

MEMORANDUM

Date: April 2, 2014

TO: Town Commission
FROM: Dave Bullock, Town Manager
SUBJECT: Discussion of Colony Cash Bond

On December 11, 2013 and March 3, 2014, the Town Commission adopted Resolutions 2013-39 and 2014-10 requiring the Colony Beach and Tennis Club Association, Inc. maintain a cash bond to guarantee maintenance conditions at 1620 Gulf of Mexico Drive. Town staff will present a draft cash bond for discussion.

The agenda materials attached are:

1. Powerpoint Presentation Cash Bond Structure
2. Draft Cash Bond in accordance with Town Resolutions 2013-39 and 2014-10

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

TOWN OF LONGBOAT KEY



COLONY CASH BOND

**TOWN COMMISSION SPECIAL MEETING
APRIL 7, 2014**



COLONY CASH BOND

- **Association remitted a \$50,000 cash bond to the Town that expired at the same time as Resolution 2012-07 (Dec. 31, 2013).**
- **Resolutions 2013-39 as amended by 2014-10, were effective at the expiration of Resolution 2012-07. These Resolutions expire on April 30, 2014 and also contains a cash bond requirement of \$50,000.**
- **Association requested the \$50,000 cash bond already held by the Town be “rolled over” to satisfy Resolutions 2013-39 and 2014-10 bond requirements.**



COLONY CASH BOND (CONT.)

- This agreement ensures there is no argument about “a gap” in the applicability and Town’s use of a cash bond due to Resolution expirations.
- This agreement provides that if a new cash bond is set by the Town Commission as a condition for an extension of the grandfathered nonconforming use, the \$50,000 cash bond held by the Town shall remain in effect until such time as the Association remits the requisite cash bond amounts associated with the newly granted extension.

**TOWN OF LONGBOAT KEY
CASH BOND
IN ACCORDANCE WITH TOWN RESOLUTIONS 2013-39 AND 2014-10**

This Bond for Secured Obligation for Maintenance in accord with Town Resolutions 2013-39 and 2014-10 is made between Colony Beach & Tennis Club Association, Inc., a Florida corporation (hereinafter "the Association"), whose mailing address is c/o Lighthouse Property Management, 4134 Gulf of Mexico Drive, Suite 203, Longboat Key, FL 34228, for the benefit and use of the Town of Longboat Key, Florida, 501 Bay Isles Road, Longboat Key, Florida (hereinafter "the Town").

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

WHEREAS, on December 11, 2013, the Town Commission passed Town Resolution 2013-39, and

WHEREAS, Sections 4(1), (2), (3), and (4) of Town Resolution 2013-39 require the Colony to maintain certain vermin and pest control programs, to secure and maintain certain structures and property in compliance with the Town Code, State and Federal Regulations, to decommission and secure the potable water and wastewater system in connection with structure demolition should demolition be required in connection with the extension resolution, and to restore and maintain landscaping, irrigation, and property on certain property at the Colony, and

WHEREAS, Section 4(5) of Town Resolution 2013-39 requires the Colony to provide the Town with a cash bond in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00), in a form acceptable to the Town guaranteeing the above four conditions, and

WHEREAS, the Association challenged the amount set for the bond in Town Resolution 2013-39; and

WHEREAS, additional judicial proceedings have occurred that affect the Colony; and

WHEREAS, owing to the limited time before expiration of Town Resolution 2013-39 and to resolve the dispute regarding the amount of the bond, the Town Commission on March 3, 2014, 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, the Association has agreed to post the cash bond to ensure its compliance of Condition 4(1), Condition 4(2), Condition 4(3), and Condition 4(4) in accordance with Town Resolution 2013-39 and in accordance with the terms and conditions stated below; and

WHEREAS, the Association has agreed that the Town may convert the Fifty Thousand Dollars (\$50,000) the Association posted and the Town holds as the cash bond in conjunction with Town Resolution 2012-07, to the cash bond to secure the aforescribed obligations in Town Resolution 2013-39, nunc pro tunc as of December 11, 2012.

NOW, THEREFORE, in consideration of the foregoing recitals incorporated as if fully set forth below, the following terms and conditions, and the Association's

submission of a secured obligation to the Town, the Association and the Town expressly agree:

1. The Town may convert the Fifty Thousand Dollars (\$50,000.00), the Association provided and the Town is ~~is~~ presently holding as the cash bond in connection with Town Resolution 2012-07, to the cash bond to ensure the Association's compliance with Condition 4(1), Condition 4(2), Condition 4(3), and Condition 4(4) of Town Resolution 2013-39 as amended by Resolution 2014-10.

2. ~~The cash bond has an expiration date of April 30, 2014, in accordance with Town Resolution 2013-39. Should the Town grant additional extensions of time, the cash bond shall remain in effect until the expiration of said extensions, or as the extension presently through April 30, 2013, may be extended from time to time. Unless the Town adopts a new Resolution granting the Association an additional extension relating to the nonconforming uses and structures for the Colony, this Fifty Thousand Dollar (\$50,000.00) cash bond has an expiration date of April 30, 2014. Accordingly, to the extent a new Resolution and extension includes the posting of a new cash bond, the \$50,000 cash bond associated with this Agreement shall remain in effect until such time as the Association remits the requisite bond commensurate with the newly granted extension. Notwithstanding the foregoing, should the Association chose to allow the nonconforming use and structure extension timeframe to expire through inaction, then in such event the cash bond shall be returned to the Association.~~

3. In the event the Association fails to comply with Condition 4(1), Condition 4(2), Condition 4(3), or Condition 4(4) of Town Resolution 2013-39, the Town shall be entitled to demand and draw upon the cash bond as follows:

a. The Town shall provide written notification to the Association by email to the Association's president, Jay Yablon, at jyablon@nycap.rr.com, to the Association's treasurer, Bob Erazmus, at boberazmus@yahoo.com, to the Association's attorney, Donald E. Hemke, at dhemk@carltonfields.com, and to the Association's attorney, Donald E. Hemke, by certified mail, return receipt requested, at Donald E. Hemke, Carlton Fields, P.A., Post Office Box 3239, Tampa, FL 33601, of the Town's intent to draw upon the cash bond to comply with Condition 4(1), Condition 4(2), Condition 4(3), or Condition 4(4) of Town Resolution 2013-39.

b. The aforesaid written notification of the intent to draw upon the cash bond shall provide the Association a specification of failings in sufficient detail (for example, "unsafe stairways at Building 55") and corrective action (for example, "fence off stairways at Building 55") to comply with Condition 4(1), Condition 4(2), Condition 4(3), or Condition 4(4), so that the Association may eliminate the failings. Such aforesaid written notification of intent to draw upon the cash bond shall further state the estimated cost of the corrective action for the specified failing and to eliminate the specified failing in order to comply with Condition 4(1), Condition 4(2), Condition 4(3), or Condition 4(4) of Town Resolution 2013-39.

c. Barring emergency conditions which would immediately adversely affect the public health or safety, the aforesaid written notification of the intent to draw upon the cash bond shall give the Association at least ten (10) business

days to eliminate the failing or failings in order to comply with Condition 4(1), Condition 4(2), Condition 4(3), and/or Condition 4(4) of Town Resolution 2013-39.

d. Should the Town Manager determine that the Association has failed to timely eliminate the failing or failings in the aforesaid written notice, he shall so notify the Association's president, treasurer, and attorney, as specified in subsection (a) above.

e. Should the Association disagree with the Town Manager's determination that the Association has failed to timely eliminate the failing or failings in the aforesaid written notice, the Association may request within ten (10) business days a public hearing to be held before the Town Commission in accordance with Section 5 of Resolution 2013-39.

f. Should the Association fail to request a hearing before the Town Commission or should the Town Commission determine that the Association has continued to fail to eliminate the specified failing or 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.

g. In the event the actual cost of compliance is less than one hundred and twenty-five percent (125%) of the amount originally estimated and covered by the monies drawn from the cash bond in accordance with subsection (f) above, 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 original amount of the cash bond to fifty thousand dollars (\$50,000), the Town shall return the unused monies to the Association.

h. The Association shall replenish the cash bond to the original amount of fifty thousand dollars (\$50,000.00) within ten (10) business days after the Town draws upon the cash bond using the process as outlined above.

~~4. The Association's obligation to comply with Condition 4(1), Condition 4(2), Condition 4(3), and Condition 4(4) of Town Resolution 2013-39 shall automatically terminate upon the expiration of the extension in accordance with Town Resolution 2013-39, as it may be extended from time to time, and thereupon any remaining monies in the cash bond shall be returned to the Association.~~

~~5.~~ This bond shall be binding upon the Association, its assigns and other successors in interest.

THIS BOND is executed this _____ day of March, 2014..

(CORPORATE SEAL)

Colony Beach & Tennis Club
Association, Inc.

By:

(Signature of officer executing bond)

Jay Yablon

President, Colony Beach & Tennis Club
Association, Inc.

ATTEST:

(Signature)

(type or print name)

County of _____

The foregoing instrument was acknowledged before me this ____ of March, 2014,
by Jay Yablon as President of Colony Beach & Tennis Club Association, Inc., a
Florida corporation, on behalf of the corporation. He is
personally known to me or has produced _____ as
identification.

(type of identification)

(Signature of Notary Public)

(Print, type or stamp name)

My Commission Expires: _____

Approved as to Form:

Town of Longboat Key:

Maggie Mooney-Portale, Town Attorney

David Bullock, Town Manager



End of Agenda Item