

## MEMORANDUM

Date: May 25, 2016

**TO:** Town Commission

**THROUGH:** Dave Bullock, Town Manager

**FROM:** Alaina Ray, Planning Zoning & Building Director

**SUBJECT:** Proposed Resolution 2016-12: 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 May 2, 2016, the Town received a request from Mr. Donald E. Hemke, legal counsel for The Colony Beach and Tennis Club Association ("Association"), for an extension of the nonconforming density for The Colony. The current extension of the nonconforming density, granted by Resolution 2014-14, expires on August 15, 2016.

A plot plan for The Colony Beach and Tennis Club ("The Colony") was approved by the Town Commission on November 21, 1972, for the development of a 237-unit tourism resort hotel on the land that consists of approximately 17.3 acres of land. The zoning of the property at the time of the plot plan approval was H-2, which allowed for a maximum density of 14 units per acre of land, which would have allowed a maximum of 242 tourism units. Building permits were issued by the Town on February 20, 1973, and the property was subsequently developed with the 237 approved tourism units (one unit was later allowed to be considered Residential).

The Colony was closed on August 15, 2010, following a bankruptcy filing for the property. 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 have been deemed abandoned after August 15, 2011. However, The Town's Zoning Code also includes provisions for property owners to file a petition with the Town Commission seeking a time extension for legally nonconforming land use and structures, which may be approved by the Town Commission under certain specific circumstances. As such, the Town received petitions to extend the nonconforming land use (density) and approved those requests as indicated below:

- Resolution 2011-17: Adopted May 2, 2011; Extension granted to December 31, 2012
- Resolution 2012-07: Adopted October 1, 2012; Extension granted to December 31, 2013
- Resolution 2013-39: Adopted December 11, 2013; Extension granted to April 30, 2014
- Resolution 2014-14: April 7, 2014; Extension granted to August 15, 2016

Previously, the Town Zoning Code limited the nonconforming extensions granted by the Town Commission to a maximum total of five (5) years. The previous provisions also required a surety bond or other security to ensure maintenance of the property; however, the previous provisions did not provide any guidance as to the amount of the bond or how the bond could be used. On April 4, 2016, the Town Commission adopted Ordinance 2016-13, which removed the five (5) year time limit, allowing the Town Commission to determine the appropriate expiration of extensions, and provided guidance for the amount and usage of surety bonds. These revised provisions are provided below:

**158.138(B)(8) Termination of nonconforming uses and structures.**

- (a) *Abandonment.* Except as set forth in subsection 158.139(A), providing for the reconstruction of involuntarily destroyed nonconforming structures, buildings or uses, a nonconforming use not used for a period of one year or the change of use to a more restricted or conforming use for any period of time shall be considered an abandonment thereof and the nonconforming use shall not thereafter be revived.
- (b) *Removal of nonconformance; extension of time to comply.* A nonconforming building or structure not used or occupied in a lawful manner or vacant for a period of one year or more shall be considered an abandonment and the nonconforming building or structure shall be removed or made conforming. However, should the period of nonuse or vacancy be caused by legal restraints upon the owner, the owner may set forth such grounds in a petition to the town commission and serve such petition on the planning and zoning official. The time may be extended by the town commission for good cause shown. The town commission may require the petitioner to decrease the nonconformity of the building or structure in one or more aspects of its nonconformity. The town commission may require the petitioner to secure the buildings, structures, and/or property in a manner acceptable to the town to ensure the health, safety, and welfare of the public.
- (c) *Special extension for continuance.* The town commission, by resolution, may grant a special extension for the continuance of an abandoned nonconforming building or structure for a period of time to be determined at a public hearing to provide for the removal of the nonconforming building or structure, or the making of the building or structure conforming, on or before the end of the period approved.
  - 1. The property owner shall have furnished the town with a good and sufficient surety bond or other security in an amount to be approved by the town commission, to require compliance with this code and/or state building codes.
  - 2. The amount of the surety bond or security shall be established by the town commission at a quasi-judicial public hearing up to an amount of no more than 100 percent of the total value of the property, including structures and land. The value of the property, including structures and land, shall be determined based on the full assessed value prior to any exemptions assigned to said property, including structures and land, according to the most recent tax assessment records for the property.
  - 3. The purpose of such bond or security shall be for the town to utilize and draw on such amounts in circumstances where the property owner has

failed to provide adequate building, structure, and/or site maintenance to ensure the health, safety, and welfare of the public. In such circumstances, the town may elect to utilize such bond or security to bring said property into compliance with town and/or state building codes, which may include, but is not limited to, conditions related to structural demolition, debris removal, site stabilization, utility stabilization, environmental remediation, building maintenance, pest and/or rodent control, site security, pool maintenance, landscape maintenance, potential storm damage, fire, vagrancy, and vandalism.

4. Nothing within this section shall prohibit the town from any actions deemed necessary by the building official relating to unsafe buildings or structures.

**During the last six (6) years that The Colony has been vacant, the Association has provided minimal maintenance, primarily to maintain some level of acceptable aesthetic appearance from Gulf of Mexico Drive. The Town has required certain protective measures, such as fencing the perimeter of the property, posting of No Trespassing signs, boarding up entrances to buildings, and draining Freon from air conditioning units. Even with the posting of the property there have been intermittent instances where individuals have trespassed on the property, resulting in 46 criminal complaints since January 2013. Over the past six (6) years, the appearance from Gulf of Mexico Drive and neighboring properties continues to deteriorate. Additionally, there has been no discernible structural maintenance to the buildings or structures on the site.**

**Due to multiple factors, including the original construction methods and materials, normal wear and tear, exposure to the elements, rodent and pest damage, lack of structural maintenance, and significant deterioration of crucial structural supports, the Town's Building Official has determined, in accordance with Florida Statutes, The Florida Building Code, and the Town's Building Code, that certain structures have either collapsed and/or are in imminent danger of collapsing and must be demolished immediately. The Building Official has submitted an informational Memorandum to accompany this Staff Report detailing the affected structures and their current deteriorated condition. Due to the risk these structures and buildings pose to the health, safety, and welfare of the public, the Building Official intends to take action to begin the abatement process for these structures.**

Your consideration of the Association's request for an extension is a quasi-judicial matter. Accordingly, a public hearing on this matter is scheduled, and the Town Commission will consider and hear evidence and testimony on the Association's request, the appropriate level of a surety bond and any applicable conditions associated with approval of the request. Accordingly, you are requested to observe the requirements of due process, and direct any interested individuals or parties who wish to discuss this matter with you, to provide their input to you at the noticed public hearing on this matter.

Should you have any questions, please don't hesitate to contact me.

## MEMORANDUM

Date: May 25, 2016

**TO:** Town Commission  
**THROUGH:** Dave Bullock, Town Manager  
**FROM:** Darin D. Cushing, CBO, CFM  
**SUBJECT:** Building Official's Report on the Colony Beach and Tennis Club Building Conditions and Disposition Determination

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The Colony Beach and Tennis Club (The Colony) property, at 1620 Gulf of Mexico Drive, has been vacant since August 2010. Since that time, various approvals for time extensions have been granted for the nonconforming use (tourism density) for the property. Numerous meetings have also been held between the Town and The Colony regarding compliance with the conditions of approval related to Town Resolution 2014-14, Section 4 (Attachment A), which sets forth general ground rules for maintaining the property in a safe and healthy manner.

As the Building Official of the Town of Longboat Key, Florida, I am charged by the Town, as well as the State of Florida, with the responsibility and authority to administer and enforce Chapter 150: Building Code of the Town Code of Ordinances, in accordance with Florida Statute 468, part XII, and the Florida Building Code. My most recent inspections of The Colony have led to serious life-safety and health concerns due to the rapidly declining condition of certain structures.

Of major concern are five structures, as well as several accessory structures, which in accordance with Town Code 150.21, Sub-section (l)(7), Demolition, should be demolished immediately. These include **Sales/ Marketing, Conference Center, Maintenance, Housekeeping/ Accounting** and the **Restaurant Complex**, as well as the **"Tiki" structures on the beach and grounds**. My analysis of the condition of the buildings and structures is provided in the attached Photographic Condition Analysis (Attachment B).

With the onset of Hurricane Season, the risk created by the conditions of the severely diminished structural integrity of the structures referenced above is greatly increased, as the aforementioned buildings have already experienced partial collapse, or are in imminent danger of total collapse.

This memorandum is for informational purposes only, in order to advise that the Building Department intends to proceed with actions necessary to abate the above referenced structures. The conditions of the other structures on the property are also being reassessed and any actions necessary to abate existing conditions will be ascertained.

Please feel free to contact me if you have further questions concerning this matter.

Cc: Dave Bullock, Town Manager

Mike Hein, Assistant Town Manager  
Alaina Ray, Director of Planning, Zoning and Building  
Maggie Mooney-Portale, Town Attorney

Attachments: Attachment A – Town Resolution 2014-14  
Attachment B – Photographic Condition Analysis

**RESOLUTION 2014-14**

**A RESOLUTION OF THE TOWN OF LONGBOAT KEY, FLORIDA, GRANTING THE REQUEST FOR AN EXTENSION OF THE PERIOD OF TIME A NONCONFORMING USE OR STRUCTURE CAN REMAIN UNUSED OR VACANT WITHOUT LOSING ITS NONCONFORMING STATUS OF THE COLONY BEACH AND TENNIS CLUB ASSOCIATION, INC., LOCATED AT 1620 GULF OF MEXICO DRIVE, IN ACCORDANCE WITH SECTION 158.138(B)(8)(b) OF THE TOWN OF LONGBOAT KEY ZONING CODE; PROVIDING FOR CONDITIONS; PROVIDING FOR INSEVERABILITY; 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**, the owners of 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 other agreements; 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 motions in the Bankruptcy Court seeking 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**, at the time of the passage of Resolution 2012-07, no orders regarding the remanded issues had been issued by the Bankruptcy Court; and

**WHEREAS**, any orders issued by the Bankruptcy Court are subject to appeal; and

**WHEREAS**, the Association believed that the tourism resort could not 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 owners of the Out Parcels did not object to the request for an extension; and

**WHEREAS**, the Town Commission granted the Association's request in accordance with Resolution 2012-07; and

**WHEREAS**, the Association and various other entities having an interest in the Colony remain in bankruptcy with various and multiple contested bankruptcy matters; and

**WHEREAS**, Resolution 2012-07 granted an extension of time under certain conditions until a final determination was made concerning control of the Colony (the entire site including the Condominium Parcel and Out Parcels) either as a result of pending litigation, In re Colony Beach & Tennis Club Association, Inc., Case No. 8:08-bk-16972-KRM, Adversary Proceeding Nos. 8:08-ap-00567-KRM and 8:08-ap-00568-KRM, 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; and

**WHEREAS**, no final resolution or settlement has been reached; and

**WHEREAS**, Resolution 2012-07 is about to expire; and

**WHEREAS**, the Association and some, but not all, of the entities with an interest in the Colony entered into an agreement to settle and resolve their differences; and

**WHEREAS**, the Association held a vote of its membership to determine support of the settlement; and

**WHEREAS**, subsequent bankruptcy filings have requested the Bankruptcy Court enter orders confirming the settlement agreement and bankruptcy plans filed by some of the bankrupt interests within the Colony; and

**WHEREAS**, Colony Lender, owner of an undivided 15% interest in the Out Parcels and holder of a mortgage on an 80% undivided interest in the Out Parcels has not signed the settlement agreement and has contested approval and confirmation of the settlement agreement and bankruptcy plan; and

**WHEREAS**, owing to the passage of time and lack of maintenance, the vacant buildings on the Colony property have continued to deteriorate, may become a detriment to the neighborhood, and a blight within the Town; and

**WHEREAS**, the existing buildings may become a detriment to the redevelopment of the Colony property; and

**WHEREAS**, on November 17, 2013, the Association filed a petition to extend the time to maintain its nonconforming (“grandfathered”) status; and

**WHEREAS**, on December 11, 2013, the Town Commission considered the Association’s request for a third extension of time to comply with the regulations governing nonconforming uses and structures for the Colony; and

**WHEREAS**, on December 11, 2013, the Town Commission passed Town Resolution 2013-39 which granted the Association’s request to extend the time to maintain its nonconforming grandfathered status until April 30, 2014; and

**WHEREAS**, on January 10, 2014, the Association filed a Writ of Certiorari in the Twelfth Judicial Circuit Court in and for Sarasota County challenging the amount of the bond set by the Town Commission in Town Resolution 2013-39; and

**WHEREAS**, the Association and Town agreed to resolve the litigation challenging the amount of the bond set forth in Town Resolution 2013-39; and

**WHEREAS**, on March 3, 2014, the Town Commission passed Town Resolution 2014-10, amending the bond amount in Town Resolution 2013-39 from Two Hundred Fifty Thousand Dollars (\$250,000) to Fifty Thousand Dollars (\$50,000); and

**WHEREAS**, on March 17, 2014, the Association filed its fourth petition to extend the time to maintain its nonconforming grandfathered status; and

**WHEREAS**, the Owners of the Out Parcels did not object to the Association’s fourth request for extension for the Town to extend the nonconforming status of the property; 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 (deleted item) the Colony, subject to the terms and conditions as set forth below; and

**WHEREAS**, the extension granted herein is for tourism units and uses only as defined by the Town Zoning Code.

**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 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 to develop the Colony property as a tourism use of 237 grandfathered tourism units is granted until a final determination is made concerning control of the Colony (the entire site including, but not limited to, the Condominium Parcel and the Out Parcels) either as a result of pending litigation, until a negotiated settlement is reached by the parties, or August 15, 2016 whichever is earlier. The extension is subject to the conditions herein. Within ninety (90) days after the determination 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 appears to be 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 or Town Commission, 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.

SECTION 4. The Colony shall:

- 1) Maintain vermin and pest control programs reviewed and approved administratively by the Town;
- 2) Secure and maintain the structures and property in compliance with Longboat Key Code of Ordinances, State, and Federal Regulations;
- 3) In anticipation of structure demolition, decommission and secure the potable water and wastewater system to the satisfaction of the Town;
- 4) Restore and maintain the landscaping, irrigation, and property on the portions of its property that are visible to the public and neighbors in a pre-shutdown condition;
- 5) Within 21 days of this Resolution, shall post "No Trespassing" signage on the property, buildings, and accessory structures in accordance with State Statute 810.011(5)(a);
- 6) Within 30 days of this Resolution, shall install a code compliant security fence to deter access around the perimeter of the entire Colony property; and
- 7) The Colony shall maintain with the Town a cash bond in the amount of Fifty Thousand Dollars (\$50,000), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 6 above. The cash bond shall be provided to the Town no later than May 1, 2014. If the cash bond is not provided by the Association to the Town by May 1, 2014, then the Town Manager may elect to bring this issue to the Town Commission at a public hearing in accordance with Sections 5 of this Resolution. Nothing herein shall be construed to prevent the Town from drawing on a portion of the cash bond remitted by the Association to the Town.
- 8) Colony shall prepare and present a formal report to the Town every 6 months. Such report shall outline compliance with all of the items outlined in Section 4, subsections (1) through (7). In the event of unsatisfactory compliance with the above provisions, the Town Commission may request a public hearing be held pursuant to Section 5 of the Resolution.

SECTION 5. If the Colony, the Association, owners of the Out Parcels, or the Town Manager seeks clarification or believes that any of the conditions set forth in Section 4 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 and whether the Town may draw on the cash bond so the Town can cure and eliminate the failings. 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: (a) authorizing a draw upon the cash bond, and (b) upon ninety (90) days' notice, terminating all or a portion of the extensions of time granted in sections 2 and 3, above.

SECTION 6. If the Town Manager believes that any of the conditions set forth in Section 4 in this Resolution have not been met, the Town shall be entitled to demand and draw upon the cash bond as follows:

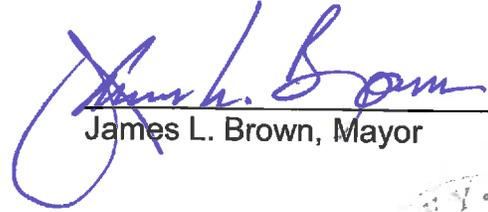
- a) The Town Manager shall provide written notification of the intent to draw upon the cash bond to the Association's president, treasurer and attorney on file with the Town. Said notification shall be provided by email and certified mail, return receipt requested.
- b) The aforementioned notification shall provide the Association a specification of failings in sufficient detail and include corrective action recommendations to comply with the conditions set forth in Section 4 so that the Association is provided an opportunity to cure the failings. An estimated cost for instituting the corrective action(s) shall be included in the notification.
- c) The aforementioned notification shall set forth a reasonable deadline of no less than 10 business days for the Association to cure said failings.
- d) Should the Town Manager determine that the Association has failed to timely cure and eliminate the failings in the aforementioned notification, upon receipt of written notice, the parties shall hold a meeting within 10 days of such notice to attempt to resolve the issue.
- e) Should the Town Manager determine that the Association has continued to fail to cure and eliminate the specified failings, the Town may draw upon the cash bond to the extent of one hundred and twenty-five percent (125%) of the estimated cost of compliance to eliminate the specified failing or failings.
- f) In the event the actual costs of curing and eliminating the failings is less than one hundred and twenty-five percent (125%) of the amount originally estimated and covered by the money drawn from the cash bond, the Town shall return the unused monies to the account containing the cash bond to the extent necessary to replenish the cash bond to the original amount of Fifty Thousand Dollars (\$50,000). If the Association has already replenished the cash bond to the original amount of the cash bond, the Town shall return the unused monies to the Association.
- g) The Association shall replenish the cash bond to the original amount of Fifty Thousand Dollars (\$50,000) within ten (10) business days after the Town draws upon the cash bond.

SECTION 7. In accordance with the terms of this Resolution, the subject property may be redeveloped and maintained at the existing density of 237 tourism units as tourism units are defined by the Town's Zoning Code, as may be amended.

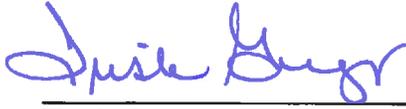
SECTION 8. The conditions, terms and authorizations set forth in this Resolution are mutually dependent and are inseverable from one another. This Resolution is to be construed as a whole and all sections of this Resolution shall be read and construed together. Accordingly, should any section, condition, or term of this Resolution be declared invalid, the remainder of this Resolution shall also be invalidated.

SECTION 9. Effective Date. This Resolution shall become effective immediately upon adoption.

Passed by the Town Commission of the Town of Longboat Key on the 7<sup>th</sup> day of April, 2014.

  
James L. Brown, Mayor

ATTEST:

  
Trish Granger, Town Clerk



**ATTACHMENT B –  
Photographic Condition Analysis**



**Sales and Marketing Building** – Meets FBC and Town Code criteria as Dangerous, Unsafe and is in imminent danger of collapse.

- The attached accessory structures are partially collapsed. The attached decks and walkways are deteriorated, detached and unsafe.
- Roof structure has deteriorated and structural integrity is compromised.
- Building exterior envelope has deteriorated allowing water intrusion, causing ceilings to collapse.
- Columns supporting roof structure deteriorated, completely detached from their foundations.
- Exterior walls have Bee Infestation, a health and safety hazard, and another indicator of deterioration inside wall cavities.

Entire Sales / Marketing Building and its attached accessories are at high risk of causing windborne debris, as well as total collapse, and should be demolished per Town Code 150.21(I)(7).



**Conference Center Building** – Cluster of buildings at entry and Gulf of Mexico Dr. Meets FBC and Town Code criteria as Dangerous, Unsafe. Has partially collapsed with the balance in imminent danger of collapse.

- The roof and wall structure has deteriorated, banyan trees effecting structure.



- Roof structure has deteriorated and structural integrity is compromised.
- Building exterior envelope compromised by organic growth, allowing water intrusion, causing ceilings to collapse.



- Total roof collapse, pulling exterior wall structure down, compromise of building envelope, and wind force resisting systems.



- Exterior walls and beam atop walls has been pulled down by collapsing roof structure.

Entire Conference Center and its attached accessories are heading to total collapse, and are at high risk of causing windborne debris. The building should be demolished per Town Code 150.21(l)(7).



**Maintenance Building** – Cluster of buildings adjacent to Gulf of Mexico Dr. Meets FBC and Town Code criteria as Dangerous, Unsafe. Has partially collapsed with the balance in imminent danger of collapse.

- The exterior openings are compromised, holes in roof structure. Accessories and utilities detached.



- Roof covering, sheathing, and structure have deteriorated and structural integrity is compromised.
- Deteriorated vents and rooftop structures allowing water intrusion, causing structural failure and collapse.



- Accessory additions to maintenance building have collapsed, pulling exterior wall structure of both maintenance and housekeeping buildings.



- Exterior openings all compromised, holes in roof structure. Accessories and utilities detached. Adjacent to Gulf of Mexico Dr.

Entire Maintenance Building and its attached accessories are either partially or totally collapsed, and are at high risk of causing windborne debris. The building should be demolished per Town Code 150.21(I)(7).



**Accounting / Housekeeping Building** – Cluster of buildings near Gulf of Mexico Dr. adjoined with maintenance building by collapsing accessory additions. Meets FBC and Town Code criteria as Dangerous, Unsafe. Has partially collapsed with the balance in imminent danger of collapse.

- The exterior openings are compromised, holes in roof structure. Accessories and utilities detached.



- Roof covering, sheathing, and structure have deteriorated and structural integrity is compromised.
- Deteriorated vents and rooftop structures allowing water intrusion, causing structural failure and collapse



- Deteriorated roof and exterior openings compromising building envelope, and wind force resisting systems. Ceilings collapsed.



- Elevated portion of building not accessible, ramp deteriorated.
- Open sewer system, health risk.

Entire Housekeeping and Accounting Building and attached accessories are heading to total collapse, and are at high risk of causing windborne debris. The building should be demolished per Town Code 150.21(1)(7).



**Restaurant Complex Buildings** – Cluster of buildings directly on the Gulf of Mexico. Meet FBC and Town Code criteria as Dangerous, Unsafe. Have partially collapsed with the balance in imminent danger of collapse.

- The roof and wall structures have deteriorated, multiple structure types, adjoined.



- Roof and wall structure exposed to weather has deteriorated and structural integrity is compromised, components detaching.
- Building exterior envelope compromised by organic growth, allowing water intrusion, causing ceilings to collapse.



- Roof structural compromise has allowed interior ceiling collapse, compromise of building envelope, and wind force resisting systems, as well as moisture intrusion.



- Exterior envelope failure is enabling roof structural deterioration, and further moisture intrusion.

Entire Restaurant Complex and its attached accessories are heading to total collapse, and are at high risk of causing windborne debris. The building should be demolished per Town Code 150.21(l)(7).



**Restaurant Complex Buildings** – Cluster of buildings directly on the Gulf of Mexico. Meet FBC and Town Code criteria as Dangerous, Unsafe. Have partially collapsed with the balance in imminent danger of collapse.

- Multiple structure types, adjoined, all in various stages of structural failure. Fabric structure and metal frame, badly deteriorated, huge wbd potential.



- Roof and wall structural components directly on Gulf, exposed to weather, have deteriorated and are components detaching.
- Building exterior envelope compromised by collapsing rooftop mechanical equipment, allowing water intrusion, causing ceilings to collapse.



- Exterior structural compromise of roof and opening components, compromise of building envelope in numerous locations.



- Building exterior envelope compromised by collapsing rooftop mechanical equipment, allowing water intrusion, causing ceilings to collapse, huge wbd potential.

Entire Restaurant Complex and its attached accessories are heading to total collapse, and are at high risk of causing windborne debris. The building should be demolished per Town Code 150.21(1)(7).



**Tiki Accessory Buildings** – Accessory, thatch roofed, buildings directly on the Gulf of Mexico, and various locations on site. Meet FBC and Town Code criteria as Dangerous, Unsafe. Have partially collapsed with the balance in imminent danger of collapse.

- The roof materials have deteriorated, structural connections failed, windborne debris.



- Tiki structure, some at pool, exposed to weather, deteriorated and structural failure.



- The roof materials have deteriorated, structural connections failed, windborne debris, multiple structures on beach.



- Other exterior, detached accessories to pool and pool bar, are potential wbd.

Tiki Structures close to total collapse, and are at high risk of causing windborne debris. These buildings should be demolished per Town Code 150.21(I)(7).

# Persson & Cohen, P.A.

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Reply to: *Lakewood Ranch*

## MEMORANDUM

TO: MAYOR DUNCAN AND COMMISSIONERS

THROUGH: MAGGIE D. MOONEY-PORTALE, TOWN ATTORNEY

FROM: KELLY M. FERNANDEZ, ASSISTANT TOWN ATTORNEY

DATE: MAY 27, 2016

RE: UPDATE ON COLONY BANKRUPTCY AND STATE COURT PROCEEDINGS

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The purpose of this memorandum is to provide an overview of the events that have transpired in the various Colony-related bankruptcy and state court proceedings since the last comprehensive memorandum from the Town Attorney's Office dated September 21, 2015. While these proceedings are routinely reported on by our office and the local press, we continue to believe it is important for the Town Commission to receive our objective summary of what has occurred and where these proceedings presently stand. As with past memorandums, please note that this overview is based solely on a review of the pleadings filed in the cases and attendance at some of the bankruptcy hearings. We have not communicated with the parties or counsel for the parties in preparing this memorandum. Consequently, the parties may have a different perspective on the proceedings and their posture.

Bankruptcy Case involving Resorts Management, Inc., Colony Beach, Inc. and Colony Beach & Tennis Club, Inc. (the "triple debtors")

(Bankruptcy Court Case Nos. 13-bk-348, 13-bk-350, and 13-bk-354)

This is the consolidated bankruptcy case involving Resorts Management, Inc., Colony Beach, Inc. and Colony Beach & Tennis Club, Inc. ("CBTC"). On August 7, 2015, the Trustee filed a Motion for Authority to Compromise Controversy and Sell Property of the Estate related to a negotiated

Agreement with Colony Lender/Unicorp. On August 28 and September 4, 2015, the Trustee's Motion was heard and resulted in the Trustee entering into a Settlement and Sale Agreement with the Association instead whereby it agreed, in part, to a cash payment to the Trustee of approximately \$3.1 million dollars. The Judge and Trustee believed the sale to the Association would result in sufficient funds for the Trustee to resolve all claims, including the Town's claim of \$5,915.45, and enable the estate to be closed or at least "hibernate" while remaining issues are resolved. Unicorp appealed. The Trustees and triple debtors filed a Motion to Dismiss which was granted on April 21, 2016 on the basis that Unicorp lacked standing to appeal and the dispute is moot since the sale terms were accomplished.

Also of note in this case, on August 20, 2014, the Trustee filed a Motion seeking to: (1) have the Bankruptcy Court issue sanctions against Colony Lender for willfully violating the automatic stay due to a letter sent to the unit owners on August 15, 2014 demanding amounts due under the Recreational Facilities Lease ("Rec Lease") totaling approximately \$5,116,664.24; and (2) to quiet title to an 80% interest in the Rec Lease Judgment. Colony Lender filed a Response asserting, in part: (1) its demand letter to the unit owners was solely regarding the Rec Lease that it acquired as part of the foreclosure sale and not the Rec Lease Judgment; (2) the Declaration of Condominium makes unit owners personally liable for the rent stream due under the Rec Lease; (3) the Bankruptcy Court has no jurisdiction over the individual unit owners; and (4) Colony Lender acknowledges that personal property was not conveyed as part of the foreclosure sale, but states Judge Moody determined that the Rec Lease Judgment is not personal property apart from the real estate interests. The Association, in its representative capacity for all unit owners, also filed a motion for sanctions against Colony Lender as well as Charles Whittall and David Siegal. Colony Lender argued the individual unit owners have no standing to bring such a motion, nor can one counsel (attorney Warren) represent all unit owners without conflicts of interest. Colony Lender also argued that while it believes it does own a 95% share of the Rec Lease and the Rec Lease Judgment, it has done nothing to formally assert its ownership. Furthermore, it believes that if there is dispute as to whether the Rec Lease conveyed with the foreclosure sale, the state court should decide the matter. On March 18, 2015, Judge May issued a Memorandum Opinion on Motions for Sanctions finding the automatic stay was only lifted as to real property and therefore the stay had been violated. On May 12, 2015, an Order Regarding Equitable Relief and Sanctions for Colony Lender/Unicorp's stay violations was entered, which provided in part that the state court rent collection action must be dismissed. The final evidentiary hearing on damages and sanctions was held on November 2 and 3, 2015. The post-trial pleadings have all been submitted, but no decision has been rendered as of May 26, 2016.

Relatedly, on September 4, 2014, the Trustee initiated an adversary proceeding (Case No. 14-ap-776) requesting the Bankruptcy Court to determine the interests of CBI, CBTC, and Colony Lender under the Rec Lease and Rec Lease Judgment. The Trustee claims that Colony Lender: (1) did not acquire any claims under the Rec Lease at the foreclosure sale based on the description of the property included in the Notice of Sale and the Amended Certificate of Title; and (2) the foreclosure sale extinguished any security interest or liens Colony Lender had under the Rec Lease as result of having its secured claim satisfied and paid in full by its \$15,200,001 bid for the Rec Lease Property. Colony Lender's position is essentially that the Rec Lease and Rec Lease Judgment

did convey with the Certificate of Title. Argument was heard on June 5, 2015, but a ruling was deferred. On October 28, 2015, the Association's and Breakpointe's respective Motions to Intervene were granted. On November 24, 2015, the Association filed an Amended Complaint to Determine Interests in Property and for Related Relief and Breakpointe filed an Intervening Complaint to Determine Interests in Property and for Related Relief. The Association and Breakpointe simultaneously filed Motions for Summary Judgment asserting similar arguments to that of the Trustee which were heard on February 9, 2016. No Order has been entered yet as of May 26, 2016.

Bankruptcy Case involving Colony Beach & Tennis Club, Ltd. ("the Partnership")

(Bankruptcy Court Case No. 09-bk-22611)

The assets in this case were approximately \$225,000.00 in cash and the estate's rights in appeals. On June 3, 2015, the Trustee filed an Expedited Motion for Entry of Order (A) Approving Competitive Bidding and Sale Procedures; (B) Scheduling Dates to Conduct Auction and Hearing to Consider Final Approval of Sale; and (C) Granting Related Relief. Therein the Trustee identified that he had entered into a letter agreement for the sale of the estate assets with Unicorp Acquisitions, LLC. For the sum of \$3.5 million, Unicorp would acquire the Trustee's right, title and interest in (i) the Recommended Judgment against the Association and (ii) all other property of every kind and description and rights of any kind or nature that make up or may make up the Partnership's bankruptcy estate with the exception of cash held by the Estate. The Trustee also expressed an intent to solicit higher and better offers. Bids were submitted and an auction to select the successful bidder was scheduled for September 8, 2015. However, prior to the start of the auction, the Trustee announced that the Association had enhanced its bid, in part due to being awarded the "triple debtor" assets, and the Trustee wished to proceed forward with a sale of the Partnership's assets to the Association. The Association's offer included the payment of \$3 million dollars in cash, the dismissal of the appeal case involving the \$23 million dollar recommended judgment against the Association, and the disallowance of the Association's claims against the Partnership estate. After much argument from the parties, Judge May accepted the business judgment of the Trustee that the Association's settlement offer-type bid was the highest and best offer received and that the resulting settlement of most, if not all, of the pending litigation was better than any additional cash that might be paid by the other bidders. This sale results in the Town's claims (\$50,904.78 and \$33,592.82) being paid in full. Unicorp appealed and the Chapter 7 Trustee filed a Motion to Dismiss. On April 13, 2016, an Order was entered granting the Trustee's Motion to Dismiss. The sale to the Association is therefore final.

Bankruptcy Case involving Colony Investors, Inc.

(Bankruptcy Court Case No. 14-bk-5269)

This Chapter 7 bankruptcy case was filed on May 8, 2014. The Town had no claims filed in this matter and there were few assets. On September 8, 2015, an auction of the assets was held and they were awarded to the Association. On November 18, 2015, the Final Report of the Chapter 7 Trustee was filed.

Colony Lender's Partition Action Against Breakpointe, LLC

(Sarasota Circuit Court Case No. 2014 CA 005028 NC)

(Bankruptcy Court Case No. 14-ap-00810-KRM)

On August 28, 2014, Colony Lender, filed a partition action against Breakpointe, LLC which is controlled by Andy Adams. As a result of the completion of Colony Lender's foreclosure action, Colony Lender and Breakpointe are tenants in common with Colony Lender having a 95% ownership interest in the recreation outparcels and Breakpointe having the remaining 5% ownership interest. Colony Lender is seeking partition by sale of the property, rather than physical division, due to the composition of the subject property and the parties' divergent intentions and economic interests for the property. On September 12, 2014, Breakpointe filed a Notice of Removal of the action to the Bankruptcy Court as an adversarial proceeding to the consolidated case involving Resorts Management, Inc., Colony Beach, Inc. and Colony Beach & Tennis Club, Inc., due to the unresolved issues involving the Rec Lease Judgment. On September 14, 2015, Colony Lender filed a Motion to Remand seeking to have this matter sent back to state court due to the sale of the estate assets to the Association, but it was denied via an Order entered on November 5, 2015.

Rabin (Unit Owners) Action Against Association and Board for Injunctive Relief

(Sarasota Circuit Court Case No. 2014 CA 001912 NC)

On April 1, 2015, Sheldon and Carol Rabin filed a Complaint against the Association and its directors seeking a mandatory injunction. They alleged that the Board violated the law governing condominiums (Chapter 718, Florida Statutes) and the Declaration by refusing to maintain and repair the common elements and structural support members of the individual units. The refusal to act resulted in the property being uninhabitable and threatened with demolition by the Town. The Rabins own a unit seaward of the coastal construction control line. On May 15, 2015, a Final Judgment was entered in favor of the Rabins. It requires the Association to retain Karins Engineering to provide an estimate and plan to get each unit habitable, prepare and adopt within 60 days a budget, and develop a plan to collect current and past due assessments. The court retained jurisdiction to address future related issues. On May 29, 2015, the Association filed notice that it retained Karins Engineering as required. The Association then filed its Notice of Appeal of the Final Judgment on June 12, 2015 (all briefs have been submitted, but an Opinion has not yet been issued) and on June 15, 2015 filed a Motion for Stay of Enforcement of Final Judgment Pending Appeal. On June 17, 2015, Plaintiffs filed a Motion to Show Cause as to why the Association should not be held in contempt for failing to comply with the Final Judgment. On February 18, 2016, a hearing was held on a Motion to Show Cause, Motion for Enlargement of Time, Motion for Stay, and Motion to View Real Property. An Order was subsequently entered denying all Motions except the Association's Motion for Stay Pending Appeal. On May 10-11, 2016 a hearing was held on the liquidation of attorneys' fees and costs. The judge has not issued a ruling yet.

Unicorp action against Association and Board of Directors for Injunctive Relief

(Sarasota Circuit Court Case No. 2015 CA 5204 NC)

On September 25, 2015, Unicorp filed a Complaint against the Association and its Directors for injunctive relief seeking, in part, enjoinder of the Board from further official action until

elections are held and owner votes taken, declaration that all acts of the Board since the expiration of Director terms are void, and the appointment of a receiver. A Motion to Dismiss was denied. The case is still pending as of May 26, 2016.

### Conclusion

The Association's acquisition of the estate assets in the cases involving the Colony Beach & Tennis Club, Ltd., Resorts Management, Inc., Colony Beach, Inc. Colony Beach & Tennis Club, Inc., and Colony Investors, Inc. brought clarity to the ownership interests at the Colony as the Association essentially gained control of the entire property except for the four outparcels. Colony Lender retains a 95% ownership interest in the four outparcels (Breakpointe, LLC retains the other 5%). As of the date of this memorandum, it appears the rights to the Rec Lease continue to remain in dispute.

We hope that you find this memorandum helpful. As always, if you have any questions regarding these matters please do not hesitate to contact us.



# **COLONY EXTENSION REQUEST**

**TOWN COMMISSION  
REGULAR MEETING  
JUNE 6, 2016**





# NONCONFORMING USE OR STRUCTURE SECTION 158.138(8)(A)

**(a) Abandonment.** Except as set forth in subsection 158.139(A), providing for the reconstruction of involuntarily destroyed nonconforming structures, buildings or uses, a nonconforming use not used for a period of one year or the change of use to a more restricted or conforming use for any period of time shall be considered an abandonment thereof and the nonconforming use shall not thereafter be revived.



# **NONCONFORMING USE OR STRUCTURE SECTION 158.138(8)(B)**

**(b) Removal of nonconformance; extension of time to comply. A nonconforming building or structure not used or occupied in a lawful manner or vacant for a period of one year or more shall be considered an abandonment and the nonconforming building or structure shall be removed or made conforming. However, should the period of nonuse or vacancy be caused by legal restraints upon the owner, the owner may set forth such grounds in a petition to the town commission and serve such petition on the planning and zoning official. The time may be extended by the town commission for good cause shown. The town commission may require the petitioner to decrease the nonconformity of the building or structure in one or more aspects of its nonconformity. The town commission may require the petitioner to secure the buildings, structures, and/or property in a manner acceptable to the town to ensure the health, safety, and welfare of the public.**



# NONCONFORMING USE OR STRUCTURE SECTION 158.138(8)(C)

**(c) Special extension for continuance.** The town commission, by resolution, may grant a special extension for the continuance of an abandoned nonconforming building or structure for a period of time to be determined at a public hearing to provide for the removal of the nonconforming building or structure, or the making of the building or structure conforming, on or before the end of the period approved.



## IMPLICATIONS OF LOSING NONCONFORMING STATUS

- **Must Comply with T-6 Zoning (6 Units/Acre)**
  - 103 Units Allowed on 17.3 Acres per current zoning
  - Loss of 134 Units of the Existing 237 Units



## **COLONY USE TIMELINE**

- **August 15, 2010: Colony Closed**
- **Resolution 2011-17: Granted Extension through December 31, 2012**
- **Resolution 2012-07: Second Extension through December 31, 2013**
- **Resolution 2013-39 & 2014-10: Third Extension through April 30, 2014**
- **Resolution 2014-14: Fourth Extension through August 15, 2016**
- **May 2, 2016: Requested Fifth Extension through February 15, 2018**



## EXISTING CONDITIONS

Several and Structures are collapsing and/or are in danger of collapse.



Maintenance Building



Housekeeping/  
Accounting



## SURETY BOND

- **158.138(B)(8)(c)1. The property owner shall have furnished the town with a good and sufficient surety bond or other security in an amount to be approved by the town commission, to require compliance with this code and/or state building codes.**
- **Bond may be up to an amount of no more than 100 percent of the total value of the property, including structures and land.**
- **Current assessed value of the property, is \$18,427,000.**



## RESOLUTION 2016-12 CONDITIONS

**15 Days:** Submit Payment in Full for Outstanding Utility Fees

**By August 1, 2016:** Provide Surety Bond to the Town

**Ongoing:** Maintain Vermin and Pest Control Programs

**Ongoing:** Maintain security fence and No Trespassing signage

**Ongoing:** Secure any remaining building and or structures

**Ongoing:** Maintain security cameras

**90 days from final settlement:** Submit Development Plan



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Atlanta  
Hartford  
Los Angeles  
Miami  
New York  
Orlando  
Tallahassee  
**Tampa**  
Washington, DC  
West Palm Beach

May 2, 2016

Alaina Ray  
Planning, Zoning and Building Director  
Town of Longboat Key  
501 Bay Isles Road  
Longboat Key, FL 34228

VIA FEDERAL EXPRESS  
and VIA EMAIL [aray@longboatkey.org](mailto:aray@longboatkey.org)  
(email with exhibits)

Subject: 1620 Gulf of Mexico Drive – The Colony  
Nonconforming Land Use/Structures  
Request for Time Extension Per LBK Zoning Code 158.138(B)(8)(b)

Dear Ms. Ray:

Pursuant to Town of Longboat Key Zoning Code 158.138(B)(8)(b), the Colony Beach and Tennis Club Association (“the Association”) petitions the Town Commission to extend the time 18 months from August 15, 2016, through February 15, 2018 (or to such further time as the Town Commission may deem appropriate under the totality of the circumstances), for the condominium resort units at The Colony, 1620 Gulf of Mexico Drive (“the Colony”) to maintain, without question, the “grandfathered status” of the 237 condominium units and existing improvements at the Colony. Enclosed pursuant to your request are 13 paper-copies of the Association’s petition.

The Association hereby incorporates, rather than repeats, the facts and arguments in the Association’s petitions which gave rise to Town Resolutions 2011-17, 2012-07, 2013-39, and 2014-14.

The Association’s instant petition will concentrate on what the Association has done since Town Resolution 2014-14 was passed April 7, 2014, what “legal restraints” remain or have arisen precluding the redevelopment of an 18-acre tourism development at the Colony, and what remains to be done prior to submitting plans for an 18-acre tourism redevelopment at the Colony.

Prior to addressing what the Association has done since Resolution 2014-14 was passed April 7, 2014, what “legal restraints” remain precluding the redevelopment of an 18-acre tourism development at the Colony, and what remains to be done prior to submitting plans for an 18-acre tourism redevelopment at the Colony, the Association would advise you that it may supplement

Carlton Fields Jordan Burt, P.A.

Carlton Fields Jordan Burt, P.A. practices law in California through Carlton Fields Jordan Burt, LLP.

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this petition prior to the workshop and public hearing on the extension request (which it understands may be scheduled for May 16, 2016, and for July 2, 2016 (pending Town approval)) should noteworthy new events occur.

The Association has expended great effort and expense to remove the "legal restraints" that have precluded and continue to preclude redevelopment of the Colony. In the fall 2015, after a series of bitterly contested proceedings in the bankruptcy cases of various entities, the Association succeeded in completely settling all disputes with the trustees for the Chapter 7 estates for the entities in bankruptcy. Under these settlements, the Association not only ended the litigation claims against the Association, but the Association also acquired all of the right, title and interest of these bankruptcy estates in assets that related to the ownership and operation of the former hotel at the Colony. By the end of April 2016, all of the appeals to the District Court taken from the rulings by the Bankruptcy Court in favor of the Association on the settlements and acquisitions had been resolved in favor of the Association.<sup>1</sup> It is important to note that the owners of the 237 condominium units at the Colony voted almost unanimously to approve special assessments to fund these settlements and that almost 90% of these special assessments has already been paid enabling the Association to significantly pre-pay its obligations.

The remaining unresolved legal restraints relate to three separate matters. First, there are several major disputes that remain pending in the bankruptcy cases. These disputes are with certain owners of the underlying real property relating to the Recreational Facilities Lease (the "Rec Lease Properties"). The Rec Lease Properties consist of the four outparcels that were not originally committed to condominium ownership. The Bankruptcy Court has these disputes under advisement and, if the disputes are not settled, the Bankruptcy Court will issue rulings. Second, a unit owner has sought a declaration that a redevelopment of the Colony must involve only the repair and maintenance of the existing buildings at the Colony. Although the state court has ruled that repairing the existing condominium units is not possible, the case remains pending. Finally, any effort to redevelop the Colony will require implementation of a plan to terminate the present condominium at the Colony. Such a plan will require an approving vote of the Unit Owners or possibly judicial action.

To address the remaining unresolved legal restraints, the Association has proposed an agreement to the owners of the Rec Lease Properties to resolve all of the remaining disputes in the Bankruptcy Court. Acceptance of the outlined proposal is tied to the execution of a development agreement for the Colony. In March 2016, the Association's Board unanimously approved the outline of a development proposal made by Chuck Whittall of Unicorp National Developments, Inc. and related entities (the "Unicorp Entities"). The Association understands that the Unicorp Entities have an agreement with the owner of an undivided 95% interest in the Rec Lease Properties to acquire that interest. The Association has engaged special counsel to negotiate the final terms of the development agreement and those negotiations are underway. It is hoped that the development agreement once negotiated can be submitted to the unit owners for their approval this summer.

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<sup>1</sup> Although not expected, as of this date, the time for filing further appeals to the Eleventh Circuit Court of Appeals has not expired as to every matter.

A fuller explanation of the current status of the "legal restraints" and efforts to resolve the "legal restraints" is contained in Mr. Warren's letter attached hereto as Exhibit A.

**Refusing to extend the "deadline" of August 15, 2016, and declaring that the Colony no longer has "grandfathered" rights to the 237 condominium units would undercut the referendum vote to increase tourism units in Longboat Key and would detriment ambience, commercial activity, other tourism establishments, and the economy in Longboat Key and neighboring jurisdictions.**

There is no public interest in attempting to eliminate the Colony's "grandfathered" density. Indeed, such elimination would be contrary to the public interest. If the "grandfathered" status were eliminated, the Town would lose up to 147 units which have traditionally been used for tourism (237 "grandfathered" tourism units minus 90 tourism units which would be permitted if there were no "grandfathering").

Voters within the Town of Longboat Key voted 81 percent in the March 2008 referendum to authorize an ordinance which would create a pool of 250 additional tourism units which could be allocated within the Town to help make up for the loss of approximately 250 tourism units earlier in the 2000s. In placing the allocation of 250 tourism units on the referendum, the Town was concerned about the loss in vitality and economic activity inherent in the reduction of tourism units within Longboat Key.

The March 2008 referendum stemmed from a year-long visioning plan the Town Planning and Zoning Board ("PZB") undertook.

Underlying the 81 percent vote to add 250 tourism units within Longboat Key was the voters' recognition of the economic importance of tourism, such as one resident would express in the Longboat Observer of February 22, 2012. "Since the teardown of the Holiday Inn and the demise of the Colony, the tourist crowd has dwindled by tens of thousands. That's business up and down the Key."

Subsequent to the referendum, the referendum subcommittee for the PZB held various hearings concerning drafting an ordinance to implement the referendum. The draft cover letter of the chairman of the PZB to the Town Commission of June 10, 2008, noted that

"[t]he need to facilitate the restoration/redevelopment of some of our aging. . . tourism properties was initially established in the visioning process and confirmed in the overwhelming voter support for the referenda questions. In particular maintaining and/or restoring the historic tourism of the Town of Longboat Key is considered to be in furtherance of the health, safety, and general welfare of the citizens of Longboat Key." It was determined that historic tourism has helped establish and maintain a level of commercial enterprise which might not otherwise exist and which makes Longboat Key unique, has added greatly to the convenience and lifestyle of our citizens and visitors, and has helped establish and maintain property values because of that lifestyle and because it provides a constant stream of potential buyers."

On May 4, 2009, the Town Commission enacted an ordinance implementing the voters' decision.

As late as February 7, 2011, the Town Commission adopted an updated vision plan (Town Resolution 2011-13). The updated vision plan noted that

"[t]he Town's major resorts are over 20 years old and showing their age. . . .The Colony Beach and Tennis Resort is currently in a state of flux and the property is in need of revitalization or redevelopment. . . .The number of units devoted exclusively to tourism use has decreased as resort operators have found the economics of operating in a highly seasonal environment difficult to sustain."

The updated vision plan lists under strengths that

"Longboat Key has recently had a reasonable balance of residential, tourism and commercial land uses such that we are not trying to reinvent the wheel or establish totally new segments. The Town is working to . . .reinvigorate the community before any further significant decline occurs. . . .Current and future tourism developments generate a greater need for retail businesses and services than could otherwise be supported, provide future places to stay for visiting relatives."

Further, the updated vision plan noted that

"tourism is an important part of the economy which supports retail services, real estate and restaurants, beach renourishment and other quality of life features of the Town. Many LBK residents came to Longboat Key as tourists or visitors. Tourism is part of the Town's history. This plan proposes that it continue to be part of the future. . . .Residents benefit by having tourists on the island."

As for the Colony in particular, persons occupying units at the Colony help support businesses on Longboat Key and neighboring jurisdictions. Many persons who have rented units at the Colony have purchased homes within Longboat Key and neighboring jurisdictions.

A loss of 147 units available for tourism use at the Colony is certainly not in the public interest when the Town's voters, the Town's PZB, and the Town Commission have consistently and overwhelmingly recognized that the loss of units available for tourism use within Longboat Key is not only not in the public interest, but is a major problem. Rather, the voters, the Town's PZB, and the Town Commission have recognized that tourism use inures to, and is fundamental to, the Town's ambience and economic vitality. The loss of approximately 147 tourism units at the Colony would effectively undercut the voters' decision in the March 2008 referendum and the Town Commissioners' enactment in May 2009 of LBK Code 158.180 to add 250 tourism units within Longboat Key into one that could net only approximately 103 additional tourism units. The loss of approximately 147 tourism units would be contrary to the manifest public interests of Longboat Key as expressed by the voters, would be contrary to the expressed views of Town Commissioners and other Town leaders, and would defy common sense.

The Association is willing to continue to maintain the appearance of the Colony along Gulf of Mexico Drive and along its borders in order to minimize or avoid any adverse affects on the Colony's neighbors and on the Town's residents and visitors during the time extension. Further, the Association is willing to continue to respond with all due diligence to any specific issues on the condominium property which the Town may bring to the Association's attention from time to time.

**Eliminating 147 existing "nonconforming" tourism units at the Colony would be particularly inappropriate now when the Town has retained a planning consultant which is expected to prepare proposals which would eliminate "nonconformities" within Longboat Key.**

The Town has retained a planning consultant which is to begin work this month which would convert the many nonconforming properties within Longboat Key to conforming properties. Eliminating the 147 existing tourism units at the Colony because they are "nonconforming" would not only single out the Colony to "lose" nonconforming units, but would undercut the policy implicit in the planning consultant's task of converting existing nonconforming properties into conforming properties.

**Eliminating 147 existing tourism units at the Colony would almost inevitably involve further complex, costly, time-consuming, avoidable and unnecessary litigation, and would be unfair to the individual Unit Owners who have invested in the Colony, and have paid taxes to the Town.**

Deeming the "grandfathered" condominium units "abandoned" also would create almost unimaginably thorny problems for the 237 fee simple Unit Owners at the Colony, which problems would inevitably spill over to the Town and easily become the subject of even more costly, time-consuming, avoidable, and unnecessary litigation.

Indeed at the discussion concerning the Colony at the Town Commission meeting of July 2, 2012, various commissioners and Town staff recognized the unfairness the "legal restraints" have imposed on the Unit Owners. One commissioner, for example, pointed out that it would be a "big deal" to the Unit Owners to "lose 130-odd units" at the Colony. Another commissioner, as another example, pointed out that Unit Owners may be "dead" prior to the court system resolving the "legal restraints."

**Eliminating the 147 existing tourism units at the Colony would significantly jeopardize development plans to restore the Colony as a first-class resort.**

In March 2016, the Colony's board of directors unanimously approved the outline of a development proposal which envisions using the grandfathered tourism units. It is expected that once the development agreement is fully negotiated it will be submitted to the condominium owners for their approval this summer. Eliminating the 147 existing tourism units at the Colony would significant jeopardize development plans to restore the Colony as a first-class resort.

**While "legal restraints" have stymied redevelopment of the Colony, the Colony has attempted to be helpful to the Town and to its citizens.**

Prior to September 2015, the Town requested the Colony to provide the Town a temporary access easement to be used in the Town's Beach Nourishment Projects. On September 4, 2015, the Colony provided, at no cost to the Town, an easement for the transportation and delivery of sand, as well as the transportation and temporary storage of tools, equipment, vehicles, personnel and materials necessary for the placement of sand along the borders of the Gulf of Mexico in connection with the Town's Beach Nourishment Projects. Beginning approximately April 4, 2016, the Town's beach nourishment contractors have been running approximately 200 trucks daily through the easement to the beach to provide sand to be distributed to properties north of the Colony. The Colony expects to make available the easement in later phases for the Town's contractors to stage their trucks prior to providing sand elsewhere on Longboat Key.

**Length of extension.**

In light of the highly unusual real estate and legal relationships at the Colony, in light of the complexities of bringing a developer on-board under the existing circumstances, it is clear that it will take a considerable amount of time to reopen the Colony as a first-class resort which would be a credit to the Town of Longboat Key. The Association, however, is making a more modest request, extending the deadline in Town Resolution 2014-14 18 months from August 15, 2016, through February 15, 2018, or to such further time as the Town Commission may deem appropriate under the totality of the circumstances. The modest extension is intended to keep pressure on all the interests to resolve the still-present "legal restraints" as quickly as possible.

**Conclusion.** The Town Commission should grant the Association's application to extend the "deadline" of August 15, 2014, in Town Resolution 2014-14 through February 15, 2018 (or to such other time as the Town Commission deems appropriate under the circumstances).

The Association certainly appreciates the frustration the Town has voiced concerning the delay in reopening a first-class resort at the Colony. But the Association would point out that its 237 Unit Owners have also been frustrated because the "legal restraints" at the Colony have precluded the Unit Owners from personally using their units and from obtaining economic benefits from their units being used for tourism uses (while at the same time being assessed substantial monies into the millions of dollars to maintain, preserve development rights, and plan and implement a first-class redevelopment at the Colony). Let me assure the Town that the Association and the owners of the 237 tourism units will do whatever they can to redevelop and reopen a first-class resort at the Colony.

Thank you for the consideration you, your staff, the Town Manager, the Town Attorney, and the Town Commission will provide this petition to extend the "deadline" of August 15, 2014, in Town Resolution 2014-14 through February 15, 2018 (or to such other time as the Town Commission deems appropriate under the circumstances).

If you or anyone at the Town has any questions or concerns, or I can provide any further assistance in expediting the Town Commission's consideration of this request to extend the time,

Alaina Ray, AICP  
May 2, 2016  
Page 7

please let me know. I can be reached at 813-229-4101 (direct), 813-205-1735 (cell), or [dhemk@carltonfields.com](mailto:dhemk@carltonfields.com).

Very truly yours,

A handwritten signature in black ink, appearing to read "D. E. Hemke", with a long horizontal flourish extending to the right.

Donald E. Hemke

Copy furnished:

Dave Bullock, Town Manager (via [dbullock@longboatkey.org](mailto:dbullock@longboatkey.org)) (email with exhibit)  
Maggie Mooney-Portale, Town Attorney (via [mmooney@swflgovlaw.com](mailto:mmooney@swflgovlaw.com)) (email with exhibit)  
Jay Yablon, President, Colony Beach and Tennis Club Association, Inc. (via [jyablon@nycap.rr.com](mailto:jyablon@nycap.rr.com)) (email with exhibit)  
Bruce Pinsky, Vice President, Colony Beach and Tennis Club Association, Inc. (via [BPinsky@pci-packaging.com](mailto:BPinsky@pci-packaging.com)) (email with exhibit)  
Gregory Rusovich, Colony Beach & Tennis Club Association, Inc. (via [GRusovich@tdintlgroup.com](mailto:GRusovich@tdintlgroup.com)) (email with exhibit)  
Salvatore Rizza (via [sjz@zizaco.com](mailto:sjz@zizaco.com)) (email with exhibit)  
Jeffrey Warren, Attorney for the Association (via [jwarren@bushross.com](mailto:jwarren@bushross.com)) (email with exhibit)  
Chuck Whittall, Unicorp Companies (via [chuck@unicorpusa.com](mailto:chuck@unicorpusa.com)) (email with exhibit)

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Post Office Box 3913  
Tampa, Florida 33601-3913

May 2, 2016

**VIA OVERNIGHT and EMAIL  
DELIVERY: [aray@longboatkey.org](mailto:aray@longboatkey.org)**

Alaina Ray  
Planning, Zoning and Building Director  
Town of Longboat Key  
501 Bay Isles Road  
Longboat Key, FL 34228

RE: The Colony Beach & Tennis Club Association, Inc.'s Report on Progress in  
Resolving Legal Restraints

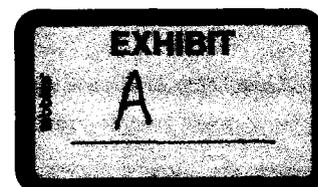
Dear Ms. Ray:

This letter will serve as a report by our client, Colony Beach & Tennis Club Association, Inc. (the "**Association**"), describing the current status of efforts to resolve the legal restraints that impact control of The Colony (the entire site including the Condominium Parcel and Out Parcels, as defined in Town Resolution 2012-07). This information is provided as support for the Association's petition, dated May 2, 2016, seeking a special extension for the continuance of the allowed period of nonuse or vacancy of the nonconforming structures, buildings, or uses at The Colony.

We are prepared to participate in any Town Workshop or Public Meeting that may be scheduled to address issues relating to The Colony and this report is provided to you as a formal update. At any scheduled Town Workshop or Public Meeting, we will make a presentation and answer any questions or provide any additional information you request.

**I. Status of Implemented Settlements with Bankruptcy Trustees.**

A. In the fall of 2015, the Association and the Chapter 7 Trustee for Colony Beach & Tennis Club, Ltd. (the "**Partnership Trustee**"), entered into a settlement and sale agreement (the "**Partnership Settlement Agreement**"), pursuant to which the Association proposed to pay or make available to the Partnership Trustee funds sufficient to pay all timely-filed, allowed claims in the bankruptcy case he administers in full and thereby settle all litigation between the Partnership Trustee and the Association. On September 14, 2015, the United States Bankruptcy



Town of Longboat Key  
May 2, 2016  
Page 2

Court for the Middle District of Florida (the "**Bankruptcy Court**"), entered an order approving the Partnership Settlement Agreement (the "**Partnership Sale Order**"). On September 15, 2015, the Association and the Partnership Trustee closed on the Partnership Settlement Agreement. In connection with the closing: (i) the Association transferred the funds to the Partnership Trustee; (ii) the Partnership Trustee transferred to the Association all of the Partnership's estate's right, title, and interest in any real, personal, or intangible property (excluding cash); (iii) by operation of the Partnership Sale Order, the claims of the Association and the Association's members (the "**Unit Owners**") in the Partnership's bankruptcy case were deemed to be withdrawn, stricken, and disallowed; and (iv) by operation of the Partnership Sale Order, the Association and the Partnership Trustee granted mutual releases and covenants not to sue to each other. Thereafter, pursuant to the Partnership Settlement and Agreement and as required by the Partnership Sale Order, the Association and the Partnership Trustee stipulated to the dismissal, with prejudice, of all pending disputes between them, including appeals pending in the United States District Court for the Middle District of Florida (the "**District Court**"). On October 21, 2015, based on a stipulation filed by the Association and the Partnership Trustee, the District Court entered an Order dismissing all matters before it regarding the Partnership's claims against the Association, with prejudice, with each party to bear its own fees and costs. On October 14, 2015, the Eleventh Circuit granted a joint motion by the Association and the Partnership Trustee to dismiss an appeal of the disallowance of an administrative expense claim, with prejudice, that the Partnership Trustee had filed.

On September 22, 2015, Unicorp Acquisitions, LLC ("**Unicorp Acquisitions**") appealed the Partnership Sale Order. Motions to dismiss the appeal were filed and on April 13, 2016, the District Court entered an Order granting the motions to dismiss and dismissing the appeal.

**B.** In the fall of 2015, the Association also entered into an agreement with the Chapter 7 Trustee (the "**Klauber Entity Trustee**") for Colony Beach, Inc., Colony Beach and Tennis Club, Inc. and Resorts Management, Inc. (the "**Klauber Entity Debtors**"), under which the Association and the Klauber Entity Trustee compromised all disputes between them and the Association acquired property from the Klauber Entity Debtors' estates (the "**Klauber Entity Settlement Agreement**"). On September 8, 2015, the Bankruptcy Court entered an order modifying and approving the Klauber Entity Settlement Agreement (the "**Klauber Entity Sale Order**"). The Klauber Entity Sale Order provided for, among other things, all allowed claims in the Klauber Entity Debtors' cases, other than the Association's claims, to be paid in full pursuant to a cash payment from the Association to the Klauber Entity Trustee at closing. On September 10, 2015, the Association and the Klauber Entity Trustee closed on the Klauber Entity Settlement Agreement. In connection with the closing: (i) the Association transferred funds to the Klauber Entity Trustee; (ii) the Klauber Entity Trustee transferred to the Association all of the Klauber Entity Debtors' estates' right, title, and interest in any real, personal, or intangible property (excluding cash); (iii) by operation of the Klauber Entity Sale Order, the Association and the Klauber Entity Trustee granted mutual releases and covenants not to sue to each other; and (iv) the Klauber Entity Trustee recorded a quit claim deed transferring Accessory Unit C a/k/a the Pro Shop, and Accessory Unit E, a/k/a the Food and Beverage Service (collectively, "**Units C**

Town of Longboat Key  
May 2, 2016  
Page 3

and E”), free and clear of all liens, claims, and encumbrances, other than the unpaid real estate taxes on Units C and E, to the Association.

On September 22, 2015, Unicorp Acquisitions and Unicorp National Developments, Inc. (“**Unicorp Developments**”) appealed the Klauber Entity Sale Order. Motions to dismiss the appeal were filed and on April 13, 2016, the District Court entered an Order granting the motions and dismissing the appeal.

On November 10, 2015, pursuant to the Klauber Entity Settlement Agreement and as required by the Klauber Entity Sale Order, the Association and the Klauber Entity Trustee filed a stipulation of voluntary dismissal of case, with prejudice, in an appeal pending in the District Court (the “**Direct Appeal**”), regarding damage claims arising from the Association’s rejection of the Recreational Facilities Lease (the “**Rec. Lease**”).

On November 11, 2015, Carolyn L. Field, as Trustee for the Carolyn L. Field Family Trust (the “**Field Trust**”), filed an objection to the Association’s and the Klauber Entity Trustee’s stipulation of voluntary dismissal of the Direct Appeal. The Field Trust maintains that although it sold its interest in the property subject to the Rec. Lease (the “**Rec. Lease Properties**”)<sup>1</sup> to Colony Lender, LLC (“**Colony Lender**”), it retained the right to recover damages arising from the rejection of the Rec. Lease based upon its 15% ownership of an undivided interest in the Rec. Lease. On April 13, 2016, the District Court entered an Order dismissing the Direct Appeal without prejudice to the Field Trust’s ability to adjudicate its damage claims arising from the rejection of the Rec. Lease.

There was a second appeal that was related to the rejection damages claim regarding the Rec. Lease (the “**Related Appeal**”). Under the Klauber Entity Settlement Agreement and as required by the Klauber Entity Sale Order, the Association and the Klauber Entity Trustee agreed to file a stipulation of voluntary dismissal of the Related Appeal, as moot, once the Direct Appeal was dismissed. After dismissing the Direct Appeal, the District Court entered an order to show cause why the Related Appeal should not also be dismissed. The Field Trust opposed the dismissal and the Association supported the dismissal. On April 21, 2016, the District Court dismissed the Related Appeal without prejudice to the Field Trust’s ability to adjudicate its damage claims arising from the rejection of the Rec. Lease.

C. In December of 2014, the Association made a bid to the Chapter 7 Trustee for Colony Investors, Inc. (the “**CI Trustee**”) to acquire all of the assets of Colony Investors, Inc., which included the capital stock of Colony Investors, Inc. and Colony Beach, Inc., one of the Klauber Entity Debtors. On September 23, 2015, the Bankruptcy Court entered an order approving the Association’s bid and directing the sale of all of Colony Investors, Inc.’s estate’s assets to the Association. The Association and the CI Trustee closed on the transaction and the CI Trustee transferred all of Colony Investors, Inc.’s estate’s assets to the Association.

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<sup>1</sup> The Rec. Lease Properties comprise the Out Parcels and two condominium units, Locker Room Unit B and Meeting Room and Club House Unit D.

Town of Longboat Key  
May 2, 2016  
Page 4

**II. Existence of Remaining Legal Restraints.<sup>2</sup>**

A. On August 7, 2014, an undivided 80% interest in the Rec. Lease Properties was transferred to Colony Lender pursuant to an Amended Certificate of Title following an auction at a foreclosure sale. Colony Lender contends that this Amended Certificate of Title also conveyed to it the right to recover from the Unit Owners any unpaid rents under the Rec. Lease. Presently, there are three adversary proceedings and a series of sanctions proceedings pending in the Bankruptcy Court against Colony Lender and its principal and Unicorp Developments and its principal that relate to this issue. The adversary proceedings are (i) adversary proceeding no. 8:13-ap-00151-KRM (“AP 151”), which challenges the claims and liens of Colony Lender, (ii) adversary proceeding no. 8:14-ap-00776-KRM (“AP 776”), which seeks a declaration that the Klauber Entity Debtors’ interest in the Rec. Lease rejection damages claim and rights under the Rec. Lease were not transferred to Colony Lender, and (iii) adversary proceeding no. 8:14-ap-00810-KRM (“AP 810”), which seeks a partition sale of the Rec. Lease Properties, which are owned by Colony Lender, as to an undivided 95% interest, and Breakpointe, LLC, as to an undivided 5% interest.

B. In the spring of 2014, certain Unit Owners filed an action styled *Sheldon and Carol Rabin v. Colony Beach & Tennis Club Association, Inc., et al.*, Case No. 2014 CA 001912 NC, in the State Court, seeking to require the Association’s Board to assess the Unit Owners to repair and maintain the existing common elements at The Colony. In May of 2015, the State Court entered a final judgment, which required the Association to obtain a report on the cost of such repairs. The Association appealed the final judgment, which appeal is pending. After a further hearing before the State Court on February 18, 2016, however, the State Court entered an order on February 29, 2016, determining that (1) the Association had fully complied with and satisfied its obligations under the final judgment and (2) repairing the existing condominium units at The Colony is not possible.

C. In connection with any development of The Colony, the Unit Owners must approve a plan to terminate the present condominium regime created by the Declaration of Condominium of Colony Beach & Tennis Club dated November 29, 1973 (as amended, the “Declaration”) pursuant to Section 718.117 of the Florida Condominium Act.

**III. Status of Efforts to Resolve Remaining Legal Restraints.**

The Association has continued efforts to settle fully and finally all remaining differences, disputes, and claims involving The Colony (collectively, the “Colony Disputes”), including the Remaining Legal Restraints, i.e. those disputes that impede a successful development project at The Colony.

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<sup>2</sup> This list of Remaining Legal Restraints is not intended to include all of the possible unresolved matters relating to The Colony, but is intended to demonstrate those matters that directly impede development of The Colony.

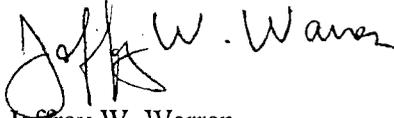
Town of Longboat Key  
May 2, 2016  
Page 5

The Association has already agreed to and has implemented a series of settlements with Unicorp Developments, Unicorp Acquisitions, and Unicorp Colony Units, LLC (“**Unicorp Units**” and, together with Unicorp Developments and Unicorp Acquisitions, the “**Unicorp Entities**”) involving payment and satisfaction of claims in the bankruptcy cases, disputes regarding payment of assessments to the Association, and disputes regarding the actions of the Association. Certain implementation steps as part of these agreements require the Partnership Trustee and the Klauber Entity Debtor Trustee to agree to take certain actions that are subject to the Bankruptcy Court’s approval in the Partnership’s and the Klauber Entity Debtors’ cases.

Further, the Association has proposed an agreement to Colony Lender and the Unicorp Entities that would achieve complete relief, and would resolve the Colony Disputes and remove the Remaining Legal Restraints, subject to agreement of Breakpointe, LLC, including consolidating ownership of the Rec. Lease Properties in one owner. Negotiations of this final settlement agreement are ongoing and involve the execution of a plan for redevelopment of The Colony acceptable to the Association’s Board and the Unicorp Entities (the “**Development Agreement**”). The Development Agreement will include a provision requiring the Association and the Unicorp Entities to use reasonable efforts to propose a plan of termination of the Association to implement the Development Agreement that will require the Unit Owners’ approval in accordance with the Association’s Declaration and Florida condominium law. It is hoped that the final Development Agreement will be ready for consideration and approval by the Unit Owners this summer.

We would be happy to provide more details about these matters if requested.

Sincerely,

  
Jeffrey W. Warren

cc: Jay Yablon, President of the Association  
Donald E. Hemke, Esq., (via [dhemke@carltonfields.com](mailto:dhemke@carltonfields.com))  
Dave Bullock, Town Manager (via [dbullock@longboatkey.org](mailto:dbullock@longboatkey.org))  
Maggie Mooney-Portale, Esq., Town Attorney (via [mmooney-portale@sarasotalawfirm.com](mailto:mmooney-portale@sarasotalawfirm.com))  
Charles Whittall (via [chuck@unicorpusa.com](mailto:chuck@unicorpusa.com))  
Robert C. Goodrich, Jr., Esq. (via [bgoodrich@burr.com](mailto:bgoodrich@burr.com))

**TOTAL ASSESSED VALUE:      \$ 18,427,000.00**

PARCEL ID	2015 ASSESSED VALUE	PropertyUse
#0000007312	\$ -	1009 - Commercial Common Areas/Elements
#0009041001	\$ 42,000.00	3904 - Hotel condo unit
#0009041002	\$ 42,000.00	3904 - Hotel condo unit
#0009041003	\$ 42,000.00	3904 - Hotel condo unit
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#0009041234	\$	101,000.00	3904 - Hotel condo unit
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#0009041246	\$	198,000.00	1104 - Retail condo unit
#0009041247	\$	257,000.00	1104 - Retail condo unit
#0009041248	\$	308,000.00	1104 - Retail condo unit
#0009041249	\$	279,000.00	1104 - Retail condo unit
#0009041250	\$	139,000.00	1104 - Retail condo unit
#0009041251	\$	46,000.00	1104 - Retail condo unit
	\$	18,427,000.00	











1620 GULF OF MEXICO DR #13B LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR #14B LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR #9B LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR #10B LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR #A LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR #B LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR #C LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR #D LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR #E LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR #F LONGBOAT KEY, FL, 34228  
1620 GULF OF MEXICO DR #G LONGBOAT KEY, FL, 34228

OWNER	LastSaleDate	LastSaleAmount
COLONY BEACH & TENNIS CLUB ASSOCIATION, INC.	1/1/1900 0:00	
GROSS KENNETH S	4/24/1992 0:00	\$ 96,000.00
RUSOVICH SUZANNE	4/23/2010 0:00	\$ 48,500.00
COLONY BEACH INVESTORS LLC	5/23/2014 0:00	\$ 50,000.00
COLONY BEACH INVESTORS LLC	3/6/2012 0:00	\$ -
1620 PROPERTIES LLC	3/15/2011 0:00	\$ 65,000.00
CAWOOD WILLIAM E	8/31/2007 0:00	\$ 50,000.00
SHEILA GOLDBLATT 2012 REVOCABLE TRUST	1/27/2015 0:00	\$ 100.00
SHEILA GOLDBLATT 2012 REVOCABLE TRUST	1/27/2015 0:00	\$ 100.00
ADAMS WILLIAM A	8/31/2007 0:00	\$ 200,000.00
COMPREHENSIVE TRANSPORTATION SERVICES INC	6/1/2001 0:00	\$ 240,000.00
COLONY BEACH INVESTORS LLC	3/15/2012 0:00	\$ 80,000.00
COLONY BEACH INVESTORS LLC	5/30/2012 0:00	\$ 40,000.00
COLONY BEACH INVESTORS LLC	5/30/2012 0:00	\$ 71,000.00
1620 PROPERTIES LLC	3/30/2013 0:00	\$ 38,500.00
COLONY BEACH INVESTORS LLC	3/7/2012 0:00	\$ 71,000.00
FLEETWOOD BLAKE	6/10/2013 0:00	\$ 35,000.00
COLONY BEACH INVESTORS LLC	3/7/2012 0:00	\$ 71,000.00
O DONNELL COLONY HOLDINGS LLC	4/30/2010 0:00	\$ 34,000.00
BURR GERTRUDE T	12/22/2008 0:00	\$ 100.00
PARSONS PAMELA K (EST OF)	5/18/2001 0:00	\$ 222,500.00
FORREST SHEILA	4/1/1994 0:00	\$ 105,000.00
COLONY BEACH INVESTORS LLC	5/18/2012 0:00	\$ 75,000.00
COLONY BEACH INVESTORS LLC	5/18/2012 0:00	\$ 75,000.00
GOLDSTONE ALVIN	3/8/2005 0:00	\$ 102,000.00
YABLON DEBORAH A	5/1/1988 0:00	\$ -
COLONY BEACH INVESTORS LLC	6/30/2014 0:00	\$ 33,000.00
MC MAHON THOMAS	7/26/1991 0:00	\$ 72,500.00
EISSENSTAT PHILLIP	4/25/1989 0:00	\$ 70,000.00
1620 PROPERTIES LLC	12/22/2014 0:00	\$ 35,000.00
KEIFER JOHN W TTEE	8/31/2007 0:00	\$ 100,000.00
GOLDBERG LAURENCE TTEE	5/31/2008 0:00	\$ 181,000.00
MONTONE GREGORY E	11/9/2007 0:00	\$ 182,000.00
JOYCE BRENDA M TTEE	4/4/2011 0:00	\$ 100.00
1620 PROPERTIES LLC	3/25/2011 0:00	\$ 45,000.00
COLONY BEACH INVESTORS LLC	2/14/2014 0:00	\$ 36,000.00
PERUZZI ROBERT A	12/8/1995 0:00	\$ 100.00
UNICORP COLONY UNITS LLC	12/23/2014 0:00	\$ 20,000.00
ABRAMSON HARVEY	5/1/1986 0:00	\$ 117,500.00
EPSTEIN SEYMOUR TTEE	3/23/2010 0:00	\$ 100.00
KOLLAR CHARLES J	5/12/1993 0:00	\$ 100,000.00
1620 PROPERTIES LLC	7/16/2012 0:00	\$ 35,000.00
RUSSO JOHN	7/31/1992 0:00	\$ 68,500.00
YOUNG TERENCE	10/1/1983 0:00	\$ 79,500.00
COLONY BEACH & TENNIS CLUB ASSN INC	10/5/2012 0:00	\$ 100.00
COLONY BEACH INVESTORS LLC	9/15/2014 0:00	\$ 30,000.00

PINSKY BRUCE V	1/29/2013 0:00	\$	100.00
PASSILLA JAMES P	12/20/2005 0:00	\$	100.00
UNICORP COLONY UNITS LLC	8/14/2015 0:00	\$	20,000.00
WICKEY ROBERT J	1/24/2013 0:00	\$	100.00
YABLON JAY R	1/23/2009 0:00	\$	100.00
COLONY BEACH & TENNIS CLUB ASSOCIATION INC	9/16/2015 0:00	\$	100.00
1620 PROPERTIES LLC	3/17/2015 0:00	\$	100.00
COLONY BEACH INVESTORS LLC	1/31/2014 0:00	\$	34,000.00
COLONY BEACH INVESTORS LLC	5/23/2014 0:00	\$	34,000.00
COREY MICHAEL A	10/7/1994 0:00	\$	92,500.00
COLONY BEACH INVESTORS LLC	5/21/2012 0:00	\$	69,000.00
UNIT 129-S LLC	1/26/2010 0:00	\$	30,000.00
PRIEST JAMES D	4/1/1980 0:00	\$	69,100.00
CROTHERS WILLIAM	5/1/1978 0:00	\$	55,000.00
COLONY BEACH INVESTORS LLC	5/15/2013 0:00	\$	35,000.00
COLONY BEACH INVESTORS LLC	2/24/2012 0:00	\$	68,000.00
FREEMAN JAMES G	8/11/2014 0:00	\$	15,500.00
COLONY BEACH INVESTORS LLC	2/28/2012 0:00	\$	68,000.00
COLONY BEACH INVESTORS LLC	3/7/2012 0:00	\$	68,000.00
COLONY BEACH INVESTORS LLC	3/9/2012 0:00	\$	72,000.00
COLONY BEACH INVESTORS LLC	3/9/2012 0:00	\$	72,000.00
COLONY BEACH INVESTORS LLC	5/30/2012 0:00	\$	72,000.00
KOHNSTAMM PETER L	9/10/2007 0:00	\$	100.00
1620 PROPERTIES LLC	5/13/2013 0:00	\$	60,000.00
UNICORP COLONY UNITS LLC	12/5/2014 0:00	\$	20,000.00
D L T E HOLDINGS LTD	8/8/2013 0:00	\$	30,000.00
UNICORP COLONY UNITS LLC	12/31/2014 0:00	\$	20,000.00
NALE DEVELOPMENT FLORIDA INC	4/14/2006 0:00	\$	90,000.00
COLONY BEACH INVESTORS LLC	5/18/2012 0:00	\$	70,000.00
COLONY BEACH INVESTORS LLC	3/9/2012 0:00	\$	70,000.00
COLONY BEACH INVESTORS LLC	3/12/2012 0:00	\$	70,000.00
H M F FAMCORP INC	1/6/2011 0:00	\$	100.00
STONEHAM LOIS E TTEE	6/8/1998 0:00	\$	100.00
COLONY BEACH INVESTORS LLC	5/24/2012 0:00	\$	70,000.00
HMF FAMCORP INC	1/14/2011 0:00	\$	50,000.00
COLONY BEACH INVESTORS LLC	9/26/2013 0:00	\$	40,000.00
UNICORP COLONY UNITS LLC	10/7/2014 0:00	\$	20,000.00
MUSGJERD ROBERT D	5/1/1987 0:00	\$	117,500.00
1620 PROPERTIES LLC	11/6/2014 0:00	\$	100.00
NAIR KESAVAN G	7/19/1995 0:00	\$	55,000.00
SPARR IRWIN M	12/1/1978 0:00	\$	67,000.00
CINIMOR HOLDINGS INC	6/26/2009 0:00	\$	143,000.00
BARRETT DENNIS P TTEE	5/16/1996 0:00	\$	100.00
1620 PROPERTIES LLC	3/14/2011 0:00	\$	60,000.00
WEHRLIN GEORGE W	6/1/1980 0:00	\$	65,000.00
COLONY BEACH INVESTORS LLC	5/15/2013 0:00	\$	38,000.00
BROWN ANDREA A TTEE	9/28/2010 0:00	\$	60,000.00

UNICORP COLONY UNITS LLC	12/8/2014 0:00	\$	40,000.00
BELAMARIC JOHN	4/1/1988 0:00	\$	122,000.00
O DONNELL COLONY HOLDINGS LLC	3/11/2014 0:00	\$	100.00
PRIGNANO ROBERT TTEE	11/9/2004 0:00	\$	100.00
COLONY BEACH INVESTORS LLC	5/8/2012 0:00	\$	71,000.00
1620 PROPERTIES LLC	11/6/2014 0:00	\$	100.00
ELHOFF PAUL D	6/1/1984 0:00	\$	105,000.00
SZABO ZOLTAN	10/3/2000 0:00	\$	100.00
BROWN ANDREA A TTEE	9/17/2010 0:00	\$	59,000.00
KEARNS ELSIE R	4/18/1997 0:00	\$	75,000.00
YENO MON INC	10/28/2010 0:00	\$	62,000.00
WARREN WILLIAM J	5/31/2002 0:00	\$	131,000.00
SPIEGEL BARRY A	2/1/1987 0:00	\$	119,500.00
RAGS FAMILY L P	12/21/2007 0:00	\$	105,000.00
GETTINGER ROBERT S	10/1/1988 0:00	\$	130,000.00
REDDY VANGALA P TTEE	8/4/2011 0:00	\$	100.00
LAY DAVID W	6/1/1976 0:00	\$	62,900.00
KEARNS THOMAS	12/14/1992 0:00	\$	125,000.00
ECKSTEIN ROLAND	5/25/1989 0:00	\$	106,000.00
FARINA EDWARD C	3/26/2004 0:00	\$	182,500.00
SHEA J TIMOTHY	4/30/2007 0:00	\$	135,000.00
1620 PROPERTIES LLC	4/4/2013 0:00	\$	80,000.00
HILL-CURTIS TERRY A	5/20/1994 0:00	\$	83,500.00
HMF FAMCORP INC	1/14/2011 0:00	\$	50,000.00
COLONY BEACH INVESTORS LLC	7/31/2014 0:00	\$	50,000.00
COLONY BEACH INVESTORS LLC	7/31/2014 0:00	\$	50,000.00
FINNERAN WILLIAM	3/4/1999 0:00	\$	170,000.00
RABIN SHELDON	9/17/2010 0:00	\$	150,000.00
SABATELLE ROBERT	5/17/2004 0:00	\$	261,500.00
HAWK ANDREW C	9/24/2002 0:00	\$	237,500.00
O DONNELL COLONY HOLDINGS LLC	5/8/2014 0:00	\$	31,000.00
COLES MICHAEL H	5/18/1999 0:00	\$	100.00
COLONY BEACH INVESTORS LLC	3/7/2012 0:00	\$	71,000.00
COLONY BEACH INVESTORS LLC	6/13/2014 0:00	\$	40,000.00
EATON A GREGORY	11/1/1987 0:00	\$	-
COLONY BEACH INVESTORS LLC	2/28/2012 0:00	\$	71,000.00
PIERCEY MICHAEL C	5/15/1991 0:00	\$	120,000.00
1620 PROPERTIES LLC	4/28/2011 0:00	\$	80,000.00
HOEY RICHARD B	4/15/1997 0:00	\$	116,000.00
LIPTON HELENE L	3/7/1990 0:00	\$	95,000.00
COLONY BEACH INVESTORS LLC	3/13/2012 0:00	\$	68,000.00
COLONY BEACH INVESTORS LLC	3/28/2012 0:00	\$	68,000.00
1620 PROPERTIES LLC	7/10/2015 0:00	\$	27,000.00
HMF FAMCORP INC	9/15/2008 0:00	\$	97,000.00
COLONY BEACH INVESTORS LLC	5/15/2014 0:00	\$	40,000.00
O DONNELL COLONY HOLDINGS LLC	4/15/2010 0:00	\$	66,200.00
BROWN ANDREA A TTEE	9/17/2010 0:00	\$	75,000.00

COLONY BEACH & TENNIS CLUB ASSN INC	10/5/2012 0:00	\$	100.00
COLONY BEACH INVESTORS LLC	5/18/2012 0:00	\$	65,000.00
RUSSO JOHN F	2/1/1978 0:00	\$	45,900.00
NEW COLONY LLC	4/8/2011 0:00	\$	27,000.00
O DONNELL COLONY HOLDINGS LLC	6/10/2015 0:00	\$	18,000.00
COLONY BEACH INVESTORS LLC	2/14/2014 0:00	\$	40,000.00
RABIN JULES	10/25/1991 0:00	\$	100,000.00
COLONY BEACH INVESTORS LLC	5/18/2012 0:00	\$	65,000.00
CHANG JEAN W	10/3/1990 0:00	\$	95,000.00
WHALEY JAMIE	7/1/2011 0:00	\$	45,000.00
NALE DEVELOPMENT FLORIDA INC	4/28/2006 0:00	\$	92,000.00
ADAMS W ANDREW	10/7/2011 0:00	\$	49,000.00
COLONY BEACH INVESTORS LLC	3/13/2012 0:00	\$	65,000.00
COLONY BEACH INVESTORS LLC	2/28/2012 0:00	\$	65,000.00
FAYTEL INC	9/8/1989 0:00	\$	35,000.00
COLONY BEACH INVESTORS LLC	5/14/2012 0:00	\$	65,000.00
PINSKY WICKEY PENNY	1/24/2013 0:00	\$	100.00
BOULAY LUC F	6/25/1991 0:00	\$	100,000.00
ROGERS - BUTCHER PAMELA S	12/16/2009 0:00	\$	100.00
STONEHAM LOIS E TTEE	6/8/1998 0:00	\$	100.00
TOLBERT JAMES A CO-TTEE	1/27/2003 0:00	\$	100.00
1620 PROPERTIES LLC	10/16/2015 0:00	\$	26,000.00
ERAZMUS R F	10/1/1978 0:00	\$	65,000.00
COLONY BEACH INVESTORS LLC	5/29/2012 0:00	\$	69,000.00
COLONY BEACH INVESTORS LLC	5/14/2012 0:00	\$	69,000.00
COLONY BEACH INVESTORS LLC	2/21/2014 0:00	\$	30,000.00
O DONNELL COLONY HOLDINGS LLC	4/15/2011 0:00	\$	48,300.00
1620 PROPERTIES LLC	1/31/2015 0:00	\$	100.00
COLONY BEACH INVESTORS LLC	5/11/2012 0:00	\$	66,000.00
COLONY BEACH INVESTORS LLC	2/28/2014 0:00	\$	30,000.00
COLONY BEACH INVESTORS LLC	5/30/2012 0:00	\$	66,000.00
MAUREEN P SCHAFFER LIVING TRUST	8/6/2015 0:00	\$	100.00
COLONY 730 LLC	10/20/2014 0:00	\$	100.00
COLONY BEACH INVESTORS LLC	5/18/2012 0:00	\$	-
FIRESTONE GREGORY	7/19/2011 0:00	\$	100.00
THOMAS DAVID B	11/22/2000 0:00	\$	3,200.00
COLONY BEACH INVESTORS LLC	7/8/2013 0:00	\$	15,500.00
COLONY BEACH INVESTORS LLC	5/21/2012 0:00	\$	68,000.00
COLONY BEACH INVESTORS LLC	5/24/2012 0:00	\$	68,000.00
1620 PROPERTIES LLC	5/13/2013 0:00	\$	40,000.00
LIVOLSI GLEN	4/27/2007 0:00	\$	105,000.00
MOGEN JOHN A (TTEE)	1/29/2004 0:00	\$	175,000.00
1620 PROPERTIES LLC	4/11/2014 0:00	\$	42,000.00
COLONY BEACH INVESTORS LLC	6/13/2014 0:00	\$	40,000.00
TURNER LIEBERT S	5/1/1980 0:00	\$	88,500.00
COLONY BEACH INVESTORS LLC	5/24/2012 0:00	\$	72,000.00
COLONY BEACH INVESTORS LLC	5/24/2013 0:00	\$	42,000.00

BUTLER DAVID G	7/1/1980 0:00	\$	82,000.00
COLONY BEACH INVESTORS LLC	4/15/2014 0:00	\$	40,000.00
COLONY BEACH INVESTORS LLC	3/12/2012 0:00	\$	71,000.00
BRADLEY JAMES M	6/1/1979 0:00	\$	65,000.00
COLONY BEACH INVESTORS LLC	3/9/2012 0:00	\$	71,000.00
COLONY BEACH INVESTORS LLC	5/24/2012 0:00	\$	71,000.00
COLONY BEACH INVESTORS LLC	3/7/2012 0:00	\$	71,000.00
RATCLIFFE SUSAN	4/29/2005 0:00	\$	100,000.00
EMSLIE JAMES F	7/27/2007 0:00	\$	200,000.00
ZUFFRANIERI BENJAMIN M JR	4/22/2011 0:00	\$	55,100.00
RATCLIFFE GILLIAN H	6/19/1995 0:00	\$	31,000.00
NEWMAN GAYLE M	2/22/2016 0:00	\$	100.00
TURNER LIEBERT S	1/1/1982 0:00	\$	-
COLONY BEACH INVESTORS LLC	5/11/2012 0:00	\$	75,000.00
1620 PROPERTIES LLC	3/14/2011 0:00	\$	60,000.00
UNICORP COLONY UNITS LLC	12/8/2014 0:00	\$	40,000.00
VADNAL JON A	9/1/1979 0:00	\$	65,000.00
ATTAI M KAZEM	2/1/1980 0:00	\$	80,000.00
HUMPHREY KATHLEEN A TTEE	4/16/2001 0:00	\$	100.00
STERN JEFFREY M	1/27/2016 0:00	\$	10,000.00
COLONY BEACH AND TENNIS CLUB ASSOCIATION INC	11/4/2015 0:00	\$	100.00
LEVY STANLEY J TTEE	6/18/2012 0:00	\$	-
ZIZZA SALVATORE J	5/1/1984 0:00	\$	70,000.00
UNICORP COLONY UNITS LLC	9/24/2014 0:00	\$	20,000.00
GRIMM ELAINE L	5/2/2011 0:00	\$	110,000.00
LEAP LONGBOAT LLC	5/8/2009 0:00	\$	87,500.00
ADAMS W ANDREW	10/7/2011 0:00	\$	100,000.00
ZIZZA SALVATORE J	7/24/1989 0:00	\$	95,000.00
1620 PROPERTIES LLC	11/6/2014 0:00	\$	100.00
ADAMS ANDY	4/1/1996 0:00	\$	102,500.00
ADAMS WILLIAM A	8/31/2007 0:00	\$	170,000.00
MC CARTHY JOHN R	5/5/1999 0:00	\$	141,000.00
ADAMS W ANDREW	10/7/2011 0:00	\$	100,000.00
ADAMS ANDY	12/12/1996 0:00	\$	115,000.00
BREAKPOINTE I LLC	5/22/2012 0:00	\$	182,500.00
COLONY LENDER LLC	7/25/2014 0:00	\$	15,200,000.00
BYERS@COLONY 503 LLC	2/27/2002 0:00	\$	337,400.00
KREINDLER RUTH B	2/18/2003 0:00	\$	100.00
KREINDLER RUTH B	6/25/2012 0:00	\$	180,000.00
FLEETWOOD BLAKE	2/24/2005 0:00	\$	205,000.00
FAUN ENTERPRISES LLC	11/1/2013 0:00	\$	35,000.00
ANIBOLE PAUL	8/31/2007 0:00	\$	100.00
BELAMARIC JOHN	12/31/1990 0:00	\$	85,000.00
ESPOSITO CARMELITO	1/1/1996 0:00	\$	100.00
ECKHART DAVID TTEE	9/10/2007 0:00	\$	100.00
RABIN SHELDON	5/23/1994 0:00	\$	182,500.00
BREAKPOINTE I LLC	5/22/2012 0:00	\$	259,200.00

BRATTER GORDON A TTEE	12/19/2003 0:00	\$	100.00
NALE DEVELOPMENT FLORIDA INC	7/31/2006 0:00	\$	350,000.00
UNIT 9B LLC	1/20/2010 0:00	\$	92,500.00
PEPE NANCY J	1/12/1995 0:00	\$	100.00
COLONY LENDER LLC	7/25/2014 0:00	\$	15,200,100.00
COLONY LENDER LLC	7/25/2014 0:00	\$	15,200,100.00
COLONY LENDER LLC	7/25/2014 0:00	\$	15,200,100.00
COLONY LENDER LLC	7/25/2014 0:00	\$	15,200,100.00
COLONY LENDER LLC	7/25/2014 0:00	\$	15,200,100.00
COLONY BEACH & TENNIS CLUB ASSOC INC	9/9/2015 0:00	\$	90,000.00
COLONY LENDER LLC	7/25/2014 0:00	\$	15,200,100.00
COLONY BEACH & TENNIS CLUB ASSOC INC	9/9/2015 0:00	\$	90,000.00
COLONY LENDER LLC	7/25/2014 0:00	\$	15,200,100.00
COLONY LENDER LLC	7/25/2014 0:00	\$	15,200,100.00

Dscr	LandArea
COLONY BEACH & TEN CLB	628217
UNIT 101S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 102S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 103S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 104S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 105S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 106S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 201S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 202S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 203S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 204S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 205S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 206S BLDG 1 COLONY BEACH & TENNIS...	0
UNIT 107S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 108S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 109S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 110S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 111S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 112S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 207S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 208S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 209S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 210S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 211S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 212S BLDG 2 COLONY BEACH & TENNIS...	0
UNIT 113S BLDG 3 COLONY BEACH & TENNIS...	0
UNIT 114S BLDG 3 COLONY BEACH & TENNIS...	0
UNIT 115S BLDG 3 COLONY BEACH & TENNIS...	0
UNIT 116S BLDG 3 COLONY BEACH & TENNIS...	0
UNIT 213S BLDG 3 COLONY BEACH & TENNIS...	0
UNIT 214S BLDG 3 COLONY BEACH & TENNIS...	0
UNIT 215S BLDG 3 COLONY BEACH & TENNIS...	0
UNIT 216S BLDG 3 COLONY BEACH & TENNIS...	0
UNIT 117S BLDG 4 COLONY BEACH & TENNIS...	0
UNIT 118S BLDG 4 COLONY BEACH & TENNIS...	0
UNIT 119S BLDG 4 COLONY BEACH & TENNIS...	0
UNIT 120S BLDG 4 COLONY BEACH & TENNIS...	0
UNIT 217S BLDG 4 COLONY BEACH & TENNIS...	0
UNIT 218S BLDG 4 COLONY BEACH & TENNIS...	0
UNIT 219S BLDG 4 COLONY BEACH & TENNIS...	0
UNIT 220S BLDG 4 COLONY BEACH & TENNIS...	0
UNIT 121S BLDG 5 COLONY BEACH & TENNIS...	0
UNIT 122S BLDG 5 COLONY BEACH & TENNIS...	0
UNIT 123S BLDG 5 COLONY BEACH & TENNIS...	0
UNIT 124S BLDG 5 COLONY BEACH & TENNIS...	0
UNIT 125S BLDG 5 COLONY BEACH & TENNIS...	0



UNIT 245S BLDG 8 COLONY BEACH & TENNIS...	0
UNIT 246S BLDG 8 COLONY BEACH & TENNIS...	0
UNIT 247S BLDG 8 COLONY BEACH & TENNIS...	0
UNIT 248S BLDG 8 COLONY BEACH & TENNIS...	0
UNIT 149S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 150S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 151S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 152S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 153S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 154S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 155S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 156S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 249S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 250S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 251S BLDG 9 COLONY BEACH & TENNIS...	0
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UNIT 254S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 255S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 256S BLDG 9 COLONY BEACH & TENNIS...	0
UNIT 101N BLDG 18 COLONY BEACH & TENNI...	0
UNIT 102N BLDG 18 COLONY BEACH & TENNI...	0
UNIT 103N BLDG 18 COLONY BEACH & TENNI...	0
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UNIT 210N BLDG 178 COLONY BEACH & TENN...	0
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UNIT 118N BLDG 15 COLONY BEACH & TENNI...	0
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UNIT 124N BLDG 14 COLONY BEACH & TENNI...	0
UNIT 125N BLDG 14 COLONY BEACH & TENNI...	0
UNIT 126N, BLDG 14, COLONY BEACH & TEN...	0
UNIT 219N BLDG 14 COLONY BEACH & TENNI...	0
UNIT 220 BLDG 14 COLONY BEACH & TENNIS...	0
UNIT 221N BLDG 14 COLONY BEACH & TENNI...	0
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UNIT 226N BLDG 14 COLONY BEACH & TENNI...	0
UNIT 127N BLDG 13 COLONY BEACH & TENNI...	0
UNIT 128 BLDG 13 COLONY BEACH & TENNIS...	0
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UNIT 137N BLDG 12 COLONY BEACH & TENNI...	0
UNIT 138N BLDG 12 COLONY BEACH & TENNI...	0
UNIT 231N BLDG 12 COLONY BEACH & TENNI...	0
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UNIT 238N BLDG 12 COLONY BEACH & TENNI...	0
UNIT 139N BLDG 11 COLONY BEACH & TENNI...	0
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UNIT 141N BLDG 11 COLONY BEACH & TENNI...	0
UNIT 142N BLDG 11 COLONY BEACH & TENNI...	0
UNIT 143N BLDG 11 COLONY BEACH & TENNI...	0
UNIT 144N BLDG 11 COLONY BEACH & TENNI...	0
UNIT 239N BLDG 11 COLONY BEACH & TENNI...	0
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UNIT 147N BLDG 10 COLONY BEACH & TENNI...	0
UNIT 148N BLDG 10 COLONY BEACH & TENNI...	0
UNIT 245N BLDG 10 COLONY BEACH & TENNI...	0
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UNIT 247N BLDG 10 COLONY BEACH & TENNI...	0
UNIT 248N BLDG 10 COLONY BEACH & TENNI...	0
UNIT 301 HI-RISE COLONY BEACH & TENNIS...	0
UNIT 303 HI-RISE COLONY BEACH & TENNIS...	0
UNIT 305 HI-RISE COLONY BEACH & TENNIS...	0
UNIT 307 HI-RISE COLONY BEACH & TENNIS...	0
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UNIT 311 HI-RISE COLONY BEACH & TENNIS...	0
UNIT 401 HI-RISE COLONY BEACH & TENNIS...	0
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UNIT 411 HI-RISE COLONY BEACH & TENNIS...	0
UNIT 500 HI-RISE COLONY BEACH & TENNIS...	0
UNIT 501 HI-RISE COLONY BEACH & TENNIS...	0
UNIT 502 HI-RISE COLONY BEACH & TENNIS...	0
UNIT 1B COLONY BEACH & TENNIS CLUB	0
UNIT 2B COLONY BEACH & TENNIS CLUB	0
UNIT 3B COLONY BEACH & TENNIS CLUB	0
UNIT 4B COLONY BEACH & TENNIS CLUB	0
UNIT 5B COLONY BEACH & TENNIS CLUB	0
UNIT 6B COLONY BEACH & TENNIS CLUB	0
UNIT 7B COLONY BEACH & TENNIS CLUB	0
UNIT 8B COLONY BEACH & TENNIS CLUB	0
UNIT 11B COLONY BEACH & TENNIS CLUB	0
UNIT 12B COLONY BEACH & TENNIS CLUB	0

UNIT 13B COLONY BEACH & TENNIS CLUB	0
UNIT 14B COLONY BEACH & TENNIS CLUB	0
UNIT 9B PRESIDENTIAL SUITE COLONY BEAC...	0
UNIT 10B VICE PRESIDENTIAL SUITE COLON...	0
PARCEL A COLONY BEACH & TENNIS CLUB AS...	5600
PARCEL B COLONY BEACH & TENNIS CLUB AS...	31350
PARCEL C COLONY BEACH & TENNIS CLUB AS...	48215
PARCEL D COLONY BEACH & TENNIS CLUB AS...	51899
UNIT A RESTAURANT & BAR AREA COLONY BE...	0
UNIT B HEALTH SPA COLONY BEACH & TENNI...	0
UNIT C PRO SHOP COLONY BEACH & TENNIS ...	0
UNIT D MEETING ROOM COLONY BEACH & TEN...	0
UNIT E FOOD & BEVERAGE SERVICE UNIT CO...	0
UNIT F MENS SHOP COLONY BEACH & TENNIS...	0
UNIT G COLONY BEACH & TENNIS CLUB	0

**RESOLUTION 2016-12**

**A RESOLUTION OF THE TOWN OF LONGBOAT KEY, FLORIDA, GRANTING THE REQUEST FOR AN EXTENSION OF THE PERIOD OF TIME A NONCONFORMING USE OR STRUCTURE CAN REMAIN UNUSED OR VACANT WITHOUT LOSING ITS NONCONFORMING STATUS OF THE COLONY BEACH AND TENNIS CLUB ASSOCIATION, INC., LOCATED AT 1620 GULF OF MEXICO DRIVE, IN ACCORDANCE WITH SECTIONS 158.138(B)(8)(b) AND (c) OF THE TOWN OF LONGBOAT KEY ZONING CODE; PROVIDING FOR CONDITIONS; PROVIDING FOR INSEVERABILITY; 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**, the owners of 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 other agreements; 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**, 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 have been deemed abandoned after August 15, 2011; and

**WHEREAS**, 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 the owners of the Out Parcels did not object; 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**, due to ongoing litigation, the Association believed that the tourism resort could not 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 second request for an additional extension of time to comply with the regulations governing nonconforming uses and structures for the Colony, to which the owners of the Out Parcels did not object; and

**WHEREAS**, the Town Commission passed Resolution 2012-07 granting the Association's request with conditions until December 31, 2013; and

**WHEREAS**, on November 17, 2013, having not resolved the ongoing litigation, the Association filed a third petition to extend the time to maintain its nonconforming status; and

**WHEREAS**, after a public hearing on December 11, 2013, the Town Commission passed Resolution 2013-39 which granted the Association's request for an extension of time to redevelop or use the nonconforming uses until April 30, 2014; and

**WHEREAS**, on March 17, 2014, having not resolved the ongoing litigation, the Association submitted its fourth petition for an extension of time to comply with the regulations governing nonconforming uses and structures for the Colony, to which the owners of the Out Parcels did not object; and

**WHEREAS**, the Town Commission passed Resolution 2014-14 granting the Association's request with conditions until August 15, 2016; and

**WHEREAS**, on May 2, 2016, the Association filed its fifth petition for an extension of time to comply with the regulations governing nonconforming uses and structures for the Colony; and

**WHEREAS**, the Owners of the Out Parcels have specifically indicated their consent and agreement to the Association's fifth request for the Town to extend the nonconforming status of the property; and

**WHEREAS**, the Town Commission continues to maintain and reaffirm that the Colony is one unified development and has not been subdivided through a subdivision process authorized or recognized by the Town; and

**WHEREAS**, in the absence of the requests for extensions, abandonment of the nonconforming use or structure would result in the loss of up to 134 tourism units at the Colony (17.3 acres x 6 u/a = 103.8 (rounded down to 103 u/a); and

**WHEREAS**, the request for the extension is consistent with the provisions of the Zoning Code Section 158.138(B)(8)(b) and/or (c), which allows the Town Commission to grant an extension and/or special extension of the period of time a nonconforming use or structure can remain unused or vacant; and

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

**WHEREAS**, pursuant to Section 158.138(B)(8)(b), the Town Commission may require the petitioner(s) to secure the buildings, structures, and/or property in a manner acceptable to the town to ensure the health, safety and welfare of the public; and

**WHEREAS**, pursuant to Section 158.138(B)(8)(c), the Town Commission may grant a special extension for the continuance of an abandoned nonconforming building or structure for a period of time to be determined at a public hearing to provide for the removal of the nonconforming building or structure, or the making of the building or structure conforming; and

**WHEREAS**, the Town Commission considered the status of the various legal proceedings that remain pending in state and federal courts and the ongoing disputes to determine, resolve and consolidate the respective ownership interests in the Colony; 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 pursuant to Sections 158.138(B)(8)(b) and (c) to provide additional time to redevelop the Colony, subject to the terms and conditions as set forth below; and

**WHEREAS**, the extension granted herein is for tourism units and uses only as defined by the Town Zoning Code.

**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. Resolutions 2011-17, 2012-07, 2013-39, and 2014-14, as referenced above, are hereby incorporated fully by reference.

**SECTION 2.** The Town Commission, pursuant to Sections 158.138(B)(8)(b) and (c) of the Town's Zoning Code, hereby grant an extension of time to redevelop or use the nonconforming uses 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 to develop the Colony property as a tourism use of 237 grandfathered tourism units is granted until a final determination is made concerning control of the Colony (the entire site including, but not limited to, the Condominium Parcel and the Out Parcels) either as a result of pending litigation, until a negotiated settlement is reached by the parties, or **(Month Day, Year)**, whichever is earlier. The extension is subject to the conditions herein. Within ninety (90) days after the determination 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 appears to be 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 or Town Commission, compliance with it shall become a condition of this extension. The Colony shall also follow the Town's adopted Charter provisions and land use approval procedures if applicable to the proposed development plan.

SECTION 4. The Colony Association and Outparcel Owners shall:

- 1) Maintain vermin and pest control programs reviewed and approved administratively by the Town on the site; and
- 2) Secure and maintain any buildings, structures, equipment and property in compliance with Longboat Key Code of Ordinances, State, and Federal Regulations;
- 3) Observe and comply with Orders issued by the Town's Building Official's enforcing applicable building code and safety standards with respect to the building, structures and equipment on the site to ensure the health, safety and welfare of the public and nearby properties;
- 4) Maintain the landscaping and provide irrigation (by water truck if necessary) on the portions of its property that are visible to the public and neighbors in a pre-shutdown condition;
- 5) Maintain "No Trespassing" signage on the property and any remaining buildings and accessory structures in accordance with Florida Statutes 810.011(5)(a);

- 6) Maintain the existing fence around the perimeter of the entire Colony property, until such time as all buildings and structures are either: demolished or issued Certificate(s) of Occupancy; and
- 7) The Association shall maintain with the Town a cash bond in the amount of [REDACTED] Thousand Dollars (\$ [REDACTED]), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 6 above as to their ownership interest in the Colony site. The Association shall maintain with the Town a cash bond in the amount of [REDACTED] Thousand Dollars (\$ [REDACTED]), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 6 above, as to their ownership interest in the Colony site. Unless additional time is needed by the Association to obtain the total amount of cash bond provided for above, the cash bond shall be provided to the Town no later than [REDACTED], 2016 [INSERT DATE]. If additional time is needed for good cause, the Association shall submit a written request for additional time to the Town Manager, submit at least [REDACTED]% of the cash bond to the Town no later than [REDACTED] [INSERT DATE], and provide the Town with a date certain in which the remainder of such cash bond funds will be remitted to the Town. If the cash bond is not provided by the Association by the date certain provided by the Association, then the Town Manager may elect to bring this issue to the Town Commission at a public hearing in accordance with Section 5 of this Resolution. Nothing herein shall be construed to prevent the Town from drawing on a portion of the cash bond remitted by the Association to the Town as a reimbursement for remedial or emergency actions taken by the Town to protect the public and nearby properties.
- 8) The Out Parcel Owners shall maintain with the Town a cash bond in the amount of [REDACTED] Thousand Dollars (\$ [REDACTED]), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 6 above as to their ownership interest in the Colony site. The Out Parcel Owners shall maintain with the Town a cash bond in the amount of [REDACTED] Thousand Dollars (\$ [REDACTED]), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 6 above, as to their ownership interest in the Colony site. Unless additional time is needed by the Out Parcel Owners to obtain the total amount of cash bond provided for above, the cash bond shall be provided to the Town no later than [REDACTED], 2016 [INSERT DATE]. If additional time is needed for good cause, the Out Parcel Owners shall submit a written request for additional time to the Town Manager, submit at least [REDACTED]% of the cash bond to the Town no later than [REDACTED] [INSERT DATE], and provide the Town with a date certain in which the remainder of such cash bond funds will be remitted to the Town. If the cash bond is not provided by the Out Parcel Owners by the date certain provided by the Out Parcel Owners, then the Town Manager may elect to bring this issue to the Town Commission at a public hearing in accordance with Section 5 of this Resolution. Nothing herein shall be construed to prevent the Town from drawing on a portion of the cash bond remitted by the Out Parcel Owners to the Town as a

reimbursement for remedial or emergency actions taken by the Town to protect the public and nearby properties.

SECTION 5. With the exception of matters relating to state and local building code compliance as set forth in subsections (2) and (3) of Section 4 of this Resolution, if the Colony, the Association, owners of the Out Parcels, or the Town Manager seeks clarification or believes that a condition(s) set forth in Section 4 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 and whether the Town may draw on the cash bond so the Town can cure and eliminate the failings.

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 (excluding building code compliance), the Town Commission may take all necessary, reasonable and appropriate actions including, but not limited to: (a) authorizing a draw upon the cash bond, and (b) upon ninety (90) days' notice, terminating all or a portion of the extensions of time granted in sections 2 and 3, above. Notwithstanding the above, should the Town need to take remedial or emergency actions on the site pursuant to state and local building codes to protect the public and nearby properties, in such instances, the Town may seek to draw on such cash bond for reimbursement of the costs associated with such remedial or emergency actions after receiving evidence and testimony at a public hearing before the Town Commission on the matter.

SECTION 6. With the exception of matters relating to state and local building code compliance as set forth in subsections (2) and (3) of Section 4 of this Resolution, if the Town Manager believes that a condition(s) set forth in Section 4 in this Resolution have not been met, the Town shall be entitled to demand and draw upon the cash bond as follows:

- a) The Town Manager shall provide written notification of the intent to draw upon the cash bond to the Association's president, treasurer and attorney on file with the Town, or the Out Parcel Owners' representatives and attorney on file with the Town. Said notification shall be provided by email and certified mail, return receipt requested.
- b) The aforementioned notification shall provide the Association and/or Out Parcel Owners a specification of failings in sufficient detail and include corrective action recommendations to comply with the conditions set forth in Section 4 so that the Association and/or Out Parcel Owners are provided an opportunity to cure the failings. An estimated cost for instituting the corrective action(s) shall be included in the notification.
- c) The aforementioned notification shall set forth a reasonable deadline of no less than 10 business days for the Association and/or Out Parcel Owners to cure said failings.
- d) Should the Town Manager determine that the Association and/or Out Parcel Owners has failed to timely cure and eliminate the failings in the aforementioned notification, the parties shall hold a hearing before the Town Commission in accordance with Section 5 above.

- e) Should the Town Commission determine that the Association and/or Out Parcel Owner have continued to fail to cure and eliminate the specified failings, the Town may draw upon the cash bond to the extent of one hundred and twenty-five percent (125%) of the estimated cost of compliance to eliminate the specified failing or failings.
- f) In the event the actual costs of curing and eliminating the failings is less than one hundred and twenty-five percent (125%) of the amount originally estimated and covered by the money drawn from the cash bond, the Town shall return the unused monies to the account containing the cash bond to the extent necessary to replenish the cash bond to the original amount of \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_). If the Association and/or Out Parcel Owners have already replenished the cash bond to the original amount of the cash bond, the Town shall return the unused monies to the Association and/or Out Parcel Owners.
- g) The Association and/or Out Parcel Owners shall replenish the cash bond to the original amount of \_\_\_\_\_ Thousand Dollars (\$\_\_\_\_\_ ) within ten (10) business days after the Town draws upon the cash bond.
- h) Notwithstanding the foregoing, nothing herein shall be construed as limiting or prohibiting the Town's Building Official from enforcing provisions of the Florida Building Code and Town's Building Code (including but not limited to Section 150.21, as amended from time to time) with respect to unsafe or unfit structures or equipment on the Colony site. To the extent emergency action is deemed necessary by the Building Official on the Colony site to protect the health, safety and welfare of the public and nearby properties, the provisions provided for in Town Code shall prevail. In such instance, the Town may seek reimbursement for any remedial or emergency actions taken by the Town from the cash bond, after conducting a public hearing before the Town Commission on the matter.

SECTION 7. In accordance with the terms of this Resolution, the subject property may be redeveloped and 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 8. The conditions, terms and authorizations set forth in this Resolution are mutually dependent and are inseverable from one another. This Resolution is to be construed as a whole and all sections of this Resolution shall be read and construed together. Accordingly, should any section, condition, or term of this Resolution be declared invalid, the remainder of this Resolution shall also be invalidated.

SECTION 9. 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 \_\_\_\_\_ [INSERT DATE].

\_\_\_\_\_  
Jack G. Duncan, Mayor

ATTEST:

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Trish Granger, Town Clerk



**End of Agenda Item**