

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Release of Road Maintenance Bonds

DEPARTMENT: Public Works **DIVISION:** Roads - Stormwater

AUTHORIZED BY: W. Gary Johnson **CONTACT:** Michael Arnold **EXT.** 5622
W. Gary Johnson, P.E. Michael Arnold, Manager
Director, Dept. Public Works Roads-Stormwater Division

Agenda Date <u>4-12-05</u>	Regular <input type="checkbox"/>	Consent <input checked="" type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

Approve release of Road Maintenance Bonds.

BACKGROUND:

- Release Road Maintenance Bond #31702 in the amount of \$14,037.79, for the project known as Monroe Commerce Center North Phase 1.
District 5: Commissioner Carey
(Michael Arnold)
- Release Road Maintenance Letter of Credit #3055284 in the amount of \$23,183.02, for the project known as Celery Avenue ROW.
District 5: Commissioner Carey
(Michael Arnold)

A two-year maintenance inspection was conducted by staff for the above mentioned projects and revealed to be satisfactory. Staff recommends the release of these bonds.

Attachments: Copy of Bonds

Reviewed by:
Co Atty: <u>NA</u>
DFS: <u>NA</u>
Other: <u>NA</u>
DCM: <u>[Signature]</u>
CM: <u>[Signature]</u>
File No. <u>CPWR01</u>

APPROVED FORMS, CHECKLISTS, PROCEDURES AND ILLUSTRATIONS

MAINTENANCE BOND FOR STREETS, CURBS, STORM DRAINS

KNOW ALL MEN BY THESE PRESENTS:

That we Realvest-Monroe CommerCenter, LLC, whose address is 2200 Lucien Way, Suite 350 Maitland, FL 32751 hereinafter referred to as "PRINCIPAL" and Nova Casualty Company, whose address is 180 Oak Street, Buffalo, NY 14203-3722, hereinafter referred to as "SURETY" are held and firmly bound unto Seminole County, a political subdivision of the State of Florida, whose address is Seminole County Service Building, 1101 East First Street, Sanford, Florida 32711, hereinafter referred to as the COUNTY in the sum of \$ 14,037.79 for the payment of which we bind ourselves, heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS PRINCIPAL has constructed certain improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as Florida Land and Colonization Company, Limited, W. Beardall's Map of St. Joseph's a plat of which is recorded in Plat Book 1, Page 114, Public Records of Seminole County, Florida, and

WHEREAS, the aforesaid improvements were made pursuant to certain plans and specifications dated April 4, 2002 and filed with the County Engineer of Seminole County; and

WHEREAS, PRINCIPAL is obligated to protect the COUNTY against any defects resulting from faulty materials or workmanship of said improvements and to maintain said improvements for a period of two (2) years from April 29, 20 05.

NOW THEREFORE, the condition of this obligation is such that if PRINCIPAL shall promptly and faithfully protect the COUNTY against any defects resulting from faulty materials or workmanship of the aforesaid improvements and maintain said improvements for a period of two (2) years from April 29, 20 05, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The County Engineer shall notify the PRINCIPAL in writing of any defect for which the PRINCIPAL is responsible and shall specify in said notice a reasonable period of time within which PRINCIPAL shall have to correct said defect. The SURETY unconditionally covenants and agrees that if the PRINCIPAL fails to perform, within the time specified, the SURETY, upon 30 days written notice from COUNTY, or its authorized agent or officer, of the default will forthwith correct such defect or defects and pay the cost thereof, including, but not limited to engineering, legal and contingent cost. Should the SURETY fail or refuse to correct said defects, the COUNTY, in view of the public interest, health, safety, welfare and factors involved, and the consideration I approving and filing that said plat shall have the right to resort to any and all legal remedies against the PRINCIPAL and SURETY and either, both at law and in equity, including specifically, specific performance to which the PRINCIPAL and SURETY unconditionally agree.

The PRINCIPAL and SURETY further jointly and severally agree that the COUNTY at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to public advertisement and receipt of bids, caused to be corrected any defects or said defects in case the PRINCIPAL shall fail or refuse to do so, and in the event the COUNTY should exercise and give effect to such right, the PRINCIPAL and the SURETY shall jointly and severally hereunder reimburse the COUNTY the total cost thereof, including, but not limited to, engineering, legal and contingent cost, together with any damages either direct or consequent which may be sustained on account of the failure of the PRINCIPAL to correct said defects.

IN WITNESS WHEREOF, the Principal and the Surety have executed these presents this the 29th day of April, 20 03.

Realvest-Monroe CommerCenter, LLC (SEAL)



Address:

2200 Lucien Way, Suite 350

Maitland, FL 32751

Principal

By: [Signature]
(If a Corporation)

Its: Mr. N. N. N.
MANAGING MEMBER

ATTEST: _____ Its: _____
(If a Corporation)

Nova Casualty Company (SEAL)

Surety

Address:

180 Oak Street

Buffalo, NY 14203-1610

By: [Signature]
Jennifer L. McCarta, Its Attorney-in-Fact and Florida
Licensed Resident Agent. Inquiries: (407) 834-0022

ATTEST: [Signature]

Bond No. 31702

**NOTICE FROM SURETY REQUIRED BY
TERRORISM RISK INSURANCE ACT OF 2002**

In accordance with the Terrorism Risk Insurance Act of 2002 (referred to hereinafter as the "Act"), this disclosure notice is provided for surety bonds on which NOVA Casualty Company is Surety.

NOTICE FORMS PART OF BOND

This notice forms part of surety bonds issued by NOVA Casualty Company

DISCLOSURE OF PREMIUM

The premium attributable to any bond coverage for "Acts of Terrorism" as defined in Section 102(1) of the Act is Zero Dollars (\$0).

**DISCLOSURE OF FEDERAL PARTICIPATION
IN PAYMENT OF TERRORISM LOSSES**

The United States will reimburse the issuing Sureties for ninety percent (90%) of any covered losses from terrorist acts certified under the Act exceeding the applicable surety deductible.

POWER OF ATTORNEY

No. 31702

Know all men by these Presents, that the **NOVA CASUALTY COMPANY**, a corporation of the State of New York, having its principal offices in the City of Buffalo, New York, does make, constitute and appoint

*****J.W. GUIGNARD, BRYCE R. GUIGNARD, M. GARY FRANCIS, APRIL L. LIVELY**

& JENNIFER L. MCCARTA***

its true and lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf, as surety, and as its act and deed, any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of

*****NOT TO EXCEED \$1,000,000*****

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of **NOVA CASUALTY COMPANY** at a meeting duly called and held on the 18th day October, 1993:

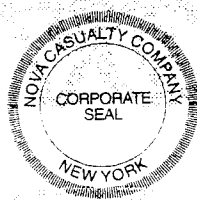
"RESOLVED, that the President, and Vice President, the Secretary or Treasurer, acting individually or otherwise, be and they hereby are granted the power and authorization to appoint by a Power of Attorney for the purposes only of executing and attesting bonds and undertakings, and other writings obligatory in the nature thereof, one or more resident vice-presidents, assistant secretaries and attorney(s)-in-fact, each appointee to have the powers and duties usual to such offices to the business of this company: the signature of such officers and seal of the Company may be affixed to any such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company, and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking or other writing obligatory in the nature thereof to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any of said officers, at any time."

In Witness Whereof, the **NOVA CASUALTY COMPANY** has caused these presents to be signed by its officer undersigned and its corporate seal to be hereto affixed duly attested by its Secretary, this 21st day of October, 1993.

Attest:

Harsha Acharya

Harsha Acharya, Secretary



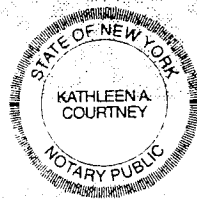
Norman F. Ernst

Norman F. Ernst, President

STATE OF NEW YORK }
COUNTY OF ERIE }

On the 21st day of October, 1993, before me personally came Norman F. Ernst, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Erie, State of New York; that he is the President of **NOVA CASUALTY COMPANY**, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

STATE OF NEW YORK }
COUNTY OF ERIE }



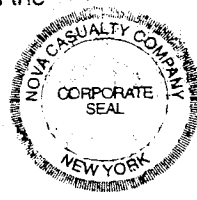
Kathleen A. Courtney

Kathleen A. Courtney
Notary Public, Erie Co., NY
My Commission Expires July 25, 1994

CERTIFICATE

I, the undersigned, duly elected to the office stated below, now the incumbent in **NOVA CASUALTY COMPANY**, a New York Corporation, authorized to make this certificate, DO HEREBY CERTIFY that the foregoing attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and Sealed at the City of Buffalo. Dated the 29TH day of APRIL, 20 03



Christopher C. Hoover

Christopher C. Hoover, Treasurer

MAINTENANCE AGREEMENT (Road Improvements)

THIS AGREEMENT is made and entered into this day of April 15, 2003, between **MARONDA HOMES, INC. OF FLORIDA**, hereinafter referred to as "PRINCIPAL," and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, PRINCIPAL has constructed certain road improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as **CELERY LAKES – PHASE 1**, a Plat of which is recorded in Plat Book _____ Pages _____, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road improvements were made pursuant to certain plans and specifications dated February 21, 2002, (as subsequently revised or amended) and filed with the County Engineer of Seminole County; and

WHEREAS, PRINCIPAL is obligated to protect the **COUNTY** against any defects resulting from faulty materials or workmanship of said road improvements and to maintain said road improvements for a period of two (2) years from April 30, 2003; and

WHEREAS, to guarantee performance of said obligations by **PRINCIPAL**, **PRINCIPAL** has obtained and furnished to the **COUNTY**, a certain Irrevocable Letter of Credit No. 3055284 issued by **BANK OF AMERICA**, in the sum of Twenty-three thousand one hundred eighty-three and 02/100 DOLLARS (\$23,183.02).

NOW THEREFORE, the **COUNTY** agrees to accept the road improvements into the County Road System upon execution of this Agreement and to accept an Irrevocable Letter of Credit as security for the maintenance obligation of the **PRINCIPAL**.

PRINCIPAL, its heirs, executors, successors and assigns, jointly and severally agrees to be held and firmly bound to the **COUNTY** in the sum of Twenty-three thousand one hundred eighty-three and 02/100 DOLLARS (\$23,183.02) on the condition that, if **PRINCIPAL** shall promptly and faithfully protect the **COUNTY** against any defects resulting from faulty materials or workmanship of the aforesaid road improvements and maintain said road improvements for a period of two (2) years from April 30, 2003, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The County Engineer shall notify the **PRINCIPAL** in writing of any defect for which the **PRINCIPAL** is responsible and shall specify in said notice a reasonable period of time within which **PRINCIPAL** shall have to correct said defect.

Should the **PRINCIPAL** fail or refuse to perform or correct said defects within the time specified, the **COUNTY** shall be authorized, but shall not be obligated, to take over and perform, or cause to be performed, such work as shall be necessary to correct such defects, and shall be authorized to draw upon the Letter of Credit to pay the cost thereof, including, but not limited to, engineering, legal and contingent costs. Further, the **COUNTY**, in view of the public interest, health, safety, welfare and other factors involved, and the consideration in approving and filing the said Plat shall have the right to resort to any and all legal remedies against the **PRINCIPAL**, both at law and in equity, including specifically, specific performance, to which the **PRINCIPAL** unconditionally agrees.

The PRINCIPAL further agrees that the COUNTY, at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to public advertisement and receipt of bids, cause to be corrected any defects or said defects in case the PRINCIPAL shall fail or refuse to do so, and, in the event the COUNTY should exercise and give effect to such right, the PRINCIPAL shall be obligated hereunder to reimburse the COUNTY the total cost thereof, including, but not limited to, engineering, legal and contingent costs, together with any damages, either direct or consequent, which may be sustained on account of the failure of the PRINCIPAL to correct said defects.

IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof.

Signed, sealed and delivered in the presence of:

[Signature]
STEVE ROSSER

[Signature]
JANE B. FOREST

Maronda Homes, Inc. of FL
Wayne Von Dreele, President

By: [Signature]

Date: 4/15/03

WITNESSES:

[Signature]
[Signature]

DEPARTMENT OF PUBLIC WORKS
ROADS DIVISION
SEMINOLE COUNTY FLORIDA

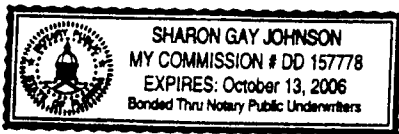
[Signature]
Roads Operations and Stormwater Manager

Date: 8/14/03

Within authority delegated by the County Manager pursuant to Resolution No. 97-R-66 adopted March 11, 1997 and further delegated by Memorandum dated March 27, 1997, Re: Streamlining of Development-Related Agenda Items and approved on April 2, 1997.

STATE OF)
) ss
COUNTY OF)

The foregoing instrument was acknowledged before me this 18th day of August, 2003, by MARK E. FLOMEJELT who is personally known to me or who has produced _____ as identification.



[Signature]
Print Name Sharon Gay Johnson
Notary Public in and for the County and State Aforementioned

My commission expires: Oct. 13, 2006

P:\USERS\RJG\ER\FM\200606
REV. 05/30/97

DATE: APRIL 4, 2003

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 3055284

BENEFICIARY
SEMINOLE COUNTY BOARD OF COUNTY
COMMISSIONERS
SEMINOLE COUNTY SERVICES BUILDING
1101 EAST FIRST STREET
SANFORD, FL 32771

APPLICANT
MARONDA HOMES, INC. OF FLORIDA
411 CENTRAL PARK DRIVE
SANFORD, FL 32771
ATTN: STEVE ROSSER

AMOUNT
USD 23,183.02
TWENTY THREE THOUSAND ONE
HUNDRED EIGHTY THREE AND
02/100'S US DOLLARS

EXPIRATION
JUNE 30, 2005 IN WINTER PARK,
FLORIDA

BY ORDER OF MARONDA HOMES, INC. OF FLORIDA, WE HEREBY ESTABLISH AN IRREVOCABLE LETTER OF CREDIT 3055284, IN YOUR FAVOR. WE HEREBY AUTHORIZE YOU TO DRAW ON BANK OF AMERICA, N.A. UP TO AN AGGREGATE AMOUNT OF \$23,183.02 (TWENTY THREE THOUSAND ONE HUNDRED EIGHTY THREE AND 02/100'S US DOLLARS) AVAILABLE BY YOUR DRAFTS AT SIGHT ACCOMPANIED BY A SIGNED STATEMENT PURPORTEDLY OF THE BOARD OF COUNTY COMMISSIONERS THAT:

"THE MAINTENANCE AGREEMENT DATED APRIL 30, 2003 BETWEEN MARONDA HOMES, INC. OF FLORIDA AND SEMINOLE COUNTY IS IN DEFAULT."

DRAFTS MUST BE DRAWN ON OR BEFORE JUNE 30, 2005 AND EACH DRAFT MUST STATE THAT IT IS "DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. 3055284 OF BANK OF AMERICA, N.A. DATED APRIL 4, 2003 AND THE AMOUNT THEREOF ENDORSED ON THIS LETTER OF CREDIT."

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR AN ADDITIONAL PERIOD OF ONE YEAR FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE UNLESS AT LEAST 45 DAYS PRIOR TO SUCH EXPIRATION DATE, WE NOTIFY YOU IN WRITING BY REGISTERED MAIL OR OVERNIGHT COURIER SERVICE THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR SUCH AN ADDITIONAL PERIOD. UPON RECEIPT OF SUCH NOTICE YOU MAY DRAW HEREUNDER BY PRESENTATION OF YOUR DRAFT AND SIGNED STATEMENT STATING "THE PROCEEDS SHALL BE HELD BY SEMINOLE COUNTY AS A CASH BOND TO SECURE CONTINUED ADHERENCE TO THE TERMS OF THE MAINTENANCE AGREEMENT WITH MARONDA HOMES, INC. OF FLORIDA."

WE HEREBY ENGAGE WITH YOU THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED. PAYMENT UNDER THIS LETTER OF CREDIT WILL BE EFFECTED UPON PRESENTATION OF YOUR DRAFT ACCOMPANIED BY THE REQUIRED DOCUMENT(S) (THE "DRAWING") TO BANK OF AMERICA N.A., 750 SOUTH ORLANDO AVENUE, SUITE 101, WINTER PARK, FLORIDA 32789, ATTENTION: BRENDA J. KASTEN AND A COPY OF SUCH DRAWING SENT SIMULTANEOUSLY BY FACSIMILE TO FAX NUMBER (213) 345-6694.

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 3055284

IF THE BOARD OF COUNTY COMMISSIONERS INITIATES SUIT UNDER THIS LETTER OF CREDIT, THE BANK HEREBY AGREES TO BE RESPONSIBLE FOR SEMINOLE COUNTY'S COURT COSTS AND REASONABLE ATTORNEYS' FEES, IF THE BENEFICIARY PREVAILS, BUT THE BANK OF AMERICA, N.A. SHALL NOT BE RESPONSIBLE FOR ANY ATTORNEYS' FEES IN EXCESS OF FIFTEEN PERCENT (15%) OF THE AGGREGATE AMOUNT OF THIS LETTER OF CREDIT.

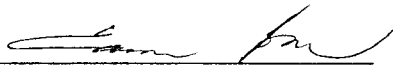
THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING SHALL NOT IN ANY WAY BE AMENDED BY REFERENCE HEREIN TO ANY AGREEMENT, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT OR AGREEMENT OTHER THAN THE MAINTENANCE AGREEMENT DATED APRIL 15, 2003 AND REFERENCED HEREIN.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 1993 REVISION, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 213-345-5304.



BOLIVAR CARRILLO
ASSISTANT VICE PRESIDENT



EUNSON BAE
OFFICER