

Return To:

Robert Banks
Assistant County Attorney
301 North Olive Avenue
West Palm Beach, FL 33401

R2005 0009

**TRANSFER OF DEVELOPMENT RIGHTS
ESCROW AGREEMENT**

Palm Beach County, (the "County"), being the stated beneficiary of this agreement, Pipers Cay, LLC ("Developer") and _____* (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 29 TDR units in Palm Beach County, Florida for use in the development known as Wyndam II, t/b/k/a Pipers Cay, LLC. The approval for the transfer of these TDR units was granted by Resolution #R-~~2004-2254~~. The County requires that Developer pay County for the TDR units prior to the issuance of the first building permit other than for sales models or a temporary real estate sales and management office is issued by County to Developer. Developer is to pay \$459,273 for the purchase of 29 TDR units.
2. Establishment of Escrow Account. The parties hereby authorize and direct the Escrow Agent to establish an Escrow Account (the "Account") at Palm Beach County Bank, a national banking association, located at 3717 Boynton Beach Blvd, Boynton (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 \$459,273 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 AA@) executed by Escrow Agent.
4. Delivery of Deed. Upon receipt of the evidence of deposit of funds, County shall deliver to Escrow Agent an executed deed conveying the 29 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 Developer directs escrow agent to disburse the funds to the County. Building permits to be issued, if all other applicable requirements are met, after disbursement of funds to the County. Any accrued interest earned on the escrow account shall be disbursed to the County.
6. Release of Deed. After the disbursement of funds to the County, Escrow Agent shall deliver the deed to Developer to be recorded in the public records by the Developer.
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 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 interplead 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 Zoning Division
100 Australian Avenue
West Palm Beach, Florida 33406

cc: Palm Beach County Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
ATTN: Landuse Section

cc: Lillian A. Ser, Esq. As to Developer: Piper's Cay, LLC
Greenberg, Traurig, P.A. 4227 Northlake Blvd.
777 South Flagler Dr., Ste 300 Palm Beach Gardens, FL 33410
West Palm Beach, FL 33401

As to Escrow Agent: Cohen, Norris, Scherer, Weinberger & Wolmer
712 U.S. Highway One, Suite 400
North Palm Beach, FL 33408
Attn: David Norris

- 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 Palm Beach County.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement this 73RD day of NOVEMBER, 2004

Witnesses:

Diinne S Coley
Diinne S Coley
 Typed or Printed Name

Date: 11/23, 2004

Todd White
TODD WHITE
 Typed or Printed Name

DEVELOPER Piper's Cay, LLC

[Signature]

Michael F. Aranda
 Typed or Printed Name

Date: 11/23, 2004

561-626-6121
 Telephone Number

Witnesses:

X *Jaime Stevenson*
Jaime Stevenson
 Typed or Printed Name

X *Todd White*
TODD WHITE
 Typed or Printed Name

ESCROW AGENT Cohen, Norris, Scherer, Weinberger & Wolmer

[Signature]

David Norris
 Typed or Printed Name

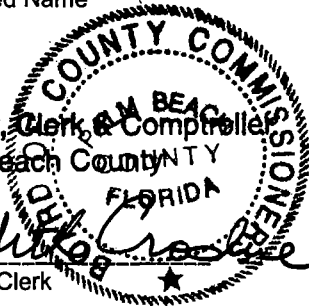
Date: 11/23, 2004

561-844-3600
 Telephone Number

ATTEST:

Sharon R. Bock, Clerk & Comptroller
 Palm Beach County
 FLORIDA

By: *Juditha Crocker*
 Deputy Clerk



R2005.0009
 PALM BEACH COUNTY, FLORIDA,
 BY IT'S BOARD OF COUNTY
 COMMISSIONERS

JAN 06 2005

By: *Addie Greene*
 Tony Masilotti, Chairman
Addie L. Greene, Vice Chairperson

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: *[Signature]*
 County Attorney

EXHIBIT A

CERTIFIED RECEIPT

STATE OF FLORIDA

COUNTY OF PALM BEACH

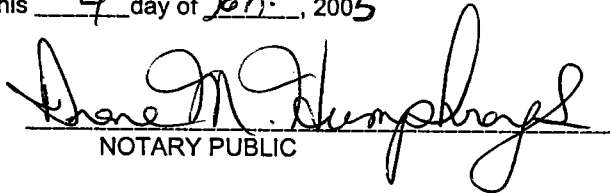
Before me, the undersigned authority, personally appeared Escrow Agent, who, being by me first duly sworn, deposes and says:

1. Escrow Agent hereby acknowledges that it has received \$459,273 to be held by Escrow Agent pursuant to the Transfer of Development Rights Escrow Agreement dated _____ in connection with Resolution #R-2004-2254 of the Development known as Wyndam II PUD, Zoning Petition 2004-008 in connection with the purchase of 29 development rights.

2. Escrow Agent acknowledges that this Affidavit is being given as an inducement to Palm Beach County to deliver an executed deed conveying the development rights to the Escrow Agent.

Further Affiant says etc. not.

SWORN TO before me this 4 day of Jan., 2005


NOTARY PUBLIC

My commission expires:

