

RESOLUTION NO. 2004- 136

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA AUTHORIZING COUNTY
ADMINISTRATOR TO EXECUTE ESCROW AGREEMENT AND
TO ASSIGN A COUNTY REPRESENTATIVE FOR SAME.**

WHEREAS, Swan Development Corporation has constructed improvements in the St. Augustine Shores Unit 7 Phase 1 as per approved construction plans, and in compliance with bonding requirements per Ordinance 99-51 for roadway maintenance and internal sidewalk construction, Swan will establish and fund an escrow account in accordance with the 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:

- Section 1. The Escrow Agreement attached hereto and made a part hereof is hereby approved.**
- Section 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 Wachovia Bank.**
- Section 3. Donald J. Hallman is designated as County Representative for authorization of any drawdowns to this account.**

DULY ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 22nd day of June, 2004.

ATTEST:

Cheryl Strickland, Clerk

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

By: 

Karen Stern, Its Chair

By: 

Deputy Clerk

ST. JOHNS COUNTY, FLORIDA
Board of County Commissioners



Growth Management Services
Development Services Department

P.O. Drawer 349
Saint Augustine, FL
32085-0349

PHONE (904) 823-2497
FAX (904) 823-2585

May, 27 2004

To: Wachovia Bank
225 Water St. Third Floor
Attn: Stephanie Moore
Jacksonville, FL 32202

Linda Kouremetis
Swan Development Corporation
49 Shores Blvd
St. Augustine, FL 32086

From: Ben Adams
St. Johns County Administrator

Re: Escrow Agreement for The Shores Unit Seven
for Roadway Maintenance and Sidewalk Construction

This letter is to designate Donald J. Hallman as the County Representative for the purpose of authorizing drawdowns to the above escrow account. This designation is being noticed per the notice provisions of the Escrow Agreement for the above account.

Sincerely,

Ben Adams
County Administrator

Donald J. Hallman

A handwritten signature in cursive script that reads "Donald J. Hallman". The signature is written in black ink and is positioned below the printed name.

ESCROW AGREEMENT
"MAINTENANCE & SIDEWALKS"

THIS ESCROW AGREEMENT, (the "Agreement") made this _____ day of _____, 2004, 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 Wachovia Bank, a national banking association, with offices at 225 Water Street, 3rd 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 Seven, 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 \$ 138,252. USD (the "Escrow Funds") with Escrow Agent representing, according to Swan, an amount equal to Fifteen Percent (15%, \$84,119.) of the cost to construct the roads, drainage and utilities as estimated by the Swan's engineer; and one hundred fifteen (115% , \$54,133.) of the cost to construct internal sidewalks.

WHEREAS, the sidewalks shall be installed and constructed by each contractor prior to obtaining a Certificate of Occupancy on each lot which required a sidewalk, 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, the "Escrow Account" hereby created and established will 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 as maintenance and sidewalk security.
 - 3.3. 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 Escrow Funds as follows:
 - 4.1. At any time after construction of some portion of the required sidewalks, Swan may submit a Sidewalk Draw Request (Exhibit B) along with a list of lots and length of sidewalk which has been constructed, to be executed by the designated County Representative. Upon verification and approval of the listed construction, the disbursement shall be approved. Disbursements will be prorated on linear ft. of sidewalk constructed. The amount of this escrow account which is allocated to maintenance of constructed roads, drainage and utility improvements shall not be eligible for draws. Upon successful completion of the 26 month maintenance period, and repair by Swan of all repairs listed by the county on a final inspection, the remaining amount of the maintenance funds may be disbursed by submittal of the Final Maintenance Draw request (Exhibit C).
 - 4.2. 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 County and Swan or a court of competent jurisdiction.
 - 4.3. 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 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 money in the Escrow Funds 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 Account 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 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. 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, 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 Swan in the Escrow Account plus investment income, if any, 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:

- 6.2.1. Securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof having maturities of not more than twelve months from the date of acquisition, or
 - 6.2.2. 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 such 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:
- 6.3.1. Escrow Agent shall not be responsible for the performance by Swan or the County under this Agreement or any other agreement.
 - 6.3.2. 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, 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.
 - 6.3.3. 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.
 - 6.3.4. 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.
 - 6.3.5. Escrow Agent shall have no responsibility with respect to the use or application of any moneys or other property paid or delivered to Escrow Agent pursuant to the provisions of this Agreement.

- 6.3.6. 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.
- 6.3.7. 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 to 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 perform any repairs listed on the County's final walk. At the time the County signs off on the final maintenance inspection, they will notify Escrow Agent via Exhibit "E" to release 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.
- 8.4. All notices required to be given in connection with this Agreement shall be sent by mail, overnight courier or fax to all parties 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: Wachovia Bank
225 Water Street, Third Floor
Jacksonville, Florida 32202
Attn: Corporate Title Group
Phone: (904) 489-5582
Fax: (904) 489-5410

- 8.5. This Agreement does not impose any responsibility on the County or Escrow Agent 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 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 _____, 2004.

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 _____ **WACHOVIA BANK**

Print Name _____ **By: _____**
Its: _____

EXHIBIT A DEFINITIONS

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

“Business Day” shall mean any day upon which Escrow Agent is open to the public for business in Jacksonville, 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 Wachovia Bank. 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 have the meaning set forth in the initial sentence of the Agreement.

“Escrow Agent” shall mean the account created by Escrow Agent pursuant to this Agreement.

“Escrow Funds” shall mean the amounts 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 6.6 hereof.

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

“Swan Representative” shall mean any 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 Wachovia Bank. No substitution or addition of an Swan Representative shall be effective without a specimen signature for such substitute or additional Swan Representative.

EXHIBIT "B"
SIDEWALK
DRAW REQUEST

DRAW REQUEST # _____

DATE _____

Pursuant to the Escrow Agreement dated _____, 2004, by and among Swan Development Corporation, the Board of County Commissioners of St. Johns County, and Wachovial 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 _____, 2004.

SWAN DEVELOPMENT CORPORATION

By: _____
Rudy Gram, Vice President

EXHIBIT C
FINAL MAINTENANCE DRAW

Wachovia Bank
Attn: Corporate Trust Group
225 Water Street, 3rd Floor
Jacksonville, Florida 32202

Re: Escrow Agreement Unit Seven (the "Agreement") dated as of* _____ *, 2004 among Wachovia Bank, ("Escrow Agent"), Swan Development Corporation ("Swan") and Board of County Commissioners of St. Johns County, Florida (:County")

Dear Ladies & Gentlemen:

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 _____, 2004, 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: _____

SCHEDULE A

Escrow Funds

Escrow Funds amount: \$ _____

Escrow Funds wiring instructions: Wachovia Bank, National Association
ABA#053000219
Account #5000 0000 16439
Attn: Stephanie Moore, BR 4800
Re: Swan #7,NCS #

Escrow Agent Fees

Acceptance Fee: \$ _____

Annual Escrow Fee: \$ 1,250.00 _____

Out-of-Pocket Expenses: \$ _____

[Transactional Costs]: \$ _____

[Other Fees/Attorney, etc.]: \$ _____

Total: \$ _____

The Acceptance Fee and the Annual Escrow Fee are payable upon execution of the escrow documents. In the event the escrow is not funded, the Acceptance Fee and all related expenses, including attorneys' fees remain due and payable, and if paid, will not be refunded. Annual fees cover a full year in advance, of any part thereof, and thus are not pro-rated in the year of termination.

The fees quoted in this schedule apply to services ordinarily rendered in the administration of an Escrow Account and are subject to reasonable adjustment based on final review of documents, or when the Escrow Agent is called upon to undertake unusual duties or responsibilities, or as changes in law, procedures, or the cost of doing business demand. Services in addition to and not contemplated in this Agreement, including, but not limited to, document amendments and revisions, non-standard cash and/or investment transactions, calculations, notices and reports, and legal fees, will be billed as extraordinary expenses.

Unless otherwise indicated, the above fees relate to the establishment of one escrow account. Additional sub-accounts governed by the same Escrow Agreement may incur an additional charge. Transactions cost include charges for wire transfers, checks, internal transfers and securities transactions.

Taxpayer Identification Numbers

Depositor: _____

Recipient: _____

Investment Instructions

Unless otherwise directed in writing, all funds will be invested in the Goldman Sachs Governmental Money Market fund #466.

Representatives

The following person is hereby designated and appointed as Depositor Representative under the Escrow Agreement.

Name

Specimen Signature

The following person is hereby designated and appointed as Recipient Representative under the Escrow Agreement.

Name

Specimen Signature

Representative Information:

The following information should be provided to Escrow Agent separately by each Representative and any future Representative.

- Date of Birth
- Address
- Mailing Address, if different
- Social Security Number