

**RESOLUTION NO. 98- 17**  
**RESOLUTION OF THE BOARD OF COUNTY**  
**COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA**  
**AUTHORIZING COUNTY ADMINISTRATOR**  
**TO EXECUTE ESCROW AGREEMENT**

**WHEREAS, the Swan Development Corporation ("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 St. Augustine Shores Unit Two Cortez Drive;**

**WHEREAS, Owner, the board of County Commissioners of St. Johns County, Florida ("County") and First Union National 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 Swan Development Corporation and First Union National Bank, N.A.**

**ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 27 day of January, 1998.**

**Attest:**  
**Cheryl Strickland, Clerk**

**By: Peterson DePardo**  
**Deputy Clerk**

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

**BY: Moses A. Floyd**  
**Its Chair Moses A. Floyd**

## ESCROW AGREEMENT

**THIS ESCROW AGREEMENT**, (the "Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by and among **Swan Development Corporation**, a Florida corporation, ("Swan") 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 **First Union National Bank, N.A.** a national banking association, with offices at 225 Water Street, 3<sup>rd</sup> Floor, Jacksonville, Florida 32202 ("Escrow Agent"),

### RECITALS

**WHEREAS**, Swan has agreed to make certain improvements (the "Improvements") to a subdivision to be known as St. Augustine Shores Unit Two ("Cortez Drive), which Improvements including paving, grading, storm drainage, and other items specified in accordance with plans approved by the County and which are on file with the Engineering Department of the County; and

**WHEREAS**, Swan has agreed to deposit within ten (10) days of the execution of this agreement the sum of \$461,695.25 USD (the "Escrow Funds") with Escrow Agent representing an amount equal to One Hundred Fifteen Percent (115%) of the cost to construct the improvements as estimated by the Corporation's engineer; and

**WHEREAS**, the Improvements shall be installed and constructed by one or more contractors retained by Swan (individually, a "Contractor"). Each Contractor shall submit to County and Swan invoices and executed lien releases on a monthly basis for work that has been completed on the Improvements, for review and approval by Swan and County or for review and approval by County only, as hereinafter provided; and

**WHEREAS**, Escrow Agent has agreed to hold, invest and disburse the Escrow Funds as hereinafter set forth.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. Recitals. The foregoing Recitals are true and correct and are hereby incorporated into this Agreement.

2. Definitions. Capitalized terms which are not defined within the context of the Agreement are defined in Exhibit A attached hereto and made a part hereof.

3. Establishment of Escrow Account.

3.1 Appointment of an Escrow Agent. County and Swan hereby appoint Escrow Agent to serve as escrow agent hereunder. Escrow Agent hereby accepts such appointment and, upon receipt of the Escrow Funds agrees to hold the same in a separate account, and invest and distribute the Escrow Funds in accordance with this Agreement. Swan has deposited or will cause to be deposited with Escrow Agent the Escrow Funds.

3.2 Permitted Uses of Escrow Funds. Swan and County agree that the Escrow Funds in the Escrow Account are to be used exclusively for the purpose of funding the Improvements, as defined herein.

3.3 Requirement to Increase Escrow Funds. In the event that during the term of this Agreement, a Draw Request would reduce the Escrow Funds to an amount which is less than an amount which equals or exceeds the cost of completing the balance of the applicable Improvements plus fifteen percent (15%) thereof, or Swan enters into a change order with any Contractor relating to the Improvements which increases the cost of construction of the Improvements, Swan shall (a) immediately deliver to County a copy of any applicable change order, (b) deliver to Escrow Agent a sum of money equal to the amount of the change order or the additional amount necessary, plus fifteen percent (15%) and (c) deliver to County a notice that the additional funds have been delivered to Escrow Agent. 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.

3.4 Monthly Accounting. Escrow Agent shall furnish to Swan and County an accounting of the receipts in, and disbursements from, the Escrow Account, on a monthly basis.

4. Disbursements of Escrow Funds. Escrow Agent shall disburse all or a portion of the Escrow Funds as follows:

4.1 On or before two years from the Effective Date, within five (5) Business Days to any Contractor who is constructing all or any portion of the Improvements upon Escrow Agent's receipt of a Draw Request in the form of Exhibit B attached hereto executed by a Swan Representative and Exhibit C executed by a County Representative. The disbursement shall be in an amount set forth in the Draw Request.

4.2 At any time after two years from the Effective Date, within five (5) Business Days to any Contractors who have completed the Improvements upon Escrow Agent's receipt of a Draw Request executed by a County Representative only. The disbursement shall be in an amount set forth in the Draw Request. After two years from the Effective Date, it shall not be necessary to obtain the approval of an Swan Representative prior to disbursement to a Contractor.

4.3 County and Swan understand and acknowledge that due to the timing of the approval process required to record a plat, Swan may be required to place in the Escrow Account a sum of money which exceeds the amount necessary to complete the Improvements plus fifteen (15%) of such costs because a Draw Request may be made by any Contractor and paid by Swan after submission and approval of this Agreement by St. Johns County staff, but prior to recording the plat. In such event, if Swan 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 Swan and the County, then Escrow Agent shall release such sums in excess of the required amount to Swan.

4.4 To Swan within five (5) business days of Escrow Agent's receipt of written certification from a County Representative in the form of Exhibit E stating that all of the Improvements have been completed and that County has accepted the Maintenance Bond (as hereinafter defined) provided by Swan Development Corporation. The disbursement shall be in an amount set forth in the written certification received from County. The Maintenance Bond to be provided by Swan upon completion of the Improvements shall either be an amount of money equal to fifteen percent (15%) of the total cost of the Improvements which will remain in the Escrow Account or a letter of credit in form and amount satisfactory to County.

4.5 To County upon receipt of a letter in the form of Exhibit F attached hereto (the "Authorization Letter") executed by a County Representative. Swan agrees that if County has not accepted the Improvements on or before three (3) months from the date of issuance of the first certificate of occupancy in the Subdivision, then County is authorized to present to Escrow Agent the Authorization Letter, and upon receipt of the Authorization Letter, without further action or authorization from Swan, Escrow Agent is authorized to make the disbursement to County in accordance with the Authorization Letter. This disbursement to County may be made even if there are other disbursements then requested under this Agreement. By way of example, if the amount to be disbursed pursuant to an Authorization Letter is such that there will be inadequate funds to make a disbursement required by a previously received Draw Request, then Escrow Agent shall first disburse all amounts payable to County pursuant to the Authorization Letter.

4.6 To County, two years and six months after the Effective Date, if on that date the Escrow Funds (excluding any amounts being held as Maintenance Bonds) have not previously been disbursed in accordance with this Agreement. The disbursement to County in such instance shall be in the amount of the remaining Escrow Funds.

4.7 If, prior to the release of the Funds pursuant to the provisions of this Agreement, Escrow Agent receives written notice from either Swan or the County of a dispute between Swan and the County, Escrow Agent shall not release to County or Swan the Escrow Funds until this dispute has been settled or resolved to the satisfaction of a court of competent jurisdiction.

4.8 At any time and from time to time, upon receipt of a Joint Written Direction.

## 5. Disputes.

5.1 Resolution of Disputes. Any and all disputes arising between County and Swan under this Agreement including shall be resolved in accordance with the procedures set forth in this Agreement.

5.2 Rights of Escrow Agent. If, at any time, there shall exist any dispute between County and Swan with respect to the holding or disposition of any portion of the Escrow Fund or any other obligations of Escrow Agent hereunder, or if at any time Escrow Agent is unable to determine, to Escrow Agent's sole satisfaction, the proper disposition of any portion of the Escrow Funds or Escrow Agent's proper actions with respect to its obligations hereunder, or if a County Representative and an Swan Representative have not appointed a successor Escrow Agent if Escrow Agent resigns hereunder, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

5.2.1 suspend the performance of any of its obligations (including, without limitation, any disbursement obligations) under this Agreement until such dispute or uncertainty shall be resolved to the sole satisfaction of Escrow Agent or until a successor Escrow Agent shall have been appointed (as the case may be); provided, however, that Escrow Agent shall continue to hold the Escrow Agent shall continue to hold the Escrow Funds in accordance herewith, and/or

5.2.2 petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction in St. Johns, Florida for instructions with respect to such dispute or uncertainty, and, to the extent required by law pay into such court all Escrow Funds held by it for holding by such court.

5.3 Generally. Escrow Agent shall have no liability to County, Swan, or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen,

out of or as a result of a delay in the disbursement of Escrow Funds or any delay in or with respect to any other action required or requested of Escrow Agent.

#### 6.0 Escrow Agent's Responsibility.

6.1. 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, its 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 Swan in the Escrow Account plus accrued interest, as provided herein.

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

(a) securities issued or directly and fully guaranteed or insured by the United State Government or any agency instrumentality thereof having 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.

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

(a) Escrow Agent shall not be responsible for the performance by Swan 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 or from a court of competent jurisdiction.

(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 Swan.

(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 Swan 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.

6.4. 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 6.6 below, be entitled to be reimbursed by Swan 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.

6.5. The Escrow Agent may resign as Escrow Agent at any time upon thirty (30) days' prior written notice to Swan and the County. In the case of the Escrow Agent's resignation, its only duty shall be hold the Escrow Account in accordance with the original provisions of this Agreement until such successor escrow agent shall be appointed. No disbursement need be made by Escrow Agent until the appointment of its successor. Swan 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 then on deposit.

6.6. Swan 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, 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's liens filed in connection with the construction of the Improvements. This indemnity shall survive the termination of this agreement.

## 7. Swan's Responsibility.

7.1. Swan 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 Swan 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, Swan 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.

## 8. Miscellaneous.

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

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

8.3. 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 St. 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. The prevailing party in any lawsuit or other proceeding shall recover for the losing party the reasonable attorneys' fees and court costs incurred by the prevailing party.

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

If to Swan: Swan Development Corporation  
49 Shores Blvd.  
St. Augustine, Florida 32086  
Attn: Rudy Gram  
Phone: (904) 794-7900  
Fax: (904) 797-6290

If to the County: St. Johns County  
Board of County Commissioners  
St. Johns County Administration Building  
Post Office Drawer 349  
St. Augustine, Florida 32085-0349  
Attn: County Administrator  
Phone: (904) 824-8131  
Fax: (904) 823-2507

If to Escrow Agent: First Union National Bank of Jacksonville  
225 Water Street, Third Floor  
Jacksonville, Florida 32202  
Attn: Donnie Hurrelbrink  
Phone: (904) 361-3157  
Fax: (904) 361-7735

8.5. 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 Swan or requirements of the County. Neither the County nor the Escrow Agent are 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.

8.6. 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 building or structures pursuant to the applicable County Ordinances in respect to the completion or non-completion of the improvements.

8.7. Swan's engineer is required to carry professional liability insurance with a minimum of \$500,000 general aggregate limits.

**IN WITNESS WHEREOF**, this Agreement has been executed this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

Witnesses:

**SWAN DEVELOPMENT CORPORATION**

\_\_\_\_\_  
Print Name \_\_\_\_\_

By: \_\_\_\_\_  
**Its Vice President**

\_\_\_\_\_  
Print Name \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

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

By: \_\_\_\_\_  
**Its County Administrator**

\_\_\_\_\_  
Print Name \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

**FIRST UNION NATIONAL BANK**

\_\_\_\_\_  
Print Name \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_



## EXHIBIT A

### DEFINITIONS

"Agreement" shall mean this Agreement together with all modifications and amendments thereof.

"Swan" shall have the meaning set forth in the initial sentence hereof.

"Swan Representative" shall mean Al Jacobsen, or any other person designated in writing signed by Rudy Gram or Antony Gram and delivered to Escrow Agent and County in accordance with the notice provisions of this Agreement, to act as its representative under this Agreement. The specimen signatures for the current Swan Representatives are on file with First Union National Bank, N.A. No substitution or addition of an Swan Representative shall be effective without a specimen signature for such substitute or additional Swan Representative.

"Authorization Letter" shall have the meaning set forth in Section 4.5 hereof.

"Business Day" shall mean any day upon which Escrow Agent is open to the public for business in St. Augustine, Florida.

"Contractor" shall have the meaning set forth in the Recitals hereof.

"County" shall have the meaning set forth in the initial sentence hereof.

"County Representative" shall mean the County Administrator or the Assistant County Administrator or any other person designated in writing signed by a County Representative and delivered to Escrow Agent and Swan in accordance with the notice provisions of this Agreement, to act as its representative under this Agreement. The specimen signatures for the current County Representatives are on file with First Union National Bank, N.A. No substitution or addition of a County Representative shall be effective without a specimen signature for such substitute or additional County Representative.

"Draw Request" shall have the meaning set forth in Section 4.1 hereof.

"Effective Date" shall mean the account created by Escrow Agent pursuant to this Agreement.

“Escrow Agent” shall have the meaning set forth in the initial sentence hereof.

“Escrow Funds” shall mean the amount set forth in the second “Whereas” clause of this Agreement, and all income, interest, and dividends thereon. Each reference herein to the Escrow Funds shall be deemed a reference to a portion of such funds, or all of such funds, as applicable.

“Improvements” shall have the meaning set forth in the Recitals hereof.

“Indemnified Parties” shall have the meaning set forth in Section 6 hereof.

“Joint Written Direction” shall mean a written direction executed by a County Representative and an Swan Representative directing Escrow Agent to disburse all or a portion of the Escrow Funds or to take or refrain from taking an action pursuant to this Agreement.

“Losses” shall have the meaning set forth in Section 6 hereof.

**EXHIBIT "B"**

**DRAW REQUEST**

DRAW REQUEST # \_\_\_\_\_

DATE \_\_\_\_\_

Pursuant to the Escrow Agreement dated \_\_\_\_\_, 1998, by and among Swan Development Corporation, the Board of County Commissioners of St. Johns County, and First Union National Bank, 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 \_\_\_\_\_, 1998.

**SWAN DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Its Authorized Agent

**EXHIBIT C**

**Notice of Receipt of Documents  
to Accompany Draw Request of  
Swan Development Corporation**

Draw Request # \_\_\_\_\_

Dated \_\_\_\_\_

Pursuant to Escrow Agreement (Cortez Drive) by and among Swan Development Corporation, a Florida corporation, the Board of County Commissioners of St. Johns County, Florida and First Union National Bank, N.A., the undersigned hereby certifies that it has received

- a. Engineer's Certificate for the referenced draw;
- b. Contractor's Request for payment; and
- c. Draw Request executed by Swan Development Corporation

The undersigned hereby consents to the above described Draw Request executed by Swan Development Corporation.

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

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF  
COUNTY OF**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by \_\_\_\_\_, the \_\_\_\_\_ of St. Johns County, Florida, a public political body, on behalf of the political body, who is personally known to me or who produced \_\_\_\_\_ as identification

\_\_\_\_\_  
Notary Public, State of

Print Name \_\_\_\_\_

My Commission expires:

My commission number:

**EXHIBIT D  
DRAW REQUEST**

(This form is for use by County only after two years from the Effective Date of the Agreement)

**DRAW REQUEST #** \_\_\_\_\_  
**DATE** \_\_\_\_\_

Pursuant to the Escrow Agreement (Cortez Drive) (the "Agreement") dated as of \*\_\_\_\_\_, 1998, by and among Swan Development Corporation, a Florida corporation, the Board of County Commissioners of St. Johns County, and First Union National Bank, N.A., as Escrow Agent, Escrow Agent is authorized to disburse:

\$ \_\_\_\_\_ United States Dollars to:

To the following Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All initially capitalized terms not defined herein shall have the meanings set forth in the Agreement.

Approved this \_\_\_\_ day of \_\_\_\_\_, 1998

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

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1998, by \_\_\_\_\_, the \_\_\_\_\_ of St. Johns County, Florida, a public political body, on behalf of the political body, who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Print Name \_\_\_\_\_  
My Commission expires: \_\_\_\_\_  
My Commission number: \_\_\_\_\_

**EXHIBIT E**  
**(LETTERHEAD)**  
**(DATE)**

First Union National Bank, N.A.  
225 Water Street, 3<sup>rd</sup> Floor  
Jacksonville, Florida 32202

Re: Escrow Agreement Cortez Drive (the "Agreement") dated as of  
\* \_\_\_\_\_ \*, 1998 among First Union National Bank, N.A.  
("Escrow Agent"), Swan Development Corporation ("Swan") and  
Board of County Commissioners of St. Johns County, Florida  
(:County")

Dear Donnie Hurrelbrink:

Please be advised that Swan Development Corporation has provided a Maintenance Bond to St. Johns County as warranty against faulty workmanship for the above referenced project, in compliance with the Escrow Agreement. Therefore, the remaining funds in the Escrow Account may be released. If you have any questions, or if I may be of any assistance, please feel free to contact me at your convenience.

Very truly yours,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF  
COUNTY OF

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1998, by \_\_\_\_\_, the \_\_\_\_\_ of St. Johns County, Florida, a public political body, on behalf of the political body, who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of  
Print Name \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT F**

(LETTERHEAD)

(Date)

First Union National Bank, N.A.  
Trust Department  
Attn: Donnie Hurrelbrink  
225 Water Street, Third Floor  
Jacksonville, Florida 32202

Re: Escrow Agreement Cortez Drive (the "Agreement")  
dated as of \* \_\_\_\_\_ \*, 1998 among First  
Union National Bank, N.A. ("Escrow Agent"), Swan  
Development Corporation ("Swan") and Board of  
County Commissioners of St. Johns County, Florida  
("County")

Dear Mr. Hurrelbrink:

All of the initially capitalized terms used herein shall have the meanings assigned to such terms in the Agreement. The undersigned hereby directs you to deliver the funds remaining in the Escrow Account pursuant to the Agreement to St. Johns County, Florida to pay for the cost of completing the Subdivision Improvements in accordance with St. Johns County standards as established by Ordinance Number 86-f as revised and the costs incurred by St. Johns County in administering and completing the inspection of the Subdivision Improvements in accordance with St. Johns County standards as established by Ordinance Number 86-f as revised.

Very truly yours,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: County Representative  
Date: \_\_\_\_\_