

RESOLUTION NO. 95- 169
RESOLUTION OF THE BOARD OF COUNTY
COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA
AUTHORIZING COUNTY ADMINISTRATOR
TO EXECUTE ESCROW AGREEMENT

WHEREAS, Atlantic Gulf Communities Corporation, ("Owner"), and The Board of County Commissioners of St. Johns County ("County") have entered into a Settlement Agreement dated April 14, 1992, which was a part of the settlement of claims by the County in the case filed by General Development Corporation as Debtor and Debtor-in-Possession under Chapter 11 of the Bankruptcy Code and styled as In Re General Development Corporation; Case No. 90-12231 - BKC-AFC, United States Bankruptcy Court for the Southern District of Florida, Miami Division, as Such Settlement Agreement was amended in the First Amendment to Settlement Agreement dated May 12, 1993, and Second Amendment to Settlement Agreement dated February 8, 1994 ("Settlement Agreement"), whereby the Owner agreed to place certain funds in escrow to assure the completion of certain subdivision improvements;

WHEREAS, the 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 Julington Creek Plantation Parcel 20 Phase 1;

WHEREAS, pursuant to the Settlement Agreement, 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 Atlantic Gulf Communities Corporation and First Union National Bank.

ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 26 day of September, 1995.

Attest:

Carl "Bud" Markel, County Clerk

By: Rosemary Lewis
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

BY: Barbara Ward
Its CHAIRMAN

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, (the "Agreement") made this 29th day of AUGUST, 1995, by and among **Atlantic Gulf Communities Corporation**, a Delaware corporation authorized to do business in the State of Florida, successor in interest to General Development Corporation, a Delaware corporation authorized to do business in the State of Florida, as Debtor-in-Possession under that United States Bankruptcy Court proceedings, Case No.: 90-12231-BKC- [AJC], with offices at 1111 Durbin Creek Boulevard, Jacksonville, Florida 32259, ("Atlantic Gulf") 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 of Florida**, a national banking corporation, with offices at Corporate Trust Department, One First Union Financial Center-14th Floor, FL6065, 200 South Biscayne Boulevard, Miami, Florida 33131 ("Escrow Agent").

WHEREAS, Atlantic Gulf has agreed to make certain improvements to a subdivision to be known as Julington Creek Plantation Parcel 20 Phase 1, 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 (the "Improvements"); and

WHEREAS, Atlantic Gulf has agreed to deposit the sum of \$483,986.50, USD, with the Escrow Agent, (the "Funds") representing an amount equal to One Hundred and Fifteen Percent (115%) of the estimate of the cost of such Improvements within ten (10) days of the execution of this Agreement; and

WHEREAS, the Contractors retained by Atlantic Gulf 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 Atlantic Gulf and the County until the Funds are paid

to the County, as hereinafter provided and, thereafter, for review and approvals by the County only;
and

WHEREAS, Atlantic Gulf and the County have executed, on April 14, 1992, a separate agreement which agreement has been amended by that certain First Amendment to Settlement Agreement dated May 12, 1993, and that certain Second Amendment to Settlement Agreement dated February 8, 1994, which more fully describes the rights and obligations between Atlantic Gulf and the County (the "Settlement Agreement"); 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 Atlantic Gulf with Escrow Agent who shall hold, invest and distribute the Funds from time to time as hereinafter set forth (the "Escrow Account").

1.2. Atlantic Gulf and the County agree that the Funds in the Escrow Account are to be used exclusively for the purpose of funding the Improvements and the Maintenance Bonds, as defined in the Settlement Agreement.

1.3. All interest income in the Escrow Account shall be attributed to Atlantic Gulf 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, Atlantic Gulf enters into a change order with the contractor relating to the Improvements, Atlantic Gulf 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 fifteen percent (15%) 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.

2. Disbursements.

2.1. The Escrow Agents 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 contractor who has completed the Improvements within five (5) business days of Escrow Agents' receipt of a Draw Request approved both by Atlantic Gulf 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.

(b) After two years from the Effective Date, to the contractor who has completed the Improvements with 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 Atlantic Gulf prior to disbursement to the contractor.

(c) The parties understand and acknowledge that due to the timing of the approval process required to record a plat, Atlantic Gulf may be required to place in the Escrow Account a sum of money which exceeds the amount necessary to complete the Improvements and fund the Maintenance Bonds because a Draw Request may be made by the Contractor

and paid by Atlantic Gulf after submission and approval of the Escrow Agreement by St. Johns County staff, but prior to recording the plat. In such event, if Atlantic Gulf delivers (i) a certificate from the engineer for the Improvements that the amount held in the Escrow Account exceeds One Hundred Percent (100%) of the amount necessary to complete the Improvements and fifteen percent (15%) of the total cost of construction to fund the Maintenance Bonds, and (ii) a written request for reimbursement, executed by Atlantic Gulf and the County, then Escrow Agent may release such sums in excess of the required amount to Atlantic Gulf.

(d) To Atlantic Gulf with five (5) business days of Escrow Agent's receipt of written certification from the County that all of the Improvements have been completed and that the County has accepted the Maintenance Bond provided by Atlantic Gulf. The disbursement shall be in an amount set forth in the written certification 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.

(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 Atlantic Gulf or the County of a dispute between Atlantic Gulf 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.

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

(h) Atlantic Gulf agrees that if the 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 Julington Creek Plantation Parcel 20 Phase 1, then the County is authorized to present to the Escrow Agent a copy of the letter attached hereto as Exhibit B ("Authorization Letter") duly executed by the County and Atlantic Gulf, and upon such presentation and without further action or authorization from Atlantic Gulf, the Escrow Agent is authorized to make the disbursement to the County in accordance with the Authorization Letter. This disbursement to the County may be made even if there are other disbursements then requested under this Agreement.

(i) Contemporaneously with the execution of this Agreement by Atlantic Gulf, Atlantic Gulf will deliver to the County to hold in escrow the Authorization Letter. Atlantic Gulf agrees that the County is authorized to deliver the letter to the Escrow agent as provided in the First Amendment to the Settlement Agreement. The Escrow Agent shall have no duty to verify the facts relating to the County's delivery of the Authorization Letter and shall be absolutely protected in making payment to the County against delivery of the Authorization Letter.

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 Atlantic Gulf 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 Atlantic Gulf 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 Fidelity Treasury Trust Income Money Market Funds.

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

(a) Escrow Agent shall not be responsible for the performance by Atlantic Gulf 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, 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 Atlantic Gulf.

(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 Atlantic Gulf 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 Accounts pursuant to this Agreement, Escrow Agent shall, in addition to the indemnification provided for in Section 3.6 below, be entitled to (i) payment for its services as Escrow agent in accordance with Exhibit C attached hereto per escrow account payable by Atlantic Gulf upon receipt by Escrow Agent of the Funds to the extent that such fee has not already been paid pursuant to this Agreement, and (ii) be reimbursed by Atlantic Gulf, 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 Atlantic Gulf 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. Atlantic Gulf 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. Atlantic Gulf 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. Miscellaneous.

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

4.2. This Agreement shall be binding upon the parties and their respective representatives and assigns, including, but not limited to, any Chapter 7 trustee appointed by the

court pursuant to the U.S. Bankruptcy Code in conjunction with Consolidated Case No.: 90-12231-BKC-AJC.

4.3. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the proper venue and jurisdiction for any action or claim with respect to this Agreement or any document delivered pursuant hereto shall be in the appropriate court in St. Johns County, Florida.

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

If to Atlantic Gulf: Atlantic Gulf Communities Corporation
1111 Durbin Creek Boulevard
Jacksonville, Florida 32259
Attn: J. Thomas Gillette, III
Phone: (904) 287-4180

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: First Union National Bank of Florida
Corporate Trust Department
One First Union Financial Center - 14th Floor, FL6065
200 South Biscayne Boulevard
Miami, Florida 33131
Attn: Ms. Isabel De Lara
Phone: (305) 789-4684

IN WITNESS WHEREOF, this Agreement has been executed this 2 day of

October, 1995.

Witnesses:

Sharon Wilson
Print Name Sharon Wilson

May Ann Beckley
Print Name: May Ann Beckley

Patricia DeGrande
Print Name Patricia DeGrande

Yvonne Carter
Print Name Yvonne Carter

Saudie Feliz
Print Name SAUDIE FELIZ

José W. Hernández
Print Name José W. Hernández

ATLANTIC GULF COMMUNITIES CORPORATION

By: [Signature]
Its Vice President

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY

By: [Signature]
Its County Administrator

FIRST UNION NATIONAL BANK OF FLORIDA

By: [Signature]
Its: TRUST OFFICER

EXHIBIT "A"
DRAW REQUEST

DRAW REQUEST # _____
DATE _____

Pursuant to the Escrow Agreement dated _____, 1995, by and among the Atlantic Gulf Communities Corporation, a Delaware corporation, the Board of County Commissioners of St. Johns County, and First Union National Bank of Florida, 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__.

**ATLANTIC GULF COMMUNITIES
CORPORATION**

By: _____
Its: _____

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

By: _____
Its: _____

EXHIBIT "B"
AUTHORIZATION LETTER

First Union National Bank of Florida
Corporate Trust Department
One First Union Financial Center - 14th Floor, FL6065
200 South Biscayne Boulevard
Miami, Florida 33131

Re: Funds Remaining in Escrow under Escrow Agreement dated _____, 1995
(Julington Creek Plantation Parcel 20 Phase 1)

Gentlemen:

The undersigned hereby direct you to deliver the funds remaining in the escrow account pursuant to the referenced Escrow Agreement in the amount of \$ _____ 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 86-4 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 86-4 as revised.

ATLANTIC GULF COMMUNITIES
CORPORATION

BY: _____

ST. JOHNS COUNTY

BY: _____
County Administrator

"EXHIBIT C"

FIRST UNION NATIONAL BANK OF FLORIDA

FEE SCHEDULE
FOR
ATLANTIC GULF COMMUNITIES
JULINGTON 20 / PHASE I

Administrative Fee:

Annual Administrative Fee \$1,500.00
in advance (*No pro-ration*)

Activity Charges:

Disbursements \$10.00
Deposits \$10.00
Returned Checks \$10.00
Investment Transactions \$35.00 Buy/Sell
(*Excluding Money Market Funds*)
Cash Management Fee 30 Basis Points on
(*Money Market Funds Only*) Average Monthly Balance
Out of Pocket Expenses At Cost
Legal Fees At Cost

AUTOMATIC CASH MANAGEMENT

You are hereby authorized to invest the cash balances in our Julington 20/Phase I Account in the below mentioned Money Market Fund under the Automatic Cash Management offered by First Union National Bank of Florida.

FIDELITY U.S. TREASURY INCOME PORTFOLIO FUND

AUTHORIZED SIGNATURE: _____
DATE: _____ 8/28/95

Please return to: First Union National Bank of Florida
Corporate Trust Department
First Union Financial Center
200 South Biscayne Boulevard
14th Floor - FL6065
Miami, Florida 33131

Attn: Isabel F. De Lara
(305) 789-4684
Fax: (305) 789-4678