CITY OF CLEARWATER/CGS ENERGY
DEVELOPER AGREEMENT FOR NATURAL GAS DISTRIBUTION SERVICE

This Agreement is entered into this ____ day of _____, 20____, between the City of Clearwater, Florida, a municipal corporation organized and existing under the laws of the State of Florida, d/b/a CGS Energy, hereinafter called "CGS" and _____, a _____ company, hereinafter called the "DEVELOPER".

RECITALS

A. DEVELOPER is developing land for sale and plans to include, among other things, approximately _____ (___) platted lots for single family homes (the "Project") to be known as _____ located in _____ County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein, and as will be recorded in the Official Records of the Clerk of the Circuit Court, _____ County, Florida.

B. DEVELOPER, for itself and on behalf of the future owners of residences in the Project, desires to have natural gas service available within the Project.

C. CGS desires to install a natural gas distribution system within the Project, at its expense, upon completion of and final approval of CGS'S feasibility report and DEVELOPER has agreed to engage CGS to install such a system within the Project, pursuant to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, CGS and DEVELOPER hereby agree as follows.

1. Recitals. The foregoing Recitals are true and correct and are incorporated in and form a part of this Agreement.

2. Gas Distribution System.

2.1 Installation of Gas Distribution System. CGS agrees to design and install a natural gas distribution system within the Project, including all necessary distribution lines, meters and ancillary facilities (collectively, the "System") necessary to provide natural gas service up to the meter of each residence constructed during the term of this Agreement as a Gas Compliant Residence in conformity with Section 3. The design of the System shall be subject to DEVELOPER's review and approval prior to CGS's commencement of construction thereof, for purposes of integration of the System into the Project. CGS shall control design of the System for gas operations purposes. The System does not include any facilities past the meter and CGS has no obligation to install or maintain such "behind the meter" facilities. DEVELOPER and CGS agree to reasonably cooperate with respect to the design and construction of the Project infrastructure, including without limitation, the System. Such cooperation shall include, without

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limitation, providing responses to requests for information required for development permits, plat approvals, and similar authorizations within fourteen (14) days of either parties' receipt of a request for any such information from the other party. The parties agree to use all commercially reasonable efforts to cause the System to be designed and constructed in coordination with the other Project infrastructure, so that (i) commencement of construction of the System can commence in concert with the commencement of construction of the other Project infrastructure; and (ii) each phase of System can be completed simultaneous with completion of the other infrastructure located within the same phase of the Project.

22 Preparation for Installation and Easements. DEVELOPER represents that it owns and has legal title to the real property on which the Project will be constructed and has the authority to develop the Project and to enter into this Agreement. DEVELOPER shall provide or cause to be provided to CGS, and its employees, agents and subcontractors, adequate physical and legal access including recorded, assignable non-exclusive easements and/or rights of way to all reasonably necessary areas of the Project in substantially the form attached hereto and incorporated herein as Exhibit "B", and/or by recorded, platted easements, all as reasonably necessary for the installation, operation, maintenance, repair and replacement of the System. With respect to such easements, DEVELOPER shall secure the consent and joinder of all necessary parties.

DEVELOPER reserves the right to relocate any easement made available hereunder if necessary for the development of the Project, provided that construction of the portion of the System subject to any such relocated easement has not yet been commenced, and suitable easements and access for the System to all portions of the Project are maintained and provided. In the event that DEVELOPER desires to modify any easement relating to any portion of the System after installation, then DEVELOPER must obtain CGS'S advance written consent to any easement modification, such consent not to be unreasonably withheld, and DEVELOPER shall reimburse CGS for design, materials, construction and other costs associated with any relocation of the System and shall provide reasonably acceptable substitute easements.

23 Installation Schedule. CGS agrees to cooperate with DEVELOPER with respect to the construction of the System and to use commercially reasonable efforts to minimize interference with DEVELOPER'S construction of the Project. If so requested, CGS shall furnish System plans, excepting any proprietary information, to DEVELOPER. DEVELOPER agrees to establish and reasonably manage a Project construction schedule that provides CGS with reasonably sufficient time and access to construct the System within the Project.

24 Ownership of Gas Distribution System. The components of the System located on the supply side of each gas meter (and including each such meter) shall remain the exclusive property of CGS at all times during and following the expiration or earlier termination of this Agreement. CGS'S operation of the System is not governed by the terms of this Agreement; rather, CGS shall operate the System in accordance with the City of Clearwater's Code of Ordinances, City policy and the requirements of applicable regulations and law. In the event the Project is not completed and/or the gas facilities and service are for any reason abandoned by DEVELOPER or its successors, and the System, or any part thereof, is no longer required to serve the Project, CGS may at its election remove readily removable, non-essential components of the System, purge and cap any components to be left in place, and restore any disrupted surface areas of the Project.

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3. Gas Appliance Requirements. In recognition of the substantial investment made by CGS in constructing the System, DEVELOPER agrees that _____ percent (__%) of the homes in the Project will be built with a gas water heater or gas home heating system, and a secondary gas appliance ("Gas Compliant Residences"). In consideration of DEVELOPER constructing the Gas Compliant Residences, DEVELOPER will be entitled to an Energy Conservation Allowance as defined and provided for in paragraph 4. DEVELOPER agrees that each "MODEL" residence in the Project will be a Gas Compliant Residence. These appliances must be connected or have the necessary gas piping to connect to the appliance at the time the Certificate of Occupancy is issued. Further, DEVELOPER agrees to make a reasonable effort to utilize natural gas and natural gas appliances and equipment in common areas of the Project such as community club houses, community fitness centers, community pools, street lamps, community laundries and central water heating systems. Additionally, DEVELOPER agrees to make a reasonable effort to require natural gas for any commercial portions of the Project where economically feasible and as applicable.

4. Energy Conservation Allowance. DEVELOPER may be entitled to Energy Conservation Allowance payments for each home constructed in the Project that meets the requirements of CGS Energy Conservation Allowance Program (the "Program"), as may be amended from time to time by the Clearwater City Council. A summary of the allowance payments presently allowed under the Program is attached hereto as Exhibit "C". In the event the Clearwater City Council rules or otherwise determines that the energy conservation allowance payments referenced above, or any portion thereof, may not be recovered by CGS through the Energy Conservation Adjustment, or that the entitlements under the Program shall be changed, then CGS'S obligation to thereafter make said allowance payments will be bound by such City Council directive and, as such, said allowance payments shall be adjusted to conform to such Council directive or terminate, as applicable, upon completion of construction of any homes then under construction in the Project (which homes shall remain eligible for allowance payments without such adjustment). During the term of this Agreement, CGS shall have the right to inspect any residence for which a claim for an allowance has been made, at reasonable times and upon notice to DEVELOPER and the applicable landowner. DEVELOPER shall be entitled to the Energy Conservation Allowance upon verification that the requirements of each Gas Compliant Residence have been met and a Certificate of Occupancy has been issued for that Residence.

5. Insurance Requirements for City/CGS: The City/CGS shall, at its own cost and expense, acquire and maintain during the term with the Developer, through self-insurance, insurance, and/or excess insurance, sufficient insurance to adequately protect the respective interest of the parties. Purchased insurance coverage shall be obtained with a carrier having an AM Best Rating of A-VII or better.

Specifically the City/CGS must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

a. **Commercial General Liability Insurance** coverage, including products/completed operations, in the minimum amount of $1,000,000 (one million dollars) per occurrence and $2,000,000 (two million dollars) general aggregate.

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b. **Commercial Automobile Liability Insurance** coverage, including property damage liability and bodily injury liability, for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of $1,000,000 (one million dollars) combined single limit.
c. Unless waived by the State of Florida, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of $1,000,000 (one million dollars) each employee each accident, $1,000,000 (one million dollars) each employee by disease and $1,000,000 (one million dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees and volunteers, if any.

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

Other Insurance Provisions for City/CGS:

Prior to the execution of this Agreement/Contract, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement/Contract remains in effect, the City/CGS will furnish the Developer with a Letter of Self-Insurance (SIGNED by the Risk Manager), Developer acknowleges that Developer will not be named as an "Additional Insured" on any of City/CGS coverages.

_____
_____
_____

a. City/CGS shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
b. City/CGS's insurance as outlined above shall be primary and non-contributory coverage for City/CGS's negligence.
c. Developer agrees that nothing contained herein shall be construed as a waiver of any sovereign immunity from, or limitation of, liability the City/CGS may be entitled to under the doctrine of sovereign immunity, or §768.28, Florida Statutes. Furthermore, this provision is not intended to nor shall it be interpreted as limiting or in any way affecting any defenses the City/CGS may have under §768.28, Florida Statutes or as consent to be sued by third parties.
d. City/CGS reserves the right to appoint legal counsel to provide for City/CGS's defense of any and all claims that may arise related to this Agreement, work performed under this Agreement, or to city/CGS's design, equipment, or service. City/CGS agrees that the Developer shall not be liable to reimburse City/CGS for any legal fees or costs as a result of City/CGS providing its defense as contemplated herein.

Developer's failure to request evidence of this insurance shall not be construed by the City/CGS as a waiver of City/CGS's obligation to provide the insurance coverage specified.

6. Insurance Requirements for Developer: The Developer shall, at its own cost and expense, acquire and maintain (and cause any subcontractors, representatives, or agents to acquire and maintain) during the term with the City, sufficient insurance to adequately protect the respective interest of the parties. Coverage shall be obtained with a carrier having an AM Best Rating of

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A-VII or better. In addition, the City has the right to review the Developer's deductible or self-insured retention and to require that it be reduced or eliminated

Specifically, the Developer must carry the following minimum types and amounts of insurance on an occurrence basis or in the case of coverage that cannot be obtained on an occurrence basis, then coverage can be obtained on a claims-made basis with a minimum three (3) year tail following the termination or expiration of this Agreement:

a. **Commercial General Liability Insurance coverage,** including but not limited to, bodily injury, personal injury, death, property damage, advertising liability, premises operations, products/completed operations, severability of interest, and contractual liability in the minimum amount of $1,000,000 (one million dollars) per occurrence and $2,000,000 (two million dollars) general aggregate.
b. **Commercial Automobile Liability Insurance coverage** for any owned, non-owned, hired or borrowed automobile for in state travel is required in the minimum amount of $1,000,000 (one million dollars) combined single limit.
c. **Unless waived by the State of Florida and proof of waiver is provided to the City, Worker's Compensation (WC) & Employer's Liability Insurance** coverage for all employees engaged under the Agreement, Worker's Compensation as required by Florida law and Employer's Liability with minimum limits of
   (a) $500,000 bodily injury each employee and each accident, $500,000 bodily injury by disease each employee, and $500,000 bodily injury by disease policy limit for quotes or agreements valued at $50,000 and under or
   (b) $1million bodily injury each employee and each accident, $1million bodily injury by disease each employee, and $1million bodily injury by disease policy limit for formal solicitation and agreements exceeding $50,000.

Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.

WAIVER OF SUBROGATION – With regard to any policy of insurance that would pay third party losses, **Developer** hereby grants the City a waiver of any right to subrogation which any insurer of the **Developer** may acquire against the City by virtue of the payment of any loss under such insurance for liability and workers compensation coverages. **Developer** agrees to obtain any endorsement that may be necessary to affect such waiver, but this provision shall apply to such policies regardless **of whether the city has received a waiver of subrogation endorsement from each insurer.**

The above insurance limits may be achieved by a combination of primary and umbrella/excess liability policies.

Other Insurance Provisions for Developer:

a. Prior to the execution of this Agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s) for as long as this Agreement remains in effect, the Developer will furnish the City with a Certificate of Insurance(s) (using appropriate ACORD certificate, SIGNED by the Issuer, and with applicable endorsements) evidencing all of the coverage set forth above and naming the City as an "Additional Insured" with respect to general and auto liability coverages.

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b. In addition, when requested in writing from the City, Developer will provide the City with certified copies of all applicable policies. The address where such certificates and certified policies shall be sent or delivered is as follows:

City of Clearwater
Attn: CGS Energy
P.O. Box 4748
Clearwater, FL 33758-4748

c. Developer shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
d. Developer's insurance as outlined above shall be primary and non-contributory coverage for Developer's negligence.
e. Developer reserves the right to appoint legal counsel to provide for the Developer's defense, for any and all claims that may arise related to Agreement, work performed under this Agreement, or to Developer's equipment, or service. Developer agrees that the City shall not be liable to reimburse Developer for any legal fees or costs as a result of Developer providing its defense as contemplated herein.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to the City, and failure to request evidence of this insurance shall not be construed as a waiver of Developer's obligation to provide the insurance coverage specified.

INDEMNIFICATION/LIABILITY:

a. To the fullest extent permitted by law, Developer agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Developer personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Developer or Developer personnel; and (iii) Developer or Developer personnel's failure to comply with or fulfill the obligations established by this Agreement.
b. Developer will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
c. The City assumes no liability for actions of Developer and will not indemnify or hold Developer or any third party harmless for claims based on this Agreement or use of Developer-provided supplies or services.

7. Force Majeure. Neither CGS nor DEVELOPER shall be liable to the other for any failure to perform pursuant to the terms and conditions of this Agreement to the extent such performance is prevented by an event of Force Majeure. The term "Force Majeure" shall mean causes not within the control of the party whose performance is affected, including without limitation, Acts of God, strikes, lockouts, acts of the public enemy, wars, insurrection, riots, epidemics, landslides, sinkholes, lightning, earthquakes, fires, storms, flood, washouts, explosions, breakage or non-foreseeable accidents to machinery or pipe lines, and which in each of the above cases, such party is unable to prevent or overcome by the exercise of due diligence

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utilizing commercially reasonable efforts, procedures and processes. The party whose performance is excused by an event of Force Majeure shall promptly notify the other party of such occurrence and its estimated duration, shall promptly remedy such event of Force Majeure, if and to the extent reasonably possible, and thereafter resume such performance as soon as possible.

8. Notices. Any and all notices sent pursuant to this Agreement shall be sent by either electronic mail, telecopy transmission (with receipt confirmation), U.S. mail, postage prepaid, return requested, or by receipted overnight national delivery service (e.g., Federal Express), and shall, if not sooner received, be deemed received three (3) business days after deposit in the United States Mail, or one business day after telecopy transmission or receipt by any national delivery service. All notices shall be addressed to each party at the address listed below unless and until such time as a party notifies the other in accordance with this Section of a change in address:

"CGS"	"DEVELOPER"
Director	_____
777 Maple St	_____
Clearwater, FL 33755	_____

9. Duration. The term of this Agreement (the "Term") shall commence upon the Effective Date and continue until the issuance of certificates of occupancy for the residences constructed upon all of the platted residential lots located within the Project. Notwithstanding any expiration or other termination of this Agreement, CGS shall remain obligated to make energy construction allowance payments, having properly accrued, to DEVELOPER as provided in Section 4 hereof.

10. Failure to Meet the Minimum. DEVELOPER acknowledges that CGS is making a substantial investment in installing the System as provided in this Agreement. In the event DEVELOPER fails to construct at least_____ percent (__%) of the residences (residences) of the Project as Gas Compliant Residences, CGS will suffer substantial damages that will be difficult to ascertain. DEVELOPER therefore agrees to pay to CGS liquidated damages as set forth below to partially compensate CGS for DEVELOPER'S failure to meet its obligation hereunder. Accordingly, if the DEVELOPER fails to complete the minimum percentage of the Gas Compliant Residences during the Term of this Agreement; then, DEVELOPER shall pay to CGS liquidated damages in the amount of _____($_____.00) for each residence below the minimum_____percent (__%) requirement.

11. Remedies and Limitations. In the event of a breach of this Agreement, the non-breaching party shall, except to the extent expressly limited by the terms of this Agreement, have all rights and remedies available at law and at equity against the breaching party. Notwithstanding the foregoing, neither party shall be entitled to recover against the other consequential, incidental or punitive damages.

12. Assignment. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns. Any assignment of this Agreement by either party shall require the prior written consent of the other party, which consent shall not be

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unreasonably withheld.

13. Miscellaneous. This Agreement shall be subject to all applicable laws, rules, orders, permits, and regulations of any federal, state, or local governmental authority having jurisdiction over the parties, their facilities, or the transactions contemplated. This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida. In the event of litigation between the parties hereto arising out of or in connection with this Agreement, each party shall bear its own attorneys' fees and costs. This Agreement constitutes the entire understanding and agreement between the parties and supersedes any and all prior negotiations, understandings or agreements. Except as provided above, this Agreement shall be binding upon, and shall inure to the benefit of the parties hereto, and their respective successors and assigns. This Agreement may be amended, modified or extended only by a written instrument signed by both parties. No failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by either party shall constitute a waiver of, or shall preclude any other or further exercise of, the same or any other right, power or remedy. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or the application thereof to any party hereto or circumstance is prohibited by or invalid under applicable law, that provision shall be effective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or the application of the same. This Agreement may be executed in any number of counterparts, and all the counterparts taken together shall be deemed to constitute one (1) and the same instrument. The captions, headings, titles, and subtitles herein are inserted for convenience of reference only and are to be ignored in any construction of the provisions of this Agreement. Any exhibit attached to this Agreement is incorporated by reference herein. Nothing contained herein shall be construed as a joint venture, partnership or any other similar relationship between CGS and DEVELOPER. Nothing in this Agreement shall be construed as creating any rights, benefits or interests in a person or group that is not a party to this Agreement.

[Signatures begin on following page]

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IN WITNESS WHEREOF, the parties hereto have caused this DEVELOPER Agreement (Natural Gas) to be signed by their respective duly authorized officers as of the date first above written.

Approved and accepted by:

CITY OF CLEARWATER, FLORIDA

By: _____
Brian Langille
Gas System Executive Director

Agreed to and accepted by:

_____, a,_____
_____company

By:_____
Name Printed: _____
Title:_____

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EXHIBIT A
Legal Description of Project

EXHIBIT B
Easement

Return to:
CGS Energy
777 Maple St
Clearwater, Fl. 33755

_____ **COUNTY** Parcel I. D. No. _____

GAS MAIN & UTILITIES EASEMENT

FOR AND IN CONSIDERATION of the sum of Ten Dollars ($10.00) in hand paid, the receipt and sufficiency of which is hereby acknowledged, and the benefits to be derived therefrom, _____, whose post office address is _____ ("Grantor") does hereby grant and convey to the **CITY OF CLEARWATER, FLORIDA,** a Florida Municipal Corporation ("Grantee"), and its successors and assigns, a non-exclusive, limited purpose easement over, under and across the following described land lying and being situate in the County of Pasco, State of Florida, to wit:

As more particularly described and depicted in EXHIBIT "A" appended hereto and by this reference made a part hereof ("Easement Premises")

This easement is for **gas main and appurtenant utilities ("Service Facilities")** installation and maintenance only. Grantee shall have the right to enter upon the Easement Premises to construct, install, maintain and reconstruct the Service Facilities located therein, and to inspect and alter same from time to time. Grantee shall be solely responsible for obtaining all governmental and regulatory permits required to exercise the rights granted herein.

Grantee covenants and agrees with Grantor that it shall maintain reasonable access to Grantor's facilities at all times during the exercise of rights granted herein for Grantor, and Grantor's guests and invitees, and that it shall promptly restore the Easement Premises and any affected areas surrounding the Easement Premises upon completion of any project undertaken in the exercise of these rights to at least the same quality of condition that existed as of the date Grantee first exercised any of its rights hereunder. Grantee further represents and warrants that it shall diligently pursue the completion of all work related to this project and complete all matter in a timely manner.

Grantor warrants and covenants with Grantee that it is the owner of fee simple title in and to the herein described Easement Premises, and that Grantor has full right and lawful authority to grant and convey this easement to Grantee, and that Grantee shall have the non-exclusive, limited purpose quiet and peaceful possession, use and enjoyment of this easement. It is expressly understood that Grantor reserves all rights of ownership of the Easement Premises not inconsistent with the easement rights granted herein.

In the event Grantor, its successors or assigns, should ever determine it necessary to relocate the Service Facilities constructed within the Easement Premises to facilitate further development or redevelopment of the property encumbered hereby; then Grantor, its successors or assigns, in consultation with and upon approval of Grantee (which consent shall not be unreasonably withheld), shall provide an alternate easement for Grantee's Service Facilities, and shall at Grantor's sole cost and expense reconstruct the Service Facilities within the alternate easement. Upon completion of the Service Facilities relocation Grantee shall cause this easement to be vacated and evidence of vacation duly recorded in the public records of Pasco County, Florida.

This easement is binding upon the Grantor, the Grantee, their heirs, successors and assigns. The rights granted herein shall be perpetual and irrevocable and shall run with the land, except by the written mutual agreement of both parties, or by abandonment of the Easement Premises by Grantee.

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IN WITNESS WHEREOF, the undersigned grantor has caused these presents to be duly executed this_____ day of_____, 20____.

Signed, sealed and
delivered In the presence
of:

_____
WITNESS signature

By: _____

_____
Print Witness Name

Print name _____

_____
WITNESS signature

By: _____

_____
Print Witness Name

Print name _____

STATE OF_____:
: ss
COUNTY OF_____:

Before me, the undersigned authority, personally appeared_____, who executed the foregoing instrument, who acknowledged the execution thereof to be their free act and deed for the use and purposes herein set forth, and who [ ] are personally known to me, or who [ ] produced_____as identification.

_____
My commission expires:
Notary Public - State of Florida

_____
Type/Print Name

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EXHIBIT B1

[Here insert descriptions of platted road rights of way]

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EXHIBIT C
Energy Conservation Allowance Plan

CGS agrees to pay to DEVELOPER an energy conservation allowance payment for each residence constructed within the Project and that has qualified for payment based on following installation schedule ("Energy Conservation Allowance Payment"):

Gas Tankless Hot Water Heater	$___.00
Gas Tank Water Heater	$___.00
Gas Home Heating System	$___.00
Piping to Gas Range	$___.00
Piping to Gas Dryer	$___.00
The total maximum energy conservation amount payable	$___.00

DEVELOPER shall deliver a written request for payment of an Energy Conservation Allowance Payment to CGS within 90 days of issuance of a certificate of occupancy for each applicable qualified residence. DEVELOPER shall submit such written requests in the form and manner reasonably prescribed by CGS. Any request for an Energy Conservation Allowance Payment that is submitted after 90 days following the issuance of a certificate of occupancy for a particular residence may not be honored.

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