

Source of Title:

Deed Book 240, Page 36

STATE OF ALABAMA)
SHELBY COUNTY)

NATURAL GAS SUPPLY AGREEMENT

THIS NATURAL GAS SUPPLY AGREEMENT (this "Agreement") is made as of the 18th day of April, 2003, by and between KenCar Development, Inc., an Alabama corporation ("Developer") and Alabama Gas Corporation, an Alabama corporation ("Alagasco").

WITNESSETH:

WHEREAS, Developer owns that certain land (the "Land") more particularly described on Exhibit A attached hereto and made a part hereof, on which Land Developer is developing a residential subdivision known as Park Forest Village, which will be comprised of 62 lots (the "Subdivision");

WHEREAS, Developer and Alagasco are of the opinion that it is advantageous to the parties and to future owners or occupants of the residences in the Subdivision that natural gas service be made available to each residence therein; and

WHEREAS, Alagasco is willing to provide natural gas service to the Subdivision and to the individual lots and residential units therein but, because of the substantial investment, costs and expenses of constructing and installing such a natural gas system, Alagasco requires assurance that such service will be used by the residential units in the Subdivision, which assurances Developer, for itself and its successors and assigns, has given and hereby gives as more particularly set forth herein.

NOW, THEREFORE, in consideration of the premises, the payments made or to be made by each party to the other as herein provided, the mutual covenants herein contained and other good and valuable consideration each to the other, the receipt and sufficiency of which are hereby acknowledged, Developer and Alagasco agree as follows:

1. Grant of Easements and Provision of Service. Developer shall grant to Alagasco sufficient and appropriate easements on, over, across and under the Land for provision of natural gas service to the Subdivision. Alagasco shall construct and install gas pipelines and other natural gas service improvements and infrastructure within such easements as deemed necessary or appropriate by Alagasco to serve the residences within the Subdivision. Alagasco and Developer shall coordinate their construction and development activities on the Land to avoid unreasonable interference with each other. Developer shall, in marketing the sale of homes and lots within the Subdivision and any future subdivisions on the Land, affirmatively and actively promote the fact that the homes are or are to be equipped with natural gas service.

2. Incentive Fee. Alagasco shall pay to Developer an "Incentive Fee" to be used in the development of the Subdivision. Such payment shall be paid to Developer upon the mutual execution of this Agreement. The amount and the payment of the Incentive Fee shall be evidenced by a separate Acknowledgment of Incentive Fee executed by Alagasco and Developer substantially in the form set forth as Exhibit C attached hereto. Developer shall refund to Alagasco the entire Incentive Fee, plus interest at the lesser of the rate of one percent (1%) per month or the maximum rate permitted by applicable law, calculated from the date Alagasco paid the Incentive Payment to Developer, if (i) construction of streets, curbing and other infrastructure within the Subdivision has not commenced within one (1) year from the date of such payment by Alagasco, or (ii) if construction has commenced within said one year period, the official subdivision map for the Subdivision or future subdivision for which said allowance has been paid has not been approved and recorded within two (2) years of said payment, which refund shall be due and payable within thirty (30) days after the end of the first of said periods without the occurrence of the specified event.

3. Covenants Running With the Land. In consideration of Alagasco's payment of said Incentive Fee and agreeing to provide natural gas service to the Subdivision, and as covenants running with the Land and binding on the owner of each lot within the Subdivision, Developer, for itself and its successors and assigns, covenants and agrees that, at the time of initial construction and occupancy, each residence in the Subdivision shall be equipped with one or more natural gas central heating systems and natural gas water heaters as the exclusive central space and water heating systems for the residence. Developer, its successors or assigns, may satisfy and release the foregoing covenant with respect to additional individual lots within the Subdivision by paying to Alagasco, as liquidated damages, One Thousand Nine Hundred Dollars (\$1,900.00) (the "Liquidated Payments") for each lot that is to be released from the covenant, which payment shall be due and payable upon the first to occur of (i) approval by the Subdivision's Architectural Review Committee of plans for, (ii) issuance of a building permit for, or (iii) substantial completion of construction of, a residence on a lot that does not comply with the covenant. Developer agrees that such payment per lot is a reasonable estimate of the damages that Alagasco would suffer in the event of non-compliance with the covenant, it being impractical to determine actual damages. In the event any such payment is not paid when due, it shall bear interest after such date and until paid at the lesser of the rate of one percent (1%) per month or the maximum rate permitted by applicable law, and Alagasco shall have a lien on the lot until said payment is made.

4. Sale of Unimproved Lots. In the event Developer or its successors or assigns sells an unimproved lot within the Subdivision, the Seller shall insert in the sales contract for such lot (unless the Liquidated Payment with respect to such lot has been received by Alagasco) a provision substantially in the form set forth on Exhibit B attached hereto and shall promptly provide a copy of each such sales contract to Alagasco. Developer shall receive as trustee for and pay over to Alagasco any and all Liquidated Payments received by Developer pursuant to such contract covenant. Developer shall use its best efforts to enforce said covenants and shall join and cooperate with Alagasco in the collection of any such accounts receivable. If requested by Alagasco, Developer shall execute a UCC-1 financing statement evidencing Alagasco's rights to such Liquidated Payments.

5. Title. Developer represents and warrants that it is the owner in fee simple of the Land, subject only to encumbrances of record, and that it has a good and full right and ability to enter into and to perform its obligations under this Agreement.

6. Attorney Fees. In the event either party brings suit to enforce its rights hereunder, the prevailing party shall be entitled to recover the costs of such suit, including reasonable attorney fees.

7. Notices. Any notice to be given by one party to the other pursuant to this instrument shall be given in writing and shall be deemed received on the third day after same has been placed in the United States mail, with postage prepaid, by certified mail, or one day after same has been deposited with a nationally-recognized overnight courier service for overnight delivery and with all charges therefor prepaid, and addressed as follows:

WHEN TO ALAGASCO:
Alabama Gas Corporation
605 Richard Arrington Jr. Blvd. North
Birmingham, Alabama 35203
Attn: Vice President – Marketing Services

WHEN TO DEVELOPER:
KenCar Development, Inc.
P.O. Box 1010
Alabaster, Alabama 35007
Attn: President

Either party may change its address or the person to whom attention of the notice is to be given, by written notice to the other party in the manner described above.


8. Complete Agreement. This Agreement embodies the full and complete agreement of the parties. There are no promises, understandings or agreements between the parties except as specifically set forth herein. Any statements, representations, agreements or promises not specifically set forth herein shall be void, unenforceable and of no force or effect. This Agreement may be modified only by an instrument in writing executed by both parties.

[CONTINUED ON FOLLOWING PAGE]


IN WITNESS WHEREOF, the parties have executed this Agreement, or have caused it to be executed by their respective duly authorized representatives, as of the day and date first set forth above.



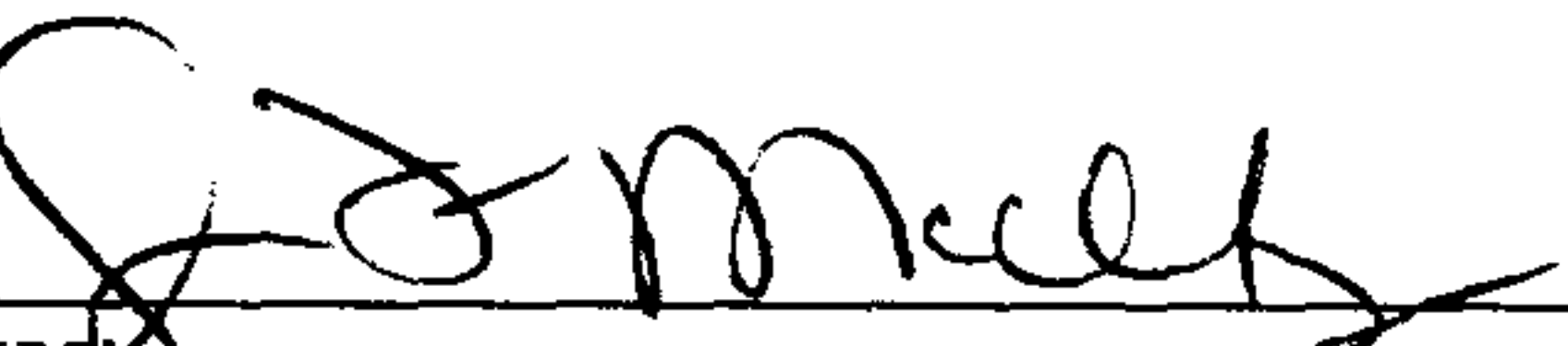
Witness



Witness




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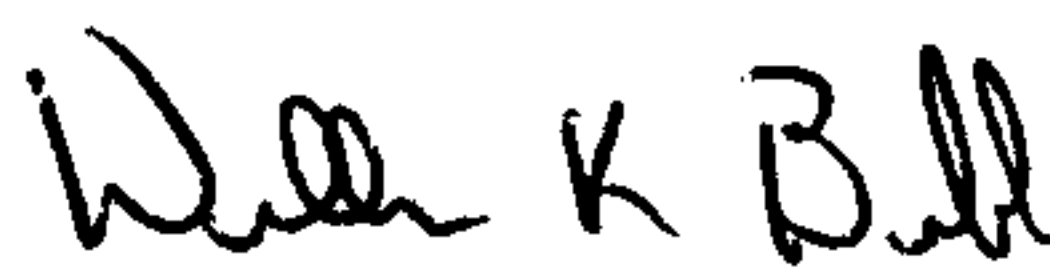
Witness

KENCAR DEVELOPMENT, INC.

By: 

Kenneth R. Carter
Its: President

ALABAMA GAS CORPORATION

By: 

William K. Bibb
Its: Vice President-Marketing Services

EXHIBIT "A"
PARCEL "A"

A PARCEL OF LAND CONTAINING 15.55 ACRES LOCATED IN THE SOUTHEAST ¼ OF THE NORTHWEST ¼ AND THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 26, TOWNSHIP 21 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA. THE POINT OF BEGINNING BEING THE SOUTHEAST CORNER OF LOT 42 PARK FOREST SUBDIVISION, FIRST SECTOR, AS RECORDED IN MAP BOOK 7, PAGE 155 IN THE OFFICE OF THE JUDGE OF PROBATE SHELBY COUNTY, ALABAMA. THENCE RUN NORTHERLY ALONG THE EAST LINE OF SAID LOT 42 A DISTANCE OF 185.94 FEET; THENCE LEFT 78°00'00" RUNNING WESTERLY ALONG THE NORTH LINE OF SAID SUBDIVISION 313.22 FEET; THENCE LEFT 72°00'00" AND RUN SOUTHWESTERLY ALONG SAID SUBDIVISION 407.81 FEET; (MEASURED LEFT 71°09'49" FOR 121.19 FEET; MEASURED LEFT 1°10'15" FOR 184.11 FEET; MEASURED RIGHT 0°18'46" FOR 102.75 FEET); THENCE RIGHT 9°53'00" AND RUN SOUTHWESTERLY ALONG SAID SUBDIVISION 68.73 FEET; (MEASURED RIGHT 10°58'30" FROM LAST MEASURED LINE 68.25 FEET); THENCE RIGHT 28°23'50" AND RUN SOUTHWESTERLY ALONG SAID SUBDIVISION 246.42 FEET; (MEASURED RIGHT 24°52'21" FROM LAST MEASURED LINE 246.16 FEET); THENCE RIGHT 16°30'10" AND RUN SOUTHWESTERLY ALONG SAID SUBDIVISION 76.71 FEET; (MEASURED RIGHT 17°11'28" FROM LAST MEASURED LINE 76.37 FEET); THENCE RIGHT 110°58'45" (MEASURED 110°45'27" FROM LAST MEASURED LINE) AND RUN NORTH ALONG EAST LINE OF PARK IN SAID SUBDIVISION 450.00 FEET; THENCE LEFT 89°33'20" AND RUN WEST ALONG NORTH LINE OF SAID PARK 465.00 FEET TO THE NORTH WEST CORNER OF PARK DRIVE; THENCE LEFT 90°26'40" AND RUN SOUTH ALONG THE WEST RIGHT-OF-WAY OF PARK DRIVE 60.00 FEET; THENCE RIGHT 90°00'00" AND RUN WESTERLY 176.70 FEET TO THE EAST LINE OF PARK FOREST FIFTH SECTOR AS RECORDED IN MAP BOOK 17, PAGE 91; THENCE RIGHT 91°21'42" AND RUN NORTHERLY 493.87 FEET TO THE NORTHEAST CORNER OF LOT 17-A OF A RESURVEY OF LOTS 17-19 PARK FOREST FIFTH SECTOR AS RECORDED IN MAP BOOK 19, PAGE 107 ALSO BEING THE NORTHWEST CORNER OF THE SOUTHEAST ¼ OF THE NORTH WEST ¼ OF SECTION 26, TOWNSHIP 21 SOUTH, RANGE 3 WEST; THENCE RIGHT 89°01'49" AND RUN EASTERLY 1381.65 FEET TO THE WESTERLY SIDE OF STATE HIGHWAY #119 THENCE RIGHT 77°32'49" AND RUN SOUTHERLY 153.75 FEET; THENCE LEFT 74°25'53" AND RUN EASTERLY 15.95 FEET; THENCE RIGHT 72°22'55" AND RUN SOUTHEASTERLY ALONG SAID HIGHWAY 251.64 FEET TO THE NORTHERLY RIGHT-OF-WAY OF FOREST PARKWAY; THENCE RIGHT 90°20'10" AND RUN SOUTHWESTERLY ALONG SAID RIGHT-OF-WAY 95.11 FEET TO THE POINT OF BEGINNING.

PARCEL "B"

A PARCEL OF LAND CONTAINING 0.40 ACRE LOCATED IN THE SOUTHEAST ¼ OF THE NORTHWEST ¼ AND THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 26, TOWNSHIP 21 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA. THE POINT OF BEGINNING BEING THE SOUTHEAST CORNER OF LOT 1 PARK FOREST SUBDIVISION FIRST SECTOR, AS RECORDED IN MAP BOOK 7, PAGE 155 IN THE OFFICE OF THE JUDGE OF PROBATE SHELBY COUNTY, ALABAMA. THENCE RUN NORTHWESTERLY ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 170.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 1 BEING ON THE SOUTHERLY RIGHT-OF-WAY OF FOREST PARKWAY; THENCE RIGHT 90° AND RUN NORTHEASTERLY ALONG SAID RIGHT-OF-WAY 95.63 FEET TO THE WESTERLY SIDE OF STATE HIGHWAY #119; THENCE RIGHT 89°39'50" AND RUN SOUTHEASTERLY ALONG SAID HIGHWAY 195.19 FEET; THENCE RIGHT 104°55'32" AND RUN WESTERLY 100.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

Provision for Inclusion in Sales Contracts

Purchaser covenants and agrees that, at the time of initial construction and occupancy, each residence constructed on each lot constituting the Property to be conveyed under this contract shall be equipped with one or more natural gas central heating systems and water heaters as the exclusive central space and water heating systems for the residence. Said covenant may be satisfied and released with respect to each lot by paying to Seller One Thousand Nine Hundred Dollars (\$1,900.00) for each lot that is to be released from the covenant, which payment shall be due and payable upon the first to occur of (i) approval by Developer or the Subdivision's Architectural Review Committee of plans for, or (ii) issuance of a building permit for, or (iii) substantial completion of, a residence on the lot that does not comply with the covenant. Any such payment that is not paid when due shall bear interest after such date and until paid at the lesser of the rate of one percent (1%) per month or the maximum rate permitted by applicable law, and Seller shall be entitled to a lien on the lot until said amount is paid. If Seller brings suit to enforce the foregoing obligations, it shall be entitled to recover the legal costs of such suit, including reasonable attorney fees. The Architectural Review Committee will not approve plans that do not comply with the covenant unless the payment has been made. This clause shall survive execution and delivery of the deed and shall inure to the benefit of Seller, its successors and assigns.

EXHIBIT C

Form of Acknowledgment of Incentive Fee

THIS ACKNOWLEDGMENT OF INCENTIVE FEE (the "Acknowledgment") is made by and between _____ ("Developer") and Alabama Gas Corporation ("Alagasco") on this _____ day of _____, _____.

WHEREAS, Developer and Alagasco have entered into that certain Natural Gas Supply Agreement (the "Agreement") of even date herewith with respect to the Subdivision known as _____; and

WHEREAS, Alagasco agreed under the Agreement to pay to Developer an Incentive Fee, the amount and the payment of said Incentive Fee to be evidenced by this Acknowledgment.

NOW THEREFORE, in consideration of the premises, Alagasco and Developer hereby acknowledge and agree as follows:

1. The Incentive Fee is \$_____, being the sum of \$_____ for each of the _____ lots existing in or planned for the Subdivision; and
2. Alagasco has paid the entire amount of said Incentive Fee (\$_____), and Developer has received and accepted such payment, to be applied pursuant and subject to the Agreement.

IN WITNESS WHEREOF, the parties have executed this Acknowledgment or have caused it to be executed by their respective duly authorized representatives, on the date first above written.

[DEVELOPER]

ALABAMA GAS CORPORATION

By: _____
Print Name: _____
Its: _____

By: _____
Print Name: _____
Its: _____