

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Release Letter of Credit for Road Maintenance Agreement and Road Maintenance Bond

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

**AUTHORIZED BY:** W. Gary Johnson, P.E., Director **CONTACT:** Michael K. Arnold, Division Manager **EXT.** 5622

<b>Agenda Date</b> <u>09/13/05</u> <b>Regular</b> <input type="checkbox"/> <b>Consent</b> <input checked="" type="checkbox"/> <b>Work Session</b> <input type="checkbox"/> <b>Briefing</b> <input type="checkbox"/> <b>Public Hearing – 1:30</b> <input type="checkbox"/> <b>Public Hearing – 7:00</b> <input type="checkbox"/>
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**MOTION/RECOMMENDATION:**

Approve release of Letter of Credit #702 in the amount of \$45,200 for Markham Estates, LLC, and Bond #700-81-22-5682 in the amount of \$3,853.95 for Wal-Mart Neighborhood Market at Red Bug Village, for Road Maintenance Agreements.

District 5 – Commissioner Carey  
District 1 – Commissioner Dallari (Michael K. Arnold)

**BACKGROUND:**

A two-year maintenance inspection was conducted by staff for Markham Estates and Wal-Mart Neighborhood Market and these projects were determined to be satisfactory. Staff recommends release of the Letter of Credit and Maintenance Bond.

Attachments: Copy of Letter of Credit  
Copy of Maintenance Bond

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



# Peoples First

Florida's Community Bank

Post Office Box 59950  
Panama City, Florida 32412-0950

1022 West 23<sup>rd</sup> Street  
Panama City, Florida 32405

John Lewis  
Executive Vice President

Telephone (850) 770-7275  
Telecopier (850) 770-7698

## IRREVOCABLE LETTER OF CREDIT (For Private Road Maintenance Agreement)

EFFECTIVE DATE: July 23, 2003  
EXPIRATION DATE: September 23, 2005  
LETTER OF CREDIT #: 702

BENEFICIARY: Seminole County Board of County Commissioners  
Seminole County Services Building  
1101 East First Street  
Sanford, Florida 32771

APPLICATION: Markham Estates, LLC  
32618 Wekiva Pines Blvd  
Sorrento, Florida 32776

Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit No. 702 in favor of **SEMINOLE COUNTY BOARD OF COUNTY COMMISSIONERS** (Beneficiary), for the account of **Markham Estates, LLC**. We hereby authorize you to draw on Peoples First Community Bank up to an aggregate amount of **FORTY-FIVE THOUSAND TWO HUNDRED AND 00/100 DOLLARS (\$45,200.00)** available by your drafts at sight accompanied by a signed statement of the Board of County Commissioners that the Private Road Maintenance Agreement dated July 10, 2003, between Markham Estates, LLC and Seminole County is in default.

Drafts must be drawn and negotiated on or before **September 23, 2005** – 26 months after Private Road Maintenance Agreement and each draft must state that it is drawn under Irrevocable Letter of Credit Number 702 of Peoples First Community Bank dated **July 23, 2003** and the amount thereof endorsed on this Letter of Credit.

In the event a draw based on expiration of this Letter of Credit the proceeds shall be held by Seminole County as a Cash Bond to secure continued adherence to the terms of the Private Road Maintenance Agreement with Markham Estates, LLC.

Upon tender of payment, you will release to the Bank the original Irrevocable Letter of Credit marked "Cancelled." In any event, upon expiration of the Private Road Maintenance Agreement dated July 28, 2002, and the completion of Markham Estates, LLC obligations thereunder, you will return the original Letter of Credit to this Bank marked "Cancelled."

We hereby agree with the drawers, endorsers, and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to Peoples First Community Bank, 116 E. Altamonte Drive, Orlando, Florida 32701, located in Orange County.



Markham Estates, LLC  
Page two  
Letter of Credit 702

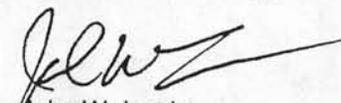
If the Board of County Commissioners initiated suit under this Letter of Credit, due to the Bank's failure to honor proper demand for payment, the Bank hereby agrees to be responsible for Seminole County's court costs and reasonable attorneys' fees, but Peoples First Community Bank shall not be responsible 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 Private Road Maintenance Agreement dated July 10, 2003, and referenced herein.

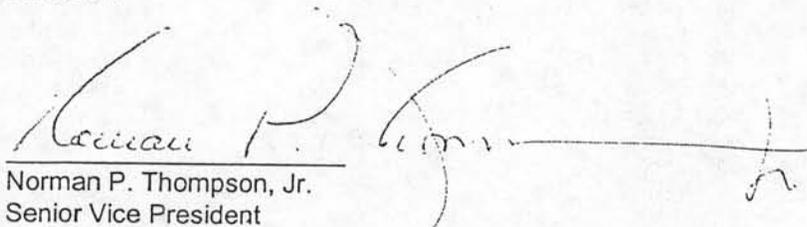
This Letter of Credit and all rights hereunder may be assigned by Seminole County to the Homeowner's Association of Markham Estates subdivision.

This Irrevocable Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500, and to the provisions of Florida law. If a conflict between the "Uniform Customs and Practice for Documentary Credits" and Florida law should arise, Florida law shall prevail. If a conflict between the law of another state or country and Florida law should arise, Florida law shall prevail.

PEOPLES FIRST COMMUNITY BANK

  
John W. Lewis,  
Executive Vice President

ATTEST:

  
Norman P. Thompson, Jr.  
Senior Vice President

SUBDIVISION AND SITE PLAN

PRIVATE ROAD MAINTENANCE AGREEMENT  
(For use with Letter of Credit)

THIS AGREEMENT is made and entered into this 10th day of July, ~~XX~~ 2003 between MARKHAM ESTATES, LLC, hereinafter referred to as "PRINCIPAL" and the MARKHAM ESTATES Homeowner's Association of MARKHAM ESTATES subdivision (hereinafter referred to as the "BENEFICIARY") or, if none, SEMINOLE COUNTY, a political subdivision of the State of Florida (hereinafter referred to as the "HOLDER"), on behalf of all purchasers of lots within MARKHAM ESTATES subdivision.

W I T N E S S E T H:

WHEREAS, PRINCIPAL has constructed certain road improvements, including streets, curbs, storm drains and other appurtenances in that certain subdivision described as MARKHAM ESTATES, a Plat of which is recorded in Plat Book 63 Pages 3, 4, & 5, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid road improvements were made pursuant to certain plans and specifications dated July 18, ~~XX~~ 2002 (as subsequently revised or amended) and filed with the BENEFICIARY or the HOLDER, as the case may be; and

WHEREAS, PRINCIPAL is obligated to protect the BENEFICIARY 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 10 July 2003, ~~XXXX~~; and

WHEREAS, to guarantee performance of said obligations by PRINCIPAL, PRINCIPAL has obtained and furnished to the BENEFICIARY or to the HOLDER on behalf of the owners of lots within the subdivision (hereinafter referred to as LOT OWNERS) a certain Irrevocable Letter of Credit No. 702 issued by Peoples First Community Bank, in the sum of Forty Five Thousand & Two Hundred & 00/100 DOLLARS (\$ 45,200.00).

NOW THEREFORE, the BENEFICIARY or the HOLDER on behalf of the LOT OWNERS, agrees 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 BENEFICIARY or to the HOLDER on behalf of the LOT OWNERS in the sum of Forty Five Thousand & Two Hundred DOLLARS (\$ 45,200.00) on the condition that, if PRINCIPAL shall promptly and faithfully protect the BENEFICIARY or LOT OWNERS 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 10 July, ~~XX~~ 2003, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The BENEFICIARY/HOLDER, or LOT OWNER 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 BENEFICIARY/LOT OWNERS (which shall include, but not be limited to any individual lot owner in MARKHAM ESTATES subdivision) 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

MARKHAM ESTATES  
7/10/2005

thereof, including, but not limited to, engineering, legal and contingent costs. Further, the BENEFICIARY/LOT OWNERS (which shall include, but not be limited to any individual lot owner in MARKHAM ESTATES subdivision), 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 BENEFICIARY/LOT OWNERS (which shall include, but not be limited to any individual lot owner in MARKHAM ESTATES subdivision), at its option, shall have the right to correct said defects resulting from faulty materials or workmanship, or, pursuant to 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 BENEFICIARY/LOT OWNERS should exercise and give effect to such right, the PRINCIPAL shall be obligated hereunder to reimburse the BENEFICIARY (which shall include, but not be limited to any individual lot owner in MARKHAM ESTATES subdivision) 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.

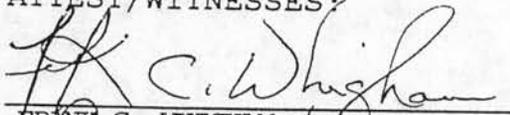
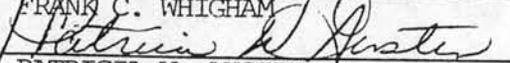
[This Agreement and all rights hereunder may be assigned by the HOLDER to the Homeowner's Association of MARKHAM ESTATES subdivision or to the individual lot owners of MARKHAM ESTATES subdivision as the case may be.]

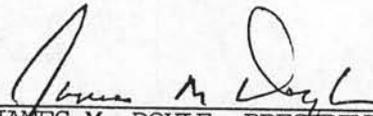
IN WITNESS WHEREOF, the parties to this Agreement have caused their names to be affixed hereto by the proper officers thereof.

**BENEFICIARY:**

MARKHAM ESTATES HOMEOWNERS ASSOCIATION, INC.

ATTEST/WITNESSES:

  
FRANK C. WHIGHAM  
  
PATRICIA W. AUSTIN

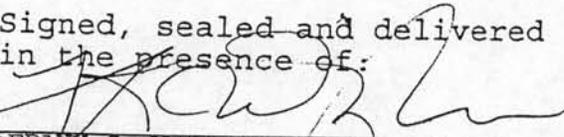
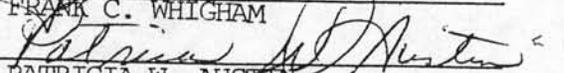
By:   
JAMES M. DOYLE, PRESIDENT

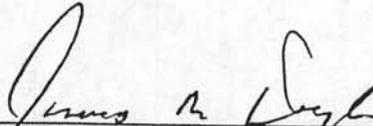
Date: July 10, 2003

**PRINCIPAL:**

MARKHAM ESTATES, LLC

Signed, sealed and delivered  
in the presence of:

  
FRANK C. WHIGHAM  
  
PATRICIA W. AUSTIN

By:   
JAMES M. DOYLE, MANAGING MEMBER

Date: July 10, 2003

HOLDER:

DEPARTMENT OF PUBLIC WORKS  
ROADS DIVISION  
SEMINOLE COUNTY, FLORIDA

*M. W. [Signature]*  
\_\_\_\_\_  
Manager, Roads Operations

WITNESSES:

*Sharon H. Johnson*  
\_\_\_\_\_  
*Shendy E. Cagen*  
\_\_\_\_\_

Date: 8/12/03

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.

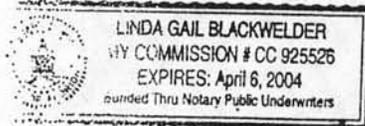
STATE OF FLORIDA            )  
  ) ss  
COUNTY OF SEMINOLE        )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of AUGUST, 2003 by MARK E. FLOMERFELT, who is personally known to me or who has produced \_\_\_\_\_ as identification.

*Linda Gail Blackwelder*  
Print Name Linda Gail Blackwelder  
Notary Public in and for the County and State Aforementioned

My commission expires: 4/6/2004

F:\USERS\ROGER\FRM\LDCE105  
Rev. 05/30/97



APPROVED FORMS, ETC.

RIGHT-OF-WAY USE PERMITTING

RIGHT-OF-WAY UTILIZATION PERMIT  
MAINTENANCE BOND  
(Streets, Curbs, Storm Drains)

KNOW ALL MEN BY THESE PRESENTS:

That we Wal-Mart Stores East, LP dba Store #5132, whose address is 2001 SE 10<sup>th</sup> St., Bentonville, AR 72716-0550, Attn: Letters of Credit and Bond Manager, hereinafter referred to as "PRINCIPAL" and National Fire Insurance Company of Hartford, whose address is c/o CNA Surety, 39 Broadway, Suite 620 New York, NY 10006, 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 Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the COUNTY in the sum of \$3,853.95 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 Wal-Mart Neighborhood Market at Red Bug Village, a plat of which is recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Public Records of Seminole County, Florida; and

WHEREAS, the aforesaid improvements were made pursuant to certain plans and specifications dated November 2, 2002, and filed with the Department of Environmental Services 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 July 22, 2003;

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 July 22, 2003, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Department of Environmental Services 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 in approving and filing the 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.

LAND DEVELOPMENT CODE

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 in case the PRINCIPAL shall fail to refuse to do so, and in the event the COUNTY should exercise and give effect to such right, the PRINCIPAL and the SURETY shall be jointly and severally hereunder to 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

22nd day of July, 2003.

Address:  
2001 SE 10th Street  
Bentonville, AR 72716-0550

Wal-Mart Stores East, LP dba Store 5132 (SEAL)  
PRINCIPAL

By: [Signature]  
J. Robert Bray - VP Real Estate

Its: [Signature]

ATTEST: [Signature]

Its: \_\_\_\_\_

National Fire Insurance  
Company of Hartford (SEAL)

SURETY

By: [Signature]  
Hazel L. Prosser ITS ATTORNEY-IN-FACT

ATTEST: [Signature]

Address  
c/o CNA Surety  
39 Broadway, Suite 620  
New York, NY 10006

[Signature]  
Juli A. Russell  
FL Resident Agent

# POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois corporation, National Fire Insurance Company of Hartford, a Connecticut corporation, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania corporation (herein called "the CNA Companies"), are duly organized and existing corporations having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint  
Hazel L. Prosser, Individually

of \_\_\_\_\_ Bentonville, Arkansas  
their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature  
--- In Unlimited Amounts ---

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their corporations and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Boards of Directors of the corporations.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 5th day of December, 2001.



Continental Casualty Company  
National Fire Insurance Company of Hartford  
American Casualty Company of Reading, Pennsylvania

Michael Gengler

Group Vice President

State of Illinois, County of Cook, ss:

On this 5th day of December, 2001, before me personally came Michael Gengler to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Chicago, State of Illinois; that he is a Group Vice President of Continental Casualty Company, an Illinois corporation, National Fire Insurance Company of Hartford, a Connecticut corporation, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania corporation described in and which executed the above instrument; that he knows the seals of said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said corporations and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporations.



My Commission Expires September 17, 2005

Diane Faulkner

Notary Public

## CERTIFICATE

I, Mary A. Ribikawskis, Assistant Secretary of Continental Casualty Company, an Illinois corporation, National Fire Insurance Company of Hartford, a Connecticut corporation, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania corporation do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the corporations printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporations this 22nd day of July, 2003.



Continental Casualty Company  
National Fire Insurance Company of Hartford  
American Casualty Company of Reading, Pennsylvania

Mary A. Ribikawskis

Assistant Secretary

## **NOTICE**

In accordance with the Terrorism Risk Insurance Act of 2002, we are providing this disclosure notice for bonds and certain insurance policies on which one or more of the Writing Companies identified below is the surety or insurer.

To principals on bonds and insureds on certain insurance policies written by any one or more of the following companies (collectively the "Writing Companies") as surety or insurer: Western Surety Company, Universal Surety of America, Surety Bonding Company of America, Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA, The Firemen's Insurance Company of Newark, NJ, and The Continental Insurance Company.

## **DISCLOSURE OF PREMIUM**

The premium attributable to coverage for terrorist acts certified under the Act was Zero Dollars (\$0.00).

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

The United States will pay ninety percent (90%) of covered terrorism losses exceeding the applicable surety/insurer deductible.