

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 9, 2022

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

GL S-5844

Hawai'i

Deny Lessee's Request for Consent to Mortgage with Estoppel Certificate and Pledge and Security Agreement, General Lease No. S-5844, WHR LLC, Lessee; Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-1-01:012 and 2-1-05:013, 016, 017, 027, 032, and 046

APPLICANT AND REQUEST:

WHR LLC, requesting consent to mortgage from Hilo Hotel Funding LLC, Mortgagee, in an amount not to exceed \$62,000,000.

LEGAL REFERENCE:

Chapter 171, Hawaii Revised Statutes, as amended (HRS), including but not limited to sections 171-6, and -22; terms and conditions of the subject lease.

LOCATION:

Portion of Government lands situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-01:012 and 2-1-05:013, 016, 017, 027, 032, and 046, as shown on the attached map labeled Exhibit 1.

AREA:

68.926 acres (net area after exclusions), more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Hotel and golf course purposes.

TERM OF LEASE:

65 years, commencing on February 1, 2006 and expiring on January 31, 2071.

ANNUAL RENTAL:

\$580,270.44 minimum base rent, or 2% of gross revenues, whichever is greater, due in semi-annual payments.

USE OF LOAN PROCEEDS:

Lessee WHR LLC has indicated it needs to pay off the current mortgagee with a new \$62 million loan and mortgage from a different lender on the leasehold premises. The loan proceeds will be used to pay off the current loan in the amount of approximately \$50 million with the additional \$12 million presumably to pay¹ the delinquent amounts for principal and interest, any penalties and late fees, attorneys' fees and costs and \$1.24 million for loan fees and closing costs.

BACKGROUND ON LEASE DEFAULTS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources (Board) at its meeting of January 11, 1980 and the breach provision contained in General Lease S-5844, WHR LLC, Lessee (Lessee), was served a Notice of Default by certified mail dated November 5, 2020 for:

X **Failure to keep lease rental payments current
(\$290,135.22 lease rent 8/01/2020 – 1/31/2021) plus late fees and interest
charges**

___ Failure to post required performance bond

___ Failure to post required fire insurance policy

___ Failure to post required liability insurance policy

Said notice for lease rent, accepted by the Lessee on November 10, 2020, offered the Lessee a thirty-day cure period to correct the default. This cure period expired on December 10, 2020.

Lessee was served a second Notice of Default by certified mail dated January 19, 2021

¹ The lessee/applicant did not articulate the breakdown the additional \$12 million, except for the \$1.24 million in loan fees and closing costs. The existing mortgage of record is \$50 million as described in the title report. The new loan and mortgage will pay of the existing mortgage, and possibly other debt or obligations of the Lessee, such as those who filed a lawsuit against Naniloa management that is mentioned later in this memorandum.

for:

- ☐ Failure to keep lease rental payments current
- ☒ **Failure to post required performance bond
(Expired: 11/07/2020)**
- ☐ Failure to post required fire insurance policy
- ☐ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on January 25, 2021, offered the Lessee a sixty-day cure period to correct the default. This cure period expired on March 25, 2021.

A third Notice of Default was served by certified mail dated, April 30, 2021, for:

- ☒ **Failure to keep lease rental payments current
(\$290,135.22 lease rent 2/01/2021 – 7/31/2021) plus late fees and interest charges**
- ☐ Failure to post required performance bond
- ☐ Failure to post required fire insurance policy
- ☐ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on May 3, 2021, offered the Lessee a thirty-day cure period to correct the default. This cure period expired on June 2, 2021.

Lengthy negotiations followed the issuance of these Notices of Default culminating in a proposed settlement that was approved, as amended, by the Board at its meeting of May 28, 2021, under agenda Item D-4. Specifically, the Board waived of two months' interest and late fees and gave Lessee until June 4, 2021 to bring its rent and remaining interest and late fees current. The Board also gave Lessee until June 30, 2021 to post its performance bond. The approved Board action specified that if Lessee missed either deadline, the lease would be forfeited. Lessee brought the rent current (with interest and late fees) on June 3, 2021 and posted the required performance bond on June 23, 2021.

By email dated January 21, 2022, Lessee requested that it be allowed to pay its semi-annual lease payment in the amount of \$290,135.22 due on February 1, 2022 in six monthly installments from February 1 to July 1, 2022, instead of a full payment on February 1, 2022. At its meeting of February 25, 2022, under agenda Item D-1, the Board approved Lessee's request to pay rent in monthly installments. However, Lessee failed to make its March 1, 2022 rental payment under the approved monthly schedule and a fourth Notice of Default was served by certified mail dated March 4, 2022, for:

- ☒ **Failure to keep lease rental payments current**

(\$50,062.36 lease rent 3/01/2022 – 3/31/2022) plus late fees and interest charges.

- ___ Failure to post required performance bond
- ___ Failure to post required fire insurance policy
- ___ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on March 7, 2022, offered the Lessee a thirty-day cure period to correct the default. On March 28, 2022, Lessee paid the full semi-annual installment under the lease explaining it no longer needed to make the monthly payments the Board approved.

As of May 19, 2022, the status of all lease compliance items is as follows:

RENT: The Lessee is current with all rent obligations.

INSURANCE:
The Lessee has posted the required liability and fire insurance policy.

PERFORMANCE BOND:
The Lessee has posted the required performance bond, but staff notes that it is scheduled to expire on May 31, 2022.

In addition to the defaults noted above, in the past three years default notices have been sent to General Lease No. S-5844 on two other occasions as indicated in the table below. Copies of the default notices were sent to the mortgagee via regular mail.

| DATE | TYPE OF DEFAULT | RESULT |
|----------|--|--|
| 6/25/18 | Unauthorized improvements ² | 7/17/18 improvements were removed |
| 11/13/20 | Delinquent Wastewater account | 12/28/20 – Repayment plan w/County of Hawaii Wastewater Branch |

REMARKS:

In 2018, Wells Fargo Bank, National Association (Wells Fargo) approved a \$50 million loan and mortgage to Lessee. Only a portion of the loan proceeds was used to pay off the existing construction loan and mortgage in the amount of approximately \$18.5 million and an equipment financing loan in the amount of approximately \$2 million; although

² On 6/18/18, County of Hawaii, Planning Department notified the Hawaii District Land Office of a SMA violation resulting from the construction of a large deck along the shoreline fronting the Hula Hula restaurant. This action triggered a Notice of Default with the lease.

staff had inquired, the Lessee refused to disclose what the roughly \$29.5 million would be used for, or where it was going. Nevertheless, the Board consented to this new \$50 million loan and mortgage on Naniloa Hotel's leasehold that allowed the Lessee to pull \$29.5 million cash for other purposes.³

After obtaining the consent to the Wells Fargo mortgage in 2018, Lessee went into default under the lease multiple times as shown in the foregoing section of this submittal for failure to keep rent current and maintain a performance bond. On December 6, 2021, Wilmington Trust National Association as Trustee for the Benefit of the Holders of Bank 2018-BNK14, Commercial Mortgage Series 2018-BNK14 (Wilmington Trust) filed a foreclosure action against Lessee for default on the Wells Fargo loan.⁴ The Ed Olson through Olson/Naniloa LLC also filed suit against the Naniloa management (Ed Bushor and Stuart Miller) on September 21, 2021 for inter alia, allegedly breaching the operating agreement for WHR LLC and fiduciary duties owed to its members by submitting proposals to redevelop the former Uncle Billy's Hilo Bay Hotel and former Country Club Condominium Hotel near the Naniloa Hotel and in competition with it.

Lessee is now requesting the Board's expedited consent to a new mortgage to be granted by Lessee to Hilo Hotel Funding LLC (HHF) by or before May 27, 2022. According to the Lessee, the proceeds of the new mortgage loan from HHF would be used to pay off the existing mortgage loan, currently held by Wilmington Trust, on the subject property by May 31, 2022 to avoid the sale of the lease in foreclosure and the commencement of bankruptcy proceedings involving Lessee. According to Lessee, the existing loan has gone into default due to losses the hotel on the property experienced from the many COVID-19-induced shutdowns and travel industry reductions. Thus, Lessee is requesting the Consent to Mortgage of General Lease No. S-5844 with Estoppel Certificate and Pledge and Security Agreement be approved by May 27, 2022 to allow closing of the HHF loan by May 31, 2022.

According to the mortgage consent application submitted by the agent for the Lessee,⁵ the initial term of the loan is for twenty-four (24) months. Lessee has the option to extend the term for two twelve (12) month periods subject to certain conditions. The interest rate will be comprised of (a) current interest of Index + 725 basis points and (b) paid-in-kind interest of 4.5%, both calculated on an actual/360 convention, with interest payments due and payable (or compounding) on a monthly basis. The "Index" is equal to the greater of (a) one-month Term SOFR (as recommended by the Federal Reserve Bank of New York) and (b) 25 basis points. Collateral: Lessee will secure its obligations to HHF with, among other things, (i) a recorded and insured leasehold mortgage on the property, (ii) a pledge from Lessee's members of all of the membership interests in WHR LLC. Staff has not been able to review the actual loan agreement and therefore unable to ascertain the actual amount the Lessee will be paying on this note, but by staff's

3 Board meeting of August 10, 2018, under agenda Item D-1, as amended, the Board consented to a mortgage of the leasehold interest in the subject property from WHR LLC (Lessee) to Wells Fargo Bank, National Association (Wells Fargo) in the amount of up to \$55 million in part to refinance the renovation costs of the Grand Naniloa Hotel Hilo. The Board additionally approved the issuance of an Estoppel Certificate/Forbearance Agreement to facilitate the loan from Wells Fargo.

4 The mortgage was assigned from Wells Fargo to Wilmington Trust.

5 The application for consent to mortgage was submitted to Land Division by email on Tuesday, May 17, 2022 at 7:04 P.M.

calculations the interest rate will be over 12% per annum⁶ for two years with over \$1.24 million in closing costs.

Staff notes that the proposed transaction is an extremely short-term bailout type loan on a distressed property (not merely a threat of foreclosure but in an actual foreclosure action) on distressed terms (high adjustable interest rates in a climbing interest rate market). The foreclosure action has already been filed, and there is a pending motion for receivership—meaning appointing a receiver to operate the hotel under Court supervision.

As part of the loan transaction, HHF is requiring a Pledge and Security Agreement (PSA). This document basically puts up the membership interests in Lessee (a Hawaii limited liability company) as collateral for the HHF loan. The PSA requires the membership interests be accompanied by duly executed instruments of transfer or assignment in blank. If Lessee were to default on the HHF loan, the ownership of Lessee could change instantly without the Board having any information on the new owners of Lessee. This is inconsistent with the lease for the property that requires prior written consent of the Board for lease assignments or transfers of interests of 20% or more in lessees that are entities, and also evades the lease assignment premium analysis that determines whether the parties to the transaction owe a premium to the State.

The current market conditions are not suitable for a short-term jumbo loan/mortgage on distressed real estate in foreclosure proceedings.⁷ In recent past, Lessee/debtor has had difficulty keeping current on the State's lease payments; and the terms and conditions of the proposed new \$62 million loan and mortgage are likely less favorable than the existing \$50 million loan and mortgage, which may result in the Lessee/debtor having more difficulty in keeping current on the new loan/mortgage or the State lease, or both. Two significant investors into the Naniloa Hotel venture,⁸ the Wells Fargo/Wilmington Trust and the Olson/Naniloa LLC⁹ filed separate lawsuits against management asserting various claims such as breach of fiduciary duty, breach of contract, loan acceleration and foreclosure. A single large investor, Wells Fargo/Wilmington Trust at \$50+ million, apparently wants out, but wants its money back first. Accordingly, staff does not believe it is in the State's best interest to allow the Lessee/debtor to further encumber and mortgage State public trust lands with more and higher debt, especially since the Lessee/debtor is already in foreclosure and on the verge of bankruptcy. Whether in either

6 Without reviewing the loan agreement, it is unclear how often the one-month SOFR will adjust, whether monthly or sooner. Staff understands the SOFR is published daily. Interest rates are expected to climb at least in the near future.

7 As noted above, the proposed new \$62 million loan and mortgage is very short term, with a high variable interest rate in a climbing interest rate market.

8 The Naniloa Hotel venture refers to the Naniloa Hotel that is leased by WHR LLC, a limited liability company (LLC) that is affiliated, owned, managed, or operated by various member/owners that are also LLCs or entities, who likewise may be affiliated, owned, managed, or operated by other entities such as another LLC, corporation, partnership, association, or individuals.

9 According to the Operating Agreement attached to the First Amended Complaint, Olson/Naniloa LLC contributed **\$7.6 million** and owns **35.48% of class A membership** into WHR, and the remaining 64.51% of class A membership is owned by Tower Hotels Fund LLC. Class A and Class B members each own a 50% interest in WHR, with Class A contributing capital and Class B apparently contributing services and guarantees. A copy of the WHR LLC Operating Agreement (copied from the First Amended Complaint filed in the Olson/Naniloa LLC lawsuit on September 23, 2021) is attached as Exhibit 2 and includes a list of membership interests in WHR LLC at Exhibit A thereto.

foreclosure or bankruptcy proceedings, the State would be better off with the existing \$50 million loan/mortgage encumbering the leasehold than \$62 million encumbering the leasehold. For the foregoing reasons staff is unable to recommend that the Board consent to the requested mortgage, estoppel certificate or PSA.

RECOMMENDATION:

That the Board deny the request for consent to the mortgage between WHR LLC, Lessee/Mortgagor, and Hilo Hotel Funding LLC, Mortgagee, and deny the request for Estoppel Certificate and Pledge and Security Agreement.

Respectfully Submitted,

Russell Tsuji

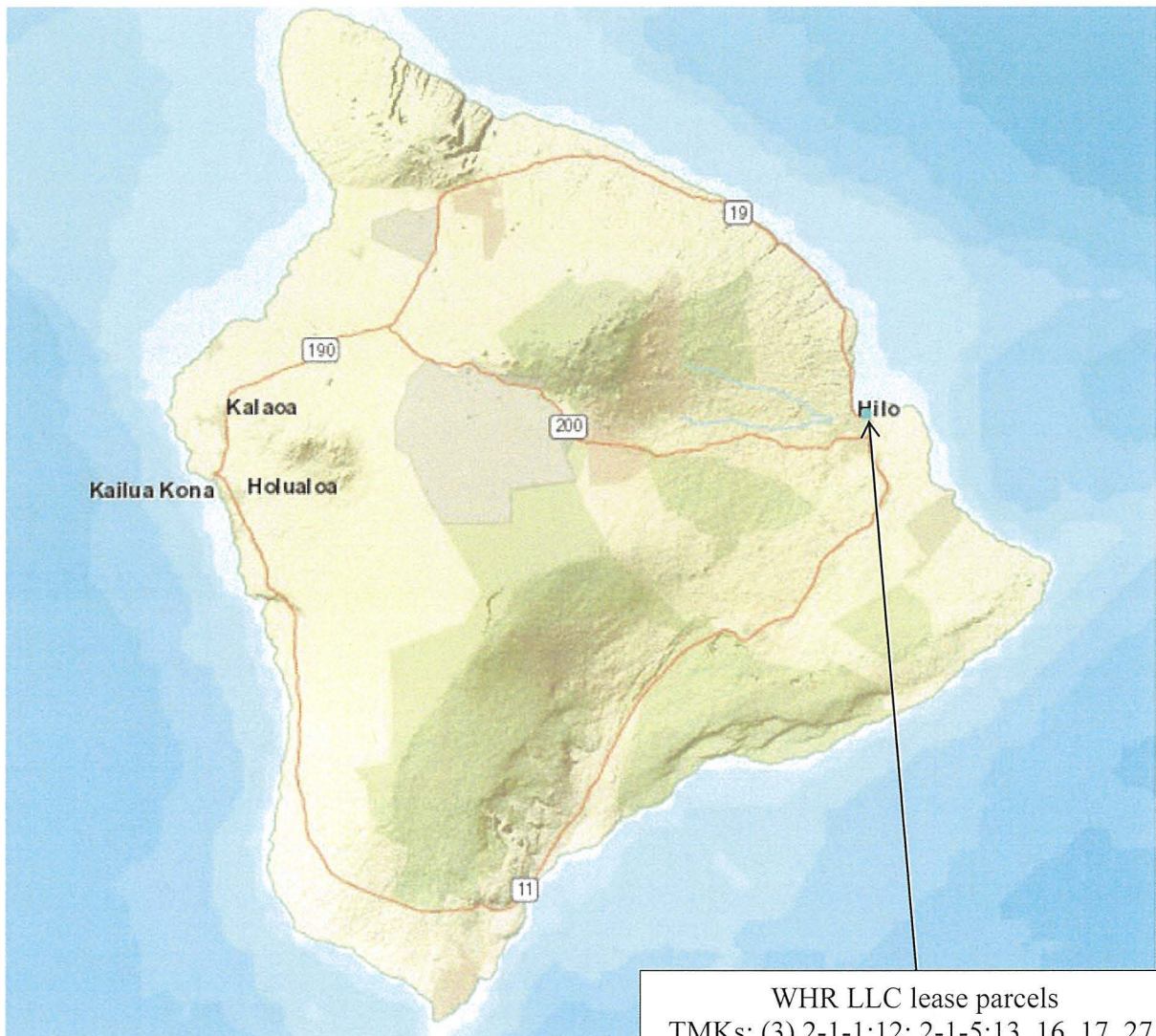
Russell Y. Tsuji
Administrator

APPROVED FOR SUBMITTAL:

Suzanne D. Case

Suzanne D. Case, Chairperson

EXHIBIT 1



WHR LLC lease parcels
TMKs: (3) 2-1-1:12; 2-1-5:13, 16, 17, 27,
32 & 46

EXHIBIT 1



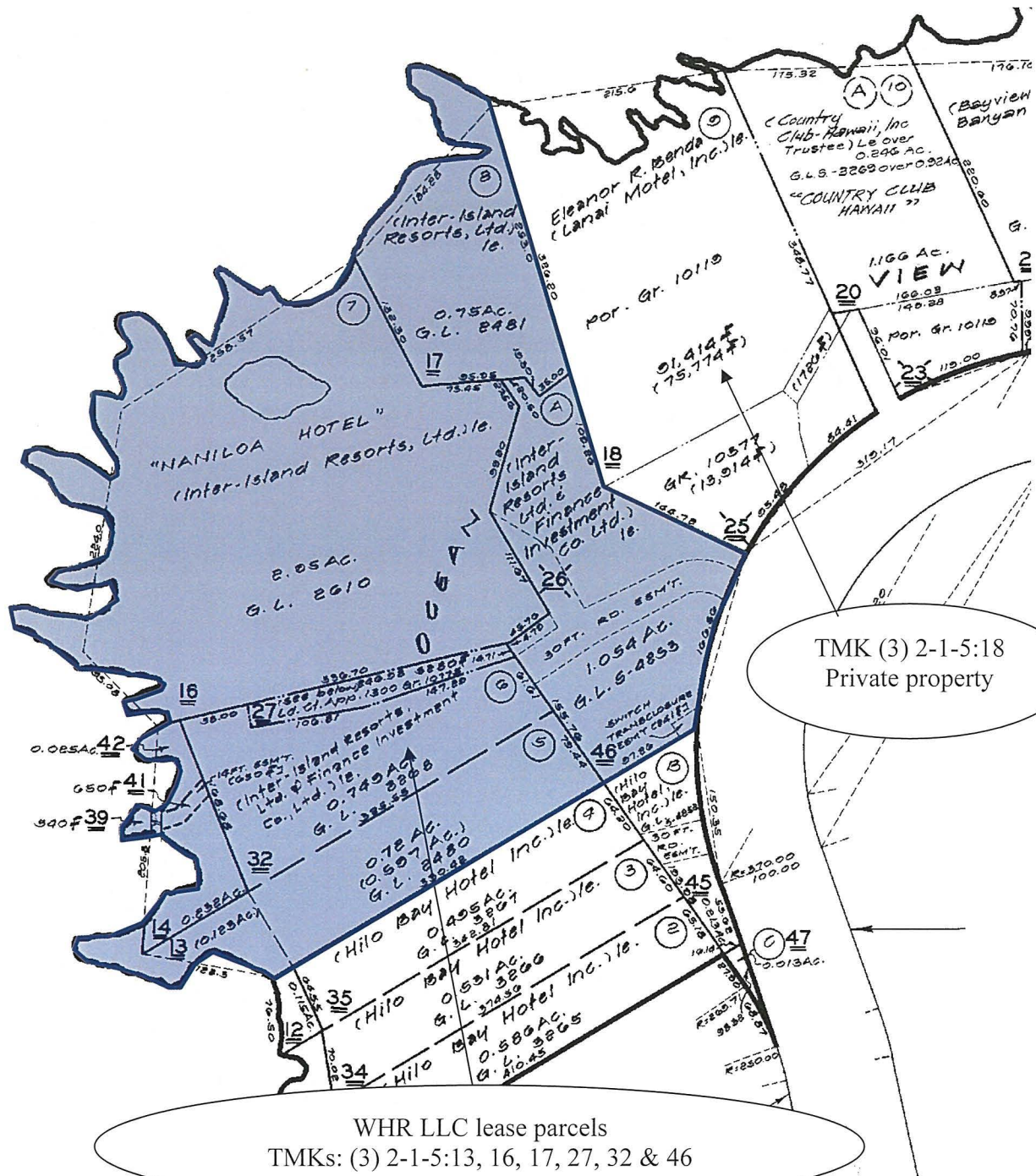


EXHIBIT 2

AMENDED AND RESTATED OPERATING AGREEMENT

OF

WHR LLC
A HAWAII LIMITED LIABILITY COMPANY

Effective as of

August 28, 2018

EXHIBIT 2

**AMENDED AND RESTATED OPERATING AGREEMENT
OF
WHR LLC**

THIS AMENDED AND RESTATED OPERATING AGREEMENT of WHR LLC ("Agreement") is entered into effective as of August 28, 2018 (the "Effective Date"), by the Managers and Members who are signatories to this Agreement.

RECITALS

A. Tower Development, Inc. ("Tower Development"), as the original Manager, and Olson/Nanihoa LLC and Tower Hotels Fund 2013, LLC ("Tower Fund"), as the original Members, caused or consented to the organization of WHR LLC (the "LLC" or the "Company") on or about November 18, 2013, pursuant to the provisions of the Hawaii Uniform Limited Liability Company Act, Chapter 428 of the Hawaii Revised Statutes (the "Statute").

B. The initial Articles of Organization for WHR LLC ("Original Articles") were filed with the Director (as defined below) on November 18, 2013.

C. On or about July 16, 2015, the Managers and Members who are signatories to this Agreement executed that certain Restated Operating Agreement pursuant to which (1) the Manager and Members agreed to certain admissions and transfers such that the LLC Interests are as set forth on Exhibit A attached hereto; and (2) the Members appointed Tower Development, Inc. and Tower Hotels Hilo LLC as Managers (the "Restated Operating Agreement").

D. The Managers and Members who are signatories to this Agreement now desire to amend and restate the Restated Operating Agreement to, among other things, include Special Purpose Provisions (in Article 17 hereof) in connection with that certain permanent loan ("Loan") being processed from Wells Fargo Bank, N.A. ("Lender") in favor of the Company, wherein Edward L. Bushor and Stuart L. Miller (individually or collectively referenced herein as the sole "Guarantor(s)") are being required by Lender to provide personal guaranty obligations ("Guaranty") in favor of Lender as a condition to closing of the Loan in favor of Lender.

E. As of the Effective Date, the Managers and Members hereby adopt this Agreement as the operating agreement of the LLC.

NOW, THEREFORE, in consideration of the covenants and the promises made herein, the Members agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Adjusted Capital Account Deficit. "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's

Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

1.1.1 increase such Capital Account by any amounts which such Member contributes to the LLC (pursuant to the terms of this Agreement or otherwise) or is deemed to be obligated to contribute to the LLC pursuant to Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

1.1.2 reduce such Capital Account by the amount of the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

1.2 Affiliate. “Affiliate” means, when used with reference to a specified Person, (i) the Principal of the Person, (ii) any Person directly or indirectly controlling, controlled by or under common control with such Person, (iii) any Person owning or controlling 10% or more of the outstanding voting interests of such Person, and (iv) any relative or spouse of such Person.

1.3 Agreement. “Agreement” means this Amended and Restated Operating Agreement dated as of August 28, 2018, as originally executed, and as amended from time to time, as the context requires. Words such as “herein,” “hereinafter,” “hereto,” “hereby” and “hereunder,” when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

1.4 AFR. “AFR” stands for Applicable Federal Rate and has the meaning set forth in Section 11.6.

1.5 Restated Operating Agreement. “Restated Operating Agreement” means that certain Limited Liability Company Restated Operating Agreement dated July 16, 2015.

1.6 Approved Budget. “Approved Budget” has the meaning set forth in Section 6.10.2.

1.7 Annual Budget. “Annual Budget” has the meaning set forth in Section 6.10.1.

1.8 Articles of Organization. “Articles of Organization” or “Articles” means the articles of organization filed with the Director for the purpose of forming the LLC, as the same may be amended or restated from time to time.

1.9 Budget. “Budget” has the meaning set forth in Section 6.10.1.

1.10 Business of the LLC. “Business of the LLC” shall be in accordance with the Business Plan pertaining to the ownership and operation of the Hilo Naniloa Hotel as a soft branded hotel (Doubletree by Hilton).

1.11 Business Plan. “Business Plan” is the business plan adopted by the LLC pertaining to the ownership and operation of the Hilo Naniloa Hotel as a soft branded

hotel (Doubletree by Hilton), as the same may be amended or modified from time-to-time, which as of the date of this Agreement includes: (i) operating a Doubletree by Hilton consistent with this Agreement and the Hotel Management Agreement dated as of December 29, 2017 ("HMA"); (ii) entering into the Loan Documents identified in Section 17; (iii) operating the Property consistent with the operating leases in place, including: (a) Access Point Financial, Inc. Master Equipment Lease dated as of January 21, 2016, (b) Pacific Waste, Inc. Trash Compactor Lease dated January 4, 2018, and (c) Life Fitness Leases dated January 26, 2016, and May 18, 2016; (iv) entering into that certain Hotel Restaurant Lease dated as of September 1, 2018 ("Restaurant Lease") and the Restaurant Management Agreement which shall be dated as of September 1, 2018 ("RMA"); and (v) Solar Phase I agreements including without limitation the Solar Phase 1 Lease Agreement and related Power Purchase Agreement for future solar project anticipated to be completed in the future (note, work has not commenced under these agreements and is still in the permitting process) ("Solar Phase I Agreements").

1.12 Capital Account. "Capital Account" of a Unit holder shall have the meaning set forth in Section 3.5.3.

1.13 Capital Contribution. "Capital Contribution" means the total amount of cash and the agreed fair market value (net of liabilities) of any property contributed to the LLC by a Member and any subsequent contributions of cash and the agreed fair market value (net of liabilities) of any other property subsequently contributed to the LLC by that Member.

1.14 Capital Proceeds. "Capital Proceeds" means all proceeds from a Capital Transaction less (i) the amount of such proceeds used to pay debts, liabilities and obligations of the LLC related to the Capital Transaction, if any, and (ii) an amount not less than one-half percent (1/2%) of the Capital Proceeds to be distributed to the Members to be set aside and donated to charities providing services in Hilo or Hawaii County in the amount and for the purposes determined by the Decision of the Managers; provided, however, if Capital Proceeds result from a Sale or other disposition of all or substantially all of the Property followed by a liquidation of the LLC, such proceeds shall be treated as Liquidation Proceeds.

1.15 Capital Transaction. "Capital Transaction" means any Sale or other disposition of all or any substantial portion of the Property (including without limitation any portion of the Real Property) and any recovery of damage awards, condemnation awards (or payments received as a result of a transfer under threat of or in lieu of condemnation) and/or insurance proceeds pertaining to demolition, destruction and/or condemnation by any governmental body of all or any substantial portion of the Property (including without limitation any portion of the Real Property).

1.16 Cash Flow From Operations. "Cash Flow From Operations" means all funds received by or on behalf of the LLC (other than Capital Proceeds, Liquidation Proceeds or Refinancing Proceeds), less (i) the amount of such funds used to pay, or

set aside as reserves to pay, all expenses and expenditures of the LLC (other than non-cash expenses such as depreciation and amortization), including without limitation debt service payments (including interest and principal) and operating expenses and (ii) an amount not less than one percent (1%) of the Cash Flow from Operations to be distributed to the Members to be set aside and donated to charities providing services in Hilo or Hawaii County in the amount and for the purposes determined by the Decision of the Managers.

1.17 Intentionally Left Blank.

1.18 Class A Members. "Class A Members" means the Class A Members listed on Exhibit A attached hereto and incorporated herein.

1.19 Class B Members. "Class B Members" means the Class B Members identified on Exhibit A.

1.20 Intentionally Left Blank.

1.21 Class A Interests. "Class A Interests" means the LLC Interests owned by the Class A Members.

1.22 Class B Units/Interest. "Class B Units" or "Class B Interests" means the Class B Units/LLC Interests owned by the Class B Members.

1.23 Intentionally Left Blank.

1.24 Code. "Code" means the Internal Revenue Code of 1986, as amended (or any corresponding provision or provisions of any succeeding law).

1.25 Company. "Company" means WHR LLC, a Hawaii limited liability company.

1.26 Conflict Person. "Conflict Person" means a business that any Member, Manager, Development Manager or Affiliate or Principal of a Member, Manager or Development Manager (collectively, "Related Person") owns (in whole or in part), operates or controls (in whole or in part) providing any goods or services to the LLC, now or in the future. Notwithstanding anything in this Agreement to the contrary, contracts with a Conflict Company shall require a Vote of the Members unless the Development Manager reasonably determines, in writing, that the contract with the Conflict Company is consistent with the Business Plan and is included in the Approved Budget, is commercially reasonable in all respects, including, without limitation, fair market rates for compensation, and is in the best interests of the LLC. As of the date hereof, Members acknowledge that Conflict Persons include, without limitation, the following companies: (a) hotel companies and other companies using the name of marine artist named Wyland, any Wyland named companies or business that are owned or controlled by a Related Person and any company holding the Wyland trade name, service names and/or marks; (b) the entertainment company, Hulapalooza LLC,

or any other company owned or controlled by a Related Person with respect to the operation of a Willie K concert venue, bar, eatery and/or lounge; (c) Molinar Construction and its affiliate construction companies in Hawaii; (d) hotel businesses using the name "The Museum Resorts"; (e) hotel company Tower Hotels LLC, which may in the future have other development and management business in the hotel industry; and (f) real estate brokerage services by Tower Commercial LLC.

1.27 Day-to-Day Operations. "Day-to-day Operations" has the meaning set forth in Section 6.1.2.

1.28 Decisions. "Decisions" shall mean decisions regarding: (1) general business plan matters that are not already approved in the Business Plan and/or modifications to the Business Plan; (2) matters that increase or decrease the Approved Budget; (3) matters that materially modify the hotel management operations; and (4) any other decisions to be made by the Managers hereunder, including, without limitation, the matters set forth in Section 6.4; provided, however, the term "Decisions" shall exclude the Day-to-Day Operations, the oversight and decision making for which is vested, and is to be made by, the Development Manager, on a day-to-day basis, subject to and in accordance with the terms, conditions and limitations set forth in this Agreement, including, without limitation, Section 6.3 below. "Decisions" shall require the unanimous approval of the Managers.

1.29 Defaulting Member. "Defaulting Member" has the meaning set forth in Section 3.10.

1.30 Development Manager. "Development Manager" means the Person selected by a Decision of the Managers to perform the Day-to-Day Operations in accordance with the terms, conditions and limitations contained in this Agreement. The initial Development Manager appointed by the Managers is Tower Development, Inc., as set forth in Section 6.1.2.

1.31 Dilution Date. "Dilution Date" has the meaning set forth in Section 3.10.

1.32 Director. "Director" means the director of the Department of Commerce and Consumer Affairs, State of Hawaii.

1.33 Disability. "Disability" or "Disabled" means a physical or mental impairment that renders an individual unable, for a period of 30 consecutive days, to perform the day-to-day, or usual, working activities engaged in by such individual prior to such impairment.

1.34 Disassociation Event. "Disassociation Event" means with respect to any Member one or more of the following: the bankruptcy or dissolution of such Member or occurrence of any other event which under law or hereunder terminates such Person's continued membership right in the LLC.

1.35 Dissolution. “Dissolution” means (i) when used with reference to the LLC, the earlier of (a) the date upon which the LLC is terminated under the Statute, or (b) the date upon which the LLC ceases to be a going concern, and (ii) when used with reference to any Member, the earlier of (a) the date upon which there is a Dissolution of the such Member or (b) the date upon which such Member’s entire interest in the LLC is terminated by means of a distribution or series of distributions by the LLC to such Member.

1.36 Distribution. “Distribution” means the transfer of money or property by the LLC to its Members without consideration.

1.37 Economic Interest. “Economic Interest” means a Person’s right to share in allocations of, and to receive distributions from, the LLC, but does not include any other rights of a Member, including, without limitation, the right to vote or to participate in the management of the LLC, or any right to information concerning the business and affairs of the LLC.

1.38 Effective Date. “Effective Date” is the date that is concurrent with the Lender Loan closing contemplated hereunder, which is anticipated for August 28, 2018.

1.39 Event of Default. “Event of Default” has the meaning set forth in Section 6.9.

1.40 Fiscal Year. “Fiscal Year” means the period beginning January 1 to and including December 31.

1.41 Former Member. “Former Member” has the meaning set forth in Section 11.2.

1.42 General Contractor. “General Contractor” has the meaning set forth in Section 6.15.1.6.

1.43 Grand Naniloa Hotel. “Grand Naniloa Hotel, a DoubleTree by Hilton” is the present name of the hotel and golf project, and has the meaning set forth in Section 2.7.

1.44 Indemnitee. “Indemnitee” has the meaning set forth in Section 12.1.

1.45 Intentionally Left Blank.

1.46 Intentionally Left Blank.

1.47 Intentionally Left Blank.

1.48 Lender. “Lender” has the meaning set forth in first paragraph of Article 17.

1.49 Licensed Rights. “Licensed Rights” shall mean any licensed rights granted under any license agreement granting use of any third party licensor trade and service marks, and/or any other hotel trade name and service marks that may be licensed, all as set forth in the Business Plan.

1.50 Liquidation Proceeds. “Liquidation Proceeds” means the amount of cash and/or other property available for distribution to the holders of LLC Interests upon liquidation of the LLC in accordance with this Agreement.

1.51 LLC. “LLC” means WHR LLC, a Hawaii limited liability company.

1.52 LLC Interest. “LLC Interest” or “Interest” means an ownership of a Class A Interest or a Class B Interest in the LLC, which includes the Economic Interest and the right to information and any voting and approval concerning the business and affairs of the LLC, as provided with respect to the particular type of Units, which is more specifically set forth in this Agreement and under the Statute.

1.53 LLC Minimum Gain. “LLC Minimum Gain” means the amount determined by computing with respect to each non-recourse liability of the LLC, the amount of gain (of whatever character), if any, that would be realized by the LLC if it disposed (in a taxable transaction) of the Property subject to such liability in full satisfaction thereof, and by then aggregating the amounts so computed as set forth in Regulations Section 1.704-2(d).

1.54 Loan. “Loan” has the meaning set forth in first paragraph of Article 17.

1.55 Loan Agreement. “Loan Agreement” has the meaning set forth in first paragraph of Article 17.

1.56 Loan Documents. “Loan Documents” has the meaning set forth in first paragraph of Article 17.

1.57 Manager. “Manager” means each Person designated or elected to manage the LLC pursuant to Article 6 of this Agreement. The Members shall have elected to have more than one Manager and such Persons so elected shall be referred to as the “Managers” and any such Person shall be referred to as a “Manager.” As of the Effective Date, the Managers shall be Tower Development and Tower Hotels Hilo LLC pursuant to the terms of Section 6.1.

1.58 Manager Waste. “Manager Waste” has the meaning set forth in Section 6.9.2.

1.59 Mediating Parties. “Mediating Parties” has the meaning set forth in Section 16.11.

1.60 Member. “Member” means a Person who:

1.60.1 Is a Member as indicated in this Agreement by reference in Exhibit A and/or the Members List maintained by Manager; or

1.60.2 Has been admitted to the LLC as a member in accordance with the Articles of Organization or this Agreement, as applicable, or is an assignee of a LLC Interest, other than an Economic Interest, who has become a Member pursuant to Section 8.1; and

1.60.3 Has not resigned, withdrawn or been expelled as a Member or transferred all of its LLC Interests or, if other than an individual, been dissolved.

1.61 Member List. “Member List” means the confidential list of names and personal information of each Member that has requested their names and personal information to be maintained confidential except in the cases such information is required to be disclosed to any third party by legal court order or governmental mandate. Each Member who has requested to have its personal information maintained confidential shall be granted a Member Number for identification purposes.

1.62 Member Non-recourse Debt. “Member Non-recourse Debt” has the meaning set forth in Regulations Section 1.704-2(b)(4).

1.63 Member Non-recourse Debt Minimum Gain. “Member Non-recourse Debt Minimum Gain” means an amount, with respect to each Member Non-recourse Debt, equal to the LLC Minimum Gain that would result if such Member Non-recourse Debt were treated as a non-recourse liability of the LLC, determined in accordance with Regulations Sections 1.704-2(i)(2) and (3).

1.64 Member Non-recourse Deductions. “Member Non-recourse Deductions” has the meaning set forth in Regulations Section 1.704-2(i)(2). The amount of Member Non-recourse Deductions with respect to a Member Non-recourse Debt for a Fiscal Year of the LLC equals the excess (if any) of the net increase (if any) in the amount of Member Non-recourse Debt Minimum Gain attributable to such Member Non-recourse Debt during that Fiscal Year over the aggregate amount of any distributions during that Fiscal Year to the Member that bears (or is deemed to bear) the economic loss for such Member Non-recourse Debt to the extent such distributions are from the proceeds of such Member Non-recourse Debt and are allocable to an increase in Member Non-recourse Debt Minimum Gain attributable to such Member Non-recourse Debt, determined in accordance with Regulations Section 1.704-2(i)(2).

1.65 Mortgage. “Mortgage” has the meaning set forth in Section 17.3.

1.66 Intentionally Left Blank.

1.67 Intentionally Left Blank.

1.68 Naniloa Volcanoes Resort. “Naniloa Volcanoes Resort” was the original name of the hotel and golf project, as of the original purchase date of the Real Property by Company.

1.69 Non-Defaulting Member. “Non-Defaulting Member” has the meaning set forth in Section 3.10.

1.70 Non-Defaulting Member Contribution. “Non-Defaulting Member Contribution” has the meaning set forth in Section 3.10.

1.71 Non-Defaulting Member’s Deemed Capital Contribution. “Non-Defaulting Member’s Deemed Capital Contribution” has the meaning set forth in Section 3.10.

1.72 Offering Member. “Offering Member” has the meaning set forth in Section 11.9.

1.73 Offered Interests. “Offered Interests” has the meaning set forth in Section 11.9.

1.74 Intentionally Left Blank.

1.75 Intentionally Left Blank

1.76 Intentionally Left Blank.

1.77 Original Articles. “Original Articles” means the Articles of Organization of WHR LLC, filed with the Department of Commerce and Consumer Affairs on November 18, 2013.

1.78 Percentage Interest. “Percentage Interest” shall be as set forth on Exhibit A hereto and/or the Member List, as the same may be amended from time to time or supplemented by a register of Interests or any other books and records maintained by the LLC or its transfer agent or registrar for the purpose of recording the interests of the LLC’s Interest holders.

1.79 Period of Duration. “Period of Duration” shall have the meaning set forth in Section 2.5.

1.80 Intentionally Left Blank.

1.81 Person. “Person” means an individual, partnership, limited partnership, corporation, trust, estate, association, limited liability company, or other entity, whether domestic or foreign.

1.82 Potentially Competitive Property. “Potentially Competitive Property” has the meaning set forth in Section 6.11.2.

1.83 Preference Rights of Advancing Party. "Preference Rights of Advancing Party" has the meaning set forth in Section 3.4.2.

1.84 Preferred Return. "Preferred Return" means (a) with respect to a Class A Member, the Class A Member's Capital Contribution multiplied by seven percent (7%) per annum.

1.85 Principal. "Principal" means the natural Person who is in ultimate control of a Member.

1.86 Project Costs. "Project Costs" shall mean the cost of acquisition of the Real Property and the cost to renovate the Real Property, all in accordance with the Business Plan and the Approved Budget.

1.87 Property. "Property" means all assets of the LLC, both tangible and intangible, or any portion thereof.

1.88 Property Manager. "Property Manager" shall mean the firm(s) employed by the LLC to manage the Real Property or any portion thereof, including, without limitation, the hotel and/or the golf course. The initial Property Manager of the retail areas (including the Willie K's Gig @ the Crown Room, Pali Room, interior retail areas and/or the golf course) shall be handled by the Managers or its agent or appointee based on market terms.

1.89 Pro rata part. "Pro rata part" shall have the meaning set forth in Section 11.3.

1.90 Purpose. "Purpose" has the meaning set forth in Section 2.7.

1.91 Real Property. "Real Property" means all of the real property subject to the terms of that certain Ground Lease No S-5841 originally entered into by and between State of Hawaii Department of Land and Natural Resources, as Lessor, and Hawaii Outdoor Tours, Inc. as Lessee, which includes real property referenced by Tax Map Key Nos. (3) 2-1-01: 12; (3) 2-1-5: 13,16, 17, 27, 27, 32 & 46, and contains the Resort Site containing approximately 6.35 acres, and Golf Course Site containing a gross area of approximately 63.775 acres situated at Waiakea South Hilo, Island of Hawaii, Hawaii.

1.92 Refinancing Proceeds. "Refinancing Proceeds" means all proceeds from refinancing or restructuring of debt of the LLC, less the amount of such proceeds (i) used to pay the debt being refinanced or restructured and related expenses, and (ii) set aside as Reserves to pay debts, liabilities and obligations of the LLC.

1.93 Regulations. "Regulations" means the federal income tax regulations promulgated by the Treasury Department under the Code, as such regulations may be amended from time to time. All references herein to a specific section of the

Regulations shall be deemed also to refer to any corresponding provisions of succeeding Regulations.

1.94 Related Person. “Related Person” has the meaning set forth in Section 1.25.

1.95 Remaining Members. “Remaining Members” has the meaning set forth in Section 11.2.

1.96 Representative. “Representative” shall mean the individual selected by a Manager and/or Development Manager with authority to act for and bind such Manager or Development Manager, as applicable.

1.97 Reserves. “Reserves” means funds set aside from Capital Contributions or gross cash revenues as reserves. Such Reserves shall be maintained in amounts reasonably deemed sufficient by the Managers for reasonable working capital funds for contingencies incident to the conduct of the business of the LLC.

1.98 Sale. “Sale” has the meaning set forth in Section 6.4.10.

1.99 Securities Act. “Securities Act” has the meaning set forth in Section 15.5.

1.100 SPE Component Entity. “SPE Component Entity” means MR Delaware SPE, LLC, a Delaware limited liability company, which shall be a Member of the Company at least until the Loan is paid in full in accordance with the terms and provisions of the Security Instrument (as defined in the Loan Agreement) and the other Loan Documents.

1.101 Statute. “Statute” means the provisions of the Hawaii Uniform Limited Liability Company Act, Chapter 428 of the Hawaii Revised Statutes.

1.102 Tower Development. “Tower Development” means Tower Development, Inc., a Hawaii corporation.

1.103 Tower Fund. “Tower Fund” means Tower Hotels Fund 2013 LLC, a Hawaii limited liability company.

1.104 Tower Hotels Hilo. “Tower Hotels Hilo” means Tower Hotels Hilo LLC, a Hawaii limited liability company.

1.105 Tower Representative. “Tower Representative” means (a) Edward Bushor, or Stuart Miller (who are the sole Guarantors under the Loan), or (b) as selected by Tower Hotels Hilo, if Edward Bushor and/or Stuart Miller are not available or have ceased to be members of the Tower Development, Inc. and/or the Tower Hotels Hilo’s executive management, such other individual with experience owning and/or managing commercial real estate as is reasonably selected by the member of Tower Hotels Hilo as its Representative under this Agreement; provided, however,

that if any proposed Tower Representative is (x) an owner, operator or Affiliate of a Potentially Competitive Property, (y) employed by, or an Affiliate of, a national hotel management company at the commencement or during its tenure as the Tower Representative, or (z) an owner, operator or Affiliate of a business in competition with any business operated on the Property, the Vote of the Members may reasonably reject such person as a Tower Representative.

1.106 Transfer. “Transfer” has the meaning set forth in Section 8.1.1.

1.107 Unit Holder or Interest Holder. “Unit Holder” or “Interest Holder” shall mean a Member but only to the extent that he has not assigned the Economic Interest in Units/Interests issued or transferred to him and an assignee of the Economic Interest in Units/Interests who has not become a Member pursuant to Section 8.1.

1.108 Unreturned Capital. “Unreturned Capital” shall mean an amount equal to the initial Capital Contribution and all additional Capital Contributions made with respect to a LLC Interest, less the cumulative amount of all distributions made with respect to such LLC Interest exclusive of any distributions related to a Preferred Return payable to a Member with respect to the LLC Interest.

1.109 Vote. Except where expressly superseded by another Section of this Agreement, or where a vote of a greater number of Members is required pursuant to the terms of the Statute, Code or Regulations, all decisions to be made by the Members shall be deemed to have been approved only upon the affirmative vote of at least a Majority in Percentage Interests of the Members (such vote by a Majority in Percentage Interest being a “Vote”).

ARTICLE 2 INTRODUCTORY MATTERS

2.1 Formation of LLC. The parties hereby consent to the organization of the LLC. If there is any conflict between this Agreement and the requirements of the Statute, this Agreement shall control except to the extent expressly required by the Statute.

2.2 Name. The name of the LLC is “WHR LLC.” The Members shall operate the Business of the LLC under such name or use such other or additional names as the Manager may deem necessary for the day-to-day operations consistent with the Business of the LLC provided that: (i) no such name shall contain the words “bank,” “insurance,” “trust,” “trustee,” “incorporated,” “inc.,” “corporation,” “corp.,” or any similar name or variation thereof; (ii) the Manager shall have reasonably determined, before use of any such name, that the LLC is entitled to use such name and will not by reason of such use infringe upon any rights of any other Person, or violate any applicable laws or governmental regulations; and (iii) the Manager shall register such name under assumed or fictitious name statutes or similar laws of the states in which the LLC operates.

2.3 Principal Office. The LLC shall maintain its principal place of business at 93 Banyon Drive, Hilo, Hawaii 96720 or at any other location designated by the Manager.

2.4 Agent for Service of Process. The name and address of the LLC's agent for service of process is Michael L. Lam, Esq., Pacific Guardian Center, Mauka Tower, 737 Bishop Street, Suite 2600, Honolulu, HI 96813.

2.5 Period of Duration. The period of duration of this Agreement ("Period of Duration") began on the date the Original Articles were filed and accepted by the Director and shall be co-terminus with the period of duration of the LLC provided in the Articles or Organization, unless the LLC is terminated or dissolved sooner, in accordance with the provisions of this Agreement.

2.6 Title to All Properties. Real and personal property owned or purchased by the LLC shall be held and owned, and conveyance made, in the name of the LLC.

2.7 Business and Purpose of the LLC. The purpose of the LLC is to engage solely in acquiring, renovating, redeveloping, improving, leasing and managing, and otherwise owning and operating the hotel and golf project formerly known as the "Naniloa Volcanoes Resort", now known as the "Grand Naniloa Hotel, a DoubleTree Hilton" and, after renovation, known as Doubletree by Hilton or such other name that is approved in the Business Plan, and such other development that may be permitted on the Real Property, all as more specifically described in the Business Plan (the "Purpose"). Other than conducting business for the Purpose, any business to be conducted by the LLC shall require the Vote of the Members; provided, however, in no event shall the LLC conduct any banking, insurance or trust company business.

ARTICLE 3

MEMBERS, CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

3.1 Minimum of Two Members. The LLC shall at all times have at least two Members, who will include in their organization documents, or who, upon request of the Lender under the Loan, will amend their organizational documents to include special purpose entity (SPE) provisions substantially similar to the provisions of Article 17 below.

3.2 Names, Addresses of Members and Initial Capital Contributions. As of the Effective Date, the Members are the persons executing this Agreement. Members, their respective addresses, their respective aggregate Capital Contributions to the LLC, and their respective Percentage Interests in profits and losses of the LLC are set forth on Exhibit A and may be updated or amended in the Member List from time to time.

3.3 Form of Capital Contributions.

3.3.1 Initial Capital Contributions. The initial Capital Contributions of the Members shall be as follows:

3.3.1.1 Class A Members Initial Capital Contribution. The Class A Members have contributed cash in an amount set forth on Exhibit A as their respective initial Capital Contributions.

3.3.1.2 Class B Member Initial Capital Contribution. As consideration for the Class B Units the individual principals named below, of the Class B Members, have agreed to guaranty the Loan as reasonably necessary for the Project and approved by the LLC.

The individual principals providing the Guaranties are as follows:

- (a) Edward L. Bushor, personally as an affiliate of Tower Hotels Hilo LLC, and
- (b) Stuart L. Miller, affiliate of Miller Realty, Inc.

3.4 Additional Contributions; Advances; Member Loans.

3.4.1 No Additional Capital and Maximum Amount. The Members hereby agree that each Member shall have no obligation to contribute additional capital to the LLC beyond the capital contributions already set forth on Exhibit A as of the Effective Date. Except as shall be expressly set forth herein, no Member shall be required to (a) make any additional Capital Contributions, (b) make any loan to the LLC or another Member, or (c) cause to be loaned any money or other assets to the LLC.

3.4.2 Advances. If any Member, Manager or third party advances money on behalf of the LLC under any guaranty, completion bond or other third party obligation for the benefit of the LLC or for Project Costs of the LLC after the LLC fails to advance the same, including those guaranties specified in Section 3.3.1.2, and the LLC does not reimburse such party in the amount of the advance within thirty (30) days of written demand therefor, then the person or entity who made the advance shall be reimbursed the amount of the advance plus seven (7%) percent per annum and returned to such Members as determined in each advance agreement approved by the Managers, but in any event, advances shall ultimately be in preference to and prior to any distributions to the Class A Interest (the "Preference Rights of the Advancing Party").

3.4.3 Mezzanine and/or Member Loans. Subject to Section 3.4.4, Manager may implement a "mezzanine loan" (as commercially understood in the lending industry) to return all capital as of the closing date of the Loan or implement a Member loan to the Company to enable the Company to return all capital to all Members as of the closing date of the Loan. In addition, any Member may, with the approval of the Managers, lend or advance money to the Company. The amount of

any loan to or advance on behalf of the Company by a Member shall not be treated as a Capital Contribution to the Company but shall be a debt due from the Company to the Member. The amount of any loan to or advance on behalf of the Company by a Member shall be repayable out of the Company's cash and shall bear interest at a floating rate equal to the greater of (a) the rate per annum then most recently publicly announced by Wells Fargo Bank, or its successors, in Portland, Oregon, as its "prime rate" in effect from time to time, plus 200 basis points, with a ceiling of seven percent (7%) per annum; or (b) seven percent (7%) per annum; provided, however, the Member loan discussed herein shall have a term co-terminus with the Loan unless the Managers determine that it is in the best interest of the Company to have a shorter term for said Member loan or, in the alternative, the Manager determine it is in the best interest of the Company to repay the Member loan earlier than the Loan term. No Member shall be obligated to make any loan or advance to the Company.

3.4.4 Proportionate Shares. If, after the closing date of the Loan, there is the need for additional funds for Project Costs, and the Managers (a) determine that the Company should obtain additional borrowed capital and (b) wish to give the Members the opportunity to lend the required funds, the Managers shall permit each Member to loan to the Company a proportionate share of the funds needed. A Member's proportionate share shall be determined on the basis of the Member's Percentage Interest. No Member shall be obligated to make any such loan. If a Member does not make all or a portion of the Member's share of such loan (the "Member Loan Deficit"), the other Members shall be given the opportunity to lend the entire amount of the Member Loan Deficit on the same proportionate basis but taking into account only those willing to make up the deficit.

3.5 Rights With Respect to Capital.

3.5.1 LLC Capital. No Member shall have the right to withdraw, or receive any return of, its Capital Contribution, and no Capital Contribution may be returned in the form of property other than cash except as specifically provided herein.

3.5.2 No Interest on Capital Contributions. Except as expressly provided in this Agreement, no Capital Contribution of any Member shall bear any interest or otherwise entitle the contributing Member to any compensation for use of the contributed capital.

3.5.3 Establishment of Capital Accounts. A separate capital account ("Capital Account") shall be maintained for each Unit Holder/Interest Holder. For book purposes, the Capital Accounts for each Unit Holder/Interest Holder's Capital Account will be separated into a contribution account and an income (loss) account and will be maintained according to sound accounting principles. Sections 3.6 and 3.7 below describe the appropriate accounting treatment for tax purposes of the Capital Accounts.

3.6 General Rules For Adjustment of Capital Accounts. The Capital Account of each Member shall be:

3.6.1 Increases. increased by:

3.6.1.1 Such Member's cash contributions;

3.6.1.2 The agreed fair market value of property contributed by such Member (net of liabilities secured by such contributed property that the LLC is considered to assume or take subject to under Code Section 752);

3.6.1.3 All items of LLC income and gain (including income and gain exempt from tax) allocated to such Member pursuant to Article 4 or other provisions of this Agreement; and

3.6.2 Decreases. decreased by:

3.6.2.1 The amount of cash distributed to such Member;

3.6.2.2 The agreed fair market value of all actual and deemed distributions of property made to such Member pursuant to this Agreement (net of liabilities secured by such distributed property that the Member is considered to assume or take subject to under Code Section 752);

3.6.2.3 All items of LLC deduction and loss allocated to such Member pursuant to Article 4 or other provisions of this Agreement.

3.7 Special Rules With Respect to Capital Accounts.

3.7.1 Time of Adjustment For Capital Contributions. For purposes of computing the balance in a Member's Capital Account, no credit shall be given for any Capital Contribution that such Member is to make until such contribution is actually made.

3.7.2 Intent to Comply with Treasury Regulations. The provisions of Section 3.5 and this Section 3.6 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations Section. To the extent such provisions are inconsistent with such Regulations Section or are incomplete with respect thereto, Capital Accounts shall be maintained in accordance with such Regulations Section.

3.8 Transferee's Capital Account. In the event a Member transfers an Interest in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

3.9 Limited Liability. Except as expressly set forth in this Agreement or required by law, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise. Further, the parties agree that none of the Members, Managers or their respective Affiliates will be required to guaranty the Loan or any other loan made to the Company without such Member's, Manager's or Affiliates express consent.

3.10 Failure to Make Capital Contribution and the Effect of Unreimbursed Advances. The failure of any Member (each a "Defaulting Member") to make its share of an additional Capital Contribution under Section 3.4.1 on the due date for such contribution shall be a default under this Agreement. In the event the Defaulting Member fails to contribute the full amount of its portion of the required Capital Contribution within thirty (30) days after due date (the "Dilution Date"), then the LLC Interests of the Members shall be recalculated and the Defaulting Members shall be diluted proportionately. Further in the event that the LLC shall fail to reimburse any advance made under Section 3.4.2 then the LLC Interests of the Members shall be recalculated and the LLC Interests of Members who did not make the advance shall be diluted proportionately. For example, if prior to the Dilution Date the total Capital Contributions made by the members was \$10,000,000 and a further Capital Contribution of \$2,000,000 is required but a Defaulting Member holding a 10% LLC Interest fails to make its \$200,000 Capital Contribution, then: (a) the total Capital Contributions are \$11,800,000, (b) the Percentage Interest of each Member is recalculated to be the Members total Capital Contribution as a percentage of the total Capital Contribution received from all Members the formula for which shall be the Member's total Capital Contribution times 100 divided by the total Capital Contribution of all Members, and (c) in this example the Defaulting Member's Percentage Interest is reduced from 10% to 8.47%.

ARTICLE 4

ALLOCATION OF NET INCOME, GAIN & NET LOSS

4.1 Allocation of Net Income, Gain And Net Loss. Net income, gain and net loss of the LLC shall be allocated from time to time to the Unit Holders as set forth below. The terms net income, gain and net loss shall have the same meaning as they have for federal income tax purposes.

4.1.1 Net Loss Shall Be Allocated.

4.1.1.1 First, to the Unit Holder or Unit Holders, separately, in proportion to and up to the amounts of net income allocated for previous Fiscal Years pursuant to Section 4.1.2.4 and not previously offset by allocations pursuant to this Section 4.1.1.1.

4.1.1.2 Second, to the Unit Holder or Unit Holders, separately, in proportion to and up to the amounts of net income allocated for previous Fiscal Years pursuant to Section 4.1.2.3 and not previously offset by allocations pursuant to this Section 4.1.1.2.

4.1.1.3 Third, to the Unit Holders in the proportion and to the extent of their positive adjusted Capital Accounts.

4.1.1.4 Fourth, to the Unit Holders in accordance with their respective Percentage Interests.

4.1.2 Net Income And Gain Shall Be Allocated.

4.1.2.1 First, to the Unit Holder or Unit Holders, separately, in proportion to and up to the amounts of net loss allocated for previous Fiscal Years pursuant to Section 4.1.1.3 and not previously offset by allocations pursuant to this Section 4.1.2.1.

4.1.2.2 Second, to the Unit Holder or Unit Holders, separately, in proportion to and up to the amounts of net loss allocated for previous Fiscal Years pursuant to Section 4.1.1.2 and not previously offset by allocations pursuant to this Section 4.1.2.2.

4.1.2.3 Third, to the Unit Holders in proportion to and to the extent of the amount of distributions made to them under Article 5.

4.1.2.4 Fourth, to the Unit Holders in proportion to their respective Percentage Interests.

4.2 Savings Clause. The tax allocations set forth in this Article 4 are intended to be consistent with the interests of the Members in the LLC and to comply with IRC Section 704(b). If such tax allocations do not accomplish that objective, they shall be modified to the extent reasonably necessary to accomplish that objective.

4.3 Qualified Income Offset. If any Unit Holder unexpectedly receives any adjustments, allocation or distributions described in clauses (4), (5) or (6) of Regulations Section 1.704-1(b)(2)(ii)(d), items of LLC income shall be specially allocated to such Unit Holder in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit created by such adjustments, allocations or distributions as quickly as possible; provided that an allocation pursuant to this Section 4.3 shall be made only if, and to the extent that, such Unit Holder would have an Adjusted Capital Account Deficit after all other allocations provided for in Section 4.1.1 or this Section 4.3 of this Agreement tentatively have been made as if this Section 4.3 were not in this Agreement. This Section 4.3 is intended to constitute a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d)(3).

4.4 Minimum Gain Chargeback. If there is a net decrease in LLC Minimum Gain during a Fiscal Year, so that an allocation is required by Regulation Section 1.704-2(f), each Unit Holder will be allocated, before any other allocation under this Article 4, items of income and gain for such Fiscal Year (and if necessary,

subsequent years) in proportion to and to the extent of an amount equal to such Unit Holder's share of the net decrease in LLC Minimum Gain determined in accordance with Regulations Section 1.704-2(g)(2). This Section 4.4 is intended to comply with, and shall be interpreted consistently with, the "minimum gain chargeback" provisions of Regulations Section 1.704-2(f).

4.5 Member Non-recourse Debt Minimum Gain Chargeback. Notwithstanding any other provision of this Article 4, but except Section 4.4, if there is a net decrease in Member Non-recourse Debt Minimum Gain attributable to a Member Non-recourse Debt during any Fiscal Year of the LLC, each Unit Holder who has a share of the Member Non-recourse Debt Minimum Gain attributable to such Member Non-recourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of LLC income and gain for such year (and, if necessary, subsequent years) in an amount equal such Unit Holder's share of the net decrease in Member Non-recourse Debt Minimum Gain attributable to such Member Non-recourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Unit Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 4.5 is intended to comply with the minimum gain chargeback requirement of that Section of the Regulations and shall be interpreted consistently therewith.

4.6 Member Non-recourse Deductions. Any Member Non-recourse Deductions for any Fiscal Year or other period shall be specially allocated to the Unit Holder who bears (or is deemed to bear) the economic risk of loss with respect to the Member Non-recourse Debt to which such Member Non-recourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(2).

4.7 Special Allocations. Any special allocations of items of net income pursuant to Sections 4.4, 4.5 and 4.6 shall be taken into account in computing subsequent allocations of net profits pursuant to Section 4.1, so that the net amount of any items so allocated and the gain, loss and any other item allocated to each Unit Holder pursuant to Section 4.1 shall, to the extent possible, be equal to the net amount that would have been allocated to each such Unit Holder pursuant to the provisions of this Article if such special allocations had not occurred.

4.8 Fees to Unit Holders or Affiliates. Notwithstanding the provisions of Section 4.1, in the event that any fees, interest, or other amounts paid to any Unit Holder or any Affiliate thereof pursuant to this Agreement or any other agreement between the LLC and any Unit Holder or Affiliate thereof providing for the payment of such amount, and deducted by the LLC in reliance on Section 707(a) and/or 707(c) of the Code, are disallowed as deductions to the LLC on its federal income tax return and are treated as LLC distributions, then

4.8.1 net income or net loss, as the case may be, for the Fiscal Year in which such fees, interest, or other amounts were paid shall be increased or

decreased, as the case may be, by the amount of such fees, interest, or other amounts that are treated as LLC distributions; and

4.8.2 there shall be allocated to the Unit Holder to which (or to whose Affiliate) such fees, interest, or other amounts were paid, prior to the allocations pursuant to Section 4.1, an amount of gross income for the Fiscal Year equal to the amount of such fees, interest, or other amounts that are treated as LLC distributions.

4.9 Section 704(c) Allocation. Any item of income, gain, loss, and deduction with respect to any property (other than cash) that has been contributed by a Unit Holder to the capital of the LLC and which is required or permitted to be allocated to such Unit Holder for income tax purposes under Section 704(c) of the Code so as to take into account the variation between the tax basis of such property and its fair market value at the time of its contribution shall be allocated to such Unit Holder solely for income tax purposes in the manner so required or permitted.

ARTICLE 5 DISTRIBUTIONS

5.1 Cash Flow From Operations. Subject to the terms of Section 3.4.2, Cash Flow From Operations shall be distributed from time to time, as soon as reasonably practicable following receipt thereof, in accordance with the following:

5.1.1 First, to the holders of any Preference Rights of the Advancing Party, until all amounts due thereunder shall have been paid in full.

5.1.2 Second, to the holders of the Class A Interests, pro rata based upon their respective Percentage Interests, until any Preferred Return outstanding as of the date of such distribution has been paid in full.

5.1.3 Third, to the holders of Class A Interests, pro rata based upon their respective Percentage Interests, until they receive distributions equal to their Unreturned Capital.

5.1.4 Thereafter, to the holders of Class A Interests and Class B Interests, pro rata based on their respective Percentage Interests.

5.2 Capital, Refinancing And Liquidation Proceeds. Subject to the terms of Section 3.4.2, Capital Proceeds, Refinancing Proceeds and Liquidation Proceeds shall be distributed from time to time:

5.2.1 First, to the holders of any Preference Rights of the Advancing Party, until all amounts due thereunder shall have been paid in full.

5.2.2 Second, to the holders of Class A Interests, pro rata based upon their respective Percentage Interests, until any Preferred Returns have been paid in full.

5.2.3 Third, to the holders of Class A Interests, pro rata based upon their respective Percentage Interests, until they receive distributions equal to their Unreturned Capital.

5.2.4 Thereafter, to the holders of Class A Interests and Class B Interests, pro rata based on their respective Percentage Interests.

5.3 Limitations on Distributions. No distributions shall be made in contravention of the Statute, including Section 428-406 thereof. No Member shall be entitled to receive distributions from the LLC other than as provided in this Agreement.

ARTICLE 6

MANAGEMENT OF THE LLC AND RIGHTS, DUTIES, OBLIGATIONS AND COMPENSATION OF MANAGERS AND OFFICERS

6.1 Management by the Managers. All powers of the LLC shall be exercised by or under the authority of, and the business and affairs of the LLC shall be managed under the direction of the Managers, unless otherwise provided in this Agreement. The Managers shall have all authority, rights and powers in the management of the Company business to do any and all acts and things necessary, proper, appropriate, advisable, incidental or convenient to effectuate the purposes of this Agreement. Subject to the express limitations set forth in this Agreement, the Managers shall have (a) all the rights and powers of a manager under the Statute, and (b) all authority, rights and powers in the management of the Company business to do any and all acts and things necessary, proper, appropriate, advisable, incidental or convenient to effectuate the purposes of this Agreement.

6.1.1 Decisions. All Decisions shall be made by the Managers. In the event that there is more than one (1) Manager, all Decisions shall require the consent and approval of all Managers. In the event that the Managers are unable to make a Decision jointly, either Manager shall call a meeting of the Members to discuss the options, recommendations, factual background and attempt to resolve any open issues to make a Decision by the Managers. In the event the Meeting of the Members does not result in unanimous approval of the Managers, the matter shall be submitted to a Vote of the Members. Each Manager shall appoint a Representative with authority to act and bind such Manager with respect to Decisions.

6.1.2 Day-to-Day Operations. The Managers have determined that in order to operate the LLC efficiently, a Development Manager shall be appointed to manage the day-to-day operations of the LLC, the day-to-day development of the Property, the day-to-day hotel management, the day-to-day asset management of the Property and the day-to-day loan, purchase and sales process as is reasonably necessary to accomplish the Purpose of the LLC on all aspects of the Property, subject in all events to the limitations set forth in this Agreement, including, without limitation, Section 6.3 below (collectively, the "Day-to-Day Operations"). As of the Effective Date, the Managers elect Tower Development to be the Development

Manager and the Tower Representative shall also serve as the Representative for the Development Manager. The Development Manager shall serve until such time as a Decision to remove the Development Manager is made by the Managers or upon the occurrence of a Development Manager Event of Default that is not cured in accordance with Section 6.8. The Development Manager may resign on thirty (30) days' advance notice to the Managers. The Development Manager need not be a Member, Manager or an individual.

6.1.3 Members Limited Authority. Except for Tower Development with respect to its capacity as Development Manager, and except for Tower Hotels Hilo and the Tower Representative and Tower Development with respect to their capacity as Managers, all other Members, unless also appointed (or hired) as a Manager, Development Manager, officer or other employee shall not participate in the day-to-day services of the business and affairs of the LLC and, if so appointed (or hired), shall participate only within the scope of authority of such position as defined in this Agreement or another written agreement between such Person and the LLC.

6.1.4 Initial Managers. As of the Effective Date, the Managers are: 1) Tower Hotels Hilo; and 2) Tower Development. Each initial Manager shall serve until it resigns or is removed in accordance with this Agreement and a successor Manager is appointed in accordance with the provisions of this Agreement.

6.1.5 Standard of Care. The Manager or Development Manager, as applicable, shall cause the affairs of the LLC to be conducted in an efficient and businesslike manner. Manager or Development Manager, as applicable, shall perform its respective duties in good faith, in a manner it reasonably believes to be in or not opposed to the best interests of the LLC and with the care that an ordinary prudent person in a similar position would use under similar circumstances. Subject to the terms, conditions and limitations of this Agreement, the Manager or Development Manager, as applicable, may, by written instrument and at the expense of the LLC, delegate all or any of its powers, rights and obligations hereunder and may appoint, employ, contract or otherwise deal with any Person for the transaction of business of the LLC, which Person may, under the supervision and/or direction of the Manager or Development Manager, as applicable, perform any acts or services for the LLC as the Manager or Development Manager, as applicable, may approve within the scope of their respective authority.

6.2 Intentionally Left Blank.

6.3 Rights, Duties And Powers of Development Manager.

6.3.1 The Development Manager's duties shall be limited to the Day-to-Day Operations, as the same may be further defined by the Managers in writing from time-to-time. In no event shall the Development Manager take an action which the Manager is prohibited from taking without approval of the Members. Subject to the limitations set forth in this Agreement, including, without limitation, Section 6.3.2 and 6.3.3 below, as of the Effective Date, the Day-to-Day Operations shall include:

6.3.1.1 To purchase, at the expense of the LLC, contracts of liability, casualty and other insurance which the Development Manager deems reasonably advisable, appropriate, or convenient for the protection of the assets, affairs, or interests of the LLC or any of the Members, or necessary for any purpose convenient or beneficial to the LLC or any Members;

6.3.1.2 To enter into a contract, license or other agreement with a Conflict Person provided that such contract, license or other agreement is contemplated by then applicable Business Plan and is included in the Approved Budget, is commercially reasonable in all respects, does not provide for compensation to any Conflict Person in excess of fair market compensation and is in the best interests of the LLC;

6.3.1.3 To employ and dismiss from employment any and all employees, agents and independent contractors (except the Property Manager, the general contractor, including the General Contractor) and architects and designers for any construction or renovation project (except as set forth in Section 6.4.16 below);

6.3.1.4 To enter into, execute, amend, supplement, acknowledge and deliver any and all contracts, agreements, licenses, leases, or other instruments necessary, proper, or desirable to carry out the Purposes of the LLC and to enter into negotiations for the Sale of the Real Property or entry into financing arrangements involving the Property or the LLC; provided, however, the Decision of the Managers shall be required to execute any contract for the Sale of the Property or financing arrangement (including the Loan), except as expressly set forth in Section 6.3.1.7 below;

6.3.1.5 To effect reimbursement from the LLC for all expenses of the LLC set forth on the Approved Budget reasonably incurred and paid by a Manager on behalf of the LLC;

6.3.1.6 The day-to-day processing of the Loan and the day-to-day processing of the permanent financing upon stabilization in an amount of up to \$75,000,000 depending upon market conditions and Property valuation in the reasonable judgment of Managers; and

6.3.1.7 Enter into one or more financing arrangement for unsecured borrowing by the LLC for trade debt incurred in the ordinary course of business in amounts less than \$250,000, at any one time outstanding.

6.3.2 The Development Manager shall have no authority to undertake any action which is inconsistent with the then applicable Business Plan except with the Decision of the Managers or Vote of the Members, as applicable.

6.3.3 The Development Manager shall have no authority to incur any expense that is not included in the then applicable Approved Budget except with the Decision of the Managers or Vote of the Members, as applicable; provided, however,

that the Development Manager has authority to settle a civil action filed by Lincoln Builders LLC, in connection with a subcontractor lien application, unless said settlement exceeds the amount of the Lender's holdback from the Loan proceeds relating to that civil action (not to exceed One Hundred Fifty Thousand Dollars (\$150,000)).

6.3.4 Each year the Development Manager shall prepare (i) the Budget pursuant to Section 6.10 below, (ii) any recommended amendments or modifications to the Business Plan, and (iii) such other reports and statements as the Managers or Members may request for review and approval, as necessary.

6.4 Matters Requiring The Approval of the Managers. In addition to any vote or approval required elsewhere in this Agreement, the Managers must unanimously agree in order to cause the LLC to engage in any extraordinary transactions, including those as set forth in this Section 6.4 as follows:

6.4.1 Any contract, lease, license or other agreement that is would not be deemed to be commercially reasonable and would not be consistent with "market" terms;

6.4.2 The merger of the LLC with any other Person (as permitted under applicable law);

6.4.3 Change the Purpose or the Business of the LLC;

6.4.4 The institution or prosecution any of legal, arbitration, or administrative actions or proceedings on behalf of the LLC involving claims which are reasonably expected to exceed \$50,000;

6.4.5 The confession of a judgment against the LLC;

6.4.6 The release, compromise, assignment or transfer of any claims, rights or benefits of the LLC or the satisfaction of any judgment, decree, decision or settlement against the LLC;

6.4.7 The distribution of Property that is inconsistent with the Business Plan and this Agreement;

6.4.8 The spending of any material amounts not authorized hereunder, including under Section 6.10;

6.4.9 The changing of the fiscal year of the LLC;

6.4.10 The sale, exchange, financing, refinancing or other transfer or encumbrancing (collectively, a "Sale") of the entire Real Property or any portion thereof that is inconsistent with the Business Plan and/or the express terms of this Agreement;

6.4.11 Executing the Loan;

6.4.12 The admission of any Person as a Member or issuance of additional Units except as expressly contemplated by Section 3.4.2;

6.4.13 The modification of any existing loan to or indebtedness of the LLC; provided, however, any modification to indebtedness that results in a material adverse change in the terms of such indebtedness or that is materially inconsistent with the Business Plan, the Approved Budget and this Agreement shall require a Vote of the Members to enter into (provided that any extension of the maturity date of any loan that doesn't increase the interest rate beyond market rates shall not require a Vote of the Members);

6.4.14 The filing of a petition under any Section or Chapter of the Bankruptcy Code, as it now exists or as hereafter amended or codified, on behalf of the LLC; an assignment for the benefit of creditors on behalf of the LLC; or acquiesce to or initiate any reorganization, arrangement, composition, adjustment, liquidation, dissolution, or similar relief on behalf of the LLC under any state statute, law or regulation relating to insolvency or other relief for debtors;

6.4.15 The timing and amount of distributions to the Members under Article 5 of this Agreement;

6.4.16 The decision to employ or terminate any Property Manager or general contractors for any construction or renovation project (including the General Contractor) or, after the 2014 renovation and redevelopment is completed by General Contractor, then also the architect for any major construction or renovation project involving substantial structural elements of the Real Property or new construction of improvements;

6.4.17 The appointment and identity of any Development Manager or the removal of any Development Manager;

6.4.18 Construction expenditures inconsistent with the Property budget;

6.4.19 Construction change orders inconsistent with the Property budget;
and

6.4.20 Material correspondence between the Company and Lender.

In the event that the Manager wishes to take any other action not enumerated herein that would be outside of the ordinary course of the business of the LLC, it shall submit such matter in writing to the Vote of the Members at least five (5) business days' prior to the date that it intends to take such action. If the Vote of the Members approves such action, the Manager may proceed. If the Vote of the Members disapproves such action, the Manager shall not proceed with such action. For such

purposes, actions specified in the current Annual Budget and Business Plan shall be considered to be in the ordinary course of business of the LLC.

6.5 Specific Additional Duties And Powers of Managers and Development Manager.

6.5.1 If required by law, Manager and Development Manager shall be qualified to do business in appropriate States by obtaining a certificate of authority to do so from the Secretary of State of the applicable States.

6.5.2 Upon written request to any Manager by any Person entitled to call a meeting of Members or the Managers (as applicable), the Manager shall immediately cause notice to be given to the Members entitled to Vote or the Managers (as applicable) that a meeting will be held at a time requested by the Person calling the meeting, provided that such meeting shall not less than thirty (30) days nor more than sixty (60) days after the Members' or Managers' (as applicable) receipt of the written notice therefor. If the notice of a meeting from Manager is not given to the Members or Managers (as applicable) within 20 days after Manager's receipt of the Person's written request, the Person entitled to call the meeting may give the notice by writing to the Manager and Members (as applicable) or, upon the application of that Person, the superior court of the county in which the principal executive office of the LLC is located, or if the principal executive office is not in Hawaii, the county in which the LLC's address in this State is located, shall summarily order the giving of the notice, after notice to the LLC affording it an opportunity to be heard. The court may issue any order as may be appropriate, including, without limitation, an order designating the time and place of the meeting, the record date for determination of Members entitled to Vote (if applicable), and the form of notice.

6.6 Warranted Reliance by Manager on Others. In performing its duties, the Manager and Development Manager shall be entitled to rely on information, opinions, reports, or statements of the following persons or groups (unless the Manager or Development Manager has knowledge concerning the matter in question that would cause such reliance to be unwarranted): any attorney, public accountant, or other person not affiliated with the Manager or Development Manager as to matters which the Manager or Development Manager reasonably believes to be within such person's professional or expert competence.

6.7 Manager to Safekeep Funds of the LLC. The Manager and Development Manager shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the LLC, whether or not in its immediate possession or control. The funds of the LLC shall not be commingled with the funds of any other Person and the Manager and the Development Manager shall not employ, or permit any other Person to employ, such funds in any manner except for the benefit of the LLC. The bank accounts of the LLC shall be maintained at First Hawaiian Bank, Hilo Branch, Hilo, Hawaii, or if not, then Bank of Hawaii Main Branch, Honolulu, Hawaii, or at such other banking institutions selected by the Managers, as long as such other banking institutions satisfy the net worth requirements set forth in Section 9.5, and

withdrawals shall be made only in the regular course of the Business of the LLC and as otherwise authorized in this Agreement on such signature or signatures as the Manager may determine.

6.8 Occurrence of an Event of Default. Upon the occurrence of an Event of Default by a Manager or a Development Manager Event of Default by the Development Manager, the Members shall continue to have all rights and remedies available at law or in equity, and, in addition, the Members shall have the right to remove the defaulting Manager, subject to the following procedures:

6.8.1 The Members shall notify all Managers that an Event of Default has occurred with respect to the defaulting Manager;

6.8.2 In the event that the Event of Default is capable of being cured, the Manager and/or Development Manager, shall have a commercially reasonable time, as agreed to by the parties, to complete the cure from the date of such notice to effectuate and complete a cure of such Event of Default (and where not agreeable, decided by the Mediator) ("Outside Cure Period"); and

6.8.3 Upon failure to cure within the Outside Cure Period, may immediately Vote to remove the Manager, whereupon the Class B Members shall elect a successor.

6.8.4 Upon the occurrence of a Development Manager Event of Default, if the Development Manager Event of Default is not cured as set forth above, the Development Manager shall be removed without further action unless (i) Development Manager has commenced cure of the Event of Default and has pursued such cure diligently and continuously and such cure is capable of being cured within the Outside Cure Period, in which case Development Manager shall be entitled to process such cure until expiration of the Outside Cure Period, and thereafter removal shall be automatic; or (ii) Development Manager has disputed the alleged Event of Default and has requested Mediation in accordance with Section 16.11. Upon removal, the Managers shall jointly act as the Development Manager until a replacement Development Manager is appointed.

6.8.5 In no event shall the removal of a Manager and/or Development Manager result in the termination or elimination of such Manager's and/or Development Manager's Interest as a Member. Further, any Manager or Development Manager shall be entitled to receive any compensation due to such Manager or Development Manager pursuant to the terms of this Agreement for periods prior to the last date serving as Manager or Development Manager, as applicable, even if such Manager or Development Manager was removed pursuant to this Article 6.

6.9 Definition of "Event of Default". The occurrence of any of the following events shall constitute an event of default ("Event of Default") hereunder.

6.9.1 Material waste of the Property by action of a Manager or the Development Manager evidenced by the commission by a Manager or the Development Manager of fraud, gross negligence, or willful misconduct ("material" meaning being waste that has resulted in loss of value of the Property (giving consideration to the scope of the development as set forth in the Business Plan)) in connection with the performance of its duties hereunder ("Manager Waste").

6.9.2 The commission of a crime by a Manager or the Development Manager (excluding misdemeanors) or a finding of civil fraud on the part of a Manager or the Development Manager.

6.9.3 The issuance of an award or opinion by the Mediator finding that the Development Manager is in material breach of its obligations and duties under this Agreement that should give rise to termination after consideration of the totality of the development and relevant facts and circumstances.

6.9.4 (a) the filing, on or after the date of this Agreement, by or against the Manager or Development Manager, of a petition under any section or chapter of the Bankruptcy Code, as it now exists or as hereafter amended or recodified, or under any rule promulgated thereunder and such petition shall have remained in force, undischarged or unstayed for a period of 60 days; (b) the initiation, by filing of a petition, pleading or otherwise, by or against the Manager or Development Manager of any procedure seeking or acquiescing in any reorganization, arrangement, composition, adjustment, liquidation, dissolution, or similar relief under any state statute, law or regulation relating to insolvency or other relief for debtors, and such petition shall have remained in force, undischarged or unstayed for a period of 60 days; (c) the making by the Manager or Development Manager of an assignment for the benefit of creditors; (d) the decree or order of a court having jurisdiction for the appointment of a receiver, trustee, controller, liquidator or custodian for all of the assets of the Manager or Development Manager and such decree or order shall have remained in force, undischarged or unstayed for a period of 60 days; or (e) should the Manager or Development Manager become insolvent or admit in writing its inability to pay its debts as they may mature.

6.10 Budgets and Cash Flow Projections.

6.10.1 On or before December 31st of each fiscal year, the Manager shall cause the Development Manager to prepare and deliver or cause to be prepared and delivered to the Members, the estimated annual budget of the LLC (the "Annual Budget") which sets forth the estimated costs and expenses to be incurred by the LLC in connection with the management and operation of the LLC for the next calendar year. The Annual Budget is also referred to herein as the "Budget".

6.10.2 The Members shall have the right by a Vote of the Members, in their discretion, to reasonably disapprove of all or any portion of the Budget. Failure to reasonably disapprove of the Budget in writing within thirty (30) days after receipt shall be deemed approval of the Budget by the Members. If the Members and the

Managers fail to reasonably resolve any Budget items within (sixty (60) days after Members' receipt of the Budget, then the last Approved Budget shall be used until a Budget is approved. The Budget, approved or deemed approved, shall be referred to as the "Approved Budget."

6.10.3 The Manager shall not need further approval of the Members to make expenditures and incur obligations (a) provided for in any Approved Budget, (b) that exceeds the applicable approved line item amount in such Approved Budget by no more than fifteen percent (15%) (but not to exceed \$100,000 with respect to any single expenditure or related series of expenditure and not to exceed \$500,000 with respect to the cumulative total of all budget line items or development categories during the course of any Fiscal Year), or (c) to the extent that the Manager in good faith deems necessary to prevent any loss or injury in a bona fide emergency or to comply with applicable laws. Notwithstanding the foregoing, until there is an Approved Budget, the Manager shall not enter into any leases at rental rates less than those contemplated by the prior year's Approved Budget, make any capital expenditures, enter into a loan or enter into any contracts not terminable within 30 days.

6.11 Other Activities of Managers, Development Manager and Members Permitted. Except as set forth expressly in this Section: 1) the Members and/or their Affiliates and any (including, without limitation, any Member and any Manager or Development Manager or Representative) may engage in or possess an interest in other business ventures of every nature and description, independently or with others; and 2) this Agreement shall not preclude or limit in any respect the right of any Manager, Development Manager, Member, Representative or Affiliate to engage or invest in any business activity of any nature or description, including those which may be the same as or similar to the Business of the LLC or in direct competition therewith. Any Manager, Development Manager, Member, Representative or Affiliate shall have the right to take for its own account (individually or as a trustee) or to recommend to others any investment opportunity.

6.11.1 The Manager and Development Manager shall be obliged to devote only as much of its time to the Business of the LLC as shall be reasonably required in light of the Purpose of the LLC. The Manager and Development Manager shall perform their respective duties in accordance with the standards set forth in Section 6.1.5 above. A Manager or Development Manager who so performs its duties shall not have any liability by reason of being or having been a Manager or Development Manager of the LLC.

6.11.2 Notwithstanding the terms stated in this Section above, Manager, Development Manager, Representatives and Members and their Affiliates, shall not acquire, develop and/or own any hotel project with more than fifty (50) rooms within a thirty (30) mile radius of the Real Property (a "Potentially Competitive Property"); provided, however, this Section shall not apply to a Potentially Competitive Property that is being sold and it would be advantageous to the LLC to control such Potentially Competitive Property for the protection of the value of the LLC, the Member

interested in the Potentially Competitive Property shall give all Members the first right of refusal to invest in the Potentially Competitive Property on substantially the same terms as this Agreement.

6.12 Acts of Manager as Conclusive Evidence of Authority. Every contract, deed, lease and other instrument executed by the Managers shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof (i) the LLC was in existence, (ii) neither this Agreement nor the Articles of Organization had been amended in any manner so as to restrict the delegation of authority among Members or the Manager, and (iii) the execution and delivery of such instrument was duly authorized by Members and the Manager, as applicable. Any Person may always rely on a certificate addressed to him and signed by the Manager:

6.12.1 as to who are the Members or the Manager(s) hereunder;

6.12.2 as to the existence or non-existence of any fact which constitutes a condition precedent to acts by the Members or the Manager or in any other manner germane to the affairs of the LLC;

6.12.3 as to who is authorized to execute and deliver any instrument or document of the LLC;

6.12.4 as to the authenticity of any copy of the Articles of Organization, this Agreement, amendments hereto and any other document relating to the conduct of the affairs of the LLC; or

6.12.5 as to any act or failure to act by the LLC, or as to any other matter whatsoever involving the LLC, or as to any other matter whatsoever involving any Manager, or any Member (in its capacity as a Member or Manager).

6.12.6 Nothing contained in this Section shall be deemed to expand the rights or authority of the Manager hereunder or to limit the approval rights of the Members hereunder.

6.13 Limitations on Liability of Manager. A Manager or the Development Manager shall not be liable to the LLC or Members for any loss or damage resulting from any mistake of fact or judgment or any act or failure to act unless the mistake, act or failure to act is the result of Manager Waste. The Members hereby adopt and approve all actions of Manager in the process of obtaining the Loan; and further, all Managers and Members hereby release all other Managers and all Members in their respective ownerships, membership or managerial capacities from any and all claims, actions, liabilities and/or losses that may exist now or could have been alleged prior to the Effective Date.

6.14 Business Plan. The Development Manager shall suggest amendments or modifications to the Business Plan at least annually and upon receipt of such

recommendations, the Managers shall review and amended or modify the Business Plan as they deem reasonably necessary and/desirable. All such amendments or modifications shall require the unanimous Decision of the Managers; provided, however, if the Business Plan is to be amended or modified such that it would no longer be consistent with the Purpose, such amendment or modification shall require the Vote of the Members. Simultaneously with the preparation of the Annual Budget, the Manager or Development Manager shall prepare a report indicating progress made on the Business Plan then in effect.

6.15 Compensation of Managers and Affiliates. Except as expressly set forth in this Agreement, the Managers, Development Manager and Affiliates shall not be entitled to any compensation. The LLC shall pay to the Managers and Development Manager in their capacity to provide to the LLC their expertise and managerial services to the LLC and real estate development manager as the service provider, in addition to being the Manager of the LLC, for activities and services that Manager or Development Manager would otherwise retain or perform itself limited to the following:

6.15.1.1 Acquisition and Due Diligence Reimbursement shall be paid to Tower Development equal to one percent 1% of the purchase price of the Real Property, which is deemed to be \$5,200,000 (and excludes the price for secured and unsecured claims). This shall cover all services pre-closing of whatever kind and all expenses prior to the closing of the purchase of the Property, excepting only Project Costs for attorneys' fees, which amount shall be paid to Tower Development as Project Costs.

6.15.1.2 The Development Manager shall be entitled Development Services Fee, which shall be a fixed amount for the development period (commencing from the closing of the Real Property and expiring December 31, 2015), for completion of hotel Towers 1 & 2 and 3, which shall be equal to Twenty Thousand Dollars (\$20,000) per month. Thereafter, Development Services Fees shall be at a reasonable amount based on market comparables and agreeable between the Managers for the applicable development services that shall not exceed a reasonable comparable project.

6.15.1.3 Commencing on completion of renovation of hotel Towers 1 & 2, the Development Manager shall be entitled to a monthly Asset Management Services Fee for all financial oversight and analysis of all hotel operations, the hotel management company, financial reporting to Members, tax reporting oversight, loan accounting review, Property asset management, golf oversight, leasing of the Property, and any other matters deemed necessary by the Managers. The Asset Management Services Fee shall be a fixed amount for the duration of the LLC equal to Ten Thousand Dollars (\$10,000) per month; provided, however, the Asset Management Services Fee shall only be paid to the extent that there exists excess cash flow after the payment of the monthly debt service payments and any additional obligations under the Loan.

6.15.1.4 The Managers and Development Manager shall be reimbursed for any project expense, marketing of the Property, and any other costs and expenses consistent with the Business Plan and Approved Budget paid by Managers, Development Manager or their employees and Affiliates that properly is to be borne by the LLC.

6.15.1.5 Tower Hotels Hilo's Development's Affiliate, Tower Commercial LLC, a licensed Hawaii real estate brokerage company, shall, if the Property is ever sold, market and oversee all bidding procedures and incoming offers and process all buyers directly rather than a listing broker handling such services, provided, however, Tower Commercial LLC and Manager shall jointly interview and retain a nationally recognized entity to list the Property nationally. Tower Commercial LLC shall receive compensation of one-half of one percent (.5%) of the sale price of the Real Property to perform the oversight and brokerage services to maximize any Sale of the Property and will co-list the Sale of the Real Property in which case the expected commission to the outside broker is anticipated to be 1%.

6.15.1.6 Tower Hotels Hilo conducts business with Molinar Construction (specifically Aaron Molinar) and its Hawaii affiliated general contractor (collectively "General Contractor"), which has been retained to handle the oversight of the construction pursuant to the terms set forth in the Business Plan with respect to the general contractor fee and as otherwise agreed upon by General Contractor and the Company. Managers understand that General Contractor provided construction services in the first Wyland Waikiki Hotel in Waikiki and has performed the construction services for Tower Hotel Development's Affiliates on all projects built in the State of Hawaii and provided all of the pricing estimates to underwrite the purchase of the Project and has been an integral part of the success of Affiliates of Tower Hotels Hilo Development's ability to process construction with a design build ability for Wyland and or artiste hotel with onsite design ability and at cost efficiently prices on a timely basis. All contractors for the Project, including, General Contractor, shall be required to be licensed in the State of Hawaii in good standing with experience in developing hotels of the same or better quality as the hotel contemplated by the Business Plan.

6.15.1.7 Notwithstanding Section 6.1.3, the LLC approves of certain project staff for the Project as follows: Stuart Miller shall continue to act as the Project Manager for the construction period and shall be compensated for day-to-day on-sight Project Manager services for the LLC and coordinate all construction supervision over the contractor, meetings, reporting and loan draws, and will be compensated based on market terms. In addition, Noel Ross shall continue to be appointed as the Project Administrator and be reimbursed for her time and services as reasonably approved by the Managers. All expenses incurred for the Project Management of construction on a day-to-day basis and Project Administration, which shall be reasonably approved by the Managers.

6.15.1.8 Managers hereby also approve, subject to compliance of all conditions specified herein below, that certain Consulting Agreement in favor of

Olson/Naniloa LLC ("O/N"), to provide general consulting services to WHR LLC in the local Hilo tourism market and lobbying efforts relating to the Project. The Consulting Agreement is referenced herein as an obligation that arises only upon a sale of the entire Project and upon the closing thereof and is subject to the following conditions: (i) that Class A Members shall have received repayment of all Class A Unreturned Capital and Class A Preferred Return; and (ii) O/N has not threatened or filed any lawsuit against the LLC, its Managers and/or its Members. Any inconsistency between the Consulting Agreement and this Agreement shall be controlled by this Agreement.

6.15.1.9 Except as otherwise provided herein, no compensation or other remuneration shall be paid by the LLC to any Member, Manager, Development Manager or any Principal of any such Member, Manager or Development Manager.

ARTICLE 7 MEETINGS OF MEMBERS

7.1 Special Meetings of Members. Special meetings of Members for any purpose or purposes of addressing any matters on which Members may vote, unless otherwise proscribed by the Statute or by the Articles of Organization, may be called by any Manager, or upon written demand of any Member or Members representing twenty-five percent (25%) or more of the Percentage Interests then held by Members on any issue proposed to be considered. Special meetings of Members for any purpose may be held at such date, time and place within or outside of the State of Hawaii or California as shall be stated in the notice of the meeting or in a duly executed and delivered waiver of notice, provided notice of the meeting is given not less than ten days nor more than 60 days before the date of the meeting.

7.2 Notices, Voting And Procedures at Meetings.

7.2.1 One or more Managers shall deliver or mail written notice stating the date, time, and place of any meeting of Members and, in the case of a special meeting of Members or when otherwise required by law, a description of the purposes for which the meeting is called, to each Member of record entitled to vote at the meeting, at such address as appears in the records of the LLC, such notice to be mailed at least ten, but not more than 60, days before the date and time of the meeting. A Member may waive notice of any meeting, before or after the date of the meeting, by delivering a signed waiver to the LLC for inclusion in the minutes of the LLC. A Member's attendance at any meeting, in person or by proxy (a) waives objection to lack of notice or defective notice of the meeting, unless the Member at the meeting objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

7.2.2 The record date for the purpose of determining the Members entitled to notice of a meeting of Members, for demanding a special meeting of Members, for voting, or for taking any other action shall be the tenth (10th) day prior to the date of the meeting or other action.

7.2.3 A Member may appoint a proxy to vote or otherwise act for the Member pursuant to a written appointment form executed by the Member or the Member's duly authorized attorney-in-fact. An appointment of a proxy is effective when received by one or more Managers of the LLC. The general proxy of a fiduciary shall be given the same effect as the general proxy of any other Member. A proxy appointment is valid for 11 months unless otherwise expressly stated in the appointment form, provided that any proxy may be revoked unless the proxy states expressly to the contrary.

7.2.4 At any meeting of Members, presence of Members entitled to cast at least a Majority of the total votes of all Members entitled to vote at such meeting constitutes a quorum. Action on a matter is approved if it receives approval by the Vote, or such other number as may be required by this Agreement or such other, higher number as may be required by law, the Articles of Organization or this Agreement for the particular matter under consideration. Upon the occurrence of a Disassociation Event, a Former Member shall not be entitled to any vote in determining whether the LLC shall purchase the interest of such Former Member as permitted in Section 11.2. Also, any assignee of a Member's Interest shall not be entitled to vote or participate on any matters at any meeting unless such assignee become a substitute Member as contemplated in Section 8.1.

7.2.5 Any or all Members may participate in any Members' meeting by, or through the use of, any means of communication by which all Members participating may simultaneously hear each other during the meeting. A Member so participating is deemed to be present in person at the meeting.

7.2.6 At any Members' meeting the Manager shall appoint a person to preside at the meeting and a person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting that shall be placed in the minute books of the LLC.

7.2.7 Subject to Section 7.2.4 and the applicable laws of the State of Hawaii, any action required or permitted to be taken at a Members' meeting may be taken without a meeting if a consent in writing setting forth the action so taken, is (i) signed by Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote on that action at a meeting were present and voted, and (ii) delivered to the LLC for inclusion in the minutes and all Members not signing such consent, if any. The record date for determining Members entitled to take action without a meeting is the first date a Member signs the consent to such action.

ARTICLE 8
RESTRICTIONS ON TRANSFER OF LLC INTERESTS;
ADMISSION OF NEW MEMBERS; BUYOUT OPTION

8.1 Transfer or Assignment of Member's Interest. A LLC Interest or an Economic Interest may be transferred or assigned only as provided in this Agreement.

8.1.1 No Transfers Without Member Consent. No transfer, sale, assignment, hypothecation, pledge, encumbrance, or other disposition (each of the foregoing, a "Transfer") or involuntary transfer of a Member's LLC Interest in the LLC, or any part thereof, will be valid without the consent of the Members approved by a Vote of the Members not including the transferring Member) and the Decision of the Managers. If a Transfer is so consented to or deemed consented to under Section 11.3, the transferee shall be admitted into the LLC as an additional Member. Any Transfer or involuntary transfer of a LLC Interest, or any part thereof, which does not satisfy the requirements of this Section 8.1.1, shall be null and void and of no force or effect, and no transferee of any such transaction shall have a right to participate in the management of the business and affairs of the LLC or to become a Member. "Transfers" shall also include a change of control of a Member.

8.1.2 Transfers of an Economic Interest. Notwithstanding Section 8.1.1 above, a Member may Transfer an Economic Interest, or any part thereof, without the consent of the Manager or the Members. Any holder of an Economic Interest shall have no right to participate in the management of the business and affairs of the LLC or to become a Member thereof.

8.2 Admission of New Members. A new Member may be admitted into the LLC only upon the approval by a Vote of the Members and the Decision of the Managers.

8.2.1 The amount of Capital Contribution that must be made by a new Member shall be determined by the Vote of the Members.

8.2.2 A new Member shall not be deemed admitted into the LLC until the Capital Contribution required of such Person shall have been made and received by the LLC and such Person has become a party to this Agreement by unconditional execution of this Agreement.

8.3 Void Transfers. Any Transfer made in violation of this Article 8 shall be of no force or effect, including any transfer in violation of Section 8.1, and the Member whose LLC Interest is the subject of a Transfer or involuntary transfer shall continue to be obligated under each and every provision of this Agreement.

ARTICLE 9
BOOKS, RECORDS, REPORTS AND BANK ACCOUNT

9.1 Maintenance of Books And Records. The Manager shall cause books and records of the LLC to be maintained in accordance with accepted accounting practices, and shall give reports to the Members in accordance with prudent business practices and the Statute. The Manager may delegate responsibility for maintenance of the books and records to the Development Manager. There shall be kept at the principal office of the LLC, as well as at the office of record of the LLC specified in Section 2.3, if different, the following LLC documents:

9.1.1 A current list of the full name and last known business or residence address of each Member set forth in alphabetical order, together with the Capital Contributions and Percentage Interests of each Member; provided, however, in the event a Member requests its personal name or entity be maintained confidential, Manager shall maintain such Member on the Member List in the Manager's books and records and assign a Member number to such Member;

9.1.2 A current list of the full name and business or residence address of each Manager;

9.1.3 A copy of the Articles of Organization and any amendments thereto, together with any powers of attorney pursuant to which the Articles of Organization and any amendments thereto were executed;

9.1.4 Copies of the LLC's federal, state and local income tax or information returns and reports, if any, for the six most recent Fiscal Years;

9.1.5 A copy of this Agreement and any amendments thereto, together with any powers of attorney pursuant to which this Agreement and any amendments thereto were executed;

9.1.6 Copies of the financial statements of the LLC, if any, for the six most recent Fiscal Years;

9.1.7 The LLC's books and records as they relate to the internal affairs of the LLC for at least the current and past four Fiscal Years;

9.1.8 Originals or copies of all minutes, actions by written consent, consents to action and waivers of notice to Members and Member Votes, actions and consents; and

9.1.9 Any other information required to be maintained by the LLC pursuant to the Statute.

9.2 Annual Accounting. Within sixty (60) days after the close of each calendar year of the LLC, the Managers shall: (i) cause to be prepared and submitted to each Member financial statements, including a balance sheet and income

statement for the period in conformity with generally accepted accounting principles; and (ii) within sixty (60) days after the close of each Fiscal Year of the LLC, provide to the Members all information necessary for them to complete federal and state tax returns. The Manager may delegate such duties to the Development Manager. For financial reporting purposes the books and records of the LLC shall be kept on the accrual method of accounting applied in a consistent manner, and shall reflect all transactions of the LLC and be appropriate for the LLC.

9.3 Inspection and Audit Rights. Each Member has the right upon reasonable request, for purposes reasonably related to the interest of that Person, to inspect and copy during normal business hours any of the LLC books and records, including those required to be maintained in accordance with Section 9.1. Such right may be exercised by the Person or by that Person's agent or attorney. Any Member may require a review and/or audit of the books, records and reports of the LLC. In addition, each Member shall have the right to review any and all books, records and reports and properties to the same extent as the Manager has such right hereunder or under the Statute. Upon reasonable notice, each Member shall have the right to order an audit of the LLC books and records by an independent Certified Public Accountant selected by a Vote of the Members. All costs and expenses of such audit shall be borne by the Member requesting the Audit unless a Notice of Default has been issued relating accounting procedures whereupon the costs shall be borne by the LLC.

9.4 Rights of Members. Upon the request of a Member, for purposes reasonably related to the interest of that Person, the Manager shall promptly deliver to the Member, at the expense of the LLC, a copy of this Agreement and a copy of the information listed in Sections 9.1.1 through 9.1.9 of this Agreement, except with respect to Member List and confidential information as the case may be.

9.5 Bank Accounts. The bank accounts of the LLC shall be maintained in such banking institutions as provided in Section 6.3.5, provided such institutions either (i) are approved by the Members, or (ii) have a net worth in excess of One Hundred Million Dollars (\$100,000,000).

9.6 Obligations to Report Allocations. The Members and Holders are aware of the income tax consequences of the allocations made by this Agreement and hereby agree to be bound by the provisions of this Agreement in reporting their shares of the LLC income and loss for income tax purposes.

ARTICLE 10 DISSOLUTION AND WINDING UP

10.1 Conditions of Dissolution. Subject to the provisions of Article 17, the LLC shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

10.1.1 The expiration of the Period of Duration;

10.1.2 A Vote of Members that the LLC shall be dissolved and wound up;

10.1.3 The occurrence of a Disassociation Event and either (i) the failure of the other Members to provide their consent by a Vote for the event resulting in the occurrence of the Disassociation Event, or (ii) the failure of the other Members holding more than fifty percent (50%) of the Percentage Interests held by all such other Members to consent to the continuation of business of the LLC; provided, however, that the LLC continues to have one or more Members in the event of any continuation of the LLC after a Disassociation Event;

10.1.4 The sale of all or substantially all of the assets of the LLC; and

10.1.5 The entry of a decree of judicial dissolution by a court of competent jurisdiction providing for the dissolution of the LLC as the result of any action filed by any Manager or any Member or Members not in violation or breach of this Agreement

10.2 Publication of Intent to Dissolve; Articles of Termination. As soon as possible following the occurrence of any of the events specified in Section 10.1, the Manager, on behalf of the LLC, shall publish notice of the LLC's intent to dissolve as required by the Statute. Upon fulfilling the publication requirement, the LLC shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence continues until the Articles of Termination have been filed with the Director or until a decree dissolving the LLC has been entered by a court of competent jurisdiction.

10.3 Winding Up. Upon the occurrence of any of the events specified in Section 10.1, the LLC shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, disposing of and conveying its Property, collecting and dividing its assets, satisfying the claims of its creditors and prescribing and defending actions by or against the LLC in order to collect and discharge its obligations. No Member shall take any action that is inconsistent with, or not necessary to or appropriate for, winding up the business and affairs of the LLC. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the assets have been distributed and the LLC has terminated.

10.4 Responsibilities For Winding Up. The Manager shall be responsible for overseeing the winding up and liquidation of the LLC in conformance with the Statute, including the following:

10.4.1 Giving written notice of the commencement of the winding up and dissolution of the LLC to all known creditors and claimants whose addresses appear in the records of the LLC,

10.4.2 Liquidating the assets of the LLC as promptly as is consistent with maximizing the market value thereof; and

10.4.3 Distributing the proceeds from the liquidation of the assets of the LLC, to the maximum extent possible, as provided in Section 10.6.

10.5 Allocations of Liquidating Gains And Losses to Unit Holders. All net income, gains and net loss realized during the winding-up period, including gains and losses realized on the sale or other disposition of all or substantially all of the LLC's assets, shall be allocated among the Members and other Unit Holders in accordance with the provisions of Section 4.1.

10.6 Order of Payment Upon Dissolution. In settling accounts of the LLC after dissolution, the Manager shall settle the liabilities of the LLC with payments in the following order, as required by the Statute:

10.6.1 To creditors other than Members, in the order of priority as provided by law;

10.6.2 To creditors who are Members in order of priority, except amounts owed to Members on account of their Capital Contributions;

10.6.3 To the Members as provided in Section 5.2; and

10.6.4 To the Members in accordance with their positive Capital Accounts.

Where the distribution pursuant to this Section 10.6 consists both of cash (or cash equivalents) and non-cash assets, the cash (or cash equivalents) shall first be distributed, in a descending order, to fully satisfy each category starting with the most preferred category above. In the case of non-cash assets, the distribution values are to be based on the fair market value thereof as determined in good faith by the liquidator, and the shortest maturity portion of such non-cash assets (e.g., notes or other indebtedness) shall, to the extent such non-cash assets are readily divisible, be distributed, in a descending order, to fully satisfy each category above, starting with the most preferred category.

10.7 Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall only be entitled to look solely at the assets of the LLC for the return of his positive Capital Account balance. Managers or Members winding up the affairs of the LLC shall be entitled to reasonable compensation.

10.8 Tenants in Common. In the event that dissolution or Managers mutually agree it is in the best interest of the Members, Manager shall have the discretion to effectuate a transfer of each Member's Percentage Interest in the LLC to all of the Members individually in a tenants-in-common ownership in order that each Member may determine how best to reinvest its Percentage Interest. The costs of such tenants in common transaction shall be borne by the LLC.

ARTICLE 11
CONSEQUENCES OF DISASSOCIATION OR BUYOUT REQUEST

11.1 Consent to Continue Business of the LLC. Subject to the provisions of Article 17, upon the occurrence of any Disassociation Event with respect to a Member, the LLC shall dissolve unless the other Members determine to continue the Business of the LLC within 90 days of the date that the Members are provided written notice of such Disassociation Event pursuant to the terms of Section 10.3 above.

11.2 Purchase of Member's Interest. Subject to the provisions of Article 17, upon the occurrence of any Disassociation Event and the consent by the remaining Members to continue the business of the LLC, and the demand for the return of its Capital Account by the Member whose actions or conduct result in the Disassociation Event ("Former Member") or such Former Member's trustee or heirs, upon the inheritance or transfer by operation of law to any Person, the other Members (the "Remaining Members") shall have an option to purchase such Former Member's LLC Interest. In addition, if a Manager (including the Initial Manager) or the Development Manager is removed for cause, the Members other than the Manager, Development Manager or its Affiliates, as applicable (also, "Remaining Members") may elect by a Majority in interest of such Remaining Members within 90 days of such removal, to purchase the LLC Interests of the Manager or Development Manager, as applicable. Within 90 days of the receipt of the demand for the return of its Capital Account by the Former Member or by such Former Member's trustee or heirs (or of the date of removal of the Manager or Development Manager) the Remaining Members shall notify the Former Member and the Manager or Development Manager, as applicable, in writing of their desire to purchase all or a portion of the Former Member's or Manager's or Development Manager's LLC Interest.

11.3 Failure to Submit Notice of Purchase. The failure of any Remaining Member to submit a notice within the applicable period shall constitute an election on the part of the Remaining Member not to purchase any of the Former Member's LLC Interest or Manager's or Development Manager's LLC Interest, as applicable. Each Remaining Member shall be entitled to purchase a portion of the Former Member's LLC Interest or Manager's or Development Manager's LLC Interest equal to the Remaining Member's "pro rata part" on the date of the consent to continue the business of the LLC, or the date of receipt of the rightful demand for the return of its Capital Contribution by the Former Member or such former Member's trustee or heirs or the date of removal of the Manager or Development Manager, as applicable. "Pro rata part" shall mean a ratio whose numerator is the purchasing Remaining Member's Percentage Interest and whose denominator is the aggregate of all purchasing Remaining Member's Percentage Interests.

11.4 Election to Purchase Less than All of an Interest. In the event any Remaining Member elects to purchase none or less than all of its pro rata part of the Former Member's LLC Interest or Manager's or Development Manager's LLC Interest, then, at their individual election, the other Remaining Members can elect to purchase more than their pro rata part. If the Remaining Members fail to purchase the entire

LLC Interest of the Former Member or Manager or Development Manager, the LLC may elect to purchase the Former Member's or Manager's or Development Manager's LLC Interest unpurchased portion. If none of the above elects to purchase, the same shall pass by operation of law to any assignee or shall remain in the hands of the Former Member or Manager or Development Manager, subject to any right of the holder of such LLC Interest to demand payment therefore according to Hawaii law, provided that all such laws are waived to the extent permissible by such laws. Notwithstanding any provision of this Agreement to the contrary, the Remaining Members may mutually agree to an allocation of the Former Member's or Manager's or Development Manager's LLC Interest to be purchased by each of them.

11.5 Valuation of Interest of Member. The value of each Member's LLC Interest shall be established as necessary under this Section 11 when and upon the triggering event for a valuation but shall occur no earlier than after the third full calendar year of the LLC. If the Members are unable or otherwise have failed to agree on the value of the Member's LLC Interests as of the end of a particular calendar quarter, then the value of the Member's Interests shall be determined by Mediation after an appraisal is completed by both the LLC and separately by the respective Former Member. In such event, the value of the Member's LLC Interests shall equal the fair market value of the Interests as determined by the Mediation.

11.6 Payment of Purchase Price. The purchase price shall be paid by the LLC or the Remaining Member(s) on an unsecured basis, as the case may be, either: (i) in three (3) equal annual installments of principal together with interest, commencing to accrue from the date of closing, at the then current Applicable Federal Rate for short term debt (the "AFR") under Section 1274(d) of the Code for the month in which the first payment is made (or a rate per annum equal to what the AFR would be for such month under Code Section 1274(d) of the Code if the AFR is no longer published) to fully amortize such purchase price over such three (3) payments with the first payment being due and payable 60 days after the determination of the fair market value of the Former Member's or Manager's or Development Manager's LLC Interest in the LLC, or (ii) within 60 days after the determination of the fair market value of the Former Member's or Manager's or Development Manager's LLC Interest, as the LLC or the Remaining Member, as the case may be, may elect in their sole discretion. If the purchase price is paid by the LLC, it shall be paid to the extent of cash available from operations or as Manager best sees fit for the LLC to maximize the financial status for the LLC.

11.7 Purchase Terms Varied by Agreement. Nothing contained herein is intended to prohibit Members from agreeing upon terms and conditions for the purchase by the LLC or any Member of the LLC Interest of any Member in the LLC desiring to retire, withdraw or resign, in whole or in part, as a Member (on such terms and conditions as may be agreed upon by the selling Member and the LLC or the remaining Members as the case may be). If any interest of a Former Member or Manager is not repurchased, then such Member shall remain a Member; each such

Member waives any ability of a Member to demand a return of his or its contribution to the LLC as provided in the Statute.

11.8 No Right to Return of Capital. To the fullest extent permitted by applicable law, neither the Former Member nor any successor in interest shall have the right to the return of its Capital Account and all such rights are waived. Any interest held by a Former Member shall be an economic interest only on all of the same terms and conditions, but without any right as a Member of the LLC.

11.9 Right of First Offer. No Member shall have the right to require the LLC or other Members to voluntarily buyout any interest of Member or any other Member or any portion of their LLC Interests. However, in the event a Member (the "Offering Member") desires to sell all or any portion of its LLC Interests (the "Offered Interests"), if three full calendar years have expired since the purchase of the Real Property, the Offering Member shall deliver a written notice to the Managers and other Members describing the Offered Interest and requesting any interested Member to make an offer therefor. All Members shall have the right to make a written offer to purchase the Offered Interest; which offer notice shall contain sufficient detail as to the price and other terms of the offer and be delivered to the Offering Member within thirty (30) days of the Offering Member's notice. The Offering Member shall have the right to accept or reject any Member's offer to purchase all or any portion of the Offered Interest; provided, however, if more than one offer is accepted by the Offering Member, the Offered Interests shall be allocated between the accepted Members prorata. The sale of the Offered Interests shall be consummated in accordance with the terms of the accepted offer or as the parties may otherwise agree. In the event that the Offering Member doesn't receive or accept any offers to purchase the entire Offered Interest, the Offering Member may thereafter sell any remaining Offered Interest to a third-party without first obtaining the consent of any Manager or Member under Section 6.4.12 or 8.1.1, as applicable, provided that the terms of such sale to one or more third parties are reasonably more favorable to the Offering Member than any written offer of a Member rejected by the Offering Member under this Section 11.9 and the sale is to the third party consummated within 120 days after the initial offer is made by the Offering Member. The transferee shall be admitted as a Member upon consummation of the transfer; provided, however, that if the transferee is (a) an owner, operator or Affiliate of a Potentially Competitive Property, (b) employed by, or an Affiliate of, a national hotel management company, or (c) an owner, operator or Affiliate of a business in competition with any business operated on the Property, the other Member may reasonably reject such transferee's admission as a Member and said transferee shall only be entitled receive an Economic Interest with respect to the Offered Interest.

11.10 Consent of Avior Capital, LLC's and/or Helen Koo's Purchase of Olson/Naniloa LLC Membership Interests. All Managers and Members hereby consent to the possible future purchase by Avior Capital, LLC ("Avior") and/or Helen Koo of the Membership Interests of Olson/Naniloa LLC ("O/N"). If O/N desires to sell any of its

Membership Interests to anyone other than Avior or Helen Koo, Tower Hotels Fund 2013 LLC shall have the first right to purchase the same.

ARTICLE 12 INDEMNIFICATION

12.1 Indemnification of Members, Managers And Their Principals. The LLC shall indemnify and hold harmless the Members, the Managers, the Development Manager and their respective officers, directors, employees, agents and Principals (individually, an "Indemnitee") from and against any and all losses, claims, demands, costs, damages, liabilities, joint and several, expenses of any nature (including reasonable attorneys' fees and disbursements), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which the Indemnitee was involved or may be involved, or threatened to be involved, as a party or otherwise, arising out of or incidental to the Business of the LLC, regardless of whether the Indemnitee continues to be a Member, Manager, or an officer, director, employee, agent or Principal of the Member or Manager at the time any such liability or expense is paid or incurred, to the fullest extent permitted by the Statute and all other applicable laws.

12.2 Expenses. Expenses incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding subject to Section 12.1 shall, from time to time, be advanced by the LLC prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the LLC of an undertaking by or on behalf of the Indemnitee acceptable to the Members to repay such amount if it shall be determined that such Person is not entitled to be indemnified as authorized in Section 12.1.

12.3 Indemnification Rights Non-Exclusive. The indemnification provided by Section 12.1 shall be in addition to any other rights to which those indemnified may be entitled under any agreement, Vote of the Members, as a matter of law or equity or otherwise, both as to action in the Indemnitee's capacity as a Member, Manager, or as an officer, director, employee, agent or Principal of a Member or Manager and as to any action in another capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

12.4 Errors And Omissions Insurance. The LLC shall, unless the Manager deems otherwise, purchase and maintain insurance, at the LLC's expense, on behalf of the Members, Managers, Development Manager and such other Persons as the Members shall determine, against any liability that may be asserted against, or any expense that may be incurred by, such Manager, Development Manager or other Person in connection with the activities of the LLC and/or the Member's acts or omissions as the Members of the LLC regardless of whether the LLC would have the power to indemnify such Person against such liability under the provisions of this Agreement.

12.5 Assets of the LLC. Any indemnification under Section 12.1 shall be satisfied solely out of the assets of the LLC. No Member shall be subject to personal liability or required to fund or to cause to be funded any obligation by reason of these indemnification provisions.

ARTICLE 13 INTENTIONALLY OMITTED

ARTICLE 14 AMENDMENTS

14.1 Amendment, Etc. of Agreement. Subject to the provisions of Article 17, this Agreement may be adopted, altered, amended, or repealed and a new operating agreement may be adopted by a Vote of the Members. Any provision of the Statute requiring a unanimous or other greater vote is hereby waived and superceded. Except as otherwise provided in this Agreement, the economic rights or voting rights of a Member may not be reduced without the approval of all of the Members.

14.2 Amendment, Etc. of Articles of Organization. Subject to the provisions of Article 17, the Articles of Organization may be altered, amended, or restated only by the Vote of the Members. Any provision of the Statute requiring a unanimous or other greater vote is hereby waived and superseded.

ARTICLE 15 INVESTMENT REPRESENTATIONS

Each Member hereby represents, warrants to, and agrees with, the Managers, the other Members and the LLC as follows:

15.1 Pre-existing Relationship or Experience. (i) Such Member has a preexisting personal or business relationship with the LLC or one or more of its Managers or (ii) by reason of his/its or her business or financial experience, or by reason of the business or financial experience of his/its or financial advisor who is unaffiliated with and who is not compensated, directly or indirectly, by the LLC or any affiliate or selling agent of the LLC, is capable of evaluating the risks and merits of an investment in the LLC Interest and of protecting such Member's own interests in connection with this investment.

15.2 No Advertising. Such Member has not seen, received, been presented with, or been solicited by any leaflet, public promotional meeting, newspaper or magazine article or advertisement, radio or television advertisement, or any other form of advertising or general solicitation with respect to the sale of the LLC Interest.

15.3 Investment Intent. Such Member is acquiring the LLC Interest for investment purposes for such holder's own account only and not with a view to or for sale in connection with any distribution of all or any part of the LLC Interest. No

other person will have any direct or indirect beneficial interest in or right to the LLC Interest.

15.4 Economic Risk. Such Member acknowledges that the LLC Interest is a speculative investment which involves a substantial degree of risk of loss of the entire investment in the LLC, that such Member understands and takes full cognizance of the risk factors related to the purchase of the LLC Interest, and that the LLC is newly organized and has no financial or operating history. Such Member is financially able to bear the economic risk of an investment in the LLC Interest, including the total loss thereof.

15.5 No Registration of Interest. Such Member acknowledges that the LLC Interest has not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or qualified under applicable blue sky laws in reliance, in part, on his representations, warranties, and agreements herein.

15.6 Restrictions on Transfer. Such Member understands that the LLC Interest is a "restricted security" under the Securities Act in that the LLC Interest will be acquired from the LLC in a transaction not involving a public offering, and that the LLC Interest may be resold without registration under the Securities Act only in certain limited circumstances and that otherwise the LLC Interest must be held indefinitely (except as otherwise expressly provided in this Agreement). In this connection, such Member understands the resale limitations imposed by the Securities Act and is familiar with SEC Rule 144, as presently in effect, and the conditions which must be met in order for that Rule to be available for resale of "restricted securities," including the requirement that the securities must be held for at least one year after purchase thereof from the LLC prior to resale and the condition that there be available to the public current information about the LLC under certain circumstances. Such Member understands that the LLC has not made such information available to the public and has no present plans to do so. It is acknowledged that there are substantial restrictions on the transferability of the LLC Interest pursuant to this Agreement, that there is no public market for the Interest and none is expected to develop, and that, accordingly, it may not be possible for the Member to liquidate the investment in the LLC.

15.7 No Obligation to Register. Such Member agrees that the LLC and the Managers are under no obligation to register or qualify the LLC Interest under the Securities Act or under any state securities law, or to assist the Member in complying with any exemption from registration and qualification.

15.8 Legends. Such Members understands that the certificates evidencing the LLC Interest may bear one or all of the following legends:

15.8.1 "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR

HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE LLC, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS, AND CONDITIONS WHICH ARE SET FORTH IN THE LIMITED LIABILITY COMPANY AGREEMENT OF THE LLC, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE LLC.”

15.8.2 Any legend required by applicable state securities laws.

15.9 No Representations by LLC. Neither any Manager, any agent or employee of the LLC or of any Manager, or any other Person has at any time expressly or implicitly represented, guaranteed, or warranted to him that he may freely transfer the Interest, that a percentage of profit and/or amount or type of consideration will be realized as a result of an investment in the LLC Interest, that past performance or experience on the part of the Managers or their Affiliates or any other Person in any way indicates the predictable results of the ownership of the Interest or of the overall LLC business, that any cash distributions from LLC operations or otherwise will be made to the Members by any specific date or will be made at all, or that any specific tax benefits will accrue as a result of an investment in the LLC.

15.10 Consultation With Attorney and Accountant. Such Member has been advised to consult with his own attorney and accountant regarding all legal and financial matters concerning an investment in the LLC and the tax consequences of participating in the LLC, and has done so, to the extent the Member considers necessary.

15.11 Indemnity. Such Member shall defend, indemnify and hold harmless the LLC, each and every Manager, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, agents, attorneys, registered representatives, and control persons of any such entity who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of or arising from any misrepresentation or misstatement of facts or omission to represent or state facts made by such Member, including, without limitation, the information in this Agreement, against losses, liabilities, and expenses of the LLC, each and every Manager, each and every other Member, and any officers, directors, shareholders, managers, members, employees, partners, attorneys, accountants, agents, registered representatives, and control persons of any such Person (including attorneys' fees, judgments, fines, and amounts paid in settlement, payable as incurred) incurred by such Person in connection with such action, suit, proceeding, or the like.

ARTICLE 16
MISCELLANEOUS PROVISIONS

16.1 Counterparts and Delivery. This Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts. This Agreement may be delivered electronically.

16.2 Survival of Rights. This Agreement shall be binding upon, and, as to permitted or accepted successors, transferees and assigns, inure to the benefit of the Manager, Members, and the LLC and their respective heirs, legatees, legal representatives, successors, transferees and assigns, in all cases whether by the laws of descent and distribution, merger, reverse merger, consolidation, sale of assets, other sale, operation of law or otherwise.

16.3 Severability. In the event any Section, or any sentence within any Section, is declared by a court of competent jurisdiction to be void or unenforceable, such sentence or Section shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in full force and effect.

16.4 Notification or Notices. Subject to the provisions of Articles 6 and 7 regarding notices of meetings of Managers and Members, any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if personally delivered, transmitted by facsimile (with mechanical confirmation of transmission), or deposited in the United States mail, registered or certified, postage prepaid, addressed to the parties' addresses set forth below, or on Exhibit A, or as otherwise provided to the LLC. Notices given in the manner provided for in this Section 16.4 shall be deemed effective on the third day following deposit in the mail or on the day of transmission or delivery if given by facsimile or by hand. Notices must be addressed to the parties hereto at the addresses provided to the LLC, unless the same shall have been changed by notice in accordance herewith.

16.5 Construction. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Members.

16.6 Section Headings. The captions of the Articles of Organization or Sections in this Agreement are for convenience only and in no way define, limit, extend or describe the scope or intent of any of the provisions hereof, shall not be deemed part of this Agreement and shall not be used in construing or interpreting this Agreement.

16.7 Governing Law. This Agreement shall be construed according to the laws of the State of Hawaii.

16.8 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

16.9 Time of the Essence. Except as otherwise provided herein, time is of the essence in connection with each and every provision of this Agreement.

16.10 Further Actions. Each of the Members agrees to execute, acknowledge and deliver such additional documents, and take such further actions, as may reasonably be required from time to time to carry out each of the provisions, and the intent, of this Agreement, and every agreement or document relating hereto, or entered into in connection herewith.

16.11 Mediation of Disputes. ALL CLAIMS, DISPUTES OR OTHER MATTERS IN QUESTION BETWEEN OR AMONG THE MEMBERS, MANAGERS AND/OR THE DEVELOPMENT MANAGER ARISING OUT OF, OR RELATING TO, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND ANY OTHER AGREEMENT WHICH THE MEMBERS, MANAGERS OR DEVELOPMENT MANAGER HAVE AGREED IN WRITING TO BE GOVERNED BY THIS SECTION, AND THE BREACH THEREOF, SHALL BE DECIDED BY MEDIATION. THE COST OF THE MEDIATION (OTHER THAN EACH PARTIES' OWN ATTORNEYS' FEES AND COSTS) SHALL BE SPLIT BY THE PARTIES PARTICIPATING IN THE MEDIATION (THE "MEDIATING PARTIES"). IF MEDIATION IS INSTITUTED UNDER THIS SECTION, THE PREVAILING PARTY SHALL BE ENTITLED TO ANY RELIEF THAT MAY BE SOUGHT (INCLUDING REIMBURSEMENT FOR THE COST OF THE MEDIATION AND ATTORNEYS' FEES AND COSTS IN THE EVENT OF A DEFAULT PURSUANT TO SECTION 16.17 BELOW). THE PARTIES HEREBY AGREED THAT MEDIATION SHALL BE CONDUCTED BY KEITH HUNTER OR IF HE IS NOT AVAILABLE, ANOTHER MUTUALLY ACCEPTABLE MEDIATOR. IF THE MEDIATING PARTIES CANNOT AGREE TO THE SELECTION OF A MEDIATOR FROM THEIR RESPECTIVE PROPOSED NOMINEES, THEN THE MEDIATING PARTIES WILL JOINTLY PETITION FOR THE APPOINTMENT OF A MUTUAL MEDIATOR. THE MEDIATION WILL BE HELD ON THE DATES, PLACE AND TIME TO BE MUTUALLY AGREED UPON BETWEEN THE MEDIATING PARTIES AND THE MEDIATOR. THE MEDIATOR SHALL APPLY AND FOLLOW THE SUBSTANTIVE LAW OF HAWAII AND THE EVIDENCE LAW OF HAWAII. THE MANNER OF EXCHANGING DOCUMENTS REGARDING THE CLAIMS, DISPUTES AND OTHER MATTERS IN QUESTION THAT ARE SUBMITTED TO MEDIATION UNDER THIS SECTION SHALL BE MUTUALLY AGREED UPON BY THE MEDIATING PARTIES AND THE MEDIATOR. DISCOVERY WILL BE PERMITTED AS APPLICABLE TO ACTIONS IN HAWAII STATE SUPERIOR COURTS. IN THE EVENT THAT THE MEDIATING PARTIES ARE NOT ABLE TO RESOLVE THE DISPUTE THROUGH MEDIATION WITHIN A REASONABLE PERIOD OF TIME GIVEN THE SCOPE AND NATURE OF THE DISPUTE, THE PARTIES SHALL SUBMIT THE DISPUTE TO THE MEDIATOR TO RENDER A BINDING DECISION ON THE PARTIES. IN SUCH EVENT, THE MEDIATOR WILL ISSUE A WRITTEN AWARD AND OPINION NOT LATER THAN THIRTY (30) DAYS AFTER THE CLOSE OF EVIDENCE.

16.12 Waiver of Litigation, Arbitration and Jury Trial. WITH RESPECT TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, EACH MEMBER,

MANAGER AND DEVELOPMENT MANAGER HEREBY IRREVOCABLY WAIVES ALL RIGHTS IT MAY HAVE TO DEMAND LITIGATION, ARBITRATION AND ANY JURY TRIAL, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 16.11 ABOVE. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY THE PARTIES AND EACH PARTY ACKNOWLEDGES THAT NONE OF THE OTHER PARTIES NOR ANY PERSON ACTING ON BEHALF OF THE OTHER PARTIES HAS MADE ANY REPRESENTATION OF FACT TO INDUCE THIS WAIVER OF LITIGATION, ARBITRATION OR TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. EACH PARTY FURTHER ACKNOWLEDGE THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. EACH PARTY FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.

16.13 Third Party Beneficiaries. Except for any potential Lender, there are no third party beneficiaries of this Agreement except Indemnitees as may be entitled to the benefits of Section 12.1.

16.14 Partition. The Parties agree that the Property that the LLC may own or have an interest in is not suitable for partition. Each Party hereby irrevocably waives any and all rights that it may have to maintain any action for partition of any Property the LLC may at any time have an interest in.

16.15 Entire Agreement. This Agreement and the Articles of Organization constitute the entire agreement of the Members, Managers and Development Manager with respect to, and supersedes all prior written and oral agreements, understandings and negotiations with respect to, the subject matter hereof.

16.16 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

16.17 Attorneys' Fees. In the event of any mediation or other dispute arising as a result of or by reason of this Agreement, the prevailing party in any such matter or other dispute shall be entitled to, in addition to any other damages assessed, its reasonable attorneys' fees, and all other costs and expenses incurred in connection with settling or resolving such dispute. The attorneys' fees that the prevailing party is entitled to recover shall include fees for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final decision is satisfied in full. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any additional legal procedure on this Agreement shall be entitled to its reasonable attorneys' fees incurred in any post judgment proceedings to collect or enforce the decision. This attorneys' fees provision is separate and several and shall survive the merger of this Agreement into any judgment.

16.18 Confidentiality and Press Releases. Except for Manager approved communications that Manager deems necessary and consistent with the Business of LLC, the Parties and their respective Affiliates and Principals hereby agree that it is in all of their best interests to keep this Agreement and the Business of the LLC and all information concerning such business confidential. Such parties each agree that they will not take any action nor conduct themselves in any fashion, including giving press releases or granting interviews, that would disclose to third parties unrelated to the LLC or the Business of the LLC any aspect of the LLC or the Business of the LLC without the approval of the Vote of the Members. To the extent such prior approval is given, it may be conditioned upon approval of the text of any press release or the scope of any intended interview.

16.19 Confidential List of Members. Each Member signing this Agreement agrees that its own Member Percentage Interest and personal names related thereto and the other Members' Percentage Interest is deemed confidential and that only upon Manager being compelled to disclose such information by law, in litigation or by governmental action, shall Manager have any obligation to reveal the percentage interests of other Members and in such event, only as required by law. This is based on the fact that many Members may have requested that Manager maintain their Percentage Interest in the Company confidential and the Members hereby agree upon the confidentiality and non-disclosure aspects of all Members' Percentage Interests and names associated therewith unless such Member authorizes such disclosure in writing.

16.20 No Right to Withdraw. No Member may resign or withdraw from the LLC.

16.21 Limitations on Authority. Until the Loan or any future permanent loan secured by the Property has been paid in full, without the unanimous consent of all Members and Managers, neither the Members nor the Managers shall have authority to:

16.21.1 borrow money on behalf of the LLC other than as expressly authorized in this Agreement or in the ordinary course of business, or grant consensual liens on the LLC's property except as expressly authorized in this Agreement;

16.21.2 dissolve or liquidate the LLC;

16.21.3 sell or lease, or otherwise dispose of, all or substantially all of the assets of the LLC; provided, however, if the value of the sale of all or substantially all of the assets of the LLC is in excess of One Hundred Million Dollars (\$100,000,000), then unanimous consent is not required and in this event, the Members hereby approve of such a sale;

16.21.4 file a voluntary petition or otherwise initiate proceedings to have the LLC adjudicated bankrupt or insolvent; or consent to the institution of the bankruptcy or insolvency proceedings against the LLC; or file a petition seeking or

consenting to reorganization or relief of the LLC as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the LLC; or seek or consent to the appointment of any trustee, receiver, conservator, assignee sequestrator, custodian, liquidator (or other similar official) of the LLC for all or substantially all of the assets of the LLC; or make any general assignment for the benefit of creditors of the LLC; or admit in writing the inability of the LLC to pay its debts generally as they become due; or declare or effect a moratorium on the LLC debt; or take any action in furtherance of any of the foregoing provisions of this Section 16.21.4; or

16.21.5 amend, alter, modify, change or repeal any provision of the Articles of Organization or this Agreement or cause any provision of the Articles of Organization or this Agreement to be amended, altered, modified, changed or repealed.

ARTICLE 17

LENDER SPECIAL PURPOSE PROVISIONS

Notwithstanding anything to the contrary contained in this Agreement, unless and until the loan (the "Loan") from Wells Fargo Bank, National Association (together with its transferees, successors and assigns, "Lender") to the Company, as evidenced by a Loan Agreement, as may be amended from time to time (the "Loan Agreement") and certain other loan documents (collectively, together with any documents related thereto, the "Loan Documents"), has been paid in full in accordance with the terms and provisions of the Security Instrument (as defined in the Loan Agreement) and the other Loan Documents, the following provisions shall apply:

17.1 Purpose. The nature of the business and of the purposes to be conducted and promoted by the Company is to engage solely in the following activities:

17.1.1 To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property as permitted by the Loan Documents;

17.1.2 To receive the Loan, enter into the Loan Documents and refinance the subject property in connection with a permitted repayment of the Loan; and

17.1.3 To exercise all powers enumerated in the applicable law of Hawaii necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

17.2 Separateness Covenants. The Company shall not:

17.2.1 Engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto;

17.2.2 Acquire or own any assets other than (a) the Property, and (b) such incidental personal property as may be necessary for the ownership, leasing, maintenance and operation of the Property;

17.2.3 Merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

17.2.4 Fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing under the applicable law of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents;

17.2.5 Own any subsidiary, or make any investment in, any Person;

17.2.6 Commingle its assets with the assets of any other Person;

17.2.7 Incur any indebtedness, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Loan and the prior construction loan, (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and/or (C) Permitted Equipment Leases (as defined in the Loan Agreement); provided, however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time two percent (2%) of the outstanding principal amount of the Loan. No indebtedness other than the Loan may be secured (subordinate or pari passu) by the Property;

17.2.8 Fail to maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party, or list its assets as assets on the financial statement of any other Person; provided, however, that the Company's assets may be included in a consolidated financial statement of its affiliates provided that (1) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Company and such affiliates and to indicate that the Company's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other Person and (2) such assets shall be listed on the Company's own

separate balance sheet or (c) fail to maintain its books, records, resolutions and agreements as official records;

17.2.9 Enter into any contract or agreement with any Manager, Member, principal or affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

17.2.10 Maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

17.2.11 Assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

17.2.12 Make any loans or advances to any Person;

17.2.13 Fail to file its own tax returns unless prohibited by applicable law from doing so (except that the Company may file or may include its filing as part of a consolidated federal tax return, to the extent required and/or permitted by Applicable Law, provided that there shall be an appropriate notation indicating the separate existence of the Company and its assets and liabilities);

17.2.14 fail either to hold itself out to the public as a legal entity separate and distinct from any other Person and not as a division or part of any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

17.2.15 Fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (to the extent there exists sufficient cash flow from the Property to do so after the payment of all operating expenses and scheduled principal and/or interest payments under the Loan and shall not require any equity owner to make additional capital contributions to the Company);

17.2.16 Without the unanimous written consent of all of its Members (including the SPE Component Entity and the Independent Director of the SPE Component Entity), (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any creditors rights laws, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors;

17.2.17 Fail to allocate shared expenses (including, without limitation, shared office space) or fail to use separate stationery, invoices and checks;

17.2.18 Fail to remain solvent, to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds or fail to maintain a sufficient number of employees in light of its contemplated business operations (in each case to the extent there exists sufficient cash flow from the Property to do so);

17.2.19 Acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable, or identify its partners, members or shareholders or other affiliates, as applicable, as a division or part of it; or

17.2.20 Violate or cause to be violated the assumptions made with respect to the Company and its principals in the Non-Consolidation Opinion (as defined in the Loan Agreement) or in any similar opinion hereafter provided in connection with the Loan.

17.3 Indemnification. Notwithstanding anything to the contrary contained herein, any indemnification of the Members is hereby fully subordinated to any obligations respecting the Property (including, without limitation, the Loan and any mortgage or deed of trust securing the Loan (the "Mortgage")) and such indemnification shall not constitute a claim against the Company in the event that cash flow necessary to pay holders of such obligations is insufficient to pay such obligations.

17.4 Certain Prohibited Activities. For so long as the Mortgage exists on any portion of the Property, no amendment of this Article 17 may be made without first obtaining approval of the mortgagee holding the Mortgage on any portion of the Property, or, after the securitization of the Loan, only if the Company receives (a) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (b) approval of such amendment by the mortgagee holding the Mortgage.


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Signature Page Follows**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CLASS A MEMBERS:

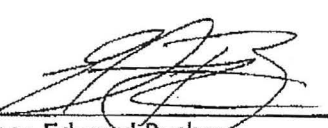
TOWER HOTELS FUND 2013 LLC,
a Hawaii limited liability company

By: Tower Development, Inc.,
a Hawaii corporation
Its Manager

By: 
Name: Stuart L. Miller
Its: President

CLASS B MEMBERS:

TOWER HOTELS HILO LLC,
a Hawaii limited liability company

By: 
Name: Edward Bushor
Its: Manager

OLSON/NANILOA LLC
a Hawaii limited liability company

By: Edmund C. Olson, as Trustee of the
Edmund C. Olson Trust No. 2

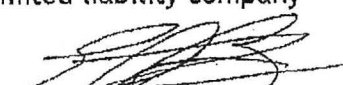
By: 
As Trustee aforesaid

PELE HILO, LLC
a Hawaii limited liability company

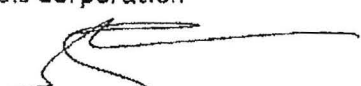
By: _____
Name: Michael V. Paulin
Its: Manager

MANAGERS:


TOWER HOTELS HILO LLC,
a Hawaii limited liability company

By: 
Name: Edward Bushor
Its: Manager

MILLER REALTY, INC.
an Illinois corporation


By: 
Name: Stuart L. Miller
Its: President

TOWER DEVELOPMENT, INC.,
a Hawaii corporation

By: 
Name: Stuart L. Miller
Its: President

DEVELOPMENT MANAGER:

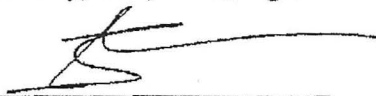
TOWER DEVELOPMENT, INC.,
a Hawaii corporation

By: 
Name: Stuart L. Miller
Its: President

ADDITIONAL CLASS B MEMBER:

MR DELWARE SPE, LLC,
a Delaware limited liability company

By Miller Realty, Inc., its Manager

By: 
Name: Stuart L. Miller
Its: President

**JOINDER
IN WHR LLC OPERATING AGREEMENT**

The undersigned Member of WHR LLC, a Hawaii limited liability company (the "Company"), hereby executes and delivers this Joinder in and to the Amended and Restated Operating Agreement of the Company, which is effective as of August 28, 2018, and agree to be bound by its terms.

Dated August 28, 2018.

MR DELAWARE SPE, LLC
By Miller Realty, Inc., Manager

By: 

Stuart Miller, President

EXHIBIT A

MEMBERSHIP INTERESTS

| WHR LLC Members | Units/ Interests | Capital Contribution | Percentage Interests/Units in Class A and B Members | Percentage Interests in the Company |
|---|---------------------|-------------------------|--|--|
| CLASS A CAPITAL MEMBERS | | | Portion of Class A Interests 50% | |
| 1. Olson/Naniloa LLC | | \$7,646,663 | 35.4807950% | 17.7403975% |
| 2. Tower Hotels Fund 2013 LLC See Note 1 below | | \$13, 904,891 | 64.5192050% | 32.2596025% |
| Subtotals | 10,000,000 | \$21,551,554 | 100% | 50% |
| CLASS B MEMBERS | | | Portion of Class B Interests 50% | |
| 1. Tower Hotels Hilo LLC | 7,500,000 | See Note 1 below | 75% | 37.5% |
| 2. Pele Hilo, LLC | 2,000,000 | See Note 1 below | 20% | 10.0% |
| 3. Miller Realty, Inc. | 400,000 | See Note 1 below | 4% | 2.0% |
| 4. MR Delaware SPE, LLC | 100,000 | N/A See Note 2 below | 1% | 0.5% |
| Subtotals | 10,000,000 | See Note 1 below | 100% | 50% |
| TOTAL | 20,000,000 | | | 100% |

Managers:

Tower Development, Inc.

Tower Hotels Hilo LLC

Note 1: Value of services in connection with (i) providing loan guaranty during the ownership of the Real Property, Manager services (to the extent provided), Project consulting (to the extent provided), and (ii) servicing as the Initial Manager/Manager (to the extent provided).

Note 2: Effective upon the closing of the Wells Fargo Loan on or about August 28, 2018, 100,000 Units were transferred to MR Delaware SPE, LLC from Miller Realty, Inc. MR Delaware SPE, LLC is a single member limited liability company formed in Delaware and its sole member is Miller Realty, Inc. MR Delaware SPE, LLC is the SPE Component Entity as defined in the Agreement.