

## Asset Purchase Agreement

**THIS ASSET PURCHASE AGREEMENT** (“Agreement”) is made and entered into as of the 11th day of September, 2020 (the “Effective Date”), by and between Pluris Hampstead, LLC, a North Carolina limited liability company with an address of 5950 Berkshire Lane, Suite 800, Dallas, Texas 75225 (the “Buyer”), and Old North State Water Company, LLC, a North Carolina limited liability company with an address of 3212 6<sup>th</sup> Avenue South, Suite 200, Birmingham, AL 35222 (the “Seller”).

### W I T N E S S E T H:

**WHEREAS**, Seller owns utility assets that consist generally of wastewater collection and treatment facilities located in the Service Area (as defined below); and

**WHEREAS**, Buyer desires to purchase, and Seller desires to sell, the Purchased Assets (as defined below) upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions, representations and agreements contained herein, the parties agree as follows:

### ARTICLE I DEFINITIONS AND CONSTRUCTION SECTION

As used in this Agreement, the following term shall have the meanings as defined herein unless the context requires otherwise:

“**CIAC**” means a Contribution in Aid of Construction as defined in 26 CFR § 1.118-2.

“**CIAC Gross Up Payments**” means income tax collected by Seller on CIAC received from contributors, using the full gross-up method, relating to any of the Properties.

“**Closing**” or “**Closing Date**” has the meaning set forth in Section 9.01 of this Agreement.

**“Connection Fees”** means the tap fees, connection fees, and other funds collected from new customers of the Utility System at or prior to initial connection to the Utility System in order to defray the cost of making utility service available.

**“Customer Deposits”** means all funds or deposits required to be made by customers of the Utility System to Seller upon becoming a customer. Said funds being held by Seller, if any, shall be transferred to Buyer at Closing. A listing of any Customer Deposits is attached hereto as **Exhibit F** and incorporated herein by this express reference. Said list shall be updated at Closing to reflect any additions or deletions from said listing from the Effective Date until the date of Closing.

**“Easements”** means easements in favor of Seller relating to the WWTP site and the provision of services to the Properties which are not within a recorded plat or dedicated roadway as set forth in **Exhibit B**.

**“Encumbrance”** means any charge, claim, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

**“Excluded Assets”** means those assets, properties and rights, tangible and intangible, real and personal, listed on **Exhibit C**.

**“Fee Parcel”** means the Lift Station Tract described in **Exhibit D**.

**“Governmental Authorization”** means any approval, license, certificate of public convenience and necessity, registration or permit issued, granted, given or otherwise made

available by or under the authority of any Governmental Body for the ownership and/or operation of the Purchased Assets.

**“Governmental Body”** means any governmental authority of any nature, including, but not limited to, the North Carolina Utilities Commission (“NCUC”), the North Carolina Department of Environmental Quality (“NCDEQ”) and the County of Pender.

**“Lift Station Tract”** means a 50’ x 50’ area of land near the northeastern corner of the WWTP site, the specific location of which is to be agreed upon by the parties and is generally shown on Exhibit D, fee simple title to which is to be conveyed to Buyer for its use to construct, operate, maintain, repair, expand and replace a lift station.

**“Personal Property”** means certain utility assets owned by Seller and utilized in providing sewer service to Properties and identified on **Exhibit E**.

**“Properties”** means the real estate development projects commonly known as Majestic Oaks, Majestic Oaks West, Southside Commons (f/k/a Grey Bull), and Salter’s Haven at Lea Marina, all of which are located in Pender County, North Carolina.

**“Purchased Assets”** has the meaning set forth in Section 2.02 hereof.

**“Seller’s Knowledge** means the actual knowledge of Seller.

**“Service Agreements”** means the contractual agreements between Seller and the owners/developers of the Properties whereby the Seller agreed to provide wastewater service to the developments described in those agreements.

**“Service Area”** means the service area identified in **Exhibit A**.

**“Title Commitment”** means the title insurance commitment with respect to the Fee Parcel in an amount not to exceed the Purchase Price, issued by the Title Company committing the Title

Company to issue and deliver the Title Policy to Buyer upon compliance with the requirements stated in Schedule B, Section 1 thereof, subject to the terms and conditions contained therein.

**“Title Company”** means Metro Title Company, LLC, 726 N. Blount Street, Raleigh, NC 27604.

**“Title Policy”** means the ALTA owner’s policy of title insurance, issued by the Title Company in accordance with the Title Commitment that meets the requirements of Section 3.03 of this Agreement.

**“Utility System”** means (1) the Fee Parcel, (2) the Easements, and (3) the Personal Property used to provide utility service to the Properties.

**“WWTP”** means the wastewater treatment plant located in the Majestic Oaks development in Hampstead, Pender County, North Carolina.

## **ARTICLE II PURCHASE AND SALE OF ASSETS**

**SECTION 2.01. PURCHASE AND SALE COVENANT.** At Closing, Buyer shall purchase from Seller and Seller shall sell to Buyer the Purchased Assets, upon the terms and subject to the conditions set forth in this Agreement.

### **SECTION 2.02. PURCHASED ASSETS.**

(A) The Purchased Assets consist of the following, all of which are to be provided by Seller free and clear, without being subject to any Encumbrance, except those waived in writing or otherwise permitted by this Agreement:

- (1) The Fee Parcel.
- (2) The Easements possessed by Seller at Closing, whether identified prior to or after Closing, as well as two easements to be granted to Buyer by Seller: (1) a twenty foot (20’) wide permanent sewer and utility easement on the WWTP site running from the Lift Station Tract

toward Buyer's existing force main; and (2) a twenty-five foot (25') wide permanent access easement for ingress, egress and regress over the existing driveway to the WWTP and extending from Dan Owen Drive to the Lift Station Tract, both as shown on Exhibit D.

(3) The Governmental Authorizations, to the extent transferable.

(4) The customers served by Seller at the Properties and Seller's franchises to serve the Service Area.

(5) The Service Agreements between Seller and the owners or developers of the Properties;

(6) The Personal Property, consisting of the collection systems for the Properties; any mains or pipes connecting the collection systems at any of the Properties, either directly or indirectly, to the WWTP; all collection lines, mains, pumps, pump stations, valves, meters, service connections, equipment, facilities, parts, tools, chemicals, and all other physical facilities, equipment used in the operation of the Utility System, other than the Excluded Assets, and third party warranties that relate to completed construction or construction in progress.

(7) Customer Deposits held by Seller at Closing, if any.

(8) [REDACTED]

[REDACTED] for any lot, building or property at the Southside Commons, Salters Haven at Lea Marina, and the Majestic Oaks / Majestic Oaks West developments (collectively the "Conveyed Connection Fees").

(9) All CIAC Gross Up Payments due on the Conveyed Connection Fees.

(B) Within 10 days after the Effective Date, to the extent they are in Seller's possession, Seller shall provide Buyers with copies of current customer records, as-built surveys and infrastructure plans, plats, engineering and other drawings, designs, blueprints, plans and

specifications, maintenance and operating manuals, engineering reports, calculations, studies, non-corporate accounting, and non-corporate business records of Seller that relate to the description and/or operation of the Utility System and/or the Properties.

**SECTION 2.03. EXCLUDED ASSETS.** Notwithstanding any other provision of this Agreement that may be construed to the contrary, the Purchased Assets do not include the Excluded Assets as shown on **Exhibit C**.

**SECTION 2.04. PURCHASE PRICE.** The Purchase Price for the Purchased Assets is

payable by Buyer to Seller in immediately available funds at Closing, such payment to be made by wire transfer, pursuant to wiring instructions to be provided by Seller to Buyer prior to Closing.

**SECTION 2.05. ASSUMED OBLIGATIONS.** With the sole exception of Buyer's agreement to provide sewer service to individual customers at the Properties after Closing, Buyer shall not assume and shall not be liable to Seller for any debt, liabilities or contractual obligations of Seller or any other party of any nature whatsoever, except as set forth in this Agreement. Seller shall remain fully and solely liable for any and all debts, obligations or liabilities arising from Seller's operation of the Utility System and provision of service to the Properties prior to the Closing.

**SECTION 2.06 TRANSITIONAL SERVICE ARRANGEMENT.**

(A) One of the Excluded Assets is the WWTP, ownership of which shall be retained by Seller. Buyer will use the Purchased Assets to connect the Properties to Buyer's existing force main running along US Highway 17 (the "Force Main"), and Buyer's existing treatment plant in Hampstead. After Closing, it will be necessary for Buyer to construct facilities connecting the Purchased Assets to the Force Main. Because Buyer is purchasing the Purchased Assets, but not

the WWTP or other Excluded Assets, in order to facilitate its sale of the Purchased Assets to Buyer it is necessary that Seller provide transitional services to Buyer. During the period of time after Closing provided for herein for Buyer to construct facilities as needed for it to transition treatment of the wastewater generated at the Properties from the WWTP to Buyer's existing treatment plant, which period shall not exceed 150 days following the Closing (the "Interim Period"), Seller shall continue to operate the WWTP and Utility System and provide wastewater treatment services for the wastewater coming from the Properties (collectively "the Services").

(B) The Interim Period shall be extended only with written permission from the Seller and on such terms and conditions as may be mutually agreed.

(C) As consideration for Buyer's provision of the Services during the Interim Period, [REDACTED]

[REDACTED] as a result of Seller's provision of sewer service to customers located at all of the Properties for so long as Seller provides the Services during the Interim Period. Notwithstanding the language of Section 9.03(A), Seller shall likewise be responsible for all accounts payable due for services, materials and supplies related to its operation and maintenance of the WWTP and Utility System during the Interim Period.

### **ARTICLE III DUE DILIGENCE ISSUES**

#### **SECTION 3.01. PROVISION OF INFORMATION BY SELLER.**

(A) Seller has provided or will provide to Buyer within ten (10) days after the Effective Date an inventory, updated through the Effective Date, of equipment, parts and other personal property used by Seller in connection with the operation of the Utility System, provided and to the extent such inventory is in Seller's possession.

(B) During the Inspection Period, Seller shall cooperate with Buyer in providing updated information and access to the Utility System by Buyer's representatives during normal business hours upon reasonable advance notice. In conducting due diligence, Buyer's representatives will comply with all applicable laws and regulations. Buyer will at all times schedule and coordinate access to the Utility System with Seller. Seller shall have the right to have a representative present at all times of Buyer access to the Utility System. Buyer acknowledges and agrees that Seller may from time to time establish reasonable rules of conduct governing Buyer access to the Utility System. Buyer shall bear all costs and expenses of its investigation and restore the Utility System to its condition prior to such investigation, if Buyer's inspection causes any damage to the Utility System. Buyer agrees to pay to Seller promptly upon demand the cost of repairing and restoring any damage or disturbance that any Buyer representative shall cause to the Utility System. Buyer agrees to defend, hold harmless and indemnify Seller and Seller's representatives (collectively "Indemnified Party") from and against any and all losses, damages, diminutions in value, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of any kind, including professional fees and attorneys' fees, that are suffered or incurred by the Indemnified Party or to which the Indemnified Party may otherwise become subject to at any time caused by Buyer's access to the Utility System.

(C) During the Inspection Period, Seller shall make any existing plats, surveys, plans or specifications for the Utility System in Seller's possession available to Buyer, or its representatives, for inspection during normal business hours upon reasonable advance notice.

### **SECTION 3.02. DUE DILIGENCE DETERMINATIONS.**

Buyer shall have the period until forty-five (45) days after the Effective Date (the "Inspection Period") to conduct its due diligence. Buyer shall have until the date that is five (5)



Business Days after the expiration of the Inspection Period within which to terminate this Agreement in its sole discretion, for any reason or no reason, by delivering notice of its termination as provided in Section 11.02; otherwise, Buyer and Seller shall proceed to Closing as set forth in Article IX. Upon a termination of this Agreement under Section 3.02, and upon reimbursement by Seller of Buyer's out-of-pocket costs of obtaining such, Buyer shall provide Seller with a copy of all reports and documents, other than environmental assessments, prepared by Buyer and on behalf of Buyer in connection with its due diligence, specifically including, the Title Commitment and Survey, and except as otherwise provided in this Agreement, Seller and Buyer shall have no liability and no further obligation to each other under this Agreement.

### **SECTION 3.03 CURRENT EVIDENCE OF TITLE.**

(A) Buyer shall have the right to obtain, within the Inspection Period, at Buyer's sole expense, the following:

(1) A Title Commitment issued by the Title Company to insure title to the Fee Parcel in an amount not to exceed the Purchase Price, naming Buyer as the proposed insured and having the effective date as set forth therein, wherein the Title Company will have agreed to issue an ALTA form owner's title insurance policy; and

(2) Copies of all recorded documents listed as special Schedule B exceptions thereunder (the "Recorded Documents").

(B) The Title Commitment shall include the Title Company's requirements for issuing the Title Policy, which, if approved by Seller, shall be met by Seller on or before the Closing Date (including those requirements that must be met by releasing or satisfying monetary Encumbrances but excluding Encumbrances that will remain after Closing as agreed to by the Buyer).

(C) If any of the following occur, they shall constitute a Title Objection:

(1) The Title Commitment or other evidence of title or search of the appropriate real estate records discloses that any party other than Seller has title to the insured estate covered by the Title Commitment;

(2) Any current survey discloses any matter that Buyer reasonably believes could materially and adversely affect Buyer's material use and enjoyment of the Fee Parcel and/or Easements described therein. Buyer shall notify Seller in writing of such matters during the within five (5) business days of learning of any such matter.

(D) For each Title Objection that it agrees in writing to cure, Seller shall use its best efforts to cure such Title Objection and take all steps required by the Title Company to eliminate such Title Objection as an exception to the Title Commitment. Any Title Objection that the Title Company is willing to insure over, on terms acceptable to Seller and Buyer, is herein referred to as an "Insured Exception." The Insured Exceptions acceptable to Buyer, together with any title exception to the Title Commitment or matters disclosed by any survey and not objected to by the Buyer in the manner aforesaid, shall be deemed to be acceptable to Buyer. In the event Seller is unable or unwilling to cure a Title Objection and/or Buyer objects to an Insured Exception, Buyer shall have the right to terminate this Agreement and shall have no liability or further obligation under this Agreement.

(E) Buyer shall have the right, but not the obligation, to do such surveys on the Fee Parcel as Buyer desires. Surveys procured by Buyer shall be at the sole cost and expense of Buyer.

(F) If Buyer desires to have any standard survey exceptions deleted or modified in the Title Policy, at least fifteen (15) days prior to Closing Buyer shall deliver to Seller's attorneys properly certified and current original surveys of the specified Fee Parcel that comply with North Carolina law.

### **SECTION 3.04. ENVIRONMENTAL PROVISIONS.**

(A) For purposes of this Section:

(1) “Hazardous Materials” means any substance or material regulated by any federal, state or local governmental entity under any Environmental Law as a hazardous material, hazardous substance, hazardous waste, pollutant, contaminant, toxic waste, toxic substance or words of similar import, including petroleum and petroleum products, by-products or breakdown products;

(2) “Environmental Laws” means any statute, law, regulation, ordinance, injunction, judgment, order, or other decree of any governmental authority pertaining to the protection of the environment, including the Federal Clean Water Act - 33 U.S.C. §1251 et seq. (1972), the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Oil Pollution Act of 1990, Toxic Substances Control Act, Superfund Amendment and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, and any comparable state statute, law, regulation, ordinance, injunction, judgment, order, or other decree. Any reference to legislative acts or regulations shall be deemed to include all amendments thereto and all regulations, orders decrees, judgments or notices issued thereunder.

(B) Seller warrants that to Seller’s Knowledge it has obtained all environmental permits and other Government Authorizations that are required in connection with the business and operation of the Utility System.

(C) Seller warrants that to Seller’s Knowledge the Utility System is in full compliance with all applicable Environmental Laws and environmental permits. Seller has no knowledge of any basis for a violation, alleged violation or liability.

(D) Seller warrants that it has not received notice of any violation, alleged violation or liability arising under any applicable federal, state or local statutes, laws and regulations (including, without limitation, any applicable environmental, regulatory, or other law, ordinance or regulation) materially or adversely affecting the Purchased Assets or Utility System. For purposes of this Section, “material” means any matters reasonably expected to result in an aggregate expenditure of over [REDACTED] to correct the non-compliance or satisfy the liability.

(E) Seller warrants that to Seller’s Knowledge there are no Hazardous Materials present on or in the environment of the Utility System that are not in material compliance with Environmental Laws, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, equipment (whether moveable or fixed) or other containers, either temporary or permanent. Seller has not disposed of any Hazardous Materials on the Fee Parcel or Easements, nor has Seller removed Hazardous Materials from the Fee Parcel or Easements, except as provided by law. For purposes of this Section, “material” means any matters reasonably expected to result in an aggregate expenditure of over [REDACTED] [REDACTED] to correct the non-compliance or satisfy the liability.

(F) Buyer, at its expense, may perform assessments as it deems appropriate, including Phase I Environmental Site Assessments (ESA) pursuant to applicable ASTM standards and Phase II Environmental Site Assessments for recognized environmental concerns identified in the Phase I Environmental Site Assessments. Seller shall cooperate with Buyer and its agents by providing reasonable access to the Utility System, collection system and Fee Parcel, so that Buyer or its agents may conduct Environmental Site Assessments. In conducting Environmental Site Assessments, Buyer’s representatives will comply with all applicable laws and regulations. Buyer

will at all times schedule and coordinate access with Seller. Seller shall have the right to have a representative present at all times of Buyer access. Buyer acknowledges and agrees that Seller may from time to time establish reasonable rules of conduct governing Buyer access. Buyer shall restore the Utility System, collection system and Fee Parcel to their condition prior to such investigation. Buyer agrees to pay to Seller promptly upon demand the cost of repairing and restoring any damage or disturbance that any Buyer representative shall cause to the Utility System, collection system or Fee Parcel. Buyer agrees to defend, hold harmless and indemnify Seller and Seller's representatives (collectively "Indemnified Party") from and against any and all losses, damages, diminutions in value, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of any kind, including professional fees and attorneys' fees, that are suffered or incurred by the Indemnified Party or to which the Indemnified Party may otherwise become subject to at any time arising out of or as a result of Buyer access pursuant to this Section.

(G) If the ESA reveals Hazardous Materials on the Fee Parcel that require remedial action, Buyer, in its sole discretion, shall either: (a) proceed to Closing; or (b) attempt to negotiate with Seller a lesser Purchase Price for the Purchased Assets and proceed to Closing under the terms contained herein; provided, however, that if Seller and Buyer are unable to negotiate in good faith a lesser Purchase Price within twenty (20) days of Buyer's first offer to Seller, Buyer may terminate this Agreement; or (c) terminate this Agreement. Upon any termination under this Section 3.04, Seller and Buyer shall have no liability and no further obligation to each other under this Agreement.

**ARTICLE IV**  
**REPRESENTATIONS AND WARRANTIES**

**SECTION 4.01. REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller represents and warrants to Buyer as follows:

(A) Seller is duly organized, validly existing and has an active status under the laws of the State of North Carolina. Seller has the power and authority to enter into this Agreement and to perform the terms and conditions of this Agreement.

(B) Any pending or threatened legal actions, suits, mediations, arbitrations, or other legal or administrative proceedings pending or threatened against Seller that could affect the Purchased Assets or that would prevent consummation of the transactions contemplated by this Agreement, any facts that might result in any action, suit, mediation, arbitration, and any other proceedings that might result in any material adverse change in the Purchased Assets are listed in Exhibit G attached hereto and incorporated herein by reference.

(C) Seller is not in default under any Governmental Authorization relating to the Utility System or Purchased Assets. Seller has not received notice of any claim of default with respect to any Governmental Authorization relating to the Utility System or Purchased Assets and is not in default with respect to any judgment, order, writ, verdict, injunction, decree or award applicable to it or any court or other government instrumentality or arbitrator having jurisdiction over it as pertaining to the Utility System or Purchased Assets

(D) The execution and performance of this Agreement by Seller does not and will not violate or result in the breach of any term, or condition, or require the consent of any person not a party hereto under: (i) the operating agreement of Seller or (ii) any material mortgage, indenture, contract, lease, license or other instrument, document or understanding, oral or written, to which the Seller is a party or subject.

(E) Seller is not party to any contract to sell the Utility System or Purchased assets to any third party.

(F) Seller is not in default under any contract, agreement, lease or other instrument to which it, the Utility System, or the Purchased Assets are bound. There are no outstanding debts or accounts payable relating to the Purchased Assets to which Seller is a party.

(G) All tax returns, information and other reports required to be filed in any jurisdiction by Seller have been timely filed and all such tax returns are true, correct and complete in all material respects. All taxes applicable to Seller for the Purchased Assets that are due and payable have been paid.

(H) Seller has not dealt with a broker, salesperson, or finder in connection with any part of the transaction contemplated by this Agreement and, to Seller's Knowledge, no broker, salesperson or other person is entitled to any commission or fee with respect to such transaction as a result of Seller's actions.

(I) Seller warrants that it is the sole legal owner and has full right, power and ability to convey the fee simple interest and good and marketable title to the Fee Parcel free and clear of all liens, claims, encumbrances and interests in the Fee Parcel except those waived by Buyer in writing or as set forth by the Title Company in the Title Commitment.

(J) Without limiting the generality of any other provision of this Section 4.01, Seller warrants that, as of Closing, Seller is the sole legal owner and has full right, power and ability to convey to Buyer clear title to all of the Purchased Assets, free of any Encumbrances.

(K) As required by Orders of the NCUC in Docket W-100, Sub 57, Seller has collected CIAC Gross Up Payments on all Conveyed Connection Fees.

(L) Seller is not holding any Customer Deposits received from any individual or entity in connection with the establishment of service to any residence or business located at any of the Properties.

(M) Seller's environmental representations and warranties contained in Section 3.04 are true and accurate and incorporated by reference into this Section 4.01.

**SECTION 4.02. REPRESENTATIONS AND WARRANTIES OF BUYER.** Buyer represents and warrants to Seller as follows:

(A) Buyer is duly organized, validly existing and has an active status under the laws of the State of North Carolina. Buyer has the power and authority to enter into this Agreement and to perform the terms and conditions of this Agreement.

(B) Buyer is not subject to, nor a party to, any action, suit, claim or other legal proceeding, legal requirement or any other restriction of any kind or character that would prevent consummation of the transactions contemplated by this Agreement.

(C) Buyer has not dealt with a broker, salesperson, or finder in connection with any part of the transaction contemplated by this Agreement and, insofar as it knows, no broker, salesperson or other person is entitled to any commission or fee with respect to such transaction.

(D) The execution and performance of this Agreement by Buyer does not and will not violate or result in the breach of any term or condition, or require the consent of any person not a party hereto under: (i) the operating agreement of Buyer; or (ii) any material mortgage, indenture, contract, lease, license or other instrument, document or understanding, oral or written, to which the Buyer is a party or subject.



**ARTICLE V**  
**ISSUANCE AND TRANSFER OF GOVERNMENTAL AUTHORIZATIONS**

**SECTION 5.01. ISSUANCE AND TRANSFER OF GOVERNMENTAL AUTHORIZATIONS.** Within ten (10) days of the expiration of Buyer's right to terminate this Agreement as provided for in Section 3.02 days, Seller and Buyer jointly shall (1) apply for and thereafter diligently seek and pursue approval by the NCUC of the transfer of the customers and Purchased Assets to Buyer, and (2) apply to any appropriate governmental agencies for issuance and/or transfer of all Governmental Authorizations necessary to operate the Purchased Assets and provide sewer service to the Properties. It is understood that the approximate time for NCUC approval alone is contemplated to be between three (3) and six (6) months following the filing of the joint application with it. Each party shall be responsible for its own fees and costs in this regard. Any filing fees incurred in seeking such governmental authorizations shall be split evenly between the parties.

**ARTICLE VI**  
**CONDITIONS PRECEDENT TO THE BUYER'S OBLIGATION TO CLOSE**

Buyer's obligation to purchase the Purchased Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by the Buyer, in whole or in part):

**SECTION 6.01. SELLER'S PERFORMANCE.** All of the material covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all material respects.

**SECTION 6.02. SELLER'S REPRESENTATIONS AND WARRANTIES.** All representations and warranties made by Seller in this Agreement shall in all material respects be

true, correct and complete as of the Effective Date, and no material breach or violation of such representations and warranties shall have occurred from the Effective Date up to and including the Closing Date.

**SECTION 6.03. ADDITIONAL DOCUMENTS.** Seller shall have caused the documents and instruments required by this Agreement and the following documents to be delivered (or made available) to the Buyer, in a form reasonably satisfactory to the Buyer:

- (A) Resolution reflecting approval of this Agreement by Seller;
- (B) Such other documents as Buyer may reasonably request for the purpose of:
  - (1) Evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller; or
  - (2) Evidencing the release of all liens, security interests, and other encumbrances as provided for in this Agreement.

**SECTION 6.04. NO CONFLICT.** Neither the consummation nor the performance of this Agreement will, directly or indirectly, materially contravene or conflict with or result in a material violation of or cause Buyer to suffer any material adverse consequence under any applicable Governmental Authorization or other legal order.

**SECTION 6.05. GOVERNMENTAL AUTHORIZATIONS.** All Governmental Authorizations and regulatory approvals shall have been issued, cancelled or transferred, as the case may be, in accordance with Article V on terms satisfactory to Buyer.

## **ARTICLE VII**

### **CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE**

Seller's obligation to sell the Purchased Assets and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in whole or in part):

**SECTION 7.01. THE BUYER'S PERFORMANCE.** All of the material covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been performed and complied with in all material respects.

**SECTION 7.02. BUYER'S REPRESENTATIONS AND WARRANTIES.** All representations and warranties made by Buyer in this Agreement shall be true, correct and complete as of the Effective Date, and no breach or violation of such representations and warranties shall have occurred from the Effective Date up to and including the Closing Date.

## **ARTICLE VIII COVENANTS OF SELLER**

**SECTION 8.01. OPERATION OF THE BUSINESS OF SELLER.** Between the Effective Date and the Closing, Seller shall:

- (A) Conduct its business relating to the Utility system and Properties in the ordinary course of business consistent with past practice;
- (B) Confer with Buyer prior to implementing operational decisions relating to the Utility System or Properties of a material nature;
- (C) Maintain the Purchased Assets in a state of repair and condition that complies with legal requirements and is consistent with the requirements and normal conduct of Seller's business;
- (D) Comply with all legal requirements and contractual obligations applicable to the operations of Seller's business relating to the Utility system and the Properties;
- (E) Use its best efforts to maintain its relations and good-will with its suppliers, customers at the Properties and any others having business relations with it relating to the Properties;

(F) Cooperate with Buyer and assist Buyer in identifying the Governmental Authorizations required by Buyer to operate the Purchased Assets and serve the Properties from and after the Closing Date and either (i) transferring existing Governmental Authorizations of Seller to Buyer, where permissible, or (ii) assisting Buyer in obtaining new Governmental Authorizations;

(G) Upon request from time to time, execute and deliver all documents, make all truthful oaths, testify in any proceedings, whether before or after Closing, and do all other acts that may be reasonably necessary to consummate this Agreement, all without further consideration;

(H) Maintain all books and business records of Seller relating to the Utility system and the Properties in the ordinary course of business;

(I) Notify and consult with Buyer prior to the initiation, development, or execution of any plans for expansion of or improvements to the Utility System;

(J) Cooperate with Buyer in sending any customer notices relating to the Properties that in Buyer's judgment are necessary or desirable in connection with the transactions contemplated herein;

(K) Not allow the levels of raw materials, supplies or other materials included in the Purchased Assets to vary materially from the levels customarily maintained;

(L) Not make any material modification to any Governmental Authorization that relates to the Purchased Assets; and

(M) Not enter into any agreements, contracts, letters of intent or understanding or other documents relating to the Properties, or modify, terminate or assign any existing agreements, contracts, letters of intent or understanding or other documents relating to the Utility System or the Properties.

**SECTION 8.02. NOTIFICATION.** Between the Effective Date and Closing, Seller shall promptly notify Buyer, in writing, if to Seller's Knowledge there is (a) any fact or condition that causes or constitutes a material breach of this Agreement, (b) the occurrence after the Effective Date of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a material breach of this Agreement, or (c) any material damage or destruction to the Purchased Assets. During the same period, Seller also shall promptly notify the Buyer of the occurrence to Seller's Knowledge of any material breach of any covenant of Seller in this Agreement or the occurrence to Seller's Knowledge of any event that may make the satisfaction of the conditions in this Agreement impossible or unlikely.

**SECTION 8.03. PAYMENT OF LIABILITIES.** Seller shall pay or otherwise satisfy in the ordinary course of business all of its liabilities and obligations relating to the Properties and Purchased Assets as they come due.

## **ARTICLE IX CLOSING AND RELATED PROCEDURES AND ADJUSTMENTS**

**SECTION 9.01. CLOSING DATE AND PLACE.** The Closing shall be held at such place as is mutually agreed on by the parties on December 31, 2020, or such earlier date mutually acceptable to Seller and Buyer.

**SECTION 9.02. RECORDING FEES AND TAXES.**

(A) Fees to record the deeds and any other instruments necessary to deliver title to Buyer shall be paid by Buyer.

(B) To the extent that taxes or other charges are due and payable with respect to the deeds and other instruments necessary to deliver title to the Purchased Assets to Buyer, said transfer taxes shall be paid by Buyer. Any income taxes due and payable by Seller as a result of the sale of the Purchased Assets shall be paid by Seller. If any of the Purchased Assets were CIAC

contributed to Seller and generated a tax liability under the 2017 Federal Tax Cuts and Jobs Act, then Seller shall pay any income taxes due and payable as a result of its receipt of any of that CIAC.

(C) All *ad valorem* or property taxes on the Lift Station Tract and the Purchased Assets shall be prorated between the parties as of the date of Closing.

### **SECTION 9.03. ACCOUNTS RECEIVABLE; ACCOUNTS PAYABLE.**

(A) All accounts receivable generated for services provided to customers prior to the Closing Date shall belong to Seller and Seller shall have the right and obligation to collect such accounts receivable. Except to the extent otherwise provided for in Section 2.06, all accounts receivable generated for services provided to customers on and after the Closing Date shall belong to Buyer and Buyer shall have the right and obligation to collect such accounts receivable.

(B) All bills for services, materials and supplies rendered in connection with the operation of the Utility System prior to the Closing Date (“Accounts Payable”), shall be paid by Seller.

### **SECTION 9.04. CONNECTION FEES.**

(A) Seller [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As part of the documentation to be provided to Buyer by Seller, Seller shall provide an accounting of all Connection Fees collected by Seller from the Southside Commons and Salters Haven at Lea Marina developments.

(B) [REDACTED]

[REDACTED] Connection Fees received by Seller relating to the Southside Commons, Salters Haven at Lea Marina, and Majestic Oaks / Majestic Oaks West developments directly to an escrow agent designated in writing by Buyer, who shall hold such funds in escrow to be paid to Buyer following Closing or to Seller if the Agreement is terminated by either party as provided for herein prior to Closing.

(C) Connection Charges collected from the Properties on and after the Closing date shall be Buyer's sole and separate property.

**SECTION 9.05. COSTS AND PROFESSIONAL FEES.**

(A) Each party shall be responsible for securing its own counsel and advisors for representation in connection with the negotiation of this Agreement and all other matters associated with performance, cancellation or closing hereunder, unless otherwise specified herein. Each party shall be responsible for the payment of the fees of its own attorneys, bankers, engineers, accountants, and other professional advisors or consultants in connection herewith. Buyer will be responsible for the recording of the deed and other instruments necessary to deliver title to Buyer.

**SECTION 9.06. RISK OF LOSS.** At all times prior to and through the time of Closing, Seller shall maintain adequate fire and extended insurance coverage for the cost of any repairs to the Purchased Assets that may be required as a result of casualty damage. The risk of loss to the Utility System prior to Closing shall be borne by Seller. The risk of loss to the Purchased Assets after Closing shall be borne by Buyer.

## **SECTION 9.07. CLOSING PROCEDURE.**

(A) On or prior to the Closing Date, Seller and Buyer shall execute all documents necessary to close the transaction.

(B) At Closing, the appropriate party shall execute or cause to be executed and delivered to the Closing the following documents in final form acceptable to Buyer, together with any exhibits or appendices ("Transfer Documents"):

- (1) Special warranty deed for the conveyance of Fee Parcel;
- (2) Assignment of Easements;
- (3) Deed of easement granting (1) a mutually acceptable twenty foot (20') wide permanent access and utility easement on the WWTP site running from the Lift Station Tract toward Buyer's existing force main along US Highway 17, and (2) a twenty-five foot (25') wide permanent access easement for ingress, egress and regress over the existing driveway to the WWTP and extending from Dan Owen Drive to the Lift Station Tract.
- (4) If necessary, general assignment of any Government Authorizations;
- (5) Bills of Sale or other documents of assignment and transfer, with full warranties of title to the Personal Property portion of Purchased Assets;
- (6) Post-closing agreements, affidavits, assignments certificates, estoppel certificates, corrective instruments, releases, satisfactions or terminations necessary or required pursuant to this Agreement;
- (7) Title Commitments consistent with Section 3.03 of this Agreement;
- (8) Non-foreign affidavit;
- (9) Any affidavits, assignments, certificates, estoppel certificates, corrective instruments, releases, satisfactions, terminations or waivers necessary to close, including, but not



limited to, a no lien affidavit, a “gap” affidavit and those instruments identified by the Title Company insuring the Fee Parcel;

(10) Documents, in a form reasonably satisfactory to the Buyer, evidencing the release of all liens, security interests, and other encumbrances.

**SECTION 9.08. DOCUMENTS AFTER THE CLOSING.** From time-to-time after the Closing, each party hereto shall, upon request of the other, execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further acts, deeds, assignments, bills of sale, transfers or other documentation for (1) confirming or correcting title in the name of Buyer or its successor(s) or perfecting possession by Buyer or its successor(s) of any or all of the Purchased Assets, including the establishment of a record of Easements without resort to litigation, expenditure of monies or other extraordinary means for all facilities and assets that are a part of the Purchased Assets in existence or use at the time of Closing, or (2) otherwise fulfilling the obligations of the parties hereunder. The foregoing notwithstanding, Seller shall be obligated, at its own cost and expense, to secure the granting of and/or recordation of any Easement necessary for Buyer’s use of the Purchased Assets as contemplated by this Agreement.

## **ARTICLE X INDEMNITY AND ATTORNEYS FEES**

### **SECTION 10.01. INDEMNITY AND ATTORNEYS FEES**

(A) In an amount which, in the aggregate, does not exceed the Purchase Price, Seller agrees to indemnify (or defend at Buyer’s sole option) Buyer, its successors and assigns, and hold them harmless against any loss, damage, liability, expense or cost arising out of or attributable to: 1) any act or omission of Seller or its agents, employees or contractors relating to Seller’s ownership, maintenance, or operation of the Utility System prior to Closing, or 2) any misrepresentation or breach of any representation, warranty or covenant on the part of Seller under this Agreement.

(B) In an amount, which in the aggregate, does not exceed the Purchase Price, Buyer agrees to indemnify (or defend at Seller's sole option) Seller, its successors and assigns, and hold them harmless against any loss, damage, liability, expense or cost arising out of or attributable to: 1) any act or omission of Buyer or its agents, employees or contractors relating to Buyer's ownership, maintenance, or operation of the Purchased Assets after Closing, or 2) any misrepresentation or breach of any representation, warranty or covenant on the part of Buyer under this Agreement.

#### **SECTION 10.02. ATTORNEYS FEES**

In the event litigation is necessary to resolve any dispute arising under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses to the extent allowed by North Carolina law.

### **ARTICLE XI GENERAL PROVISIONS**

**SECTION 11.01. APPLICABLE LAW; JURISDICTION AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, excluding any choice of law rules that may direct the application of the laws of any other jurisdiction. Any dispute which the parties cannot resolve shall be litigated exclusively in Superior Court of Wake County, North Carolina or the North Carolina Business Court.

#### **SECTION 11.02. NOTICE.**

(A) All notices, certificates or other communications hereunder shall be sufficiently given upon receipt or refusal when hand delivered or mailed by registered or certified mail, postage prepaid, or by courier service, charges prepaid, to the parties at the following addresses:

To Seller: Old North State Water Company, LLC  
3212 6<sup>th</sup> Avenue South  
Suite 200

Birmingham, AL 35222  
Attn: John McDonald  
Email: [JMcDonald@integrawater.com](mailto:JMcDonald@integrawater.com)

With a courtesy copy by email to:

Karen Kemerait  
Fox Rothschild LLP  
434 Fayetteville St.  
Suite 2800  
Raleigh, NC 27601-2943  
Fax: (919) 755-8800  
Email: [KKemerait@foxrothschild.com](mailto:KKemerait@foxrothschild.com)

R Scott Tobin  
Taylor English Duma LLP  
4208 Six Forks Road  
Suite 1000  
Raleigh, NC 27609  
Email: [stobin@taylorenghish.com](mailto:stobin@taylorenghish.com)

To Buyer: Pluris Hampstead, LLC  
5950 Berkshire Lane  
Suite 800  
Dallas, Texas 75225  
Attn: Maurice W. Gallarda, PE  
Fax: (214) 965-9090  
Email [mgallarda@plurisusa.com](mailto:mgallarda@plurisusa.com)

With a courtesy copy by email to:

Daniel C. Higgins  
Burns, Day & Presnell, PA  
2626 Glenwood Avenue  
Suite 560  
Raleigh, NC 27608  
Fax: 919-782-2311  
Email: [dhiggins@bdppa.com](mailto:dhiggins@bdppa.com)

(B) Any written notice given to one person in subsection (A) of this Section shall also be copied and provided to all other persons identified in subsection (A).

(C) The parties may, by notice in writing given to the others, designate any future or different addresses to which the subsequent notices, certificates or other communications shall be sent.

**SECTION 11.03. ASSIGNMENT AND JOINDER.**

(A) This Agreement may not be assigned without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld.

(B) This Agreement shall be construed as solely for the benefit of Seller and Buyer and their successors and assigns and no claim or cause of action shall accrue to or for the benefit of any other party.

(C) This Agreement shall be binding on and shall inure to the benefit of the parties to it and their respective successors and permitted assigns.

**SECTION 11.04. AMENDMENTS AND WAIVERS.** Except as otherwise provided in this Agreement, no amendment, supplement, modification or waiver of this Agreement shall be binding upon any party hereto unless executed in writing by such party. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

**SECTION 11.05. ENTIRE AGREEMENT.** This Agreement is the entire agreement between the parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the agreements, understandings, negotiations and discussions of the parties, whether oral or written, pertaining to the subject matter hereof.

**SECTION 11.06. REMEDIES; TERMINATION EVENTS.** By notice given prior to or at the Closing, this Agreement may be terminated as follows:

(A) Without limiting all of the rights and remedies at law available to Buyer arising from Seller's failure to comply with its obligations under this Agreement, including, without limitation, the remedy of specific performance, if the Governmental Authorizations set out in Article V, or if all conditions precedent to Buyer's obligation to close set out in Article VI have not been satisfied prior to the Closing Date, Buyer shall have the right of termination, by delivery of notice to Seller.

(B) Without limiting the rights and remedies available to Seller pursuant to Section 11.07(A) hereof in connection with Buyer's failure to comply with its obligations under this Agreement, if the Governmental Authorizations set out in Article V, or if all conditions precedent to Seller's obligation to close set out in Article VII have not been satisfied on or prior to the Closing Date, Seller shall have the right of termination, without further recourse or liability to Buyer, by delivery of notice to Buyer.

(C) As otherwise provided in this Agreement.

**SECTION 11.07. REMEDIES; EFFECT OF TERMINATION.**

(A) Each party's right of termination under Section 11.06 is in addition to any other rights it may have under this Agreement or otherwise and the exercise of such right of termination is not an election of remedies. If this Agreement is terminated pursuant to Section 11.06, all obligations of the parties under this Agreement shall terminate unless otherwise stated in this Agreement; provided, however, that if this Agreement is terminated because of a breach of this Agreement by Seller or because one or more of the conditions to the Buyer's obligations under this Agreement is not satisfied as a result of the Seller's failure to comply with its obligations under

this Agreement, Buyer's right to pursue all legal remedies will survive such termination unimpaired.

(B) Neither Seller nor Buyer shall be liable to the other in the event that after the Effective Date there occurs (1) a change of law that prevents the Closing, (2) any action by a third party that prevents the Closing, or (3) any legal order that prevents the Closing. Both parties shall diligently defend against any third party's attempt to prevent a Closing or Governmental Authorization.

(C) If a material breach of any provision of this Agreement has been committed by Seller and such Breach has not been waived by Buyer, but does not result in termination of this Agreement, Buyer retains all remedies available to it at law or in equity with respect to such breach.

(D) Neither Seller nor Buyer shall be liable to the other for any special, consequential or punitive damages.

**SECTION 11.08. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be considered an original. The Parties expect that the Seller will execute this Agreement before execution by the Buyer.

**SECTION 11.09. SECTION HEADINGS.** Any headings preceding the texts of the several articles, sections or exhibits in this Agreement shall be solely for the convenience of reference and shall not constitute a part of this Agreement, nor affect its meaning, construction or effect.

**SECTION 11.10. SEVERABILITY.** In the event any term or provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality unenforceability shall not affect any other provisions of this Agreement and the remainder of this Agreement shall be construed to be in full force and effect

**SECTION 11.11. EXHIBITS AND SCHEDULES.** All exhibits, schedules and attachments referred to herein are intended to be and hereby are made specifically a part of this Agreement.

IN WITNESS WHEREOF, the Seller and Buyer have caused this Agreement to be duly executed and entered into on the date first above written.

SELLER:

**Old North State Water Company, LLC,**  
a North Carolina limited liability company

By: \_\_\_\_\_

Title: \_\_\_\_\_

BUYER:

**Pluris Hampstead, LLC,**  
a North Carolina limited liability company

By: \_\_\_\_\_

Title: Managing Member

**EXHIBIT A**  
**SERVICE AREA**

The service territories and areas (1) assigned to Seller by the NCUC as described in NCUC Docket W-1300, Sub 0 relating to the Majestic Oaks development; (2) described in Seller's Application for Certificate of Public Convenience and Necessity in NCUC Docket W-1300, Sub 20 relating to the Southside Commons (f/k/a Grey Bull) development; and (3) described in Seller's Notification of Intention To Begin Operations In Area Contiguous To Present Service Area in NCUC Docket W-1300, Sub 56 relating to the Salter's Haven at Lea Marina development.



**EXHIBIT B**  
**EASEMENTS**

List

A list of Seller's easements will be added when it is completed.

## **EXHIBIT C**

### **EXCLUDED ASSETS and OBLIGATIONS OF SELLER AS TO THE WWTP**

Excluded from the Seller's assets to be acquired by Buyer will be (1) all businesses conducted by Seller not relating to the Utility System or the Properties; (2) Seller's (a) cash and cash equivalents (*e.g.*, certificates of deposit, investment accounts, etc.); (b) accounts receivable for service provided to the Properties up to the date of Closing; (c) tax refunds and loss carry forwards; (d) investment tax credits; (e) any other assets owned by Seller not associated with its provision of service to the Properties; (f) [REDACTED] relating to the Southside Commons, Salters Haven at Lea Marina, and Majestic Oaks / Majestic Oaks West developments; (g) the WWTP and the land where it is located (except for the Lift Station Tract and Easements), and all adjacent structures, and (h) all ponds associated with the WWTP and its operation, including upset ponds, high rate infiltration ponds and other ponds.

Seller shall be free to relocate the WWTP for use elsewhere but shall be responsible for decommissioning the WWTP and the site where it is located, as well as all associated ponds, basins and property.

## **EXHIBIT D**

### **FEE PARCEL AND EASEMENTS TO BE CONVEYED**

A temporary Exhibit D is attached, which will be replaced with a survey plat when the survey is completed.

# EXHIBIT MAP

## NOTE:

1. THIS MAP IS INTENDED FOR USE AS AN EXHIBIT ONLY. THIS MAP IS NOT A SURVEY.
2. PROPERTY LINE DIMENSIONS TAKEN FROM RECORDED PLATS AVAILABLE ONLINE FROM THE FEMDER COUNTY GIS WEBSITE, SPECIFICALLY:

Date: 08/06/2013 15:50:00 DocNo: 000550286 Kind: MAP Book: 55 Page: 32

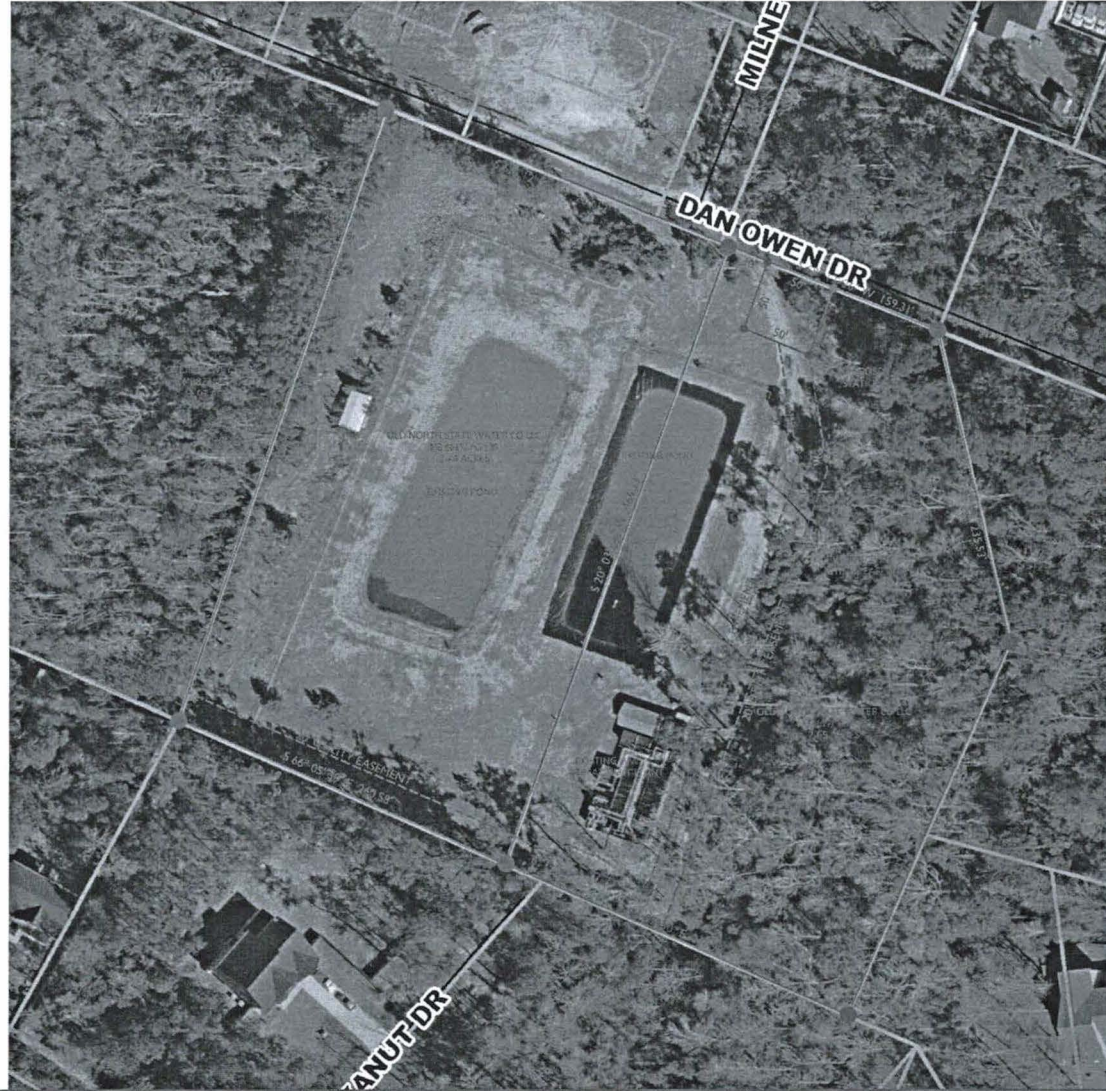
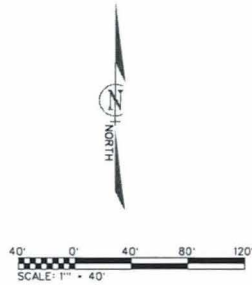
Description  
LTS 75R, 76R, 114 & 141-152 SEC 4 TP: TOPSAIL SD: MAJESTIC OAKS  
COMMON AREA A & B TOPSAIL  
AND

Date: 01/12/1996 00:00:00 DocNo: 000057121 Kind: MAP Book: 30 Page: 104

Description  
Desc1: TOP TWP  
QIT: SL 415

3. PROPERTY TO BE CONVEYED IS 50 FEET BY 50 FEET. THE EXACT LOCATION OF THE CORNERS SHOULD BE VERIFIED BY A NCPLS PRIOR TO CONVEYANCE.
4. THE LOCATION OF THE PROPOSED 20 FOOT UTILITY EASEMENT SHOULD BE VERIFIED BY A NCPLS PRIOR TO CONVEYANCE.

5. THE EXISTING 10 FOOT UTILITY EASEMENT ON THE ADJOINING PROPERTY (WIER, DEWEY) TAKEN FROM THE PLATS REFERENCED ABOVE.
6. WETLANDS ARE NOT DEPICTED. SEE REFERENCED PLATS.



PLURIS HAMPSTEAD, LLC  
1094 NC 210  
SNEADS FERRY, NC 28460



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PO BOX 4039 SURF CITY, NC 28445  
910.448.1046



NC FIRM C-1989 AL FIRM CA-4336-E NC REG NO. 25572 AL REG NO. 32178

NOTE: ANY PLAN THAT DOES NOT BEAR AN  
ENGINEER'S SEAL, SIGNATURE AND DATE IS A  
PRELIMINARY PLAN AND NOT RELEASED FOR  
CONSTRUCTION

**EXHIBIT E**  
**PERSONAL PROPERTY**

All wastewater collection systems for the Properties, including any mains or pipes connecting the collection systems at any of the Properties, either directly or indirectly to the WWTP or any pump or lift stations, but not limited to all collection lines, mains, pumps, valves, meters, service johns, equipment, facilities, parts, tools, chemicals, and all other physical facilities, equipment, used in providing service to the Properties, other than the WWTP, and third party warranties that relate to completed or construction in progress.

**EXHIBIT F**  
**CUSTOMER DEPOSITS**

None

**EXHIBIT G**  
**PENDING OR THREATENED MATTERS**

None