MEMORANDUM

Date: September 26, 2012

TO: Town Commission

FROM: Dave Bullock, Town Manager

SUBJECT: Resolution 2012-07, Request from the Colony Beach and Tennis Club Association, Inc. for Extension of Time to Comply with Regulations Governing Nonconforming Uses and Structures

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On September 24th, the Town Commission continued the public hearing on whether to extend the grandfathered non-conforming use and structures at the Colony beyond December 31, 2012. Following testimony, staff report and Commission deliberation, the Town Manager was directed to modify the proposed resolution granting the extension with additional conditions considered by the Town Commission. The attached Resolution 2012-07 attempts to comply with that direction.

Please don't hesitate to contact me if you have any questions.

RESOLUTION 2012-07

A RESOLUTION OF THE TOWN OF LONGBOAT KEY, FLORIDA, GRANTING THE REQUEST OF THE COLONY BEACH AND TENNIS CLUB ASSOCIATION, INC., FOR AN EXTENSION OF TIME TO COMPLY WITH THE REGULATIONS GOVERNING NONCONFORMING USES AND STRUCTURES FOR THE COLONY BEACH AND TENNIS CLUB, LOCATED AT 1620 GULF OF MEXICO DRIVE, ALLOWING ADDITIONAL TIME TO REOPEN THE TOURISM RESORT DEVELOPMENT IN ACCORDANCE WITH SECTION 158.138(B)(8)(b) OF THE TOWN OF LONGBOAT KEY ZONING CODE; PROVIDING FOR CONDITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, at the request of Colony Beach Associates, Ltd., the Town of Longboat Key ("the Town") at a special meeting of the Town Commission on November 21, 1972, approved the plot plan for the development of a 237 unit tourism resort hotel ("the Colony") on the land that consists of approximately 17.3 acres of land, located at 1620 Gulf of Mexico Drive; and,

WHEREAS, the zoning of the subject land at the time of the plot plan approval was H-2, which allowed for a maximum density of 14 units per acre of land; and,

WHEREAS, the current zoning for the Colony is T-6, allowing up to 6 units per acre; and,

WHEREAS, the Town issued a building permit for the construction of the tourism resort hotel on February 20, 1973, and the Colony was subsequently constructed; and,

WHEREAS, construction of the Colony occurred prior to current Federal, State, and local Flood Regulations as well as the current State Building Code; and,

WHEREAS, on November 30, 1973, approximately 15 acres of the site were submitted to condominium ownership ("the Condominium Parcel"); and,

WHEREAS, the remaining approximately 3 acres were not dedicated to condominium ownership ("the Out Parcels"); and,

WHEREAS, the Colony Beach and Tennis Club Association, Inc. ("Association") is a not-for-profit corporation formed in 1973 and its membership is made up of the 237 tourist condominium units within the Colony; and,

WHEREAS, 232 of the 237 units entered into a Certificate of Agreement of Limited Partnership ("the Limited Partnership") dated December 27, 1973; and

WHEREAS, beginning in 1973, the Limited Partnership managed the Colony as a condominium resort hotel under the Agreement of Limited Partnership; and,

WHEREAS, the Limited Partnership filed for Chapter 11 under Federal bankruptcy codes and was converted on August 9, 2010, to Chapter 7 liquidation; and,

WHEREAS, the Colony closed on August 15, 2010; and,

WHEREAS, the Association was placed in possession and control of the Association property pursuant to the Bankruptcy Court order and final judgment; and,

WHEREAS, the Association Board and representatives from the Town met on October 7, 2010, to discuss the future of the tourism resort development; and,

WHEREAS, Section 158.138(B)(8)(a) of the Town's Zoning Code provides that a nonconforming use or structure not used for a period of one year shall be considered abandoned and, therefore, all nonconforming uses or structures within the Colony could be deemed abandoned after August 15, 2011; and,

WHEREAS, the Association received a number of development proposals and worked diligently with the Town, but by April 2011 it became apparent that multiple legal restraints would prevent the Colony from reopening prior to the time of abandonment under the Town's Zoning Code; and,

WHEREAS, the Association, therefore, petitioned the Town for an extension of the one year period pursuant to Section 158.138(B)(8)(b) of the Town's Zoning Code; and

WHEREAS, the owners of the Out Parcels did not object to the requested extension; and,

WHEREAS, after a public hearing on May 2, 2011, the Town Commission passed Resolution 2011-17 granting an extension of the abandonment provisions of the Zoning Code until December 31, 2012; and,

WHEREAS, on July 27, 2011, the United States District Court for the Middle District of Florida ("the District Court") reversed the Bankruptcy Court's prior final judgments and remanded the matter back to the Bankruptcy Court for further deliberations; and,

WHEREAS, the District Court's order raised questions about whether the Partnership or the Association was in control of the Association property and whether the Partnership was entitled to significant damages against the Association; and,

WHEREAS, on October 14, 2011, the Association appealed the District Court's orders to the United States Eleventh Circuit Court of Appeals ("the Eleventh Circuit"); and,

WHEREAS, on March 2, 2012, the Eleventh Circuit dismissed the appeal without prejudice; and,

WHEREAS, on March 26, 2012, the Bankruptcy Trustee filed a motion in the Bankruptcy Court to return control of the Association property to the Partnership Trustee; and,

WHEREAS, the Association had previously selected a developer of the property but that relationship was terminated in May 2012 after the District Court's and Eleventh Circuit's rulings and the subsequent motion filed by the Bankruptcy Trustee; and,

WHEREAS, on July 13, 2012, the Bankruptcy Court conducted a full day hearing on this matter to consider, among other things, whether the Partnership or the

Association should be in control of the Association property and the amount of damages that should be awarded to either party; and,

WHEREAS, no order has been issued by the Bankruptcy Court; and,

WHEREAS, an order issued by the Bankruptcy Court is subject to subsequent appeal; and,

WHEREAS, the Association believes the tourism resort cannot be redeveloped or reopened in a manner fitting to the resort prior to December 31, 2012; and,

WHEREAS, on July 30, 2012, the Association submitted a request for an extension of time to comply with the regulations governing nonconforming uses and structures for the Colony; and,

WHEREAS, the request for the extension is consistent with the provisions of the Zoning Code Section 158.138(B)(8)(b), which allows the Town Commission to grant an extension of the period of time a nonconforming use or structure can remain unused or vacant if the nonuse or vacancy is caused by legal restraints upon the owner or lessee; and,

WHEREAS, pursuant to Section 158.138(B)(8)(b), the Town Commission may require the petitioner to decrease the nonconformity of the building or structure in one or more aspects of its nonconformity; and,

WHEREAS, abandonment of the nonconforming use or structure would result in the loss of tourism units that could be redeveloped or reopened in the future to approximately 85 units, a loss of approximately 152 units, if redevelopment is based on 14.3 acres of land currently controlled by the Association; and,

WHEREAS, under single control or ownership, abandonment of the nonconforming use or structure would result in the loss of tourism units that could be redeveloped or reopened in the future to approximately 103 units, a loss of approximately 134 units, based on 17.3 acres of land; and,

WHEREAS, the Town Commission has determined that multiple legal constraints have prohibited the timely redevelopment or reopening of the Colony, and deems it in the public interest to grant an extension of the abandonment provision of Section 158.138(B)(8) to provide additional time to redevelop or reopen the Colony.

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

SECTION 1. The above Whereas clauses are true and correct and are hereby ratified and confirmed.

SECTION 2. The Town Commission, pursuant to Section 158.138(B)(8)(b) of the Town's Zoning Code, hereby grants an extension of time to redevelop or use the nonconforming uses and structures at the Colony without being deemed to have abandoned the nonconformities in accordance with Section 158.138(B)(8)(a) as provided below.

SECTION 3. An extension of time is granted until a final determination is made concerning control of the Colony (the entire site including the Condominium

Parcel and Out Parcels) either as a result of the Bankruptcy proceedings, in re: Colony Beach & Tennis Club, Ltd., Case No.: 8:09-bk-22611-KRM, Adversary Proceeding No.: 8:10-ap-00242-KRM, or until a negotiated settlement is reached by the parties. While litigation is pending, the Association shall submit to the Town quarterly reports beginning January 1, 2013, describing progress in resolving pending litigation. Within ninety (90) days after the determinations of control of the Colony, whoever is determined to be in control shall submit a complete development plan for re-opening the Colony. The development plan shall be in a form acceptable to the Town and shall at a minimum include:

a) schedules for all phases (planning, financing, design, and construction),
b) specific time frames for submittal of site plans and building permit applications,
c) a financing plan, and
d) a construction plan.

The development plan shall be reviewed by the Town Manager to ensure that it appears to comply with all Federal, State, and local laws as well as whether it is feasible, reasonable, and practical. If not approved by the Town Manager, the Colony shall have thirty (30) days to revise and resubmit its development plan. If the revised development plan is not approved by the Town Manager, the parties shall hold a hearing before the Town Commission in accordance with Section 5 below. Once the development plan is approved by the Town Manager, compliance with it shall become a condition of this extension. The Colony shall also follow the Town's adopted land use approval procedures if applicable to the proposed development plan.

If the Colony's development plan as approved above is to reutilize and reopen its existing buildings, the extension granted hereunder shall be for a period of 12 months from the date of plan approval. If the Colony's development plan as approved above is to construct all or substantially all new buildings, the extension granted hereunder is for a period of 36 months from the date of plan approval. In either case, all improvements must comply with all applicable Federal, State, and local laws.

SECTION 4. Within thirty (30) days of adoption of this Resolution, the Colony shall:

1) Maintain vermin and pest control programs reviewed and approved administratively by the Town;

2) Secure all unsafe buildings and stairways in compliance with Sections 150.04, 150.21, 150.22, and 150.71 of the Longboat Key Code of Ordinances as well as the Florida Building Code;

3) Restore and maintain the landscaping and irrigation on the portions of its property that are visible to the public and neighbors in a pre-shutdown condition; and

4) Provide the Town with a cash bond in the amount of Fifty Thousand Dollars ($50,000.00), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 3 above.

SECTION 5. If the Colony, the Association, owners of the Out Parcels, or the Town Manager seek clarification or believe that any of the conditions set forth in this Resolution have not been met, that party may request a public hearing to be held before the Town Commission to determine compliance with the requirements of this Resolution. After receiving all evidence and testimony at the public hearing, if the Town Commission determines that the requirements of this Resolution have not been met, the Town Commission may take all necessary, reasonable and appropriate actions including, but not limited to, upon ninety (90) days notice, terminate all or a portion of the extensions of time granted herein.

SECTION 6. In accordance with the terms of this Resolution, the subject property may be redeveloped or maintained at the existing density of 237 tourism units as tourism units are defined by the Town's Zoning Code, as may be amended.

SECTION 7. Notwithstanding anything herein to the contrary, if the litigation or settlement referenced in Section 3 is not reached by December 31, 2015, this extension shall terminate unless further extended by the Town Commission after a properly noticed and advertised public hearing.

SECTION 8. Effective Date. This Resolution shall become effective immediately upon adoption.

Passed by the Town Commission of the Town of Longboat Key on the ____ day of _____, 2012.

_____
James L. Brown, Mayor

ATTEST:

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Trish Granger, Town Clerk

End of Agenda Item