

Item # 31

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Approve Release of Cash Maintenance Bond for Markham Estates

DEPARTMENT: Planning & Development **DIVISION:** Development Review

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Mike Rumer ^{MR} **EXT.** 7337

Agenda Date <u>10/14/2003</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 cash Private Road Maintenance Bond, replaced by Irrevocable Letter of Credit (attached).

District 5 – (Mike Rumer – Planner)

BACKGROUND:

Cash Road Maintenance Bond #01-5500038 in the amount of \$45,190.62 for the project known as Markham Estates Final Engineering is being requested to be released and replaced by Peoples First Community Bank Irrevocable Letter of Credit.

STAFF RECOMMENDATION:

Staff recommends the exchange.

District 5

Attachments: Markham Estates, LLC release request letter
DR Inspections no objection letter with attached agreements
Peoples First Community Bank Irrevocable Letter of Credit

Reviewed by:
Co Atty: <u>RTC</u>
DFS: _____
Other: <u>df</u>
DCM: <u>SS</u>
CM: <u>MR</u>
File No. <u>cpdd04</u>

Markham Estates, LLC
32618 Wekiva Pines Boulevard
Sorrento, FL 32776
(407) 221-4956

July 30, 2003

Seminole County
Planning & Development Department
Development Review Division
Attn: Ms. Jackie Laracuente, CPM
1301 E. Second St.
Sanford, FL 32771-1468

Subject: Private Road Maintenance Agreement (Markham Estates Subdivision)

Dear Jackie,

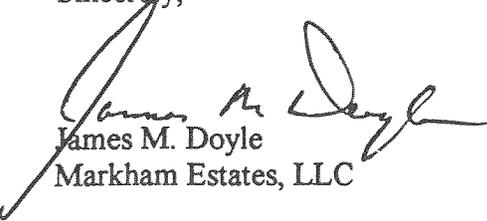
On July 11, 2003 we delivered a Private Road Maintenance Agreement (For use with a Cash Bond) along with Check #1097, dated July 11, 2003 in the amount of Forty Five Thousand, One Hundred and Ninety Dollars and Sixty-Two Cents (\$45,190.62) issued by Markham Estates, LLC. Since we did not have sufficient time to obtain a Letter of Credit from our bank, and in an effort to obtain the final approval from Seminole County Planning and Development, Markham Estates, LLC paid the Cash Bond.

We have just received an Irrevocable Letter of Credit from Peoples First Community Bank dated July 23, 2003 in the amount of Forty Five Thousand, Two Hundred Dollars (\$45,200.00). We are enclosing the Irrevocable Letter Of Credit #702 along with the Private Road Maintenance Agreement (For use with Letter Of Credit).

We would like to use the Irrevocable Letter Of Credit along with the Private Road Maintenance Agreement to replace the Cash Bond of \$45,190.62 we submitted on July 11, 2003. We are requesting a refund of the Cash Bond to be made payable to Markham Estates, LLC, the originator of the Cash Bond monies.

We would appreciate anything your office can do to expedite this request. We are sorry for any inconvenience this may cause your office, but I'm sure you can understand why we are following this course of action. Please keep me informed on your progress and let me know if you need any further assistance. You may call me at (407) 221-4956 at any time.

Sincerely,



James M. Doyle

Markham Estates, LLC

Incls Irrevocable Letter Of Credit # 702
Private Road Maintenance Agreement
(For use with Letter Of Credit)



July 31, 2003

TO: Gail Blackwelder, Public Works
FROM: Jackie Laracuenta, Supervisor DR Inspections
RE: Cash Bon Release for Markham Estates

Markham Estates, LLC would like to get their Cash Bond released for the above mentioned project (see attached letter). They will post a Letter of Credit and Maintenance Agreement in it's place. (See attached documents).

I have no objections to this exchange. Please advise as to the course of action we must take. If it needs to go before the Board , please advise us on the date this will take place.

If you have any questions, please contact me at 7409.

ORIGINAL
CASH BOND INFO

MAINTENANCE BONDS AND AGREEMENTS

Type of Bond:

Project Name

DRC Number

District

Street Names and Lengths

Principal Name

Principal's Representative

Principal's Phone Number

Principal Address

Principal City

Principal State

Principal Zip Code

Bond/Agreement Origination Date

Bond Number

Bond Amount

Letter of Credit Number

Surety Company

Surety Address

Surety City

Surety State

Surety Zip Code

Inspector:

Bond/Agreement Expiration Date

Bond/Agreement Inspection Date

Bond/Agreement Release Date

SUBDIVISION AND SITE PLAN

REPLACEMENT BOND +
Letter of Credit

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

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
FRANK C. WHIGHAM
Patricia W. Austin
PATRICIA W. AUSTIN

By: James M. Doyle
JAMES M. DOYLE, PRESIDENT

Date: July 10, 2003

PRINCIPAL:

MARKHAM ESTATES, LLC

Signed, sealed and delivered
in the presence of:

Frank C. Whigham
FRANK C. WHIGHAM
Patricia W. Austin
PATRICIA W. AUSTIN

By: James M. Doyle
JAMES M. DOYLE, MANAGING MEMBER

Date: July 10, 2003



Peoples First Florida's Community Bank

Post Office Box 59950
Panama City, Florida 32412-0950

1022 West 23rd 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

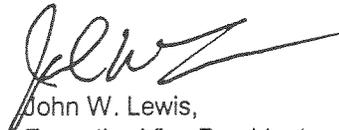
If the Board of County Commissioners initiated suit under this Letter of Credit, due to the Bank's failure to honor proper demand for payment, the Bank hereby agrees to be responsible for Seminole County's court costs and reasonable attorneys' fees, but Peoples First Community Bank shall not be responsible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

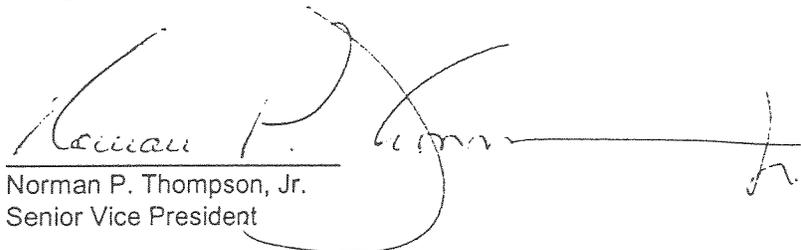
This Irrevocable Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500, and to the provisions of Florida law. If a conflict between the "Uniform Customs and Practice for Documentary Credits" and Florida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