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**Please reply to Fort Lauderdale**

September 21, 2020

The Honorable Members of the Town of Palm Beach Architectural Review Commission

Michael B. Small, Chairman  
Robert N. Garrison, Vice Chairman, Architect  
John David Corey, Member, Master Gardener  
Maisie Grace, Member  
Alexander C. Ives, Member  
Betsy Shiverick, Member  
Richard Sammons, Member, Architect  
Katherine Catlin, Alternate Member  
Dan Floershemier, Alternate Member  
Ted Cooney, Alternate Member

*Via E-mail Request to Ms. Kelly Churney and Ms. Laura Groves van Onna*

Re: September 23, 2020  
Agenda Item X C. 7  
Major Project  
Application No. B-063-2020:  
The Palm House Hotel  
160 Royal Palm Way,  
Palm Beach, Florida 33480

Dear Commission Members:

This Firm Represents Virginia C. Simmons, individually and as Trustee of the Virginia C. Simmons Revocable Trust U/A/D May 4, 2018, the owner of single-family residential property having a street address of 133 Brazilian Avenue, Palm Beach, Florida. The Simmons property is within 200 feet of The Palm House Hotel as demonstrated by the Composite Exhibit "1" location map prepared by Cooper Gary, and an except of the Simmons' property aerial map

from the Palm Beach County Property Appraiser website. Our Firm has been retained to provide preliminary comment on Application No. B-063-2020 (the "Application") which is pending before the Architectural Review Commission ("ARCOM").

At this time, our client is concerned about the following:

- (1) Whether the Town's Notice Requirements have been met for the September 23, 2020 ARCOM Meeting;
- (2) There is no Town professional Staff report which has been prepared for the ARCOM Meeting;
- (3) ARCOM's consideration of the *aesthetic* and *design* aspects of the Application is premature because Town Commission pre-requisite development orders in the form of granting special exceptions and variances and increasing non-conformities would be required to approve the Site Plan; furthermore, to the extent that ARCOM is requested to make recommendations concerning the Applicant's requests for variances, special exception, and Site Plan approval, our client would request that ARCOM **recommend denial** of those requested development orders; and
- (4) The Application's failure to fully illustrate its short comings.

Each of these four (4) concerns are explained in more detail in the sections that follow.

## 1. Notice

Our first concern is notice. The Application bears a date of August 21, 2020. Unfortunately, a complete copy of the Application was not received by our client in the mail and was only obtained by the undersigned last week to discover what was on the Agenda for the September 23, 2020 ARCOM Meeting. Attached as Exhibit 2 are the only documents which our client received in the mail with respect to The Palm House Hotel development. As can be seen, much of the Application material is not included in Exhibit "2." At the outset, our client desires to know whether the Town's notice requirements for the scheduled September 23, 2020 ARCOM Meeting have been met and would request the Commission to make a specific determination in

this regard before considering the Application<sup>1</sup>. If the Town's notice requirements have not been met, the Application should be re-advertised, and its consideration deferred.

## 2. No Professional Staff Report

Our second concern is that there is no written Staff report for the upcoming ARCOM Meeting, and thus, there is no Staff comment concerning the Application, or the accuracy of the representations and statements made in the Application. This creates a concern for citizens who do not have the practical expertise or ability, or time, to review and verify such matters. It also appears from the Agenda format that ARCOM is expected to make recommendations concerning the variances and special exceptions and request for Site Plan approval contemplated in the Application; however, there is no Town Professional Staff Comment concerning its evaluation of the applicable standards as applied to the Application which must be met for such development orders to be granted. It is common in our experience for local advisory commissions to have Staff's evaluation and reports when taking action - - even when part of such action is advisory in nature. Our client would request that ARCOM ask the Town's professional development Staff to review the Application and comment on the various statements or representations of the Application, upon ARCOM's standards for review as applied to the Application<sup>2</sup>, and upon the requested special exceptions, variances, and Site Plan Approval.

Without a written report from the Town's professional Staff, it is likely that some important details might be missed. For example, the Application discloses that music and other activities might occur on the pool deck and in the grass area near the pool deck. In 2012, the historical digest received by our client for the zoning application discloses that the Town Commission conditioned its approval of the development orders it then granted to indicate in Condition 4 that *"The pool deck area shall be allowed only background music and light live music with the speaker system directed to the North. There shall be no music on the abutting grass area."* The Amendment to Declaration of Use Agreement recorded in Official Records Book 25694 at page 0633 indicates in Article IV, Paragraph 3 that there will be no events on the pool deck, the grass area will remain *"passive,"* and music on the pool deck will be only background or light live music with the speaker system directed to the North. In the Second Amendment to Declaration of Use Agreement recorded in Official Records Book 26251 at page 0078, Article IV, Section 2 states that the activity allowed on the rooftop of the function room

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<sup>1</sup> As our client's land is within 200 feet of The Palm House Hotel, and the Application requires Site Plan Approval, Variances, and Special Exceptions, she should have been provided with a copy of Application No. B-063-2020, and did not receive same. Please see Sec. 18-202 (1) of the Town Code.

<sup>2</sup> We have reviewed Sec. 18-205 (a) of the Town's Code, and several of ARCOM's standards for review lend themselves to Staff Comment, such as standard (a)(4) [harmony with the Town Comprehensive Plan and any precise plans adopted pursuant to the Comprehensive Plan], (a)(5) [conformity with the Town's Code and other ordinances], (a)(6) [degree of excessive dissimilarity], and (a)(8) [appropriateness in relation to established character of other structures in the immediate area or surrounding areas relative to design features viewable from public and private rights of way].



was transferred to the rooftop of the hotel, provided no events of any kind or recorded or live music were allowed. The foregoing conditions and restrictions are amended and *removed* by the proposed, draft Third Amendment to Declaration and Use Agreement. One is left to wonder *where* is live and recorded outdoor music and entertainment and activity contemplated, *what* is contemplated, and most importantly *why* is this intensification being considered? Our client opposes any increase in noise or outdoor activity that generates noise, and would prefer that very light, live or recorded background music be limited to defined areas, be limited to daylight hours only, have enforceable decibel limits, and require speakers facing North. Other problematic compatibility issues may be disclosed by a written Staff Report.

**3. ARCOM Aesthetic Architectural and Design Review is premature; furthermore, ARCOM should recommend that development orders be denied.**

The Application discloses that The Palm House Hotel is non-conforming, and that for the proposed Site Plan to be approved, certain special exceptions and numerous variances will need to be granted by the Town Commission. Our client (and we believe other Town citizens) plan(s) on opposing some of the requested special exceptions and variances which are necessary for Site Plan Approval. It is our understanding that the Town's ARCOM approval is needed relative to aesthetic design and architectural matters prior to an application for a building permit being approved. Further, it is our understanding that an application for a building permit should take place after Site Plan Approval. Indeed, Sec. 18-205 (a) (9) of the Town's Code indicates that in order for ARCOM to approve a proposed project, it must determine that:

"(9) The proposed development is in conformity with the standards of this Code and other applicable ordinances insofar as the location and appearance of the buildings and structures are involved."

In a case such as this which involves Town Commission required development orders as a prerequisite to Site Plan Approval, it would seem premature for the applicant to seek ARCOM aesthetic architectural and design approval at this time, and our client would request that the Architectural Review Commission defer its consideration of these aspects of the subject application until after the Town Commission considers the pre-requisite development orders and determines whether to grant Site Plan Approval.

Since it is apparent from the Agenda that the Architectural Review Commission is considering making recommendations to the Town Commission concerning whether the Town Commission should grant or deny the requested Special Exceptions, Variances, and approve a Site Plan which increases nonconformities, the following Sections 3A, 3B, and 3C provide some preliminary observations as to why the Architectural Review Committee should recommend that these development orders be **denied**.

A. Claimed Hardships Seem "Self Imposed" Suggesting that  
Variances should be Denied

As stated above, variances are needed for the Site Plan requested to be approved. Our preliminary review of the Town's variance law would cause an objective reader to doubt whether sufficient grounds for granting a variance are present in this case. Our review the Palm Beach County Property Appraiser records discloses that the applicant, LR Palm House LLC, a Delaware Limited Liability Company, obtained a Debtor in Possession Deed to the site on May 15, 2019, which is *after* the 2016 Town conditional development approvals. While our investigation is on-going, we would note that the boundary survey which is contained in the subject Application and was prepared by Wallace Surveying Corporation discloses that The Palm House Hotel site is uniformly rectangular, having a 300' x 200' dimension. Thus, the real property on which The Palm House Hotel sits has no irregular contours or shape which would support a variance request. Moreover, the real property *more than satisfies* the C-B Zoning District's minimum lot area, lot width, and lot depth requirements (*See* Sec. 134-1308 (1), (2), (3) Town Code). Given that the current owner acquired the site *after* the 2016 conditional town approvals and *after* the Town's 2017 Comprehensive Plan Amendments, and given that the real property on which the hotel is not irregular and more than satisfies the Town's C-B District minimum dimensional requirements, any claimed "hardship" for a requested variance should be viewed as "self-created" in as much as a *developed site* was purchased, and the Application results from the property owner's desire to change things. A self-created hardship can not be the basis for granting a variance.

- B. A Hotel having in excess of 26 Units Per Acre is presently not a listed Special Exception Use in the C-B Zoning District; therefore, the requested Special Exception Approvals are not available.

As stated above, the Application states that special exceptions granted by the Town Commission are needed for the Site Plan to be approved. Our preliminary review of the Town's special exception law would cause an objective reader to doubt whether the Town Commission can consider the subject Application as a Special Exception. Sec. 134-229 (1) of the Town Code reads as follows:

"The requirements for granting a special exception use under this chapter are as follows:

- (1) The use is a permitted special exception use as set forth in article VI of this chapter."

The Town's C-B District Regulations define the applicable Special Exception Use in Section 134-229 (a) (5) as follows:

- (a) The special exception uses require a site plan review as provided in article III of this chapter. The special exception uses in the C-B commercial district are as follows:
  - (5) Hotels at a maximum of 26 units per acre.

Our review of the Application discloses that The Palm House Hotel presently has more than a maximum of 26 units per acre, and therefore, an application for the Hotel *as currently developed* does not qualify as a Special Exception Use since it is not a listed special exception use in the C-B Zoning District. Therefore, this special exception can not be granted.

C. Non-conformities should not be allowed to increase and enlarge.

As stated above, the Application discloses The Palm House Hotel is a non-conforming structure, and some of the requests in the Application increase the extent of such nonconformities, and this does not appear to be permitted under the Town's Code. The Town's Code makes a distinction between regulations that relate to non-conforming uses, and regulations that relate to non-conforming structures, and the Code is less flexible for expansions to non-conforming structures. As the Members may know, non-conformities should be *reduced* over time, and when this occurs, such action should not be viewed as justifying an increase in non-conformities elsewhere in the development (or "traded" for an increase in non-conformities elsewhere within the development). As an example, the Application advises that the rear yard setback requirement is 23.88 feet, and yet new construction is proposed which would encroach within the rear yard setback so that a 10-foot rear yard setback is requested. The new construction would include, an enclosed dumpster area, electric transformer, pool water feature, pool concierge, portion of the pool deck, retaining walls, a bar and restroom facility, a chiller, a screen wall, and a second transformer. These all engender noise and activity and loss of separation which form the policy considerations protected by yard setback regulations. We also note that the apparent maximum allowed lot coverage requirement is 50%, and the Application proposes to *increase* the current non-conformity of 62.8% to 63.8%. Finally, the Application discloses that the maximum allowed building height is two stories, and not only are three (3) stories existing, but the space on the third floor may be activated which increases the extent of non-conformity. A proposed expansion or enlargement of nonconformities goes against zoning legal policy considerations and all concepts of proper use of the property and should not be allowed.

#### 4. Failure to Highlight Extent of Shortcomings

Our fourth concern is the Application's apparent focus between what was conditionally approved in 2016 as opposed to what is requested now. It is important to note that one very



significant difference between conditional approvals in 2016 and requested approvals in 2020 is that the Town completed its Comprehensive Plan Evaluation and Appraisal Report and adopted Comprehensive Plan Amendments when the Town Commission enacted Ordinance No. 9-2017 which was passed on Second Reading on August 9, 2017. Section 5 of this Ordinance repealed all ordinances of the Town of Palm Beach, Florida, or parts thereof which conflict with Ordinance No. 9-2017 or any part of Ordinance No. 9-2017. From a practical perspective, therefore, the proper focus of the Town should not merely concentrate on the claimed-and-not-yet-Staff-verified "differences" between the 2016 conditional Town approval versus what is requested in 2020; but instead, the proper focus should be on what is being requested in 2020 versus what is allowed under the Town's land development regulations, and whether any of the changed provisions of the Comprehensive Plan affect the Application. The true extent of the development's various shortcomings will then be apparent and disclosed, and this will enhance the development review process.

### **Conclusion**

As stated above, our client is: (1) concerned about whether the Town's Notice Requirements have been met for the September 23, 2020 ARCOM Meeting, (2) concerned that there is no Town professional Staff report which has been prepared for the ARCOM Meeting, (3) concerned that ARCOM's consideration of the aesthetic architectural or design aspects of the Application is premature because Town Commission pre-requisite development orders have not been granted; and furthermore, ARCOM should recommend that such development orders be denied, and (4) is concerned with fact that the Application does not demonstrate the extent of its shortcomings.

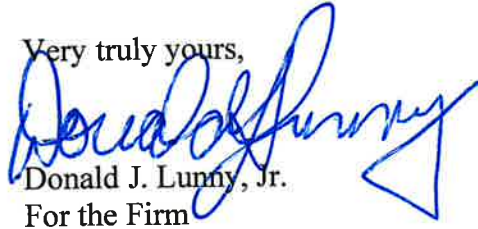
If the matter is to proceed after the Notice concern is evaluated, our client would request that consideration of the aesthetic architectural and design aspects of the Application be deferred until after the Town Commission considered the Applicant's requests for Site Plan Approval, special exception approvals, and numerous variances. Further, our client would request that the Architectural Review Commission recommend that the requested special exceptions, variances, and Site Plan Approval be denied.

We reserve the right to revise our preliminary comment as our investigation continues to add additional reasons why our client's requests should be granted.

Thank you for your kind attention to this matter.

Correspondence addressed to  
Town of Palm Beach Architectural Review Commission  
September 21, 2020  
Page 8 of 8

Very truly yours,

A handwritten signature in blue ink, appearing to read "Donald J. Lunny, Jr.", written over the typed name.

Donald J. Lunny, Jr.  
For the Firm

Cc w/encl: (Via E-mail):

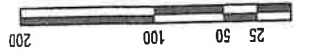
Mr. Wayne Berman;  
Ms. Debbie Moody;  
Ms. Virginia C. Simmons;  
Harris K. Solomon, Esq.; and,  
Maura Ziska, Esq.



## Composite Exhibit “1”

VM1

LOCATION MAP



The Palm House Hotel

160 Royal Palm Way

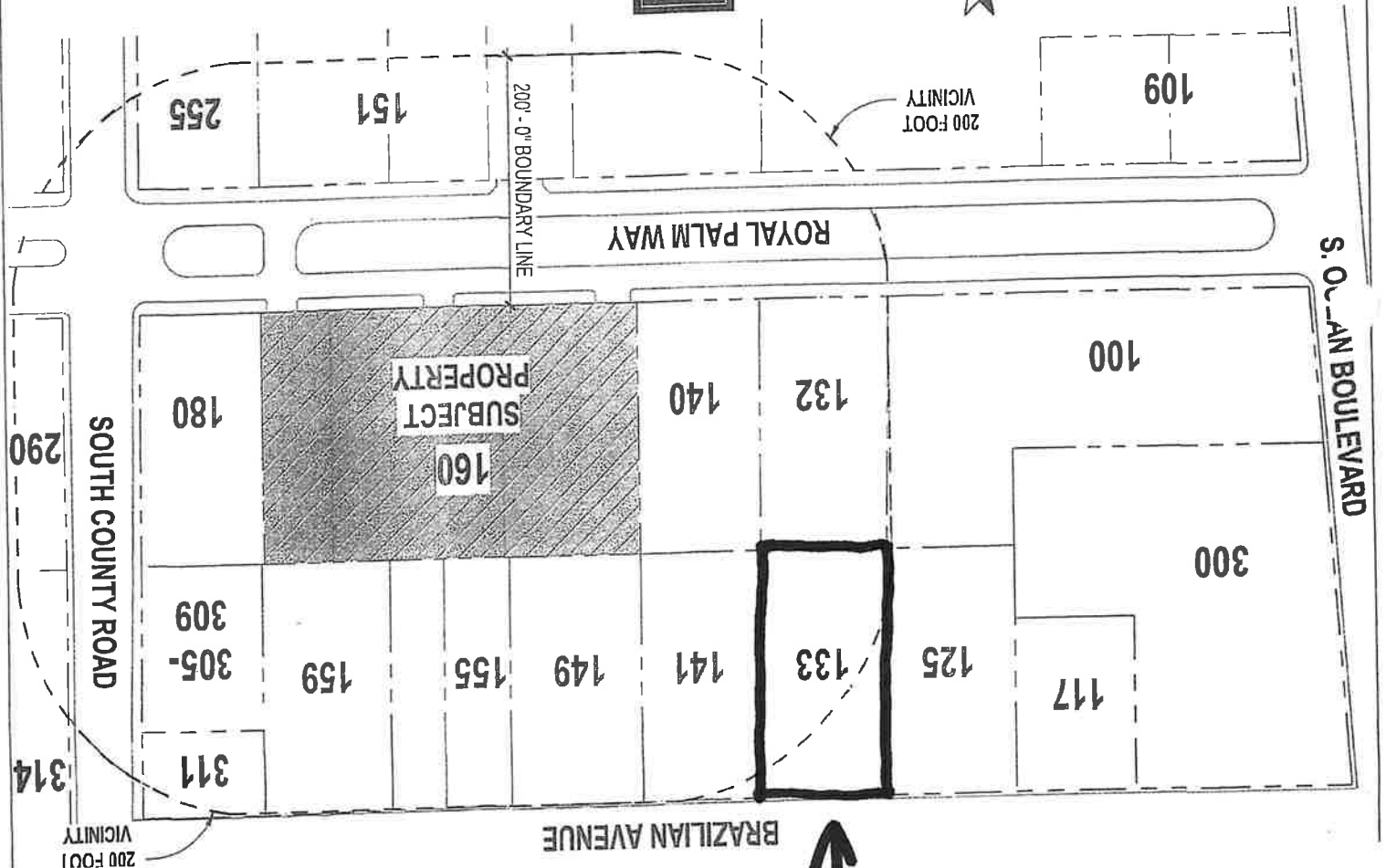
AUGUST 10TH, 2020

Z-20-00289

License No AA26000496

B-063-2020

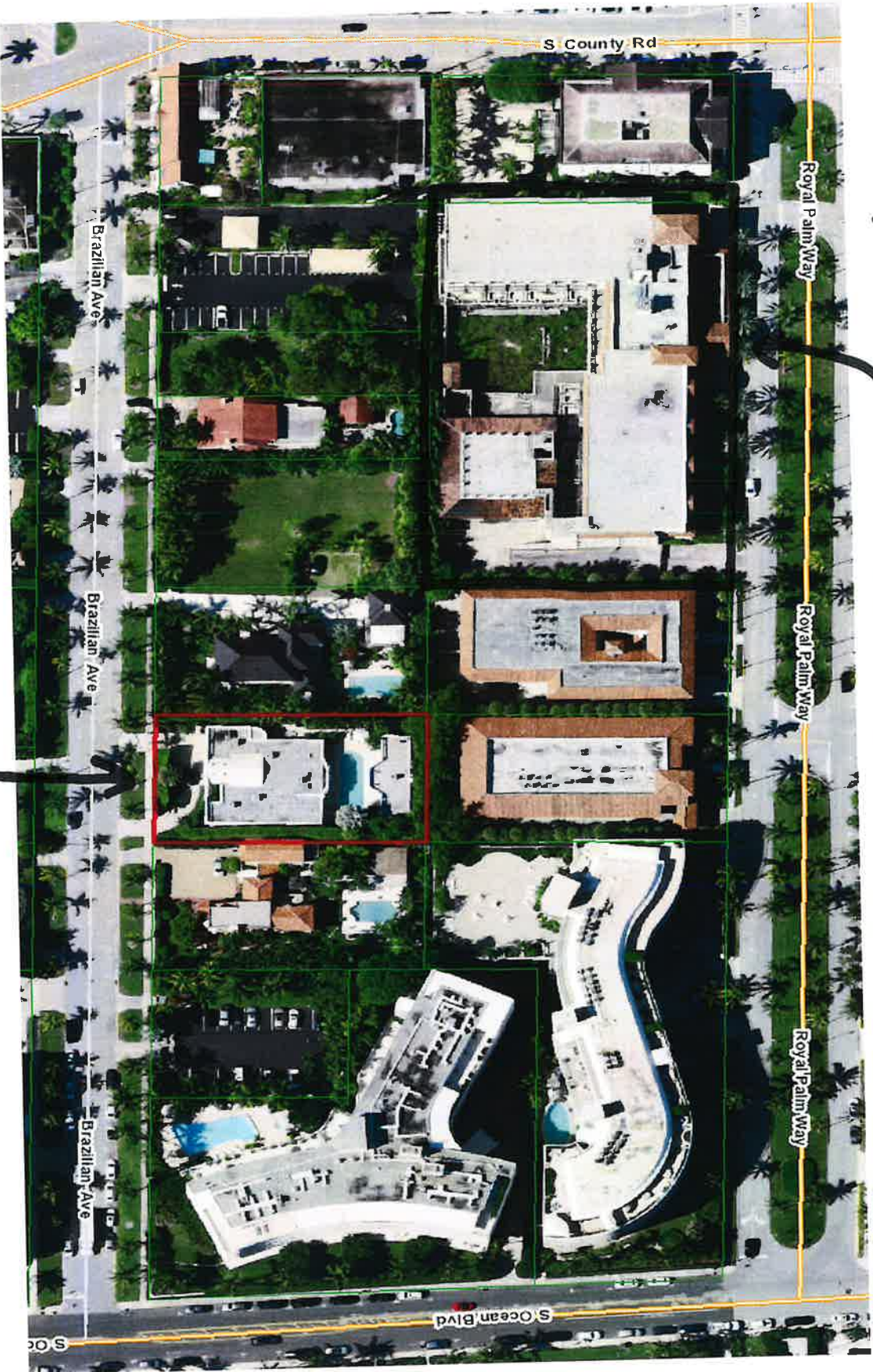
COOPER CARRY



**SIMMONS  
RESIDENCE**



The Palm House Hotel



SIMMONS RESIDENCE



## Composite Exhibit “2”

**ZONING APPLICATION**  
**TOWN OF PALM BEACH**



**Z-20-00289**  
**(Zoning Case Number)**

This application includes requests for:

<u>X</u>	Site Plan Review
<u>X</u>	Special Exception
<u>X</u>	Variance

**TO BE HEARD BY THE TOWN COUNCIL ON OCTOBER 14, 2020 AFTER 9:30 A.M., IN THE TOWN OF PALM BEACH COUNCIL CHAMBERS LOCATED ON THE 2<sup>ND</sup> FLOOR, 360 SOUTH COUNTY ROAD, PALM BEACH.** Pursuant to the Town Zoning Code of Ordinances, Sections 134-172 (Special Exceptions and Variances) and/or 134-328 (Site Plan Review), this application is being sent to all property owners within 300' of the location of the subject zoning application. A copy of this application along with all exhibits such as large drawings and other supporting documents that are not attached to this application are available for inspection at the Town's Planning, Zoning & Building Department, 360 S. County Rd., east entrance, weekdays between the hours of 8:30 a.m. and 4:30 p.m. All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Town Council with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based. Please be advised that the Town does not enforce private covenants or deed restrictions.

I. SUBJECT ADDRESS: 160 Royal Palm Way

Zoning District C-B

Legal Description: Being all of Lots 31, 32 and 33, Block F, ROYAL PARK ADDITION to the Town of Palm Beach, Florida, according to the plat thereof as recorded in Plat Book 4, Page 1 Public Records of Palm Beach County, Florida.

Fee Simple Property Owner's Name: LR Palm House LLC (Ian Livingstone, Executive Chairman)

Name and address of person who can receive service of process for purposes of litigation in Palm Beach County: Maura Ziska, Esquire, Kochman & Ziska PLC, 222 Lakeview Ave. Suite 1500 West Palm Beach, FL 33401

Applicant Name: LR Palm House LLC (Ian Livingstone, Executive Chairman)

Contact Phone c/o Kochman & Ziska PLC 561-802-8960

II. **DESCRIPTION OF THE REQUEST TO BE HEARD BY TOWN COUNCIL**, citing applicable Town Zoning Code Section Number(s):

A. Applicable Zoning Code Section Number(s):

Section 134-226. Special Exception Request to modify the approved Special Exception.

Section 134-227. Town council authorization, compliance and site plan review required.

Section 134-329. Review by town council.

Section 134-201. Findings prior to authorization.

Section 134-1304. Special Exception uses. (5) Hotels.

Section 134-1305. Outdoor dining.

Section 134-1308. Lot, yard and area requirements (6) Side yard; (7) Rear yard; (8) Height and Overall height; (9) Lot coverage

Section 134-1669. Side and rear yard walls.

Section 134-1729. Generators and swimming pool equipment. (2) c.

**B. Description of request by Zoning Section Number(s): Project Overview:**

**Section 134-1304 (5):** Request to modify Site Plan Review # 1-2016 with Special Exception to change the approved use from condo-hotel to hotel; modify the previously approved site plan; and amend the conditions of approval in the Declaration of Use Agreement, as identified in the proposed Third Amendment to the Declaration of Use which is Exhibit "F") of this application. The proposed site modifications being requested as follows:

**Section 134-1304(5):** The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The hotel is 84,495 gross square feet in total. There is an East and West guest wing, and these wings are connected by a central core containing the Main Entrance and other partially completed public functions. A separate conference and events "Function Room" and partial pool deck was also constructed at the south east portion of the property.

**Section 134-227, 326 & 329 1729(2)(c):** (Site Plan Review) The new owner/applicant is proposing new work for the hotel which includes the following site plan modifications:

- 1) Completion and conversion of guest rooms for a total of 79 keys. Two new presidential suites will be constructed within the building core, each with private outdoor balconies.
- 2) Completion of the Lower Level for back-of-house, administrative and housekeeping functions for the hotel. The interior modifications for the lower level includes renovation of partially completed areas including kitchen, food storage, housekeeping, staff areas and hotel administrative offices. The Owner is requesting an additional 148 SF to provide a new service stair from the Lower Level to support the Pool Area. Additional areas for renovation include spaces for MEP infrastructure such as electrical, hot water, and elevator systems. The proposed modifications remove all Hotel Guest program areas from the Lower Level. The Lower Level renovation includes restoration of parking area for 60 parking spaces including three accessible parking spaces. Two parking spaces which includes on Van Accessible parking space is located behind the existing function room. All parking will be Valet only per the Declaration of Use Amendment Three. Total on-site parking provided is 62 spaces.
- 3) A new pool deck will be constructed adjacent to the existing Function Room, with various amenities that include chaise lounges and outdoor seating, shade umbrellas, toilets, a towel/concierge stand, open-air bar with enclosed pantry behind, water features, lush native plantings, and Event Lawn to be used as a pre-function space, or for small wedding and/or overflow sun bathing;
- 4) The first level lobby and public spaces will be completed to include fine dining and lobby bar, with 88 indoor seats as well as 36 outdoor seating facing the new pool deck. The second floor dining that was previously approved has been eliminated to make room for the reconfigured hotel suites which include the new presidential suites;
- 5) The Function Room construction will be completed and the seating plan in the Function Room is being revised to add 50 more seats for a total of 200 seats (the total overall number of seats throughout the hotel that was previously approved is being reduced from 336 to 324);
- 6) A small 556 square foot banquet prep kitchen is proposed to be constructed adjacent to and on the east side of the existing Function Room.
- 7) Replace a 250 RW generator in the basement with the same size that exists today.



Other exterior improvements will include new third floor railings, re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. Fenestration requiring replacement will be replaced with similar windows and doors. Addition of a small 61 square foot pool service building; enclosing the 679 square foot function room pre-function space on the west side of the Function Room; addition of 588 square foot restroom for Function Room, addition of 556 square foot prep kitchen for Function Room and addition of 148 square foot stairwell to access Function Room prep kitchen.

The following is a list of the proposed special exceptions and variances being requested for the hotel project:

- 1) Section 134-226 & 229: A special exception request to modify the approved special exception by converting from a condominium hotel to hotel use and make the site modifications and change to the conditions of approval as identified in this application.
- 2) Section 134-1305: A special exception request to allow 36 seats for outdoor dining on the first floor on the north side of the pool deck; and
- 3) Section 134-1308(9): A variance for lot coverage to be 63.8% in lieu of the 62.8% existing and the 50% maximum allowed in the C-B Zoning District;
- 4) Section 134-1308(8): A variance for the addition of railings and solid wall on the east façade of the hotel above the second floor where only a two story building is allowed in the C-B Zoning District;
- 5) Section 134-1308(8): A variance for the addition of railings and solid wall on the east façade of the hotel with a height of 31.83 feet in lieu of the 25 foot maximum allowed;
- 6) Section 134-1669: A variance for the height of the wall enclosing the dumpster located at the southeast corner of the property to be 13.25 feet tall in lieu of the 7 foot maximum height allowed from the neighbor's grade;
- 7) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with a height of 33.58 feet in lieu of the 25 foot maximum allowed in the C-B Zoning District;
- 8) Section 134-1308(8): A variance for the two story open air addition on the south side of the hotel for a hotel suite balcony on the second floor and covered dining on the first floor with an overall height of 42 feet in lieu of the 35 foot maximum allowed in the C-B Zoning District;
- 9) Section 134-1669: A variance for the height of the wall along the rear property line to be 8.5 feet in lieu of the 7 foot maximum allowed from the neighbor's grade;
- 10) Section 134-1669: A variance for the height of the wall enclosing the existing chiller at the south west corner of the property to be 12 feet tall in lieu of the 7 foot maximum allowed from the neighbor's grade;
- 11) Section 134-1308(7): A variance for a rear yard setback for the chiller to be 2.25 feet in lieu of the 10 foot minimum required in the C-B Zoning District;
- 12) Section 134-1308(6): A variance for a west side yard setback for the chiller to be 5.8 feet in lieu of the 10 foot minimum required in the C-B Zoning District;

### **III. APPLICATIONS CONTAINING SITE PLAN REVIEW**

If the application contains Site Plan Review, complete Exhibit A, and briefly describe below the reasons why such application should be approved. This explanation should be a summary of information provided in Exhibit A (Site Plan Review by Town Council as stated in the Town's Zoning Code at Section 134-329).

The Site Plan should be approved as part of the Special Exception approval as the proposed site plan is completing unfinished work, correcting unauthorized work and adding functional space to improve the hotel operations and property.

**Zoning Case Number**

**IV. APPLICATIONS CONTAINING SPECIAL EXCEPTIONS**

If the application contains requests for Special Exceptions, complete **Exhibit B**, and briefly describe below the reasons why such application should be approved. This explanation should be a summary of information provided in Exhibit B (Requirements for granting Special exceptions by the Town Council as stated in the Town's Zoning Code at Section 134-229).

The Special Exception should be approved as the Palm House hotel has been in existence since the 1961 (previously the Heart of Palm Beach Motor Hotel) and has been an asset to the community for many years. However, the site has been abandoned and is in need of completion and the opportunity to open a viable business in this location. The new owner/application has tremendous experience in the hotel business (globally) and has every intention of making this hotel a beautiful site for many years to come. The proposed completion of the project will be a tremendous asset to future guests of the hotel as well as the neighboring properties.

**V. APPLICATIONS CONTAINING VARIANCES**

If the application contains requests for variances, please respond to the questions below, and complete **Exhibit C** (Findings for authorizing a variance as stated in the Town's Zoning Code at Section 134-201).

- a. Applicant should provide a brief description of the special conditions which when subjected to a literal enforcement of the provisions of the zoning ordinance will result in unnecessary and undue **HARDSHIP**. This explanation should be a summary of information provided in Exhibit C.

The hardship that runs with the land is that the existing hotel is non-conforming to today's code. The additional square footage will improve amenities, livability and aesthetics within the confines of the existing building and property. This would be challenging without zoning relief from the current code.

- b. Applicant should address how granting of a variance for these special conditions will not be contrary to the public's interest.

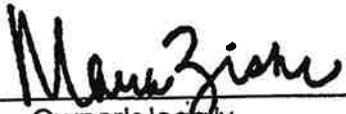
Granting the variances is reasonable as the total number of off-street parking spaces remains the same as the previous approval and will be all valet spaces. The overall seating within the hotel property has been reduced from that which was previously approved.

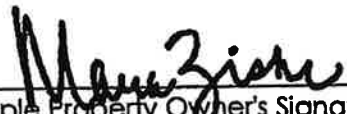
**VI. SITE HISTORY**

Please provide a detailed history in chronological order of all zoning-related requests processed on or after January 1, 1970 applicable to this property.

See attached Exhibit "E".

Respectfully submitted,

  
\_\_\_\_\_  
Owner or Owner's legally  
Authorized Agent\*  
Maura Ziska, Esq., Attorney LR Palm House LLC  
561-802-8960

  
\_\_\_\_\_  
Fee Simple Property Owner's Signature  
(or his/her duly authorized attorney)  
Maura Ziska, Esq. Attorney for LR Palm House LLC  
561-802-896

**EXHIBIT A – REQUEST FOR SITE PLAN REVIEW**

In order to assist the Town Council in reviewing the site plan application, please ensure that the following items have been addressed.

1. Sufficiency of statements on ownership and control of the subject property and sufficiency of conditions of ownership or control, use and permanent maintenance of common open space, common facilities or common lands to ensure preservation of such lands and facilities for their intended purpose and to ensure that such common facilities will not become a future liability for the Town.

**The owner in control of the property is LR Palm House LLC, a Delaware limited liability company.**

2. Intensity of use and/or purpose of the proposed development in relation to adjacent and nearby properties and the effect thereon.

**The proposed modifications to the previously approved hotel project does not intensify the use as the same number of "keys" are being proposed with the same number of parking spaces previously approved and an overall reduction in seating throughout the hotel.**

3. Ingress and egress to the property and the proposed structure thereof, with particular reference to automotive and pedestrian safety; separation of automotive traffic; traffic flow and control; provision of services and servicing of utilities and refuse collection; and access in case of fire, catastrophe or emergency.

**Ingress, egress, utilities, and refuses collection will remain the same along Royal Palm Way.**

4. Location and relationship of off-street parking and off-street loading facilities to thoroughfares and internal traffic patterns within the property, with particular reference to automotive and pedestrian safety, traffic flow and control, access in case of fire or catastrophe, and screening and landscaping.

**The proposed reorganization of off-street parking and off-street loading facilities will improve internal traffic patterns within the property including: automotive/pedestrian safety, traffic flow and control (valet operations), access in case of fire or catastrophe, and screening and landscaping.**

5. Proposed screens and buffers to preserve internal and external harmony and compatibility with uses inside and outside the property boundaries.

**Landscaping will be tremendously enhanced via this proposal.**

6. Manner of drainage on the property, with particular reference to the effect of provisions for drainage on adjacent and nearby properties and the consequences of such drainage on overall town capacity.

**Drainage will be improved if required by the Town of Palm Beach.**

7. Utilities, with reference to hook-in locations and availability and capacity for the uses projected.

**The utility hook ups will remain the same.**

8. Recreation facilities and open spaces, with attention to the size, location and development of the areas as to adequacy, effect on privacy of adjacent and nearby properties and uses within the



property, and relationship to community-wide open spaces and recreation facilities.

N/A.

8. Such other standards as may be imposed by this chapter for the particular use or activity involved.

N/A.

10. Height of commercial structures with reference to adjoining buildings, the effect on uniformity in height, and the general principle of retaining the low profile scale of commercial architecture.

**The proposed height of the new addition to the existing structures match the existing height of the hotel, which are non-conforming to today's code but grandfathered.**

11. Visible size and bulk. The proposed development should be so arranged that it minimizes the visible bulk of the structures to drivers and pedestrians on abutting roadways, the point of reference being the centerline of the abutting roadways, with the intent being to maintain visual impact of multistory buildings at the same relative level of intensity as a single-story building at the minimum required setback.

**The proposed modifications to the hotel will not create additional visible size and bulk as most of the changes are internal to the property.**

**EXHIBIT B - REQUEST FOR SPECIAL EXCEPTION**

The Town Council must find the application in conformance with a number of requirements. Please provide sufficient information on each of the requirements to enable the Council to make a determination on your application.

1. The use is a permitted special exception use as set forth in article VI of this chapter.  
**A hotel is a permitted Special Exception use in the C-B Zoning District under Section 134-1304 of the Town of Palm Beach Zoning Code.**
9. The use is so designed, located and proposed to be operated that the public health, safety, welfare and morals will be protected.  
**The proposed uses and innovative site design will not adversely impact the public or neighborhoods but alternatively will provide a much aesthetically-improved site for the future users and adjacent neighbors of the site.**
10. The use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.  
**The proposed uses associated with the modifications to the hotel development will have a positive impact on the value of neighboring properties as the modifications to the hotel will be elegant and the hotel and restaurant will serve as another choice for Royal Palm Way and the Town visitors.**
11. The use will be compatible with adjoining development and the intended purpose of the district in which it is to be located.  
**The proposed modifications to the hotel will be compatible with the neighborhood as there has been a hotel in this location since 1961.**
12. The use will comply with yard, other open space, and any special requirements set out in article VI for the particular use involved.  
**The proposed modifications to the hotel will comply with all yard, other open space, and any special requirements set forth in Article VI, that are grandfathered with the property except the minor relief being requested herein.**
13. The use will comply with all elements of the comprehensive plan.  
**The proposed modifications to the hotel will comply with the Comprehensive Plan, where applicable.**
7. The use will not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district.  
**The proposed modifications to the hotel and site will not result in substantial economic, noise, glare, or odor impacts on adjoining properties and properties generally in the district since the activity is internal to the buildings except minor outdoor uses,**
8. Adequate ingress and egress to property and proposed structures thereon and off-street parking and loading areas will be provided where required, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or

catastrophe.

**Adequate ingress, egress, and parking is provided on Royal Palm Way and in the underground parking garage. All off-street parking will be subject to valet parking operations.**

9. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, and economic impact shall be compatible and in harmony with properties in the district.

**Any proposed signage will comply with the applicable Town standards.**

10. Location, availability and compatibility of utility service for the use shall be satisfactory to ensure health and safety.

**The utility service will remain the same or be upgraded if required by the Town.**

14. Refuse and service areas for the use shall not adversely affect automotive and pedestrian safety and convenience, traffic flow and control, or access in case of fire or catastrophe.

**The refuse and service areas will remain the same or will be upgraded if required by the Town.**

15. In all districts except the C-OPI district, and also with the exception of hotel, motel and timeshare uses, the proposed special exception use will not attract the principal portion of its customers/clients from off-island locations. The applicant shall submit evidence satisfactory to the town council that not less than 50 percent of the customers of the proposed use will be town persons. Evidence submitted in support of this contention shall include credible data or information suitable for review by the town to determine the credibility and the appropriateness of the applicant's conclusion. The submittal shall include a description of the types of information used and the methodology employed to arrive at the conclusion. Information used shall include, but shall not be limited to, lists of customer/client addresses or certification thereof by an independent certified public accountant approved by the town, market studies prepared by independent professional firms, or data from similar operations under the control of the applicant. The town may in the future require the applicant to demonstrate to the satisfaction of the town council that the special exception use is continuing to be town-serving.

**Hotels by definition under the code are "town serving".**

16. If historic/specimen trees are located on the subject property, the location of said historic/specimen trees shall be identified on a signed and sealed survey. In addition, adequate landscaping, screening and barricade protection of historic/specimen trees shall be demonstrated to be provided as required in this chapter.

N/A.

17. The proposed use will not place a greater burden than would be caused by a permitted use on municipal police services due to increased traffic or on fire protection services due to the existence of or increased potential for fire/safety code violations.

**The proposed modifications to the hotel and will meet the fire code and safety requirements and will have controlled parking using a valet service operation. Therefore, it should not create a greater burden to the Town.**

**EXHIBIT C - REQUEST FOR VARIANCE**

**CRITERIA FOR AUTHORIZING A VARIANCE**

The Town Council must find the application in conformance with a number of criteria. Please address each of the criteria completely in order to provide the Council with sufficient information to make a determination on your application.

1. List the special conditions and circumstances peculiar to the land, structure or building which are not applicable to other lands, structures or buildings in the same zoning district.

**The special conditions and circumstances peculiar to the land and structure is that the hotel was constructed in 1961 (as Heart of Palm Beach Motor Hotel) and is in need of completion and further development to bring it up to today's living standards and community needs.**

2. Indicate how the special conditions and circumstances do not result from the actions of the applicant.

**The special circumstances do not result from the actions of the applicant as the site and building have pre-existed the purchase by the applicant.**

3. Demonstrate that the granting of the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings or structures in the same zoning district.

**Granting the variances will not confer special privileges as other buildings in the C-B Zoning District are non-conforming to today's code and are similarly situated with the need to update.**

4. Demonstrate how literal interpretation of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.

**The hardship that runs with the land is that the existing hotel is non-conforming to today's code. The additional square footage will improve amenities, livability and aesthetics within the confines of the existing building and property. This would be challenging without zoning relief from the current code.**

5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

**The variances being granted are the minimum necessary to bring the property and hotel up to world class status and complete a dormant abandoned building.**

6. Show how the granting of the variance will be in harmony with the general intent and purpose of this chapter, and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

**Granting the variances will be in harmony with the intent of the code to protect the neighborhood and town and will not be injurious to the public welfare as the hotel is in need of completion and updating to open and be a viable business in Town.**



**Z-20-00289**

**Zoning Case Number**

**EXHIBIT D - PARKING STATEMENT**

Please provide a detailed parking statement which includes details of all available off-street parking, including information regarding the number of parking spaces designated for service use (for example: lawn service, pool service, staff/employee use, etc.)

**COMMERCIAL PROPERTIES MUST:**

- PROVIDE NUMBER OF OFF-STREET PARKING SPACES AVAILABLE FOR EMPLOYEES ON THE SUBJECT PROPERTY: 10
- PROVIDE NUMBER OF EMPLOYEES/STAFF PER SHIFT: 20 employees per shift
- INDICATE LOCATION WHERE EMPLOYEES PARK OFF-SITE: West Palm Beach Marriott (also owned by L+R Hotels) 1001 Okeechobee Blvd., West Palm Beach

**RESIDENTIAL PROPERTIES MUST:**

- PROVIDE NUMBER OF OFF-STREET PARKING SPACES AVAILABLE ON THE SUBJECT PROPERTY: \_\_\_\_\_
- PROVIDE NUMBER OF EMPLOYEES/STAFF PER SHIFT: \_\_\_\_\_
- INDICATE LOCATION WHERE EMPLOYEES/STAFF PARK OFF-SITE: \_\_\_\_\_

## EXHIBIT E – SITE HISTORY

Please provide a detailed history of all zoning-related requests applicable to this property processed on or after January 1, 1970, in chronological order, including but not limited to variances, special exceptions, site plan reviews, and existing agreements.

**1971 – Variance #42-71** was approved for permission to install a sign, which is (8'-6") two feet from the front street line

**07/08/1975 - Special Exception – #8-75** was approved to construct a hotel building having forty-five rooms with the following conditions:

1. front yard kept in natural land cover
2. two or more shade trees at least twelve feet and with a spread of not more than ten feet upon planting be provided in the front yard
3. The Town will be furnished with a letter that existing hotel and approved hotel will never be connected

**1975 - Special Exception – #8-75** Town Council approved a six month extension

**12/11/1979 – Variance to Commercial Moratorium No. 5-79 –** Permission to expand existing hotel by constructing a 3-story, 45 unit hotel with related parking. Deferred from 10/9/1979 meeting. **DENIED**

**12/11/1979 - Special Exception No. 22-79 –** Permission to construct three story hotel in lieu of two story with density of 45 units/acre in lieu of 22. **CB District.**  
**APPROVED** with special amendments:

1. A sufficient dimension be allowed in the proposed parking lot at the rear and an additional hedging along the South line of the property line be installed at a height of six feet.
2. Five foot wall conforming to the existing wall now at the rear of the existing hotel property be continued along the South property line to the Eastern terminus of the property.
3. 30 units be allowed in lieu of the requested 32.
4. Applicant is required to participate in the sanitary and storm sewer construction in the future on a equitable basis as we approved for other applicants in the same sewer.

**01/12/1982 – Special Exception No. 2-82 –** Permission to modify Special Exception No. 22-79 by constructing a vinyl awning structure over walkway between East and West buildings that will not be visible from the street. **C-TS District. APPROVED –** No enclosures on the sides of this awning permitted.

**12/11/2001 – Site Plan Review No. 21-2001 With Special Exceptions and Variances –** Approval requested for a modified site plan to the Heart of Palm beach hotel to include one and two story additions to provide for a ballroom and associated service area, elevator, handicap restroom and storage building; and  
**SPECIAL EXCEPTION –** approval requested to allow a two story addition to the existing hotel located in the C-TS District; and  
**SPECIAL EXCEPTION –** approval requested to provide for supplemental off-site shared parking in the C-TS District in conjunction with a signed parking license agreement with JP Morgan Chase to provide 53 shared spaces; and  
**VARIANCE –** to allow an expansion of a non-conforming hotel use in existence over 15 years; and  
**VARIANCE –** to allow the expansion of a non-conforming building or structure by completing the proposed site plan changes; and

**VARIANCE – for a total building length of 264 feet in lieu of the required maximum of 150 feet for a variance of 114 feet; and**

**VARIANCE – to allow floor area within the C-TS Zoning District of 27,101 square feet in lieu of the 25,388 square feet existing and 15,000 square feet allowed maximum for a variance of 1713 square feet; and**

**VARIANCE – to allow a 25.09 foot front setback in lieu of the 30.29 foot required setback for a variance of 5.2 feet; and**

**VARIANCE – to allow a rear setback of 11.48 feet in lieu of the 15 foot minimum required setback for a variance of 3.52 feet; and**

**VARIANCE – to allow the proposed modifications without providing the additional 33 off-street parking spaces required by code.**

**DEFERRED to January 8, 2002 meeting per Town Council.**

**01/08/2002 – Modified Site Plan Review No. 21-2001 With Special Exceptions and Variances – Approval requested for a modified site plan to the Heart of Palm Beach Hotel to include one and two story additions to provide for a ballroom/function place and associated service area, elevator, handicap chair lift, meeting room, new handicap restroom and storage building;**

**SPECIAL EXCEPTION – approval requested to allow a two story addition to the existing hotel located in the C-TS District; and**

**VARIANCE – to allow an expansion of a non-conforming hotel use in existence over 15 years; and**

**VARIANCE – to allow the expansion of a non-conforming building or structure by completing the proposed site plan changes; and**

**VARIANCE – for a total building length of 264 feet in lieu of the required maximum of 150 feet for a variance of 114 feet; and**

**VARIANCE – to allow floor area within the C-TS Zoning District of 27,101 square feet in lieu of the 25,388 square feet existing and 15,000 square feet allowed maximum for a variance of 1713 square feet; and**

**VARIANCE – to allow a 25.09 foot front setback in lieu of the 30.29 foot required setback for a variance of 5.2 feet; and**

**VARIANCE – to allow valet only parallel parking in existing parking areas and a reduction in aisle width to 13' in lieu of the required 25' for valet parking only for a variance of 12'; and**

**VARIANCE – to allow parallel parking automobiles to block another automobile requiring one automobile to be moved to allow another to be taken from the property which is contrary to Section 134-2172.**

**DEFERRED to February 12, 2002 meeting per December 21, 2001 letter from James R. Brindell, Esq.**

**02/12/2002 – Modified Site Plan Review No. 21-2001 With Special Exceptions and Variances – Site plan approval requested for a modified site plan to the Heart of Palm Beach Hotel. Request has been reduced since its origination in two regards: the elimination of the proposed enclosure of a pool area and a storage/bathroom proposed to be located slightly into a setback. DEFERRED to March 12, 2002 meeting for further review by the Town's Traffic Consultant.**

**03/12/2002 – Modified Site Plan Review No. 21-2001 With Special Exceptions and Variances – Site plan approval requested for the Heart of Palm Beach Hotel to construct one and two story additions for function/pre-function areas, elevator, handicap chair lift and a new handicap restroom; special exception approval to allow a two story addition to the existing hotel located in the C-TS District; and, variances to allow:**

**VARIANCE – expansion of a non-conforming building or structure by completing the proposed site plan changes; and**

**VARIANCE – connecting both building to allow a total building length of 264 feet in lieu of the required maximum 160 feet; and**

**VARIANCE – floor area of 27,101 square feet in lieu of the 25,388 square feet existing and 15,000 square feet maximum allowed; and**

**VARIANCE – a 25.09 foot front setback in lieu of the 30.29 foot required setback for a variance of 5.2 feet; and**

**VARIANCE – valet only parallel parking in existing parking areas during function events;; and**

**VARIANCE – reducing the drive aisle width to 13' in lieu of the required 25' maximum allowed for valet parking only; and**

**VARIANCE** – allowing parallel parking of automobiles to block another automobile requiring one automobile to be moved to allow another to be taken from the property which is contrary to Section 134-2172.

**APPROVED** with the following conditions:

1. Functions during breakfast shall be limited to 74 guests.
2. Functions during lunch shall be limited to 49 guests.
3. Functions with less than 25 guests will not be required to have valet parking attendants.
4. Functions of 25 to 50 guests shall be required to have a minimum of two valet parking attendants and one parking supervisor.
5. Functions of 75 to 110 guests shall be required to have a minimum seven valet parking attendants and two parking supervisors.
6. Any time valet parking operations are required to be provided by the hotel, there shall be one special duty Town of Palm Beach police officer, payed for by the hotel, on duty at that location. If the Town determines that one police officer is not sufficient, the applicant at his own expense, shall be required to provide one additional Town of Palm Beach special duty place officer at the hotel for those functions that are of the size that have been determined to be a problem.
7. When valet operations are required as stated above, the hotel shall being valet operations 24 hours prior to the event.
8. When the West garage becomes full during valet operation, no further valet drop-offs will occur in that garage.
9. If the Town determines that the valet operations are not adequate to handle the parking requirements for the functions at the hotel, the applicant shall be required to come back to the Town Council to determine what adjustments, limitations or other accommodations need to be imposed to address such problem. In addition, the applicant shall also be required to return in one year after the proposed function/pre-function addition is completed to re-evaluate the valet parking and traffic circulation issues at the hotel. If the Town determines that the valet operation during the events in the function/pre-function area are not working, the Council may take remedial action, up to and including further limiting the use of said area.

05/14/2002 - Modified Site Plan Review No. 21-2001 Council clarified the conditions of approving with the following conditions (changes underlined):

1. Functions during breakfast shall be limited to 74 non-hotel guests
2. Functions during lunch shall be limited to 49 non-hotel guests
3. Functions with less than 25 non-hotel guests will not be required to have valet parking attendants
4. Functions of 25 to 50 non-hotel guests shall be required to have a minimum of 2 valet parking attendants and 1 parking supervisor



5. Functions of 75 or more non-hotel guests shall be required to have a minimum of 7 valet parking attendants and 2 parking supervisors. The maximum capacity for the function/pre-function area shall be 110 total guest

12/09/2003 – Site Plan Review #10-2003 with Special Exception – Modifying Site Plan Review #21-2001 with Special Exception and Variances – to expand the previously approved hotel (a special exception used) by constructing a 452 square foot basement addition below the service area and previously approved function room. The additions will consist of a hallway, storage room, elevator machine room and elevator hoist way. APPROVED.

01/13/2004 – Site Plan Review #1-2004 with Special Exception and Variances – Site Plan approval for a modified site plan for the Heart of Palm Beach Hotel including a partial third floor addition on the East building to add 6,984 square feet for 7 rooms and a corridor, and a basement parking garage of 8,237 square feet under the existing surface parking lot, raising the surface parking lot in the back, for a net gain of 17 off-street parking spaces. These seven additional hotel units will allow the hotel to provide a few suites which it currently lacks.

SPECIAL EXCEPTION – to expand the previously approved hotel special exception.

VARIANCE – to allow a partial third story addition to the existing hotel in the C-B Zoning District, where only two stories are allowed; and

VARIANCE – to allow the expansion of a non-conforming building or structure by completing the proposed changes and extending the overall length of the third floor of the building to 264 feet in lieu of the 150 feet allowed; and

VARIANCE – to allow 63.33 hotel rooms per Palm Beach acre in lieu of the 58.67 existing and the maximum 26 hotel rooms per Palm beach acre allowed by adding 7 additional rooms on the third floor of the East part of the building; and

VARIANCE – to allow a building height of 34.92 feet from zero datum in lieu of the 25 foot maximum height allowed for a two-story building for the East building addition; and

VARIANCE – to allow an overall building height of 36.0 feet from zero datum in lieu of the 30 foot maximum overall height allowed for a two-story building for the East building addition.

DEFERRED to the February 10, 2004 meeting.

02/10/2004 – Site Plan Review #1-2004 with Special Exception and Variances – Site Plan approval for a modified site plan for the Heart of Palm Beach Hotel including a partial third floor addition on the East building to add 6,984 square feet for 7 rooms and a corridor, and a basement parking garage of 8,237 square feet under the existing surface parking lot, raising the surface parking lot in the back, for a net gain of 17 off-street parking spaces. These seven additional hotel units will allow the hotel to provide a few suites which it currently lacks.

SPECIAL EXCEPTION – to expand the previously approved hotel special exception.

VARIANCE – to allow a partial third story addition to the existing hotel in the C-B Zoning District, where only two stories are allowed; and

VARIANCE – to allow the expansion of a non-conforming building or structure by completing the proposed changes and extending the overall length of the third floor of the building to 264 feet in lieu of the 150 feet allowed; and

VARIANCE – to allow 63.33 hotel rooms per Palm Beach acre in lieu of the 58.67 existing and the maximum 26 hotel rooms per Palm beach acre allowed by adding 7 additional rooms on the third floor of the East part of the building; and

VARIANCE – to allow a building height of 34.92 feet from zero datum in lieu of the 25 foot maximum height allowed for a two-story building for the East building addition; and

VARIANCE – to allow an overall building height of 36.0 feet from zero datum in lieu of the 30 foot maximum overall height allowed for a two-story building for the East building addition.

APPROVED with the following conditions:

1. Applicant must provide 2 inch storm water retention as required by Code.

2. Fire sprinkle the entire building prior to the certificate of occupancy for the improvements identified above.

04/13/2004 – Special Exception #10-2004 – Special Exception modification requested from the Heart of Palm Beach Hotel to provide a gift shop on the second floor of approximately 160 square feet. DEFERRED to the May 11, 2004 meeting.

05/11/2004 – Special Exception #10-2004 – Special Exception modification requested from the Heart of Palm Beach Hotel to provide a gift shop on the second floor of approximately 160 square feet. DEFERRED to the June 8, 2004 meeting.

06/08/2004 – Special Exception #10-2004 – With Site Plan Review and Variances (MODIFIED) – Modify the Special Exception and Site Plan Approval Granted under Site Plan Review #1-2004 with Special Exception and Variances

VARIANCE – addition of 800 square feet of office and storage in the basement, and to add 1,380 square feet of storage on the roof of the third floor of the East wing; and

VARIANCE – a gift shop on the second floor; and

VARIANCE – an increase for a building height of 35.58 feet from zero datum (a variance of 10.58 feet) in lieu of the previously approved building height of 34.92 feet from zero datum (a variance of 9.92 feet) and the 25 foot maximum height allowed for a two-story building to the East wing addition; and

VARIANCE – a modification to allow an increase in the existing variances for an overall building height of 36.67 feet from zero datum (a variance of 6.67 feet), in lieu of the previously approved overall building height of 36.0 feet from zero datum (a variance of 6.0 feet) and the 30 foot maximum overall building height allowed for a two-story building for the East wing addition; and

VARIANCE – a modification to allow an access aisle width on the new part of the basement garage at 17.67 feet in lieu of the 20 feet minimum required; and

VARIANCE – two air conditioning cooling towers which are 72 square feet in area and 9.58 feet high and are to be installed on an existing 2 foot high basement wall 3.75 feet from the rear property line in lieu of the minimum 15 foot required by Code for accessory structures (a variance of 11.25 feet); and

VARIANCE – a screen wall for the new air conditioning units to be 11.58 feet high in lieu of the maximum 7 foot height allowed by Code (a variance of 4.58 feet).

APPROVED with the following conditions:

1. Applicant must continue to meet all previous conditions of the approval

2. Fire sprinkle the entire building and additions prior to the certificate of occupancy for the improvements identified above.

3. Provide signage in the new portion of the parking garage basement that allows only valet and employee parking in that portion of said garage.

01/09/2007 – Site Plan Review #2-2007 with Special Exceptions and Variances and Waiver of Zoning in Progress – Request special exception approval for continued operation of hotel under new ownership. Applicant believes prior zoning applications are vested and not subject to the zoning in progress, but if Town attorney concludes that the applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application.

SPECIAL EXCEPTION - for expansion of hotel's accessory uses, including 1,500 square foot expansion of spa facility; addition of 1,335 square feet of public space, plus 360 square feet of back room space, for function room in a building in lieu of existing tent facility; replacement of the existing second floor function space with a 3,600 total square foot dining room including 840 square feet for outdoor seating on balcony; and

SPECIAL EXCEPTION – to permit outdoor dining with maximum of 56 seats on 840 square foot second floor balcony on front façade; and

SITE PLAN APPROVAL – for expansion of an existing hotel within nonconforming building. This site plan request includes the addition of a 1,940 square foot porte-cochere/covered drop off and relocation of the loading dock from the front façade to under the West wing of guest rooms; relocation and construction of new lobby; the construction of a 1,695 total square foot addition in the rear yard to serve as function space in lieu of the existing tent facility space; an expansion of the spa facility to 4,100 square feet; replacement of the existing second floor function space with a 3,600 total square foot dining room, including 840 square foot dining area on balcony; renovation of guestrooms (net

reduction of units: 95 to 80); construction of an enclosure for an existing outdoor fire stairwell; new roof design and materials; infilling the walls of the balconies; a new 2,160 square foot loggia in the back pool area of the building fronting the swimming pool; and adoption of exclusively valet parking for the site.

**VARIANCE** – to permit construction of a porte-cochere/covered drop off with front set back of .34 feet, in lieu of 34.72 foot minimum required front yard setback required by code.

**VARIANCE** – to permit construction of a relocated curb cut and porte-cochere/covered drop off, expansion of existing spa and construction of a permanent function space, which increases lot coverage to 66.4%, in lieu of the 61.4% existing lot coverage and the 50% maximum lot coverage allowed by code.

**VARIANCE** – to permit construction of relocated curb cut and porte-cochere/covered drop off expansion of the existing spa and construction of permanent function space, with overall landscape space of 23% overall landscaped space (no change from existing) in lieu of the 30% minimum overall landscaped space required by Code.

**VARIANCE** – to accommodate new mansard roofing design and material, to permit overall building height of 35.27 feet from zero datum (no change from existing) in lieu of the 30 foot maximum overall building height allowed by Code.

**VARIANCE** – to accommodate new mansard roofing design and material to permit building height of 34.61 feet from zero datum (no change from existing) in lieu of 25 feet maximum building height allowed by Code.

**VARIANCE** – to have two architectural tower features in lieu of the two (2) maximum tower features allowed by Code.

**VARIANCE** – for two (2) of the architectural tower features and four dormer windows with front yard setbacks of 24.5 feet and 24.88 feet in lieu of the 39.72 foot minimum front yard setback required by Code.

**VARIANCE** – for two (2) architectural towers, 5 feet maximum in height, with an overall building height of 40.27 feet, in lieu of the 35 feet maximum overall building height allowed by Code for the towers.

**VARIANCE** – to construct a 3,000 total square foot function room to replace current tent facility, with a 10.0 foot rear yard setback, in lieu of 28.88 minimum rear yard setback required by Code.

**VARIANCE** – to accommodate new mansard roof design and materials with a 5.8 feet side yard setback (no change from existing) at Western property line, in lieu of the 19.72 foot minimum side yard setback required by Code.

**VARIANCE** – to allow outdoor dining room seating on the front and back outside balconies where said use is required by Code to be entirely within the principal building.

**VARIANCE** – to allow a marquee wider than the entry way and with support closer than eighteen inches to the face of the curb.

**VARIANCE** – to construct 9,100 square foot of additional improved space, without providing the one additional loading berth required by Code.

**VARIANCE** – to provide 67 off street parking spaces, in lieu of 97 existing spaces and the 147 required by Code.

**VARIANCE** – to allow required parking to be stacked in a method which required the movement of other vehicles in order to move another vehicle.

**DEFERRED** to the February 13, 2007 meeting.

**02/13/2007 – Site Plan Review #2-2007 with Special Exceptions and Variances and Waiver of Zoning in Progress** – Request special exception approval for continued operation of hotel under new ownership. Applicant believes prior zoning applications are vested and not subject to the zoning in progress, but if Town attorney concludes that the applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application.

**DEFERRED** to the March 13, 2007 meeting to allow more research to address Town Council's questions.

**03/13/2007 – Site Plan Review #2-2007 with Special Exceptions and Variances and Waiver of Zoning in Progress** – Request special exception approval for continued operation of hotel under new ownership. Applicant believes prior zoning applications are vested and not subject to the zoning in progress, but if Town attorney concludes that the applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application.

**DEFERRED to the April 10, 2007 meeting.**

**04/10/2007 – Site Plan Review #2-2007 with Special Exceptions and Variances and Waiver of Zoning in Progress – Request special exception approval for continued operation of hotel under new ownership. Applicant believes prior zoning applications are vested and not subject to the zoning in progress, but if Town attorney concludes that the applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application.**  
**DEFERRED to the May 7, 2007 meeting.**

**05/07/2007 – Site Plan Review #2-2007 with Special Exceptions and Variances and Waiver of Zoning in Progress – Request special exception approval for continued operation of hotel under new ownership. Applicant believes prior zoning applications are vested and not subject to the zoning in progress, but if Town attorney concludes that the applicant is not vested, the Applicant requests that the Town waive the application of the zoning in progress for this application.**

**APPROVED with the following conditions:**

1. Applicant enter into a Construction Agreement and a Declaration of Use Agreement which incorporated the conditions of approval for the operation of the hotel and its amenities.
2. Applicant is also required to design and construct new median cuts in the 100 block of Royal Palm way to the satisfaction of the Town's Public Works Department.

**07/11/2012 – Site Plan Review #6-2012 with Special Exception and Variances – The subject condominium hotel is currently under renovation pursuant to the approval of the Town Council in May 2007. The site plan has been modified from the original plan which requires approval from the Town Council. The following is a list of the proposed changes to the approved plan:**

- Elimination of two pool structures and relocation of a pool structure;
- Relocation of pool restrooms to inside of Function Room;
- Relocation of bar area;
- Elimination of the mansard roof on the East elevation and addition of a mansard roof on the North elevation and East guest wing elevation;
- Relocation of pool equipment and storage to under pool service building;
- Approval of landscaping, cabanas and pool terrace for the entire site;
- Addition of plunge pools to the pool terrace area;
- Addition of interior floor above lobby to total 1,486 square feet of which 500 square feet is dining area;
- Addition of parapet to connect East and West stair towers;
- Addition of roof deck lounge on existing rooftop of hotel;
- Addition of elevator to the show on roof plan of function roof where previously not shown

A request for Special Exception approval is required for the new owner of the condominium hotel and changes and modification of the hotel which is a special exception. The following variances are requested in conjunction with the modification to the site plan:

**VARIANCE – for the height and overall height of the new mansard roofing design and material to be 35.27 feet from zero datum (no change from existing) in lieu of the 30 foot maximum overall building height allowed by code in the C-B Zoning District;**

**VARIANCE – for 7 parking spaces due to the additional floor 986 square feet created above the lobby for additional dining and kitchen facilities (no increase in number of seats) and finished kitchen prep area which totals 831 square feet in the basement;**

**VARIANCE – to allow construction of the new function room building, spa and second floor dining room to be phased and completed after the hotel has a certificate of occupancy and open for business. The applicant is requesting a 5 year extension from the certificated of occupancy to construct and/or build out the function room building, spa and dining room on the second floor.**

**APPROVED – The Council approved the change in hotel operators with the following conditions:**

1. The hotel, with the exception of the spa/fitness area in the basement and second floor dining room above the lobby, shall be completed and have a certificate of occupancy by February 14, 2013.
2. The spa/fitness area and second floor dining room above the lobby shall have the shell (exterior space drywall, all life safety features, minimum electric and floor slab) completed by



February 14, 2013. Those areas shall be completed following issuance of building permit(s) and final certificate of occupancy when commercial tenants are secured.  
3. The South perimeter landscape buffer shall be approved and completed by September 30, 2012.

The remainder of the site plan review with variances shall be considered at the August 15, 2012 Council meeting.

08/15/2012 – Modified Site Plan Review #6-2012 with Special Exception and Variances – Additional changes to the 07/11/2012 request are as follows:

- Replace solid parapet on function room with balustrade railing;
- Increase height of doors in main lobby overlooking pool deck by 3 feet;
- Add a breezeway from the main lobby to function room;
- Add a 7 foot tall hedge with a 42 inch rail on South side of proposed swimming pool to run length of pool deck area;
- Add pergola on south elevation and extend balconies on North, South and East elevations;
- Addition of service corridors and expansion of kitchen and laundry room which totals

approximately 3,625 square feet;

- Shift location of approved function room 25 feet to the East and add back the 4 of the 6 parking spaces that are lost. Size of the spa facility is decreased from 7,325 square feet to 5,948 square feet which eliminates the need for 2 parking spaces that were lost. Net effect is zero loss of parking spaces;
- Replace solid concrete railing on stairway on South side of West wing fire escape with precast balustrade railing.

A request for Special Exception approval is required for the new owner of the condominium hotel and changes and modification of the hotel which is a special exception. The following variances are requested in conjunction with the modification to the site plan:

VARIANCE – for the height and overall height of the new parapet roofing design and material to be 35.27 feet from zero datum (no change from existing) in lieu of the 30 foot maximum overall building height allowed by Code in the C-B Zoning District;

VARIANCE – for 4 parking spaces due to the additional floor 986 square feet created above the lobby for additional dining and kitchen facilities (no increase in number of seats);

VARIANCE – for 3 parking spaces due to the addition of a kitchen prep area which totals 831 square feet in the basement for a total of 7 parking spaces that would be required;

VARIANCE – to increase the height of the parapet wall above the parking deck to be 14 feet in lieu of the 5 foot maximum allowed and the 3.5 feet existing.

APPROVED MODIFIED SITE PLAN REVIEW REQUEST #S 2,3,4,6,7,8,10, 11, 13, 14, 15 AND 16. REQUEST #S CORRESPOND TO PRESENTATION FROM 8/15/2012. REQUEST #12, TO ADD A BREEZEWAY BETWEEN THE HOTEL AND THE PROPOSED FUNCTION ROOM WAS WITHDRAWN BY THE APPLICANT. REMAINING REQUESTS WERE APPROVED, SUBJECT TO THE FOLLOWING CONDITIONS:

1. The proposed 14 foot tall parapet wall between the proposed function room and the proposed service bar shall have a water feature that runs the length of the wall. Said water feature shall be operational as determined by the Town Council as outlined in the proposed Declaration of Use Agreement.
2. The service bar shall remain for the use of only the hotel staff. Service shall not be provided to hotel guests. In addition, no chairs shall be allowed for hotel guest at the service bar.
3. The pool deck area and abutting grass area between the pool deck and proposed Function Room to the East shall remain passive and no events shall be held in those areas.
4. The pool deck area shall be allowed only background music and light live music with the speaker system directed toward the hotel to the North. There shall be no music on the abutting grass area.  
The hours shall be as identified in the original Declaration of Use Agreement.
5. The air conditioning equipment on the proposed Function Room roof shall be screened from the neighbors by a solid parapet wall.

6. The Function Room elevator and stairwells shall not be accessible from 7:00 p.m. to 9:00 a.m. Fire-rescue accessibility shall be provided by Knox-boxes and an elevator override system.

7. Additional landscape material to completely screen the back of the hotel from the neighbors shall be required and maintained on the South perimeter of the subject property in perpetuity. The landscaping of the entire property shall be approved by the Architectural Commission.

8. These new conditions of approval shall be incorporated in the Declaration of Use Agreement.

**ALL 3 VARIANCE REQUESTS APPROVED.**

**APPLICANT IS REQUIRED TO COMPLETE THE FUNCTION ROOM, MESSANINE DINING ROOM AND FITNESS CENTER/SPA CONSTRUCTION TO MINIMUM "SHELL" COMPLETION PRIOR TO FEBRUARY 14, 2013; THEREAFTER ONLY INSIDE QUIET WORK WILL BE ALLOWED.**

01/09/2013 – Site Plan Review #3-2013 with Special Exception and Variance – Requesting a modification to the site plan and special exception from the approved zoning application Site Plan Review #6-2012 with Special Exception and Variances which requires approval from the Town Council.

- Relocation of the roof top sundeck on the proposed Function Room, including the removal of the two stairwells and elevator going to that area. The sundeck was allowed to be relocated on top of the second floor roof above the lobby dining room. This approval included required stairs and an elevator to the new proposed sundeck area and physical separation of the proposed sundeck from the South ten feet of the building. In addition, other roof areas that are not part of the approved new sundeck area shall also have a structural separation from the new sundeck. The previous conditions of approval of the sundeck on the Function Room apply to this new sundeck area.

- Relocation of the air conditioning equipment from the Function Room roof to the Northeast corner of the surface parking lot as identified on the plans.

- Elimination of the outside stairs to the spa area.

- Modification of the service double doors on the East side of the proposed Function room.

- Modification to create a niche on only the West end of the proposed water wall between the

Function room and the outside service area building on the South side of the subject property. The Council denied the sliding doors on the West entrance to the Function Room, the niche on the East side of the water wall and the bar area abutting the South doors from the lobby dining room leading out to the outside seating area.

**APPROVED with the following conditions:**

1. The East and South boundary of the subject property shall be screened in a manner which is approved by the neighbors to the East.

2. The relocated air conditioning equipment shall also be fully screened by a wall and landscape material. Said screening shall be maintained in perpetuity.

3. Applicant is required to come back to the February 13, 2013 Town Council meeting for approval of a second amendment to the Declaration of Use Agreement, which addresses all of the proposed modifications changing the Agreement. All other conditions of approval in the Declaration of Use Agreement remain valid.

09/10/2014 – Site Plan Review #12-2014 with Special Exceptions and Variances – Requesting a modification of the site plan which requires approval from the Town Council. Proposed changes to the SPR #3-13 approved hotel plan:

**SPECIAL EXCEPTION** – addition of 1,006 square feet of basement level spa/salon/fitness area and 6,719 square feet of hotel lounge, business center, guest recreation and services area ("Premier Guest Service Area") to primarily serve hotel guests; addition of 3,804 square feet for back of house support services in the basement level and change of such uses to administrative offices, employee break room, restrooms, housekeeping and kitchen coolers/freezers; addition of 75 square feet for pool deck restrooms; addition of 573 square feet for exterior Function Room bathrooms; change of use to pool deck and adjacent Function Room courtyard area to allow for pre-function events; redesign and reduction of main kitchen by 100 square feet; addition of 1,483 square feet for Function Room finishing kitchen, "green room" and speaker area; reintroduction of previously approved function room

sundeck to private spa deck on roof; addition of 39 dining seats to interior second floor restaurant and relocation of those seats to the previously approved third floor deck; and conversion of one hotel room to a private dining room and relocation of 12 previously approved second floor interior restaurant dining room seats to such room.

**SPECIAL EXCEPTION** – to permit outdoor dining with a maximum of 39 seats on the previously approved third floor deck and addition of three bar/beverage stations customarily associated with a hotel use; one on the third floor deck, one to serve the second floor North dining terrace and one portable station for the Function room courtyard area for pre-function events (total approved outside seating in other areas is 66 seats). Total outdoor seating proposed to be 105 seats.

**VARIANCE** – to permit construction of an addition to the basement level (for area not below existing building footprint) to allow for back of house space, expanded spa and Premier Guest Service Area which increases lot coverage to 71%, in lieu of the 66.4% existing and the 50% maximum lot coverage allowed by Code.

**VARIANCE** – to allow a basement addition to extend further outside the confines of the existing building footprint which is not permitted by code.

**VARIANCE** – to allow a landscaped open space of 12.2% in lieu of the 12.7% existing and the 30% minimum required by Code.

**VARIANCE** – for a front yard setback of 7.66 feet in lieu of the 29.54 foot minimum front yard setback required to install a retractable awning which covers the second floor doors and the previously approved outdoor seating area on the North dining terrace.

**VARIANCE** – for a 10 foot rear yard setback in lieu of the 15 feet required to relocate previously approved pool cabanas.

**VARIANCE** – for a 10 foot rear yard setback in lieu of the 15 foot minimum required for the location of a men's restroom to service the pool area.

**VARIANCE** – for a 10 foot rear yard setback in lieu of the 15 foot minimum required to construct an addition to the East side of the previously approved Function Room.

**VARIANCE** – for the non-conforming hotel to not provide an additional required loading space for commercial deliveries based on the additional accessory commercial square footage of 7,864 proposed for the hotel.

**VARIANCE** – to allow changes to the use of the 1,881 square foot third floor deck as Town Code provides for a two story limitation. The prior variance limited the use of the third floor deck to a private spa deck and there is a proposed change of use associated with that variance to allow for the addition of 39 outdoor dining seats, a bar/beverage station customarily associated with hotel uses (with 410 square feet of decorative, open trellis), 80 square foot enclosed storage room and 1,132 square foot expansion of deck area.

**VARIANCE** – for height and overall height to allow a 410 square foot open trellis on the third floor deck associated with the proposed outdoor dining area. The variance request is for the height of the trellis on the third floor to be 41 feet high in lieu of the 25 foot maximum allowed which is 16 feet over the maximum building height of 25 feet and the maximum overall height of 41 feet in lieu of the 30 foot maximum allowed.

**VARIANCE** – for 68 off-street parking spaces for the proposed addition of the finishing kitchen, "green room" and speaker are for the Function Room, the increase in spa square footage, the loss of parking spaces resulting from the addition of the Function Room addition, the additional back of house space to serve the hotel, the additional 39 dining seats and the Premium Guest Services Area located in the basement level.

**DEFERRED to October 13, 2014, Special Town Council Meeting.**

**FOUR OUTSTANDING ISSUES THAT HAVE TO BE RESOLVED BY OCTOBER 13, 2014 MEETING:**

1. Provide a letter from the City of West Palm Beach that there is adequate portable water capacity for the project.

2. Provide the Town's Public Works Department with the sewer capacity analysis from a licensed engineer. That has to be reviewed and signed off on by Public Works and accepted by John Page, Director of Planning, Zoning and Building.

3. Discussions with Building Official Bill Bucklew note that handicap accessibility requirements are not being met for proposed parking, even if it is completely valet. Please contact Bill Bucklew to address the issue.

4. Provide John Randolph, Town Attorney, the draft waiver language as discussed at the Council meeting from both the client and Mr. Straub, for his review. Once approved by Mr. Randolph, the waivers are to be executed and submitted to this office prior to the October 13 Council meeting. A newly revised Declaration of Use Agreement is also to be provided.

**10/13/2014 – Site Plan Review #12-2014 with Special Exceptions and Variances – Requesting a modification of the site plan which requires approval from the Town Council. DENIED FOR SPECIAL EXCEPTIONS AND VARIANCES. SITE PLAN MODIFICATIONS DENIED WITH THE EXCEPTION OF THE FOLLOWING FIVE:**

1. Reintroduction of a rectangular shaped pool (26' x 48') previously approved by the Town Council from curvilinear design decision by prior owner.
2. Reintroduction of an awning to connect main hotel and Function Room previously approved by the Town Council but eliminated by prior owner.
3. Design change to front door (North), West restaurant and East egress doors.
4. Enclosure of first through third level exterior access corridors on most Eastern elevation, above garage entrance.
5. Change of building color to custom pink hue.

**01/13/2016 – Site Plan Review #1-2016 with Special Exception – for modification to hotel approved plans to comport with previous approvals with exception of minor changes to improve service areas and access to those areas via stairs and elevators. The intent of the following proposed site plan changes is to address and secure the Town's approval for certain improvements that (A) are already partially constructed, (B) will improve the function of the hotel, but (C) will not increase the intensity of the use of the Property or require any additional variances of any nature:**

1. Complete construction of Function room and pool area consistent with plans previously approved by the Town.
2. Demolish partially constructed bathrooms on West side of Function Room and complete construction in area immediately adjacent to the Southeast corner of the Function room per plans previously approved by the Town.
3. Demolish partially constructed walkway, stairs and elevator in so far as it provides access to roof above Function Room.
4. Demolish approximately 1,140 square feet of office space in area previously approved as service corridor and laundry space.
5. Demolish partially constructed enclosures of portions of the basement garage on both East and West side of the Property, to restore 5 required off-street parking spaces.
6. Completion of partially constructed stair and elevator from basement to third floor on North side of hotel building and demolish partially constructed elevator extension to roof top.
7. Restore guest room area on third floor which was converted to private dining over-looking the second floor dining room.
8. Demolish partially constructed partial wall in the Function Room kitchen.
9. Construction of new access stairs from the basement kitchen area to the lobby dining room.
10. Construct new stairs, elevator and dining area on the second floor dining room.
11. Construct redesigned mezzanine dining room stairs.
12. Construct opening on the East side of the Function Room wall identified as the state.
13. No reduction of condo-hotel units. The condo-hotel units remain at 79 units.
14. Remove infill framing at exterior walkways on East elevation (Installed subsequent to staff's Identification of non-approved construction).

**APPROVED.**

**01/11/2017 – Request for One Year Time Extension, Site Plan Review # 1-2016 – APPROVED for 12-month time extension.**

**01/10/2018 – Request for One Year Time Extension, Site Plan Review # 1-2016 – APPROVED for 12-month time extension.**



Prepared by and return to:  
Maura Ziska, Esq.  
Kochman & Ziska, PLC  
222 Lakeview Ave. Suite 1500  
West Palm Beach, FL 33401

**THIRD AMENDMENT TO DECLARATION OF USE AGREEMENT**

**By**

**THE TOWN OF PALM BEACH**

**and**

**LR PALM HOUSE LLC  
(F/K/A 160 ROYAL PALM LLC and ROYAL 160, LLC)**

**Dated September, 2020**

**EXHIBIT "F"**

## **AMENDMENT OF DECLARATION OF USE AGREEMENT**

THIS THIRD AMENDMENT TO DECLARATION OF USE AGREEMENT ("Amendment") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the TOWN OF PALM BEACH, a Florida municipal corporation, 360 South County Road, Palm Beach, Florida 33480 (hereinafter the "Town"); and LR PALM HOUSE LLC, formerly known as ROYAL 160, LLC and ROYAL 160, LLC, 160 Royal Palm Way, Palm Beach, Florida 33480 hereinafter the ("Owner"), which terms "Town" and "Owner" will include and bind the successors and assigns of the parties, wherever the context so requires or admits.

### **WITNESSETH:**

WHEREAS, the Town and Owner heretofore entered into a Declaration of Use Agreement, dated July 30, 2007 and recorded in Official Records Book 21987, Page 499, and an Amendment to the Declaration of Use Agreement, dated December 28, 2021 and recorded in Official Records Book 25694, Page 633, and further amended in the Second Amendment to the Declaration of Use Agreement, dated August 13, 2013 and recorded in Official Records Book 26251, Page 78, all in the Public Records of Palm Beach County, Florida ("Agreement");

WHEREAS the land described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as "Land") is located within the municipal limits of the Town;

WHEREAS, title to all of the Land is held by the Owner;

WHEREAS, the Palm House Hotel (hereinafter referred to as the "Hotel") is located and operated on the Land at 160 Royal Palm Way in the Town;

WHEREAS, the Town Council on October 9, 2020, approved the Site Plan Revise with Special Exception and Variances number Z-20-00\_\_ to modify the previously approved Site Plan Review #16-2016 with Special Exception, which allowed the new Owner to operate the Hotel subject to the modified conditions, which modified previous conditions of approval;

WHEREAS, the modifications to the previous conditions of approval are set forth herein and the approval of this Agreement is on the basis of the Owner's application and the testimony on behalf of the Owner;

WHEREAS, the Town made specific findings that the Owner met all applicable provisions of the Town Code governing site plan review, special exceptions, and variance requests;

WHEREAS, in approving the Site Plan Review with Special Exceptions and Variances, the modifications to the previous conditions of approval reflected herein are imposed in order to regulate the use, mitigate any adverse impacts of the use, and insure that said use shall not be adverse to the public interest;

WHEREAS, all of the representations made herein are true and accurate and the approval of the Site Plan Review with Special Exception and Variances are conditioned upon the representations made herein and all of the conditions herein imposed; and,

WHEREAS, in granting the approval, the Town Council relied upon the oral and written representations of the property owner/applicant both on the record and as part of the application process.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and in consideration of other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed that the Agreement is hereby amended and modified as follows:

## **ARTICLE I** **RECITALS**

The recitals set forth above are true and correct and are incorporated herein and made a part hereof.

## **ARTICLE II** **REPRESENTATION OF OWNERSHIP**

Owner has full right to enter into this amendment to the 2007 Declaration of Use Agreement, as amended, and to bind the Land, Hotel and itself to the terms hereof. There are no covenants, restrictions or reservations of record that will prevent the use of the Hotel and Land in accordance with the terms and conditions of this Agreement. No consent to execution, delivery and performance hereunder is required from any person, partner, limited partner, creditor, investor, judicial or administrative body, governmental authority or other party other than any such consent which already has been unconditionally given or referenced herein. The execution of this Amendment will not violate any restrictions, court orders or agreements to which Owner or the Land are subject.

## **ARTICLE III** **CONDOMINIUM HOTEL USES**

The use of the Land shall be for hotel uses and accessory uses in compliance with all of the information and exhibits not inconsistent with the terms and conditions set forth herein and as set forth in the applications previously submitted to, and approved by, the Town (hereinafter referred to as the "Approvals"). The Town's approval of the Application is subject to that provision of the Town Code which provides that no subsequent deviation may be made from the application as approved by the Town Council except upon new application to and approval by the Town Council. Any additional uses of the Land shall be subject to approval by the applicable governmental authority including but not limited to the Town Council of the Town, the Architectural Commission of the Town, Palm Beach County, the State of Florida, the United States Government, and/or any agencies under any of the foregoing governmental authorities.

## **ARTICLE IV** **MODIFICATIONS TO PREVIOUS CONDITIONS OF APPROVAL**

The following modifications to previous conditions of approval are imposed as conditions of granting approval of the Site Plan Review with Special Exceptions and Variances contained in Z-20-00289 and are required to be met as conditions of the continued operation of the Hotel.

#### **DECLARATION OF USE DATED JULY 30, 2007**

1. Paragraph 3 shall be amended as follows:

~~The second floor dining room area is approved for a total 120 seats with the ability to relocate 50 of those seats to the second floor balcony patios (a maximum of 25 seats on the front balcony and 25 seats on the back balcony terrace). In addition, The first floor dining room is approved for 65~~ 88 indoor seats with the ability to relocate 16 and 36 outdoor seats facing the new pool deck outdoors on the covered pool loggia. The dining room may serve meals to the public and hotel guests in the dining rooms from 5:00 AM to 1:00 AM. Outside dining shall only be allowed from 9:00 AM to 10:00 PM ~~on the covered pool loggia. However, seating for patrons for dining on the covered pool loggia shall not occur after 9:00 PM. Outside dining shall only be allowed from 6:00 AM to 11:00 PM on the second floor dining room balconies. However, seating for patrons for dining on the second floor outside dining shall not occur after 9:00 PM. This shall not preclude 24 hours room service.~~

2. Paragraph 7 shall be amended as follows:

The function area shall only be allowed ~~150~~ 200 seats with recorded or live music or other entertainment between the hours of 12:00 Noon and 11:30 PM. 12:00 AM. ~~No sooner than one year from the date of the certificate of occupancy, the applicant may apply for a special exception with variance for a maximum of 50 additional seats in the function area.~~

3. Paragraph 8 shall be deleted in its entirety as follows:

~~The upper deck sun deck on top of the function room shall only be used for sunning or lounging. There shall be no events of any kind or live or recorded music provided on said sun deck.~~

#### **AMENDMENT TO DECLARATION OF USE DATED DECEMBER 28, 2012**

1. Paragraph 1 shall be amended as follows:

The proposed ~~14~~ 15.16 foot tall parapet wall between the ~~proposed~~ function room and the ~~proposed employee pool service building~~ west wing of the hotel shall have a water feature that runs the length of the wall. Said water feature shall be operational between the hours of 9:00 a.m. and midnight (12:00 a.m.).

2. Paragraph 3 shall be amended as follows:

~~There shall be no Pre-function events in the pool deck and grass area between the pool deck and Function Room~~ shall be allowed. ~~These areas shall remain passive. The pool deck area shall be allowed only background music and light live music with the speaker system directed towards the hotel to the north. There shall be no music played on the~~

abutting grass area. The pool deck hours and hours for music shall be as identified in the Agreement.

3. Paragraph 5 shall be deleted in its entirety as follows:

~~Except for emergencies, the Function Room elevator and stairwells shall not be accessible to the sundeck from 7:00 PM to 9:00 AM so as not to allow hotel guests and employees on the Function Room roof during those hours. Fire rescue accessibility shall be provided by know boxes and an elevator override system. The access points to the stairs leading to the sundeck on the Function Room shall be designed to be completely isolated from the ground floor with a full door and other separation to ensure that when they are locked there is no access to the sundeck.~~

4. Paragraph 7 shall be deleted in its entirety as follows:

~~All construction must be completed by February 14, 2013 with the exception of the function room, spa/fitness area and second floor dining room above the lobby which shall be required to only have the shells (drywall, all life safety features, minimum electric and floor slab) completed by February 14, 2013. Any elements of the Hotel or Land not completed by February 14, 2013, include the function room, spa/fitness area and second floor dining room shall be required to obtain new approvals and permits.~~

## **SECOND AMENDMENT TO DECLARATION OF USE DATED AUGUST 13, 2013**

1. Paragraph 1 shall be deleted in its entirety as follows:

~~The air conditioning equipment previously approved to be located on the roof of the Function Room shall be relocated to the planters on the east side of the Function Room and are required to be screened from the neighbors.~~

2. Paragraph 2 shall be deleted in its entirety as follows:

~~The previously approved activity and restrictions for the roof top of the Function Room shall be transferred to the roof top area above the Hotel lobby on the third floor of the hotel. The following restrictions now apply to the roof top of the Hotel in lieu of the roof top of the Function Room: (a) the sundeck shall only be used for sunning or lounging; (b) there shall be no events of any kind or live or recorded music provided on said sundeck; (c) except for emergencies, the Hotel elevator and stairwells shall not be accessible to the sundeck from 7:00 p.m. to 9:00 a.m. so as not to allow hotel guests and employees on the Hotel sundeck during those hours. Fire rescue accessibility shall be provided by know boxes and an elevator override system. There shall be a barrier constructed to the satisfaction of the Town which precludes access to the roof top of the hotel to the east and south of the sundeck.~~

3. Paragraph 4 shall be deleted in its entirety as follows:

~~All construction must be completed by February 14, 2013 for the function room, spa/fitness area and second floor dining room. The building shall be required to only have the shells (drywall, all life safety features, minimum electric and floor slab) completed by February 14, 2013. Any element~~



~~completed by February 14, 2013, including the function room, spa/fitness area and second floor dining room shall be required to obtain new approvals and permits.~~

#### **ARTICLE V** **PROVISIONS FOR NOTICE**

For the issuance of any notice regarding the terms of the Agreement and this Amendment, notice shall be provided.

To the Town Manager:

The Town of Palm Beach, Town Hall  
360 S. County Road  
Palm Beach, FL 33480

To the Owner:

LR Palm House LLC  
160 Royal Palm Way  
Palm Beach, FL 33480

#### **ARTICLE VI** **PROVISIONS TO RUN WITH LAND/RECORDING**

This Amendment shall run with the Land and shall be binding upon the Owner and its respective legal representatives and successors and assigns. This Amendment shall be recorded by the Owner in the Official Records of Palm Beach County, Florida upon full execution by the parties hereto. This Amendment shall be superior to any mortgages on the Land and shall be recorded prior to the recording of any such mortgages.

#### **ARTICLE VII** **ENTIRE AGREEMENT**

This Amendment, as identified herein, only represents the modifications to the Agreement, as recorded in Official Records Book 21987, Page 499 and Amendment to the Agreement as recorded in Official Records Book 25694, Page 633 and Second Amendment to the Agreement as recorded in Official Records Book 26251, Page 78, of the Public Records of Palm Beach County between the parties and may not be amended except by written agreement executed by both parties. All other provisions and conditions in the Agreement, as recorded in Official Records Book 21987, Page 499 and Official Records Book 25694, Page 633 and Official Records Book 26251, Page 78 of the Public Records of Palm Beach County, remain in full force and effect.

#### **ARTICLE VIII** **MISCELLANEOUS**

Wherever the word "laws" appears in this Agreement, it shall be deemed to include all ordinances, rules and regulations as well as laws of the appropriate governmental authorities. This Amendment may not be amended except by written instrument signed by all parties hereto. Paragraph headings are inserted for convenience only and shall not be read to enlarge, construe, restrict or modify the provisions hereof. All references to numbered or lettered paragraphs, subparagraphs and exhibits refer (unless the context indicates otherwise) to paragraphs and subparagraphs of this Agreement and to exhibits attached hereto, which exhibits are by this reference made a part hereof. This Agreement shall be binding upon the parties hereto and upon their successors and assigns. In the event of the invalidity of any provision of this Agreement,

same shall be deemed stricken herefrom and this Agreement shall continue in full force and effect as if such invalid provision were never a part hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above.

Signed, sealed and delivered  
In the presence of:

TOWN OF PALM BEACH

By: \_\_\_\_\_  
Gail Coniglio, Mayor

By: \_\_\_\_\_  
Maggie Zeidman, President  
Town Council

By: \_\_\_\_\_  
Kirk Blouin  
Town Manager

LR PALM HOUSE LLC

By: \_\_\_\_\_  
Its: Manager/Member

STATE OF FLORIDA

) SS.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Gail Coniglio, the Mayor of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced as identification.

**Notary Public – State of Florida**

Notary Seal: \_\_\_\_\_

STATE OF FLORIDA

SS.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Maggie Ziedman, the President of the Town Council of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced \_\_\_\_\_ as identification.

**Notary Public – State of Florida**

Notary Seal: \_\_\_\_\_

STATE OF FLORIDA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Kirk Blouin, the Town Manager of the Town of Palm Beach, a Florida municipal corporation, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public – State of Florida

Notary Seal: \_\_\_\_\_

STATE OF FLORIDA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of LR Palm House LLC, a Florida limited liability company, on behalf of the corporation/limited liability company/partnership, who ☐ is personally known to me or who ☐ has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public – State of Florida

Notary Seal: \_\_\_\_\_

APPROVED AS TO LEGAL FORM AND  
SUFFICIENCY:

\_\_\_\_\_  
John C. Randolph  
Town Attorney

**Exhibit "A"**

**Legal Description of the Land:**

**Being Lots 31, 32 and 33, Block F, Royal Park Addition, a subdivision in the Town of Palm Beach, Palm Beach County, Florida, as recorded in Plat Book 4, Page 1, Public Records of Palm Beach County, Florida.**



BRAZILIAN AVENUE

S. OCEAN BOULEVARD

300

117

125

133

141

149

155

163

100

132

140

160

SUBJECT  
PROPERTY

ROYAL PALM WAY

109

200 FOOT  
VICINITY

200' - 0" BOUNDARY LINE

151

25 50 100 200



LOCATION MAP



VM1

The Palm House Hotel  
160 Royal Palm Way

License N°

AUGU



**Town of Palm Beach  
Notification to Property Owners**

**Architectural Review Commission Project Notice**

TO BE HEARD BY THE ARCHITECTURAL REVIEW COMMISSION ON September 23, 2020  
AFTER 9:00 A.M., in the Town of Palm Beach Council Chambers located on the 2<sup>nd</sup> floor, 360 South County Road, Palm Beach. Pursuant to Section 18-202 (1) of the Town Architectural Review Ordinance, this application is being sent to all property owners within 250' radius of the location of the subject application.

All interested persons may appear and be heard at said Public Hearing and may likewise submit written statements prior to and at said Public Hearing. If any person decides to appeal any decision made by the Architectural Review Commission with respect to this matter, he/she will need to ensure that a verbatim record of the proceeding is made which record includes the testimony and evidence upon which the appeal is to be based. Please be advised that the Town does not enforce private covenants or deed restrictions.

ARCOM#: B-063-2020

Address: 160 Royal Palm Way, Palm Beach Florida 33480

Applicant: LR Palm House LLC

**Project Description:**

The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The proposed new work for the hotel includes completion and conversion of guest rooms for a total of 79 keys. A new pool deck will be constructed adjacent to the existing Function Room. Other exterior improvements will include re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. Fenestration requiring replacement will be replaced with similar windows and doors.

This notification is not to solicit approval or disapproval. It is a required notification to surrounding property owners. The plans for the project are on file in the Planning, Zoning & Building Department and are available for review Monday through Friday between 8:30 a.m. and 4:30 p.m. or may be available via the Town's website at [www.townofpalmbeach.com/index.aspx?NID=676](http://www.townofpalmbeach.com/index.aspx?NID=676). Please note that the applicant may submit revised plans and materials up to 9 days prior to the meeting date; therefore, if you are an interested party, you will need to contact the Town using the information below to verify if revisions have or have not been submitted.

If you would like to be automatically informed of changes to the ARCOM Agenda and Back-up Material, please visit our website [www.townofpalmbeach.com](http://www.townofpalmbeach.com) and click on the "Stay Informed" button on the main page and follow the instructions provided and select Architectural Commission (ARCOM).

If you need further information relative to this project, please contact Josh Martin, Director of Planning, Zoning and Building at 561-227-6401 or [jmartin@townofpalmbeach.com](mailto:jmartin@townofpalmbeach.com).



**TOWN OF PALM BEACH**  
Planning, Zoning & Building Department  
360 S. County Rd.  
Palm Beach, FL 33480

**APPLICATION FOR PROJECT REVIEW BY THE ARCHITECTURAL REVIEW COMMISSION**

Application Number: B-063-2020

Date: August 21st, 2020

Application Type:

☐

Major  
Minor

☒

Combination\*  
Minor with notice

\*If Town Council review required, include Zoning Application Number: Z-20-00289

- I. **PROJECT ADDRESS:** 160 Royal Palm Way, Palm Beach Florida 33480
- II. **DESCRIPTION OF THE REQUEST:** The exact wording in this section will appear on the ARCOM Agenda. Please include a comprehensive summarized description of the proposed project.  
The existing Palm House hotel is located at 160 Royal Palm Way, Palm Beach, Florida. It is currently vacant and construction is partially completed. The structure is three stories with a partially enclosed basement containing parking and back-of-house functions. The proposed new work for the hotel includes completion and conversion of guest rooms for a total of 79 keys. A new pool deck will be constructed adjacent to the existing Function Room. Other exterior improvements will include re-painting, new exterior floor finishes, trellises and a covered walkway leading to the existing Function Room. Fenestration requiring replacement will be replaced with similar windows and doors.

Whole Structure Demolition? Yes        or No X

Number of Stories: 3 Roof Material (type): Clay tile & modified bitumen membrane  
Concrete Clay Tile, Low  
Const. Type: CBS: IIIA Frame: & Steel Colors: Building: Pink Roof: Slope Roofs: Gray  
Stucco, Stone  
Trim: & Wood Shutters: N/A \*this information to be included on the cover sheet of the ARCOM plans

III. **DESIGN PROFESSIONAL(S):**

☒  
☐  
☐

Architect  
Landscape Architect  
Other:                     

☐  
☐  
☐

Design Consultant  
Engineer

Check if you are an ARCOM member and this project will result in a voting conflict for you.

Name of Professional: Michael Sean McLendon License #: AR95062

Phone number: 404-240-9537 Email address: seanmclendon@coopercarry.com

IV. **OWNER/AGENT INFORMATION:**

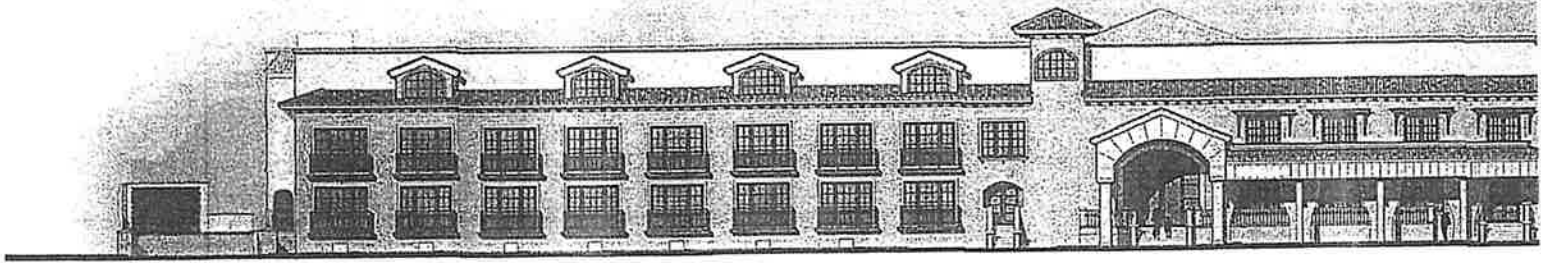
Property Owner's Name: LR Palm House LLC

Owner's Address (if different from Subject Address): c/o Kochman & Ziska PLC

222 Lakeview Avenue, Suite 1500 Phone number: 561-802-8960

Signature (owner or owner's legally authorized agent\*): Maura Ziska  
\*if signed by a legally authorized agent, must be accompanied by a Power of Attorney or statement from the property owner authorizing the signer to sign on the owner's behalf.

(printed name and title) Maura Ziska



NORTH ELEVATION - ROYAL PALM WAY



**ELEVATION** 

EL1.B

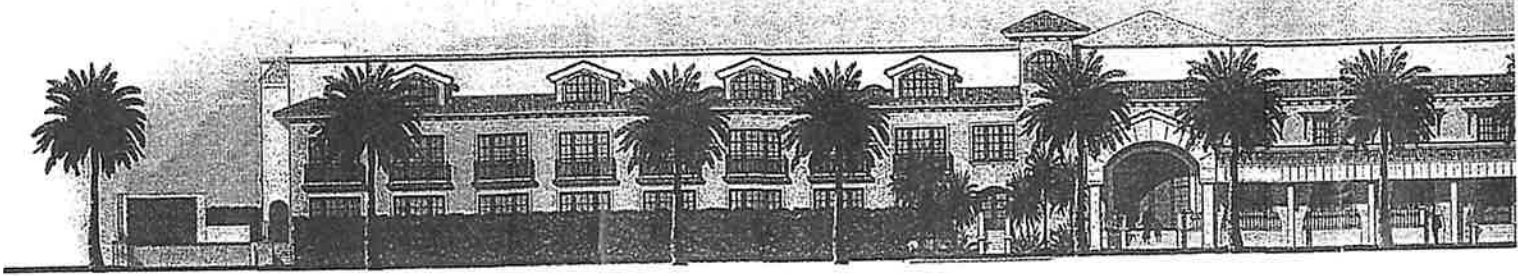
**The Palm House Hotel**

*160 Royal Palm Way*

License N°

AUGUS





NORTH ELEVATION - ROYAL PALM WAY



**ELEVATION**



EL1.A

**The Palm House Hotel**  
*160 Royal Palm Way*

License N°  
AUGU

