

RESOLUTION NO. 97- 190
RESOLUTION OF THE BOARD OF COUNTY
COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA
AUTHORIZING COUNTY ADMINISTRATOR
TO EXECUTE ESCROW AGREEMENT

WHEREAS, the M. L. Partnership ("Owner") has submitted to the County and by separate Resolution the County has approved a plat of a portion of the Owner's lands as more fully described in that certain Marsh Landing at Sawgrass Unit Thirty-Two "A";

WHEREAS, Owner, the Board of County Commissioners of St. Johns County, Florida ("County") and Barnett Bank, N.A. ("Escrow Agent"), have entered into an Escrow Agreement whereby the completion of the subdivision improvements will be assured by the deposit of funds in an escrow account, in accordance with the terms of the Escrow Agreement attached hereto and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

1. The Escrow Agreement attached hereto and made a part hereof as Exhibit A ("Agreement") is hereby approved.
2. The County Administrator is hereby authorized to execute such Agreement on behalf of the County, upon receipt of the Agreement executed by M. L. Partnership and Barnett Bank, N.A.

ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 25 day of November, 1997.

Attest:

Cheryl Strickland, Clerk

By: Laura Pace
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

BY: Mark H. Boyd
Its Chairman

Exhibit "A"

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, (the "Agreement") made this _____ day of _____, 199__, by and among **M.L. Partnership**, a Florida general partnership, ("Partnership") and the **Board of County Commissioners of St. Johns County, Florida**, a political body of the State of Florida, with offices at St. Augustine, St. Johns County, Florida, (the "County") and **Barnett Bank of Jacksonville, N.A.**, a national association, with offices at 50 North Laura Street, Suite 2300, Jacksonville, Florida 32202 ("Escrow Agent").

WHEREAS, Partnership has agreed to make certain improvements to a subdivision to be known as Marsh Landing at Sawgrass Unit Thirty-Two "A", which improvements including paving, grading, storm drainage, and other items specified in accordance with plans approved by the County ("Plans") and which are on file with the Engineering Department of the County (the "Improvements"), which Improvements have been partially completed; and

WHEREAS, Partnership has agreed to deposit the sum of \$ 611,977.00, USD, with the Escrow Agent, (the "Funds") representing an amount equal to One Hundred Percent of the estimate of the remaining cost to complete such Improvements and Fifteen (15 %) Percent of the original contract amount to construct such Improvements; and

WHEREAS, the Contractors retained by Partnership to complete the Improvements shall submit invoices and executed lien releases on a monthly basis for work that has been completed on the Improvements for review and approval by Partnership and the County. However, if the Funds are paid to the County, as hereinafter provided, the invoices and executed lien releases shall be reviewed and approved by the County only; and

WHEREAS, Escrow Agent is agreeable to act as escrow agent under this Agreement and to disburse the Funds in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the parties agree:

1. Establishment of Escrow Account.

1.1. An escrow account shall be established under this Agreement by Partnership with Escrow Agent who shall hold, invest and distribute the Funds from time to time as hereinafter set forth (the "Escrow Account").

1.2. Partnership and the County agree that the Funds in the Escrow Account are to be used exclusively for the purpose of funding the Improvements.

1.3. All interest income in the Escrow Account shall be attributed to Partnership for income tax purposes. Any accrued interest earned on the Escrow Account shall be included

for all purposes as a part of the Funds and disbursed by the Escrow Agent in accordance with Section 2 below.

1.4. In the event that during the term of this Agreement, Partnership enters into a change order with the Contractors relating to the Improvements, Partnership shall (a) immediately deliver to Escrow Agent and the County a copy of the change order, (b) deliver to the Escrow Agent a sum of money equal to the amount of the change order plus an additional fifteen percent (15%) of the cost thereof and (c) deliver to the County a notice that the additional funds have been delivered to the Escrow Agent. The Escrow Agent shall deposit such additional funds in the Escrow Account and such additional funds shall be held, invested and disbursed in the same manner as if they had been a part of the Funds initially placed in the Escrow Account.

1.5 In consideration of the agreement of the County to enter into this Agreement and perform its obligations hereunder, Partnership agrees to pay to the County the Amount of Seventy Five and 00/100 Dollars (\$75.00) in connection with each disbursement by Escrow Agent to Contractor.

2. Disbursements.

2.1. The Escrow Agent shall disburse all or a portion of the Funds in accordance with the following:

(a) On or before two years from the date this Escrow Agreement is executed by all parties (the "Effective Date"), to the Contractors who have performed work to build the Improvements within five (5) business days of Escrow Agent's receipt of a Draw Request approved both by Partnership and the County. The disbursement shall be in an amount set forth in the Draw Request. The Draw Request shall be in a form substantially similar to that set forth in the attached Exhibit A. As a condition to approval by the County of any draw request, the Partnership shall cause to be submitted to the County with each draw request, a certification from an engineer retained by the Partnership, naming the Partnership and the County and certifying that the value of the Improvements which are subject to the draw request is consistent with the Contractor's draw request and certifying the percentage of completion of the Improvements in accordance with the Plans as approved by the County.

(b) After two years from the Effective Date, to the Contractors who have completed the Improvements within five (5) business days of Escrow Agent's receipt of a Draw Request approved by the County only. The disbursement shall be in an amount set forth in the Draw Request. After such date, it shall not be necessary to obtain the approval of Partnership prior to disbursement to the Contractors.

(c) The parties understand and acknowledge that due to the timing of the approval process required to record a plat, Partnership may be required to place in the

Escrow Account a sum of money which exceeds the amount necessary to complete the Improvements because a Draw Request may be made by the Contractors and paid by Partnership after submission and approval of the Escrow Agreement by St. Johns County staff, but prior to recording the plat. In such event, if Partnership delivers (i) a certificate from the engineer that the amount held in the Escrow Account exceeds One Hundred and Fifteen Percent (115%) of the amount necessary to complete the Improvements; and (ii) a written request for reimbursement, executed by Partnership and the County, then Escrow Agent may release such sums in excess of the required amount to Partnership.

(d) To Partnership within five (5) business days of Escrow Agent's receipt of written certification from the County that all of the Improvements have been completed. The disbursement shall be in an amount set forth in the written acknowledgement received from the County.

(e) To the County on two years and six months after the Effective Date, if on that date the Funds have not previously been disbursed in accordance with 2.1 (a), (b), (c) or (d) hereinabove. The disbursement shall be in the amount of the remaining Funds and shall be applied to the completion of the Improvements. In the event that the amount of the remaining Funds exceeds the remaining cost of the Improvements plus the reasonable costs and expenses incurred by the County as described in paragraph 4, the County shall return any excess Funds to Partnership.

(f) If, prior to the release of the Funds pursuant to the provisions of 2.1 (a), (b), (c) or (d) hereinabove, the Escrow Agent receives written notice from either Partnership or the County of a dispute between Partnership and the County, the Escrow Agent shall not release the Funds until this dispute has been settled or resolved to the satisfaction of a court of competent jurisdiction or agreed to in writing by both parties.

(g) The Escrow Agent shall, at any time, make distribution of the Funds upon written direction duly executed by both Partnership and the County. The disbursement shall be in the amount set forth in such written direction.

2.2 The County is authorized to rely upon the certifications of the engineer without making additional inquiry, provided however, the County, in its discretion, may make such inquiries as it deems expedient, and question the sufficiency or accuracy of any certification. If the certification is considered by the County to be insufficient or inaccurate, the Partnership shall provide to the County, upon request, such additional information and/or certification as may be necessary to satisfy the County that disbursement should be made on a draw request.

3. Escrow Agent's Responsibility.

3.1. Upon disbursement of all or any portion of the Funds in accordance with this Agreement, Escrow Agent shall have no further responsibility with respect to the amounts so disbursed. In this regard, it is expressly agreed and understood that in no event shall the aggregate amount of disbursements from the Escrow Account by Escrow Agent exceed the amounts deposited by Partnership in the Escrow Account plus accrued interest, as provided herein.

3.2. Escrow Agent shall have the authority to invest and reinvest the Funds upon written direction from Partnership and pursuant to the Agreement in:

(a) securities issued or directly and fully guaranteed or insured by the United States Government or any agency of instrumentality thereof have maturities of not more than twelve months from the date of acquisition, or

(b) money market funds collateralized with securities of the types described in clause (a). In the absence of a specific directive to the contrary, Escrow Agent shall invest the Funds in a money market account.

3.3. Partnership and the County understand and agree that the duties of Escrow Agent are purely ministerial in nature. Partnership and the County further agree that:

(a) Escrow Agent shall not be responsible for the performance by Partnership or the County under this Agreement or any other agreement.

(b) Escrow Agent shall have the right to act in reliance upon any document, instrument or signature believed by it in good faith to be genuine and to assume (unless it has reason to believe otherwise) that any person purporting to give any notice or instructions in accordance with the Agreement or in connection with any transaction to which this Agreement relates has been fully authorized to do so. Escrow Agent shall not be obligated to make any inquiry as to the authority, capacity, existence or identity of any person purporting to give any such notice or instructions. Provided, however, no disbursement shall be made unless a written Draw Request bears or appears to bear the signature of the County Administrator of St. Johns County or his designee, on behalf of the County and has affixed to it the County seal.

(c) In the event that Escrow Agent shall be uncertain as to its duties or rights under this Agreement or shall receive instructions with respect to the Funds or the Escrow Account which, in its sole opinion, are in conflict with either other instructions received by it or any provision of this Agreement, it shall be entitled to hold the Funds, or any portion thereof, in the Escrow Account pending the resolution of such uncertainty to Escrow Agent's sole satisfaction, by final judgment of a court of competent jurisdiction or otherwise or to interplead such Funds with such court.

(d) Escrow Agent shall not be liable for any action taken or omitted hereunder or under this Agreement except in the case of its bad faith, gross negligence or willful misconduct. Escrow Agent shall be entitled to consult with counsel of its own choosing and shall not be liable for any action taken in reasonable reliance upon the advice of such counsel. Any reasonable expenses incurred by Escrow Agent in connection with such consultation shall be reimbursed by Partnership.

(e) Escrow Agent shall have no responsibility with respect to the use or application of any of the Funds or other property paid or delivered to Escrow Agent pursuant to the provisions of this Agreement.

(f) Escrow Agent shall furnish to Partnership and the County an accounting of the receipts in, and disbursements from, the Escrow Accounts, on a monthly basis.

(g) This Agreement exclusively sets forth the duties of Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Agreement as to Escrow Agent.

3.4. Without regard to the amount deposited in the Escrow Account pursuant to this Agreement, Escrow Agent shall, in addition to the indemnification provided for in Section 3.6 below, be entitled to be reimbursed by Partnership for any reasonable expenses for performing its obligations in connection with this Agreement, including, but not limited to reasonable costs, expenses and legal fees incurred by Escrow Agent relating to the preparation of this Agreement and the review of the documents pertaining to this Agreement.

3.5. The Escrow Agent may resign as Escrow Agent at any time upon thirty (30) days' prior written notice to Partnership and the County. In the case of the Escrow Agent's resignation, its only duty shall be to hold and dispose of the Escrow Account in accordance with the original provisions of this Agreement until such successor escrow agent shall be appointed. Partnership and the County shall jointly consent and appoint such successor escrow agent. Upon such appointment, the Escrow Agent's only duty shall be to pay over to the successor escrow agent the Funds in escrow pursuant to this Agreement less any portion thereof previously paid out in accordance with this Agreement.

3.6. Partnership agrees to indemnify Escrow Agent and its officers, agents and stockholders (herein the "Indemnities") against, and to hold them harmless of and from, any and all loss, liability, cost, damage and expense, any and all loss, limitation, reasonable attorneys' fees, except in the case of Escrow Agent's bad faith, gross negligence, or wilful misconduct, which the Indemnities may suffer or incur by reason of any action, claim or proceeding brought by any third party against the Indemnities, arising out of or relating in any way to this Agreement, or the performance of its duties hereunder, and including any claim arising out of the any mechanic' liens filed in connection with the construction of the Improvements.

4. Partnership's Responsibility.

4.1 The Partnership shall complete the construction of the Improvements within two (2) years of the date of this Escrow Agreement and pay for the cost thereof in excess of the Funds. In the event the Partnership fails to complete construction of the Improvements within said two (2) year period and the remaining cost of the Improvements exceeds the amount of the remaining Funds, the County may, in its sole discretion, elect to complete construction of the Improvements, in whole or in part, at one time or in phases. If the County elects to complete said Improvements, in the manner aforesaid, the Partnership is obligated to pay and/or reimburse to the County forthwith upon demand the amount of all reasonable costs and expenses of any kind, including but not limited to labor, materials, engineering fees, construction management fees, contractor fees, accounting fees, travel expenses, administrative costs, and attorneys fees, which may be incurred by the County to complete construction of said improvements in excess of the remaining Funds.

5. Miscellaneous.

5.1. This Agreement encompasses the entire Agreement of the parties and shall not be modified except by an instrument in writing signed by the parties.

5.2. This Agreement shall be binding upon the parties and their respective representatives and assigns.

5.3. In the event that any party hereto commences a lawsuit or other proceeding relating to or arising from this Agreement, the parties hereto agree that the Circuit Court for the Seventh Judicial Circuit in and for S.t Johns County, Florida, shall have sole and exclusive jurisdiction. This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida without giving effect to the conflict of laws principles thereof.

5.4. All notice required to be given in connection with this Agreement shall be sent and addressed as follows:

If to Partnership:	M.L. Partnership 4400 Marsh Landing Boulevard, P. O. Box 1219 Ponte Vedra Beach, Florida 32082 Attn: Steve Loveland Phone: (904) 285-6921
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With copy to: Marsh Landing Venture
c/o GATX Capital Corporation
Four Embarcadero Center, Suite 2200
San Francisco, California 94111
Attn: Edwin R. Mihm
Phone: (415) 955-3200

If to the County: St. Johns County
Board of County Commissioners
St. Johns County Administration Building
Post Office Drawer 349
St. Augustine, FL 32085-0349
Attn: County Administrator
Phone: (904) 824-8131

If to Escrow Agent: Barnett Bank of Jacksonville, N.A.
50 North Laura Street, Suite
Jacksonville, Florida 32202
Attn: Robert F. Carmichael
Phone: 791-7793

5.5 This Agreement does not impose any responsibility on the County to inspect any construction or installation said to have been completed, nor to determine or assure that the Improvements have actually been made or that they comply with the construction contracts entered into by the Partnership or requirements of the County. The County is not a party to any of the contracts referred to in this Escrow Agreement. The rights and obligations of the County are governed solely by this Escrow Agreement, applicable County Ordinances, and Florida law.

5.6 The Escrow Agreement shall not affect or impair the authority of the County to grant or withhold the issuance of certificates of occupancy for any buildings or structures pursuant to the applicable County Ordinances in respect to the completion or non-completion of

the Improvements.

IN WITNESS WHEREOF, this Agreement has been executed this ____ day of _____, 199__.

Witnesses:

M.L. PARTNERSHIP

By and Through Its Managing General Partner
Marsh Landing Venture, Ltd.

By Marsh Landing Investors, Ltd.

By GGC Marsh Landing, Inc.

Lisa M. Gibson
Print Name Lisa M. Gibson

Andrea T. Dickson
Print Name: Andrea T. Dickson

By: *Edwyn D. Wilson*
Its VP President

Print Name _____

Print Name _____

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY**

By: _____
Its County Administrator

Diane Miller
Print Name Diane Miller

BARNETT BANK OF JACKSONVILLE, N.A.

Elizabeth A. Wilson
Print Name Elizabeth A. Wilson


By: 
Its: VP/President

EXHIBIT "A"
DRAW REQUEST

DRAW REQUEST # _____
DATE _____

Pursuant to the Escrow Agreement dated _____, 199____, by and among M.L. Partnership, the Board of County Commissioners of St. Johns County, and Barnett Bank of Jacksonville, N.A., as Escrow Agent, Escrow Agent is authorized to disburse:

\$ _____ United States Dollars to:

This draw request may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute only one instrument.

Approved this ____ day of _____, 199__.

M.L. PARTNERSHIP
By and Through Its Managing General Partner
Marsh Landing Venture, Ltd.
By Marsh Landing Investors, Ltd.
By GGC Marsh Landing, Inc.

By: _____
Its Authorized Agent

**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

By: _____
Its: _____