

Return To:

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

R2005 1416

JUL 28 2005

TRANSFER OF DEVELOPMENT RIGHTS
ESCROW AGREEMENT

Palm Beach County, (the "County"), being the stated beneficiary of this agreement, Hypoluxo Homes LLC (Developer) and Mitchell A. Sherman, P.A. (the Escrow Agent), in consideration of the mutual covenants contained in this Agreement, hereby agree as follows:

1. Developer has contracted to buy fourteen (14) TDR units in Palm Beach County, Florida for use in the development known as Nicola PUD. 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 three hundred and fifty thousand (\$350,000.00) for the purchase of fourteen (14) TDR units.
2. Establishment of Escrow Account. The parties hereby authorize and direct the Escrow Agent to establish an Escrow Account (the "Account") at Bank of America #005502901712, a national banking association, located at West Palm Beach, FL (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 \$ three hundred and fifty thousand (\$350,000.00) 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 fourteen (14) 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, 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. 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 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: PB County Attorney

As to Developer: **Hypoluxo Homes LLC**
7593 Boynton Beach Blvd.; Ste. 220
Boynton Beach, FL 33437

As to Escrow Agent: **Mitchell A. Sherman, P.A.**
7593 Boynton Beach Blvd., Ste 210
Boynton Beach, FL 33437

- 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 June, 2005.

Witnesses:

E.A. Scherr

Eric Scherr
Typed or Printed Name

Date: June 24th, 2005

Ellen Schapiro

Ellen Schapiro
Typed or Printed Name

Hypoluxo Homes LLC

[Signature]

Charles Scardina
Typed or Printed Name

Date: June 24th, 2005

561-364-3653
Telephone Number

Witnesses:

E.A. Scherr

Eric Scherr
Typed or Printed Name

Ellen Schapiro

Ellen Schapiro
Typed or Printed Name

ESCROW AGENT

[Signature]

Mitchell A. Sherman
Typed or Printed Name

Date: June 24th, 2005

561-738-1202
Telephone Number

R2005 1416

ATTEST:

JUL 28 2005

~~DOROTHY H. WILKEN, Clerk~~

By: [Signature]
Deputy Clerk

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS
KAREN T. MARCUS

By: [Signature]
FOR: Tony Masilotti, Chairman

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]
County Attorney

Sharon R. Bock, Clerk & Comptroller
Palm Beach County

By: [Signature]
Deputy Clerk

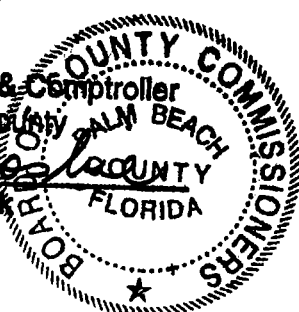


EXHIBIT A

CERTIFIED RECEIPT

STATE OF FLORIDA

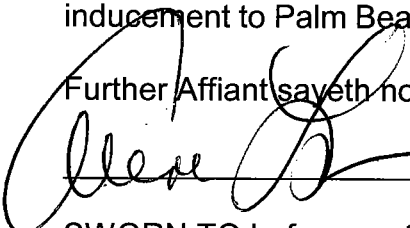
COUNTY OF PALM BEACH

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

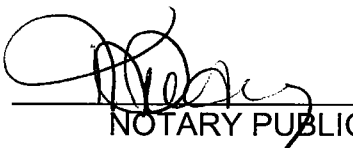
1. Escrow Agent hereby acknowledges that it has received \$ **three hundred and fifty thousand (\$350,000.00)** to be held by Escrow Agent pursuant to the Transfer of Development Rights Escrow Agreement dated 6/24/05 in connection with DRO Application No. R-2005-1078 of the Development known as **Hypoluxo Homes LLC**, Zoning Petition **2004-00661**, in connection with the purchase of **fourteen (14)** 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.



SWORN TO before me this 24th day of June, 2005.



NOTARY PUBLIC

My commission expires:



Khristina N Iwasz
My Commission DD165879
Expires February 01, 2007