

Return To:

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

**TRANSFER OF DEVELOPMENT RIGHTS
ESCROW AGREEMENT**

R2005. 0012

Palm Beach County, (the "County"), being the stated beneficiary of this agreement, Colson & Colson Construction Co. ("Developer") and First American Title, App. Suji Alkhami (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 8 TDR units in Palm Beach County, Florida for use in the development known as South Wind Heights Congregate Living Facility. The approval for the transfer of these TDR units was granted by Resolution #R- 2004-2030. 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 \$ \$126,696 for the purchase of 8 TDR units.
2. Establishment of Escrow Account. The parties hereby authorize and direct the Escrow Agent to establish an Escrow Account (the "Account") at First American Title Insurance Company, a ~~national banking association~~, located at One Lakeshore Center, 3281 E. Guasti Road Suite 490, Ontario, CA 91761 (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 \$ \$126,696 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 8 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

As to Developer: Colson & Colson Construction Co.
P.O. Box 14111
Salem, Oregon 97309
Attn: Bruce Thorn

As to Escrow Agent: First American Title
One Lakeshore Center
3281 East Guasti Road, Suite 490
Ontario, California 91761
Attn: Suri Afkhami

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 15th day of Dec., 2004

Witnesses:

Robin R. Boyd

Robin R. Boyd
Typed or Printed Name

Date: December 15, 2004

Gust A. Newland

Kristin A. Newland
Typed or Printed Name

DEVELOPER

Colson & Colson Construction Co.

Norman L. Brenden, Authorized Agent
Typed or Printed Name

Date: December 15, 2004

503-370-7070
Telephone Number

Witnesses:

Linda Kenaston

LINDA Kenaston
Typed or Printed Name

Shampton

F. Hampton
Typed or Printed Name

ESCROW AGENT

Suri Afkhami

SURI AFKHAMI
Typed or Printed Name

Date: 12-16, 2004

909-510-6209
Telephone Number

ATTEST:

Sharon R. Bock, Clerk & Comptroller
Palm Beach County

By: Judith Greene
Deputy Clerk

R2005.0012

JAN 06 2005

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

By: Addie L. Greene
Tony Masiotti, 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 \$ 126,696 to be held by Escrow Agent pursuant to the Transfer of Development Rights Escrow Agreement dated 12-15-04 in connection with Resolution #R-2004-2030 of the Development known as South Wind Heights Congregate Living Facility, Zoning Petition 2004-2028, in connection with the purchase of 8 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 sayeth not.

Suri Apphamei

SWORN TO before me this 16th day of Dec, 2004

Chang Su-Wan
NOTARY PUBLIC

My commission expires: 12-22-06

