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FILED

OCT 23 2009

Clerk's Office
N.C. Utilities Commission

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October 23, 2009

HAND DELIVERED

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

RE: *Briar Chapel Utilities, LLC*
Docket No. W-1230, Sub 0

Dear Ms. Vance:

Please find enclosed for filing in the above-referenced docket, one original and seven (7) copies of the unexecuted Agreement between NNP-Briar Utilities, LLC for the Installation, Conveyance, and Operation of a Wastewater Utility System Serving Briar Chapel and Herndon Woods. Please also find enclosed for filing a map of the Sewer Service Area for Briar Chapel Utilities, LLC. We would appreciate your filing these documents and returning one "filed" stamped copy to me via our courier.

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

Thank you in advance for your assistance and cooperation.

Sincerely,



Karen M. Kemeraït

skp

Enclosures

cc: All parties of record
Bill Grantmyre

mf
AG
Brown
Kite
Legal
Accty.
E & Res.
Walter

FILED

OCT 23 2009

Clerk's Office
N.C. Utilities Commission

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

September __, 2009

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 September, 2009 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 and Herndon Woods (each 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 2,405 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 the approximately 10 acre parcel of property owned by William Crutchfield that is adjacent to Briar Chapel and that may be subdivided into up to 15 residential lots.

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 **Error! Reference source not found.**

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 Projects and 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 purchase price of twenty percent (20%) of the total construction cost of each phase of the Wastewater Utility System. The Developer shall contribute the remaining eighty percent (80%) of each phase of the Wastewater Utility System to Utility Company as a contribution in aid of construction.

4.2. Utility Company shall pay to Developer the 20% purchase price total sum of \$3,096,544 for the first 250,000 GPD phase of the Wastewater Utility System, for which Developer and Utility Company estimate the total construction cost will be \$15.483 Million. Payment shall be made on a pro rata basis of \$3,096 per Connection, for the first 1,000 Connections. 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 fifteenth 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.

4.3. The 20% of construction cost purchase price payments for each phase of the Wastewater Utility System after the first 250,000 GPD phase, shall be made quarterly on a pro rata per Connection basis, payable on the fifteenth 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.

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.

(a) 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.

(b) Utility Company shall request from the Commission a wastewater connection fee of \$1,500 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.

(c) Utility Company shall provide all bonds required by the Commission for the Certificate and each Certificate Extension.

(d) 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 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 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 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 shall construct such pump station.

(d) Upon development, the Developer shall cause to be installed in each section of the Projects 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. 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 Certificate 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 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 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 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 shall design, permit, and construct such pump station.

(e) Upon development, the Developer shall cause to be installed in each section of the ESA 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. 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 7.2, 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 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, commercial general liability insurance ("CGL"), written on an occurrence policy, 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 such CGL policy 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 satisfy any insurance limits required by this Agreement in combination with an "excess" or "umbrella" insurance policy, provided that (a) both the CGL and "excess" or "umbrella" policies or a certificate of such policies 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 policies otherwise comply with this Agreement.

(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 of execution of this Agreement and thereafter annually within 10 days following renewal of any such policies; and
- (vi) All policies shall include a Waiver of Subrogation in favor of the Developer.

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:

16 Windy Knoll Circle
Chapel Hill, NC 27516
Attn: Keith Hurrand

Telephone: (919) 423-5189
Facsimile: (919) 240-4962

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

Briar Chapel Utilities, LLC.
16 Windy Knoll Circle
Chapel Hill, NC 27516
Attn: Bill Mumford
Telephone: (919) 423-5189
Facsimile: (919) 240-4962

[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: _____
Keith Hurand, Assistant Vice President

BRIAR CHAPEL UTILITIES, LLC

By: _____
Douglas Hageman, General Counsel and
Vice President

Senior

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 1.9
Map of the Deeded Properties

See attached.

EXHIBIT 1.15
Effluent Easement and Irrigation Agreement

See attached.

EXHIBIT 5.5(a)
Approved Wastewater Collection System Contractors

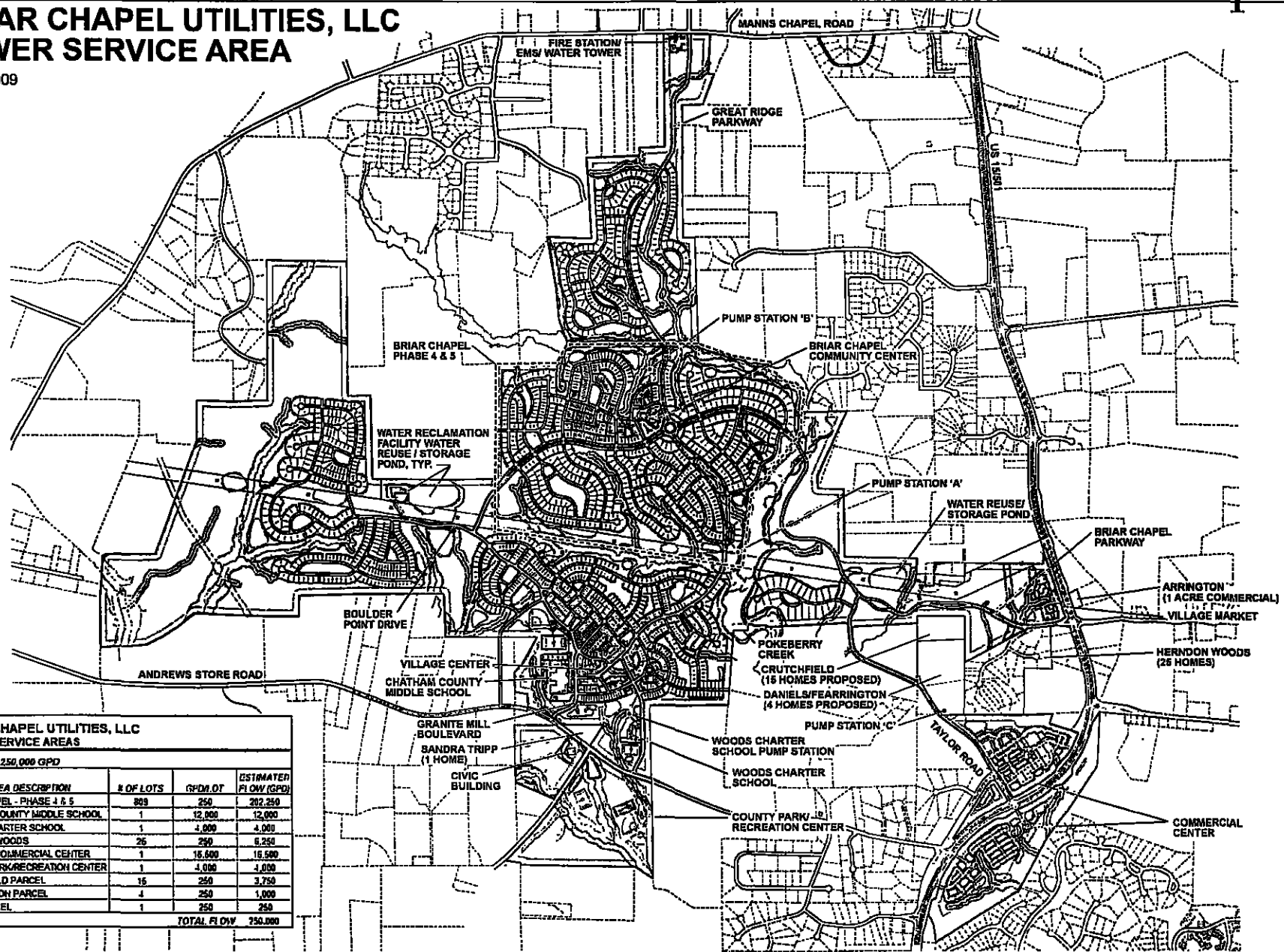
<u>Name/Address/Telephone</u>	<u>Contact Person</u>	<u>Mobile</u>	<u>Contact Person</u>
Arnold Utility Construction P.O. Box 236 Fuquay Varina, NC 27526 919-872-9450	Melvin Arnold	740-6387 or 427-4189	Brian Arnold
BAF 2921 N. Main Street Fuquay Varina, NC 27526 919-552-9276	Ben Fish		
Bunn Pipeline, 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			

Briar Chapel

BRIAR CHAPEL UTILITIES, LLC SEWER SERVICE AREA

10/22/2009

BRIAR CHAPEL UTILITIES, LLC SEWER SERVICE AREAS			
PHASE 1 - 250,000 GPD			
AREA DESCRIPTION	# OF LOTS	GHDI LOT	ESTIMATED FLOW (GPD)
BRIAR CHAPEL - PHASE 4 & 5	809	250	202,250
CHATHAM COUNTY MIDDLE SCHOOL	1	12,000	12,000
WOODS CHARTER SCHOOL	1	4,000	4,000
HERNDON WOODS	26	250	6,250
PHASE 1 - COMMERCIAL CENTER	1	15,500	15,500
COUNTY PARK/RECREATION CENTER	1	4,000	4,000
CRUTCHFIELD PARCEL	15	250	3,750
FEARRINGTON PARCEL	4	250	1,000
TRIPP PARCEL	1	250	250
TOTAL FLOW			250,000



THE JOHN R. McADAMS
COMPANY, INC.