

UTILITY TRANSFER AGREEMENT

THIS UTILITY TRANSFER AGREEMENT ("Agreement") is made as of the 29th day of February, 1996 by and among ATLANTIC GULF COMMUNITIES CORPORATION, a Delaware corporation formerly known as General Development Corporation ("Atlantic Gulf"), GENERAL DEVELOPMENT UTILITIES, INC., a Florida corporation ("GDU") and HENDRY COUNTY, FLORIDA ("County"). Atlantic Gulf and GDU are sometimes hereinafter collectively referred to as "Transferor".

W H E R E A S:

A. Atlantic Gulf is a party to certain installment land sales contracts (collectively, "Contracts" and individually, "Contract") with various third party purchasers (collectively, "Purchasers" and individually, "Purchaser") for the sale and purchase of individual homesite lots (collectively, "Lots" and individually, "Lot") within the plats described on Exhibit "A" attached hereto ("Plats"), all of which are located within the collective boundaries of Glades and Hendry Counties, Florida.

B. At the time Atlantic Gulf entered into the Contracts, Transferor intended to construct water and sewer utility facilities which would service the Lots, and the Contracts required the Purchasers thereunder to pay to Atlantic Gulf monthly service extension fees ("Utility Fees"), which would be credited against the utility connection fee payable by the applicable Purchaser when the Purchaser connected into the utility facilities servicing Purchaser's Lot.

C. Transferor is a party to the following escrow agreements (collectively, "Escrow Agreements"): (i) Escrow Agreement dated March 26, 1985 ("All Other States Agreement") by and between Transferor and Citibank, N.A. ("Citibank"); and (ii) New York Escrow Agreement dated September 7, 1976 ("New York Agreement") by and between Transferor and Citibank and consented to by the Department of State, State of New York ("New York Department"), both of which set forth an arrangement for the escrowing of the Utility Fees collected by Transferor, the release of Utility Fees from escrow and certain other matters, all as more particularly set forth therein.

D. Pursuant to the Restated Second Amended Joint Plan of Reorganization of General Development Corporation filed in the United States Bankruptcy Court, Southern District of Florida under Case No. 90-12231-BKC-AJC ("Joint Plan"), Atlantic Gulf implemented the Homesite Purchaser Assurance Program Utility Service Program ("HPAP Utility Service Program") and the "Class 14 Utility Service Program" (as described in the Joint Plan) to allow Atlantic Gulf additional time after a deeded customer indicates an intention to build a residence upon the deeded homesite to cause utility service

to be extended by the "utility provider", or alternatively, to transfer the customer to a utility-satisfied homesite.

E. To ensure its future performance under the HPAP Utility Service Program and the Class 14 Utility Service Program, Atlantic Gulf, in conjunction with the State of Florida, Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes ("Florida Department") and other interested parties, established two utility trusts funded with ten million dollars of GDU utility sales proceeds to be administered pursuant to the following trust agreements ("Utility Trusts"): (i) Homesite Program Utility Fund Trust Agreement dated December 8, 1992 ("HPAP Trust"), by and between Atlantic Gulf and First Union National Bank of Florida, as Trustee ("Trustee"); and (ii) Class 14 Utility Fund Trust Agreement dated December 8, 1992, ("Class 14 Trust") by and between Atlantic Gulf and Trustee.

F. GDU and County are parties to that certain Water and Sewer System Asset Purchase and Sale Agreement dated October 14, 1994 (the "Utility Sales Agreement"), whereby GDU agreed to sell and County agreed to purchase that certain water and sewer system commonly known as the Port LaBelle Water and Sewer System ("System").

G. Upon the sale of the System, Transferor will no longer be able to extend water and sewer utility service to the Lots. Therefore, the Utility Sales Agreement provides, among other things, the following: (i) County will provide water and sewer service to GDU's customers consistent with or superior to the services currently being provided by GDU to its customers; (ii) County will provide water and wastewater service to Atlantic Gulf and properties owned by Atlantic Gulf, directly or indirectly, in a uniform and non-discriminatory manner with other property and property owners served by the County within the certificated area of the System; (iii) Transferor shall transfer into the New Escrows (as hereinafter defined) for the benefit of the County, the following: (a) the Utility Fees (for final deeded and active Contracts) held by Citibank under the Escrow Agreements which were paid by the Purchasers of the Lots, together with certain interest thereon which shall be: (x) at the rate set forth in the Contracts [the "Contract Interest" which is either: (1) a stipulated fixed rate (the "Stipulated Rate"), or (2) the passbook savings account rate paid by Citibank (the "Passbook Rate")] for all periods up until the Closing Date (as hereinafter defined), and (y) at the actual accrual rate earned from and after the Closing Date until the date that the funds are actually transferred into the New Escrows (the "Transfer Date"); and (iv) Transferor shall file the Withdrawal Certificates (as hereinafter defined) with the Trustee instructing the Trustee to disburse directly to the County \$1,000,000 of the trust funds held by Trustee under the Utility Trusts, to help pay for the cost of extending water and sewer utility service to the Lots.

H. The parties are entering into this Agreement to effectuate items (i), (ii), (iii) and (iv) in recital G above, subject to the terms and provisions set forth below.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by this reference.

2. Service Obligations. County hereby agrees as follows: (i) to provide water and sewer service to GDU's customers consistent with or superior to the services currently being provided by GDU to its customers; and (ii) to provide water and wastewater service to Atlantic Gulf and properties owned by Atlantic Gulf, directly or indirectly, in a uniform and non-discriminatory manner with other property and property owners served by the County within the certificated area of the System. Notwithstanding the foregoing, Atlantic Gulf shall remain liable for the transfer of deeded homesite purchasers to utility satisfied lots in accordance with and subject to the conditions set forth in the HPAP Utility Service Program and the Class 14 Utility Service Program.

3. Transfer of Utility Fees. The parties acknowledge and agree that the Utility Fees are currently invested and may not be transferred on the date that GDU and the County actually close on the sale and purchase of the System under the Utility Sales Agreement (the "Closing Date"). In that regard, Transferor shall direct Citibank to: (i) transfer Two Million Eight Hundred Sixty Eight Thousand Three Hundred Four and 30/100 (\$2,868,304.30) Dollars of Utility Fees, together with: (a) the Contract Interest earned thereon for all periods up to the Closing Date (but retaining any additional interest earned thereon during such period for the benefit of Transferor), and (b) all interest earned on the portion of the Utility Fees to be transferred from the escrows established pursuant to the All Other States Agreement to a new escrow to be administered pursuant to the terms and provisions of the escrow agreement attached hereto as Exhibit "B", from the Closing Date to the Transfer Date; and (ii) transfer Three Million Four Hundred Seven Thousand Sixty Three and 90/100 (\$3,407,063.90) Dollars of Utility Fees, together with: (a) the Contract Interest earned thereon for all periods up to the Closing Date (but retaining any additional interest earned thereon during such period for the benefit of Transferor), and (b) all interest earned on the portion of the Utility Fees to be transferred from the escrows established pursuant to the New York Agreement to a new escrow to be administered pursuant to the terms and provisions of the escrow agreement attached hereto as Exhibit "C", from the Closing Date to the Transfer Date. Transferor shall direct Citibank to make the

foregoing transfers at the time the investments under the All Other States Agreement and the New York Agreement reach maturity, which maturity date shall not exceed forty-five (45) days following the date of the Closing. The escrow accounts to be established pursuant to the agreements attached hereto as Exhibits "B" and "C" are hereinafter each referred to as a "New Escrow" and collectively as the "New Escrows". The transfer of the Utility Fees to the New Escrows, as provided herein, shall be subject to the following terms and provisions:

- A. The parties acknowledge and agree that all interest in excess of the Contract Interest earned on the Utility Fees being transferred prior to the date of Closing shall be the property of Transferor, and all interest earned on the Utility Fees being transferred from the Closing Date until the Transfer Date shall be for the benefit of County and delivered into the New Escrows, as set forth above. The amount of Contract Interest earned on the Utility Fees shall be calculated as follows: (i) Contracts earning interest at the Passbook Rate shall utilize the Passbook Rate used for the Escrow Agreements in effect as of December 31 of each calendar year for that year, and interest at the Passbook Rate for calendar year 1996 shall be estimated (and prorated effective as of the Closing Date) based on the Passbook Rate in effect as of December 31, 1995, and (ii) Contracts earning interest at the Stipulated Rate shall be calculated utilizing such Stipulated Rate. At the request of either party, the parties shall re-prorate and readjust the 1996 interest earned at the Passbook Rate which was estimated and prorated at closing based on the December 31, 1995 rate, by utilizing the Passbook Rate used for the Escrow Agreements calculated as of December 31, 1996, provided that the readjustment will result in an adjusted amount in excess of five (5%) percent of the 1996 estimated Contract Interest transferred to the County.
- B. Except as provided in paragraph 3C below, the Utility Fees (including Contract Interest), as appropriate, pertaining to the applicable Lot shall be released to the County upon the County extending water and sewer facilities to such Lot so that water and sewer service is then available at the boundary of the Lot in sufficient capacity to adequately service a home built (or to be built) on the Lot (or upon the County extending water facilities to a particular Lot and waiving the central sewer requirement so that a building permit may be issued with a permanent septic tank). Notwithstanding the foregoing, the County shall be entitled to make partial withdrawals from the New Escrows prior to completion of the extension of water and sewer facilities to individual Lots in an amount proportionately equal to the percentage

of work completed (pursuant to a written construction contract as provided below) as certified by an appropriately licensed and qualified engineer and in accordance with the New Escrows, provided that: (i) County has first entered into a written construction contract with a reputable and bondable general contractor (the "Contractor"), and (ii) the Contractor's obligations are guaranteed and secured by a surety rated at least "A" by A.M. Best and licensed to do business in Florida, with a public construction bond in statutory form meeting all of the requirements of Section 255.05, Florida Statutes.

- C. In the event the County elects to finance the extension of the water and sewer utility service to the Lots with the proceeds of municipal bonds, supported, in whole or in part, by assessment revenues from newly created special assessment districts, community development districts or similar districts ("Assessments"), the County shall, upon the actual final binding and certified assessment of the Lots (or a portion thereof) beyond the expiration of all applicable appeal periods, be permitted to withdraw a portion of the Utility Fees, together with the applicable portion of Contract Interest on such withdrawal, attributable to the assessed Lots from the escrow.
- D. The owner of the Lot shall receive a credit against the first sums due for any future obligation to pay Assessments, connection fees or impact fees for use rights and/or installation of the water and sewer lines in a total amount equal to the amount of Utility Fees (including Contract Interest earned prior to and subsequent to the actual date of transfer by Transferor to the New Escrows) released to the County with respect to the applicable Lot. This credit shall run with title to the Lot.
- E. The Utility Fees (including Contract Interest) shall only be applied by the County toward the cost of extending water and/or sewer utility service to the Lots as described herein. The Utility Fees (including Contract Interest) shall be so applied for the benefit of the owner of each Lot at the time of extending such service to that Lot, irrespective of whether such owner is the original purchaser of the Lot from Atlantic Gulf or a transferee of such original purchaser.
- F. In the event that a Purchaser exchanges a Lot for another lot located outside of Glades and Hendry Counties, Florida ("Other County Lot") pursuant to the Contract, the portion of the Utility Fees (including Contract Interest) attributable to such Lot shall be transferred

to the escrow agent under the New York Agreement or All Other States Agreement, as applicable. Similarly, in the event a purchaser under an installment land sales contract with Atlantic Gulf exchanges an Other County Lot for a Lot located in Glades or Hendry County, Florida, Atlantic Gulf shall cause the transfer of the utility fees (including interest earned thereon at the rate set forth in the applicable Contract for the Lot(s) being transferred) attributable to the Other County Lot under the New York Agreement or All Other States Agreement, as applicable, to the escrow agent under the applicable New Escrow. In such event, Atlantic Gulf shall transfer such monies within ten (10) days following such exchange of Lot(s) and promptly deliver notice of the exchange to the County. In the event a Purchaser exchanges a Lot for another lot located in Glades and/or Hendry County, Florida ("Same County Lot") pursuant to the Contract, the portion of the Utility Fees (including Contract Interest) attributable to such Lot shall be reallocated to the Same County Lot under the applicable New Escrow. County shall cause any reallocation or transfer of Utility Fees under this paragraph to occur on or before ten (10) days following written notice from Atlantic Gulf or GDU of such exchange of Lot.

- G. The County shall keep and maintain a current, accurate accounting of all Utility Fees (including Contract Interest) paid to the County, all on a Lot by Lot basis, and shall, upon Transferor's written request therefor, provide Transferor with a copy of such written accountings. All books and records of County with respect to the Utility Fees shall be open for inspection from time to time by Transferor at all reasonable times upon written request of Transferor.

4. Transfer of escrowed funds from Utility Trusts. Transferor agrees with the County that Transferor shall file withdrawal certifications in the form attached hereto as Exhibit "F" (the "Withdrawal Certificates") with the Trustee instructing the Trustee to disburse directly to the County as soon as reasonably feasible (but in any event prior to December 31, 1996), an aggregate amount of One Million and No/100 (\$1,000,000.00) Dollars from the HPAP Trust and/or the Class 14 Trust, to be used by the County in conjunction with providing water utility service (including, without limitation, line extension and plant expansion) within the Plats (collectively, the "Utility Trust Funds"). The parties acknowledge and agree that the withdrawal of Utility Trust Funds by Transferor from the Class 14 Trust and/or HPAP Trust are "routine cash withdrawals" thereunder, and the transfer of such funds by Transferor to County for the provision of water and sewer service constitutes a "Permitted Class 14 Use" and "Permitted Homesite Use", respectively, and Transferor shall request the

Division to approve such expenditure and the Trustee(s) to release the Utility Trust Funds. County covenants and agrees that: (a) County will utilize the Utility Trust Funds prior to withdrawal of any funds from the New Escrows, and (b) the Utility Trust Funds shall be utilized solely for providing water service to Lots of Purchasers.

The County shall keep and maintain a current, accurate accounting of all Utility Trust Funds, and shall, upon Transferor's written request therefor, provide Transferor with a copy of such written accountings. All books and records of County with respect to the Utility Trust Funds shall be open for inspection from time to time by Transferor at all reasonable times upon written request of Transferor. In this regard, the County has simultaneously with the execution hereof, entered into a certain Agreement with the Florida Department in the form attached hereto as Exhibit "E".

5. Assignment. The County shall not be permitted to assign its rights or obligations under this Agreement. Notwithstanding the foregoing, County shall be entitled to assign its rights and obligations under this Agreement and the related Escrow Agreements to a governmental entity or authority established by the County or jointly with Glades County, Florida for purposes of constructing and operating the System.

6. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given on the date of delivery, if delivered by hand, sent by recognized courier (such as Federal Express), or sent by written telecommunication (such as telecopy or fax) or three (3) days after mailing, if mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the County at:

Hendry County, Clerk of the
Circuit Court
P.O. Box 1760
LaBelle, Florida 33935
Fax No. (941) 675-5317

with a copy to:

Hendry County Attorney
County Annex Building
50 S. Bridge Street, P.O. Box 1760
LaBelle, Florida 33935
Fax No. (941) 675-5317

If to Transferor:

Atlantic Gulf Communities Corporation
2601 South Bayshore Drive
Miami, Florida 33133
Attn: Thomas W. Jeffrey, Chief
Financial Officer
Fax No.: (305) 859-4360

with a copy to:

Matthew B. Gorson, Esq.
Greenberg, Traurig, Hoffman, Lipoff,
Rosen & Quentel, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Fax No.: (305) 579-0717

7. Miscellaneous.

a. This Agreement shall be construed and governed in accordance with the laws of the State of Florida. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof, and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

b. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, the remainder of this Agreement shall be construed to be in full force and effect.

c. In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels.

d. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall be held to include every other gender and all genders, and captions and paragraph headings shall be disregarded.

e. Time shall be of the essence for each and every provision of this Agreement.

f. All of the exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

8. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought and unless approved by the Florida Department and New York Department. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns.

EXECUTED as of the date first above written in several counterparts, each of which shall be deemed an original, but all constituting only one agreement.

Signed in the presence of:

ATLANTIC GULF COMMUNITIES CORPORATION, a Delaware corporation

Cynthia Belgrave
Name: Cynthia Belgrave
Joel H. Goldman
Name: Joel Goldman

By: C. E. Fancher Jr.
Name: C. E. Fancher Jr.
Title: Vice President

[Corporate Seal]

GENERAL DEVELOPMENT UTILITIES, INC., a Florida corporation

Cynthia Belgrave
Name: Cynthia Belgrave
Joel H. Goldman
Name: Joel Goldman

By: C. E. Fancher Jr.
Name: President
Title: C. E. Fancher Jr.

[Corporate Seal]

HENDRY COUNTY, FLORIDA

Name: _____

Name: _____

By: Carol O. Pratt
Name: Carol O. Pratt
Title: Vice-Chairman

[Seal]

Attest: Christine Pratt
Name: Christine Pratt

EXHIBIT A

HENDRY COUNTY

Port LaBelle - Unit 1

A subdivision of a portion of sections 10 and 15, township 43 south, range 29 east, Hendry County, Florida. Plat Book # 3 and Page # 50-59

Port LaBelle - Unit 2

A subdivision of a portion of sections 14 and 15, township 43 south, range 29 east, Hendry County, Florida. Plat Book # 3 and Page # 60-72

Port LaBelle - Unit 3

A subdivision of a portion of sections 11, 14 and 15, township 43 south, range 29 east, Hendry County, Florida. Plat Book # 3 and Page # 73-85

Port LaBelle - Unit 4

A subdivision of a portion of sections 10, 11, 12, 13, 14 and 15, township 43 south, range 29 east Hendry County Florida. Plat Book # 3 and Page # 86-102

Port LaBelle - Unit 5

A subdivision of a portion of sections 1 and 2, township 43 south, range 29 east, Hendry County, Florida. Plat Book # 3 and Page 104-106

Port LaBelle - Unit 6

A subdivision of a portion of sections 1, 12 and 13, township 43 south, range 29 east and a portion of sections 7 and 18, township 43 south, range 30 east, Hendry County, Florida. Plat Book # 3 and Page # 109-115

Port LaBelle - Unit 7

A subdivision of a portion of section 13, township 43 south, range 29 east and a portion of section 18, township 43 south, range 30 east, Hendry County, Florida. Plate Book # 3 and Page 116-130

Port LaBelle - Unit 8

A subdivision of a portion of sections 17 and 18, township 43 south, range 30 east, Hendry County, Florida. Plat Book # 3 and Page 131-143

Port LaBelle - Unit 9

A subdivision of a portion of sections 6, 7, 8, 17 and 18, township 43 south, range 30 east and a portion of sections 1 and 12 township 43 south, range 29 east, Hendry County, Florida. Plat Book # 3 and Page 144-159

Port LaBelle - Unit 10

A subdivision of a portion of sections 12, 13 and 14, township 43 south, range 30 east, Hendry County, Florida. Plat Book # 4 and Page 17-28

Port LaBelle - Unit 11

A subdivision of a portion of sections 1, 2, 11, 12, 13 and 14, township 43 south, range 30 east, sections 6 and 7, township 43 south range 31 east, Hendry County, Florida. Plat Book # 4 and Page 29-41

Port LaBelle - Unit 12

A subdivision of a portion of section 13, township 43 south, range 30 east, and sections 18 and 19, township 43 south, range 31 east, Hendry County, Florida. Plat Book # 4 and Page 42-54

Port LaBelle - Unit 13

A subdivision of a portion of sections 6, 7 and 18, township 43 south, range 31 east and a portion of section 13, township 43 south, range 30 east, Hendry County, Florida. Plat Book # 4 and Page 55-66

GLADES COUNTY

Port LaBelle - Unit 101

A subdivision of a portion of sections 35 and 36, township 42 south, range 29 east, Glades County, Florida. Plat Book # 3 and Page # 57-65

Port LaBelle - Unit 102

Portions of section 36, township 42 south, range 29 east and sections 29, 30, 31 and 32, township 42 south, range 30 east, Glades County, Florida. Plat Book # 3 and Page 66-86