676	3,954	3,676	3,676	4,039	3,782	3,775	3,768	4,250	4,250	46,529
Net Income	798,339	892,210	652,814	209,354	486,547	456,328	856,668	504,109	777,800	701,573	500,137	538,924	7,374,803

EXHIBIT B

EXHIBIT C



755 Crossover Lane
Memphis, TN 38117

May [], 2022

Hilo Hotel Funding LLC.
Attention: Real Estate Asset Management
9 West 57th Street, 40th Floor
New York, NY 10019

Re: Grand Naniloa Hotel- Hilo, a DoubleTree by Hilton (Hilo, HI) – Facility No. 48258

Ladies and Gentlemen:

HILTON FRANCHISE HOLDING LLC, a Delaware limited liability company, successor by-merger to DOUBLETREE FRANCHISE LLC, a Delaware limited liability company (“**Franchisor**”) and WHR, LLC, a Hawaii limited liability company (“**Franchisee**”) are parties to a franchise agreement dated March 12, 2015, including all amendments, riders, supplemental agreements and assignments (collectively, “**Franchise Agreement**”). Franchisee operates the Grand Naniloa Hotel-Hilo, a DoubleTree by Hilton hotel located at 93 Banyan Drive, Hilo, HI 96720 (“**Hotel**”) under the terms of the Franchise Agreement.

This letter agreement is being entered into in connection with a mortgage loan in the amount of \$62,000,000 dated May [–], 2022, as such mortgage loan may be periodically amended, modified, supplemented, extended or restated (“**Loan**”), from .HILO HOTEL FUNDING LLC, a Delaware (limited liability company, as administrative agent for itself and other participant lenders (in its capacity as administrative agent, “**Lender**”) to Franchisee, to be used for the direct benefit of the Hotel.

Reference is also made to a letter agreement dated August 31, 2018, among Franchisor, Franchisee and Wells Fargo Bank, N.A. (“**Existing Comfort Letter**”).

1. **Cure Period.**

(a) **Notice of Franchisee Default.** Franchisor will concurrently provide Lender a copy of any default notice sent to Franchisee under the Franchise Agreement. The notice will be sent to Lender at the address set forth above or such other address designated by Lender in writing, provided that only a single address may be designated and it may not be a P.O. Box.

(b) **Lender’s Cure Periods.** Lender shall have the right, but not the obligation, to cure the default within fifteen (15) calendar days beyond the expiration of any cure period given to Franchisee (“**Lender’s Cure Period**”). If the default is for failure to comply with physical standards or other non-monetary default which could only be cured by Lender acquiring possession and/or ownership of the Hotel (each, an “**Acquisition**”) and/or ownership of the Franchisee (an “**Equity Acquisition**”), Lender may have an additional period of one hundred eighty (180) calendar days, commencing at the expiration of Lender’s Cure Period (“**Additional Period**”), for Lender to complete its Acquisition, through foreclosure or other appropriate proceedings or its Equity Acquisition through UCC sale or other appropriate proceedings and/or ownership of Franchisee; provided that Lender must: (i) notify Franchisor no later than the date it commences proceedings (or promptly after action is stayed or enjoined) that Lender wants the Additional Period; (ii) commence proceedings and diligently prosecute such proceedings to completion; and (iii) comply with the obligations of Franchisee under the Franchise Agreement not being performed by Franchisee during the Additional Period including payment of all monetary obligations but excluding those obligations which can only be performed by Franchisee or which Lender cannot perform without possession and/or ownership of the Hotel and/or ownership of



Franchisee. On request by Lender, the Additional Period may be further extended by Franchisor in its determination, which determination shall take into consideration the period of time required to complete an Acquisition or Equity Acquisition in the applicable jurisdiction, and any period of time in which Lender's action has been stayed or enjoined. If Franchisor has not issued a default notice to Franchisee or Lender has cured Franchisee's default during Lender's Cure Period and Lender commences a foreclosure or other proceeding intended to result in an Acquisition, or commences a UCC sale or other proceeding intended to result in an Equity Acquisition, Lender may exercise the rights under this letter agreement under the terms and timelines outlined in this Subparagraph. If Franchisor has not issued a default notice, Lender's notice to Franchisor of Franchisee's default under the Loan will be deemed to initiate the timeline outlined under the Lender's Cure Period and Additional Period. Franchisor acknowledges and agrees that an Acquisition or Equity Acquisition shall not be deemed a sale or lease of the Hotel under the Franchise Agreement, nor a violation of any control or transfer provisions of the Franchise Agreement, and shall not be subject to any right of first refusal or right of first offer contained in the Franchise Agreement.

(c) Franchisor's Rights to Terminate Franchise Agreement. Notwithstanding any other provision of this letter agreement, Franchisor may terminate the Franchise Agreement if any of the following occur: (i) Franchisee's default or any subsequent default, in the sole opinion of Franchisor, damages the image or reputation of Franchisor or any brand name owned and/or licensed by Hilton Worldwide Holdings Inc., a Delaware corporation, or its subsidiaries or affiliates (collectively, "Hilton"); (ii) Franchisor is required to terminate the Franchise Agreement by court order or action of any trustee in bankruptcy or debtor in possession of the Hotel; or (iii) the Additional Period expires without other arrangements, satisfactory to Franchisor in its sole discretion, having been entered into between Franchisor and Lender.

(d) Expiration of Franchise Agreement. Nothing in this letter agreement will extend the Franchise Agreement beyond its stated expiration date.

(e) Receiver Appointment. If a receiver is appointed to operate the Hotel at the request of Lender, Franchisor may require the receiver to enter into Franchisor's then-current form of receiver agreement, with such modifications as mutually agreed between Franchisor, Lender and receiver, or other documentation that Franchisor considers reasonably necessary.

2. Acquisition and Assumption.

(a) Lender's Election to Waive Assumption of Franchise Agreement. Lender may give written notice (a "**Waiver Notice**") to Franchisor of Lender's election to waive Lender's right to assume the Franchise Agreement at any time (i) during Lender's Cure Period, or the Additional Period, as the Additional Period may be extended in accordance with Subparagraph 1(b) of this letter agreement, or (ii) within twenty (20) calendar days after the completion of the Acquisition. If given, the Waiver Notice will be effective twenty (20) calendar days after Franchisor's receipt of the Waiver Notice, and Franchisor may rely on the Waiver Notice to exercise its remedies against Franchisee under the Franchise Agreement, including termination of the Franchise Agreement. Lender shall not be liable for any termination fees or liquidated damages arising from the early termination of the Franchise Agreement; provided, however, if Lender or its designee is or comes into possession of the Hotel before the Waiver Notice is effective, then Lender shall be responsible for post-termination de-identification obligations at the Hotel, and for payment of any fees owed to Franchisor pursuant to the Franchise Agreement that accrued while Lender was in possession of the Hotel before the Waiver Notice is effective, but excluding termination fees or liquidated damages.

(b) Acquisition and Franchise Agreement Assumption. If Lender does not deliver the Waiver Notice to Franchisor under Subparagraph 2(a), the Franchise Agreement will continue in full force and effect. If Lender acquires possession and/or ownership of the Hotel as the result of an Acquisition,

Lender will be deemed to have assumed the Franchise Agreement as of the date of the Acquisition. Lender will be obligated to perform all of the obligations of Franchisee under the Franchise Agreement existing at or accruing after the Acquisition date, including the payment of fees owed to Franchisor (“**Assumption**”). Any conditions in the transfer provisions of the Franchise Agreement that Franchisor deems relevant shall apply with respect to the Assumption, including but not limited to the obligation for Lender to submit its ownership structure, organizational documents and evidence of insurance. Lender must, within ten (10) business days after receipt of a request from Franchisor, provide to Franchisor all information necessary for Franchisor to determine that Lender is not a Sanctioned Person (as defined below), as well as the other information reasonably requested. If Franchisor confirms that Lender is not a Sanctioned Person, Franchisor will promptly prepare Franchisor’s then-current form assumption agreement (“**Assumption Agreement**”) to document the Assumption, and deliver the Assumption Agreement to Lender. Lender must execute and return the Assumption Agreement to Franchisor within ten (10) business days after receipt from Franchisor. Lender’s failure to timely execute and deliver the Assumption Agreement may be deemed a default under the Franchise Agreement entitling Franchisor to terminate the Franchise Agreement. Any renovation requirements imposed by Franchisor in connection with the Assumption will not exceed those which Franchisor could have imposed had Franchisee remained as the Franchisee under the Franchise Agreement. In lieu of any transfer or application fee for the Assumption, Lender agrees to pay Franchisor a processing fee of Five Thousand Dollars (\$5,000). In connection with the Assumption, Lender must diligently cure all defaults which it could not cure before the Acquisition under the terms of Subparagraph 1(b), within the time period determined by Franchisor based on the nature of the default and/or the condition of the Hotel at the time of Lender’s Acquisition except for personal and non-curable defaults. “Personal and non-curable defaults” means that the default (i) occurred before the date of Lender’s Acquisition; (ii) is a non-curable default; (iii) is purely personal to Franchisee (e.g., failure to provide adequate notice or past failure to maintain Franchisee’s company status); and (iv) is unrelated to the operation of the Hotel.

(c) Equity Acquisition and Amendment. If Lender acquires ownership of the Franchisee by means of an Equity Acquisition, Lender will be deemed to have assumed the rights and obligations of the Franchisee under the Franchise Agreement as of the date of the Equity Acquisition, and Lender must diligently cure all defaults which Lender could not cure before the Equity Acquisition under the terms of Subparagraph 1(b), within the time period determined by Franchisor based on the nature of the default and/or the condition of the Hotel at the time of Lender’s Equity Acquisition. Lender must enter into an amendment to the Franchise Agreement to document the change of control of Franchisee, which will, among other things, contain a new ownership structure for Franchisee (“**Amendment**”). Subject to confirmation that Lender is not a Sanctioned Person, Franchisor will prepare the Amendment promptly after receipt of any information requested under this Subparagraph 2(c). Franchisor will deliver the Amendment to Lender, and Lender will execute and return the Amendment to Franchisor within ten (10) business days after Franchisor delivers it. Lender’s failure to timely execute and deliver to Franchisor the Amendment shall be a default under the Franchise Agreement entitling Franchisor to terminate the Franchise Agreement. Any renovation requirements imposed by Franchisor in connection with the Amendment will not exceed those which Franchisor could have imposed had such change of control of Franchisee not occurred. In lieu of any transfer or application fee, Lender agrees to pay Franchisor a processing of Five Thousand Dollars (\$5,000). For the avoidance of doubt, an Equity Acquisition is not an Acquisition, and the provisions of Subparagraphs 2(a) and 2(b) shall not apply with respect to any Equity Acquisition; provided, however, that the term “Assumption” as referenced in Subparagraph 2(d) and Paragraph 10 shall also include Lender’s assumption of the rights and obligations of the Franchisee under the Franchise Agreement as of the date of the Equity Acquisition.

(d) Lender’s Sale to Third Party After Assumption. The transfer provisions of the Franchise Agreement will apply to any sale, assignment or transfer by Lender after an Assumption. If the

transfer is to a third party who desires to continue to operate the Hotel, these provisions require a change of ownership application, approval of the third party, and payment of an application fee.

3. **Notice to Franchisor**. Lender agrees to notify Franchisor (a) contemporaneously with commencement of any action that may result in an Acquisition or Equity Acquisition, (b) contemporaneously with the filing of a petition for appointment of a receiver or any other action initiated by Lender that materially impacts possession of the Hotel, (c) promptly after an Acquisition or Equity Acquisition of the date the Acquisition or Equity Acquisition occurred, or (d) promptly after Lender no longer has a security interest in the Hotel or the Loan is paid in full, but Lender's failure to give notice under this Subparagraph 3(d) will not affect the automatic termination of this letter agreement under Paragraph 14. Lender further agrees to promptly provide to Franchisor a copy of any order appointing a receiver, or any other judicial or administrative order from an action initiated by Lender that materially impacts possession of the Hotel or control of the Franchisee. All notices to Franchisor should be sent to the following address or such other address periodically designated by Franchisor in writing:

Hilton Worldwide Holdings Inc.
Attention: General Counsel
7930 Jones Branch Drive, Suite 1100
McLean, VA 22102

If Lender wishes to send a notice to Franchisor regarding securitizations, Lender may send the notice by any method described above, or by email (with read receipt confirmation) at Lender.Comfort.Letters@hilton.com or such other email address as Franchisor may periodically designate by notice to Lender.

4. **Confidentiality and Non-Disclosure**. The provisions of this letter agreement shall not be disclosed by Lender or Franchisee to any third party, excepting (a) the respective employees, directors, officers, agents, regulators or legal and financial representatives of each of Franchisee, Lender and Lender's servicers, trustees and certificate holders, on a need-to-know basis; (b) as required by law; (c) as mutually agreed to by the parties; (d) as part of any due diligence performed as a part of a sale, assignment, participation or securitization of the Loan by Lender or a sale of the Hotel after an Acquisition or Equity Acquisition; (e) any investor or potential investor in, or underwriter of, the Loan; and/or (f) any rating agency that rates securities backed by the Loan. Except as provided above, Franchisee and Lender agree not to copy, reproduce or otherwise make available in any form whatsoever to any other person, firm, corporation, or business, the provisions of this letter agreement.

5. **Franchisee Estoppel and Release**. As consideration for this letter agreement relating to the Loan:

(a) Franchisee hereby certifies to Franchisor that the Franchise Agreement is in full force and effect, and no default, claim, breach, offset, defense to full and strict enforcement, waiver, or estoppel (collectively, a "**Claim**"), or condition that could with passage of time, giving notice or otherwise become a Claim, currently exists or has existed against Franchisor under the Franchise Agreement or the Existing Comfort Letter.

(b) Franchisee hereby represents that the loan referenced in the Existing Comfort Letter has been paid in full and agrees that the Existing Comfort Letter is null and void and of no further force and effect, and Franchisor has no obligations of any kind under the Existing Comfort Letter.

(c) Franchisee hereby agrees that this letter agreement will remain in full force and effect in favor of Lender with respect to the Loan, as the Loan may periodically be modified, amended, extended, supplemented, or restated.

(d) Franchisee hereby agrees that this letter agreement was provided to Lender at Franchisee's request.

(e) Franchisee hereby fully and forever releases, discharges, and agrees to indemnify, defend, and hold harmless Franchisor, its predecessors, successors and assigns and each of their respective former and present officers, employees, directors, shareholders, partners, members, parents, subsidiaries, affiliates, alter egos, representatives, agents, and attorneys (collectively, the "**Released Parties**"), from any and all Claims, demands, liens, actions, agreements, suits, causes of action, obligations, controversies, debts, costs, attorney's fees, expenses, damages, judgments, orders, and liabilities of whatever kind or nature in law, equity, or otherwise, whether now known or suspected which have existed, may or do exist ("**Released Claims**"), based on any facts, events, or omissions occurring before the execution of this letter agreement which arise out of, concern, pertain, or relate in any way to the Franchise Agreement or the Existing Comfort Letter. Franchisee acknowledges that it may hereafter discover Claims presently unknown or unsuspected, or facts in addition to or different from those which it now knows or believes to be true, with respect to the matters released by this letter agreement. Nevertheless, Franchisee fully and finally settles and releases all such matters, and all Claims relative thereto, which do now exist, may exist or have existed between the Released Parties and Franchisee.

6. **Lender Estoppel and Release.** As consideration for this letter agreement relating to the Loan:

(a) Lender hereby certifies to Franchisor that Lender is not a Sanctioned Person. "**Sanctioned Person**" means any person, entity, or Government, including those with Control over such persons or entities, or acting on behalf of such persons or entity, who is subject to Trade Restrictions that prohibit or restrict the Parties' performance of the Parties' obligations under this agreement. "**Trade Restrictions**" means trade, economic or investment sanctions, export controls, anti-terrorism, non-proliferation, anti-money laundering and similar restrictions in force pursuant to laws, rules and regulations imposed under Laws to which the Parties are subject.

(b) Lender hereby represents and warrants in favor of Franchisor that Lender is not a Competitor of Franchisor.

(c) Lender hereby represents and warrants in favor of Franchisor that neither Lender nor any of its officers or directors own any Equity Interest in Franchisee.

(d) Lender hereby agrees that this letter agreement shall remain in full force and effect in favor of Lender with respect to the Loan, as the Loan may periodically be modified, amended, extended, supplemented or restated, without the need for further action by Lender or Franchisor.

(e) Lender hereby fully and forever releases, discharges, and agrees to indemnify, defend and hold harmless the Released Parties from any and all Released Claims by Lender based on any facts, events, or omissions occurring before the execution of this letter agreement which arise out of, concern, pertain, or relate in any way to this letter agreement.

7. **Franchisor Estoppel.** Subject to the acknowledgement by Lender that Franchisor does not own or operate the Hotel, Franchisor hereby certifies to Lender that, to Franchisor's knowledge as of the date indicated on the first page of this letter agreement, (a) the Franchise Agreement is in full force and effect, and (b) no Default currently exists under the Franchise Agreement. "**Franchisor's knowledge**" means the actual knowledge of applicable and reasonably obvious Hotel operational matters regularly reviewed by company employees who have given their attention to such matters in the ordinary course of business and does not include any investigation by those employees or others of other matters

or beyond their usual and customary reviews of the Hotel, nor does it include constructive notice of matters or information located in public or Hotel records. "**Default**" means matters which have been the subject of an actual notice of default under the Franchise Agreement and does not include matters which are or may be in process, under discussion, or otherwise addressed.

8. **Assignment.** This letter agreement may not be assigned by Lender without the written consent of Franchisor; provided, however, Franchisor's consent is not required for any assignment to:

(a) a direct or indirect subsidiary or affiliate of Lender in connection with an Acquisition or Equity Acquisition.

(b) the trustee in a securitization **if** Lender (i) directly transfers the Loan to the trustee **and** (ii) gives notice to Franchisor within thirty (30) days of the transfer, identifying the new "Lender" and the new address for notice. If Lender fully complies with the provisions of this Subparagraph, Franchisor will recognize the trustee as "Lender" under this letter agreement; but Franchisor may, in its discretion, reject any notice that is not sent by Lender or that is not sent in a timely manner in accordance with this Subparagraph.

(c) any successor administrative agent with respect to the Loan if the successor is a national bank, a state-chartered bank, commercial bank, or the U.S. branch of a foreign bank authorized to operate in the U.S., and the administrative agent identified as "Lender" under this letter agreement gives notice to Franchisor, identifying the new "Lender" and the new address for notice, within thirty (30) days of the transfer, but Franchisor may, in its discretion, reject any notice that is not sent by Lender or that is not sent in a timely manner in accordance with this Subparagraph.

(d) any subsequent holder or holders of the Loan ("**Assignee**") **if** (1) the Loan is not in default when notice is given; (2) Lender gives notice to Franchisor, identifying Assignee and the new address for notice, within thirty (30) days of the transfer; and (3) the Assignee (i) is a national bank, state-chartered bank, commercial bank, investment bank, pension fund, finance company, insurance company, or other financial institution engaged in the business of making loans or any fund managed by any of the foregoing, (ii) is not a Competitor of Franchisor, and (iii) does not own directly or indirectly, any equity interest in Franchisee or its constituent owners; provided, however, that Franchisor may, in its discretion, reject a notice if the Loan is in default when notice is given, or if the notice is not sent by Lender, or if notice is not sent in a timely manner in accordance with this Subparagraph. On receipt and acceptance of the notice, Franchisor will promptly prepare its then-current form of Assignment and Assumption Agreement ("**Assignment**") and Lender and Assignee must promptly execute and return the Assignment. Franchisor may charge a nominal fee for processing the Assignment. If there is more than one Assignee, the Assignees must (i) designate a single representative to receive notices, negotiate on behalf of and bind each Assignee in connection with this letter agreement and any assignment thereof, and (ii) acknowledge that Franchisor shall be entitled to rely on such designation and deal solely with such representative without the necessity of notifying, negotiating with, or obtaining the consent of, each Assignee.

9. **Communication with Lender.** Franchisee agrees that Franchisor may discuss with Lender or its designee the status of the Hotel, the Franchise Agreement, or any matter to which Lender is entitled to notice under the terms of this letter agreement. Franchisee agrees that the Released Parties shall not be liable to Franchisee for taking any action or providing any information required or contemplated by this letter agreement.

10. **Management.** Any change to the management company for the Hotel ("**Management**") made by Lender or a receiver before an Assumption is subject to Franchisor's prior written approval. Franchisor will use its business judgment in determining whether to approve the new Management. After an Assumption, the terms of the Franchise Agreement will govern with respect to Management, provided,

however, Lender shall not be bound by any requirements of the Franchise Agreement to manage the Hotel itself.

11. **Subordination.** Franchisor acknowledges and agrees that the Franchise Agreement, to the extent that it creates any interest in the Hotel, is and shall be subordinate to the mortgage or deed of trust of Lender placed or to be placed on the Hotel in accordance with the terms of the Loan.

12. **Collateral Assignment.** If the Franchise Agreement is being pledged by Franchisee to Lender as security for Franchisee's obligations to Lender under the Loan, issuance of this letter agreement evidences Franchisor's consent to the collateral assignment. Lender's rights in connection with the Franchise Agreement are governed by the terms and conditions in this letter agreement.

13. **Execution.** This letter agreement may be signed in counterparts, each of which will be considered an original. The parties agree to conduct the transaction by electronic means which will be initiated by Franchisor. An authorized representative of Franchisor will countersign on behalf of Franchisor when all conditions are fulfilled.

14. **Effectiveness and Termination.** This letter agreement will be effective only when Franchisor receives signatures indicating acceptance by Lender and Franchisee and Franchisor's authorized representative countersigns on the signature page. If Franchisor does not receive signed copies from Lender and Franchisee within thirty (30) days from the date indicated on the first page of this letter agreement, Franchisor's offer to enter into this letter agreement may be withdrawn. Once effective, this letter agreement will automatically terminate if (a) Lender no longer has a security interest in the Hotel or the Loan is paid in full, (b) Lender transfers the Loan to another entity unless this letter agreement is assigned in compliance with its terms, (c) Lender materially breaches this letter agreement, (d) Lender has been taken over in any manner by any state or federal agency, (e) Franchisee transfers the Franchise Agreement and the transfer results in a new franchise agreement being entered, or (f) Franchisor terminates the Franchise Agreement in accordance with the terms of this letter agreement.

15. **General.** No entity may exercise any rights as Lender under this letter agreement if the entity or any affiliate is or becomes the owner of a direct or indirect beneficial interest (except a strictly passive interest) in Franchisee, other than through the exercise of rights under the Loan. The provisions of this letter agreement are applicable only for the Hotel and the parties to this letter agreement. Issuance and execution of this letter agreement or the granting of any conditions provided in this letter agreement does not constitute an obligation on Franchisor's part to provide the same at any future date. This letter agreement sets forth the entire agreement of the parties to this letter agreement in regard to the matters addressed in this letter agreement. Capitalized terms not otherwise defined in this letter agreement shall have the meanings assigned to the term in the Franchise Agreement.

Sincerely,

HILTON FRANCHISE HOLDING LLC

Signature Blocks on Following Page

Hilo Hotel Funding LLC .

Re: Grand Nanihoa Hotel- Hilo, a DoubleTree by Hilton (Hilo, HI) – Facility No. 48258

Page 8

LENDER:

HILO HOTEL FUNDING LLC

By: _____

Name: _____

Title: _____

Accepted and agreed to _____
DATE

FRANCHISEE:

WHR, LLC

By: _____

Name: Stuart Miller

Title: _____

Accepted and agreed to _____
DATE

FRANCHISOR:

HILTON FRANCHISE HOLDING LLC

By: _____

Name: _____

Title: Authorized Signatory

Effective Date: _____

EXHIBIT D

and duly noted on Transfer Certificates of Title No. 108,763 and 106,776.

Lessor hereby consents to that certain Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing dated _____, 2022, in substantially the form attached hereto and made a part hereof as Exhibit "A", and recorded concurrently herewith in the Bureau of Conveyances and the Office of the Assistant Registrar of the Land Court of the State of Hawaii, and duly noted on Transfer Certificates of Title No. 108,763 and 106,776 (the "Leasehold Mortgage"), executed by Lessee for the benefit of [Hilo Hotel Funding LLC], a Delaware limited liability company, as administrative agent for the lenders from time to time a party to the Loan (together with their successors and assigns, "Lender"), which secures that certain loan (the "Loan") from Lender to Lessee, which Leasehold Mortgage encumbers the "Property" (as defined in the Leasehold Mortgage and which includes the Resort Site (as defined in the Lease), the Golf Course and Allied Facilities Site (as defined in the Lease), the buildings and the Improvements (as defined in the Leasehold Mortgage) located thereon). The Leasehold Mortgage is an "Authorized Mortgage" under the Lease and Lender is an "Authorized Mortgagee" under the Lease.

This Consent shall serve as evidence that Lessor has received a copy of each of the Leasehold Mortgage and the notice address of Lender for purposes of the notices under the Lease shall be sent to Sculptor Real Estate, Attention: Real Estate Asset Management, 9 West 57th Street, New York, New York 10019 or such other address as Lender may designate to Lessor.

Lessor hereby confirms that:

(a) Lessor shall not agree to any mutual termination or cancellation or accept any surrender of the Lease, except upon the expiration of the term of the Lease or its termination pursuant to any express provision of the Lease, nor shall any material amendment, alteration or modification of the Lease (including, without limitation, any amendment or other modification to the economic terms of the Lease, any provisions addressed in this Consent, any provisions relating to Lender's rights under the Lease, the term of the Lease and/or any material increase in Lessee's obligations or material decrease in Lessee's rights under the Lease) be binding upon Lender or any purchaser in foreclosure from Lender, unless Lender has given its prior written consent to such amendment or modification;

(b) The Loan or any portion thereof may be transferred or assigned without the consent of Lessor and any such transferee or assignee shall also be deemed an "Authorized Mortgagee" under the Lease;

(c) Until the Loan has been paid in full, Lessor will not exercise any lien rights it may have pursuant to Section 19 of the Lease on any buildings and improvements owned or placed on the Property by Lessee, any property kept or used on the Property, or any sublease rents of the improvements and buildings located on the Property; provided, however, that the foregoing shall in no way affect Lessor's reversionary interest in the Property as a result of, among other things, expiration of the lease term or earlier termination of the lease;

(d) With respect to Section 20.d. of the Lease, any new ground lease entered into between Lessor and any successor Lessee, Lessor shall assign to the successor Lessee all space leases and subleases under which the tenants have attorned to Lessor (if any), with the consent of Lender, within 10 days following execution of the new ground lease; and

(e) The renting of rooms in the ordinary course of Lessee's business does not constitute renting or subletting for purposes of Section 14 of the Lease.

Lessor hereby certifies that, to the best of its knowledge, the following statements are true and correct, recognizing that Lender and its successors and assigns will rely on such statements:

(1) As of the date of execution of this document, Lessee is the current lessee under the Lease;

(2) As of the Effective Date, the following events have occurred which with the passage of time or the giving of notice may constitute a default: NONE

(3) Except as set forth in Paragraph (2) above, as far as Lessor is aware, the Lessee is not in default in any respect as of this date nor has any event occurred which with the passage of time or the giving of notice would constitute a default;

(4) Except as set forth in Paragraph (2) above, there are no claims for damages, rents due, or other liability which

Lessor is aware of against Lessee arising out of the Lease or performance of the terms, covenants or conditions of the Lease;

(5) The Lease is in full force and effect and has not been modified, supplemented, extended or amended as of this date;

(6) As of the date hereof, no Base Rent is due from Lessee under the Lease. The Base Rent currently payable by Lessee under the Lease is \$580,270.44 per annum. Base Rent due under the Lease has been paid through January 31, 2022; and

(7) The term of the Lease commenced on February 1, 2006, and expires on January 31, 2071, unless sooner terminated as provided in the Lease.

[Signature Page to Follow]

IN WITNESS WHEREOF, the STATE OF HAWAII, by the Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this ____ day of _____, 2022.

STATE OF HAWAII

Approved by the Board
of Land and Natural
Resources at its meeting
held on _____, 2022.

By

SUZANNE D. CASE
Chairperson
Board of Land and
Natural Resources

APPROVED AS TO FORM:

JULIE H. CHINA
Deputy Attorney General

Dated: _____

EXHIBIT E



EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)
6/3/2022

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

PRODUCER NAME, CONTACT PERSON AND ADDRESS Lockton Insurance Brokers, LLC 777 S. Figueroa Street, 52nd Fl. CA License #0F15767 Los Angeles CA 90017		PHONE (A/C, No, Ext): (213) 689-0065		COMPANY NAME AND ADDRESS Landmark American Insurance Company		NAIC NO: 33138
FAX (A/C, No): (213) 689-0550		E-MAIL ADDRESS:		IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH		
CODE:		SUB CODE:		POLICY TYPE Property		
AGENCY CUSTOMER ID #:		NAMED INSURED AND ADDRESS WHR, LLC 1110460 93 Banyan Drive Hilo HI 96720		LOAN NUMBER		POLICY NUMBER LHD428654
ADDITIONAL NAMED INSURED(S)		EFFECTIVE DATE 6/1/2022		EXPIRATION DATE 6/1/2023		<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:						

PROPERTY INFORMATION (ACORD 101 may be attached if more space is required) BUILDING OR BUSINESS PERSONAL PROPERTY

LOCATION / DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION		PERILS INSURED		<input type="checkbox"/> BASIC	<input type="checkbox"/> BROAD	<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> All Risk
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$ 93,322,150		DED: 50,000					
<input checked="" type="checkbox"/> BUSINESS INCOME <input type="checkbox"/> RENTAL VALUE		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A	IF YES, LIMIT:		<input checked="" type="checkbox"/> Actual Loss Sustained; # of months: 18		
BLANKET COVERAGE		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, indicate value(s) reported on property identified above: \$				
TERRORISM COVERAGE		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Attach Disclosure Notice / DEC				
IS THERE A TERRORISM-SPECIFIC EXCLUSION?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
IS DOMESTIC TERRORISM EXCLUDED?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
LIMITED FUNGUS COVERAGE		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, LIMIT: 100,000		DED: 50,000		
FUNGUS EXCLUSION (If "YES", specify organization's form used)		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Limit to \$100,000				
REPLACEMENT COST		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					
AGREED VALUE		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					
COINSURANCE		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, %				
EQUIPMENT BREAKDOWN (If Applicable)		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, LIMIT: 93,322,150		DED: 10,000		
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, LIMIT: 93,322,150		DED: 50,000		
- Demolition Costs		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, LIMIT: 10,000,000		DED: 50,000		
- Incr. Cost of Construction		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, LIMIT: 10,000,000		DED: 50,000		
EARTH MOVEMENT (If Applicable)		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, LIMIT: 17,000,000		DED: 5%/Min		
FLOOD (If Applicable)		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, LIMIT: 18,000,000		DED: 100,000		
WIND / HAIL INCL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, LIMIT: Included		DED:		
NAMED STORM INCL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, LIMIT: 20,000,000		DED: 5%/Min		
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST		<input type="checkbox"/> CONTRACT OF SALE <input type="checkbox"/> LENDER'S LOSS PAYABLE <input checked="" type="checkbox"/> LOSS PAYEE		LENDER SERVICING AGENT NAME AND ADDRESS	
<input checked="" type="checkbox"/> MORTGAGEE					
NAME AND ADDRESS 784745 Wells Fargo Bank, N.A. as Master Servicer D1118-02W 1525 West W.T. Harris Blvd. Charlotte NC 28262				AUTHORIZED REPRESENTATIVE 