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L A W Y E R S

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June 12, 2008

FILED

JUN 12 2008

Clerk's Office
N.C. Utilities Commission

HAND DELIVERED

Renne Vance, Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

**RE: Amended Application for Certificate of Public Convenience and Necessity
Briar Chapel Utilities, LLC
Docket No. W-1230, Sub 0**

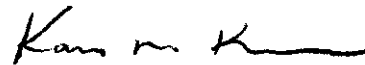
Dear Ms. Vance:

Enclosed herewith please find an original and nine copies of the Amended Application for Certificate of Public Convenience and Necessity for Briar Chapel Utilities, LLC and for Approval of Rates to operate as a sewer utility.

I would appreciate your filing this amended Application and returning one "filed" stamped copy to me via our courier.

If you have any questions or comments regarding the amended Application, please do not hesitate to contact me.

Sincerely,



Karen M. Kemeraut

pbb

Enclosures

cc: Mr. Ken Rudder, Public Staff Water Division (w/enclosures)

(22)
ab
Brow
Hia
P. A. C. T.
C. K. S.
Water
(Maps included)

FORM REVISED 6/04

DOCKET NO. W-1230

FILING FEE RECEIVED

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
AMENDED
 APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE & NECESSITY
 AND FOR APPROVAL OF RATES

FILED

JUN 12 2008

Clerk's Office
 N.C. Utilities Commission

INSTRUCTIONS

Notes or explanations placed in the margins of the application are acceptable. If additional space is needed, supplementary sheets may be attached. If any section does not apply, write "not applicable" or cross out the section.

APPLICANT

1. Trade name used for utility business Briar Chapel Utilities, LLC
2. Name of owner (if different from trade name) NNP-Briar Chapel, LLC
3. Business mailing address 16 Windy Knoll Circle
 City and state Chapel Hill, NC Zip Code 27516
4. Business street address (if different from mailing address) Same
5. Business telephone number 919/361-7000, Ext 18
6. If corporation, list the following:
 President LaDonna K. Monsees Sr. Vice President Derek C. Thomas
 Secretary Dolores A. Valle Treasurer/CFO - Vicki R. Mullins
 Three (3) largest stockholders and percent of voting shares held by each
NNP - Briar Chapel, LLC - 100% owner of NNP - Briar Chapel Utilities, LLP
7. If partnership, list the owners and percent of ownership held by each
N/A

PROPOSED UTILITY SERVICE AREAS

8. Name of Subdivision or Service Area Briar Chapel
9. County (or Counties) Chatham County
10. Type of Service (Water and/or Sewer) Sewer Only

PROPOSED RATES
 (Amount Applicant Proposes to Charge)

11. Metered Residential Service:
 Water: Not Applicable
 Sewer: Not Applicable
12. Flat Rate Residential Service:
 Water: Not Applicable
 Sewer: \$65 per month per Residential Unit
13. Nonresidential Service (explain):
 Water: Not Applicable
 Sewer: \$65 per month per Non-Residential Unit
14. Tap-on fees:
 Water: Not Applicable
 Sewer: \$1500 per Residential Unit
15. Finance charge for late payment: 1% per month on unpaid balance
 (NCUC Rule R12-8) specifies not more than one percent (1.0%) per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.)
16. Reconnection charge if water service cut off by utility as specified in NCUC Rule R7-20: Not Applicable
17. Reconnection charge if water service discontinued at customer's request: Not Applicable
18. Reconnection charge if sewer service cut off by utility as specified in NCUC Rule R10-16: Actual Cost
19. Other charges: Not Applicable

PROPOSED BILLING

1. Frequency of billing shall be (monthly, quarterly, etc.) Monthly
2. Billing shall be for service (in advance or arrears) Arrears
3. Bills past due 15 days after billing dates: (NCUC Rule R12-9 specifies that bills shall not be past due less than fifteen (15) days after billing date).
4. Will regular billing be by written statement? (yes or no) Yes
5. Will the billing statement contain the following? (Indicate yes or no for each item)

(a) Meter reading at beginning and end of billing period	<u>No</u>
(b) Date of meter readings	<u>No</u>
(c) Gallons used, based on meter readings	<u>No</u>
(d) Amount due for current billing period listed as a separate amount	<u>Yes</u>
(e) Amount due from previous billing period listed as a separate amount	<u>Yes</u>
(f) Amount due for each special charge (i.e., deposits, tap fees, etc.) listed as a separate amount	<u>Yes</u>
6. Show how the following will appear on the billing statement:
 - (a) Mailing address of company: 16 Windy Knoll Circle
Chapel Hill, NC 27516
 - (b) Address where bill can be paid in person: Not Applicable
 - (c) Name and phone number of alternative persons to contact for emergency service after business hours:
Contract Operator - Name and number to be provided
7. Is service already metered? (yes or no) Water - Yes N/A / Sewer - No
8. Does the Applicant understand the provisions for establishing credit and collecting customer deposits set forth in NCUC Rules and Regulations, Chapter 12? (yes or no) Yes
(Customer deposits must be refunded to customers having not more than two (2) bills overdue during a 12-month period and who are not then delinquent on the payment of their bills, per NCUC Rule R12-6.)

PRESENT RATES

9. Are you presently charging for service? If so, describe the rates being charged.
Not Applicable
10. How long have these rates been in effect? Not Applicable

PERSONS TO CONTACT

- | | <u>NAME</u> | <u>ADDRESS</u> | <u>TELEPHONE</u> |
|-----------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------|----------------------------|
| Asst. <u>V.P. - Operations - Mitch Barron</u> | <u>5850 Fayetteville Rd., Suite 201, Durham, NC 27713</u> | | |
| 12. Complaints or Billing | <u>Contract Operator, To be provided</u> | <u>To be provided</u> | <u>919/361-7000 Ex. 18</u> |
| 13. Engineering Operations | <u>Jeff Scouten</u> | <u>16 Windy Knoll Circle, Chapel Hill, NC</u> | <u>910/442-2856 (temp)</u> |
| 14. Emergency Service | <u>Contract Operator</u> | <u>27516</u> | |
| 15. Accounting | <u>Kendall Owen</u> | <u>16 Windy Knoll Circle, Chapel Hill, NC 27516</u> | <u>910-442-2856 (temp)</u> |
16. Are the names and phone numbers shown above listed in the phone book by each of the proposed service areas? (yes or no) Not yet. They will be
 17. Can customers make phone calls for service without being charged for a long distance phone call? (yes or no) Yes
 18. Do persons designated to receive phone calls for emergency service, after regular business hours, have authority to provide the needed repairs without first contacting owner? (yes or no) Yes
 19. List the qualifications of the person in charge of the utility system:
Contract Operator in excess of 20 years of experience in utility operations
Holds all appropriate licenses
 20. List the date(s) and describe any DENR violation(s) since the last application for franchise, transfer, or rate increase: Not Applicable

SERVICE AREA

Fill in one column for each subdivision or service area.

	(1)	(2)	(3)
1. Name of subdivision or service area	Briar Chapel		
2. County (or Counties)	Chatham		
3. Type of service (water, sewer, etc.)	Sewer		
4. If water is purchased, list from whom	Chatham County		
5. Source of water supply (wells, etc.)	Chatham County Water Distribution System		
6. Number of wells in service	N/A		
7. Pumping capacity of each pump in service	N/A		
8. Elevated storage tank capacity (gals.)	1,000,000 Gallons		
9. Pressure tank capacity (gals.)	N/A		
10. Types of water treatment (chlorine, etc.)	Via Chatham County		
11. Number of fire hydrants installed	48		
12. Is sewage disposal by septic tank or by sewer system?	Waste water treatment plant constructed to treat the sewage and surface apply to land via spray irrigation system		
13. If disposal is by sewer system, is sewage treated by utility company or by others?	Utility Company		
14. Capacity of Company's sewage treatment plant (gallons per day)	750,000 gallons per day at full build out		
15. Is service metered? (yes or no)	Yes		
16. Number of water meters in use	2		
17. Number of service taps in use (list number of each size)	Water 5/8" - 1 2" - 1		
	Sewer 4" - 2		
18. Number of customers at the end of test year	Water None yet.		
	Sewer None yet.		
19. Number of customers that can be served by mains already installed (including present customers, vacant lots, etc.)	Water 353 (1st Phase)		
	Sewer 353 (1st Phase)		
20. Number of customers that can be served by pumping capacity	Water N/A		
21. Number of customers that can be served by storage tank capacity	Water N/A		
22. Number of customers that can be served by treatment plant capacity	Sewer 2,405 residential; 230,000 sq. feet of retail space; 250,000 sq. feet of office space; 2 schools w/1,300 students and staff; 2 recreational clubs/pools		
23. Name nearest water/sewer utility system	Water utility - Chatham County System; sewer utility - Briar Chapel Utilities, LLC		
24. Distance to nearest water/sewer utility system	Waterlines connected to County lines on-site and N/A for sewer; no County or Municipal sewer available.		
25. Does any other person or utility seek to furnish the service(s) proposed herein? (yes or no)	No		
26. a. DENR System I.D. No.	Water Chatham County		
b. NPDES or Nondischarge Permit No.	Sewer See Attached Permits		

FINANCIAL STATEMENT

1. Will a separate set of books be maintained for the utility business?
Yes
2. Will a separate bank account be maintained for the utility business?
Yes
3. Are the revenues and expenses listed below based on past operations or are they estimated for future operations?
(actual or estimated) Estimated for future operations.

Note: If the Applicant already holds a public utility franchise, the proposed service area is new (i.e., there are no customers being served), and the proposed rates herein are the same as those previously approved, then the financial information below (lines 4 through 35) may be omitted.

Year 5
REVENUES AND EXPENSES

For 12 Months Ended _____ (Date)

<u>Revenues</u>	<u>Water</u>	<u>Sewer</u>
4. Residential service (flat rate)	\$ <u>N/A</u>	\$ <u>See Schedule 1</u>
5. Residential service (metered rate)	\$ _____	\$ _____
6. Nonresidential service (flat rate)	\$ _____	\$ _____
7. Nonresidential service (metered rate)	\$ _____	\$ _____
8. Other revenues (describe in remarks below)	\$ _____	\$ _____
9. Total Revenues (Lines 4 thru 8)	\$ _____	\$ _____
10. Total salaries (except owner)	\$ _____	\$ _____
11. Salaries paid to owner	\$ _____	\$ _____
12. Administrative and office expense (except salaries)	\$ _____	\$ _____
13. Maintenance and repair expense (except salaries)	\$ _____	\$ _____
14. Transportation expenses	\$ _____	\$ _____
15. Electric power for pumping	\$ _____	\$ _____
16. Chemicals for treatment	\$ _____	\$ _____
17. Testing fees	\$ _____	\$ _____
18. Permit fees	\$ _____	\$ _____
19. Purchased water/sewer treatment	\$ _____	\$ _____
20. Annual depreciation	\$ _____	\$ _____
21. Taxes: State income taxes	\$ _____	\$ _____
22. Federal income taxes	\$ _____	\$ _____
23. Gross receipts (or franchise tax)	\$ _____	\$ _____
24. Property taxes	\$ _____	\$ _____
25. Payroll taxes	\$ _____	\$ _____
26. Other taxes	\$ _____	\$ _____
27. Interest on debt during year	\$ _____	\$ _____
28. Other expenses (describe in remarks below)	\$ _____	\$ _____
29. Total Expenses (Lines 10 thru 28)	\$ _____	\$ _____
30. Net Income (Line 9 minus Line 29)	\$ _____	\$ _____

Remarks

31. _____
32. _____
33. _____
34. _____
35. _____

Year 5

NUMBER OF CUSTOMERS SERVED

	<u>Water</u>		<u>Sewer</u>	
	<u>Flat Rate</u>	<u>Metered</u>	<u>Flat Rate</u>	<u>Metered</u>
36. Customers at beginning of year	<u>N/A</u>	<u>N/A</u>	<u>827</u>	<u>N/A (REU)</u>
37. Customers at end of year	<u>N/A</u>	<u>N/A</u>	<u>1,067</u>	<u>N/A (REU)</u>
38. Average gallons used per customer	<u>N/A</u>			per month

COST OF UTILITY SYSTEM

1. Is the cost of utility system listed below based on past operation, or is it estimated for future operation?
(actual or estimated) Estimated for future operations
2. Does the cost of utility system listed below represent the cost to the Applicant herein? (yes or no)
Yes.
If no, list cost (purchase price to Applicant). _____

Year 5

ORIGINAL COST OF UTILITY SYSTEM

As of Year Ended _____ (Date)

Note: List the total original cost to construct and establish the system, whether or not paid for by the present owner.

	<u>Balance at End of Year</u>	
	<u>Water</u>	<u>Sewer</u>
3. Land and rights-of-way	\$ <u>N/A</u>	\$ <u>See Schedule 7</u>
4. Structures and site improvement	\$ _____	\$ _____
5. Wells	\$ _____	\$ _____
6. Pumping equipment	\$ _____	\$ _____
7. Treatment equipment	\$ _____	\$ _____
8. Storage tanks	\$ _____	\$ _____
9. Mains (excluding service connections)	\$ _____	\$ _____
10. Service connections	\$ _____	\$ _____
11. Meters (including spare meters)	\$ _____	\$ _____
12. Office furniture and equipment	\$ _____	\$ _____
13. Transportation equipment	\$ _____	\$ _____
14. Other utility property in service (describe in remarks below)	\$ _____	\$ _____
15. Total utility property in service (Lines 3 thru 14)	\$ _____	\$ _____
16. Less: accumulated depreciation	\$ _____	\$ _____
17. Less: accumulated lap fees and other contributions in aid of construction	\$ _____	\$ _____
18. Less: customer advances	\$ _____	\$ _____
19. Net investment in utility property (Line 15 minus 16, 17, & 18)	\$ _____	\$ _____

Utility Property Not in Service

	<u>Balance at End of Year</u>	
	<u>Water</u>	<u>Sewer</u>
20. Construction work in progress	\$ _____	\$ _____
21. Property held for future use	\$ _____	\$ _____
22. Other (describe in remarks below)	\$ _____	\$ _____

Remarks

23. _____
24. _____
25. _____
26. _____

RECOVERY OF PLANT COST

The utility proposes to recover the cost of the plant listed on Page 5, Line 15 as follows:

	<u>Water</u>	<u>Sewer</u>
1. Amount to be contributed by developer	\$ _____	\$ 1,844,800.00 (See Schedule 7)
2. Amount to be recovered through tap fees	\$ _____	\$ 2,667,800.00
3. Amount to be recovered through rates	\$ _____	\$ 6,817,287.00
4. Other (please describe below on Line 6)	\$ _____	\$ _____
5. Total cost of plant	\$ _____	\$ 11,329,887.00

6. Description of other:

Not Applicable

ANNUAL DEPRECIATION

7. If annual depreciation is claimed using a composite rate for the entire system, show rate of depreciation used:

Water: Not Applicable

Sewer: See Schedule 7

8. If annual depreciation is claimed using individual rates for each type of equipment, show rates of depreciation used:

See Schedule 7

OTHER FINANCIAL INFORMATION

1. Please provide the following capital structure information for the Company prior to the purchase of the new water and/or sewer system(s):

See Schedule 8

a. Capital structure as of _____

b. Capital structure balances:

	<u>Amount</u>	<u>Percent Of Total Capital</u>
Long-term debt/loans	\$ _____	_____
Preferred stock (if any)	\$ _____	_____
Common equity:		
Common stock	\$ _____	_____
Retained earnings	\$ _____	_____
Total common equity	\$ _____	_____
Total capital	\$ _____	<u>100%</u>

2. The purchase price of the system will be financed as follows:

a. Long-term debt	\$ See Schedule 8
b. Short-term debt	\$ _____
c. Common stock	\$ _____
d. Retained earnings	\$ _____
e. Other (please describe below on Line g)	\$ _____
f. Total purchase price	\$ _____

g. Description of other: _____

3. Please provide the following for improvements/additions to be made in the first year:

a. Brief description: **See Schedule 8**

b. Financing:

(1) Long-term debt	\$ _____
(2) Short-term debt	\$ _____
(3) Common stock	\$ _____
(4) Retained earnings	\$ _____
(5) Other (please describe below on Line (7))	\$ _____
(6) Total improvements/additions	\$ _____

(7) Description of other: _____

1. Are there any major improvements/additions required in the next five years and the next ten years? Indicate the estimated cost of each improvement/addition, the year it will be made, and how it will be financed (long-term debt, short-term debt, common stock, retained earnings, and other (please explain)).

Expansion of WWTP to 500,000 GPD

Expansion of WWTP to 750,000 GPD

Spray irrigation package 'B' including east storage pond and pump station

Spray irrigation package 'C' including west storage pond and pump station

Collection and irrigation system expansions up to 750,000 GPD

2. Are there any major replacements required in the next five years and the next ten years? Indicate the estimated cost of each replacement, the year it will be made, and how it will be financed (long-term debt, short-term debt, common stock, retained earnings, and other (please explain)).

Lift station pumps - 4 @ 8,000 in year 6

Grinder pumps - 5 @ 1,500 in years 5 through 10

3. Please fill out the attached addendum showing the projected cash flows and income statement for the first five years of operation of this system. This addendum should be for the utility system for which the subject application is being submitted, exclusively. Instructions are included on page 3 of the addendum. The following information may be provided instead of filing the addendum:

Addendum provided and attached

- (1) Audited financial statements for the utility and/or parent company.
- (2) Budgets, capital and operating, for the company's North Carolina utility operations for the next five years.
- (3) The most recent fiscal year budgets, capital and operating, and the actual amounts for that year for the utility's and/or parent company's North Carolina utility operations.

EXHIBITS

THE FOLLOWING EXHIBITS SHALL BE ATTACHED TO THE APPLICATION:

1. If the Applicant is a corporation, enclose a copy of the Articles of Incorporation on file with the North Carolina Secretary of State. (Not required if previously filed with the Commission.) **Attached.**
2. If the Applicants are doing business as a partnership, enclose a copy of the partnership agreement. (Not required if previously filed with the Commission.) **N/A**
3. If the Applicant is conducting business under a trade name or d/b/a, enclose a copy of the certificate filed with the register of deeds in each county where the Applicant will be conducting business as required by G.S. 66-60.
4. Enclose a copy of a letter from the Department of Environment and Natural Resources granting approval of the plans for each water system. **N/A**
5. Enclose a copy of a letter from the Department of Environment and Natural Resources granting approval of the plans for each sewer system. **See Attached**
6. Enclose a copy of a Division of Environmental Health (DEH) report on a chemical analysis of untreated water from each well. (This should not be confused with the monthly samples submitted to DEH for bacteriological analysis. Contact DEH for instructions to obtain a sample for chemical analysis.) **N/A**
7. Enclose a copy of purchase agreements or contracts showing provision for ownership or control of the water or sewer systems, including sites for wells or treatment plants. **Contract of Sale of Plant to Utilities from BC**
8. Enclose a copy of contracts or agreements, including all attachments, exhibits, and appendices, between the utility and any other party (land developers, customers, etc.) regarding the proposed utility services, including contracts regarding tap fees, construction costs, easements, and rights-of-way, etc. (If none, write "none"). **Agreement for Operations, Maintenance and Management**
9. Enclose a vicinity map showing the location of the proposed subdivisions or service areas in sufficient detail for someone not familiar with the county to locate the subdivisions. (A county road map with the subdivisions outlined is suggested.) **See Attached**
10. Enclose maps of the subdivisions in sufficient detail to show the layout of streets, lots, the water or sewer mains, hydrants, wells, pumping equipment, treatment facilities, storage facilities, etc. **See Attached**
11. Enclose a copy of the workpapers supporting the estimate of the plant costs, including a breakdown by type of plant item, showing the detail of how the estimated cost was determined, and indicating which plant items, if any, will be contributed to the utility. **See Schedules 1 - 9**
12. Enclose a copy of the most recent fiscal year financial statements, audited if available, for the Applicant.
13. Enclose a copy of the most recent fiscal year financial statements, audited if available, for the parent company of the Applicant.
14. If the information requested in Exhibits 12 and 13 is not available, enclose a copy of the most recent fiscal year financial statements or statement of net worth for the principals of the utility and/or parent company.

FILING INSTRUCTIONS

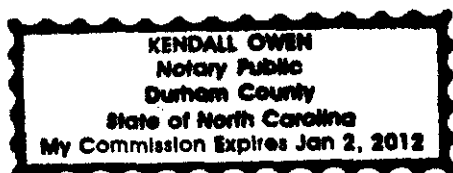
15. Eight (8) copies of the application and exhibits shall be filed with the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4325. One of these copies must have an original signature. (Applicants must also provide any copies to be returned to them.)
16. Enclose a filing fee as required by G. S. 662-300. A Class A company (annual revenues of \$1,000,000 or more) requires a \$250 filing fee. A Class B company (annual revenues between \$200,000 and \$1,000,000) requires a \$100 filing fee. A Class C company (annual revenues less than \$200,000) requires a \$25 filing fee. **MAKE CHECK PAYABLE TO THE N.C. DEPARTMENT OF COMMERCE/UTILITIES COMMISSION.**

SIGNATURE

17. Application shall be signed and verified by the Applicant. **Briar Chapel Utilities LLC**
Signature: *Mitch Barron*
Mitch Barron, Asst. V.P.
Date: _____
18. (Typed or Printed Name) **Mitch Barron**
personally appearing before me and, being first duly sworn, says that the information contained in this application and in the exhibits attached hereto are true to the best of his/her knowledge and belief.

This is the 11th day of June, 2008
Kendall Owen
Notary Public

5850 Fayetteville Rd
Durham Address NC 27713
My Commission Expires: Jan 2, 2012
Date



Briar Chapel Utilities, LLC

Docket No. W-1230, Sub O

ADDENDUM TO APPLICATION FOR TRANSFER OF PUBLIC UTILITY FRANCHISE AND FOR APPROVAL OF RATES

Schedule 1

Projected Income Statement

Line No.	Item	Year 1	Year 2	Year 3	Year 4	Year 5
<u>Operating revenue</u>						
1	Metered service revenue					
2	Flat rate service revenue	25,584 [1]	106,080 [1]	355,618 [1]	645,154 [1]	832,354 [1]
3	EPA testing surcharge					
4	Re-connect fees					
5	Return check charge					
6	Late payment charges					
7	Other operating revenue	256 [2]	1,061 [2]	3,556 [2]	6,452 [2]	8,324 [2]
8	Total operating revenue (Sum of lines 1 thru 7)	25,840	107,141	359,174	651,605	840,677
<u>Operating expenses</u>						
9	Total salaries and wages (employees only)					
10	Outside labor expense (non-employees)	49,000 [3]	72,000 [3]	72,000 [3]	75,000 [3]	75,000 [3]
11	Administrative and office expense	440 [4]	4,040 [4]	15,440 [4]	34,640 [4]	44,240 [4]
12	Maintenance and repair expense	820 [4]	3,400 [4]	11,398 [4]	20,678 [4]	26,678 [4]
13	Purchased water					
14	Purchased sewer treatment					
15	Electric power expense (exclude office)	13,200 [3]	26,400 [3]	28,000 [3]	28,000 [3]	29,500 [3]
16	Chemicals expense	328 [4]	1,360 [4]	4,559 [4]	8,271 [4]	10,671 [4]
17	Testing fees	820 [4]	3,400 [4]	11,398 [4]	20,678 [4]	26,678 [4]
18	Transportation expense					
19	Sludge	1,640 [4]	6,800 [4]	16,000 [4]	16,000 [4]	16,000 [4]
20	Other operating expenses	2,296 [4]	9,520 [4]	31,914 [4]	57,898 [4]	74,698 [4]
21	Total operations and maintenance expenses (Sum of lines 9 thru 20)	68,544	126,920	190,710	261,166	303,466
22	Annual depreciation expense	454,850 [5]	454,850 [5]	454,850 [5]	454,850 [5]	454,850 [5]
23	Amortization of CIAC	(1,640) [6]	(6,800) [6]	(22,796) [6]	(41,356) [6]	(53,356) [6]
24	Payroll taxes					
25	Franchise (gross receipts) tax	1,535 [7]	6,365 [7]	21,337 [7]	38,709 [7]	49,941 [7]
26	Annual NCUC regulatory fee	31 [8]	127 [8]	427 [8]	774 [8]	999 [8]
27	Total operating expenses (Sum of lines 21 thru 26)	523,320	581,462	644,528	714,143	755,900
<u>Income taxes</u>						
28	State income taxes	0	0	0	0	5,850
29	Federal income taxes	0	0	0	0	15,085
30	Total income taxes (Line 28 plus line 29)	0	0	0	0	20,935
31	Net operating income/(loss) (Line 8 minus line 27 minus line 30)	(497,480)	(474,322)	(285,354)	(62,538)	63,842
32	Interest expense					

33	Net income/(loss) (Line 31 minus line 32)	<u>(497,480)</u>	<u>(474,322)</u>	<u>(285,354)</u>	<u>(62,538)</u>	<u>63,842</u>
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Briar Chapel Utilities, LLC
Docket No. W-1230, Sub O
ADDENDUM TO APPLICATION FOR TRANSFER OF PUBLIC UTILITY FRANCHISE AND FOR APPROVAL OF RATES

Instructions

Schedule 1
Instructions

- 1 These schedules should reflect all revenues, costs, investment, etc. associated with or to be associated with the utility system for which the subject transfer application is being submitted, exclusively.
- 2 For purposes of forecasting future expenses, as a simplifying assumption, it may be assumed that increases in such costs due to increases in general price levels (i.e., inflation) will on average be offset by concurrent rate increase
- 3 A written detailed narrative explanation of all assumptions underlying the information and data contained in this addendum and five (5) copies of all workpapers developed in compiling the addendum are to be filed with the Commisijons's Chief Clerk concurrent with the filing of the transfer application.
- 4 Computations for Statement of Cash Flows (Page 2 of Addendum)
 - (a) Line 2 should agree with Addendum Page 1 - Projected Income Statement, Line 8.
 - (b) Line 3 should agree with Addendum Page 1 - Projected Income Statement, Line 21.
 - (c) Line 4 should agree with Addendum Page 1 - Projected Income Statement, sum of Lines 24 thru 26.
 - (d) Line 14 should equal Line 12 plus Line 13.
 - (e) Line 15 should equal Line 5 less Line 14.
 - (f) Line 30 should equal Line 15 less Line 20 plus Line 29.
 - (g) Line 31 should equal the cash balance at the end of the prior year, except for the beginning balance for Year 1, which should be zero.
 - (h) Line 32 should equal Line 30 plus Line 31.

Briar Chapel Utilities, LLC
Docket No. W-1230, Sub O
ADDENDUM TO APPLICATION FOR TRANSFER OF PUBLIC UTILITY FRANCHISE AND FOR APPROVAL OF RATES

Projected Income Statement

Schedule 1
Footnotes

Narrative of Assumptions Used in the Completion of the Projected Income Statement

- [1] Per Schedule 3
- [2] Per Schedule 4 (1% of Revenue)
- [3] Schedule 4
- [4] Cost rate per Schedule 4 x E.R.U. per Schedule 3.
- [5] Schedule 7
- [6] Accumulated tap fees amortized over 30 years.
- Gross receipts tax at 6%.
- [7] NCUC regulatory fees at .12%.
- [8]

Briar Chapel Utilities, LLC

Docket No. W-1230, Sub O

ADDENDUM TO APPLICATION FOR TRANSFER OF PUBLIC UTILITY FRANCHISE AND FOR APPROVAL OF RATES

Statement of Cash Flows

Schedule 2

Line No.	Item	Year 1	Year 2	Year 3	Year 4	Year 5
<u>Cash Flows From Operating Activities</u>						
1	Pre-tax operating income/(loss):					
2	Total operating revenue	25,840 [1]	107,141 [1]	359,174 [1]	651,605 [1]	840,677 [1]
3	Less: Operation and maintenance expenses	(68,544) [2]	(126,920) [2]	(190,710) [2]	(261,166) [2]	(303,466) [2]
4	Less: Taxes other than income	(1,566) [3]	(6,492) [3]	(21,764) [3]	(39,483) [3]	(50,940) [3]
5	Pre-tax operating income/(loss)	(44,270) [4]	(26,271) [4]	146,700 [4]	350,956 [4]	486,271 [4]
6	Income tax calculation:					
7	Pre-tax operating income/(loss):	(44,270) [5]	(26,271) [5]	146,700 [5]	350,956 [5]	486,271 [5]
8	Plus: Tap Fees	49,200 [6]	154,800 [6]	479,880 [6]	556,800 [6]	360,000 [6]
9	Less: Tax depreciation, net of CIAC amortization	(453,210) [7]	(448,050) [7]	(432,054) [7]	(413,494) [7]	(401,494) [7]
10	Less: Interest expense	(247,252) [8]	(230,807) [8]	(205,691) [8]	(178,542) [8]	(156,556) [8]
11	Taxable income/(loss)	(695,532) [9]	(550,328) [9]	(11,165) [9]	315,720 [9]	288,221 [9]
12	State income tax	0 [10]	0 [10]	0 [10]	0 [10]	5,850 [10]
13	Federal income tax	0 [11]	0 [11]	0 [11]	0 [11]	15,085 [11]
14	Total income taxes to be paid	0 [12]	0 [12]	0 [12]	0 [12]	20,935 [12]
15	Net cash provided by (used in) operating activities	(44,270) [13]	(26,271) [13]	146,700 [13]	350,956 [13]	465,337 [13]
<u>Cash Flows From Investing Activities</u>						
16	Purchases of utility plant	11,329,887 [14]				
17	Plus: Cash bonds posted					
18	Less: Contributions in aid of construction	(1,844,800) [15]				
19	Less: Proceeds from disposal of utility plant					
20	Net cash used (provided) by investing activities	9,485,087 [16]	0	0	0	0
<u>Cash Flows From Financing Activities</u>						
21	Proceeds from issuing short term debt					
22	Less: Principal repayment of short-term debt					
23	Plus: Proceeds from issuing long-term debt					
24	Less: Principal repayment of long-term debt					
25	Less: Interest payment for long and short term debt					
26	Plus: Proceeds from issuing stock					
27	Less: Dividends paid					
28	Plus: Funds provided by owner	9,485,087 [17]				
29	Net cash provided (used) by financing activities	9,485,087 [18]	0	0	0	0
30	Net increase (decrease) in cash	(44,270) [19]	(26,271) [19]	146,700 [19]	350,956 [19]	465,337 [19]
31	Cash balances at beginning of year	0 [20]	(44,270) [20]	(70,541) [20]	76,159 [20]	427,115 [20]

32 Cash balance at end of year

<u>(44,270)</u>	[20]	<u>(70,541)</u>	[20]	<u>76,159</u>	[20]	<u>427,115</u>	[20]	<u>892,452</u>	[20]
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Briar Chapel Utilities, LLC
Docket No. W-1230, Sub O
Statement of Cash Flows

Schedule 2
Footnotes

Narrative of Assumptions Used in the Completion of the Statement of Cash Flows

- [1] Revenue amounts on Line 2 are per the Projected Income Statement, Line 8, for each year.
- [2] Operation and maintenance expenses on Line 3 are per the Projected Income Statement, Line 21, for each year.
- [3] Taxes other than income on Line 4 are per the Projected Income Statement, Lines 24 thru 26, for each year.
- [4] Pre-tax operating income/(loss) on Line 5 is the summation of Lines 2 thru 4, for each year.
- [5] Pre-tax operating income/(loss) on Line 7 is per Line 5, for each year.
- [6] Contributions in aid of construction on Line 8 are based upon the E.R.U. for each year per Schedule 3 x \$2,500 tap fee per E.R.U.
- [7] Depreciation per Schedule 7 net of CIAC Amortization.
- [8] Taxable income/(loss) on Line 11 is the summation of Lines 7 thru 10, for each year.
- [9] State income tax per Schedule 1.
- [10] Federal income tax per Schedule 1.
- [11] Total income taxes to be paid on Line 14 is the summation of Lines 12 thru 13, for each year.
- [12] Net cash provided by (used in) operating activities on Line 15 is the total of Line 5 less Line 14, for each year.
- [13] Purchases of utility plant on Line 16, Year 1, is based upon the purchase price paid by the purchaser for the utility assets.
- [14] Contributions in aid of construction per Schedule 7.
- [15] Net cash used (provided) by investing activities on Line 20 is the summation of Lines 16 thru 19, for each year.
- [16] Funds provided by owner on Line 28 is the amount of funds necessary to invest in the utility assets.
- [17] Net cash provided (used) by financing activities on Line 29 is the summation of Lines 21 thru 28, for each year.
- [18] Net increase (decrease) in cash on Line 30 is the total of Line 15 plus Line 20 plus Line 29, for each year.
- [19] Cash balances at beginning of year on Line 31 are zero for Year 1, and equal to the ending balance of the previous year for Years 2 thru 5.
- [20] Cash balance at end of year on Line 32 is the total of Line 30 plus Line 31, for each year.

Briar Chapel Utilities, LLC

Docket No. W-1230, Sub O

Briar Chapel Sewer Flow Rates By Year (Estimated) for 1st Five Years (2008 - 2012)

Schedule 3

Use & Flow Rate Per Unit	2008				2009				2010				2011				2012			
	Units	Number Customers	Flow GPD	Revenue	Units	Number Customers	Flow GPD	Revenue	Units	Number Customers	Flow GPD	Revenue	Units	Number Customers	Flow GPD	Revenue	Units	Number Customers	Flow GPD	Revenue
Residential (250 GPD/House)	10	10	2,500	7,800	90	90	22,500	70,200	220	220	55,000	171,600	240	240	60,000	187,200	240	240	60,000	187,200
Charter School (15 GPD/Student)	380	1	5,700	17,784	220		3,300	10,296												
Middle School (10 GPD/Student)									800	1	8,000	24,960								
Offices (30 GPD/1000 SF)									40,000	20	1,200	3,744	160,000	80	4,800	14,976				
Drug Store (100 GPD/1000 SF)									14,300	1	1,430	4,462								
Bank (100 GPD/1000 SF)									7,000	1	700	2,184								
Retail Shops (100 GPD/1000 SF)									46,500	40	4,650	14,508	140,000	160	14,000	43,680				
Sit Down Restaurant (50 GPD/Seat)									180	1	9,000	28,080	180		9,000	28,080				
Grocery Store (100 GPD/1000 SF)										1			50,000		5,000	15,600				
Yearly Flow:	2008	11	8,200	25,584	2009	90	25,800	80,496	2010	285	79,980	249,538	2011	480	92,800	289,536	2012	240	60,000	187,200
Total					Total				Total				Total				Total			

Briar Chapel Utilities, LLC
W-1230, Sub 0
Cost Estimates

Schedule 4

<u>Type</u>	<u>Calculated</u>	<u>Rate</u>	<u>Modifier</u>	<u>Adjusted Rate</u>	
Service charge collected	per unit	\$65.00			
Misc. fees collected		1.00%			
Contract operations	per month	\$6,000.00	12	\$72,000.00	75,000
Admin/office/billing/cust svc	\$/unit/year	\$40.00		yr 2-yr3	Yr 4-yr5
Maintenance repair/supplies	\$/unit/year	\$25.00			
First year partial	months		7		
Electric power	per month	\$2,200.00	12	\$26,400.00	plus \$1,600 yr 3-5
Chemicals	\$/unit/year	\$10.00			
Other operating	\$/unit/year	\$70.00			
Laboratory/testing	\$/unit/year	\$25.00			
Sludge	\$/unit/year	\$50.00			

Briar Chapel Utilities, LLC
Docket No. W-1230, Sub O
Income Tax Calculation

Schedule 5

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Total Operating Revenue	<u>25,840</u>	<u>107,141</u>	<u>359,174</u>	<u>651,605</u>	<u>840,677</u>
Operating Revenue Deductions Before Interest Expense					
Interest Expense	<u>523,320</u>	<u>581,462</u>	<u>644,528</u>	<u>714,143</u>	<u>755,900</u>
Total Operating Revenue Deductions	<u>523,320</u>	<u>581,462</u>	<u>644,528</u>	<u>714,143</u>	<u>755,900</u>
State Taxable Income	<u>(497,480)</u>	<u>(474,322)</u>	<u>(285,354)</u>	<u>(62,538)</u>	<u>84,777</u>
State Income Tax @ 6.90%	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>5,850</u>
Federal Taxable Income	<u>(497,480)</u>	<u>(474,322)</u>	<u>(285,354)</u>	<u>(62,538)</u>	<u>78,927</u>
Federal Income Tax					
First \$50,000 @ 15%					7,500
Next \$25,000 @ 25%	0	0	0	0	6,250
Next \$25,000 @ 34%	0	0	0	0	1,335
Next \$235,000 @ 39%	0	0	0	0	0
Next \$9,665,000 @ 34%	0	0	0	0	0
Next \$5,000,000 @ 35%	0	0	0	0	0
Next \$3,333,333 @ 38%	0	0	0	0	0
Over \$18,333,333 @ 35%	0	0	0	0	0
Total Federal Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>15,085</u>
Net amount					
Add: Interest Expense	<u>(497,480)</u>	<u>(474,322)</u>	<u>(285,354)</u>	<u>(62,538)</u>	<u>63,842</u>
	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net Income For Return	<u>(497,480)</u>	<u>(474,322)</u>	<u>(285,354)</u>	<u>(62,538)</u>	<u>63,842</u>

Briar Chapel Utilities, LLC
Docket No. W-1230, Sub O
Original Cost Rate Base

Schedule 6

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Plant in Service	11,329,887	11,329,887	11,329,887	11,329,887	11,329,887
Accumulated Depreciation	(454,850)	(909,701)	(1,364,551)	(1,819,402)	(2,274,252)
Contributions in Aid of Construction (Net of CIAC Amortization)	<u>(1,892,360)</u>	<u>(2,042,000)</u>	<u>(2,505,884)</u>	<u>(3,044,124)</u>	<u>(3,392,124)</u>
Net Plant in Service	8,982,677	8,378,186	7,459,452	6,466,361	5,663,511
Cash Working Capital	8,568	15,865	23,839	32,646	37,933
Average Tax Accruals	<u>(261)</u>	<u>(1,082)</u>	<u>(3,627)</u>	<u>(6,581)</u>	<u>(8,490)</u>
Original Cost Rate Base	8,990,984	8,392,969	7,479,663	6,492,427	5,692,954

Briar Chapel Utilities, LLC

W-1230, Sub 0

Calculation of Plant, Accumulated Depreciation and Depreciation Expense

For the Year Ended December 31, 2008 - 2012

Schedule 7

Sewer Plant

Line No.	Item	Date Acquired	Plant In Service [a]	CIAC [b]	Adjusted Depreciable Plant [c]	Life [d]	Years In Service [e]	Annual Depreciation [f]	Accumulated Depreciation 12/31/2008 [g]	Accumulated Depreciation 12/31/2012 [h]
1	WWTP (1st Ph. 250K GPD incl. Lab Building)	06/01/08	1,757,312		1,757,312	30	1	58,577	58,577	292,885
2	Plant Equipment	06/01/08	201,510		201,510	7	1	28,787	28,787	143,936
3	Plant Design	06/01/08	27,945		27,945	30	1	932	932	4,658
4	Site Work (Pad & Related)	06/01/08	200,000		200,000	30	1	6,667	6,667	33,333
5	Central Storage Pond	06/01/08	1,500,000		1,500,000	30	1	50,000	50,000	250,000
6	Upset Storage Pond	06/01/08	500,000		500,000	30	1	16,667	16,667	83,333
7	Fencing, Electric, Water, Telephone	06/01/08	150,000		150,000	25	1	6,000	6,000	30,000
8	Geotechnical Engineering & Inspections	06/01/08	36,000		36,000	25	1	1,440	1,440	7,200
9	Land (WWTP & Storage Ponds; 21.24 acres)	06/01/08	382,320		382,320					
10	Land (Pump Stations; 1 acre)	06/01/08	18,000		18,000					
11	Ph. 4 Collection System (gravity and force main sewers)	06/01/08	1,100,000	1,100,000		30	1			
12	Ph. 4 Collection System Civil Engineering	06/01/08	230,000	230,000		30	1			
13	Grinder Pumps (66 each)	06/01/08	514,800	514,800		10	1			
14	Pump Station 'A'	06/01/08	312,000		312,000	25	1	12,480	12,480	62,400
15	Pump Station 'B'	06/01/08	400,000		400,000	25	1	16,000	16,000	80,000
16	Spray Irrigation System, Pkg. 'A' (52 Acres)									
	Piping	06/01/08	965,120		965,120	30	1	32,171	32,171	160,853
	Spray Heads	06/01/08	299,520		299,520	5	1	59,904	59,904	299,520
	Controllers	06/01/08	399,360		399,360	15	1	26,624	26,624	133,120
17	Spray Irrigation System, Pkg. 'B' (73 Acres)									
	Piping	06/01/08	1,448,320		1,448,320	30	1	48,277	48,277	241,387
	Spray Heads	06/01/08	233,600		233,600	5	1	46,720	46,720	233,600
	Controllers	06/01/08	654,080		654,080	15	1	43,605	43,605	218,027
	Total		11,329,887	1,844,800	9,485,087			454,850	454,850	2,274,252

Briar Chapel Utilities, LLC
Docket No. W-1230, Sub O
Return on Original Cost Rate Base
Year 5

Schedule 8

Present Rates

Debt					
Equity	50%	2,846,477	5.50%	2.75%	156,556
Total	50%	2,846,477	11.50%	5.75%	327,345
	100%	5,692,954		8.50%	483,901

Briar Chapel Utilities, LLC
Docket No. W-1230, Sub O
Revenue Requirement
Year 5

Schedule 9

<u>Item</u>	<u>Rate Base Method</u>	<u>Retention Factor</u>	<u>Revenue Requirement</u>
	(a)	(b)	(c)
<u>Operating Revenue Deductions</u>			
Total Operating & Maintenance Expenses			
Depreciation Expense	303,466		
Amortization of CIAC	454,850		
Property Taxes	(53,356)		
Payroll Taxes	0		
Other Taxes	0		
Total	0		
	<u>704,960</u>	<u>0.9388000</u>	<u>750,916</u>
<u>Net Operating Income For Return</u>			
Debt Service Return			
	156,556	0.9388000	166,762
Equity Return:			
REG @ .12%, GRT @ 4%, SIT @ 6.9%, FIT @ 15%			
REG @ .12%, GRT @ 4%, SIT @ 6.9%, FIT @ 25%	42,500	0.7429194	57,207
REG @ .12%, GRT @ 4%, SIT @ 6.9%, FIT @ 34%	18,750	0.6555171	28,603
REG @ .12%, GRT @ 4%, SIT @ 6.9%, FIT @ 39%	16,500	0.5768550	28,603
REG @ .12%, GRT @ 4%, SIT @ 6.9%, FIT @ 34%	143,350	0.5331539	268,872
REG @ .12%, GRT @ 4%, SIT @ 6.9%, FIT @ 35%	277,085	0.5768550	480,337
REG @ .12%, GRT @ 4%, SIT @ 6.9%, FIT @ 38%	0	0.5681148	0
REG @ .12%, GRT @ 4%, SIT @ 6.9%, FIT @ 35%	0	0.5418941	0
	0	0.5681148	0
Revenue Requirement			<u>1,781,300</u>

BRIAR CHAPEL UTILITIES, LLC

**ACTION BY WRITTEN CONSENT
OF
THE SOLE MEMBER**

The undersigned, constituting the Sole Member of BRIAR CHAPEL UTILITIES, LLC, a Delaware limited liability company (referred to as the "Company") in accordance with the provisions of the Delaware Limited Liability Company Act, do hereby consent to the taking of the following actions and do hereby adopt the resolutions set forth below:

Election of Officers

RESOLVED, that the following named individuals are hereby elected to the office appearing next to their respective names effective as of April 1, 2008, to serve in such capacity until removal or replacement by the Sole Member or resignation:

LaDonna K. Monsees
Derek C. Thomas
Vicki R. Mullins
Richard L. Croteau
Douglas L. Hageman
Mitch Barron
Gary Gagne
Noel C. Webb
Dolores A. Valle
Sharon W. Koplan
Daryl-Lynn Burke

President
Sr. Vice President
Sr. Vice President and Chief Financial Officer
Vice President
Vice President and Secretary
Assistant Vice President
Assistant Vice President
Assistant Vice President
Secretary
Assistant Secretary
Assistant Treasurer

RESOLVED FURTHER, that, effective April 1, 2008, any officer of the Company is hereby authorized, directed and empowered to take, on behalf of the Company, in any of the Company's capacities, all actions that such officer deems necessary, advisable or appropriate in their sole and absolute discretion, including, without limitation, executing and delivering any and all instruments, agreements, certificates and other documents as such officer in his or her sole and absolute discretion deem necessary, advisable or appropriate which instruments, agreements, certificates and other documents shall be in such form as such officer shall approve in his or her sole and absolute discretion, the execution thereof by such officer being conclusive evidence of such approval.

RESOLVED FURTHER, that any actions heretofore or hereafter taken by the officers of the Company within the terms of these resolutions are hereby ratified, certified and adopted in all respects.

DATED as of April 1, 2008

SOLE MEMBER

NNP-Briar Chapel, LLC
a Delaware limited liability company

By: *Dolores A. Valle*
Dolores A. Valle
Secretary

Mar-17-2004 08:46

From-CBA Fax

9409550500

Delaware

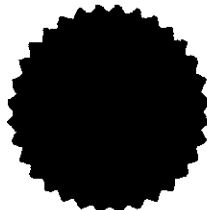
PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "BRIAR CHAPEL UTILITIES, LLC", FILED IN THIS OFFICE ON THE SIXTEENTH DAY OF MARCH, A.D. 2004, AT 3:41 O'CLOCK P.M.

3778024 8100

040195097



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 2992011

DATE: 03-17-04

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:41 PM 03/16/2004
FILED 03:41 PM 03/16/2004
SRV 040195097 - 3778024 FILE

**CERTIFICATE OF FORMATION
OF**

BRIAR CHAPEL UTILITIES, LLC

The undersigned, an authorized natural person, for the purpose of forming a limited liability company (hereinafter called the "company"), under the provisions and subject to the requirements of the Delaware Limited Liability Company Act, hereby certifies that:

1. The name of the limited liability company is Briar Chapel Utilities, LLC
2. The address of the registered office and the name and the address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are National Registered Agents, Inc., 9 East Lockerman Street, Suite 1B, Dover, Delaware 19901.

Executed on March 12, 2004.


Dolores A. Valle
Assistant Secretary



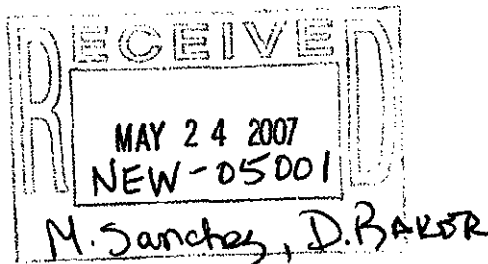
Exhibit 5
5/24/2007 Latest and Final Sewer
Permit Approval from DENR

Michael F. Easley, Governor
William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources
Alan W. Klimek, P.E., Director
Division of Water Quality

May 21, 2007

Mitch Barron, VP
Briar Chapel Utilities, LLC
5850 Fayetteville Road, Suite 201
Durham, NC 27713

Subject: Permit No. WQ0029867 Modification
Briar Chapel Subdivision A & B
Wastewater Collection System Extension
Chatham County



Dear Mr. Barron:

In accordance with your permit modification request received May 21, 2007, we are forwarding herewith Permit No. WQ0029867, dated May 21, 2007, to Briar Chapel Utilities, LLC, for the construction and operation of the subject wastewater collection system extension. This permit shall be effective from the date of issuance until rescinded, shall void Permit No. WQ0029867 issued January 29, 2007, and shall be subject to the conditions and limitations as specified therein. This cover letter shall be considered a part of this permit and is therefore incorporated therein by reference. This modification corrects the size of the Force Main for the Woods Charter School.

Please note that on September 1, 2006, the North Carolina Administrative Code (NCAC) 15A NCAC 2H .0200 rules referenced in your permit application were replaced by 15A NCAC 2T. This permit is being issued based on the new 2T rules. You should review these rules, available through the Division's PERCS web site <http://www.ncwaterquality.org/percs/> to insure your compliance. The Fast Track Engineering Certification attached to this permit is based on 15A NCAC 2T.

Please pay particular attention to Permit Condition 3 which requires that the wastewater collection facilities be properly operated and maintained in accordance with 15A NCAC 2T .0403 or any individual system-wide collection system permit issued to the Permittee. Your attention is also directed to Permit Condition 6 which requires Engineering Certification prior to operation of this collection system extension. Also note Permit Condition 12 which requires that the receiving wastewater treatment facilities be constructed and operational, and that the engineer's certification has been received by the Division of Water Quality, prior to flows being made tributary to this sewer extension.

Permitting of this project does not constitute an acceptance of any part of the project that does not meet 15A NCAC 2T; the Division of Water Quality's (Division) Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; and the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable, unless specifically mentioned herein. Division approval is based on acceptance of the certification provided by a North Carolina-licensed Professional Engineer in the application. It shall be the Permittee's responsibility to ensure that the as-constructed project meets the appropriate design criteria and rules. Failure to comply may result in penalties in accordance with North Carolina General Statute §143-215.6A through §143-215.6C, construction of additional or replacement wastewater collection facilities, and/or referral of the North Carolina-licensed Professional Engineer to the licensing board.

One
North Carolina
Naturally

North Carolina Division of Water Quality
Internet: www.ncwaterquality.org

1628 Mail Service Center
Location: 3800 Barrett Drive

Raleigh, NC 27699-1628
Raleigh, NC 27609

Phone (919) 791-4200
Fax (919) 571-4718

Customer Service
1-877-623-6748

In accordance with the provisions of Article 21 of Chapter 143, General Statutes of North Carolina as amended, and other applicable Laws, Rules, and Regulations, permission is hereby granted to Briar Chapel Utilities, LLC, for the construction and operation of

- approximately 3,600 linear feet of 4-inch force main to serve the Woods Charter School, and the continued construction and/or operation of
- approximately 22,450 linear feet of 8-inch gravity sewer, and
- a 371-gallon per minute pump station with duplex pumps, on-site audible and visual high water alarms, and an on-site generator with automatic transfer switch, and
- a 683-gallon per minute pump station with duplex pumps, on-site audible and visual high water alarms, and an on-site generator with automatic transfer switch, and
- approximately 1,800 linear feet of 6-inch force main, and
- approximately 7,000 linear feet of 8-inch force main, and

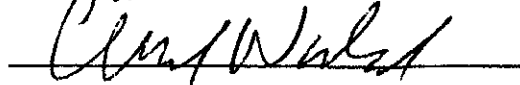
to serve 1,160 residential units as part of the Briar Chapel Subdivision A&B project, and the discharge of a maximum of 250,000 gallons per day of collected domestic wastewater into the Briar Chapel Utilities' existing sewerage system and Phase A treatment facility, and an additional discharge of 40,000 gallons per day of collected domestic wastewater into the Briar Chapel Utilities' sewerage system and Phase B treatment facility, pursuant to the request received May 21, 2007, and in conformity with 15A NCAC 2T; the Division's Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable; and other supporting data subsequently filed and approved by the Department of Environment and Natural Resources and considered a part of this permit.

The sewage and wastewater collected by this system shall be treated in the Briar Chapel Utilities Wastewater Treatment Facilities Phases A and B (Permit No. WQ0028552) prior to being land applied by spray irrigation.

If any parts, requirements, or limitations contained in this permit are unacceptable, you have the right to request an adjudicatory hearing upon written request within 30 days following receipt of this permit. This request must be in the form of a written petition, conforming to Chapter 150B of North Carolina General Statutes, and filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714. Unless such demands are made, this permit shall be final and binding.

If you have any questions regarding this permit or require any additional information, please contact Barry Herzberg at (919) 791-4200, or by e-mail to barry.herzberg@ncmail.net.

Sincerely,



for Alan W. Klimek, P.E., Director
Division of Water Quality

by Charles Wakild, P.E.
Surface Water Quality Supervisor
Raleigh Regional Office

cc: Chatham County Health Department
Deborah Gore, PERCS Unit
RRO, SWP Files
RRO, APS, Jay Zimmerman
Keith Fenn, PE; John R. McAdams, 2905 Meridian Parkway, Durham, NC 27713
Central Files

NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
RALEIGH
WASTEWATER COLLECTION SYSTEM EXTENSION PERMIT

This permit shall be effective from the date of issuance until rescinded and shall be subject to the following specified conditions and limitations:

1. This permit shall become voidable unless the wastewater collection facilities are constructed in accordance with the conditions of this permit; 15A NCAC 2T; the Division of Water Quality's (Division) Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable; and other supporting materials unless specifically mentioned herein.
2. This permit shall be effective only with respect to the nature and volume of wastes described in the application and other supporting data.
3. The wastewater collection facilities shall be properly maintained and operated at all times. The Permittee shall maintain compliance with an individual system-wide collection system permit for the operation and maintenance of these facilities as required by 15A NCAC 2T .0403. If an individual permit is not required, the following performance criteria shall be met as provided in 15A NCAC 2T .0403:
 - a. The sewer system shall be effectively maintained and operated at all times to prevent discharge to land or surface waters, and any contravention of the groundwater standards in 15A NCAC 2L .0200 or the surface water standards in 15A NCAC 2B .0200.
 - b. A map of the sewer system shall be developed and shall be actively maintained.
 - c. An operation and maintenance plan shall be developed and implemented.
 - d. Pump stations that are not connected to a telemetry system shall be inspected every day (i.e. 365 days per year). Pump stations that are connected to a telemetry system shall be inspected at least once per week.
 - e. High-priority sewer lines shall be inspected at least once per every six-month period of time.
 - f. A general observation of the entire sewer system shall be conducted at least once per year.
 - g. Inspection and maintenance records shall be maintained for a period of at least three years.
 - h. Overflows and bypasses shall be reported to the appropriate Division regional office in accordance with 15A NCAC 2B .0506(a), and public notice shall be provided as required by North Carolina General Statute §143-215.1C.
4. **This permit shall not be transferable.** In the event there is a desire for the wastewater collection facilities to change ownership, or there is a name change of the Permittee, a formal permit request shall be submitted to the Division accompanied by documentation from the parties involved, and other supporting materials as may be appropriate. The approval of this request shall be considered on its merits and may or may not be approved.

5. Construction of the gravity sewers, pump stations, and force mains shall be scheduled so as not to interrupt service by the existing utilities nor result in an overflow or bypass discharge of wastewater to the surface waters of the State.
6. Per 15A NCAC 2T .0116, upon completion of construction and **prior to operation** of these permitted facilities, the completed Engineering Certification form attached to this permit shall be submitted with the required supporting documents to the address provided on the form. A complete certification is one where the form is fully executed and the supporting documents are provided as applicable. Gravity sewers installed greater than ten percent below the minimum required slope per the Division's Gravity Sewer Minimum Design Criteria shall not be acceptable and shall not be certified until corrected. If there is a unforeseen obstacle in the field where all viable solutions have been examined, a slope variance can be requested from the Division with firm supporting documentation. This shall be done through a permit modification with fee. Such variance requests will be evaluated on a case by case basis. Resolution of such request shall be evident prior to completing and submitting the construction certification.
7. A copy of the construction record drawings shall be maintained on file by the Permittee for the life of the wastewater collection facilities.
8. Failure to abide by the conditions and limitations contained in this permit; 15A NCAC 2T; the Division's Gravity Sewer Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Station and Force Mains adopted June 1, 2000 as applicable; and other supporting materials may subject the Permittee to an enforcement action by the Division, in accordance with North Carolina General Statutes §143-215.6A through §143-215.6C.
9. In the event that the wastewater collection facilities fail to perform satisfactorily, including the creation of nuisance conditions, the Permittee shall take immediate corrective action, including those as may be required by this Division, such as the construction of additional or replacement facilities.
10. The issuance of this permit shall not exempt the Permittee from complying with any and all statutes, rules, regulations, or ordinances that may be imposed by other government agencies (local, state and federal) which have jurisdiction, including but not limited to applicable river buffer rules in 15A NCAC 2B .0200, erosion and sedimentation control requirements in 15A NCAC Ch. 4 and under the Division's General Permit NCG010000, and any requirements pertaining to wetlands under 15A NCAC 2B .0200 and 15A NCAC 2H .0500.

11. Noncompliance Notification:

The Permittee shall verbally report to a water quality staff member at the Raleigh Regional Office, telephone number 919-791-4200, as soon as possible, but in no case more than 24 hours or on the next working day, following the occurrence or first knowledge of the occurrence of either of the following:

- a. Any process unit failure, due to known or unknown reasons, that renders the facility incapable of adequate wastewater transport, such as mechanical or electrical failures of pumps, line blockage or breakage, etc.; or
- b. Any failure of a pumping station or sewer line resulting in a by-pass directly to receiving waters without treatment of all or any portion of the influent to such station or facility.

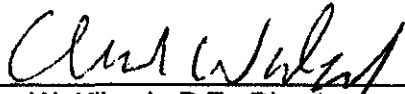
Initial voice mail messages or faxed information shall not be considered as the initial verbal report. Overflows and spills occurring outside normal business hours may also be reported to the Division of Emergency Management at telephone number (800) 858-0368 or (919) 733-3300. Persons reporting any of the above occurrences shall file a spill report by completing Part I of Form CS-

SSO (or the most current Division approved form), within five days following first knowledge of the occurrence. This report shall outline the actions taken or proposed to ensure that the problem does not recur. Per Condition I(2), Part II of Form CS-SSO (or the most current Division approved form) can also be completed to show that the SSO was beyond control.

12. No wastewater flow shall be made tributary to the subject sanitary sewer system until the Wastewater Treatment Facility Phase A is constructed and operational for the initial 250,000 gallons per day (permit number WQ0028552), and the engineer's certification has been received by the Division of Water Quality. No wastewater flow shall be made tributary to the subject sanitary sewer system until the Wastewater Treatment Facility Phase B is constructed and operational for the final 40,000 gallons per day, and the engineer's certification has been received by the Division of Water Quality. **Written approval shall be obtained from the Raleigh Regional Office prior to the use of this sewer line.**

Permit issued this the 21st Day of May, 2007.

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION



for Alan W. Klimek, P.E., Director
Division of Water Quality
By Authority of the Environmental Management Commission

by Charles Wakild, P.E.
Surface Water Quality Supervisor
Raleigh Regional Office

Permit Number WQ0029867
Briar Chapel Utilities, LLC
Briar Chapel A&B

**Exhibit 5
8/4/2006 DWQ Phase 3-4 Low
Pressure Sewer Extension**



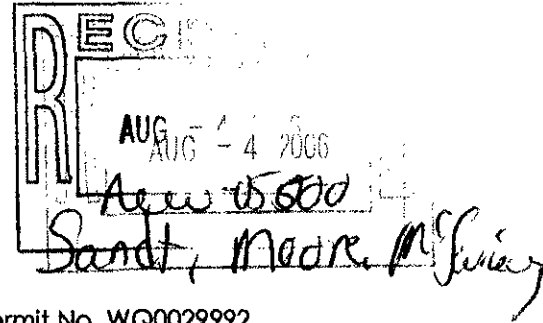
Michael F. Easley, Governor

William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources

Alan W. Klimek, P.E., Director
Division of Water Quality

July 28, 2006

Mitch Barron
Briar Chapel Utilities LLC
PO Box 1486
Pittsboro, NC 27312



Subject: Permit No. WQ0029992
Briar Chapel
Pressure Sewer Extension
Chatham County

Dear Mr. Barron:

In accordance with your permit application received March 10, 2006, and subsequent additional information received July 6, 2006, July 17, 2006 and July 24, 2006, we are forwarding herewith Permit No. WQ0029992 dated July 28, 2006, to Briar Chapel Utilities LLC for the construction and operation of the subject wastewater collection extension. This permit shall be effective from the date of issuance until rescinded and shall be subject to the conditions and limitations as specified therein.

Please pay particular attention to Permit Condition 3 which requires that the wastewater collection facilities be properly operated and maintained in accordance with 15A NCAC 2H .0227 or any individual system-wide collection system permit issued to the Permittee. Permit Condition 5 prohibits operation of this sewer system until the downstream sewer and treatment plant are constructed and certified operational. Permit Condition 17 requires a check valve on the Alley A1 downhill force main.

Permitting of this project does not constitute an acceptance of any part of the project that does not meet 15A NCAC 2H .0200; the Division of Water Quality's (Division) Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; and the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable, unless specifically mentioned herein. Division approval is based on acceptance of the certification provided by a North Carolina-licensed Professional Engineer in the application. It shall be the Permittee's responsibility to ensure that the as-constructed project meets the appropriate design criteria and rules. Failure to comply may result in penalties in accordance with North Carolina General Statute §143-215.6A through §143-215.6C, construction of additional or replacement wastewater collection facilities, and/or referral of the North Carolina-licensed Professional Engineer to the licensing board.

If any parts, requirements, or limitations contained in this permit are unacceptable, you have the right to request an adjudicatory hearing upon written request within 30 days following receipt of this permit. This request must be in the form of a written petition, conforming to Chapter 150B of North Carolina General Statutes, and filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714. Unless such demands are made this permit shall be final and binding.

Mr. Barron
July 28, 2006
Page 2

Note that the Division reorganized in 2004. For our organizational chart, see http://h2o.enr.state.nc.us/documents/dwq_orgchart.pdf. All sewer related matters are now handled through the Pretreatment, Emergency Response and Collection Systems Unit under the Point Source Branch EXCEPT FOR FAST-TRACK SEWER PERMITTING WHICH CONTINUES TO BE ADMINISTERED THROUGH OUR REGIONAL OFFICES. The Unit is located on the 13th floor of the Archdale building in downtown Raleigh. Please ensure the letterhead information is used for all correspondence to ensure timely delivery.

One set of approved plans and specifications is being forwarded to you. If you need additional information concerning this matter, please contact Marie Doklovic at (919) 733-5083 extension 371.

Sincerely

Alan W. Klimek, P. E.

cc: Chatham County Health Department
Raleigh Regional Office, Water Quality Section (Permit WQ0028552)
Richard Dickie, PE, The John R. McAdams Company
SWP Central Files
PERCS (formerly NDPU) Files

NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
RALEIGH
WASTEWATER COLLECTION PERMIT

In accordance with the provisions of Article 21 of Chapter 143, General Statutes of North Carolina as amended, and other applicable Laws, Rules, and Regulations

PERMISSION IS HEREBY GRANTED TO

BRIAR CHAPEL UTILITIES LLC
CHATHAM COUNTY

FOR THE

construction and operation of a pressure sewer collection system consisting of 66 centrifugal simplex grinder pump stations with on-site audible and visual high water alarms; approximately 2,426 linear feet of 2-inch pressure sewer; approximately 1,863 linear feet of 3-inch pressure sewer; approximately 1,298 linear feet of 4-inch pressure sewer and all associated appurtenances and service lines to serve 66 lots in Briar Chapel, with no additional discharge of collected wastewater into the Briar Chapel Utilities LLC's existing sewerage system (flow allocated under Permit No. WQ0029867), pursuant to the application received March 10, 2006, and subsequent additional information received by the Division, and in conformity with the project plans, specifications, and other supporting data subsequently filed and approved by the Department of Environment and Natural Resources and considered a part of this permit.

This permit shall be effective from the date of issuance until rescinded and shall be subject to the following specified conditions and limitations:

1. This permit shall become revocable unless the wastewater collection facilities are constructed in accordance with the conditions of this permit; 15A NCAC 2H .0200; the Division of Water Quality's (Division) Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable; and other supporting materials unless specifically mentioned herein.
2. This permit is effective only with respect to the nature and volume of wastes described in the application and other supporting data.
3. The wastewater collection facilities shall be properly maintained and operated at all times. The Permittee shall maintain compliance with an individual system-wide collection system permit for the operation and maintenance of these facilities as required by 15A NCAC 2H .0227. If an individual permit is not required, the following performance criteria shall be met as provided in 15A NCAC 2H .0227:
 - a. The sewer system shall be effectively maintained and operated at all times to prevent discharge to land or surface waters, and any contravention of the groundwater standards in 15A NCAC 2L .0200 or the surface water standards in 15A NCAC 2B .0200.

- b. A map of the sewer system shall be developed and shall be actively maintained.
 - c. An operation and maintenance plan shall be developed and implemented.
 - d. Pump stations that are not connected to a telemetry system shall be inspected every day (i.e. 365 days per year). Pump stations that are connected to a telemetry system shall be inspected at least once per week. This requirement does not apply to pump stations serving a single building associated with a properly permitted pressure sewer system.
 - e. High-priority sewer lines shall be inspected at least once per every six-month period of time.
 - f. A general observation of the entire sewer system shall be conducted at least once per year.
 - g. Inspection and maintenance records shall be maintained for a period of at least three years.
 - h. Overflows and bypasses shall be reported to the appropriate Division regional office in accordance with 15A NCAC 2B .0506(a), and public notice shall be provided as required by North Carolina General Statute §143-215.1C.
4. The sewage and wastewater collected by this system shall be treated in the Briar Chapel Utilities LLC Wastewater Treatment Facility (Non-Discharge Permit No. WQ0028552) prior to being land applied by spray irrigation.
5. **No flow shall be made tributary to the subject sewer system permitted herein until the downstream sewers (Permit No. WQ0029867) and/or wastewater treatment plant (Permit No. WQ0028552) have been constructed and the engineer's certification has been received by the Division of Water Quality.**
6. This permit is not transferable. In the event there is a desire for the facilities to change ownership, or there is a name change of the Permittee, a formal permit request must be submitted to the Division of Water Quality (Division) accompanied by documentation from the parties involved and other supporting materials as may be appropriate. The approval of this request will be considered on its merits and may or may not be approved.
7. Construction of the sewers, pump station(s) and force main shall be scheduled so as not to interrupt service by the existing utilities nor result in an overflow or bypass discharge of wastewater to the surface waters of the State.
8. Per 15A NCAC 2H .0220, upon completion of construction and prior to operation of these permitted facilities, the completed Engineering Certification form attached to this permit shall be submitted with the required supporting documents to the address provided on the form. A complete certification is one where the form is fully executed and the supporting documents are provided as applicable.
9. A copy of the approved plans and specifications shall be maintained on file by the Permittee for the life of the wastewater collection facilities.
10. Failure to abide by the conditions and limitations contained in this permit; 15A NCAC 2H .0200; the Division's Gravity Sewer Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Station and Force Mains adopted June 1, 2000 as applicable; and other supporting materials may subject the Permittee to an enforcement action by the Division, in accordance with North Carolina General Statutes §143-215.6A through §143-215.6C.

11. The issuance of this permit does not exempt the Permittee from complying with any and all statutes, rules, regulations, or ordinances that may be imposed by other government agencies (i.e., local, state, and federal) having jurisdiction, including but not limited to applicable river buffer rules in 15A NCAC 2B .0200, soil erosion and sedimentation control requirements in 15A NCAC Chapter 4 and under the Division's General Permit NCG010000, and any requirements pertaining to wetlands under 15A NCAC 2B .0200 and 15A NCAC 2H .0500.

12. The Permittee shall provide the following items for the pressure sewer:

- a. Pump on/off elevations located so that 2-8 pumping cycles may be achieved per hour in any centralized pump station serving more than one building.
- b. A minimum of 250 gallons of storage capacity above the pump-on activation level in the simplex pump station wet well.
- c. An air relief valve located at all high points along the force main.
- d. A screened vent for the wet well.
- e. Fillets located in the wet well(s) at the intersection of the flooring and side walls.
- f. Three feet of cover (minimum) over the force main or the use of ferrous material where three feet cannot be maintained.
- g. Sufficient devices which will protect the pump station from vandals.
- h. Flood protection if the pump station is located below the 100-year flood elevation.
- i. Adherence with the following minimum separations:
 - (i) Storm sewers (vertical) 12 inches
 - (ii) Water mains (vertical-water over sewer) 18 inches or (horizontal) 10 feet
 - (iii) In benched trenches (vertical) 18 inches
 - (iv) Any private or public water supply source, including any WS-I waters or Class I or Class II impounded reservoirs used as a source of drinking water 100 feet
 - (v) Waters classified WS (other than WS-I), B, SA, ORW, HQW, or SB [from normal high water (or tide elevation)] 50 feet
 - (vi) Any other stream, lake or impoundment 10 feet
 - (vii) Any building foundation 5 feet
 - (viii) Any basement 10 feet
 - (ix) Top slope of embankment or cuts of 2 feet or more vertical height 10 feet
 - (x) Drainage systems
 - (I) Interceptor drains 5 feet
 - (II) Ground water lowering and surface drainage ditches 10 feet
 - (xi) Any swimming pool 10 feet
 - (xii) Ferrous sewer pipe with joints equivalent to water main standards, shall be used where these minimum separations cannot be maintained. The minimum separation shall however not be less than 25 feet from a private well or 50 feet from a public water supply well;

13. In the event that the facilities fail to perform satisfactorily, including the creation of nuisance conditions, the Permittee shall take immediate corrective action, including those that may be required by this Division, such as the construction of additional or replacement wastewater collection facilities.

14. Noncompliance Notification:

The Permittee shall verbally report to a water quality staff member at the Raleigh Regional Office, telephone number (919) 791-4200, as soon as possible, but in no case more than 24 hours or on the next working day following the occurrence or first knowledge of the occurrence of either of the following:

- a. Any process unit failure, due to known or unknown reasons, that render the facility incapable of adequate wastewater transport such as mechanical or electrical failures of pumps, line blockage or breakage, etc.

- b. Any failure of a pumping station or sewer line resulting in a by-pass directly to receiving waters without treatment of all or any portion of the influent to such station or facility.

Voice mail messages or faxed information is permissible but this shall not be considered as the initial verbal report. Overflows and spills occurring outside normal business hours may also be reported to the Division of Emergency Management at telephone number (800) 858-0368 or (919) 733-3300. Persons reporting any of the above occurrences shall file a spill report by completing Part I of Form CS-SSO (or the most current Division approved form), within five days following first knowledge of the occurrence. This report shall outline the actions taken or proposed to ensure that the problem does not recur. Per Condition I(2), Part II of Form CS-SSO (or the most current Division approved form) can also be completed to show that the SSO was beyond control.

15. The Permittee shall maintain on hand for immediate installation a supply of spare, fully operational pump units of each type used in the pressure sewer system. The number of pumps on hand shall not be less than 10 percent of the number of installed units or one unit, whichever is greater.
16. Each pump station shall be clearly and conspicuously posted with the telephone number of the owner/operator of the pressure sewer system and instructions to call the number in the event of high water alarm activation.
17. A check valve shall be placed on the Alley A1 force main (a downhill main) to 1) keep wastewater from backing up into the line from the main and 2) to keep the line full to force flow into the main when needed.

Permit issued this the 28th day of July, 2006

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

Alan W. Klimek, P. E., Director
Division of Water Quality
By Authority of the Environmental Management Commission

Permit Number WQ0029992

Permit No. WQ0029992
July 28, 2006

System Description:

66 centrifugal simplex grinder pump stations with on-site audible and visual high water alarms; approximately 2,426 linear feet of 2-inch pressure sewer; approximately 1,863 linear feet of 3-inch pressure sewer; approximately 1,298 linear feet of 4-inch pressure sewer and all associated appurtenances and service lines to serve 66 lots

Complete and submit this form to the permit issuing office as indicated below with the following:

- One copy of the project record drawings (plan & profile views of sewer lines) of the wastewater collection system extension
- Changes to the project should be clearly identified on the record drawings or in written summary form. Permit modifications are required for any changes resulting in non-compliance with this permit, regulations or minimum design criteria.

This project shall not be considered complete nor allowed to operate until this Engineer's Certification and all required supporting documentation have been received by the Division. **Therefore, it is highly recommended that this certification be sent in a manner that provides proof of receipt by the Division.**

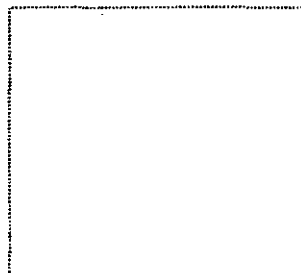
ENGINEER'S CERTIFICATION

☐ Partial

☐ Final

I, _____, as a duly registered Professional Engineer in the State of North Carolina, having been authorized to observe (☐ periodically, ☐ weekly, ☐ full time) the construction of the subject project for the Permittee hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance of this permit; 15A NCAC 2H .0200; the Division of Water Quality's (Division) Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable; and other supporting materials.

North Carolina Professional Engineer's seal, signature, and date:



**SEND THIS FORM & SUPPORTING DOCUMENTATION
WITH REQUIRED ATTACHMENTS
TO THE FOLLOWING ADDRESS**

**NC DIVISION OF WATER QUALITY
PRETREATMENT, EMERGENCY RESPONSE & COLLECTION SYSTEMS UNIT
1617 MAIL SERVICE CENTER
RALEIGH NC 27699-1617**

The Permittee is responsible for tracking all partial certifications up until a final certification is received. Any wastewater flow made tributary to the wastewater collection system extension prior to completion of this Engineer's Certification shall be considered a violation of the permit and shall subject the Permittee to appropriate enforcement actions.

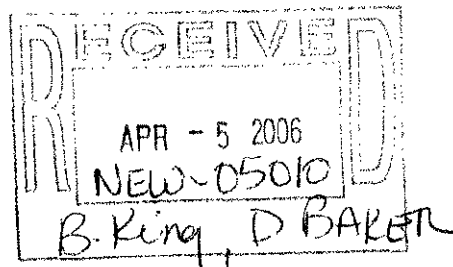
Exhibit 5
4/6/2006 DWQ Phase 3-4
Sewer Modification



Michael F. Easley, Governor
William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources
Alan W. Klimek, P.E., Director
Division of Water Quality

April 3, 2006

Mitch Barron, VP
Briar Chapel Utilities, LLC
5850 Fayetteville Street Suite 201
Durham, NC 27713



Subject: Permit No. WQ0029867 Modification
Briar Chapel Subdivision A & B
Wastewater Collection System Extension
Chatham County

Dear Mr. Barron:

In accordance with your permit modification application received March 29, 2006, we are forwarding herewith Permit No. WQ0029867, dated April 3, 2006, to Briar Chapel Utilities, LLC, for the construction and operation of the subject wastewater collection system extension. This permit shall be effective from the date of issuance until rescinded, shall void Permit No. WQ0029867 issued March 2, 2006, and shall be subject to the conditions and limitations as specified therein. This cover letter shall be considered a part of this permit and is therefore incorporated therein by reference. This modification is to change the design points for the pump stations.

Please pay particular attention to Permit Condition 3 which requires that the wastewater collection facilities be properly operated and maintained in accordance with 15A NCAC 2H .0227 or any individual system-wide collection system permit issued to the Permittee. Your attention is also directed to Permit Condition 6 which requires Engineering Certification prior to operation of this collection system extension. Also note Permit Condition 12 which requires that the receiving wastewater treatment facilities be constructed and operational, and that the engineer's certification has been received by the Division of Water Quality, prior to flows being made tributary to this sewer extension.

Permitting of this project does not constitute an acceptance of any part of the project that does not meet 15A NCAC 2H .0200; the Division of Water Quality's (Division) Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; and the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable, unless specifically mentioned herein. Division approval is based on acceptance of the certification provided by a North Carolina-licensed Professional Engineer in the application. It shall be the Permittee's responsibility to ensure that the as-constructed project meets the appropriate design criteria and rules. Failure to comply may result in penalties in accordance with North Carolina General Statute §143-215.6A through §143-215.6C, construction of additional or replacement wastewater collection facilities, and/or referral of the North Carolina-licensed Professional Engineer to the licensing board.

One
North Carolina
Naturally

North Carolina Division of Water Quality 1628 Mail Service Center Raleigh, NC 27699-1628 Phone (919) 791-4200 Customer Service
Internet: www.ncwaterquality.org Location: 3800 Barrett Drive Raleigh, NC 27609 Fax (919) 571-4718 1-877-623-6748

In accordance with the provisions of Article 21 of Chapter 143, General Statutes of North Carolina as amended, and other applicable Laws, Rules, and Regulations, permission is hereby granted to Briar Chapel Utilities, LLC, for the construction and operation of

- approximately 21,900 linear feet of 8-inch gravity sewer, and
- a 371-gallon per minute pump station with duplex pumps, on-site audible and visual high water alarms, and an on-site generator with automatic transfer switch, and
- a 683-gallon per minute pump station with duplex pumps, on-site audible and visual high water alarms, and an on-site generator with automatic transfer switch, and
- approximately 1,800 linear feet of 6-inch force main, and
- approximately 7,000 linear feet of 8-inch force main

to serve 1,160 residential units as part of the Briar Chapel Subdivision A&B project, and the discharge of a maximum of 250,000 gallons per day of collected domestic wastewater into the Briar Chapel Utilities' existing sewerage system and Phase A treatment facility, and an additional discharge of 40,000 gallons per day of collected domestic wastewater into the Briar Chapel Utilities' sewerage system and Phase B treatment facility, pursuant to the application received February 15, 2006, and in conformity with 15A NCAC 2H .0200; the Division's Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable; and other supporting data subsequently filed and approved by the Department of Environment and Natural Resources and considered a part of this permit.

The sewage and wastewater collected by this system shall be treated in the Briar Chapel Utilities Wastewater Treatment Facilities Phases A and B (Permit No. WQ0028552) prior to being land applied by spray irrigation.

If any parts, requirements, or limitations contained in this permit are unacceptable, you have the right to request an adjudicatory hearing upon written request within 30 days following receipt of this permit. This request must be in the form of a written petition, conforming to Chapter 150B of North Carolina General Statutes, and filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714. Unless such demands are made, this permit shall be final and binding.

If you have any questions regarding this permit or require any additional information, please contact Barry Herzberg at (919) 791-4200, or by e-mail to barry.herzberg@ncmail.net.

Sincerely,



for Alan W. Klimek, P.E.

cc: Chatham County Health Department
Marie Doklovic, PERCS Unit
Raleigh Regional Office, SWP
Raleigh Regional Office, APS, Jay Zimmerman
Brian King, PE; John R. McAdams, 2905 Meridian Parkway, Durham, NC 27713
Central Files

NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
RALEIGH
WASTEWATER COLLECTION SYSTEM EXTENSION PERMIT

This permit shall be effective from the date of issuance until rescinded and shall be subject to the following specified conditions and limitations:

1. This permit shall become voidable unless the wastewater collection facilities are constructed in accordance with the conditions of this permit; 15A NCAC 2H .0200; the Division of Water Quality's (Division) Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable; and other supporting materials unless specifically mentioned herein.
2. This permit shall be effective only with respect to the nature and volume of wastes described in the application and other supporting data.
3. The wastewater collection facilities shall be properly maintained and operated at all times. The Permittee shall maintain compliance with an individual system-wide collection system permit for the operation and maintenance of these facilities as required by 15A NCAC 2H .0227. If an individual permit is not required, the following performance criteria shall be met as provided in 15A NCAC 2H .0227:
 - a. The sewer system shall be effectively maintained and operated at all times to prevent discharge to land or surface waters, and any contravention of the groundwater standards in 15A NCAC 2L .0200 or the surface water standards in 15A NCAC 2B .0200.
 - b. A map of the sewer system shall be developed and shall be actively maintained.
 - c. An operation and maintenance plan shall be developed and implemented.
 - d. Pump stations that are not connected to a telemetry system shall be inspected every day (i.e. 365 days per year). Pump stations that are connected to a telemetry system shall be inspected at least once per week.
 - e. High-priority sewer lines shall be inspected at least once per every six-month period of time.
 - f. A general observation of the entire sewer system shall be conducted at least once per year.
 - g. Inspection and maintenance records shall be maintained for a period of at least three years.
 - h. Overflows and bypasses shall be reported to the appropriate Division regional office in accordance with 15A NCAC 2B .0506(a), and public notice shall be provided as required by North Carolina General Statute §143-215.1C.
4. **This permit shall not be transferable.** In the event there is a desire for the wastewater collection facilities to change ownership, or there is a name change of the Permittee, a formal permit request shall be submitted to the Division accompanied by documentation from the parties involved, and other supporting materials as may be appropriate. The approval of this request shall be considered on its merits and may or may not be approved.

5. Construction of the gravity sewers, pump stations, and force mains shall be scheduled so as not to interrupt service by the existing utilities nor result in an overflow or bypass discharge of wastewater to the surface waters of the State.
6. Per 15A NCAC 2H .0220, upon completion of construction and **prior to operation** of these permitted facilities, the completed Engineering Certification form attached to this permit shall be submitted with the required supporting documents to the address provided on the form. A complete certification is one where the form is fully executed and the supporting documents are provided as applicable. Gravity sewers installed greater than ten percent below the minimum required slope per the Division's Gravity Sewer Minimum Design Criteria shall not be acceptable and shall not be certified until corrected. If there is a unforeseen obstacle in the field where all viable solutions have been examined, a slope variance can be requested from the Division with firm supporting documentation. This shall be done through a permit modification with fee. Such variance requests will be evaluated on a case by case basis. Resolution of such request shall be evident prior to completing and submitting the construction certification.
7. A copy of the construction record drawings shall be maintained on file by the Permittee for the life of the wastewater collection facilities.
8. Failure to abide by the conditions and limitations contained in this permit; 15A NCAC 2H .0200; the Division's Gravity Sewer Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Station and Force Mains adopted June 1, 2000 as applicable; and other supporting materials may subject the Permittee to an enforcement action by the Division, in accordance with North Carolina General Statutes §143-215.6A through §143-215.6C.
9. In the event that the wastewater collection facilities fail to perform satisfactorily, including the creation of nuisance conditions, the Permittee shall take immediate corrective action, including those as may be required by this Division, such as the construction of additional or replacement facilities.
10. The issuance of this permit shall not exempt the Permittee from complying with any and all statutes, rules, regulations, or ordinances that may be imposed by other government agencies (local, state and federal) which have jurisdiction, including but not limited to applicable river buffer rules in 15A NCAC 2B .0200, erosion and sedimentation control requirements in 15A NCAC Ch. 4 and under the Division's General Permit NCG010000, and any requirements pertaining to wetlands under 15A NCAC 2B .0200 and 15A NCAC 2H .0500.
11. **Noncompliance Notification:**

The Permittee shall verbally report to a water quality staff member at the Raleigh Regional Office, telephone number 919-791-4200, as soon as possible, but in no case more than 24 hours or on the next working day, following the occurrence or first knowledge of the occurrence of either of the following:

- a. Any process unit failure, due to known or unknown reasons, that renders the facility incapable of adequate wastewater transport, such as mechanical or electrical failures of pumps, line blockage or breakage, etc.; or
- b. Any failure of a pumping station or sewer line resulting in a by-pass directly to receiving waters without treatment of all or any portion of the influent to such station or facility.

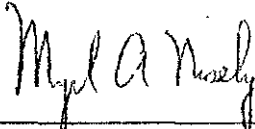
Initial voice mail messages or faxed information shall not be considered as the initial verbal report. Overflows and spills occurring outside normal business hours may also be reported to the Division of Emergency Management at telephone number (800) 858-0368 or (919) 733-3300. Persons reporting any of the above occurrences shall file a spill report by completing Part I of Form CS-

SSO (or the most current Division approved form), within five days following first knowledge of the occurrence. This report shall outline the actions taken or proposed to ensure that the problem does not recur. Per Condition I(2), Part II of Form CS-SSO (or the most current Division approved form) can also be completed to show that the SSO was beyond control.

12. No wastewater flow shall be made tributary to the subject sanitary sewer system until the Wastewater Treatment Facility Phase A is constructed and operational for the initial 250,000 gallons per day (permit number WQ0028552), and the engineer's certification has been received by the Division of Water Quality. No wastewater flow shall be made tributary to the subject sanitary sewer system until the Wastewater Treatment Facility Phase B is constructed and operational for the final 40,000 gallons per day, and the engineer's certification has been received by the Division of Water Quality. **Written approval shall be obtained from the Raleigh Regional Office prior to the use of this sewer line.**

Permit issued this the 3rd Day of April, 2006.

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION



for Alan W. Klimek, P.E., Director

Division of Water Quality

By Authority of the Environmental Management Commission

Permit Number WQ0029867
Briar Chapel Utilities, LLC
Briar Chapel A&B

Complete and submit this form to the permit issuing regional office with the following:

- One copy of the project record drawings (plan & profile views of sewer lines) of the wastewater collection system extension
- supporting design calculations (selected pumps, system curve, operating point, available storage if portable generator(s) or storage greater than longest past three year outage reliability option selected) for any pump stations permitted as part of this project
- Changes to the project should be clearly identified on the record drawings or in written summary form. Permit modifications are required for any changes resulting in non-compliance with this permit, regulations or minimum design criteria.

This project shall not be considered complete nor allowed to operate until this Engineer's Certification and all required supporting documentation have been received by the Division. Therefore, it is highly recommended that this certification be sent in a manner that provides proof of receipt by the Division.

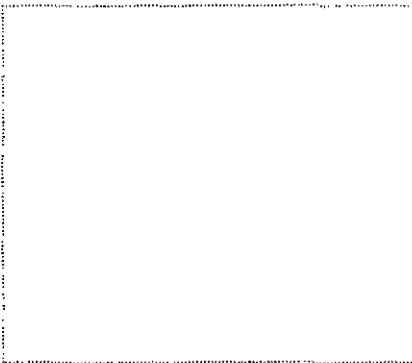
ENGINEER'S CERTIFICATION

☐ Partial

☐ Final

I, _____, as a duly registered Professional Engineer in the State of North Carolina, having been authorized to observe (☐ periodically, ☐ weekly, ☐ full time) the construction of the subject project for the Permittee hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance of this permit; 15A NCAC 2H .0200; the Division of Water Quality's (Division) Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable; and other supporting materials.

**North Carolina Professional Engineer's
seal, signature, and date:**



**SEND THIS FORM & SUPPORTING DOCUMENTATION
WITH REQUIRED ATTACHMENTS TO THE FOLLOWING ADDRESS**

**RALEIGH REGIONAL OFFICE
1628 MAIL SERVICE CENTER
RALEIGH NC 27699-1628**

The Permittee is responsible for tracking all partial certifications up until a final certification is received. Any wastewater flow made tributary to the wastewater collection system extension prior to completion of this Engineer's Certification shall be considered a violation of the permit and shall subject the Permittee to appropriate enforcement actions.



Exhibit 5
3/14/2006 DWQ Phase 3-4
Sewer Permit

Michael F. Easley, Governor

William G. Ross, Jr., Secretary
North Carolina Department of Environment and Natural ResourcesAlan W. Klimek, P.E., Director
Division of Water Quality

facsimile transmittal

To: Leonard McBryde Fax: 919-361-2269

From: Barry Herzberg Date: 3/14/2006

Re: Briar Chapel Pages: 7

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

As you requested.

Barry Herzberg
Environmental Engineer
NCDENR - DWQ
Raleigh Regional Office
919-791-4200

One
North Carolina
Naturally

North Carolina Division of Water Quality
Internet: h2o.env.state.nc.us

Raleigh Regional Office
1628 Mail Service Center

Surface Water Protection
Raleigh, NC 27699-1628

Phone (919) 791-4200
FAX (919) 571-4718

Customer Service
1-877-623-6748

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Michael F. Easley, Governor
William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources
Alan W. Klimek, P.E., Director
Division of Water Quality

March 2, 2006

Mitch Barron, VP
Briar Chapel Utilities, LLC
5850 Fayetteville Street Suite 201
Durham, NC 27713

Subject: Permit No. WQ0029867
Briar Chapel Subdivision A & B
Wastewater Collection System Extension
Chatham County

Dear Mr. Barron:

In accordance with your permit application received February 15, 2006, and additional information received on February 21, 2006, we are forwarding herewith Permit No. WQ0029867, dated March 1, 2006, to Briar Chapel Utilities, LLC, for the construction and operation of the subject wastewater collection system extension. This permit shall be effective from the date of issuance until rescinded, and shall be subject to the conditions and limitations as specified therein. This cover letter shall be considered a part of this permit and is therefore incorporated therein by reference.

Please pay particular attention to Permit Condition 3 which requires that the wastewater collection facilities be properly operated and maintained in accordance with 15A NCAC 2H .0227 or any individual system-wide collection system permit issued to the Permittee. Your attention is also directed to Permit Condition 6 which requires Engineering Certification prior to operation of this collection system extension. Also note Permit Condition 12 which requires that the receiving wastewater treatment facilities be constructed and operational, and that the engineer's certification has been received by the Division of Water Quality, prior to flows being made tributary to this sewer extension.

Permitting of this project does not constitute an acceptance of any part of the project that does not meet 15A NCAC 2H .0200; the Division of Water Quality's (Division) Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; and the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable, unless specifically mentioned herein. Division approval is based on acceptance of the certification provided by a North Carolina-licensed Professional Engineer in the application. It shall be the Permittee's responsibility to ensure that the as-constructed project meets the appropriate design criteria and rules. Failure to comply may result in penalties in accordance with North Carolina General Statute §143-215.6A through §143-215.6C, construction of additional or replacement wastewater collection facilities, and/or referral of the North Carolina-licensed Professional Engineer to the licensing board.

Subject to the conditions and limitations as specified herein

One
North Carolina
Naturally

North Carolina Division of Water Quality - 1628 Mail Service Center - Raleigh, NC 27699-1628 Phone (919) 791-4200
Internet: www.ncwaterquality.org Location: 3800 Barrett Drive - Raleigh, NC 27609 Fax (919) 571-4718

Customer Service
1-877-623-6748

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Briar Chapel Utilities, LLC
Page 2
March 2, 2006

In accordance with the provisions of Article 21 of Chapter 143, General Statutes of North Carolina as amended, and other applicable Laws, Rules, and Regulations, permission is hereby granted to Briar Chapel Utilities, LLC, for the construction and operation of

- approximately 21,900 linear feet of 8-inch gravity sewer, and
- a 256-gallon per minute pump station with duplex pumps, on-site audible and visual high water alarms, and an on-site generator with automatic transfer switch, and
- a 210-gallon per minute pump station with duplex pumps, on-site audible and visual high water alarms, and an on-site generator with automatic transfer switch, and
- approximately 1,800 linear feet of 6-inch force main, and
- approximately 7,000 linear feet of 8-inch force main

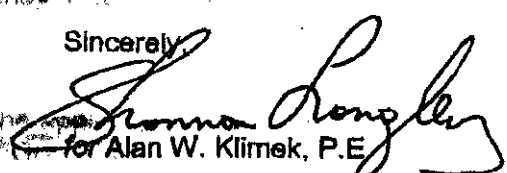
to serve 1,160 residential units as part of the Briar Chapel Subdivision A&B project, and the discharge of a maximum of 250,000 gallons per day of collected domestic wastewater into the Briar Chapel Utilities' existing sewerage system and Phase A treatment facility, and an additional discharge of 40,000 gallons per day of collected domestic wastewater into the Briar Chapel Utilities' sewerage system and Phase B treatment facility, pursuant to the application received February 15, 2006, and in conformity with 15A NCAC 2H .0200; the Division's Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable; and other supporting data subsequently filed and approved by the Department of Environment and Natural Resources and considered a part of this permit.

The sewage and wastewater collected by this system shall be treated in the Briar Chapel Utilities Wastewater Treatment Facilities Phases A and B (Permit No. WQ0028552) prior to being land applied by spray irrigation.

If any parts, requirements, or limitations contained in this permit are unacceptable, you have the right to request an adjudicatory hearing upon written request within 30 days following receipt of this permit. This request must be in the form of a written petition, conforming to Chapter 150B of North Carolina General Statutes, and filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714. Unless such demands are made, this permit shall be final and binding.

If you have any questions regarding this permit or require any additional information, please contact Barry Herzberg at (919) 791-4200, or by e-mail to barry.herzberg@ncmail.net.

Sincerely,


for Alan W. Klimek, P.E.

cc: Chatham County Health Department
Marie Doklovic, PERCS Unit
Raleigh Regional Office, SWP
Raleigh Regional Office, Jay Zimmerman
Brian King, PE; John R. McAdams Company, 2905 Meridian Parkway, Durham, NC 27713
Central Files

NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
RALEIGH
WASTEWATER COLLECTION SYSTEM EXTENSION PERMIT

This permit shall be effective from the date of issuance until rescinded and shall be subject to the following specified conditions and limitations:

1. This permit shall become voidable unless the wastewater collection facilities are constructed in accordance with the conditions of this permit; 15A NCAC 2H .0200; the Division of Water Quality's (Division) Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable; and other supporting materials unless specifically mentioned herein.
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 - a. The sewer system shall be effectively maintained and operated at all times to prevent discharge to land or surface waters, and any contravention of the groundwater standards in 15A NCAC 2L .0200 or the surface water standards in 15A NCAC 2B .0200.
 - b. A map of the sewer system shall be developed and shall be actively maintained.
 - c. An operation and maintenance plan shall be developed and implemented.
 - d. Pump stations that are not connected to a telemetry system shall be inspected every day (i.e. 365 days per year). Pump stations that are connected to a telemetry system shall be inspected at least once per week.
 - e. High-priority sewer lines shall be inspected at least once per every six-month period of time.
 - f. A general observation of the entire sewer system shall be conducted at least once per year.
 - g. Inspection and maintenance records shall be maintained for a period of at least three years.
 - h. Overflows and bypasses shall be reported to the appropriate Division regional office in accordance with 15A NCAC 2B .0506(a), and public notice shall be provided as required by North Carolina General Statute §143-215.1C.
4. This permit shall not be transferable. In the event there is a desire for the wastewater collection facilities to change ownership, or there is a name change of the Permittee, a formal permit request shall be submitted to the Division accompanied by documentation from the parties involved, and other supporting materials as may be appropriate. The approval of this request shall be considered on its merits and may or may not be approved.

5. Construction of the gravity sewers, pump stations, and force mains shall be scheduled so as not to interrupt service by the existing utilities nor result in an overflow or bypass discharge of wastewater to the surface waters of the State.
6. Per 15A NCAC 2H .0220, upon completion of construction and prior to operation of these permitted facilities, the completed Engineering Certification form attached to this permit shall be submitted with the required supporting documents to the address provided on the form. A complete certification is one where the form is fully executed and the supporting documents are provided as applicable. Gravity sewers installed greater than ten percent below the minimum required slope per the Division's Gravity Sewer Minimum Design Criteria shall not be acceptable and shall not be certified until corrected. If there is a unforeseen obstacle in the field where all viable solutions have been examined, a slope variance can be requested from the Division with firm supporting documentation. This shall be done through a permit modification with fee. Such variance requests will be evaluated on a case by case basis. Resolution of such request shall be evident prior to completing and submitting the construction certification.
7. A copy of the construction record drawings shall be maintained on file by the Permittee for the life of the wastewater collection facilities.
8. Failure to abide by the conditions and limitations contained in this permit; 15A NCAC 2H .0200; the Division's Gravity Sewer Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Station and Force Mains adopted June 1, 2000 as applicable; and other supporting materials may subject the Permittee to an enforcement action by the Division, in accordance with North Carolina General Statutes §143-215.6A through §143-215.6C.
9. In the event that the wastewater collection facilities fail to perform satisfactorily, including the creation of nuisance conditions, the Permittee shall take immediate corrective action, including those as may be required by this Division, such as the construction of additional or replacement facilities.
10. The issuance of this permit shall not exempt the Permittee from complying with any and all statutes, rules, regulations, or ordinances that may be imposed by other government agencies (local, state and federal) which have jurisdiction, including but not limited to applicable river buffer rules in 15A NCAC 2B .0200, erosion and sedimentation control requirements in 15A NCAC Ch. 4 and under the Division's General Permit NCG010000, and any requirements pertaining to wetlands under 15A NCAC 2B .0200 and 15A NCAC 2H .0500.
11. **Noncompliance Notification:**

The Permittee shall verbally report to a water quality staff member at the Raleigh Regional Office, telephone number 919-791-4200, as soon as possible, but in no case more than 24 hours or on the next working day, following the occurrence or first knowledge of the occurrence of either of the following:

- a. Any process unit failure, due to known or unknown reasons, that renders the facility incapable of adequate wastewater transport; such as mechanical or electrical failures of pumps, line blockage or breakage, etc.; or
- b. Any failure of a pumping station or sewer line resulting in a by-pass directly to receiving waters without treatment of all or any portion of the influent to such station or facility.

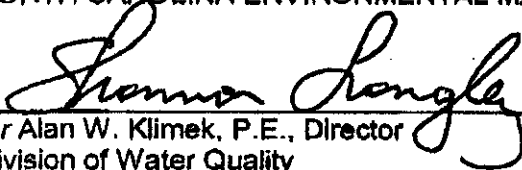
Initial voice mail messages or faxed information shall not be considered as the initial verbal report. Overflows and spills occurring outside normal business hours may also be reported to the Division of Emergency Management at telephone number (800) 858-0368 or (919) 733-3300. Persons reporting any of the above occurrences shall file a spill report by completing Part I of Form CS-

SSO (or the most current Division approved form), within five days following first knowledge of the occurrence. This report shall outline the actions taken or proposed to ensure that the problem does not recur. Per Condition I(2), Part II of Form CS-SSO (or the most current Division approved form) can also be completed to show that the SSO was beyond control.

12. No wastewater flow shall be made tributary to the subject sanitary sewer system until the Wastewater Treatment Facility Phase A is constructed and operational for the initial 250,000 gallons per day (permit number WQ0028552), and the engineer's certification has been received by the Division of Water Quality. No wastewater flow shall be made tributary to the subject sanitary sewer system until the Wastewater Treatment Facility Phase B is constructed and operational for the final 40,000 gallons per day, and the engineer's certification has been received by the Division of Water Quality. Written approval shall be obtained from the Raleigh Regional Office prior to the use of this sewer line.

Permit issued this the 2nd Day of March, 2006.

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION


for Alan W. Klimek, P.E., Director
Division of Water Quality

By Authority of the Environmental Management Commission

Permit Number WQ0029867
Briar Chapel Utilities, LLC
Briar Chapel A&B

Wastewater Treatment Facility Phase A

2nd Day of March, 2006



By Authority of the Environmental Management Commission



3

FAST TRACK ENGINEERING CERTIFICATION

Permit No. WQ0029867
Briar Chapel Utilities, LLC
Briar Chapel A&B
March 2, 2006

Complete and submit this form to the permit issuing regional office with the following:

- One copy of the project record drawings (plan & profile views of sewer lines) of the wastewater collection system extension
- supporting design calculations (selected pumps, system curve, operating point, available storage if portable generator(s) or storage greater than longest past three year outage reliability option selected) for any pump stations permitted as part of this project
- Changes to the project should be clearly identified on the record drawings or in written summary form. Permit modifications are required for any changes resulting in non-compliance with this permit, regulations or minimum design criteria.

This project shall not be considered complete nor allowed to operate until this Engineer's Certification and all required supporting documentation have been received by the Division. Therefore, it is highly recommended that this certification be sent in a manner that provides proof of receipt by the Division.

ENGINEER'S CERTIFICATION☐ Partial☐ Final

I, _____, as a duly registered Professional Engineer in the State of North Carolina, having been authorized to observe (☐ periodically, ☐ weekly, ☐ full time) the construction of the subject project for the Permittee hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance of this permit; 15A NCAC 2H .0200; the Division of Water Quality's (Division) Gravity Sewer Minimum Design Criteria adopted February 12, 1996 as applicable; the Division's Minimum Design Criteria for the Fast-Track Permitting of Pump Stations and Force Mains adopted June 1, 2000 as applicable; and other supporting materials.

North Carolina Professional Engineer's
seal, signature, and date:

**SEND THIS FORM & SUPPORTING DOCUMENTATION
WITH REQUIRED ATTACHMENTS TO THE FOLLOWING ADDRESS**

**RALEIGH REGIONAL OFFICE
1628 MAIL SERVICE CENTER
RALEIGH NC 27699-1628**

The Permittee is responsible for tracking all partial certifications up until a final certification is received. Any wastewater flow made tributary to the wastewater collection system extension prior to completion of this Engineer's Certification shall be considered a violation of the permit and shall subject the Permittee to appropriate enforcement actions.



North Carolina Department of Environment and Natural Resources
Division of Land Resources

James D. Simons, PG, PE
Director and State Geologist

Michael F. Easley, Governor
William G. Ross Jr., Secretary

CERTIFICATE OF APPROVAL

July 29, 2005

CERTIFIED MAIL
RETURN RECEIPT

Mr. Mitch Barron
Briar Chapel Utilities, LLC
PO Box 1486
Pittsboro, North Carolina 27312

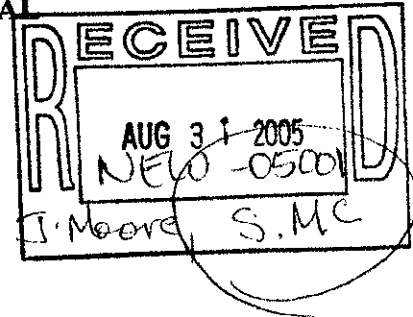
RE: Approval to Construct
Briar Chapel Reclamation Facility - Central Pond Dam
Chatham County

Dear Mr. Barron:

This is in response to your submission dated June 3, 2005 and received on June 6, 2005 of plans, specifications and design data for the construction of the subject dam in compliance with the Dam Safety Law of 1967. The proposed dam will be located in northern Chatham County in the Cape Fear river basin. The above listed documents were prepared under the supervision of Mr. F. Sean McGrath, PE. Also, Check No. 014532 in the amount of \$200.00 serving as the minimum application processing fee was received on June 6, 2005.

This letter constitutes approval of the proposal to construct the subject dam according to the plans and specifications received by this Division on June 6, 2005 with the following stipulations:

1. Project construction shall be supervised by Mr. Wes Lowder, PE.
2. During construction, the Division of Land Resources may require such progress reports as are deemed necessary.
3. Upon completion of the project, Mr. Wes Lowder, PE shall inspect the completed work and upon finding that the work has been done as specified, and the dam is safe, shall file with the Division of Land Resources two sets of record drawings and a certificate stating that the work has been completed in accordance with approved plans, specifications and other requirements.
4. To insure its usefulness in case of a dam safety emergency, the submitted Emergency Action Plan (EAP) should be updated at least yearly and be readily available to those responsible for operation of the facility. Additionally, please include contact information for Chatham County's Emergency 911 Communications Center (either dial 911 if in Chatham County or (919) 542-2811) as local authorities would likely be the first responders in time of a dam safety emergency.



Mr. Mitch Barron
July 29, 2005
Page 2 of 2

You may want to combine the contact information for the State Emergency Operations Center (EOC) and the Division of Emergency Management (DEM) since DEM runs the State EOC. Once these changes are made, please forward a signed copy of the EAP to this Division for our records and use. You may also want to send a copy of the EAP to Chatham County's Emergency Operations department.

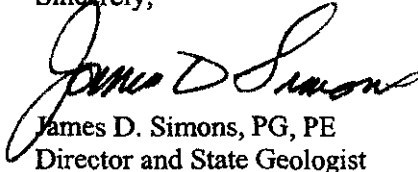
5. No water shall be impounded behind the dam until an approval to impound is issued by the Division of Land Resources for operation of this dam. ←
6. You must notify Mr. John Holley, PE, Regional Engineer, Land Quality Section, 1628 Mail Service Center, Raleigh, North Carolina 27699, telephone number (919) 571-4700 ten days before the start of construction.

The Army Corps of Engineers and the Water Quality Section of this Department should be contacted to determine if additional permits are required. Also, the erosion and sediment control program having jurisdiction should be contacted to determine permit requirements. In any case, sediment shall be prevented from entering the waters of the state or flowing onto neighboring property.

I am enclosing a copy of an Owner's Certification Form and an explanation of the final processing fee calculation. An additional fee will be required when the engineer's certification is submitted if the construction cost exceeds \$10,001.00. In any event, the cost certification must be completed and returned with the engineer's certification before an approval to impound can be processed.

The Dam Safety Law of 1967 requires that project construction commence within one year from the date of this approval, or the approval is void. For assistance, you may contact Mr. John Holley, PE in the Raleigh Regional Office or Mr. Maxwell R. Fowler, PE in the Central Office at (919) 733-4574.

Sincerely,



James D. Simons, PG, PE
Director and State Geologist

JDS/whd

Enclosures

cc: Mr. Wes Lowder, PE
Mr. Ken Schuster, PE
Mr. John Holley, Jr., PE

OWNER'S CERTIFICATION

AFFIDAVIT OF ACTUAL COST OF CONSTRUCTION, ENLARGEMENT OR REMOVAL
OF DAM
(COST OF COMPLETED PROJECT)

1. Name of dam _____
2. County in which dam is located _____
3. Owner of dam _____
4. Owner's address _____
5. Owner's telephone number _____
6. Authorized representative of owner _____
(if applicable)
7. Authorized representative's address _____
(if applicable)
8. Authorized representative's telephone number _____
(if applicable)
9. Engineer's name _____
10. Engineer's address _____
11. Engineer's telephone number _____
12. Actual cost of _____
(Construction, Enlargement or Removal)
of dam: \$ _____ *
13. Additional application processing fee enclosed \$ _____

The above information is true and correct to the best of my knowledge and belief and was provided by me under oath.

Type and print name

Title of authority

Signature

Date

I, _____, a Notary Public of the County of _____
_____ in the State of North Carolina, hereby certify that
_____ appeared personally before me this day and being duly
sworn acknowledge that the above form was executed by him/her.

Witness my hand and notarial seal, this _____ day of _____, 20____.

Seal

Notary

My commission expires _____

***Attach contractual documentation for project which includes lump sum bid price or unit bid quantities with prices; all change order items costs, etc. An approval will not be issued if documentation for the actual cost of construction/enlargement/removal and the additional application processing fee are not provided.**

approved plans and specifications. It should be noted that only the Director of the Division of Land Resources has the authority to issue an approval to impound. Civil penalties up to \$500.00 per day can be assessed or injunctive relief can be sought for dams impounding prior to issuance of an approval to impound.

Examples for calculation of the Additional Application Processing Fee follow.

ADDITIONAL APPLICATION PROCESSING FEE CALCULATION, EXAMPLE NO. 1

Cost of Completed Project = \$77,000.00

- Additional Application Processing Fee Submitted at Completion of Project is:

$$2\% \times (\$77,000.00 - \$10,001.00) = \$1,339.98$$

ADDITIONAL APPLICATION PROCESSING FEE CALCULATION, EXAMPLE NO. 2

Cost of Completed Project = \$342,000.00

- Additional Application Processing Fee Submitted at Completion of Project is:

$$\begin{aligned} & 2\% \times (\$100,000.00 - \$10,001.00) \\ & + 1.5\% \times (\$342,000.00 - \$100,001.00) \\ & = \$1,799.98 + \$3,629.99 = \$5,429.97 \end{aligned}$$

ADDITIONAL APPLICATION FEE CALCULATION, EXAMPLE NO. 3

Cost of Completed Project = \$850,000.00

- Additional Application Processing Fee Submitted at Completion of Project is:

$$\begin{aligned} & 2\% \times (\$100,000.00 - \$10,001.00) \\ & + 1.5\% \times (\$500,000.00 - \$100,001.00) \\ & + 1.0\% \times (\$850,000.00 - \$500,001.00) \\ & = \$1,799.98 + \$5,999.99 + \$3,499.99 = \$11,299.96 \end{aligned}$$

Should you have any questions concerning the calculation of the Additional Application Processing Fee, please contact the Dam Safety Program staff at telephone number (919) 733-4574.

Rev. 2 October 2001

APPLICATION PROCESSING FEES FOR CONSTRUCTION, ENLARGEMENT OR REMOVAL OF DAM

The 1990 General Assembly authorized in General Statute (G. S.) 143-215.28A the required payment of application processing fees for the construction of new dams, and for the enlargement or removal of existing dams. The total fee amount is based on the cost of the completed project with a Minimum Application Processing Fee of \$200.00

The cost of the completed project includes all labor and materials costs associated with the construction, enlargement or removal of a dam and appurtenances. The cost of the completed project, however, does not include costs associated with engineering design or quality control testing, land or right-of-way acquisition, electrical generating machinery, or constructing a roadway across the dam.

There are two types of fees: (1) the "Minimum Application Processing Fee," and (2) the "Additional Application Processing Fee." These two types of fees are described below.

The Minimum Application Processing Fee is \$200.00. This is an initial review fee and must be submitted with the application for construction, enlargement or removal of a dam along with a preliminary estimate of the cost of the completed project. The State's review of an application will not commence if the Minimum Application Processing Fee is not submitted with the application.

If the cost of the completed project exceeds \$10,001.00, an Additional Application Processing Fee must be submitted at the completion of the project. The Additional Application Processing Fee must be submitted along with the dam owner's certification of the cost of the completed project; the engineer's as-built plans; and the engineer's certification that the dam and all appurtenances have been constructed, enlarged or removed in conformance with the approved plans and specifications.

The Additional Application Processing Fee is based on the cost of the completed project and is calculated according to the following percentages:

- (a) 2% of the actual costs between \$10,001.00 and \$100,000.00
- (b) 1.5% of the actual costs between \$100,001.00 and \$500,000.00.
- (c) 1% of the actual costs between \$500,001.00 and \$1,000,000.00
- (d) 0.5% of the actual costs over \$1,000,000.00.

The maximum Additional Application Processing Fee is \$50,000.00.

The Additional Application Processing Fee must be for the exact amount as determined from the percentages above and must be paid for by check or money order made payable to **NCDENR. DO NOT SEND CASH.** If the amount of the Additional Application Processing Fee remitted is incorrect, it will be returned as unacceptable. An approval to impound will not be issued until receipt of the required Additional Application Processing Fee and an as-built inspection by the Division of Land Resources, Land Quality Section determines that the dam is in compliance with the

AGREEMENT

between

NNP-BRIAR CHAPEL, LLC,

and

BRIAR CHAPEL UTILITIES, LLC,

for the Installation, Conveyance, and Operation of a

**WASTEWATER UTILITY SYSTEM SERVING
BRIAR CHAPEL AND HERNDON WOODS**

Chatham County, North Carolina

_____, 2008

AGREEMENT

This Agreement for the installation, conveyance, and operation of a wastewater utility system serving Briar Chapel, Herndon Woods and the Crutchfield Property ("**Agreement**") is made as of the _____ day of _____ 2008, by and between NNP-BRIAR CHAPEL, LLC, a Delaware limited liability company ("**Developer**") and BRIAR CHAPEL UTILITIES, LLC, a Delaware limited liability company ("**Utility Company**") (collectively the "**Parties**").

WITNESSETH:

THAT WHEREAS, Utility Company has obtained the Permits (defined below) to install and operate the Wastewater Utility System (defined below) and the Spray Irrigation Facilities (defined below) to provide wastewater utility service to all sections of the Projects (defined below);

WHEREAS, Developer has installed portions of the Wastewater Utility System and the Spray Irrigation Facilities at the request of and on behalf of Utility Company and intends to install certain additional portions from time to time as necessary to serve the Projects; and

WHEREAS, Developer has requested, and Utility Company has agreed, that upon completion of each Wastewater Utility System Phase (defined below), Developer shall convey the components of the Wastewater Utility System constructed during such phase to Utility Company, and Utility Company shall accept such components of the Wastewater Utility System and, thereafter, own and operate each such Wastewater Utility System Phase, all in accordance with this Agreement.

NOW, THEREFORE, for and in consideration of the premises and of the rights, powers, and duties hereinafter set forth to be performed by each Party, the Developer and Utility Company do mutually agree as follows:

1. DEFINITIONS

1.1. "Agreement" shall mean this Agreement for the installation, conveyance, and operation of a Wastewater Utility System serving Briar Chapel (defined below) including all exhibits and schedules hereto, if any, as amended from time to time.

1.2. "As-Builts" shall mean the engineering drawings of the Wastewater Utility System, as constructed.

1.3. "Briar Chapel" shall mean the property being developed by the Developer known as Briar Chapel located on NC Highway 15-501 in Chatham County, North Carolina, which is proposed to include approximately 2,389 residential lots, business and retail centers, two schools, a civic center, a pool and clubhouse, athletic fields, trail system and other recreation and amenity areas.

1.4. "Certificate" shall mean a certificate of public convenience and necessity for wastewater utility service at the Projects issued by the Commission (defined below).

1.5. "Certificate Extension" shall mean an extension to the Certificate.

1.6. “Closing” shall mean each instance upon which Wastewater Utility System Assets (defined below) are transferred from the Developer to Utility Company.

1.7. “Closing Date” shall mean the date of the applicable Closing, as the context requires.

1.8. “Collection System Permit” shall mean a permit for the operation of the Wastewater Collection System at the Projects issued by DWQ (defined below).

1.9. “Commission” shall mean the North Carolina Utilities Commission.

1.10. “Connection” shall mean any single-family residential connection or RUE connection to the Wastewater Utility System located in the Projects.

1.11. “Crutchfield Property” shall mean _____.

1.12. “Deeded Properties” shall mean a site of adequate size for the WWTP including adequate buffers, sites of adequate size for the Reuse Effluent Storage Ponds (defined below) including adequate buffers, and sites of adequate size for the Upset Storage Pond (defined below) including adequate buffer. Attached as Exhibit 1.9 is a map of the Deeded Properties.

1.13. “Developer” shall mean NNP-Briar Chapel, LLC, a Delaware limited liability company and developer of Briar Chapel.

1.14. “DWQ” shall mean the Division of Water Quality of the North Carolina Department of Environment and Natural Resources.

1.15. “Effluent Easement” shall mean that certain Effluent Easement and Irrigation Agreement attached hereto as Exhibit 1.15 to be executed by the Developer and Utility Company, including all exhibits and schedules thereto, if any, as amended from time to time.

1.16. “ESA” shall mean an extended service area designated by the Developer and located outside, but in the general vicinity, of the Projects and to be served by the Wastewater Utility System.

1.17. “ESA Effluent Easement” shall mean an ESA Effluent Easement and Irrigation Agreement in substantially the same form as Exhibit 1.15 (as revised to apply to ESA Spray Areas (defined below)) to be executed by Utility Company and the owners of the ESA Spray Areas, including all exhibits and schedules thereto, if any, as amended from time to time.

1.18. “ESA Spray Areas” shall mean all areas at the ESA that have been or may in the future be permitted by DWQ for spray irrigation of Reuse Effluent.

1.19. “ESA Spray Irrigation Facilities” shall mean all the Reuse Effluent irrigation lines relating to the ESA Spray Areas, pumps, booster pumps, irrigation and spray devices, controls and other devices used exclusively in the application of Reuse Effluent from either the Reuse Effluent Storage Ponds or any additional Reuse Effluent storage ponds upon the ESA Spray Areas, together with all appurtenant easements.

1.20. “ESA Wastewater Collection System” shall mean the wastewater service lines, gravity collection lines, if any, force mains, lift stations, if any, and all appurtenant equipment that will bring the wastewater from the customers located in the ESA to the WWTP.

1.21. “Exclusivity Period” shall mean a period of twelve (12) years from the execution date of this Agreement, as may be extended in accordance with Section 9.3(c).

1.22. “GPD” means gallons per day.

1.23. “Grinder Pump Station” shall mean the wastewater grinder pump, tank and controls, if any, to be located on each customer’s property near the dwelling or commercial building into which the customer’s wastewater enters and is then pumped into the Wastewater Collection System or ESA Wastewater Collection System, as the case may be.

1.24. “Herndon Woods” shall mean the property known as Herndon Woods located at Hubert Herndon Road and U.S. 15-501 in Chatham County, which consists of approximately 25 residential lots.

1.25. “Non-Discharge Permit” shall mean the permit for the construction and operation of the Wastewater Utility System issued by DWQ as Permit No. WQ0028552, including all modifications thereto.

1.26. “Non-Recourse Party” shall mean, collectively, any direct or indirect partner, shareholder, member, officer, director, trustee, agent, or employee or other representative of the Developer or any affiliated entity, including, but not limited to, The State of California Public Employees’ Retirement System (“CalPERS”) or any direct or indirect partner, shareholder, member, officer, director, trustee, agent, or employee thereof.

1.27. “Permit” or “Permits” shall mean the Collection System Permit and /or the Non-Discharge Permit, as the context requires.

1.28. “Projects” shall mean Briar Chapel, the Crutchfield Property, and Herndon Woods.

1.29. “Reuse Effluent Pumping Station” shall mean any pump house, pumps and controls located near the Effluent Storage Pond that shall be used to pump Reuse Effluent to and through the Spray Irrigation Facilities at the Projects.

1.30. “Spray Areas” shall mean all areas at the Projects that have been or may in the future be permitted by DWQ for spray irrigation of Reuse Effluent.

1.31. “Spray Irrigation Facilities” shall mean all Reuse Effluent Pumping Station, Reuse Effluent irrigation lines, pumps, booster pumps, irrigation and spray devices, controls and other devices used in the application of Reuse Effluent from the Reuse Effluent Storage Ponds upon the Spray Areas.

1.32. “Residential Unit Equivalent” or “RUE” shall mean a unit of wastewater treatment capacity equal to the presumed average daily wastewater flow of a single-family unit in the Projects

(250 GPD). For purposes of this Agreement, the number of RUEs represented by a non-residential user shall be determined as follows:

(a) If there is no water or wastewater meter for the non-residential facility, by dividing the design flow of the facility in question, (in GPD) by 250 GPD; or

(b) If there is a water and/or wastewater meter for the non-residential facility, in accordance with the following chart:

Meter Size	RUE
less than 1"	1
1"	2.5
1.5"	5.0
2"	8.0
3"	15.0
4"	25.0
6"	50.0

1.33. "Reuse Effluent" shall mean the wastewater that has been treated to the point that it meets the quality standards required by the Non-Discharge Permit.

1.34. "Reuse Effluent Storage Ponds" shall mean the Reuse Effluent storage ponds at the Project totaling 53.1 million gallons in which the Reuse Effluent is to be stored after treatment at the WWTP (defined below) and from which the Reuse Effluent is then pumped to be sprayed on the Spray Areas (defined below) and any additional effluent storage ponds permitted and constructed as part of the Wastewater Utility System.

1.35. "Service Line" shall mean the portion of the individual household wastewater line for which Utility Company will assume maintenance responsibility. The Service Line shall include only that portion of the line that extends from the Grinder Pump Station near the individual house to Utility Company's wastewater main at or near the street. The portion of the line extending from the individual house to the Grinder Pump Station shall not be included in the term "Service Line."

1.36. "Upset Storage Pond" shall mean the 3.5 million-gallon, five-day storage pond to be located near the WWTP for the retention of wastewater during WWTP upsets or any other storage tank or storage pond permitted by DWQ for the retention of wastewater during WWTP upsets and any additional upset storage ponds permitted and constructed as part of the Wastewater Utility System.

1.37. "Utility Company" shall mean Briar Chapel Utilities, LLC, a Delaware limited liability company.

1.38. "Wastewater Collection System" shall mean the wastewater service lines, pressure and/or gravity collection lines, force mains, lift stations, if any, and all appurtenant equipment that will deliver wastewater from the customers at the Projects to the WWTP.

1.39. “Wastewater Connection Fee” has the meaning set forth in Section 4.2.

1.40. “Wastewater Plans” are all plans and specifications for the Wastewater Utility System approved by Chatham County (if required), Utility Company and DWQ and engineered by the Developer’s engineer.

1.41. “Wastewater Utility System” shall mean the WWTP, the Wastewater Collection System, the Reuse Effluent Storage Ponds, the Upset Storage Pond, the Spray Irrigation Facilities, all lift stations, if any, and other facilities used in the collection, treatment, holding and discharge of the wastewater and, if constructed, any additional components of the wastewater utility system necessary to service the ESA including but not limited to additional components to the WWTP, additional Reuse Effluent Storage Ponds and Upset Storage Pond capacity, and additional components of the Wastewater Collection System.

1.42. “Wastewater Utility System Assets” shall mean the WWTP, the Deeded Properties, the Wastewater Collection System, the Spray Irrigation Facilities and, if constructed, any additional components of the Wastewater Utility System necessary to service the ESA including but not limited to additional components to the WWTP, additional capacity for the Reuse Effluent Storage Ponds and Upset Storage Pond, and additional components of the Wastewater Collection System and the ESA Spray Irrigation Facilities.

1.43. “Wastewater Utility System Phase” shall mean any discrete phase of development of the Wastewater Utility System, including any modifications to the Wastewater Utility System necessary to permit wastewater service to the ESA, which the Developer may elect to convey to Utility Company upon its completion.

1.44. “WWTP” shall mean the wastewater treatment plant of up to 750,000 GPD to be constructed in phases to serve the Projects, as the same may be expanded from time to time.

1.45. “WWTP Phase” shall mean the WWTP to be conveyed to Utility Company at the initial Closing, having a treatment capacity of 250,000 GPD, or any other discrete addition to the WWTP constructed thereafter to increase the treatment capacity of the WWTP up to a maximum capacity of 750,000 GPD.

2. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

The Developer hereby represents and warrants as follows:

2.1. Organization; Good Standing; Power. The Developer is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Delaware and has all the requisite power and authority to own, lease, and operate its properties, to carry on its business as now being conducted and to enter into this Agreement and perform its obligations hereunder.

2.2. Authority Relative to Agreement. The execution, delivery and performance of this Agreement by the Developer have been duly and effectively authorized by all necessary action. This

Agreement has been duly executed by the Developer and is a valid and legally binding obligation of the Developer enforceable in accordance with its terms except (i) as limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, (b) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (ii) to the extent any indemnification provisions may be limited by applicable federal or state securities laws.

2.3. Effect of Agreement. The execution, delivery and performance of this Agreement by the Developer and the consummation of the transactions contemplated hereby will not (i) require the consent, approval or authorization of any person, corporation, partnership, joint venture or other business association or public authority other than the Commission or DWQ, (ii) violate, with or without the giving of notice or the passage of time or both, any provisions of law now applicable to the Developer, or (iii) result in a violation of the Developer's certificate of formation or limited liability company agreement.

3. **REPRESENTATIONS AND WARRANTIES OF UTILITY COMPANY**

Utility Company hereby represents and warrants as follows:

3.1. Organization; Good Standing; Power. Utility Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the state of Delaware and has all the requisite power and authority to own, lease, and operate its properties, to carry on its business as now being conducted and to enter into this Agreement and perform its obligations hereunder.

3.2. Authority Relative to Agreement. The execution, delivery and performance of this Agreement by Utility Company have been duly and effectively authorized by all necessary action. This Agreement has been duly executed by the Utility Company and is a valid and legally binding obligation of Utility Company enforceable in accordance with its terms except (i) as limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, (b) laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, and (ii) to the extent any indemnification provisions may be limited by applicable federal or state securities laws.

3.3. Effect of Agreement. The execution, delivery and performance of this Agreement by the Utility Company and the consummation of the transactions contemplated hereby will not (i) require the consent, approval or authorization of any person, corporation, partnership, joint venture or other business association or public authority other than the Commission or DWQ, (ii) violate, with or without the giving of notice or the passage of time or both, any provisions of law now applicable to the Utility Company, or (iii) result in a violation of the Utility Company's certificate of formation or limited liability company agreement.

4. CONSIDERATION FOR CONVEYANCE OF UTILITY SYSTEMS

4.1. Utility Company shall pay to Developer the Wastewater Connection Fee for each Connection to the Wastewater Utility System for the Exclusivity Period. Payment shall be made at the initial Closing of the Wastewater Utility System Assets for all then-existing Connections to the Wastewater Utility System. After such Closing, for additional connections to the Wastewater Utility System, such payments shall be made on the _____th day of January, April, July and October, respectively, for all connections established in the three months immediately preceding each such January, April, July and October.

4.2. Utility Company shall request from the Commission a wastewater connection fee of \$2,500 for each Connection and shall use its best efforts to gain the Commission's approval of such fee. The wastewater connection fee approved by the Commission, in whatever amount, is referred to herein as the "**Wastewater Connection Fee**". The Wastewater Connection Fee shall be a one time fee and shall be charged to the first builder or homeowner requesting service at a particular lot or unit in the Projects and only such first builder or homeowner.

5. INSTALLATION OF WASTEWATER UTILITY SYSTEM

5.1. Permits and Approvals.

(a) The Parties acknowledge that Utility Company has obtained the Non-Discharge Permit and Collection System Permit. The Parties acknowledge that the Non-Discharge Permit authorizes the construction and operation of a WWTP of up to 750,000 GPD, which is to be constructed in phases. At the time of this Agreement, the Non-Discharge Permit authorizes the construction and operation of the Reuse Effluent Storage Ponds, Upset Pond, and Spray Irrigation facilities for an effective permitted flow of 250,000 GPD of wastewater from the Projects, and the Developer has constructed a 250,000 GPD WWTP, one Reuse Effluent Storage Pond to serve Phase 1 of the WWTP, and the Upset Storage Pond.

5.2. Design of Wastewater Utility System.

(a) The Wastewater Utility System has been designed to treat 750,000 GPD at full buildout and is based on an influent flow assumption of 250 GPD per residence, which design flow assumption was approved in the Non-Discharge Permit.

(b) From time to time after the initial Closing, the Developer may request that Utility Company seek modifications to the Non-Discharge Permit to permit construction and operation of one or more additional WWTP Phases to provide service for additional residences or Residential Unit Equivalents within the Projects, to add Reuse Effluent storage pond(s) and/or upset storage pond capacity to accommodate an increase in WWTP capacity, if necessary, or to designate additional or different land as Spray Areas. The Developer shall cause its engineer to prepare, in Utility Company's name, and process through the DWQ approval process, plans and specifications for any Permit modifications required to provide service to the Projects. Utility Company shall review and approve the plans and specifications prior to Utility Company's execution of the

applications, which approval shall not be unreasonably withheld, conditioned, or delayed. Utility Company shall approve and execute such application and cooperate fully with the Developer's engineer to expedite the DWQ and Chatham County (if required) permit approval process. The Developer shall pay for all engineering costs and permit fees associated with design, DWQ approval, and construction of any such modifications to the Wastewater Utility System, except that the Developer shall not pay any costs incurred by Utility Company for its participation in the permit modification process.

(c) Utility Company, upon request by the Developer, shall apply to DWQ for a reduction in the influent flow assumption in the Non-discharge Permit. In such case, Utility Company shall provide the Developer with the information concerning historic WWTP flows to support the application. The Developer shall pay for all engineering costs and permit fees associated with design and DWQ approval and permitting of any modifications to the Wastewater Utility System, except that the Developer shall not pay any costs incurred by Utility Company for its participation in the permit approval process. If DWQ reduces the influent flow assumption resulting in a corresponding increase in the number of single-family residences or Residential Unit Equivalents that may be served by the WWTP, the Developer or its assigns shall be entitled to wastewater service under this Agreement for all such additional single-family residences or Residential Unit Equivalents.

5.3. Application for Certificate. Promptly after the execution of this Agreement, and prior to the installation of each Wastewater Utility System Phase, Utility Company, at Utility Company's own cost, will apply to the Commission as soon as may be practicable for a Certificate or Certificate Extension to provide wastewater service to that section of the Projects. The Parties agree to fully cooperate and use commercially reasonable efforts to obtain Commission issuance of the Certificate. The Developer shall furnish to Utility Company the necessary financial information for utility plant investment including back-up invoices necessary for Utility Company to complete the Certificate application and data request responses to the Commission. Utility Company shall provide all bonds required by the Commission for the Certificate and each Extension. Utility Company shall notify the Developer in writing upon the issuance of an order by the Commission approving the Certificate or any Certificate Extension.

5.4. Installation of Wastewater Utility System.

(a) The Developer, at the Developer's expense, shall be responsible for the construction and installation of all components of the Wastewater Utility System needed to provide service to the Projects, which system shall be constructed in phases.

(b) The Developer shall install, at the Developer's expense, any necessary additional effluent storage pond capacity and/or upset storage capacity required by DWQ in order for the Wastewater Utility System to serve the Projects. If DWQ determines that any of the existing Reuse Effluent Storage Ponds at the Projects have adequate capacity to serve the Projects, then the Developer shall not be required to construct additional effluent storage capacity. If DWQ determines that any existing Upset Storage Pond has adequate capacity to serve the Projects, then the Developer shall not be required to construct additional upset storage capacity.

(c) The Developer, at the Developer's expense, shall construct any and all modifications required to the Reuse Effluent Pumping Station in order for the Wastewater Utility System to serve the Projects. If an additional pump station is required for the Projects, then the Developer, at the Developer's expense, shall construct such pump station.

(d) Upon development, the Developer shall cause to be installed in each section of the Projects at the Developer's expense, a complete Wastewater Collection System, including upgrades to the existing Wastewater Collection System at the Projects necessary to permit the provision of service to all lots in that section of the Projects. The entire Wastewater Collection System shall be constructed in such a manner as to restrict entry of groundwater and surface waters into the Wastewater Utility System to the greatest extent practicable and, at a minimum, shall conform to the minimum standards established by the DWQ regulations for infiltration/inflow. Once any phase of the Wastewater Collection System has been installed, certified by the engineer, and inspected and approved by Utility Company, it shall be conveyed by the Developer to Utility Company at no cost. The Developer shall thereafter have no further responsibility for such phase of the Wastewater Collection System.

(e) The Developer shall construct and install or cause to be constructed and installed the Spray Irrigation Facilities, at the Developer's expense. In no event shall the Developer be obligated to construct or cause to be constructed more spray irrigation facilities than are required by DWQ in the Non-Discharge Permit and that are required to serve the Projects or ESA.

(f) The Developer shall pay the costs of bringing three phase electrical power to the WWTP and the Effluent Pump Stations.

(g) If additional treatment capacity is necessary to serve the Projects or any portion of the ESA, if constructed, construction of the portion of the Wastewater Utility System necessary to provide such additional capacity shall be completed in accordance with Section 6 of this Agreement.

(h) From time to time after the initial Closing, upon Developer's request, Utility Company shall execute such applications, agreements, access or construction easements, or other documents and instruments necessary or desirable to facilitate the exercise of Developer's rights or performance of its obligations under this Section 5.4, and shall otherwise cooperate with Developer in connection therewith.

5.5. Oversight; Required Documents. The Wastewater Utility System shall be installed in accordance with the Wastewater Plans. Furthermore:

(a) Prior to the commencement of any construction work on the Wastewater Utility System after the date of execution of this Agreement, the Developer shall obtain Utility Company's approval of all contractors and subcontractors who will perform work on the installation of the Wastewater Utility System. Attached as Exhibit 5.5(a) is a list of all utility contractors currently approved by Utility Company for Wastewater Utility System installations at the Projects. Utility Company shall update this list whenever requested by the Developer, with the list always having a minimum of three approved utility contractors. The Developer may submit to Utility

Company additional names of licensed utility contractors (including references) for investigation and evaluation by Utility Company. Utility Company shall not unreasonably withhold or condition approval of such additional contractors and shall promptly respond to Developer's request to update Exhibit 5.5(a), but in any event within fourteen (14) days of such request.

(b) The Developer shall furnish to Utility Company copies of all required surveys, maps, and engineering drawings and specifications sufficient for filing an application with the Commission for the Certificate or Certificate Extension. Surveys, maps, and engineering drawings shall be submitted to Utility Company in both paper and electronic versions, with the electronic files being in a ".dwg" format or commercial equivalent. In the event the Commission requires Utility Company to provide an executed copy of the Effluent Easement to the Commission prior to issuance of the Certificate or any Certificate Extension, the Parties shall execute the Effluent Easement and deliver the originals of such agreement to counsel for the Developer to be held in escrow pending the initial Closing. The Developer's counsel shall provide a copy of the executed Effluent Easement to Utility Company for the sole purpose of complying with the requirements of the Commission for issuance of the Certificate or Certificate Extension. The Effluent Easement shall not become effective until delivery and recording in accordance with Section 7.2(f) of this Agreement.

(c) The Developer shall assign to Utility Company any warranties on the Wastewater Utility System components that are provided to the Developer by its subcontractors or the manufacturers of the Wastewater Utility System components. EXCEPT FOR ANY SUCH MANUFACTURER'S WARRANTIES, UTILITY COMPANY IS ACQUIRING THE WASTEWATER UTILITY SYSTEM ASSETS ON AN "AS-IS, WHERE-IS" BASIS AND "WITH ALL FAULTS" AND WITHOUT ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(d) Utility Company may periodically inspect the construction and may require correction to portions of the construction that are not consistent with the Wastewater Plans.

(e) The Developer shall furnish to Utility Company an itemized statement of the entire cost of the Developer's installed Wastewater Utility System with substantiating invoices, or statement of cost in such cases where invoices are not available, and further will furnish to Utility Company sufficient copies of all surveys, maps and engineering drawings and specifications required by the Commission in filing an application for the Certificate or Extension.

5.6. Installation of Grinder Pump Stations.

(a) For each lot or building in the Projects served by a pressure wastewater main, the Developer shall provide a standardized wastewater connection valve box at the property or street right of way line on such lot with a service line feeding to a pressure collection system.

(b) Each lot or building lot in the Projects served by a pressure wastewater main shall have a standardized Grinder Pump Station, the design of which must be pre-approved by Utility Company and DWQ. Developer shall design, permit and install the Grinder Pump Stations to serve the lot or building. Each Grinder Pump Station shall be owned by Utility Company and Utility Company shall be responsible for the maintenance, repair and replacement of such Grinder Pump

Station. Utility Company may apply to the Commission for approval of a surcharge to recover the cost of maintaining, repairing and replacing the Grinder Pump Stations. Additionally, should any person place into the Grinder Pump Station any materials or objects that interfere with the operation of the Grinder Pump Station, Utility Company may charge and collect from the person the actual cost of the repairs and/or replacement of the Grinder Pump Station. Utility Company shall not be responsible for providing power for the Grinder Pump Stations, which will be provided through the lot owner's individual electric service. Utility Company shall not be responsible for providing an emergency generator when there are power outages, nor shall there be any liability to Utility Company should a portable generator not be connected to the Grinder Pump Station during a power outage.

(c) The Developer shall use commercially reasonable efforts to ensure that the employees, contractors, subcontractors, and builders under its control do not break or damage the Grinder Pump Stations, service lines, or connection valve boxes.

5.7. Consultation on the Planning and Coordination of Future Wastewater Installations. The Developer and Utility Company shall consult on each Wastewater Utility System expansion so that such expansions shall be sized to accommodate wastewater for future developments upstream. Once Utility Company approves the sizing of wastewater and Reuse Effluent mains, the Developer shall be responsible for paying any additional costs to install upsized lines necessary to accommodate wastewater and Reuse Effluent distribution service. Once the lines are installed, certified by the engineer, inspected and approved by Utility Company and conveyed to Utility Company, then the Developer shall have no further responsibility for the lines.

6. **EXPANSION TO ESA**

6.1. ESA to be Interconnected to Wastewater Utility System. The Developer and Utility Company agree that the ESA shall be serviced by the Wastewater Utility System pursuant to this Section 6.

6.2. Wastewater Utility System Capacity for ESA.

(a) Wastewater Utility System capacity for the ESA, to the extent capacity is available, shall be provided by the then-existing Wastewater Utility System.

(b) If Utility Company has not, pursuant to Section 5.2(b) of this Agreement, already obtained a reduction in the Non-Discharge Permit influent flow assumption sufficient to allow the ESA to be served by the Wastewater Utility System, Utility Company, upon request by the Developer, shall apply to DWQ for a reduction in the influent flow assumption at the Projects utilized to establish the limitation contained in the Non-Discharge Permit.

(c) To the extent that additional Wastewater Utility System capacity is needed to serve all or any portion of the ESA, such capacity shall be provided in accordance with Section 6.3 of this Agreement.

6.3. Installation of Additional Components of the Wastewater Utility System and the ESA Wastewater Collection System.

(a) The Developer shall cause its engineer to prepare, in Utility Company's name, and process through the DWQ approval process, plans and specifications for any Permit modifications required to provide service to the ESA. Utility Company shall review and approve the plans and specifications prior to Utility Company's execution of the applications, which approval shall not be unreasonably withheld, conditioned, or delayed. Utility Company shall approve and execute such application and cooperate fully with the Developer's engineer to expedite the DWQ and Chatham County (if required) permit approval process. The Developer shall pay for all engineering costs and permit fees associated with design, DWQ approval, and construction of any such modifications to the Wastewater Utility System, except that the Developer shall not pay any costs incurred by Utility Company for its participation in the permit modification process.

(b) The Developer, at the Developer's expense, shall be responsible for the construction and installation of all components of the modified Wastewater Utility System needed to provide service to the ESA.

(c) The Developer shall install, at the Developer's expense, any necessary additional effluent storage pond capacity and/or upset storage capacity required by DWQ in order for the Wastewater Utility System to serve all or any portion of the ESA. If DWQ determines that any of the existing Reuse Effluent Storage Ponds at the Projects have adequate capacity to serve the ESA, then the Developer shall not be required to construct additional effluent storage capacity. If DWQ determines that any existing Upset Storage Pond has adequate capacity to serve the ESA, then the Developer shall not be required to construct additional upset storage capacity.

(d) The Developer, at the Developer's expense, shall construct any and all modifications required to the Reuse Effluent Pumping Station in order for the Wastewater Utility System to serve the ESA. If a separate pump station is required for the ESA, then the Developer, at the Developer's expense, shall design, permit, and construct such pump station.

(e) Upon development, the Developer shall cause to be installed in each section of the ESA at the Developer's expense, a complete ESA Wastewater Collection System, including upgrades to the existing Wastewater Collection System at the Projects necessary to permit the provision of service to all lots in that section of the ESA. The entire ESA Wastewater Collection System shall be constructed in such a manner as to restrict entry of groundwater and surface waters into the ESA Wastewater Utility System to the greatest extent practicable and, at a minimum, shall conform to the minimum standards established by the DWQ regulations for infiltration/inflow. Once any phase of the ESA Wastewater Collection System has been installed, certified by the engineer, and inspected and approved by Utility Company, it shall be conveyed by the Developer to Utility Company at no cost. The Developer shall thereafter have no further responsibility for such phase of the ESA Wastewater Collection System.

(f) The Developer or its successors or assigns shall construct and install or cause to be constructed and installed the ESA Spray Irrigation Facilities, at the Developer's expense. In no event shall the Developer be obligated to construct or cause to be constructed more spray

irrigation facilities than are required by DWQ in the Non-Discharge Permit and that are required to serve the Projects or ESA.

(g) The Developer may at any time request in writing that Utility Company seek a modification of the Non-Discharge Permit to allow for the construction and operation of all or any portion of the ESA Spray Irrigation Facilities, a corresponding increase in the permitted flow of the WWTP and/or approval by DWQ for the WWTP to provide service for additional Residential Unit Equivalents within the ESA based on the additional permitted spray irrigation facilities and permitted flow. Within 60 days of the receipt of such a request, or as soon thereafter as is practicable in light of the qualification stated below, Utility Company shall apply for the requested modification of the Non-Discharge Permit, provided that the Developer furnishes Utility Company with all required application materials, including engineering plans and specifications, in a timely fashion. Utility Company shall attempt to make such application through DWQ's Express Review process, if available. The Developer shall pay or reimburse Utility Company for all out-of pocket costs associated with such permit modification(s). Utility Company shall make a good faith effort to obtain the requested permit modification(s) and to cooperate with the Developer in all matters relating to such modification(s).

6.4. ESA Certificates. Prior to the installation of any phase of the ESA Wastewater Collection System, Utility Company shall apply to the Commission and obtain a Certificate to provide wastewater service to that phase of the ESA. Utility Company shall provide all bonds required by the Commission for each Certificate.

6.5. Oversight; Required Documents. Any modifications to the Wastewater Utility System shall be installed in accordance with the Wastewater Plans. Furthermore:

(a) Prior to the commencement of any construction work by the Developer on modifications to the Wastewater Utility System necessary in order to provide service to the ESA, the Developer shall, in accordance with Section 5.5(a) of this Agreement, obtain Utility Company's approval of all contractors and subcontractors who will perform work on the installation of any modifications to the Wastewater Utility System. Utility Company shall not unreasonably withhold or condition approval of such additional contractors and shall promptly respond to Developer's request to update Exhibit 5.5(a), but in any event within fourteen (14) days of such request.

(b) The Developer shall furnish to Utility Company an itemized statement of the entire cost of the Developer's modifications to the Wastewater Utility System with substantiating invoices, or statements of cost in such cases where invoices are not available, and, further, will furnish to Utility Company copies of all required surveys, maps, and engineering drawings and specifications sufficient for filing an application with the Commission for the Certificate or Certificate Extension. In the event the Commission requires Utility Company to provide an executed copy of the ESA Effluent Easement to the Commission prior to issuance of the Certificate or any Certificate Extension, the Parties shall execute the ESA Effluent Easement and deliver the originals of such agreement to counsel for the Developer to be held in trust pending the Closing. The Developer's counsel shall provide a copy of the executed ESA Effluent Easement to Utility Company for the sole purpose of complying with the requirements of the Commission for issuance

of the Certificate or Certificate Extension. The ESA Effluent Easement shall not become effective until delivery and recording in accordance with Section 7.4 of this Agreement.

(c) The Developer shall assign to Utility Company any warranties on the Wastewater Utility System components that are provided to the Developer by its subcontractors or the manufacturers of the Wastewater Utility System components. EXCEPT FOR ANY SUCH MANUFACTURER'S WARRANTIES, UTILITY COMPANY IS ACQUIRING THE WASTEWATER UTILITY SYSTEM ASSETS ON AN "AS-IS, WHERE-IS" BASIS AND "WITH ALL FAULTS" AND WITHOUT ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(d) Utility Company will periodically inspect the construction and may require correction to portions of the construction that are not consistent with the Wastewater Plans.

6.6. Installation of Grinder Pump Stations.

(a) For each lot or building in the ESA served by a pressure wastewater main, the Developer shall provide a standardized wastewater connection valve box at the property or street right of way line on such lot with a service line feeding to a pressure collection system.

(b) Each lot or building in the ESA served by a pressure wastewater main shall have a standardized Grinder Pump Station, the design of which must be pre-approved by Utility Company and DWQ. Developer shall design, permit and install the Grinder Pump Stations to serve the lot or building. Each Grinder Pump Station shall be owned by Utility Company and Utility Company shall be responsible for the maintenance, repair and replacement of such Grinder Pump Station. Utility Company may apply to the Commission for approval of a surcharge to recover the cost of maintaining, repairing and replacing the Grinder Pump Stations. Additionally, should any person place into the Grinder Pump Station any materials or objects that interfere with the operation of the Grinder Pump Station, Utility Company may charge and collect from the person the actual cost of the repairs and/or replacement of the Grinder Pump Station. Utility Company shall not be responsible for providing power for the Grinder Pump Stations, which will be provided through the lot owner's individual electric service. Utility Company shall not be responsible for providing an emergency generator when there are power outages, nor shall there be any liability to Utility Company should a portable generator not be connected to the Grinder Pump Station during a power outage..

(c) The Developer shall use commercially reasonable efforts to ensure that the employees, contractors, subcontractors and builders under its control do not break or damage the Grinder Pump Stations, service lines or connection valve boxes.

7. **CONVEYANCE OF WASTEWATER UTILITY SYSTEM ASSETS**

7.1. Conveyance of Wastewater Utility System Assets.

(a) At the times and on the terms described below, the Developer shall convey to Utility Company, by special warranty deed, easements, or bill of sale, as appropriate, the Wastewater

Utility System Assets. The Deeded Properties shall each front upon publicly dedicated streets to provide free and reasonable access to the Wastewater Utility System Assets located thereon. In the event that the sites do not front upon a publicly dedicated, completed street, then the Developer shall provide an all weather gravel access road to such sites and shall convey a perpetual twenty (20) foot easement over such road for ingress, egress, regress, and access to the Deeded Properties road and for the installation, operation, maintenance, repair and replacement of the Wastewater Utility System Assets.

(b) At the times and on the terms described below, the Developer shall convey to Utility Company, at no cost to Utility Company, by special warranty deed, easements, or bill of sale, as appropriate, any components added to the Wastewater Utility System in order to serve the ESA including, but not limited to, any Reuse Effluent storage pond(s), upset storage pond(s), collection lines, force mains, pumps, controls, electrical equipment, services, lift stations, ESA Spray Irrigation Facilities and all connections required to provide wastewater service to each section of ESA.

7.2. Initial Closing.

(a) Developer's Pre-Closing Deliveries. The Developer shall deliver to Utility Company:

(i) Engineering certification of the WWTP, Reuse Effluent Storage Pond, Upset Storage Pond;

(ii) surveys and title insurance for the Deeded Properties pursuant to Section 7.7 of this Agreement;

(iii) title insurance commitments for the perpetual easements for the collection mains, force mains, collection pumping stations, the collection lift stations, and the Spray Irrigation Facilities to be conveyed at the initial Closing, if any, pursuant to Section 7.8 of this Agreement;

(iv) written certification of the Developer's installation cost with respect to the WWTP, Reuse Effluent Storage Pond, Upset Storage Pond, the initial phase of the Spray Irrigation Facilities, and the initial phase of the Wastewater Collection System;

(v) the As-Built; and

(vi) the lot numbers and addresses of all properties to be served by the WWTP.

(b) Utility Company's Pre-Closing Deliveries. Utility Company shall deliver to the Developer a Certificate or Certificate Extension.

(c) Initial Closing Date. The Closing of the transfer of the Water Utility System Assets comprising the initial Water Utility System Phase shall take place on the date that is thirty

(30) days from Utility Company's receipt of the last item described in **Section** Error! Reference source not found., or such other date as is mutually agreed upon by the Parties.

(d) Closing Deliveries. At the initial Closing:

(i) The Developer shall convey by special warranty deed and bill of sale, and Utility Company shall accept, the Deeded Properties, the initial phase of the Wastewater Collection System and the initial phase of the Spray Irrigation Facilities;

(ii) The Developer shall convey to Utility Company the easements described in Sections 7.6 and 7.7 of this Agreement;

(iii) The Parties shall deliver such other agreements, documents and certificates necessary or desirable to effect such transfers.

(e) Initial Closing Representations. At the initial Closing, the Developer shall represent and warrant the following to Utility Company:

(i) the conveyance of all the Deeded Properties, the WWTP, the Reuse Effluent Storage Ponds, the Upset Storage Pond, the Reuse Effluent Pumping Station, the initial portion of the Wastewater Collection System, and the initial portion of the Spray Irrigation Facilities to be conveyed at the Closing will not violate any judicial, governmental or administrative order, award, judgment, or decree applicable to the Developer or to such Wastewater Utility System Assets;

(ii) there are no existing contracts or commitments whatsoever of any type or nature in effect with respect to the Deeded Properties, the WWTP, the Reuse Effluent Storage Ponds, the Upset Storage Pond, the Reuse Effluent Pumping Station, the initial portion of the Wastewater Collection System and the initial portion of the Spray Irrigation Facilities to be conveyed at the Closing, other than this Agreement; and

(iii) except as described herein, there are no liens, claims, or encumbrances whatsoever of any type or nature upon or against the Deeded Properties, the WWTP, the Reuse Effluent Storage Ponds, the Upset Storage Pond, the Reuse Effluent Pumping Station, the initial portion of the Wastewater Collection System and the initial portion of the Spray Irrigation Facilities to be conveyed at the Closing, including but not limited to deeds of trust, financing statements or security agreements filed under the Uniform Commercial Code either in Chatham County or with the North Carolina Secretary of State.

(f) Effluent Easement. At the initial Closing, the Developer shall cause the owners of the Spray Areas and Utility Company shall execute the Effluent Easement and Utility Company shall cause the Effluent Easement to be recorded in the Chatham County Register of Deeds. In the event that the Effluent Easement has previously been executed in accordance with Section 5.5(b) hereof, the Effluent Easement shall be released from escrow and delivered to Utility Company for recording in accordance herewith.

7.3. Subsequent Closings.

(a) Notice. After the initial Closing, the Developer shall deliver to Utility Company each of the following items with respect to a Wastewater Utility System Phase:

(i) Engineering certification of the Wastewater Utility System relating to a Wastewater Utility System Phase pursuant to the Wastewater Plans, including the interconnection and necessary upgrades to the existing Wastewater Collection System;

(ii) Surveys and title insurance for the Deeded Properties (if any) pursuant to Section 7.7 of this Agreement;

(iii) Written certification of the Developer's installation cost with respect to such Wastewater Utility System Phase;

(iv) Notice of procurement of title insurance commitments for the perpetual easements for the collection mains, force mains, collection pumping stations, collection lift stations, and the Spray Irrigation Facilities, pursuant to Section 7.8 of this Agreement;

(v) Notice of insertion of easements in favor of Utility Company for the Grinder Pump Stations described in Section 7.6 of this Agreement in the recorded restrictive covenants applicable to the Projects (or ESA, as the case may be);

(vi) As-Builts; and

(vii) The lot numbers and addresses of all additional properties to be served by the WWTP.

(b) Closing Date for Subsequent Closings. Upon receipt of the last notice described in Section 7.3(a) of this Agreement, the Parties shall mutually agree upon a date for the transfer of such Wastewater Utility System Assets, which date shall not be more than thirty (30) days from the date of notice provided by the Developer and described above.

(c) Closing Deliveries for Subsequent Closings. At each subsequent Closing, the Developer shall convey by special warranty deed and bill of sale, and Utility Company shall accept, the Wastewater Utility System Assets. At each Closing, the Developer shall also convey to Utility Company the easements described in Sections 7.5 and 7.6 of this Agreement. In addition, at each Closing and thereafter each Party shall execute and deliver such other agreements, documents and certificates as may be necessary or desirable to effect a transfer of the Wastewater Utility System Assets.

(d) Effluent Easement. If applicable to any Closing, the Developer shall cause the owners of the Spray Areas to, and Utility Company shall, execute the ESA Effluent Easement. Utility Company shall cause the ESA Effluent Easement to be recorded in the Chatham County Register of Deeds. In the event that the ESA Effluent Easement has previously been executed in accordance with Section 5.5(b) of this Agreement, the ESA Effluent Easement shall be released from escrow and delivered to Utility Company for recording in accordance herewith.

7.4. Subsequent Closing Representations. At each subsequent Closing, the Developer shall represent and warrant the following to Utility Company:

(i) the conveyance of all the Wastewater Utility System Assets at the Closing will not violate any judicial, governmental or administrative order, award, judgment, or decree applicable to the Developer or the Wastewater Utility System Assets;

(ii) there are no existing contracts or commitments whatsoever of any type or nature in effect with respect to the Wastewater Utility System Assets being transferred to Utility Company, other than this Agreement; and

(iii) except as described herein, there are no liens, claims, or encumbrances whatsoever of any type or nature upon or against any of the Wastewater Utility System Assets being transferred to Utility Company, including but not limited to deeds of trust, financing statements or security agreements filed under the Uniform Commercial Code either in Chatham County or with the North Carolina Secretary of State.

7.5. Easements for Force Mains and Collection Mains. At the time of completion of the transfer of the Wastewater Utility System Assets relating to each Wastewater Utility System Phase to Utility Company, the Developer shall convey to Utility Company a perpetual easement within the rights of way of all publicly dedicated streets and roads within that section of the Projects for ingress, egress, regress, and access for the installation, operation, maintenance, repair and replacement of the collection system lines, valves and other equipment appurtenant to the Wastewater Collection System. If any wastewater collection mains or force mains are not within publicly dedicated rights of way, the Developer shall convey to Utility Company a perpetual easement, with a total width of twenty (20) feet centered on the main, for ingress, egress, regress, and access to install, operate, maintain, repair and replace the main and appurtenant equipment. These easements may be conveyed to Utility Company by restrictive covenants recorded in the Chatham County Register of Deeds.

7.6. Easements for Grinder Pump Stations. Each Grinder Pump Station will require a perpetual easement with a total width of ten (10) feet centered on the Service Line, and a fifteen (15) foot diameter circle centered at the center of the Grinder Pump Stations. These perpetual easements shall be for ingress, egress, regress, and access to install, operate, repair, maintain and replace the Service Line and the Grinder Pump Stations. The Developer, in each deed to a lot purchaser and in the recorded restrictive covenants relating to such lot, shall reserve and convey, or shall otherwise obtain and convey, to Utility Company these perpetual easements for the Grinder Pump Stations and Service Lines.

7.7. Title Insurance and Surveys for Deeded Property. The Developer, at the Developer's cost, shall provide to Utility Company (a) title insurance insuring the Deeded Properties to be marketable fee simple title, free and clear of any and all liens and encumbrances, and (b) a current plot plan of each such tract showing improvements, surveyed and sealed by a registered surveyor. The Developer shall procure a title commitment on behalf of Utility Company with respect to each site prior to the applicable Closing and shall pay the attorney's fees incurred in connection therewith.

Utility Company shall pay the title insurance premiums in connection with the issuance of an owner's policy after each such Closing.

7.8. Title Insurance for Easements. The Developer shall also provide Utility Company title insurance for all perpetual easements for wastewater collection lines, force mains, collection pumping stations and collection lift stations not within publicly dedicated rights of way and for the perpetual easements in connection with the Spray Irrigation Facilities. The title insurance shall insure the perpetual easements to be free and clear of all liens and encumbrances. The Developer shall procure a title commitment on behalf of Utility Company with respect to each site prior to the applicable Closing and shall pay the attorney's fees incurred in connection therewith. Utility Company shall pay the title insurance premiums in connection with the issuance of an owner's policy after each such Closing.

8. TERMINATION

8.1. Termination Events. This Agreement may, by notice given prior to or at the initial Closing, be terminated:

(a) by either Developer or Utility Company if a material breach of any provision of this Agreement has been committed by the other Party, such breach has not been waived, and such breach continues for a period of thirty (30) days after receipt of written notice thereof from the affected Party to the breaching Party; provided, however, that if the nature of the material breach is such that more than thirty (30) days are reasonably required for its cure, then the affected Party shall not be allowed to terminate this Agreement if the breaching Party commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(b) by mutual consent of Developer and Utility Company.

8.2. Effect of Termination. Each Party's right of termination under Section 8.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 8.1, all further obligations of the parties under this Agreement will terminate; provided, however, that if this Agreement is terminated by a Party because of the breach of the Agreement by the other Party or because one or more of the conditions to the terminating Party's obligations under this Agreement is not satisfied as a result of the other Party's failure to comply with its obligations under this Agreement, the terminating Party's right to pursue all equitable and/or legal remedies will survive such termination unimpaired.

9. OPERATION OF THE WASTEWATER UTILITY SYSTEM ASSETS

9.1. Operation of the Spray Irrigation Facilities. The Parties acknowledge that the Parties' rights and responsibilities with respect to wastewater disposal and spray irrigation are as set forth in the Effluent Easement.

9.2. Operation of Wastewater Utility System Assets. After conveyance of the Wastewater Utility System Assets to Utility Company, Utility Company shall provide wastewater service to the

customers of such section of the Projects or ESA to which the Wastewater Utility System Phase relates and to all of the amenities located therein in accordance with the terms of the Certificate or Certificate Extension, as the same may be amended from time to time. UTILITY COMPANY WILL NOT BE RESPONSIBLE FOR ACHIEVING WATER QUALITY LEVELS IN THE REUSE EFFLUENT BEYOND THE REQUIREMENTS OF THE NON-DISCHARGE PERMIT.

9.3. WWTP Utility System Allocation.

(a) All Wastewater Utility System capacity permitted by the Non-Discharge Permit utilized by the Projects is reserved and allocated to Developer, and its successors and assigns, for the Exclusivity Period.

(b) Developer may allocate such capacity within the Projects, in its sole discretion, but shall provide written notice to Utility Company of such allocations; provided, however, that upon subdivision approval of the Projects or any phase thereof, Developer shall be deemed to have allocated capacity to each platted lot therein without further notification to Utility Company. It is not necessary that houses have been built on a lot in order for the capacity allocation to become effective within the twelve-year time period.

(c) If there is any unallocated capacity remaining in the Water Utility System or the Wastewater Utility System at the end of the Exclusivity Period, Utility Company will request from the Commission an extension of the Exclusivity Period up to five (5) years beyond the twelve-year time period upon the written request of the Developer. If the Commission does not approve Developer's request to reserve any unallocated capacity beyond the twelve-year time period, such capacity shall be the sole property of Utility Company and Utility Company may charge capacity fees for the use of capacity by Developer. Developer shall not be responsible for any modifications to the Water Utility System or Wastewater Utility System or for any costs related thereto to serve landowners outside the Projects.

9.4. Responsibilities for Grinder Pump Stations and Service Lines. After the completed initial installation of the Grinder Pump Stations, Utility Company shall operate, maintain, repair and replace the components of the Grinder Pump Stations and Service Lines. The customer shall be responsible for that portion of the collection line from the residence or building to the Grinder Pump Station. The electric service for the Grinder Pump Stations shall be provided by each customer as part of their household electric service. NEITHER UTILITY COMPANY NOR THE COMPANY SHALL HAVE ANY RESPONSIBILITY OR LIABILITY WHATSOEVER SHOULD A PORTABLE GENERATOR DURING A POWER OUTAGE NOT BE CONNECTED TO THE GRINDER PUMP STATION TO KEEP IT FROM OVERFLOWING OR BACKING UP.

9.5. Notices to Lot Purchasers. The Developer shall include in the lot purchase contracts and also in the related restrictive covenants language describing the purchaser's responsibilities with respect to the Grinder Pump Station serving the purchaser's lot or building, in accordance with the provisions of Section 5.6(b), Section 7.6, and Section 9.4 of this Agreement.

9.6. Gravity Collection Service Lines.

(a) Gravity services for single family residences shall consist of a wastewater service tap, a 4" home service line, and a cleanout at the easement or right of way line. Gravity services for commercial units shall consist of a wastewater service tap, a service line sized by the Developer's engineer to accommodate the anticipated flow from the commercial unit, and a cleanout at the easement or right of way line. The Developer shall use commercially reasonable efforts to ensure that the employees, contractors, and subcontractors under its control do not break, damage or bury these cleanouts. For the period of one year after the installation of each cleanout, the Developer shall ensure that all damage to the wastewater service cleanouts to the extent caused by Developer, its employees, contractors, or subcontractors are repaired promptly at no cost to Utility Company.

(b) It shall be the responsibility of the owner of each dwelling or commercial unit with a gravity service line to maintain the wastewater service line from their residence or place of business to the cleanout at or near the property line. If the cleanout is not at or near the property line, then the owner of that dwelling or commercial unit shall be responsible for maintenance of the wastewater service line up to the property line.

10. **CERTAIN COVENANTS AND AGREEMENTS**

10.1. Insurance.

(a) General Liability. Utility Company shall, at Utility Company's sole cost and expense, maintain, or cause to be maintained, general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the WWTP Property and adjoining streets and passageways. The coverage under all such liability insurance shall be in such amounts as may be required by law, but in all events for limits of not less than \$2,000,000 per occurrence and not less than \$4,000,000 in the annual aggregate. Utility Company may provide any insurance required by this WWTP Easement pursuant to a "blanket" or "umbrella" insurance policy, provided that (a) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the WWTP Property, which amount(s) shall not be subject to reduction on account of claims made with respect to other properties and (b) such policy otherwise complies with this WWTP Easement.

(b) Policy Requirements and Endorsements. All insurance policies required by this Agreement shall contain (by endorsement or otherwise) the following provisions:

- (i) All policies shall name the Developer as an additional insured;
- (ii) All policies shall be written as primary policies not contributing with or in excess of any coverage that the Developer may carry;
- (iii) All policies shall contain contractual liability coverage;

(iv) The insurance carrier shall be required to give the Developer thirty (30) days' prior notice of cancellation;

(v) Utility Company shall deliver to the Developer certificates of insurance on the date hereof and before expiration of any then-current policy; and

(vi) All policies shall include a Waiver of Subrogation.

10.2. Exculpation of Non-Recourse Parties. No Non-Recourse Party shall be liable in any manner or to any extent under or in connection with this Agreement, and neither Utility Company nor any successor, assignee, partner, officer, director, or employee of Utility Company shall have any recourse to any assets of a Non-Recourse Party other than such party's interest in the Developer to satisfy any liability, judgment or claim that may be obtained or made against any such Non-Recourse Party under this Agreement. Utility Company agrees it shall look solely to the assets of the Developer for the enforcement of any claims arising hereunder or related to this Agreement, and Utility Company waives any claim against each of the Non-Recourse Parties, irrespective of the compliance or noncompliance now or in the future with any requirements relating to the limitation of liability of members of limited liability companies, shareholders of corporations or limited partners of limited partnerships. The terms of this Section 10.2 are a material consideration and inducement to the Developer to enter into this Agreement, and but for the inclusion of such provision in this Agreement, the Developer would not enter into this Agreement. The limitation of liability provided in this Section 10.2 is in addition to, and not a limitation of, any limitation on liability applicable to a Non-Recourse Party provided by law or by this Agreement or any other contract, agreement or instrument. The terms of this Section 10.2 shall survive the Closings under this Agreement.

11. GENERAL PROVISIONS

11.1. Execution of Future Agreements. After the execution of this Agreement, all new development agreements entered into by the Developer with respect to development of the Projects shall be consistent with the terms of this Agreement to the extent addressing the provision of wastewater service to the Projects.

11.2. Cooperation for All Necessary Government Approvals. The Parties agree to cooperate in obtaining all necessary permits including the Permits and issuance of the Certificate and/or Certificate Extensions by the Commission to Utility Company. Utility Company, at Utility Company's cost, shall file for all Certificates and Certificate Extensions.

11.3. Representations, Warranties, Covenants and Agreements Survive Closing. All representations and warranties of the Parties hereunder shall survive each Closing. Further, any covenant or agreement herein which contemplates performance after the time of any Closing shall not be deemed to be merged into or waived by the instruments delivered in connection with such Closing, but shall expressly survive such Closing and be binding upon the Parties obligated thereby.

11.4. Environmental and Safety Laws. At all times that Utility Company operates the Wastewater Utility System, Utility Company shall comply with all applicable laws and regulations,

including but not limited to, environmental laws. In the event of noncompliance, Utility Company shall take such actions as are required by applicable federal, state or local regulatory authorities.

11.5. Binding upon Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties, and the successors and assigns of each. Prior to Closing, Utility Company may not assign this Agreement without the prior written consent of the Developer, such consent not to be unreasonably withheld. Assignments after Closing shall not require the consent of the Developer but Utility Company shall provide thirty (30) days prior written notice to Developer of any such assignments. The Developer may assign its rights and delegate its duties under this Agreement in whole or in part to a property owners association formed with respect to the Projects, to a developer purchasing all or any portion of the Projects, or to an affiliate of the Developer.

11.6. No Third Party Beneficiary Rights. Nothing expressed or referred to in this Agreement will be construed to give any person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to Section 11.5 of this Agreement.

11.7. Independent Contractors. The Parties are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the Parties.

11.8. Counterparts. This Agreement may be executed in one or more counterpart signature pages, each of which will be deemed to be an original of this Agreement (and all of which, when taken together, will be deemed to constitute one and the same instrument). Signature pages transmitted by facsimile or other electronic means shall be deemed to be the original signatures of the parties for all purposes.

11.9. Headings. The headings of particular provisions of this Agreement are inserted for convenience only and shall not be construed as a part of this Agreement or serve as a limitation or expansion on the scope of any term or provision of this Agreement.

11.10. Enforcement of Agreement. Each Party acknowledges and agrees that the other Party would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any breach of this Agreement by a Party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which a Party may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent any breach or threatened breach of any of the provisions of this Agreement, without posting any bond or other undertaking.

11.11. Waiver. No waivers of, or exceptions to, any term, condition or provision of this Agreement, in any instance or instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

11.12. Entire Agreement. This writing and the documents referred to herein embody the entire agreement and understanding between the Parties and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

11.13. Modifications in Writing. This Agreement shall not be modified, amended, or changed in any respect except in writing, duly signed by the Parties and each Party hereby waives any right to amend this Agreement in any other way.

11.14. Consent to Jurisdiction. The Parties agree that the state and federal courts of North Carolina shall have exclusive jurisdiction over this Agreement and any controversies arising out of, relating to, or referring to this Agreement, the formation of this Agreement, and actions undertaken by the Parties hereto as a result of this Agreement, whether such controversies sound in tort law, contract law or otherwise. Each of the Parties hereto expressly and irrevocably consents to the personal jurisdiction of such state and federal courts, agrees to accept service of process by mail, and expressly waives any jurisdictional or venue defenses otherwise available.

11.15. Governing Law. This Agreement shall be governed by the internal substantive laws of the State of North Carolina, without regard to such state's conflict of law or choice of law rules.

11.16. Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be sent either (i) personally by hand delivery, (ii) by registered or certified United States first-class mail, postage prepaid, return receipt requested, (iii) by nationally recognized overnight courier, or (iv) by facsimile addressed to the address or facsimile number indicated below (or at such other address or facsimile number as such Party or permitted assignee shall have furnished to the other Parties hereto in writing). All such notices and other written communications shall be effective on the date of delivery.

If to the Developer, such notice shall be addressed to:

5850 Fayetteville Road
Suite 201
Durham, NC 27713
Attn: Mitch Barron

Telephone: (919) 361-7000
Facsimile: (919) 361-7011

If to Utility Company, such notice shall be addressed to:

Briar Chapel Utilities, LLC.

Attn: _____
Telephone: (919) _____
Facsimile: (919) _____

[Signature Page to Agreement]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in their respective names, all by authority duly given, the day and year first above written.

NNP-BRIAR CHAPEL, LLC

By: _____

UTILITY COMPANY, LLC

By: _____

INDEX TO EXHIBITS

	<u>EXHIBIT</u>
Map of the Deeded Properties	1.9
Effluent Easement and Irrigation Agreement	1.15
Approved Wastewater Collection System Contractors	5.5(a)

EXHIBIT 1.15
Effluent Easement and Irrigation Agreement

See attached.

EXHIBIT 5.5(a)
Approved Wastewater Collection System Contractors

<u>Name/Address/Telephone</u>	<u>Contact Person</u>	<u>Mobile</u>	<u>Contact Person</u>
Arnold Utility Construction P.O. Box 236 Fuquay Varina, NC 27526 919-872-9450	Melvin Arnold	740-6387 or 427-4189	Brian Arnold
BAF 2921 N. Main Street Fuquay Varina, NC 27526 919-552-9276	Ben Fish		
Bunn Pipeline, Inc. 722 Creech Church Road Kenly, NC 27542 919-422-1906	Mike Bunn		
CSSI 6040-A Six Forks Road Suite 246 Raleigh, NC 27609 919-779-3212	Robert Spivey	422-2562	Richard Smith
Earth Works 6004 Stephanie Circle Selma, NC 27576 919-965-9767	Rick Lundquist		
Dennis Corbett Construction 102 Bluegrass Road Selma, NC 27576 919-965-6008 919-815-6282	Dennis Corbett	422-1710	
Harrco 3534 Walters Road Creedmoor, NC 27522 919-528-7891	Lex Harrison	369-5643	Rodney Harrison
Pipeline Utilities 8015 Fayetteville Road Raleigh, NC 27603 919-772-4310	Johnny Blankenship	218-8004	Kenny Wrenn
Sanford Contractors, Inc. 628 Rocky Fork Road Sanford NC 27330 919-775-7882			
Selco Construction P.O. Box 1142 Smithfield, NC 27577 919-934-9941			

EFFLUENT EASEMENT AND IRRIGATION AGREEMENT

RETURN TO:

This EFFLUENT EASEMENT AND IRRIGATION AGREEMENT (the “**Effluent Easement**”) is made and entered into as of the ___ day of _____, 2008, by NNP-Briar Chapel, LLC, a Delaware limited liability company (“**Developer**”), and BRIAR CHAPEL UTILITIES, LLC, a Delaware limited liability company (“**Utility Company**”).

W I T N E S S E T H:

THAT WHEREAS, Developer is the developer of the Projects (defined below); and

WHEREAS, the Developer and Utility Company have entered into the Acquisition Agreement (defined below) whereby Utility Company will acquire the Wastewater Utility System (defined below) serving the Projects, with Utility Company owning and operating the facilities as a utility company regulated by the Commission (defined below) and DWQ (defined below) for wastewater service; and

WHEREAS, Utility Company is a public utility company in the business of providing wastewater service.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and Utility Company intending to be legally bound, agree as follows:

1. Definitions.

1.1 “*Acquisition Agreement*” shall mean that certain Agreement for the installation, conveyance, and operation of the Wastewater Utility System, dated as of _____, 2008, executed between Developer and Utility Company.

1.2 “*Briar Chapel*” shall mean the property being developed by the Developer known as Briar Chapel located on NC Highway 15-501 in Chatham County, North Carolina, which shall consist of approximately 2389 residential lots, business and retail centers, two schools, a civic center, a pool and clubhouse, athletic fields, trail system and other recreation and amenity areas.

- 1.3 “*Commission*” shall mean the North Carolina Utilities Commission.
- 1.4 “*Developer*” shall mean NNP-Briar Chapel, LLC, a Delaware limited liability company and the developer of Briar Chapel.
- 1.5 “*DWQ*” shall mean the Division of Water Quality of the North Carolina Department of Environment and Natural Resources.
- 1.6 “*Easement Property*” shall mean the property described on Exhibit A attached hereto.
- 1.7 “*Effluent Easement*” shall mean this Effluent Easement and Irrigation Agreement, including all exhibits and schedules hereto, if any, as the same may be amended from time to time.
- 1.8 “*GPD*” shall mean gallons per day.
- 1.9 “*Herndon Woods*” shall mean the property known as Herndon Woods located at Hubert Herndon Road and U.S. Highway 15-501, which consists of approximately 25 residential lots.
- 1.10 “*Monitoring Locations*” shall mean the groundwater monitoring wells and surface water sampling points that may be located from time to time on the Easement Property in compliance with DWQ requirements.
- 1.11 “*Permit*” shall mean the permit for the operation of the Wastewater Utility System and Spray Irrigation Facilities (defined below) issued by DWQ, as the same may be modified or renewed from time to time.
- 1.12 “*Projects*” shall mean Briar Chapel and Herndon Woods.
- 1.13 “*Reuse Effluent*” shall mean the wastewater that has been treated by Utility Company to the point that it meets the effluent quality standards required by the Permit.
- 1.14 “*Reuse Effluent Pumping Station*” shall mean any pump house, pumps and controls located near the Reuse Effluent Storage Ponds that shall be used to pump Reuse Effluent to and through the Primary Spray Irrigation Facilities at the Projects.
- 1.15 “*Reuse Effluent Storage Ponds*” shall mean the Reuse Effluent storage ponds at the Project totaling 53.1 million gallons in which the Reuse Effluent is to be stored after treatment at the WWTP (defined below) and from which the Reuse Effluent is then pumped to be sprayed on the Spray Areas (defined below) and any additional effluent storage ponds permitted and constructed as part of the Wastewater Utility System.
- 1.16 “*Spray Areas*” shall mean all areas at the Projects that have been or may in the future be permitted by DWQ for spray irrigation of Reuse Effluent. The Spray Areas are depicted on Exhibit B attached hereto.
- 1.17 “*Spray Irrigation Facilities*” shall mean all Reuse Effluent irrigation lines, pumps, booster pumps, irrigation and spray devices, controls and other devices used in the application of Reuse Effluent from the Reuse Effluent Storage Ponds upon the Spray Areas (other than the Reuse Effluent Pumping Station).

1.18 “*Upset Storage Pond*” shall mean the 3.5 million-gallon, five-day storage pond to be located near the WWTP for the retention of wastewater during WWTP upsets or any other storage pond permitted by DWQ for the retention of wastewater during WWTP upsets and any additional upset storage ponds permitted and constructed as part of the Wastewater Utility System.

1.19 “*Utility Company*” shall mean the Briar Chapel Utilities, LLC, a Delaware limited liability company.

1.20 “*Wastewater Utility System*” shall mean the WWTP, the Wastewater Collection System, the Reuse Effluent Storage Ponds, the Upset Storage Pond, the Reuse Effluent Pumping Station, the Spray Irrigation Facilities, all lift stations, if any, and other facilities used in the collection, treatment, holding and discharge of the wastewater and, if constructed, any additional components of the wastewater utility system necessary to service the ESA including but not limited to additional components to the WWTP, additional Reuse Effluent Storage Pond and Upset Storage Pond capacity, and additional components of the Wastewater Collection System.

1.21 “*WWTP*” shall mean the wastewater treatment plant located within Briar Chapel.

1.22 “*WWTP Property*” shall mean the property upon which the WWTP is located, as more particularly described in Exhibit C.

2. Treatment and Storage. Utility Company shall treat the wastewater created by customers and common area facilities within the Projects in the WWTP and then discharge the Reuse Effluent into the Reuse Effluent Storage Ponds. The Reuse Effluent shall be treated by Utility Company to the standards established by DWQ in the Permit, and any modified or successive Permits issued by DWQ.

3. Withdrawal and Spray Irrigation. Utility Company shall be responsible for all aspects of the daily operation of the Reuse Effluent Pumping Station and the Spray Irrigation Facilities by a certified spray irrigation operator.

4. Maintaining Reuse Effluent Storage Pond Levels. Utility Company shall require its certified spray irrigation operator to monitor the level of the Reuse Effluent in the Reuse Effluent Storage Ponds and to maintain the level in the Reuse Effluent Storage Ponds at or below the DWQ required freeboard level.

5. Addition of Fresh Water into Reuse Effluent Storage Ponds. Developer may in its reasonable discretion pump fresh water into the Reuse Effluent Storage Ponds for use in irrigating the Spray Areas, provided that the levels in the Reuse Effluent Storage Ponds are at all times maintained below the freeboard level required by the Permit.

6. Testing and Inspections. Utility Company shall be responsible for conducting any and all effluent, groundwater, surface water, and soil sampling, and associated recordkeeping and reporting required by the Permit. Pursuant to and in accordance with Section 11 below, Utility Company shall have the right, at any time following reasonable notice to Developer, to enter the Easement Property to: (a) inspect and review the operation of the Spray Irrigation Facilities; (b) take soil borings and conduct any other tests required by the Permit; and (c) perform groundwater and surface water monitoring within the Spray Areas as required by the Permit (including installation of Monitoring Locations); provided, however, that (x) Utility Company’s testing and inspection activities on the Easement Property, unless otherwise required by the Permit or DWQ regulation, shall not interfere with the intended use of the

Easement Property, and (y) Utility Company shall use commercially reasonable efforts to avoid damage to the Spray Irrigation Facilities and the Easement Property.

7. Reuse Effluent Quality. UTILITY COMPANY SHALL NOT BE RESPONSIBLE FOR ACHIEVING WATER QUALITY LEVELS IN THE REUSE EFFLUENT BEYOND THE REQUIREMENTS OF THE PERMIT.

8. Landscaping and Maintenance of Spray Areas. Developer shall be responsible for the landscape replacement and maintenance of the Spray Areas at Developer's sole cost and in accordance with the requirements of the Permit.

9. Service Interruption. In the event of service interruptions caused by a malfunction of the Wastewater Utility System or the Spray Irrigation Facilities, Utility Company shall exercise due diligence in completing the necessary repairs and restoring Reuse Effluent delivery to the Reuse Effluent Storage Ponds and functionality to the Spray Irrigation Facilities.

10. Insurance.

10.1 General Liability. Utility Company shall, at Utility Company's sole cost and expense, maintain, or cause to be maintained, general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Spray Areas. The coverage under all such liability insurance shall be in such amounts as may be required by law, but in all events for limits of not less than \$1,000,000 per occurrence and not less than \$3,000,000 in the annual aggregate.

10.2 Policy Requirements and Endorsements. All insurance policies required by this WWTP Easement shall contain (by endorsement or otherwise) the following provisions:

- (a) All policies shall name the Developer as an additional insured;
- (b) All policies shall be written as primary policies not contributing with or in excess of any coverage that the Developer may carry;
- (c) The insurance carrier shall be required to give the Developer thirty (30) days' prior notice of cancellation; and
- (d) Utility Company shall deliver to the Developer certificates of insurance on the date hereof and before expiration of any then-current policy.

11. Grant of Easement to Utility Company.

11.1 Developer hereby grants and conveys to Utility Company, its successors and assigns forever, a perpetual non-exclusive easement appurtenant to the WWTP Property for the purpose of spraying Reuse Effluent, operating the Spray Irrigation Facilities and other activities related thereto as more fully set forth in this Effluent Easement. This easement allows such spraying and related activities, as more particularly described in this Effluent Easement, within the Spray Areas, which are located within the Easement Property. The right to spray and monitor pursuant to this easement is given without payment of any fee or other charge being made therefor. Developer shall not further encumber the Spray Areas or engage in any activity therein, or grant any other interest or privilege therein to any other party

that would interfere with Utility Company's enjoyment of its rights or fulfillment of its obligations created by this Effluent Easement.

11.2 Developer further hereby grants to Utility Company, its successors and assigns forever, a perpetual non-exclusive easement appurtenant to the WWTP Property to the other portions of the Easement Property for ingress, egress, regress and access to and from the Spray Areas and Spray Irrigation Facilities, and over, across, upon, and through the Spray Areas and Spray Irrigation Facilities as necessary for Utility Company to enjoy the rights and to fulfill its obligations under this Effluent Easement, including the performance of soil borings and other testing required by the Permit, without payment of any fee or other charge being made therefor. Developer shall not interfere with or permit any other party to interfere with Utility Company's right of ingress, egress, regress and access granted hereby. In the exercise of Utility Company's right of ingress, egress, regress and access, Utility Company shall, where possible, use existing roads, paths, and other ways of travel to and from the Spray Areas. Utility Company shall have no obligation to maintain such roads, paths, or other ways of travel, but shall exercise ordinary care in its use of the same. Where roads, paths, or other ways of travel do not exist, Developer shall make reasonable efforts to specify ways of travel for Utility Company's use so as to permit Utility Company to enjoy the privileges and fulfill the obligations created by this Effluent Easement without undue interference. Utility Company shall use its best efforts to conduct its activities in the Spray Areas so as to avoid any unreasonable and adverse interference with the normal use of the Spray Areas and other Easement Property.

12. Grant of Easement to Developer. Utility Company hereby grants and conveys to Developer, its successors and assigns forever, a perpetual non-exclusive easement over, across, upon, and through the WWTP Property for ingress, egress, regress and access to and from the Reuse Effluent Storage Ponds for the purposes of (i) pumping fresh water into the Reuse Effluent Storage Ponds, (ii) operating, maintaining, repairing and replacing the conveyance lines from the fresh water source to the Reuse Effluent Storage Ponds, and (iii) other activities related thereto as more fully set forth in this Effluent Easement and as necessary for Developer to enjoy the rights and to fulfill its obligations under this Effluent Easement. This easement is appurtenant to the Easement Property and allows activities on and access to the WWTP Property without payment of any fee or other charge being made therefore. Utility Company shall not further encumber the WWTP Property, or engage in any activity therein, or grant any other interest or privilege therein to any other party, that would interfere with Developer's enjoyment of its rights or fulfillment of its obligations created by this Effluent Easement. In the exercise of Developer's right of ingress, egress, regress and access, Developer shall, where possible, use existing roads, paths, and other ways of travel to and from the Amenity Reuse Effluent Pumping Station. Developer shall have no obligation to maintain such roads, paths, or other ways of travel, but shall exercise reasonable care in its use of the same. Where roads, paths, or other ways of travel do not exist, Utility Company shall make reasonable efforts to specify ways of travel for Developer's use so as to permit Developer to enjoy the privileges and fulfill the obligations created by this Effluent Easement without undue interference.

13. General Provisions.

13.1 Binding upon Successors and Assigns. The conditions, restrictions and easements contained in this Effluent Easement are covenants running with the land; they are made by Utility Company and Developer for the benefit of themselves, their successors and assigns in title to all or part of the WWTP Property or the Easement Property. In addition, Developer may assign its rights and delegate its duties under this Effluent Easement in whole or in part.

13.2 No Third Party Beneficiary Rights. Nothing expressed or referred to in this Effluent Easement will be construed to give any person other than the parties to this Effluent Easement any legal or equitable

right, remedy or claim under or with respect to this Effluent Easement or any provision of this Effluent Easement, except such rights as shall inure to a successor or permitted assignee pursuant to Section 16.1 above.

13.3 Independent Contractor. The parties hereto are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Effluent Easement to create an agency, partnership, or joint venture between the parties hereto.

13.4 Counterparts. This Effluent Easement may be executed in one or more counterpart signature pages, each of which will be deemed to be an original of this Effluent Easement (and all of which, when taken together, will be deemed to constitute one and the same instrument). Signature pages transmitted by facsimile or other electronic means shall be deemed to be the original signatures of the parties for all purposes.

13.5 Headings. The headings of particular provisions of this Effluent Easement are inserted for convenience only and shall not be construed as a part of this Effluent Easement or serve as a limitation or expansion on the scope of any term or provision of this Effluent Easement.

13.6 Enforcement of Agreement. Each party acknowledges and agrees that the other party would be irreparably damaged if any of the provisions of this Effluent Easement are not performed in accordance with their specific terms and that any breach of this Effluent Easement by a party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which a party may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Effluent Easement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent any breach or threatened breach of any of the provisions of this Effluent Easement, without posting any bond or other undertaking.

13.7 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be sent either (i) personally by hand delivery, (ii) by United States first-class mail, postage prepaid, (iii) by hand or nationally recognized overnight courier, or (iv) by facsimile addressed to the address or facsimile number indicated on the signature pages to this Effluent Easement (or at such other address or facsimile number as such party or permitted assignee shall have furnished to the other parties hereto in writing). All such notices and other written communications shall be effective on the date of delivery, mailing, or facsimile transmission.

13.8 Waiver. No waivers of, or exceptions to, any term, condition or provision of this Effluent Easement, in any instance, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

13.9 Entire Agreement. This writing and the documents referred to herein embody the entire agreement and understanding between the parties with respect to the subject matter of the Effluent Easement and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

13.10 Modifications in Writing. This Effluent Easement shall not be modified, amended, or changed in any respect except in writing, duly signed by the parties hereto, and each party hereby waives any right to amend this Effluent Easement in any other way. The parties acknowledge that any such modifications may be subject to DWQ or other regulatory agency approval.

13.11 Consent to Jurisdiction. The parties hereto agree that the state and federal courts of North Carolina shall have exclusive jurisdiction over this Effluent Easement and any controversies arising out

of, relating to, or referring to this Effluent Easement, the formation of this Effluent Easement, and actions undertaken by the parties hereto as a result of this Effluent Easement, whether such controversies sound in tort law, contract law or otherwise. Each of the parties hereto expressly and irrevocably consents to the personal jurisdiction of such state and federal courts, agrees to accept service of process by mail, and expressly waives any jurisdictional or venue defenses otherwise available.

13.12 Governing Law. This Effluent Easement shall be governed by the internal substantive laws of the State of North Carolina, without regard to such state's conflict of law or choice of law rules.

13.13 Recordation; Duration. Upon closing of the transactions contemplated by the Acquisition Agreement, Utility Company shall record this Effluent Easement in the Register of Deeds of Chatham County, North Carolina at Utility Company's expense. The provisions of this Effluent Easement will run with and bind title to the WWTP Property and the Easement Property, will be binding upon and inure to the benefit of all owners of any portion of the WWTP Property or the Easement Property, and will be and remain in effect until such time as a document terminating this Effluent Easement is signed by all of the owners of the WWTP Property and the Easement Property and recorded in the public land records of Chatham County.

13.14 Required Amendments. In the event that the Permit is modified, amended or expanded at any time to permit additional or different land to be used for spray irrigation of Reuse Effluent, the parties hereto shall execute and record an amendment to this Effluent Easement designating such additional or different areas as Spray Areas hereunder.

[Signature Page to Effluent Easement and Irrigation Agreement]

IN WITNESS WHEREOF, the parties have caused this Effluent Easement to be duly executed in their respective corporate names, all by authority duly given, the day and year first above written.

NNP-BRIAR CHAPEL, LLC

By: _____
_____, _____

Address:

Fax:

BRIAR CHAPEL UTILITIES, LLC

By: _____
_____, _____

Address:

Fax:

STATE OF _____

COUNTY OF _____

I, the undersigned, a Notary Public of the County and State aforesaid, certify that _____, whose identity has been proven by satisfactory evidence, said evidence being:

- ☐ I have personal knowledge of the identity of the principal(s)
☐ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____

☐ A credible witness has sworn to the identity of the principal(s);
who is the _____ of NNP-Briar Chapel, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged that (s)he is _____ of **NNP-BRIAR CHAPEL, LLC**, a Delaware limited liability company and that as _____ being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

Witness my hand and official stamp or seal this _____ day of _____, 200__.

Notary Public

Print Name:

My Commission Expires: _____

[AFFIX NOTARY SEAL BELOW-NOTE THAT SEAL MUST BE **FULLY LEGIBLE**]

STATE OF _____

COUNTY OF _____

I, the undersigned, a Notary Public of the County and State aforesaid, certify that _____, whose identity has been proven by satisfactory evidence, said evidence being:

☐

I have personal knowledge of the identity of the principal(s)

☐

I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____

☐

A credible witness has sworn to the identity of the principal(s);

who is the _____ of Briar Chapel Utilities, LLC, personally came before me this day and acknowledged that (s)he is _____ of **Briar Chapel Utilities, LLC**, a Delaware limited liability company, and that as _____ being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

Witness my hand and official stamp or seal this _____ day of _____, 200__.

Notary Public

Print Name:

My Commission Expires: _____

[AFFIX NOTARY SEAL BELOW-NOTE THAT SEAL MUST BE **FULLY LEGIBLE**]

EXHIBIT A
Easement Property

EXHIBIT C
WWTP Property

Exhibit 9
Vicinity Map

