

R992260 D

DEC 02 1999

**TRANSFER OF DEVELOPMENT RIGHTS
ESCROW AGREEMENT**

Palm Beach County, (the "County"), being the stated beneficiary of this agreement, Phoenix Real Estate Associates, Inc., ("Developer") and Robert S. Forman, P.A., Trust Account (the "Escrow Agent"), in consideration of the mutual covenants contained in this Agreement, hereby agree as follows:

1. Developer received approval for and has contracted to buy 50 TDR units in Palm Beach County, Florida for use in the development known as Lake Worth and Lyons PUD. The approval for the transfer of these TDR units was granted by Resolution #R-97-1091. The County requires that Developer pay County for the TDR units at the time the first building permit, other than permits for site development work, infrastructure, sales models or a temporary real estate sales and management office, is issued by County to Developer. Developer is to pay \$278,750.00 for the purchase of 50 TDR units.
2. Establishment of Escrow Account. The parties hereby authorize and direct the Escrow Agent to establish an Escrow Account (the "Account") at SouthTrust Bank, a national banking association, located at 225 North Federal Highway Pompano Beach, FL 33062 (the "Bank") to be held pursuant to the terms of this Agreement. The account shall be an interest bearing account, maintained in a segregated account which is not a loan reserve or hold back of bank funds. When the escrowed funds are released to the County, all interest earned by such funds while in escrow shall accrue to the County. If the County is not entitled to the funds, the interest earned by such funds shall accrue to the Developer. Developer shall pay all costs, fees and expenses of Bank and Escrow Agent arising from or in connection with the Account.
3. Deposit of Funds. Upon execution of this agreement, Developer shall deposit \$278,750.00 into the "Account". The Escrow Agent shall hold funds in escrow. Developer shall evidence such deposit by delivering to County two copies of a sworn receipt (which is attached hereto as Exhibit "A") executed by Escrow Agent.
4. Deposit of Deed. Upon receipt of the evidence of deposit of funds, County shall deliver to Escrow Agent an executed deed conveying the 50 TDR units to developer. This deed shall be held by the Escrow Agent.
5. Disbursement of Escrowed Funds. Escrow agent shall hold the escrow funds until it receives written notice from County that a building permit (as described in Paragraph 1 above) for the development has been approved. Within ten (10) days after receipt of notice from County, escrow agent shall disburse the funds to the County. Building permits to be issued simultaneous with dispersal of funds. Any accrued interest earned on the escrow account shall be disbursed to the County.
6. Release of Deed Simultaneously with the disbursement of funds,

Escrow Agent shall deliver the deed to Developer to be recorded in the public records.

7. Revocation or abandonment of Approval. In the event that the approval of this development is revoked in accordance with Section 5.8 of the Palm Beach County Unified Land Development Code, or formally abandoned by the Developer and that the abandonment has been approved by the County, the County shall send written notification to Escrow Agent. Escrow Agent shall then disburse all funds including accrued interest to Developer and return the deed to County.
8. Dispute Resolution. In the event of dispute between County and Developer, Escrow Agent may, at its option, continue to hold any disputed funds until Developer and County mutually agree to disbursement, or until a final administrative or judicial order is issued; or Escrow Agent may inter-plead such disputed sums in the Circuit Court for Palm Beach County, Florida. County and Developer agree that Escrow Agent shall not be liable to any person for its acts pursuant to this Agreement other than for Escrow Agent's willful breach of this Agreement or Escrow Agent's gross negligence.
9. Standard Provisions:
 - A. Additional Instruments. Each of the parties shall from time to time at the request of the other, execute, acknowledge and deliver to the other party any and all further instruments that may be reasonably required to give full force and effect to the provisions of this Agreement.
 - B. The Entire Agreement. This Agreement constitutes the entire understanding of the parties and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
 - C. Modification. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.
 - D. Waiver. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.
 - E. Severability. If any provisions of this Agreement are held to be invalid or unenforceable, all of the other provisions shall nevertheless continue in full force and effect.
 - F. Notices. Unless otherwise specifically provided herein, all notices shall be in writing and sent to the parties by certified mail, return receipt requested, postage prepaid, or by other nationally recognized overnight courier service. Unless otherwise specifically

provided. herein said notices shall be effective on the third (3rd) day following such notice being deposited in the United States mails or one (1) business day following mailing by overnight express mail.

As to County: Palm Beach County Planning Division
100 Australian Avenue
West Palm Beach, Florida 33406

As to Developer: Phoenix Real Estate Associates, Inc.
500 N.E. Spanish River Boulevard, Suite 107
Boca Raton, FL 33431

As to Escrow Agent: Robert S. Forman, P.A.
Robert S. Forman, Esquire
2101 West Commercial Boulevard, Suite 4100
Fort Lauderdale, FL 33309

- G. Captions. Captions contained in this Agreement are inserted only as a matter of convenience or for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision hereof.
- H. Venue. This instrument shall be governed by and enforced and construed under the laws of the State of Florida. Venue for all actions shall be in the County where in the Property is located.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement this
23 day of NOV., 1999

Witnesses:

Deborah J. Forman
DEBORAH J. FORMAN
Typed or Printed Name

Date: NOV. 23rd, 1999

Jean Seibold
JEAN SEIBOLD
Typed or Printed Name

DEVELOPER

Skyhawk Rainey, Pres.
SKYHAWK RAINEY, Pres.
Typed or Printed Name

Date: NOV. 23rd, 1999

(561) 361-0600
Telephone Number

Witnesses:

Deborah J. Forman
DEBORAH J. FORMAN
Typed or Printed Name

Jean Seibold
JEAN SEIBOLD
Typed or Printed Name

ATTEST:

DOROTHY H. WILKEN, Clerk

By: Joan Hawley
Deputy Clerk

ESCROW AGENT

Robert S. Forman, P.A. Trust Acct.
ROBERT S. FORMAN, P.A. TRUST ACCT.
Typed or Printed Name

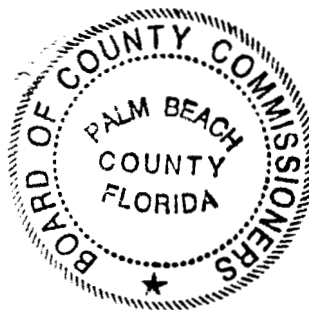
Date: NOV. 23rd, 1999

(954) 735-0000
Telephone Number
PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: Maudie Ford Lee
Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: Debra Ann Altier
County Attorney



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EXHIBIT A

CERTIFIED RECEIPT

STATE OF FLORIDA

COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared Escrow Agent, who; being by me first duly sworn, deposes and says;

1. Escrow Agent hereby acknowledges that it has received \$278,750.00 to be held by Escrow Agent pursuant to the Transfer of Development Rights Escrow Agreement dated _____ in connection with Resolution #R-97-1091 of the Development known as Lake Worth & Lyons PUD, Zoning Petition 97-31, in connection with the purchase of 50 development rights.

2. Escrow Agent acknowledges that this Affidavit is being given as an Inducement to Palm Beach County to produce a deed conveying the development rights,


Further Affiant sayeth not.

ROBERT S. FORMAN, P.A.



Robert S. Forman, President

SWORN TO before me this 1st day of December, 1999.


NOTARY PUBLIC

My commission expires:

