

LAW OFFICES  
**GREGG H. GLICKSTEIN, P.A.**  
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Gregg H. Glickstein, Esquire

June 22, 2018

Mayor Gail L. Coniglio, Town of Palm Beach  
c/o Kirk Blouin, Town Manager and  
Jay Boodheshwar, Deputy Town Manager (via email)  
360 S. County Road  
Palm Beach, FL 33480

Re: Palm House Receiver's Fifth Request for Extension of Abatement Period for Conditional  
Abatement of Daily Non-completion Fee for the Palm House Project

Dear Mayor Coniglio and Town Council Members:

Cary Glickstein, as Receiver for the Palm House Property/Project located at 160 Royal Palm Way, respectfully requests the opportunity to show the Council that good cause exists for extending the Town's 120-day abatement period for the conditional abatement of the \$2,000 per day daily fee, originally effective as of December 14, 2016, that was most recently extended by the Council on April 12, 2018 for an additional 120-day period.

As stated in the attached letter from John (Skip) Randolph for the Town, dated January 20, 2017:

On the Receiver's request, a motion was initially made at the Town Council meeting in November 2016 and modified by the Town on December 14, 2016, to reflect the Town's decision to abate the \$2,000 per day daily fee otherwise accruing in accordance with Mr. Page's letter, effective December 14, 2016, contingent upon the utilization of the Funds, as described in the Agreed Order and consistent with the Receivership Order. In the event, however, the Funds are used in a manner inconsistent with the Receivership Order, the abatement shall end; the entire abated amount of daily fees retroactive to December 14, 2016 shall be reinstated; and, daily fees of \$2,000 per day for each day that a violation exists shall continue to accrue in accordance with Mr. Page's letter of February 22, 2013. Subject to the conditions imposed by the Town for abatement of the daily fees, the abatement shall remain in effect for a period of 120 days subject to an extension, for good cause shown, on motion made and approved by the Town Council before the abatement period expires.



Before addressing the Receiver's request for a fifth extension of the abatement period set forth in Mr. Randolph's letter, the Receiver confirms to the Council adherence to the conditions imposed by the Council for the abatement granted as of December 14, 2016.

The initial impetus for the Receiver's efforts to pursue a conditional abatement in October 2016 was the Receiver's anticipated receipt of funds described in that certain Agreed Order Granting Plaintiff's Motion for Appointment of Receiver to Take Custody of Funds in the Federal Court's Registry, dated September 22, 2016, in *Palm House Hotel, LLLP v. Robert Matthews, et al.*, Case No.: 502015CA014480XXXXMB AB, pending in the Circuit Court of Palm Beach County, Florida (the "Agreed Order"). This action is a separate but related action from *Ryan Black v. Gerry Matthews and Palm House, LLC*, Case No.: 502014CA014846XXXXMB AG (the "Receivership Action") in which Cary Glickstein was appointed as receiver for the Palm House Project/Property in July 2015 based on an amended agreed order appointing receiver (the "Receivership Order").

Pursuant to the Agreed Order, proceeds from the private sale of the yacht known as the M/Y ALIBI (the 'Yacht') in the approximate amount of \$2,323,179.95 (the 'Funds') that were previously deposited into the Registry of the Federal Court in Case No. 9:15 CV-81606-KAM, United States District Court for the Southern District of Florida (the 'Federal Case') were delivered to the Receiver.

The Agreed Order appoints Cary Glickstein as Receiver for the Funds. Pursuant to paragraph 5 of the Agreed Order, the Receiver may apply to the Court for utilization of the funds for "reasonable purposes." Based on the Town Council meeting in September 2016, the Receiver intended to apply to the Court, pursuant to the Agreed Order, to utilize the funds to correct the "public safety issues" that were the subject of the Town Council Actions for that Town Council meeting.

Based on the September 2016 Town Council meeting, the Receiver authorized the Town to inspect the Palm House site and identify public safety issues in need of correction. Mr. Randolph provided the Receiver with a report for that inspection, which is attached to the Receiver's Fourth Quarterly Receiver's Report filed in the Receivership action on October 17, 2016.

Thereafter discussion ensued between the Receiver, Tom Bradford and Eric Brown in an effort to better identify the scope of the work necessary to correct the public safety issues outlined in the Town's inspection report and the estimated cost to complete that corrective work. The Receiver's expressed his intent to incorporate that scope of work and cost information in a motion to the court seeking court permission to use the Funds to reimburse the Town for emergency work completed on its behalf in October 2016 and to pay for completion of the remaining necessary work. In November 2016 the Receiver sought a cost proposal from the Town for completing the balance of work directed to public safety issues/conditions but got no further than an estimate prepared by Hedrick Brothers for the Town for preparing an estimate for that work, as reflected in the a separate exhibit to the Receiver's quarterly report.



June 22, 2018

Page 3

As was discussed at that time, the Funds represent a potential source of funding for payment of and/or reimbursement for the cost of the work necessary to correct the subject public safety issues. The Funds also represent a source of funding for the receivership for the non-incoming producing Property that the Receiver has, by and large, been without for the duration of the receivership since July 2015.

In an effort to secure the Funds for purposes of the receivership, the Receiver sought from the Council an abatement of the daily fee being assessed against the Palm House Property for an initial term, with possible extensions, conditioned on utilization of the Funds for purposes consistent with the Receivership Order, as it may be amended.

Consistent with the Receiver's objectives with regard to the Funds and the conditions imposed by the Council on the use of the Funds for abatement purposes, the Receiver has filed successive motions with the court to fund public safety remediation (Hedrick Brothers Construction Estimate) \$345,446.00, Town Code Enforcement Fines (CE 14-1091- \$19,150.00, CE 14-1212-\$ 169,400.00 (unpaid balance: \$0); real estate taxes for 2016 and 2017, electric and water utility services, property, windstorm and liability insurance premiums and ongoing property maintenance.

Since the appearing before the Council in April, there have been material developments relating to the Receiver and the receivership. Beginning in late April and continuing into late May, the Receiver was working with a prospective purchaser for the Property, Madison Realty Capital/The Bluestone Group (Bluestone). In his tenth quarterly receiver's report, which we provided to Town Counsel in April, the Receiver stated:

Because the Receiver does not have the authority to sell the Property, with or without court approval, there is no single person with whom a prospective purchaser can negotiate terms and conditions for a prospective sale of the Property. In order for a prospective purchaser to pursue a purchase of the Property at this time, the prospective purchaser must negotiate a purchase transaction in component parts and cobble together a deal based on successful negotiations with the Town, the Owner, KK-PB Financial LLC, the EB-5 Investors/Palm House Hotel LLLP and the subordinate lien holders. The Property will simply not support a purchase price sufficient to fully satisfy all of these constituencies; accordingly, each must compromise to allow a purchase price that the Property can support. To date, that has not happened. Justifiably, bona fide prospective purchasers, with an understanding of the obstacles to the acquisition of the Property and completion of the Project, are reluctant to pursue the purchase of the Property.

Consistent with the Receiver's report, Bluestone commenced negotiations with the various constituencies and made surprising progress before terminating their efforts to acquire the property shortly before Memorial Day. Also in late April, Gerry Matthews, a defendant and counter-plaintiff in the Receivership action filed a motion to expand the Receiver's powers (the Motion). A copy of the Motion was provided to Town Counsel earlier this month.



June 22, 2018

Page 4

The Receiver was appointed by an agreed order as receiver for the Palm House property, but not as receiver for the property owner, 160 Royal Palm, LLC (160). Throughout the receivership, 160, controlled nominally by Gerry Matthews and effectively by Bob Matthews, has opposed efforts to expand the Receiver's authority to allow the Receiver to market the Property for sale and sell it to a bona fide developer capable of completing the Project as approved by the Town. Criminal indictments of Gerry and Bob Matthews in April led Gerry Matthews' to file the Motion.

On May 31, 2018, the Court heard the Motion and pronounced a ruling. An order has not been entered but one is expected before the July 10, 2018 Council meeting. When an order is entered, a copy will be provided to Town Counsel. We anticipate that the order will expand the Receiver's authority generally as to management of 160 and specifically as to the authority to sell the Property or place 160 in bankruptcy. We hope that the order will also provide separately for a stay as to all litigation by and against 160 pending in Palm Beach County, including the pending action by 160 against the Town.

In January 2018, the Receiver obtained a title commitment and appraisal for the Property, among other property condition reports, as noted in the Receiver's previous extension request. Based on the information in those reports, the Receiver has opined and reported to the Court that based on recorded mortgage liens, judgment liens and other encumbrances on the Property, together with projected project completion costs, consistent with the receivership mandate, the Property is presently unsellable and unfinanceable.

State court does not provide the authority to sell real property free and clear of liens and encumbrances. The Receiver believes that ability to market the property for sale AS IS but free and clear of liens will generate the kind of market interest that will never present itself if marketed AS IS and subject to all the liens and other encumbrances revealed by the title commitment. Bankruptcy court appears to provide the only forum in which the Property can be marketed and sold free and clear of the baggage that has thwarted the primary objective of receivership: project completion as approved by the Town. It is the Receiver's further understanding that that forum will also permit the Receiver to continue to perform the responsibilities currently being performed with regard to the maintenance, protection and preservation of the Property. Accordingly, that forum may be the best option available to the Receiver for the most effective exercise of the expanded authority he expects to receive from the Court.

Upon entry of an order by the Court, the Receiver intends to exercise his expanded authority to pursue marketing the Project for sale with the ultimate goal of selling the Property to a bona fide developer who can complete the Project, as approved by the Town. Bluestone, like every other prospective purchaser contacting the Receiver and expressing interest in a possible acquisition of the Project has voiced concern about the accrued Building and Zoning Board \$2,000/day daily fine and the Code Enforcement Board \$250/day fine. The continuation of the abatement is strongly



supports the Receiver's efforts to court prospective purchasers and it encourages a prospective purchaser to invest the time and money required to pursue the purchase of the Property and completion of the Project. As noted, the Property is saddled with self-inflicted problems far and wide. The abatement creates at least a perception from a prospective buyer's perspective, that the Town can support a bona fide developer and not represent another potentially insurmountable obstacle to project completion.

Finally, the conditional abatement remains a compelling, persuasive argument for securing funds to pay to maintain the Property, prevent reoccurrence of unsafe and unsightly Project site conditions that initially confronted the Receiver and took over 18 months to satisfactorily correct, and to fully satisfy accrued Town Code Enforcement fines. The Receiver has consistently informed the Court in his motions for funding authority and in the Receiver's quarterly receiver's reports that the abatement conferred by the Council is conditional, temporary and subject to expiration absent a sufficient showing to the Council of good cause for further extension. The Court has repeatedly acknowledged its appreciation of the Town's patience and cooperation and has repeatedly recognized that any disposition of the Property must take into account the Town and the surrounding property owners.

While the argument remains that abatement of the daily fine represents a loss of leverage in favor of the Town to compel completion of the Project, the Receiver's view has been and continues to be that the conditional abatement of the daily fee is a better utilization of that leverage further to Town's objectives for which there is no prejudice to the Town if the conditions for abatement are not fulfilled.

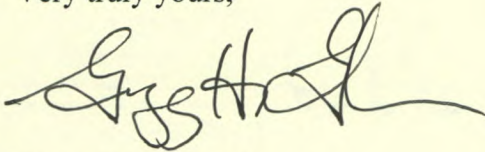
The future of the Property is admittedly uncertain as to what events will transpire in the next 120 days if the Town approves this extension request but we are genuinely encouraged with the prospects for the Property with the expanded authority the Receiver expects to receive before this request is considered by the Council.

Accordingly, the Receiver respectfully submits that the same reasons that supported the Town's conditional abatement in December 2016, its extension in April 2017, its extension in August 2017, its extension in December 2017 and its extension in April 2018 remain in full force and effect at this time and those reasons constitute good cause for the Council's extension of the abatement period for an additional 120-day abatement period or for such other abatement period as the Council determines is warranted at this time.

Thank you for the opportunity to present this motion and for your consideration of its merits.

June 22, 2018  
Page 6

Very truly yours,

A handwritten signature in black ink, appearing to read "Gregg H. Glickstein". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gregg H. Glickstein  
Counsel for Receiver, Cary Glickstein  
Attachments

cc: John (Skip) Randolph, Esquire (via email)  
Cary Glickstein, Receiver (via email)

**John C. Randolph**  
*Attorney*  
(561) 650-0458  
Fax: (561) 650-5300  
jrandolph@jonesfoster.com

January 20, 2017

***Via U.S. Mail & Email (cg@ironwoodproperties.com)***

Cary Glickstein  
Receiver, Palm House, 160 Royal Palm Way, West Palm Beach, FL  
1118 Waterway Lane  
Delray Beach, Florida 33483

Re: Palm House - Receiver's Request for Conditional Fine Abatement  
Palm House Hotel, LLLP v. Robert Matthews, et al.,  
Case No. 502015CA014480XXXXMB AB, Fifteenth Judicial Circuit

Dear Mr. Glickstein:

I am the attorney for the Town of Palm Beach. I am writing, on behalf of the Town, to confirm certain actions of the Town Council relating to a request you made of the Council. As Receiver for the Palm House at 160 Royal Palm Way in Palm Beach (the "Property") under an Amended Agreed Order on Plaintiff's Motion for Appointment of Receiver (the "Receivership Order") entered in *Ryan Black vs. Gerry Matthews and Palm House, LLC*, Case No: 502014CA014846XXXXMB AG, you requested a conditional abatement of the Town's enforcement of the Property owner's violation of the Declaration of Use Agreement between the Town and the Property owner, 160 Royal Palm, LLC.

In connection with your request, the Town was apprised of that certain Agreed Order Granting Plaintiff's Motion for Appointment of Receiver to Take Custody of Funds in the Federal Court's Registry, dated September 22, 2016, in *Palm House Hotel, LLLP v. Robert Matthews, et al.*, Case No.: 502015CA014480XXXXMB AB, pending in the Circuit Court of Palm Beach County, Florida (the "Agreed Order").

As you are aware and as more particularly set forth in John Page's letter to the Property owner dated February 22, 2013, the Town has been enforcing the Property's owner's violation of that Declaration of Use Agreement as provided in the Remedies for Violation section of the Agreement which requires the Property owner to pay the Town a liquidated amount of \$2,000 on a per day basis for each day that a violation exists. As set forth in Mr. Page's letter, the daily fee (effective February 15, 2013), will continue until such time that the Town issues a Certificate of Occupancy verifying that the project has been completed in accordance with all Town Codes and requirements.



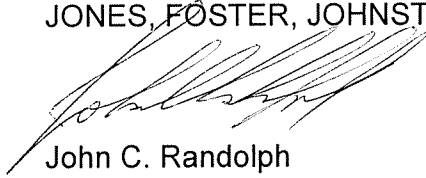
Cary Glickstein  
Receiver, Palm House, 160 Royal Palm Way, West Palm Beach, FL  
January 20, 2017  
Page 2

You appeared before the Town Council, as Receiver for the Property, seeking an abatement of the daily fees currently accruing for the reasons stated in Mr. Page's February 22, 2013 letter for an initial term, with possible extensions, conditioned on utilization of the Funds, as described in the Agreed Order, for purposes consistent with the Receivership Order, as it may be amended.

On the Receiver's request, a motion was initially made at the Town Council meeting in November 2016 and modified by the Town on December 14, 2016, to reflect the Town's decision to abate the \$2,000 per day daily fee otherwise accruing in accordance with Mr. Page's letter, effective December 14, 2016, contingent upon the utilization of the Funds, as described in the Agreed Order and consistent with the Receivership Order. In the event, however, the Funds are used in a manner inconsistent with the Receivership Order, the abatement shall end; the entire abated amount of daily fees retroactive to December 14, 2016 shall be reinstated; and, daily fees of \$2,000 per day for each day that a violation exists shall continue to accrue in accordance with Mr. Page's letter of February 22, 2013. Subject to the conditions imposed by the Town for abatement of the daily fees, the abatement shall remain in effect for a period of 120 days subject to an extension, for good cause shown, on motion made and approved by the Town Council before the abatement period expires.

Sincerely,

JONES, FOSTER, JOHNSTON & STUBBS, P.A.

A handwritten signature in black ink, appearing to read "John C. Randolph", is written over the typed name.

John C. Randolph  
JCR/jcl