

ORDINANCE 2023-07

AN ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, APPROVING AN AMENDED PLANNED UNIT DEVELOPMENT(PUD)/OUTLINE DEVELOPMENT PLAN (ODP) FOR ST. REGIS HOTEL AND RESIDENCES, LOCATED AT 1621 GULF OF MEXICO DRIVE; REAFFIRMING 67 RESIDENTIAL UNITS AND 12 TOURISM UNITS, AND REAFFIRMING THE ALLOCATION OF 156 TOURISM UNITS FROM THE TOWN'S TOURISM UNITS POOL, FOR A TOTAL PROJECT DENSITY OF 235 UNITS ON 17.6 ACRES OF PROPERTY; REAFFIRMING 3 RESIDENTIAL TOWERS CONTAINING 67 RESIDENTIAL UNITS AND 2 TOURISM UNITS, INCLUSIVE OF SUPPORTING AMENITIES; REAFFIRMING A RESORT WITH 166 TOURISM UNITS ON THE SITE, INCLUSIVE OF 3 RESTAURANTS, 3 BARS, A SPA, AN EVENT LAWN, A TOTAL OF 17,654 SQUARE FEET OF MEETING SPACE (INCLUDING A BALLROOM AND MEETING/BOARD ROOMS), A LOBBY AREA, ADMINISTRATIVE AREAS, SERVICE AREAS, SWIMMING POOLS, AND OFF-STREET PARKING; APPROVING THE REMOVAL OF 62 MECHANICAL LIFTS AND 4 HOTEL PARKING SPACES FROM THE HOTEL PORTION OF THE FIRST FLOOR PODIUM PARKING; MODIFYING AND EXPANDING THE APPROVED SURFACE PARKING LOT TO PROVIDE FOR THE CONSTRUCTION OF 105 SURFACE PARKING SPACES; PROVIDING FOR INSEVERABILITY; REPEALING AND SUPERCEDING ALL ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, 1621 Gulf of Mexico Drive (hereinafter the "Property") is the site of a former 237-unit tourism resort, known as the Colony Beach and Tennis Club (hereinafter the "Colony"); and

WHEREAS, the Property is 17.6 acres and is zoned T-6 (High-Density Tourist Resort Commercial District), with a maximum allowed density of 6 units per acre; and

WHEREAS, as a result of ownership, maintenance, redevelopment, legal and financial disputes amongst the Property's previous stakeholders, in 2010 the resort closed and fell into disrepair; and

WHEREAS, after years of litigation, closure, and subsequent condemnation of the Property's structures in 2017, Brandon Commons, L.L.C., Lake Brandon Shoppes, L.L.C., Metro Pointe, L.L.C., Metro Plaza, L.L.C., WPT Outparcel, L.L.C., CW Family, LLLP, CW Family, LLC, Unicorp Acquisitions II, LLC, and Unicorp National Developments, Inc. (collectively hereinafter "Unicorp") filed a Planned Unit Development (hereinafter "PUD")/Outline Development Plan (hereinafter "ODP") and Final Site Plan, pursuant to Zoning Code Sections 158.067 and 158.103, to redevelop the site as the St. Regis Hotel and Residences; and

WHEREAS, in 2017, Unicorp gave Brenda Patten, Esq. (hereinafter the "Agent") authorization to act on its behalf as agent for all applications required for development of the Property; and

WHEREAS, Unicorp's 2017 application and PUD/ODP/Final Site Plan submittal elected to redevelop the Property as a mixed-use project in the T-6 zoning district, rather than utilize the existing condemned structures, uses and nonconforming tourism density that existed on the former Colony site; and

WHEREAS, by choosing the optional PUD/ODP form of entitlement which allows for more flexible development standards, Unicorp was required to reduce the overall density on the Property from 6 units/acre (17.6 acres x 6 u/a = 105.6 total units) to 4.5 units/acre (17.6 acres x 4.5 u/a = 79.2 total units) pursuant to Section 158.070 of the 2018 Zoning Code; and

WHEREAS, Unicorp's 2017 submittal sought approval under Sections 158.067 and 158.103 of the 2018 Zoning Code to build 78 residential units and 1 tourism unit; and

WHEREAS, because of the T-6 zoning of the Property, Unicorp also applied for the distribution of the remaining 165 tourism units from the Town's Tourism Units Pool that were available, in accordance with Section 158.180 of the 2018 Zoning Code; and

WHEREAS, quasi-judicial hearings were held and the Town Commission approved the St. Regis Hotel and Residences project on March 16, 2018, through the adoption of Ordinance 2018-07 and Resolution 2018-01 with 59 conditions of approval; and

WHEREAS, Ordinance 2018-07 approved 78 residential units, 1 tourism unit, and the allocation of the remaining 165 additional tourism units from the Town's Tourism Units Pool for a total project density of 244 units on 17.6 acres; and

WHEREAS, Ordinance 2018-07 also authorized the construction of three residential towers containing 78 residential units, inclusive of supporting amenities; and

WHEREAS, Ordinance 2018-07 also authorized the construction of a resort containing 166 tourism units, inclusive of 3 restaurants, 2 bars, a spa, an event lawn, a total of 15,304 square feet of meeting space (inclusive of a ballroom and meeting/board rooms), a lobby area, administrative areas, service areas, swimming pools, and off-street parking; and

WHEREAS, Ordinance 2018-07 approved a maximum height of 65 feet for the residential towers and the hotel building; and

WHEREAS, during the 2018 public hearings, Unicorp agreed to amend the site plan associated with its application and reduce its previously proposed 10,000 square foot ballroom to 7,650 square feet; and

WHEREAS, Ordinance 2018-07 approved seven departures, pursuant to Section 158.067(D), which modified the zoning standards otherwise provided for in the Town's 2018 Zoning Code; and

WHEREAS, the approved departures in Ordinance 2018-07 related to the following requirements in the 2018 Zoning Code: (a) maximum building length, pursuant to Section 158.102 (L)(3); (b) Gulf waterfront setback pursuant to Section 158.150 (D)(1)(b); (c) accessory commercial uses pursuant to Section 158.127 (C)(2); (d) Floor Area Ratio (FAR) pursuant to Section 158.102 (C)(1)(c); (e) Living Space Ratio pursuant to Section 158.102 (C)(2); and (f) Open Space Ratios pursuant to 158.102 (C)(2); and

WHEREAS, since the adoption of Ordinance 2018-07 and Resolution 2018-01, Unicorp expended significant financial resources satisfying several conditions within both development orders including, but not limited to, the condition that obligated Unicorp to demolish the existing condemned buildings on the Colony Property, the condition that required payment of the outstanding delinquent utility fees and penalties on the Colony

Property, and the condition that required the consolidation of property ownership interests within the Property; and

WHEREAS, in 2021, Unicorp gave Brenda Patten, Esq. re-authorization to act on its behalf as agent for all applications required to amend the prior approvals for development of the Property; and

WHEREAS, on or about March 4, 2021, Unicorp filed an application to amend the ODP/PUD/Final Site Plan application along with a Special Exception application utilizing the Zoning Code and Comprehensive Plan in effect on March 16, 2018; and

WHEREAS, Unicorp's 2021 application sought to amend entitlements in Ordinance 2018-07 and Resolution 2018-01, in accordance with the Zoning Code in effect in 2018 (for the PUD/ODP and Final Site Plan) since the Town substantially amended the Code in 2019 and significantly modified the standards for ODP/PUDs; and

WHEREAS, a number of the 2019 Zoning Code amendments preclude certain aspects of the previously entitled St. Regis development and other similarly zoned T-6-zoned properties from using certain provisions within the Town's Zoning Code; and

WHEREAS, based upon Unicorp's substantial expenditures satisfying conditions in Ordinance 2018-07 and to avoid the loss of existing entitlements and the need for Unicorp to substantially redesign the project, Unicorp asserted legal vested rights and equitable estoppel arguments relating to the continued application of the 2018 Zoning Code to Unicorp's amendment to its prior ODP/PUD approval; and

WHEREAS, Unicorp's 2021 submittal sought approval under Sections 158.067 and 158.103 of the 2018 Zoning Code to build 67 residential units and two tourism units contained in three residential towers; and

WHEREAS, because of the T-6 zoning of the Property, Unicorp also sought approval for the reallocation of 156 out of the previously allocated 165 tourism units from the Town's Tourism Units Pool (returning nine tourism units to the Town's Tourism Units Pool), in accordance with Section 158.180 of the 2018 Zoning Code; and

WHEREAS, Unicorp's 2021 submittal also sought approval of a Special Exception for approval to exceed the maximum allowable building height for certain rooftop mechanical equipment, enclosed stairwells and landings, and parapet walls within the project; and

WHEREAS, a quasi-judicial hearing was held and the Planning and Zoning Board approved Special Exception 2021-02 on September 17, 2021, which was subject to approval of PUD/ODP/Final Site Plan amendment applications, and recommended to the Town Commission that the proposed PUD/ODP/Final Site Plan application be approved with certain agreed upon conditions; and

WHEREAS, quasi-judicial hearings were held and the Town Commission approved the St. Regis Hotel and Residences project on October 20, 2021, through the adoption of Ordinance 2021-12 and Resolution 2021-21 with 61 conditions of approval; and

WHEREAS, Ordinance 2021-12 approved 67 residential units and twelve tourism units; the reallocation of 156 tourism units from the Town's Tourism Units Pool, and the return of nine units to the Town's Tourism Units Pool; for a total project density of 235 units on 17.6 acres; and

WHEREAS, Ordinance 2021-12 also authorized the construction of three residential towers containing 67 residential units and two tourism units, inclusive of supporting amenities; and

WHEREAS, Ordinance 2021-12 also authorized the construction of a resort containing 166 tourism units, inclusive of 3 restaurants, 2 bars, a spa, an event lawn, a total of 17,654 square feet of meeting space (inclusive of a ballroom and meeting/board rooms), a lobby area, administrative areas, service areas, swimming pools, and off-street parking; and

WHEREAS, the Ordinance 2021-12 also approved the reassignment of the address of the property from 1620 Gulf of Mexico Drive (which was the address for the former Colony resort) to 1621 Gulf of Mexico Drive, 1561 Gulf of Mexico Drive, 1571 Gulf of Mexico Drive, 1581 Gulf of Mexico Drive, 1591 Gulf of Mexico Drive, and 1601 Gulf of Mexico Drive associated with the overall site and proposed primary buildings on site; and

WHEREAS, during the 2021 public hearings, Unicorp proposed to amend the site plan associated with its application and increase its previously proposed number of parking spaces from 405 to 468 in order to meet 2018 Zoning Code requirements; and

WHEREAS, Ordinance 2021-12 also approved Unicorp's request to utilize 62 mechanical car lifts as required parking spaces for the hotel and its accessory uses; and

WHEREAS, Ordinance 2021-12 approved 17 departures which modified the zoning standards, pursuant to Section 158.067(D), otherwise provided for in the Town's 2018 Zoning Code; and

WHEREAS, the approved departures in Ordinance 2021-12 related to the following requirements in the 2018 Zoning Code: (a) Floor Area Ratio (FAR) pursuant to Section 158.102 (C)(1)(c); (b) Open Space Ratio pursuant to 158.102 (C)(2); (c) Living Space Ratio pursuant to Section 158.102 (C)(2); (d) Three departures related to Gulf waterfront setback pursuant to Section 158.150 (D)(1)(b); (e) Side yard setback pursuant to Section 158.102 (L)(2); (f) Two departures related to Maximum building length pursuant to Section 158.102 (L)(3); (g) Separation between Beach Shelters pursuant to Section 158.151(F)(1); (h) Dimension of Accessory Structure in Waterfront Yard, pursuant to Section 158.151(F)(1); (i) Accessory Commercial Uses pursuant to Section 158.127 (C)(2); (j) Parking Space and Aisle Width Dimensions pursuant to Section 158.128(A)(1) & (B); (k) Parking Layout pursuant to Section 158.128(A)(4); (l) Three departures related to Distance Between Buildings pursuant to Section 158.102(L)(2); and (m) Off-Street Loading/Unloading Berths Sections 158.129(A) & (B); and

WHEREAS, on March 11, 2022, the Town issued a Site Plan Exemption for the Property, in accordance with Section 158.026 of the 2022 Zoning Code, to allow for: (a) shift of the fire access road while maintaining the Departure that was granted by Ordinance 2021-12; (b) a reduction in the size of the great lawn; (c) a shift of the great lawn and patio heaters to the east side of the fire access road; (d) elimination of the lift station; and (e) adjustment of sewer profiles; and

WHEREAS, since the adoption of Ordinance 2021-12 and Resolutions 2021-21, Unicorp expended significant financial resources satisfying additional conditions within both development orders including, but not limited to, receiving a Building Permit to construct the project and commencing vertical construction on the property; and

WHEREAS, on May 25, 2022, the Town issued Building Permits, in accordance with Ordinance 2021-12 and Resolution 2021-21, to allow for the construction of the project; and

WHEREAS, the project is currently under construction; and

WHEREAS, by deeds recorded in the Public Records of Sarasota County, title to the Property has been conveyed to S.R. LBK, LLC, a Delaware limited liability company and

S.R. LBK II, LLC, a Delaware limited liability company (collectively hereinafter “Owners”); and

WHEREAS, the Owners have given Brenda Patten, Esq. re-authorization to act on its behalf as agent for all applications required to amend the prior approvals for development of the Property; and

WHEREAS, on or about January 5, 2023, the Owners filed an application to amend the PUD/ODP/Final Site Plan application utilizing the Zoning Code and Comprehensive Plan in effect on March 16, 2018 (hereinafter “Applicant”); and

WHEREAS, on June 5, 2023, the Town Commission conducted a duly noticed first quasi-judicial public hearing on the Applicant’s January 5, 2023 PUD/ODP/Final Site Plan application; and

WHEREAS, on June 20, 2023, the Applicant requested and the Town Commission agreed to allow the Applicant to revise their initially submitted applications by eliminating a proposed parking structure from the plan and replacing the parking provided therein with an expanded surface parking area and conducting a duly noticed first quasi-judicial public hearing on Ordinance 2023-07 on September 18, 2023; and

WHEREAS, on July 6, 2023, the Applicant filed the amended PUD/ODP/Final Site Plan application to eliminate the proposed parking structure and provide for an expanded surface parking area; and

WHEREAS, the amended PUD/ODP/Final Site Plan is seeking approval of the construction of a newly expanded parking area where a previously planned surface parking lot was approved and the elimination of mechanical parking lift spaces from the project; and

WHEREAS, the amended PUD/ODP/Final Site Plan increases the total number of parking spaces by one space, from 468 to 469; and

WHEREAS, the amended PUD/ODP/Final Site Plan application is seeking approval of a decrease in building foot print and lot coverage; an increase in open space ratio; a decrease in living space ratio; and a modification of setbacks for the Fire Lane and Patio Heaters; and deletion of beach shelters, mechanical parking lifts and tiki hut from the plan; and

WHEREAS, the Applicant’s amended PUD/ODP application requests eighteen departures which modify the zoning standards otherwise provided for in the Town’s Zoning Code; and

WHEREAS, the Applicant’s remaining requested departures relate to the following requirements in the 2018 Zoning Code: (a) Floor Area Ratio (FAR) pursuant to Section 158.102 (C)(1)(c); (b) Open Space Ratio pursuant to 158.102 (C)(2); (c) Living Space Ratio pursuant to Section 158.102 (C)(2); (d) Three departures related to Gulf waterfront setback pursuant to Section 158.150 (D)(1)(b); (e) Side yard setback pursuant to Section 158.102 (L)(2); (f) Two departures related to Maximum building length pursuant to Section 158.102 (L)(3); (g) Accessory Commercial Uses pursuant to Section 158.127 (C)(2); (h) Four departures related to Parking Space and Aisle Width Dimensions pursuant to Section 158.128(A)(1) & (B); (i) Two departures related to Parking Layout pursuant to Section 158.128(A)(4); (j) Two departures related to Distance Between Buildings pursuant to Section 158.102(L)(2); (k) A Departure for Street Yard setback Section 158.128(H)(2) and Section 158.145; and (l) Off-Street Loading/Unloading Berths Sections 158.129(A) & (B); and

WHEREAS, the Planning and Zoning Official has accepted and processed the Applicant’s application and subsequent revisions in a timely fashion; and

WHEREAS, the Planning and Zoning Official referred the January 5, 2023, submittal by the Applicant to the Planning and Zoning Board along with supporting documentation and staff recommendations relating to an earlier version of the Applicant's submittal; and

WHEREAS, the Planning and Zoning Board held a properly noticed quasi-judicial public hearing on the Applicant's January 5, 2023 application on April 18, 2023, and heard evidence and testimony associated with the Applicant's application; and

WHEREAS, the Planning and Zoning Board reviewed the January 5, 2023 application which provided for a more intense use of the Property, and after considering all of the competent substantial evidence in the record, and recommended to the Town Commission that the proposed PUD/ODP/Final Site Plan application be approved with certain agreed upon conditions; and

WHEREAS, the Applicant's subsequently amended July 6, 2023 PUD/ODP/Final Site Plan application proposes a less intense use of the Property than the earlier January 5, 2023 application reviewed by the Planning and Zoning Board; and,

WHEREAS, the Applicant's July 6, 2023, PUD/ODP/Final Site Plan application is consistent with the Town's Comprehensive Plan and the T-6 zoning district in which it is located; and

WHEREAS, on September 18, 2023, the Town Commission conducted another duly noticed first quasi-judicial public hearing on Ordinance 2023-07 considering the Applicant's July 6, 2023 PUD/ODP/Final Site Plan application; and

WHEREAS, on October 2, 2023, the Town Commission conducted another duly noticed second quasi-judicial public hearing on Ordinance 2023-07 and approved the Ordinance; and

WHEREAS, after considering all of the competent substantial evidence in the record, including the testimony and documents submitted into the record at the hearing, including the Staff Report submitted on August 15, 2023, and its supplements, and the recommendation of the Planning and Zoning Board, the Town Commission makes these conclusions of law and findings of fact:

- A. Pursuant to Section 158.067 (C)(1) of the 2018 Zoning Code, with the recommended conditions of approval, the Owners' amended ODP is consistent with the intent of a planned unit development as provided in Section 158.065.
- B. Pursuant to Section 158.067 (C)(2) of the 2018 Zoning Code, with the recommended conditions of approval, the Owners' amended ODP is consistent with the Town's Comprehensive Plan.
- C. Pursuant to Section 158.067 (C)(3) of the 2018 Zoning Code, with the recommended conditions of approval, the Owners' amended ODP meets the zoning regulations applicable to the subject property with associated departures.
- D. Pursuant to Section 158.067 (C)(4) of the 2018 Zoning Code, with the recommended conditions of approval, the purpose, location and amount of common open space in the Owners' amended ODP is adequate for maintenance and conservation of the common open space, and adequate for the amount and purpose of the common open space as related to the proposed density and type of development.
- E. Pursuant to Section 158.067 (C)(5) of the 2018 Zoning Code, with the recommended conditions of approval, the Owners' amended ODP provides adequate

control over vehicular traffic and parking, and enhances the amenities of light and air, recreation and visual enjoyment.

F. Pursuant to Section 158.067 (C)(6) of the 2018 Zoning Code, with the recommended conditions of approval, the Owners' amended ODP does not adversely impact the immediate neighborhood, as the resort existed harmoniously in the neighborhood for years prior to its closure in 2010.

G. Pursuant to Section 158.067 (C)(8) of the 2018 Zoning Code, with the recommended conditions of approval, the Owners' amended ODP provides for an effective and unified development on the project site making appropriate provision for the preservation of scenic features and amenities of the site and the surrounding areas.

H. With the recommended conditions of approval, the departure of 0.38 Floor Area Ratio (FAR) (292,310 square feet), to provide a 0.70 FAR ratio (537,858 square feet) (Section 158.102 (C)(1)(c) of the 2018 Zoning Code), is consistent with the intent of the Code and in the best interest of the Town.

I. With the recommended conditions of approval, the departure of 1.29 Open Space Ratio (695,523.1 square feet), to provide a 0.91 Open Space Ratio (487,764.5 square feet) (Section 158.102 (C)(2) of the 2018 Zoning Code), is consistent with the intent of the Code and in the best interest of the Town.

J. With the recommended conditions of approval, the departure of 0.59 Living Space Ratio (318,616.5 square feet), to provide a 0.91 Living Space Ratio (488,170.5 square feet) (Section 158.102 (C)(2) of the 2018 Zoning Code), is consistent with the intent of the Code and in the best interest of the Town.

K. With the recommended conditions of approval, the departure of 41.7 feet for Gulf waterfront setback for the Monkey Bar structure, to provide a setback of 108.3 feet (Section 158.150 (D)(1)(b) of the 2018 Zoning Code), is consistent with the intent of the Code and in the best interest of the Town.

L. With the recommended conditions of approval, the departure of 41 feet and 34.4 feet for Gulf waterfront setback for two Patio Heaters, to provide setbacks of 109 feet for the north patio heater and 115.6 feet for the south patio heater (Section 158.150 (D)(1)(b) of the 2018 Zoning Code), is consistent with the intent of the Code and in the best interest of the Town.

M. With the recommended conditions of approval, the departure of 4 feet for Distance Between Buildings for the side setback on the north side of the Property, to provide a setback of 45 feet (Section 158.102 (L)(2) of the 2018 Zoning Code), is consistent with the intent of the Code and in the best interest of the Town.

N. With the recommended conditions of approval, the departure of 32.53 degrees for building length on north side of property, to a building length angle of 62.53 degrees (Section 158.102 (L)(3) of the 2018 Zoning Code), is consistent with the intent of the Code and in the best interest of the Town.

O. With the recommended conditions of approval, the departure of 11.57 degrees for building length on south side of property, to a building length angle of 41.57 degrees (Section 158.102 (L)(3) of the 2018 Zoning Code), is consistent with the intent of the Code and in the best interest of the Town.

P. With the recommended conditions of approval, the departure of 64.7 feet for Gulf waterfront setback, to provide a setback of 85.3 feet (Section 158.150 (D)(1)(b)

of the 2018 Zoning Code) for the Emergency Fire Lane, is consistent with the intent of the Code and in the best interest of the Town.

Q. With the recommended conditions of approval, the departure of 14.8%, subject to a 7,650 square foot ballroom, for accessory commercial uses, to provide 24.8% (39,190.5 square feet) of accessory commercial uses (Section 158.102 (C)(1)(c) of the 2018 Zoning Code), is consistent with the intent of the Code and is in the best interest of the Town.

R. With the recommended conditions of approval, the departure of 1-foot by 2 feet to provide for 173 ground-level parking spaces that are 9 feet by 18 feet; the departure of 1 foot, 6 inches by 2 feet to provide for 17 parking spaces that are 8 feet, 6 inches by 18 feet; and the departure of up to 6 feet, 9 inches to provide for one parking aisle that is 18 feet, 3 inches; one parking aisle that is 20 feet, five inches; one parking aisle that is 20 feet, six inches; and one parking aisle that is 20 feet, (Section 158.128(A)(1) & (B) of the 2018 Zoning Code), is consistent with the intent of the Code and is in the best interest of the Town.

S. With the recommended conditions of approval, a departure to provide 85 ground-level stacked parking spaces (Section 158.128(A)(4) of the 2018 Zoning Code) within the hotel portion of the parking podium, is consistent with the intent of the Code and is in the best interest of the Town.

T. With the recommended conditions of approval, the departure of 36 feet, 6 inches distance between buildings; 32 feet, 4 inches distance front to rear; 22 feet, 4 inches distance side to rear for distance between restroom and residential tower, to provide 7 feet, 8 inches between the buildings (Section 158.102(L)(2) of the 2018 Zoning Code), is consistent with the intent of the Code and is in the best interest of the Town.

U. With the recommended conditions of approval, the departure 38 feet, 1 inch between Pool Cabanas, to provide a separation of 1 foot, 11 inches between Pool Cabanas, (Section 158.102(L)(2) of the 2018 Zoning Code) is consistent with the intent of the Code and is in the best interest of the Town.

V. With the recommended conditions of approval, the departure of 6 loading/unloading berths, to provide 2 loading/unloading berths (Section 158.129(A) & (B) of the 2018 Zoning Code), is consistent with the intent of the Code and is in the best interest of the Town.

W. With the recommended conditions of approval, the departure of 1.5-feet by 2 feet to provide for 105 parking spaces within the outdoor hotel surface parking areas that are 8.5 feet by 18 feet (Section 158.128(A)(1) & (B) of the 2018 Zoning Code), is consistent with the intent of the Code and is in the best interest of the Town.

X. With the recommended conditions of approval, the departure of 17.26 feet street yard setback of the hotel surface parking lot (Section 158.128(H)(2) and Section 158.145 of the 2018 Zoning Code), is consistent with the intent of the Code and is in the best interest of the Town.

Y. With the recommended conditions of approval, a departure to provide 31 stacked parking spaces (Section 158.128(A)(4) of the 2018 Zoning Code) within the 93-space hotel surface parking lot, is consistent with the intent of the Code and is in the best interest of the Town.

Z. With the recommended conditions of approval, the amended ODP sufficiently addresses the terms and conditions intended to protect the interests of the public in the integrity of the plan.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

Section 1. The Whereas clauses above are ratified and confirmed as true and correct, and are hereby incorporated fully by reference.

Section 2. The PUD/ODP application received January 5, 2023 (as modified by the sixth supplemental submission by the Applicant on July 6, 2023), for the St. Regis Hotel and Residences Planned Unit Development and Outline Development Plan as described herein, is hereby approved subject to the conditions contained in Exhibit "A" attached hereto as St. Regis Hotel and Residences, located at 1621 Gulf of Mexico Drive, 1561 Gulf of Mexico Drive, 1571 Gulf of Mexico Drive, 1581 Gulf of Mexico Drive, 1591 Gulf of Mexico Drive, and 1601 Gulf of Mexico Drive Longboat Key, Florida 34228. Exhibit "A" is incorporated fully herein.

Section 3. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of the Ordinance shall also be invalidated.

Section 4. All ordinances and resolutions and parts of ordinances and resolutions in conflict herewith, including Ordinance 2018-07, Ordinance 2021-12, Resolution 2018-01, and Resolution 2021-21 shall be superseded. Notwithstanding the foregoing, nothing herein shall be construed to repeal the Applicant's prior special exception approval set forth in Special Exception Order 2021 – 02, and any references to Ordinance 2021-12 or Resolution 2021-21 contained in that special exception order or other development order(s) shall be superseded by and read in pari materia with Ordinance 2023-07. In the event of a conflict between this Ordinance 2023-07, and previously issued Ordinances 2018-07 and Ordinance 2021-12, this Ordinance 2023-07 shall prevail and any conflicting terms are hereby repealed.

Section 5. This Ordinance shall be codified and made a part of the official Code of Ordinances of the Town of Longboat Key in accordance with Section 6 of this Ordinance.

Section 6. This Ordinance shall take effect upon adoption by the Town Commission and approval within 30 days by the Owners. If the Town Commission has not received notification of approval and acceptance of this Ordinance within 30 days after the Applicant's receipt, this Ordinance shall be deemed to have been denied. Notwithstanding the foregoing, the PUD/ODP approval provided for herein is contingent upon the Applicant having obtained approval of the Final Site Plan amendment from the Town Commission through Resolution 2023-21.

Passed on the first reading and public hearing the 18th day of September 2023.

Adopted on the second reading and public hearing this 2nd day of October 2023.

Kenneth Schneier, Mayor

ATTEST:

Trish Shinkle, Town Clerk

Attachment: Exhibit "A", Conditions Requisite for Approval

EXHIBIT "A"

ORDINANCE 2023-07

CONDITIONS REQUISITE FOR APPROVAL
PLANNED UNIT DEVELOPMENT/OUTLINE DEVELOPMENT PLAN
ST. REGIS HOTEL AND RESIDENCES
1621, 1561, 1571, 1581, 1591, AND 1601 GULF OF MEXICO DRIVE

The conditions below are reflected in underline/strikethrough text to indicate changes that have been made to the conditions that were previously set forth in Ordinance 2021-12. All references to the Zoning Code are from the 2018 Town Zoning Code (Chapter 158). All other Code references are from the current Town Code (2023).

- 1) The provisions of the amended Planned Unit Development/Outline Development Plan application for the subject property, received January 5, 2023 (as modified by the sixth supplemental submission on July 6, 2023) shall be complied with unless waived or modified by the following conditions, or by written agreement between the Town and the Applicant, or amended pursuant to Town Code. Any and all improvements authorized by this PUD/ODP/Final Site Plan shall comply with T-6 High-Density Tourist Resort Commercial District of the Zoning Code, as amended in this Ordinance. After issuance of the final Certificate of Occupancy for the project any subsequent modifications to the approval provided within this PUD/ODP/Final Site Plan that are not otherwise exempt under the site plan requirements of the then applicable Town Code, shall be subject to the applicable Town Code in effect at the time of such subsequent submittal.
- 2) **[Condition Completed.]** The PUD/ODP approval contained herein is contingent upon the Applicant obtaining approval of the Special Exception from the Planning and Zoning Board through Special Exception Order 2021-02 and Final Site Plan from the Town Commission through Resolution 2023-12.
- 3) The additional 156 tourism units granted from the tourism pool and flexible regulatory standards, as allowed by Section 158.180, shall restrict the future use of the entire 166 tourism units within the hotel to a tourism use only. Tourism units on Longboat Key shall provide transient lodging accommodations of less than 30 consecutive calendar days or one (1) entire calendar month, whichever is less, and are not to be used as dwelling units for permanent occupancy.
- 4) In accordance with Section 158.067(H) of the Zoning Code, final site development plan approval for a planned unit development runs with the land for a period not to exceed four calendar years from the date of the ordinance adopting the final site development plan.
- 5) **[Condition Completed.]** Upon the issuance of a final Condemnation Order and Notice of Intent to Demolish buildings on the Property, the Applicant shall apply for permits to demolish all buildings subject to such order, and shall demolish them within 60 days of the issuance of such a permit, for the protection of the neighboring adjacent property owners. If the Condemnation Order and Notice of Intent to Demolish is appealed by any unit owner, the deadline for obtaining a demolition permit and completing demolition shall be extended until a date 30 days after the date that any appeal is finally denied. This deadline may be extended by the Town Manager for good cause shown for a period not to exceed 120 days. Any request for an extension must be submitted in writing to the Town Manager at least 20 days prior

to the expiration. Any additional extensions, beyond that provided by the Town Manager, shall be considered by the Town Commission in a public meeting. Notwithstanding the foregoing, nothing herein shall prevent the Town from utilizing the processes provided for in Section 150.21 of the Town Code; including the Town's demolition of the structures and the imposition of liens against the property for the costs of abatement and/or demolition as provided for in Section 150.21(M) of the Town Code. Additionally, nothing herein shall preclude the Town from pursuing all other available means of enforcement of state and local codes including, but not limited to, enforcement proceedings before the Town's Code Enforcement Board or litigation. In accordance with Sections 3303.01-3303.7 of the Florida Building Code, 6th Edition, the Applicant shall ensure the following is done to protect adjacent properties before, during and after demolition:

- a) Prior to demolition, contractor shall assume all responsibility for the elimination of all non-protected wildlife, pests and rodents. All individual pests, rodents and non-protected wildlife, which are primarily outdoor inhabitants, that become incidental invaders inside buildings, must be eliminated.
 - b) Prior to demolition, contractor is responsible for acquiring any applicable permits and coordinating with all appropriate agencies. Bid shall include all permit costs.
 - c) Lead, mold and asbestos surveys required for all buildings prior to demolition.
 - d) All material must be removed and disposed of in a legal manner. At no time can materials be stacked or stored on property.
 - e) Staging is only permitted within the site. Access will be limited to only one point.
 - f) Contractor may have limited use of a wrecking ball.
 - g) Contractor responsible for protection of underground utilities.
 - h) The vacant lot shall be filled and maintained to the existing grade.
 - i) The lot shall be sodded or seeded with grass, or otherwise covered with vegetative landscaping within five calendar days of the completion of demolition.
 - j) Adjoining public and private property shall be protected from damage during demolition work. Protection shall be made to control water runoff and erosion during demolition activities. The Applicant shall provide written notice to the owners of adjoining buildings advising them of demolition activities and that the adjoining buildings should be protected. Said notification shall be delivered no less than 10 days prior to the scheduled start date of the demolition.
- 6) **[Condition Completed.]** Prior to the issuance of any building permits for construction of the project, the Applicant shall submit written documentation to the Town demonstrating:
- a) The condominium has been terminated and the rights of the unit owners to the ownership of individual condominium units have been extinguished; and
 - b) The Applicant has unified ownership and control over the entire 17.6-acre property, and in accordance with applicable law, including Chapter 718, Florida Statutes, has the right to obtain building permits. For purposes of this condition, "ownership and control" shall mean that Unicorp, or one or more entities in which Chuck Whittall is manager or president, shall hold title and be the owner of 100% of the real property interests in the entire 17.6-acre property.

- c) Nothing herein shall preclude the Applicant from applying for or obtaining demolition permit(s) to address unsafe, unfit or condemned structures located on the property and removing said structures pursuant to such an Order by the Town's Building Official and/or Fire Marshall.
- 7) **[Condition Completed.]** All rights under Resolution 2016-18 shall terminate and Resolution 2016-18 shall be repealed at the expiration of all applicable appeal period(s) following the effective date of Resolution 2018-01. In the event of an appeal, Resolution 2016-18 and all obligations and provisions set forth therein shall be extended until the completion of all appeals.
- 8) **[This Condition Was Eliminated by the Town Commission in Ordinance 2021-12.]** ~~All proposed tourism units must be completed and receive certificates of occupancy prior to the issuance of any certificates of occupancy for any of the 78 residential units.~~
- 9) Two of the 69 units in the condominium towers are tourism units available for occupancy for less than 30 consecutive calendar days or one entire calendar month, whichever is less. The two tourism units shall be designated on the floor plans for the development no later than the time building permits are issued for vertical construction of the condominium towers. Either or both of these units may be converted back to residential use only as a minor change only one time pursuant to Section 158.100. All 67 residential units, plus either or both of the 2 units while designated for residential use, shall be used as dwelling units for residential occupancy in accordance with the provisions of the Zoning Code. At all times, the number of parking spaces required for residential use shall be maintained for all 69 units in the condominium towers. Use of all 69 units in the condominium towers must comply with Town codes.
- 10) The hotel shall be designed, constructed, and operated to be eligible for designation as a "Five Star" hotel of similar quality to the Eau Palm Beach Resort & Spa or The St. Regis Bal Harbour Resort.
- 11) The hotel restaurants and hotel bars, the Monkey Bar and the Beach Grill will be available for public use. The meeting rooms, boardrooms and ballroom may be booked by the public for private events. The public will be able to obtain services at the spa, which shall include a day pass to use the hotel pool and beach facilities on the day of the spa appointment. Membership or contractual rights for the non-exclusive use of the hotel recreation facilities may be established and granted by the hotel management. The "public" shall include people who are not hotel guests or unit owners, tenants or their guests.
- 12) Without a reduction to the amount of ballroom/meeting space or adoption of other conditions of approval otherwise limiting maximum seating capacities identified below, to ensure that the parking provided meets the requirements of the Town's Land Development Regulations, occupancy in the restaurants, lounges and meeting rooms shall be limited to the following as set forth below. However, maximum seating may be reallocated among areas as a minor change pursuant to Section 158.100 provided the total number of seats does not exceed 1,057 and the maximum seating in the ballroom does not exceed 425.

Area	Maximum Seating
Restaurant/Bar Spaces	
Specialty Restaurant	120
3 Meal Restaurant	100
Beach Grill	40
Terrace Bar	12
Lobby Lounge & St. Regis Bar	40
Monkey Bar	20
Sub Total – Bar/Rest	332
Meeting/Conference Spaces	
Ballroom	425
Meeting Rooms (6)	250
Board Rooms (2)	50
Subtotal – Meeting	725*
Total Occupancy	1057

*Contingent upon Condition 53.

- 13) **[Condition Completed.]** As part of an application for building permit approval, the Applicant will submit a construction management plan addressing issues including, but not limited to the following, ensuring the mitigation of construction traffic, noise, hours of construction, and other issues that might potentially impact existing Town residents:
- Points of ingress to and egress from the site for construction and delivery vehicles;
 - Areas on the site designated for the parking of construction vehicles and the storage of construction materials;
 - Hours of construction;
 - Mitigation plans for buffering and screening the construction site to reduce impacts on surrounding properties; and
 - A procedure for regularly informing residents of The Aquarius and Ten Con of construction activities, telephone numbers to call for information and a process for resolving complaints that may arise.
- 14) After the development is completed, a master association will be established for the maintenance and collection of assessments to maintain all common areas and landscaping, as well as the stormwater management system and related facilities in both the residential and tourism areas of the project. The hotel facilities, including open space, landscaping, and recreational areas and facilities, will be maintained pursuant to a franchise and maintenance agreement with the hotel operator. Common areas and facilities within and associated with the three residential towers will be maintained by a condominium association to be created by the filing of a condominium declaration in accordance with Florida law.
- 15) The development shall not be constructed in phases. Building permits for the hotel tower and the three residential towers shall be issued concurrently. Construction on the site shall commence within 6 months after issuance of the building permit for vertical construction and shall be completed within 36 months after the start of construction. Extensions may be granted in accordance with the Town's codes. No certificate of occupancy for the hotel tower, including meeting rooms and ballroom, shall be issued until the residential units in the three residential towers are certified as substantially complete. No certificate of occupancy for any residential unit shall

be issued until the hotel tower: exterior is completed, water tight, and fully enclosed; interior drywall and stairwells are completed; and accessory structures are under construction. This condition is intended to assure that the hotel and residential towers will be constructed and completed at the same time, but also to recognize that the interior improvements to individual residential units may not be finished at the same time as other units in the same towers, or the hotel, due to the specifications and customizations of the purchasers of the residential units.

- 16) **[Condition Completed.]** The site plan designates a room, identified as F.C.C. ("Fire Control Center") on the ground floor of the hotel that may be used by the Town of Longboat Key Fire and/or Police departments as a control room and/or emergency command center for fire and emergency service prevention on the property and incident management on the property on a year-round basis. Prior to filing construction plans for the development, the developer will consult with the Town to provide the communication facilities necessary to enable use of the room for these purposes and show those facilities on the construction plans. The inclusion of this room in the site plan is for the life safety of the residents, guests, visitors, and employees at the property.
- 17) The site plan shows a fire/emergency access road along the north, west and south sides of the site, connecting to Gulf of Mexico Drive. The entirety of this access road may be used by the Town of Longboat Key to provide for fire, police, and emergency rescue services to the site, the abutting beach, and the Gulf of Mexico. All non-emergency activities, including but not limited to: providing beach renourishment activities to the beach fronting and adjacent to the property; providing inspections and/or turtle patrol activities by inspectors approved by the Town or Florida Fish and Wildlife Conservation Commission (FWC); providing access to the Town of Longboat Key's Public Works Department to address fish kills and/or red tide events, perform beach grooming and maintenance shall be restricted to the north side of the site only. A 20' wide travel way shall be maintained clear of obstruction by the hotel. The owner will execute an easement to the Town or its agents granting access across the 20' emergency driveway for the above stated purposes. The fire/emergency access road may also be used by the hotel operator for hotel vehicles and overflow parking at special events so long as a 20' travel way for emergency access remains free of obstruction. The Town shall repair any damage to the access easement or the Property resulting from the use of the access easement by the Town or FWC.
- 18) Per Section 58.02 (A) of the Town Code, all utilities shall be located underground.
- 19) A six-foot tall fence shall be provided and maintained to secure the site with an opaque covering, acceptable to the Town Planning, Zoning, and Building Department. The fence shall be removed from the site at the completion of construction of the project. A change to the temporary fencing may be approved administratively.
- 20) The development/construction plans shall conform to the Florida Building Code and all other applicable codes and ordinances pertaining to, but not limited to, Town Code Chapter 154 Flood Control, Federal ADA, and Florida Accessibility Codes.
- 21) Parking of construction-related vehicles shall be prohibited along Gulf of Mexico Drive.

- 22) The development shall meet all of the applicable codes and requirements of the Fire Department regarding emergency vehicle access, and shall conform to all applicable codes and ordinances pertaining to, but not limited to, the fire code and life/safety codes. Plans shall be submitted to the Town Fire Marshal at the time a building permit application is submitted.
- 23) Building plans shall include fire suppression systems, appropriate exit signage, portable fire extinguishers, fire alarm systems, and emergency lighting as approved by the Town Fire Marshal, prior to the issuance of any building permits.
- 24) Native and drought resistant plant species shall be used in the buffer and other common areas to reduce water requirements. No more than 25 percent of the site may be planted in sod or plant species that are not drought resistant. A detailed landscape plan shall be submitted to the Town and approved by the Planning, Zoning, and Building Department prior to the issuance of a building permit.
- 25) All nuisance exotic species of trees on the entire site shall be removed including Australian Pine (*Casuarina* spp.), Carrotwood (*Cupianopsis anacardioides*), and Brazilian Pepper (*Schinus terebinthifolius*). All efforts shall be made to avoid the removal of native vegetation; however, whenever such native vegetation having a diameter breast height (dbh) of four (4) inches or greater must be removed, the applicant shall provide on-site replacement trees at a ratio of two (2) replacement trees for each one (1) tree removed, or provide mitigation as required by Chapter 98 of the Town Code. Replacement trees shall have a minimum of a four-inch dbh and a 12-foot height, when planted at grade.
- 26) Existing mature trees shall be preserved to the greatest extent possible in accordance with the submitted tree plan (Sheet L-100), received by the Town on July 6, 2023.
- 27) The approved landscaping, as presented to the Town on the plans, received by the Town on July 6, 2023, as may be modified by the terms of these conditions of approval or the Town Code, shall be maintained and replaced if necessary at an equivalent maturity level. The cost of maintenance and replacement shall be the responsibility of the property owner. A change to the landscape plans to accommodate final site plan approval and building permits may be approved as a minor change under Zoning Code Section 158.100 as long as there is no net decrease in the landscaping coverage along the north, south or eastern property line boundaries.
- 28) All signage for the property shall meet the requirements of and be permitted in accordance with Chapter 156 Sign Code of the Town of Longboat Key, Florida Code of Ordinances.
- 29) Prior to the issuance of any building permit, all applications for permits submitted to any outside permitting agency (i.e. Southwest Florida Water Management District (SWFWMD), Florida Department of Environmental Protection (FDEP), Florida Department of Transportation (FDOT), etc.), and all applicable permits received and approved from such agencies, shall be submitted to the Planning, Zoning, and Building Department.
- 30) Subsequent to receiving site plan approval from the Town Commission, three (3) sets of the approved site plan materials, with any necessary changes to meet all applicable conditions of the adopted resolution of approval, shall be submitted to the Planning, Zoning, and Building Department for final compliance review. The site plan materials shall include all plan sheets included in the application packet and photocopies of all

applicable outside agency permits. The Applicant shall submit the site plan materials no later than three months after the approval of Ordinance 2023-07, unless administratively extended. A building permit application must include the approved site plan with staff's compliance review stamp of approval.

- 31) Approval of the proposed site plan shall be subject to payment of all staff review and consultant charges during the redevelopment process by the Owners.
- 32) Consistent with Condition 27, the Owners shall install all required landscape buffer vegetation along Gulf of Mexico Drive at the earliest point in the project, consistent with the landscape's long-term survival.
- 33) **[This Condition Is No Longer Applicable.]** ~~The Applicant shall pay an impact fee at the issuance of a building permit for the additional seven (7) units granted pursuant to Chapter 158 Section 158.017, *Parks and open space land acquisition*, to be used for parks and open space according to the standards and formula set forth in the section.~~
- 34) All engineering construction plans pertaining to infrastructure, including but not limited to, water, wastewater, access, offsite roadway improvements, grading and drainage shall be approved by the Town Public Works prior to the issuance of a building permit.
- 35) **[Condition Completed.]** All past due/delinquent balances and penalties due to the Town as part of the existing Colony water and sewer system must be fully satisfied prior to the St. Regis development connecting to the Town's water and sewer system.
- 36) **[Condition Completed.]** All Stormwater Management system design assumptions shall be verified through Geo-Technical investigation and other appropriate testing methods prior to construction authorization/building permit.
- 37) **[Condition Completed.]** The landscape plan shall be further coordinated and refined along the north and south property boundary lines near and above where stormwater chambers are to be installed.
- 38) **[Condition Completed.]** Additional landscaping shall be installed along the northern property line to screen the event lawn from visual and auditory impacts. A landscaping plan must be submitted and approved by the Town prior to issuance of a building permit.
- 39) All exterior lighting shall comply with Section 158.102(B)(5), arranging the lighting to shield or deflect the light from adjoining properties and streets. All exterior lighting shall be in compliance with Chapter 100 Sea Turtles, of the Town Code both during construction and at completion of construction.
- 40) Prior to the issuance of a building permit, a Notice of Intent (NOI) for a Construction Generic Permit shall be required to be submitted to the (FDEP, in accordance with the Town's Municipal Separate Stormwater System permit under the National Pollutant Discharge Elimination System (NPDES) program. The Applicant shall submit evidence of application for the NPDES NOI, including a Stormwater Pollution Prevention Plan (SWPPP) and use of best management practices during construction for erosion and sedimentation controls for the entire project site.
- 41) During construction, coordination with the Public Works Department shall be maintained during water, wastewater, and stormwater connections and phasing. A pre-construction meeting with Public Works is advised.

- 42) The Owners of St. Regis shall post a satisfactory performance bond approved by the Town's Attorney and accompanied by the engineer-of-record's opinion of probable construction cost for site work. The bond amount shall be 125% of the engineer's estimate and kept current through the duration of construction. Upon receipt of signed and sealed "as-built" plans, the principal amount of the Bond may be reduced by 75 percent of its original amount for a one-year maintenance period after issuance of the Certificate of Occupancy, at the end of which the bond shall be released (Zoning Section 158.067(G)1 and Town Code Section 157.31(B)).
- 43) Prior to issuance of any certificate of occupancy or temporary certificate of occupancy, all infrastructure, including but not limited to, utilities, access, Gulf of Mexico Drive roadway improvements, landscaping, storm water systems and grading shall be completed.
- a) Per Town of Longboat Key Code of Ordinances Section 55.05, a Landscape Certificate of Compliance and irrigation as-built must be completed to the satisfaction of the Public Works Department prior to issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy.
 - b) Prior to Certificate of Occupancy or Temporary Certificate of Occupancy for any phase, a set of Record Drawings signed and sealed by the Engineer of Record shall be completed to the satisfaction of the Public Works Department for that phase. Drawings shall show all improvements including but not limited to grading, drainage, utilities, landscape, roadway improvements, etc. Such record drawings shall also include a signed and sealed statement by the engineer that the improvements are in substantial conformance with the approved plans or otherwise differences noted.
- 44) The stormwater management system shall be maintained in perpetuity. The perimeter stormwater management system at the north and south property lines shall be monitored and maintained regularly to ensure that the system functions as designed by the engineer of record. In addition, the pervious surface parking system shall be monitored and maintained regularly to ensure proper drainage performance. The Applicant/designated responsible entity assumes full responsibility for operation and maintenance of the stormwater management system subject to this approval.
- 45) The Applicant must coordinate with Sarasota County Area Transit (SCAT) and Town staff for the placement/construction of a future mobility and/or transit connection and shelter.
- 46) The Applicant's engineer shall confirm that the multi-use trail along the west side of Gulf of Mexico Drive for the full frontage of the development meets current minimum FDOT standards, and if not, shall design and permit to expand and achieve same.
- 47) The Applicant shall comply with Zoning Code Sections 158.018 and 158.102(I) regarding water and wastewater capacity reservation. Coordination with Public Works regarding Facility Investment Fees is required prior to temporary or permanent Certification of Occupancy.
- 48) **[Condition Completed.]** Prior to issuance of a building permit, the Applicant shall submit a Dune Enhancement and Protection Plan. The Dune Enhancement and Protection Plan will include the following information: installation and/or maintenance of salt-tolerant plants, such as sea oats, dune grasses, and other diverse species; minimize breaks in the vegetated dune zone at beach access corridors; identify access corridors where dune walkovers shall be installed (where appropriate); and

seek to connect to the adjacent vegetated dune zones to maintain alongshore vegetative connectivity of the dunes. Where appropriate, the Applicant will import beach compatible sand to restore the elevation of the landward portion of the beach to re-establish the dunes prior to vegetative enhancement. The Plan will also acknowledge and discuss the requirement to acquire permits from the appropriate agencies for the implementation of the Plan (e.g. FDEP Coastal Construction Control Line permit).

- 49) The Applicant shall indemnify and provide a defense on behalf of the Town if any third party appeals this approval.
- 50) The Applicant agrees to limit the total number of beds within the entire project to 650 beds.
- 51) For public safety purposes, the Applicant shall install an Emergency Radio System (RAS) that will allow for public safety departments to communicate during an emergency incident in and around each building. The communications system shall be approved by the Fire Chief prior to issuance of the initial building permit for the project.
- 52) In order to manage the traffic generated by the proposed development, including the special events, the Applicant shall construct a 185-foot southbound right-turn lane including the 50 foot taper and extend the existing northbound left-turn lane to 360 feet including 50 foot taper or as far as geometric constraints allow, subject to such dimensions as authorized and approved by FDOT.
- 53) The total number of attendees at one time for special events held in the ballroom, meeting rooms and board rooms, event lawn, and beach combined shall be no more than 425 people, regardless of whether they are hotel guests, on-site residents or attendees not staying at the hotel or residing on site. The number of attendees shall be verified by bookings for an event, ticket sales, table and chair setup and other operational data for events. Such information shall be provided to the Town upon request. The hotel operator shall provide an Event Management Plan to the Town Manager at least 30 days prior to an event at which 385 attendees are expected at the same time in the ballroom, meeting rooms and board rooms. The Town Manager may, but shall not be required to, comment on the Event Management Plan. For the purpose of this provision, a 'special event' means 1) an activity in the meeting center (ballroom, meeting rooms, board rooms, pre-function space and ballroom terrace), event lawn, and beach for which a sponsoring entity enters a contract with the hotel to establish the time, date, number of attendees, and cost (on a flat fee or per person basis) for the event, and where the sponsor is responsible for payment to the hotel for the participation of the attendees, and the attendees do not pay the hotel for attendance at the event, other than for hotel room charges, bar charges, or valet parking; and 2) an activity conducted on the hotel's beach that is advertised to the public. A special event does not include an activity organized by the hotel for guests of the hotel and conducted on hotel facilities other than the meeting center, so long as the event is not advertised to the public. If the Town receives complaints about problems associated with any event as described above, such as Gulf of Mexico Drive traffic management, parking, queuing, valet operation, number of attendees, or similar concerns, then upon request of the Town the hotel operator shall provide data to the Town Manager on the management of the event and shall cooperate with the Town Manager to avoid similar problems at future events. The Town and the hotel operator will agree on mitigation measures which shall be implemented at all future

events. Management of such events shall at all times be the responsibility of the hotel operator, not the Town. A violation of the maximum number of persons allowed at an event shall be a violation subject to Code Enforcement. Nothing in this condition shall preclude a person from filing a complaint with the Town's Code Enforcement official and pursuing a violation of the maximum number of attendees as a Code Enforcement matter. The fine for the first offense of exceeding 425 attendees at such event shall be deemed irreparable or irreversible in nature and a fine not to exceed \$5,000 per violation may be imposed.

- 54) **[Condition Completed.]** The Departure for accessory commercial space is reduced by 2,350 square feet, from 27,061 square feet to 24,711 square feet. The Applicant shall reduce the size of the ballroom to no more than 7,650 square feet and shall either increase the back of house space or reduce the building footprint by 2,350 square feet in the final building permit and construction plans. Any change to the site plan for the hotel building to accommodate a reduction in the size of the ballroom shall be allowed as a minor change pursuant to Zoning Code Section 158.100.
- 55) **[Condition Completed.]** The final building plans will include cellular repeaters in the hotel and residential towers to improve cellular phone coverage.
- 56) In recognition of the Town's need for additional recreational facilities to serve permanent and temporary residents, and Florida law, which would exempt the existing 237 tourism or dwelling units from payment of recreation impact fees, the Applicant will donate \$200,000.00 to the Town to be designated for improvements to public recreation facilities.
- 57) ~~**[This Condition Is No Longer Applicable.]** The site plan shall be revised to comply with the building setbacks on the north and south side of the site as required by §158.102(L)(2). Changes to the site plan to conform the setbacks to the requirements of §158.102(L)(2) shall be allowed as a minor change pursuant to Zoning Code §158.100.~~
- 58) **[Condition Completed.]** The Applicant shall cooperate with the Town and the U. S. Postal Service to change the address of the site from 1620 Gulf of Mexico Drive to an odd numbered address consistent with addresses of other properties on the west side of Gulf of Mexico Drive.
- 59) **[Condition Completed.]** The Applicant shall maintain a surety or cash bond with the Town in an amount sufficient to guarantee the performance of stipulation 5. The initial amount of the surety or cash bond shall be a minimum of \$1,100,000.00. This amount shall be adjusted by the Applicant annually based upon an engineer's estimate of the cost to guarantee performance of stipulation 5. Upon demonstration by the Applicant that requirements contained in stipulation 5 have been completed, the Town Commission may release the obligation for this surety or bond.
- 60) All beach furniture, recreational equipment, and any temporary structure(s) shall be in compliance with Chapter 100, Marine Turtle Protection.
- 61) ~~**[This Condition Is No Longer Applicable.]** Any additional equipment or machinery required to operate the 62 parking lifts that is not part of the vehicle lift mechanism in the lift space will be shown on the construction plans and shall not protrude into any drive aisle or parking space in the podium garage.~~
- 62) The Owners shall register for a Business Tax Receipt and Residential Rental Certificate of Registration for the two tourism units located in the residential towers. The registrations shall be maintained and renewed on an applicable basis.