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División de Contabilidad - 2019-2020

Florida Department of State

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HE-RO DEVELOPMENT CORPORATION

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SECRETARY OF STATE
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ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
HE-RO DEVELOPMENT CORPORATION

The Articles of Incorporation of He-Ro Development Corporation, a Florida corporation (the "Corporation"), filed with the Department of State on January 21, 1997, document number P97000005918, as amended by those certain Articles of Amendment to Articles of He-Ro Development Corporation, filed with the Department of State on May 17, 2002, and as further amended by those certain Articles of Amendment to Articles of Incorporation of He-Ro Development Corporation, filed with the Department of State on June 4, 2014, are hereby amended as shown below:

1. Article III of the Articles of Incorporation of this Corporation is hereby deleted in its entirety and replaced with the following:

III. PURPOSE

The nature of the business and of the purposes to be conducted and promoted by the Corporation, is to engage solely in the following activities:

(i) to own a 1% ownership interest in HR-441, Ltd., a Florida limited partnership ("Borrower") and act as the sole general partner of Borrower;

(ii) to cause Borrower to receive that certain Loan (as hereinafter defined) from the Lender (as hereinafter defined), and enter into the Loan Documents (as hereinafter defined) and refinance that certain property located at 20273 State Road 7, Boca Raton, Florida 33498 ("Property"), in connection with a permitted repayment of the Loan or otherwise cause Borrower to assign or cause the defeasance of the Loan in accordance with the Loan Documents; and

(iii) to exercise all powers enumerated in the applicable law of the State of Florida necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

2. Article IX of the Articles of Incorporation of this Corporation is hereby deleted in its entirety and replaced with the following:

IX. POWERS

This Corporation shall have all of the corporate powers enumerated in the Florida Business Corporations Act.

3. Article XII of the Articles of Incorporation of this Corporation is hereby deleted in its entirety and replaced with the following:

XII. INDEMNIFICATION

The Corporation shall indemnify any officer, director, employee or agent or any former officer, director, employee or agent to the full extent permitted by law.

Notwithstanding anything to the contrary contained herein, any indemnification of the Corporation's directors and officers is hereby fully subordinated to any obligations respecting the Borrower or the Property (including, without limitation, the Loan (as hereinafter defined) and any mortgage or deed of trust securing the Loan (the "Mortgage")) and such indemnification shall not constitute a claim against the Corporation or the Borrower in the event that cash flow necessary to pay holders of such obligations is insufficient to pay such obligations.

4. Article XIII of the Articles of Incorporation of this Corporation is hereby deleted in its entirety and replaced with the following:

XIII. AMENDMENT

This Corporation reserves the right to amend or repeal any provisions contained in these articles or any amendments hereto, and any right conferred upon the shareholders is subject to this reservation.

Notwithstanding the foregoing or anything else to the contrary contained in these Articles of Incorporation, unless and until the loan (the "Loan") from Wells Fargo Bank, National Association (together with its transferees, successors and assigns, the "Lender") to HR-441, LTD., a Florida limited partnership (the "Borrower"), as evidenced by a Loan Agreement (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, Article III, Article XII and Article XIV shall apply. Accordingly, for so long as the Mortgage (as hereinafter defined) exists on any portion of the Property, no amendment of Article III, Article XII and/or Article XIV of these Articles of Incorporation (as hereby amended) 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 Corporation receives (i) 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 (ii) approval of such amendment by the mortgagee holding the Mortgage.

5. Article XIV of the Articles of Incorporation of this Corporation is hereby deleted in its entirety and replaced with the following:

XIV. SEPARATENESS COVENANTS

Notwithstanding anything to the contrary contained in the Articles of Incorporation, the Corporation will not:

- (i) engage in any business or activity other than the ownership of its interest in Borrower, acting as the sole general partner of Borrower, and activities incidental thereto;
- (ii) acquire or own any assets other than its ownership interest in Borrower;
- (iii) merge into or consolidate with any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing (each a "Person"), or dissolve, terminate, liquidate in whole

or in part, transfer or, other than in accordance with the Loan Documents (as hereinafter defined), otherwise dispose of all or substantially all of its assets or change its legal structure;

(iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable law of the jurisdiction of its organization or formation, or materially amend, modify, terminate or fail to comply, in any material respect, with the provisions of its organizational documents;

(v) own any subsidiary, or make any investment in, any Person;

(vi) commingle its assets with the assets of any other Person;

(vii) incur any indebtedness;

(viii) (a) fail to maintain, in all material respects, all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party, (b) list its assets as assets on the financial statement of any other Person; provided, however, that Corporation'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 Corporation and such affiliates and to indicate that Corporation'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 Corporation's own separate balance sheet or (c) fail to maintain, in all material respects, its books, records, resolutions and agreements as official records;

(ix) enter into any contract or agreement with any general partner, member, shareholder, 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;

(x) 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;

(xi) 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;

(xii) make any loans or advances to any Person;

(xiii) fail to file its own tax returns unless prohibited by applicable law from doing so (except that Borrower 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 Borrower and its assets and liabilities);

(xiv) 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, material misunderstanding regarding its separate identity;

(xv) 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 Corporation);

(xvi) without the unanimous written consent of all of its partners or members, as applicable, (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;

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

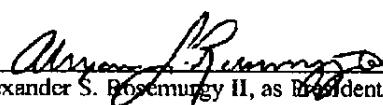
(xviii) fail to remain solvent, to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds or fail to maintain a sufficient number of employees in light of its contemplated business operations (in each case to the extent there exists sufficient cash flow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

(xix) 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.

6. These Articles of Amendment shall be effective at the time of their filing with the Department of State.

7. The foregoing amendment was adopted by a Consent to Action of the Shareholders and the Board of Directors of He-Ro Development Corporation on even date herewith. The number of votes cast by the shareholders in favor of the foregoing amendment was sufficient to approve the foregoing amendment.

IN WITNESS WHEREOF, the undersigned being the President of this Corporation, has executed these Articles of Amendment on this 24th day of November, 2015.


Alexander S. Rosemurgy II, as President of
He-Ro Development Corporation