

**CONSENT TO ASSIGNMENT AND ASSUMPTION OF DEVELOPER AGREEMENT FOR  
NATURAL GAS DISTRIBUTION SERVICE BETWEEN CONNERTON, LLC AND  
CLEARWATER GAS SYSTEM  
ORIGINALLY DATED DECEMBER 2, 2004**

This **Consent to Assignment and Assumption of Development Agreement for Natural Gas Distribution Service** ("Consent to Assignment") is made and entered into this 6 day of June, 2017, to be effective as of the \_\_\_\_ day of May, 2010 ("Effective Date") by and between the City of Clearwater, Florida, a municipal corporation organized and existing under the laws of the State of Florida, d/b/a Clearwater Gas System, ("CGS"), and Pasco Investment Land LLC, a Delaware limited liability company ("ASSIGNEE" or "DEVELOPER") (each individually referred to as "Party" or collectively as the "Parties").

**WITNESSETH**

**WHEREAS**, CGS and Connerton, LLC, a Delaware limited liability company ("ORIGINAL DEVELOPER") entered into that certain Developer Agreement for Natural Gas Distribution Service on December 2, 2004 ("Gas Distribution Agreement" or "Agreement") to provide for the installation of a natural gas distribution system and related services to approximately Six Thousand (6000) single-family residential homes and associated common facilities within an area to be known as the Connerton development in Pasco County, Florida (the "Development"); and

**WHEREAS**, Assignee, as successor by deed, bill of sale and assignment to Original Developer in connection with (i) a conveyance of the Development in May 2010 and (ii) a restructuring of Assignee and certain of its subsidiary entities in November 2013, currently holds all requisite right, title and interest in the development rights to the Development and certain contracts relating solely to the real property within the Development, including, but not limited to, any and all interests in the Gas Distribution Agreement; and

**WHEREAS**, economic conditions have delayed the Development as contemplated under the Gas Distribution Agreement; and

**WHEREAS**, Assignee is in control of the development rights for the Development as of the date of this Consent to Assignment; and

**WHEREAS**, in order to perpetuate and allow time for the Development to occur as economic conditions recover, and to preserve each Party's interest in the Gas Distribution Agreement, the parties now wish to extend the time for performance of the Agreement, and adjust the Energy Conservation Allowance (the "ECA") as provided for thereunder; and

**WHEREAS**, CGS believes, and Assignee has no knowledge otherwise, that all other conditions precedent to the Agreement have occurred, including an amendment to that certain territorial agreement between Peoples Gas System ("Peoples") and CGS, dated May 1995, and that certain Gas Supply Agreement between Peoples and CGS,

which will provide for gas supply to the Project.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CGS, and ASSIGNEE 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. Assignment. Assignee has agreed to accept and assume all of the rights, obligations and responsibilities of Original Developer as set forth in the Agreement. CGS hereby consents to said assignment and assumption. Assignee hereby represents that, to its knowledge, it is entitled to all benefits to be derived from the Gas Distribution Agreement and that no benefits thereunder are due to any other party, including any assignor of interests in the subject real property, intangible property, associated development rights or related contract rights, and no benefits thereunder are due to any other party having previously had any prior interest in same ("Predecessors in Interest").

3. Excess Flow Valve. Recognizing recent changes in Federal Regulations, the Parties agree that Paragraph 2.6 of the Agreement is hereby deleted in its entirety and the following is substituted therefore: "The Parties acknowledge and agree that excess flow valves shall be installed in accordance with the requirements of Title 49 Code of Federal Regulations, Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, more specifically, Part 192.381: Service lines: Excess flow valve performance standards and 192.383: Excess flow valve installation".

4. Multiple Phases. Paragraph 2.7 of the Agreement is hereby amended to include the following at the end of the paragraph: "The Phases of the Project are or will be delineated in Exhibit A-1, attached hereto and incorporated herein. Feasibility analysis with respect to the installation of a gas System shall be made as to each Phase independently. If all Phases cannot be delineated at the inception of this agreement, Exhibit A-1 shall be amended by written agreement of the Parties at such times as additional Phases are defined within the Project. DEVELOPER shall provide CGS with documentation delineating new Phases promptly as such documentation becomes available." The Agreement is hereby amended to include as Exhibit A-1, the depiction attached hereto as Exhibit A-1, which shows existing Phases and anticipated future Phases as of the date hereof. The Phases shown as The Arbors and The Gardens have been determined feasible for installation of a gas System pursuant to the Agreement..

5. Energy Conservation Allowance. Paragraph 4 of the Agreement, The Energy Conservation Allowance (ECA) Plan, is hereby amended to reflect CGS's energy conservation allowances as the same may have been applicable from time to time during the Term, and as of the Effective Date of this Assignment as more particularly described in Revised Exhibit "B" (attached hereto and incorporated herein). For purposes of receiving an Energy Conservation Allowance, any home/unit constructed in the Project shall be deemed to meet the requirement of CGS's Program and shall be entitled to receive the

deemed to meet the requirement of CGS's Program and shall be entitled to receive the applicable ECA credits so long as such home/unit contains at least 3 of the following (even if such home/unit is not otherwise a Gas Compliant Residence): (i) energy efficient gas water heater, (ii) energy efficient whole-house gas heating system, (iii) piping to permit the installation of an energy efficient pilotless gas range, and (iv) piping to permit the installation of an energy efficient gas clothes dryer. All other terms of paragraph 4 of the original agreement shall remain in full force and effect.

6. Notices. Any and all notices sent pursuant to this Agreement shall be sent by either 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.

Clearwater Gas System  
Attn: Gas Sales Manager  
400 North Myrtle Avenue  
Clearwater, FL 33755  
Fax: (727) 562-4903

Pasco Investment Land, LLC  
c/o Hayman Woods  
Attn: John Helton  
1601 Elm Street, Suite 3110  
Dallas, Texas 75201  
Fax: (214) 242-2236

7. Duration. The term of the Agreement (the "Term") commenced on December 2, 2004 with an original termination date of December 2, 2024; however, said termination date is hereby extended for an additional ten (10) year period, and shall continue until the earlier of (i) completion of the Project by the issuance of certificates of occupancy for the requisite number of Gas Compliant Residences and the completion of all common area and improvements with gas compliance facilities and equipment, along with the completion of all Gas Compliant Homes in excess of requisite number as requested by Assignee, or (ii) December 2, 2034.

8. Failure to Meet Minimum. Paragraph 9 of the Agreement is hereby amended and restated as follows. "DEVELOPER acknowledges that CGS is making a substantial investment in installing the System as provided in this Agreement. In the event builders within the Project fail to construct at least eighty percent (80%) of the attached and detached single family residences approved for a specific Phase of the project constructed by the DEVELOPER (the "Minimum") where gas facilities are installed, 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 builders fail to complete the Minimum percentage of the Gas Compliant Residences in a particular Phase of the Project actually constructed by DEVELOPER where a gas System has been installed pursuant to the Agreement (a "Gas System Phase"), CGS may make demand for Liquidated Damages that are due and payable at any time after CGS can determine, mathematically, that DEVELOPER will be unable to comply with the 80% Gas Compliant Residence requirement. Said another way, as each home that is not a Gas Compliant Residence within a particular Gas System Phase receives a Certificate of Occupancy, if CGS has determined that DEVELOPER cannot mathematically reach the 80% requirement in that Gas System Phase, CGS may make immediate demand as each such home falling under the Minimum receives its Certificate of Occupancy. DEVELOPER shall pay CGS liquidated damages in the amount of Seven Hundred and Fifty Dollars (\$750.00) for each attached or detached single family residence below the minimum eighty percent (80%) requirement for that Phase. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty.

9. Minimum Percentages. The Parties agree that Paragraphs 2.7, 3 and 9 of the Agreement contain minimum percentage of single family residences requirements within the Project. Notwithstanding the estimated total number of units for the overall project, the calculation for minimum percentage shall be based on the actual number of single family detached and attached residences approved and developed within a Gas System Phase. Additionally, the Developer ("Parties") agrees to make a reasonable effort to utilize natural gas in townhomes and commercial buildings (including condominiums) within the Project where feasible. Additional natural gas load from any such commercial buildings, at the sole discretion of CGS and to the extent that the added feasibility revenues above servicing costs for such commercial loads, may be used to offset any shortfall in residential minimum percentages.

10. Except as expressly modified by this Consent to Assignment, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be signed by their respective duly authorized officers as of the date first above written.


Agreed to and accepted by:

Pasco Investment Land LLC

By: Connerton Holdings, LLC, its sole member


By: Connerton Development Holdings,  
LLC, its sole member

By: HW CGC Acquisition, LLC, its  
co-managing member

By:   
Name: John Helton  
Title: EVP

and

By: GF Tampa LLC, its co-  
managing member

By:   
Name: Ari Pluchnik  
Title: Authorized Signatory

(City signatures continue on following page)

Approved and accepted by:

CITY OF CLEARWATER, FLORIDA

By:

  
Charles S. Warrington, Jr.  
Gas System Managing Director

Approved as to form:

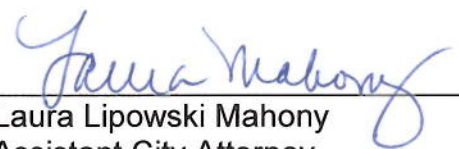
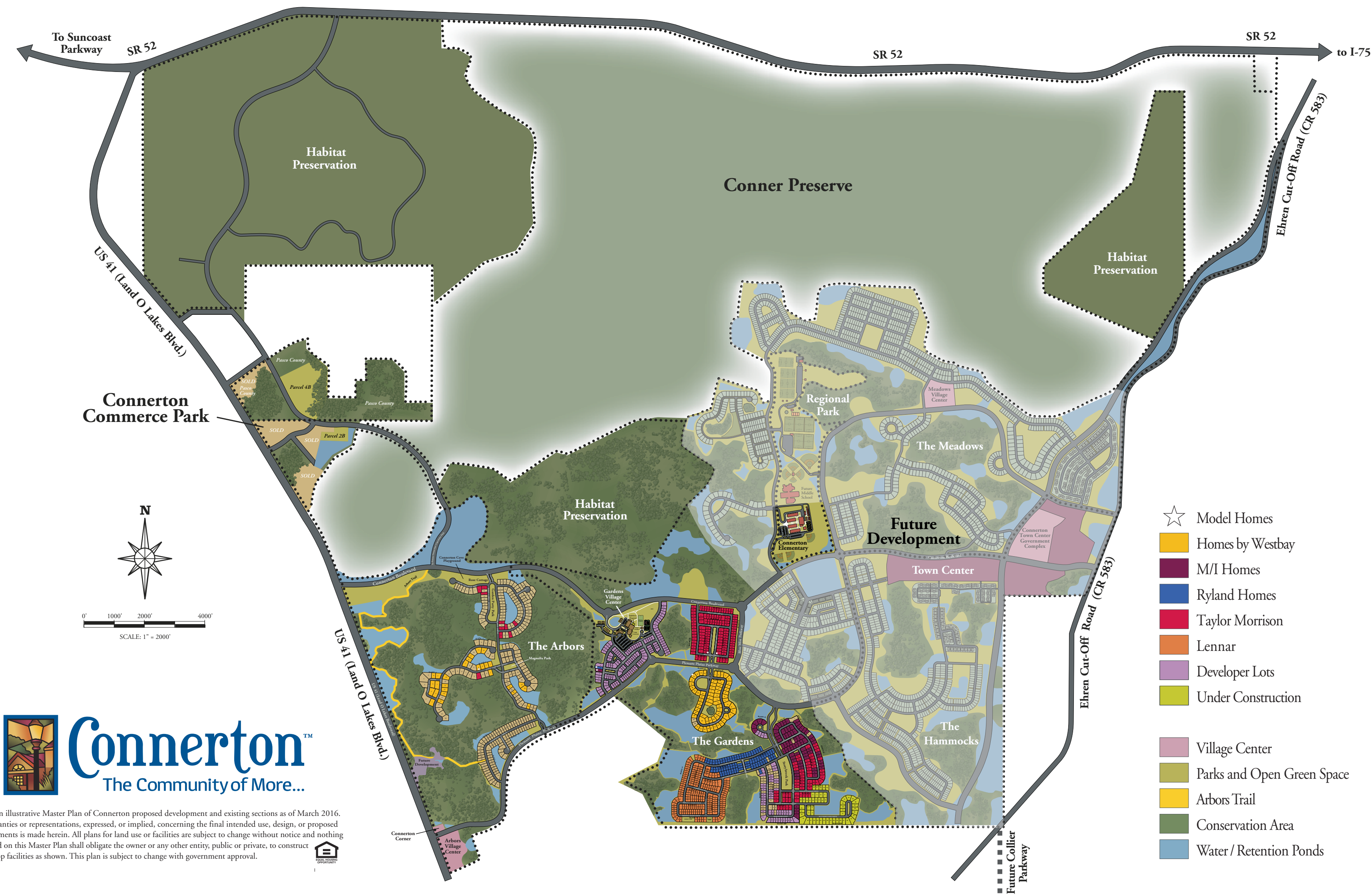
  
Laura Lipowski Mahony  
Assistant City Attorney

EXHIBIT A-1

[attached]



Exhibit A-1



This is an illustrative Master Plan of Connerton proposed development and existing sections as of March 2016. No warranties or representations, expressed, or implied, concerning the final intended use, design, or proposed improvements is made herein. All plans for land use or facilities are subject to change without notice and nothing presented on this Master Plan shall obligate the owner or any other entity, public or private, to construct or develop facilities as shown. This plan is subject to change with government approval.





## **REVISED EXHIBIT "B"**

### **Energy Conservation Allowance Effective Date December 2, 2004**

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

Energy Efficient Gas Central Home Heating System	\$270.00
Energy Efficient Gas Water Heater	\$270.00
Piping to Energy Efficient Pilotless Gas Range	\$ 85.00
Piping to Energy Efficient Gas Dryer	\$ 85.00

The total maximum energy conservation amount payable on each Home that conforms to the schedule above	\$710.00
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A request for payment of Allowance shall be submitted to Company within 90 days of issuance of the Certificate of Occupancy for each unit. Requests for an Allowance after 90 days of issuance of a Certificate of Occupancy will not be honored, unless waived by mutual agreement of the parties in writing. For purposes of this paragraph, email communications indicating agreement of the parties shall be a sufficient writing.

### **Energy Conservation Allowance Effective Date February 1, 2010**

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

Energy Efficient Gas Central Home Heating System	\$350.00
Energy Efficient Gas Water Heater	\$450.00
Piping to Energy Efficient Pilotless Gas Range	\$ 100.00
Piping to Energy Efficient Gas Dryer	\$ 100.00

The total maximum energy conservation amount payable on each Home that conforms to the schedule above	\$1000.00
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A request for payment of Allowance shall be submitted to Company within 90 days of issuance of the Certificate of Occupancy for each unit. Requests for an Allowance after 90 days of issuance of a Certificate of Occupancy will not be honored, unless waived by

mutual agreement of the parties in writing. For purposes of this paragraph, email communications indicating agreement of the parties shall be a sufficient writing.

### **Energy Conservation Allowance Effective Date April 1, 2011**

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

Energy Efficient Gas Central Home Heating System	\$500.00
Energy Efficient Gas Water Heater	\$450.00
Piping to Energy Efficient Pilotless Gas Range	\$ 150.00
Piping to Energy Efficient Gas Dryer	\$ 100.00

The total maximum energy conservation amount payable on each Home that conforms to the schedule above	\$1200.00
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A request for payment of Allowance shall be submitted to Company within 90 days of issuance of the Certificate of Occupancy for each unit. Requests for an Allowance after 90 days of issuance of a Certificate of Occupancy will not be honored, unless waived by mutual agreement of the parties in writing. For purposes of this paragraph, email communications indicating agreement of the parties shall be a sufficient writing.

The Energy Conservation Allowance to be paid hereunder shall be paid as provided for above, in accordance with paragraph 4 of the Agreement, and other applicable provisions of the Agreement, as Certificates of Occupancy are issued and Developer submits proof thereof to CGS.

Liquidated Damages due in accordance with paragraphs 3, 9 and other applicable provisions of the Agreement shall not prevent the payment of the ECA. .