Exhibit A

ONSWC Letter to Chatham County,
March 19, 2021

Old North State Water Company

Po Box 10127
Birmingham, AL 35202-0127
Toll Free: 877-511-2911 Local: 205-326-3200

March 19, 2021

Mr. David Camp
Director of Permits and Inspections
Chatham County, North Carolina
VIA EMAIL

Dear Mr. Camp:

We are now allowing commercial connections to the Briar Chapel system.

Please utilize the new system we have discussed whereby builders or developers receive consent from Old North State Water Co. This helps us to control process of new applications and flows to the sewer system going forward.

Sincerely,

John L. McDonald
Manager
Old North State Water Company, LLC

Exhibit B

Blue Heron Water/Waste-Water Service Application

Intention to Provide Sewer Service

To: Chatham County Central Permitting Division

From: Old North State Water Company, LLC, PO Box 10127, Birmingham, AL 35202-0127: 205-326-3200

Utility Company name and contact information

Please be advised that we have been granted a Certificate of Public Convenience and Necessity by the North Carolina Utilities Commission to provide sewer utility service to the property described below. It is our intention to provide sewer service pursuant to GS 130A-337.

Property owner: BHEYBC, LLC

Property address: 135 BALLENTRAE COURT

City PITTSBORO NC, Zip 27312

Parcel #: 0093293

Subdivision: BRIAR CHAPEL Lot #: 16 Phase #:

Number of bedrooms:

Any applicable service limitations: No

Authorized Utility Company (Print Name & Signature) Date

Old North State Water Co.

An IntegraWater Company

BUILDER: BHEVBC, LLC DATE TO START NEW SERVICE: (REQUIRED) TBD

**Federal Tax ID #: _____ **Federal Tax ID # is Required

Use: Residential ____ Commercial ____ Industrial ____

Please include: Lot #, Phase #, Subdivision & service address FOR ALL APPLICATIONS

Billing Address: % BLUE HERON ASSET MGMT Attn: KEVIN WADE EMAIL: _____

1111 HAYNES ST. STE. 203 Phone: _____

RALEIGH, NC 27604

Service Address: 135 BALLENTRAE CT SUBDIVISION: BRIAR CHAPEL
(City and Zip required)

LOT#: 16 PHASE: _____

PROJECT MANAGER: JONATHAN WINSTEAD E-Mail: JON@EVOLVECOS.COM

CELL: _____

*TAP FEE	$_____	*ALL Fees are Non-refundable
*APPLICATION FEE	$_____	
*METER FEE	$_____	SERIAL NUMBER: _____
TOTAL CHARGES:	$_____	
Payment Method:	CHECK # _____ DATE: _____ AMOUNT: _____	

UPON RECEIPT OF THIS APPLICATION AND PAYMENT OF ALL FEES

THE METER SET WILL BE REQUESTED FOR THE DATE TO START SERVICE REQUESTED ABOVE. PLEASE ALLOW AT LEAST 2 BUSINESS DAYS FOR PROCESS OF YOUR APPLICATION.

Any meters for vacant/bare/empty lots are the responsibility of the builder. If it is damaged or grated over during construction, YOU WILL BE CHARGED a fee for a replacement meter and an additional reinstallation fee. METERS ARE SERVICED BY OUR TECHNICIANS AND CODED BY THE SERIAL NUMBER ISSUED AT SET.

********UNDER NO CIRCUMSTANCES ARE YOU ALLOWED TO MOVE A METER FROM ITS LOCATION TO ANOTHER LOT*******

Special Instructions

BUILDER:

**You are responsible to notify our office of any change to E-911 physical/service address or lot changes PRIOR to CLOSE

***BUILDER ACCOUNTS WILL NOT BE FINALIZED WITHOUT AN APPLICATION FROM THE NEW HOMEOWNER

_____

_____

_____

_____

Rates and Miscellaneous Charges are Subject to Change

*****Read This Contract in Its Entirety Before Signing*****

***Continue to back of page

BUILDER APPLICATION

CUSTOMER #_____

Old North State Water Co.

An IntegraWater Company

WWW.INTEGRAWATER.COM
P.O. BOX 10127
BIRMINGHAM, AL 35202

******WATER / WASTE-WATER SERVICE APPLICATION******

==========

*****READ THIS APPLICATION IN ITS ENTIRETY BEFORE SIGNING*****

*****THIS APPLICATION WILL BECOME A BINDING CONTRACT UPON ACCEPTANCE BY THE UTILITY*****

I, we, the undersigned ("Consumer") hereby request water/waste-water service from Old North State Water Co an Integra Water, LLC Company or its subsidiaries ("Utility") at the Service Address and for the use stated below and none other. Consumer agrees to promptly pay the application fees, service fees, deposits, late fees, after-hours fees, processing fees and all other charges and fees of Utility ("Charges") at Utility's standard rates as set by Utility, now or at any future time, and to comply with Utility's rules, regulations and policies, as modified from time to time by Utility ("Rules"). Utility's obligation to provide water/waste-water service is subject to (i) Utility's acceptance of this Application and (ii) the provisions of any water or sewer license, franchise, easement, right-of-way or other agreements that may exist between Utility and any governmental authority or other person. Utility shall have exclusive right to furnish such service(s) to the Service Address. Consumer will read and comply with the **Water & Waste Water Policy Manual** available at www.integrawater.com or upon request from Utility at the address shown. The signed Application and applicable Charges must be submitted to Utility at the address set forth and Consumer further agrees that:

(1) Utility retains title to and has the sole right to use all meters, connections and other property furnished by it and may remove them anytime; and
(2) Consumer is responsible for the safekeeping of all property of Utility at the Service Address; and
(3) Consumer consents to *Consumer's water provider* releasing to Utility, water consumption at the Service Address for exact calculation of sewer service.
(4) Consumer grants and guarantees free right of access by Utility employees, agents, and contractors to meters, connections and other property of Utility at the Service Address without obstruction (e.g., shrubs, decks, porches, vehicles, animals, fences, etc., or human intervention); and
(5) Consumer will keep the service line, all other piping, all plumbing fixtures and fittings and all appliances at the Service Address (not including meters maintained by the Utility) in good and safe operating condition, first notifying the Utility prior to having repairs made to the service line, and will report immediately to the Utility any leaks discovered; and
(6) Consumer **will not connect supplementary water or sewer service** to a new or existing meter or connection on Utility's system. Consumer agrees that a separate tap with associated Charges will be required for each building or structure at the Service Address; and
(7) Consumer will notify Utility within 10 days prior to vacating the Service Address or service discontinuance for any reason; and
(8) Consumer will install, at Consumer's expense and pursuant to Utility specifications, the service line from Utility's distribution system to the point of use at the Service Address. Consumer is responsible for obtaining correct specifications from Utility for service lines. Utility has the sole right to determine the location of the service line's connection to the Utility's distribution system. Utility will not refund any payments made by Consumer for extension of water or waste-water distribution lines to the property line of the Service Address unless required under a separate agreement with Utility; and
(9) Consumer agrees that Utility may install or cause to be installed a cut-off valve on the water service line at the Service Address, and that upon a Default, Utility has the absolute right 10 days after mailing notice to the Service Address to stop water and waste water service to the Service Address by use of the cut-off valve. Utility has the right to do so without notice in the event of an emergency or if damage to Utility's system or plant is likely to occur or Utility is otherwise likely to incur liability. **Use of the cut-off valve to terminate waste- water service will also result in the termination of water service, but Consumer must continue to pay the minimum fee for water service if required by the water service provider.**
(10) Discontinuance of Service: Consumer understands and agrees that:
  a.) 10 days after mailing written notice to the Service Address (or immediately and without notice in the event of an emergency or if damage to Utility's system or plant is likely to occur or Utility is otherwise likely to incur liability), Utility can cut off water and waste water service to the Service Address if Consumer fails to pay any Charges, fails to comply with any of the Regulations or fails to comply with any provision of this Contract (a "Default"); and
  b.) Consumer must pay an additional delinquent processing fee to reinstate service, and if reinstatement of service occurs after hours, Consumer must pay an additional after hours call fee.
  c.) Consumer must pay all Charges in full before service will be reinstated; and
  d.) **Utility employees or contracted agents are not allowed to collect payments in the field** without special authorization from management; and
  e.) Utility employees and contracted agents must disconnect all accounts that are delinquent; and
  f.) Consumer must pay any unpaid Charges promptly at time service is discontinued; and
(11) Consumer will pay a late fee equal to 10% of any Charges that remain unpaid following the delinquent date shown on the utility bill. Consumer will pay or reimburse Utility for all costs and expenses, including, but not limited to, reasonable attorney's fee, collection fees, and interest, incurred by the Utility in collecting or attempting to collect any Charges or other sum due from Consumer to Utility; and Consumer waives all rights of exemption as to personal property under the constitution and laws of this state or any other state; and
(12) **Consumer does and hereby release and forever discharge, and hereby agrees to indemnify, defend and hold harmless, Utility, its members, managers, employees, contractors, successors and assigns (collectively, the "Indemnified Parties"), from all loss, claim, damage and expense to property, person or otherwise and of every nature (including attorney's fees) arising out of or relating to the provision of service to the Service Address by Utility, including any loss, claim, damage or expense arising out of a breach by Consumer of any provision of this Contract, except to the extent caused by the sole negligence or willful misconduct of Utility. In addition, Consumer does hereby releases and forever discharge the Indemnified Parties from all loss, claim, damage and expense to property, person or otherwise and of every kind arising from any service interruptions or other conditions or occurrences arising from or relating to use of the cut-off valve, water or waste water line breaks or blockages, tampering, failures of the Utility system, acts of God, fire, earthquake, flood, explosion, war or hostilities, any act of terrorism or belligerence, riot, public disorder, expropriation, requisition, confiscation or nationalization, rationing or allocation (whether imposed by law, decree, regulation or industry insistence), restraint by order of court or governmental authority, inability to obtain necessary approvals from any governmental authority, epidemic, quarantine, strikes or combination of workmen, labor disturbances, failure or breakdown of facilities and/or equipment (whether or not resulting from any cause listed above), changes in laws or regulations, termination or restriction of rights under any license, franchise, easement, right-of-way or other agreement for any cause whatsoever or any other event, matter or thing, wherever occurring, which shall not be within the reasonable control of Utility (each a "Force Majeure Event"). Utility's failure to perform or delay in performing any of its obligations under this Contract as a result of a Force Majeure Event shall not be a breach of this Contract.**

Builder Signature: By: Charles X. Forde, Jr., Authorized Signatory Date: 3·23·2021

UTILITY SIGNATURE: _____ Date: _____

***Continue to back of page

Exhibit C

ONSWC Intention to Provide Service to Blue Heron

Sent on 3.23.21

Intention to Provide Sewer Service

To: Chatham County Central Permitting Division

From: Old North State Water Company, LLC, PO Box 10127, Birmingham, AL 35202-0127: 205-326-3200

Utility Company name and contact information

Please be advised that we have been granted a Certificate of Public Convenience and Necessity by the North Carolina Utilities Commission to provide sewer utility service to the property described below. It is our intention to provide sewer service pursuant to GS 130A-337.

Property owner: BHEVBC, LLC

Property address: 135 BALLENTRAE COURT

City PITTSBORO NC, Zip 27312

Parcel #: 0093293

Subdivision: BRIAR CHAPEL Lot #: 16 Phase #:

Number of bedrooms: multi family

Any applicable service limitations: No

Erica Cochran Erica M Cochran 3/23/21

Authorized Utility Company (Print Name & Signature) Date

ERICA COCHRAN NOTARY PUBLIC ALABAMA STATE AT LARGE My Commission Expires 05-06-2024

Exhibit D

ONSWC NC Sewer Builder Instructions

NC Sewer Builder Instructions

- Complete the Builder Application for Connection.
- Enclose a check for the Tap, CIAC tax and Application Fees. (Please see fee schedule)
- The Waste Water policy manual is informational and should be kept for reference.

Please MAIL the completed application and check for fees to:

ONSWC - Subdivision
PO Box 10127
Birmingham, AL 35202

or Overnight to:

ONSWC - Subdivision
3212 6th Ave S, Ste 200
Birmingham, AL 35222

Builder accounts are activated once Final Inspection has been approved and connection to sewer is completed. Please make sure all Lots & Boxes are properly marked for inspection and meter sets prior to mailing this packet back to Old North State Water Company. Builder accounts cannot be finalized until the New Owner utility account has been set up.

Builders may also have access to their account by calling our toll free Customer Service Department 1-877-511-2911, option 1.

Exhibit E

ONSWC Email to Blue Heron,
March 23, 2021

Frank Forde

From: Erica Cochran <ecochran@onswc.com>
Sent: Tuesday, March 23, 2021 10:31 AM
To: Frank Forde
Cc: Jon Winstead
Subject: RE: Briar Chapel Apartments (n/k/a The Perch Apartments)

I will have this to you by the end of the day. I will provide an invoice for the tap fees that are due along with the CIAC Tax gross ups for those tap fees at a later date.

Thank you

Erica Cochran
Executive Assistant
PLEASE UPDATE YOUR RECORDS TO REFLECT MY NEW EMAIL ADDRESS:
ecochran@onswc.com

Direct 205-326-3698
Fax 205-326-6856

3212 6th Avenue South
Suite 200
Birmingham, AL 35222

From: Frank Forde <frank@evolvecos.com>
Sent: Tuesday, March 23, 2021 9:29 AM
To: Erica Cochran <ecochran@onswc.com>
Cc: Jon Winstead <jon@evolvecos.com>
Subject: Briar Chapel Apartments (n/k/a The Perch Apartments)

Ms. Cochran

Hope this email finds you well. We are trying to work with Rebecca McIver at Chatham County on getting our permits issued.

Through Ms. Matzen at Newland Co we were furnished with the 1st attachment. We fully thought this correspondence would get our permits released.

Ms. McIver now needs the first form on the 2nd attachment completed by your office.

Can you kindly provide this so that we may obtain our permits.

If you need any additional information, please let me know.

FxF

Exhibit F

ONSWC Tap Fee Invoice to Blue Heron,
April 19, 2021

Old North State Water Company, LLC
PO Box 10127
Birmingham, AL 35202
1-877-511-2911
www.integrawater.com

Date: 4/19/2021

INVOICE

BHBC Apartments, LLC

General Ledger Code	System Name
	Briar Chapel—The Perch

Description	Total
Tap Fees Due:	$1,082,320.00
(270.58 REU x $4,000.00)	
CIAC Taxes due on tap payments:	$320,907.88
($1,082,320.00 x 29.65%)	
Erica Cochran	
4/19/2021	
Please remit payment to:	
ONSWC-Briar Chapel	
ATTN: Erica	
PO Box 10127	
Birmingham, AL 35202	

AMOUNT DUE	$1,403,227.88

Exhibit G

Revised ONSWC Tap Fee Invoice to Blue Heron, November 29, 2021

Old North State Water Company, LLC
PO Box 10127
Birmingham, AL 35202
1-877-511-2911
www.integrawater.com

Date: 11/29/2021

INVOICE

BHBC Apartments, LLC

PAID via ACH 8-31-2022

General Ledger Code	System Name
	Briar Chapel—The Perch

Description	Total
Tap Fees Due:	$1,082,320.00
(270.58 REU x $4,000.00)	
Erica Cochran	
11/29/2021	
Please remit payment to:	
ONSWC-Briar Chapel	
ATTN: Erica	
PO Box 10127	
Birmingham, AL 35202	

Project: BHEVBC Loan Draw? _____

Acct # 14040 Amount $ 1,082,320.00

Acct # _____ Amount $ _____

Acct # _____ Amount $ _____

Approved by: Dustin Wade Date 8/30/2022

Entered by: mc Date 5-27-22

Notes: _____

$1,082,320.00

This i lina Utilities Commission may make in pending Docket No. M-10(

Exhibit H

Emails between Liberty Senior and ONSWC, April 1, 2021; April 5, 2021; and April 19, 2021

Christopher B. Dodd

From: Erica Cochran <ecochran@onswc.com>
Sent: Monday, April 19, 2021 3:34 PM
To: Thaddeus R Moore
Cc: John McDonald
Subject: RE: Briar Chapel
Attachments: BLANK ONSWC-IW NC BUILDER Service Application Contract.pdf; ONSWC BLANK-Intention to Provide Sewer Service Briar Chapel.docx; ViewFile-C3.pdf; Liberty Senior Living Tap Fee Invoice.pub

Thad:

I have attached the invoice for tap fees and CIAC taxes due for the Liberty Senior Apartments. In addition, I have also attached our Application for Service and Intention to Provide sewer service that we will need along with the tap fees. I have attached the NCUC Order in regards to CIAC taxes as well.

A physical copy is being mailed out to you today.

Please let me know if you need anything further.

Thank you,

Erica Cochran
Executive Assistant
PLEASE UPDATE YOUR RECORDS TO REFLECT MY NEW EMAIL ADDRESS:
ecochran@onswc.com

Direct 205-326-3698
Fax 205-326-6856

3212 6th Avenue South
Suite 200
Birmingham, AL 35222

From: John McDonald <jmcdonald@onswc.com>
Sent: Monday, April 19, 2021 1:24 PM
To: tmoore@libertyseniorliving.com
Cc: Erica Cochran <ecochran@onswc.com>
Subject: FW: Briar Chapel

Thad,

I hope you enjoyed your weekend.

The adult apartment project mentioned below was permitted at 38,150 gallons per day (per the FTSE permit). We will calculate and invoice you for the connection fees. The current tap fee is $4,000/unit.

Is the 2334 S. 41st Street the best address to send the invoice, and to your attention? Additionally, please use this email address going forward.

Thanks,

John

John McDonald
Managing Member
Old North State Water Company, LLC
3212 6th Avenue S
Suite 200
Birmingham, AL 35222
205.326.3355

From: Thaddeus R Moore <TMoore@libertyseniorliving.com>
Sent: Monday, April 5, 2021 2:57 PM
To: John McDonald <JMcDonald@integrawater.com>
Subject: RE: Briar Chapel

Good chatting with you as well John. What document would help you the most regarding our 150 unit active adult apartment project east of 15-501?

What do we need to do to pay the $1,500/unit connection fees associated with it?

Thanks,

Thad Moore
Development Manager
Liberty Senior Living
Mobile: 919-612-7002
tmoore@libertyseniorliving.com

2334 S. 41st Street, Wilmington, NC 28403
Visit our website at www.LibertySeniorLiving.com

From: John McDonald <JMcDonald@integrawater.com>
Sent: Thursday, April 1, 2021 5:08 PM
To: Thaddeus R Moore <TMoore@libertyseniorliving.com>
Subject: Briar Chapel

Thad,

Great talking with you and find my contact info below. My cell is 205.908.9588

Happy Easter!

John

John McDonald

IntegraWater

3212 6th Avenue South
Suite 200
Birmingham, AL 35222
D 205.326.3355
P 205.326.3200
www.integrawater.com

Exhibit I

APA, ONSWC and Briar Chapel Utilities, LLC, Docket No. W-1300, Sub 9

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is made this the 31st day of October, 2014 ("Effective Date"), by and between Briar Chapel Utilities, LLC, a Delaware Limited Liability Company authorized to do business in North Carolina, (hereinafter referred to as "Seller"), NNP-Briar Chapel, LLC, a Delaware Limited Liability Company authorized to do business in North Carolina (hereinafter referred to as "Developer") and Old North State Water Company, LLC, a North Carolina limited liability company (hereinafter referred to as "Buyer") (individually the Seller, the Developer, and the Buyer may be referred to as a "Party" and collectively referred to as the "the Parties").

W I T N E S S E T H:

WHEREAS, Seller owns and operates a wastewater utility system (hereinafter referred to as "Wastewater Utility System") which serves a service area, located within Chatham County, North Carolina, that currently includes Briar Chapel Subdivision, Briar Chapel Community Center, Herndon Woods Subdivision, Woods Charter School, Margaret B Pollard Middle School, Chatham County Parks and Recreation Center, the US Steel property, and certain other areas. This service area shall collectively be referred to as the "Briar Chapel Development" or "Development"; and

WHEREAS, the Briar Chapel Development is currently owned by Developer, which constructed and installed the existing Wastewater Utility System, and conveyed the Wastewater Utility System to Seller as of December 22, 2009; and

WHEREAS, Developer contemplates constructing and installing future additional phases and expansions to the Wastewater Utility System in the Development and in areas outside, but in the general vicinity, of the Development (hereinafter referred to as the "ESA"); and

WHEREAS, Seller has obtained a Certificate of Public Convenience and Necessity (hereinafter referred to as "Certificate" or "CPCN") from the North Carolina Utilities Commission (hereinafter referred to as the "Commission") to provide wastewater utility service to the Briar Chapel Development and approvals from the North Carolina Department of Environment and Natural Resources-Division of Water Resources (hereinafter referred to as "DWQ" or "DWR") to provide wastewater utility service to the Development as follows:

Name	DWQ I.D. No.	U.C. Docket No.
Briar Chapel	WQ0029867	W-1230, Sub 0
Briar Chapel	WQCS00372	
Briar Chapel	WQ0028552	

and

WHEREAS, Buyer is engaged in the business of owning and operating wastewater utility assets and furnishing wastewater utility operation and management services in the State of North Carolina; and

WHEREAS, Envirolink, Inc. has operated the Wastewater Utility System at the Briar Chapel Development since August 2008, pursuant to a separate Agreement for Operations, Maintenance and Management Services dated August 1, 2008, as amended, by and among Developer, Seller, and Envirolink, Inc.; and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all assets of the Wastewater Utility System serving the Development and the ESA as specifically hereinafter described and identified; and

WHEREAS, Developer and/or Buyer intend to install future expansions to the Wastewater Utility System to provide wastewater utility service to all sections of the Development, said Wastewater Utility System may be installed in phases; and

WHEREAS, the Parties have agreed that: (i) Seller will transfer the existing Wastewater Utility System Assets to Buyer, and Buyer will accept such existing Wastewater Utility System Assets; (ii) Buyer will expand the capacity of the existing Wastewater Treatment Plant; (iii) Developer will construct and transfer certain additional components of the Wastewater Utility System serving the Development and the ESA to Buyer, and Buyer will accept such future Wastewater Utility System Assets; and (iv) Buyer will operate the existing Wastewater Utility System and future expansions of the Wastewater Utility System, all in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, warranties, representations, stipulations and agreements hereinafter contained, the Parties hereto mutually agree and covenant as follows:

Section 1

1. DEFINITIONS

1.1. *"Agreement"* shall mean this Asset Purchase Agreement for the purchase, conveyance and operation of the existing wastewater assets and the installation, conveyance, and operation of future expansions to the Wastewater Utility System serving the Development and surrounding areas, including all exhibits and schedules hereto, and amendments thereto.

1.2. *"Briar Chapel Development"* or *"Development"* shall mean the property already developed and to be developed by Developer, known as Briar Chapel Subdivision, Briar Chapel Community Center, Herdon Woods Subdivision, Woods Charter School, Margaret B Pollard Middle School, Chatham County Parks and Recreation Center, Village Center, Village Market, Commercial Center, Sandra Tripp property (1 REU), Crutchfield property (18 REUs), Daniel/Fearrington property (4 REUs), the Arrington property (1 Acre Commercial), and the US Steel property consisting of approximately 2,000 acres located in northern Chatham County, North Carolina.

1.3. *"Certificate"* shall mean the Certificate of Public Convenience and Necessity for providing wastewater utility service in the Development issued by the North Carolina Utilities

Commission in Docket W-1230, Sub 0, and any other certificates which might be issued for service in the Development.

1.4. *"Certificate Extension"* shall mean any extension(s) to the Certificate(s).

1.5. *"Closing"* shall mean each instance upon which Wastewater Utility System Assets are transferred from either Seller or Developer to Buyer. The initial Closing shall be between Seller and Buyer. Subsequent Closings are envisioned to be between Developer and Buyer.

1.6. *"Closing Date"* shall mean the date of the applicable Closing, as the context requires.

1.7. "*Collection System Permit(s)*" shall mean the individual permit(s) for the construction of each phase of the Wastewater Collection System in the Development. The permit(s) may have been issued as multiple individual permits or may have been issued as modifications to the initial Wastewater Collection System Permit.

1.8. "*Commission*" shall mean the North Carolina Utilities Commission.

1.9. "*Commitments*" shall mean those commitments for wastewater service that are included in the service area, are not being developed by Developer, and are included in the definition of "Development". These commitments include 28 REUs for Herndon Woods, one (1) REU for the Sandra Tripp property, 18 REUs for the Crutchfield property, 4 REUs for the Daniel/Fearrington property, for one acre of commercial development for the Arrington property, and for the US Steel property.

1.10. *"Deeded Property(ies)"* shall mean the following real property being conveyed to Buyer by special warranty deed: That certain tract of land containing 21.24 total acres, located in Baldwin Township, Chatham County, North Carolina, and shown as Reclamation Facility Tract A (North) and Reclamation Facility Tract A (South), Exempt Plat, on Plat Book 2008, Pages 131-132, Chatham County Registry, to which reference is hereby made for a more particular description.

1.11. *"Developer Agreement(s)"* shall mean the Agreement(s) between Developer and Seller for the installation, conveyance, and operation of a wastewater utility system necessary to provide wastewater utility service to the Development and any subsequent amendments thereto.

1.12. *"DWQ" or "DWR"* shall mean the former Division of Water Quality of the North Carolina Department of Environment and Natural Resources now the Water Quality Permitting Section within the Division of Water Resources (DWR). DWQ shall have the same meaning as DWR and DWR shall have the same meaning as DWQ.

1.13. *"Effluent Easement"* shall mean, collectively, those certain Effluent Easement and Irrigation Agreements attached hereto as Schedule 2, executed by Seller and Developer, including all exhibits and schedules thereto, if any, and any subsequent amendments thereto.

1.14. *"Effluent Storage Pond"* shall mean the 21.3 million gallon storage pond constructed within the Development in which the Reuse Effluent is stored after treatment at the WWTP and from which the Reuse Effluent is then pumped and sprayed on the Spray Areas.

1.15. *"ESA"* shall mean any extended service areas acquired by Developer and located outside but in the general vicinity of the Development to be served by the Wastewater Utility System.

1.16. *"ESA Effluent Easement"* shall mean an ESA Effluent Easement and Irrigation Agreement in substantially the form as Schedule 2 (as revised to apply to ESA Spray Areas), to be executed by Developer and Buyer upon certification of the ESA Spray Irrigation Facilities, including all exhibits and schedules thereto, if any, and any subsequent amendments thereto.

1.17. *"ESA Spray Areas"* shall mean all areas in the ESA that have been or may in the future be permitted by DWQ for spray irrigation of Reuse Effluent.

1.18. *"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, software, controls and other devices used in the application of Reuse Effluent from either the Effluent Storage Pond or any additional effluent storage ponds upon the ESA Spray Areas, together with all appurtenant easements.

1.19. *"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.

1.20. "*Gravity Service Line*" shall mean the line, which conveys wastewater via gravity flow, from the individual household or commercial establishment to the Wastewater Collection System. The portion of the individual household sewer line for which Buyer assumes maintenance responsibility shall include only that portion of the individual household sewer line that extends from, and includes, the wastewater cleanout at or near the property line to the Buyer's wastewater main at or near the street, unless a cleanout is not located at or near the property line in which case Buyer shall assume maintenance responsibility up to the property line.

1.21. "*GPD*" shall mean gallons per day.

1.22. *"Grinder Pump Station"* shall mean the wastewater grinder pump, tank and controls, if any, 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.

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

1.24. *"Non-Discharge Permit"* shall mean the 0.75 MGD permit for the ultimate construction of a 0.75 MGD wastewater treatment plant and construction and operation of the existing 0.25 MGD Wastewater Treatment Plant issued by DWQ as Permit No. WQ0029867, including all modifications thereto.

1.25. *"Reclaimed Effluent"* shall mean the wastewater that has been treated to the point that it meets the quality standards required by DWR for disposal on individual residential and non-residential lots.

1.26. "*Reclaimed Irrigation Facilities*" shall mean all Reclaimed Effluent irrigation lines installed in defined areas that are not located on individual lots for the purpose of irrigating designated open areas on individual residential lots or non-residential lots. These areas are commonly referred to as "conjunctive" areas and are currently not credited toward the Wastewater Utility System's permitted irrigation disposal capacity.

1.27. *"Residential Equivalent Unit"* or "*REU*" shall mean a unit of wastewater treatment capacity equal to the presumed average daily wastewater flow of a single-family unit in the Development (250 GPD). For purposes of this Agreement, the number of REUs 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 a wastewater meter for the non-residential facility, in accordance with the following chart:

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

1.28. *"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.

1.29. *"Reuse Effluent Pumping Station"* shall mean that certain pump house, pumps and controls to be located near the Effluent Storage Pond that shall be used to pump Reuse Effluent to and through the Spray Irrigation Facilities at the Development.

1.30. "*Reuse Irrigation Facilities*" shall mean all Reuse Effluent irrigation lines, pumps, booster pumps, irrigation and spray devices, software, controls and other devices used in the application of Reuse Effluent from the Effluent Storage Pond upon the Spray Areas located within Development which shall be owned and operated by Buyer.

1.31. *"Spray Areas"* shall mean all areas at the Development that have been or may in the future be permitted by DWQ for spray irrigation of Reuse Effluent.

1.32. *"Spray Irrigation Facilities"* shall mean all Reuse Effluent irrigation lines, pumps, booster pumps, irrigation and spray devices, software, controls and other devices used in the application of Reuse Effluent from the Effluent Storage Pond upon the Spray Areas located within Development which shall be owned and operated by Buyer.

1.33. *"System-wide Collection System Permit"* shall mean the permit for the operation of the Wastewater Collection System for the Development issued by DWQ (WQCS00372).

1.34. *"Upset Storage Pond"* shall mean the 3.5 million gallon five-day retention pond that is located near the WWTP for the retention of wastewater during WWTP upsets.

1.35. *"Wastewater Collection System"* shall mean the wastewater service lines (gravity and low pressure), gravity collection lines, if any, force mains, lift stations, if any, and all appurtenant equipment that will deliver wastewater from the customers within the Development to the WWTP.

1.36. *"Wastewater Plans"* are all plans and specifications for the Wastewater Utility System approved by DWQ, Buyer, and Chatham County (if required), and engineered by Seller's or Developer's engineer.

1.37. *"Wastewater Utility System"* shall mean the WWTP, the Wastewater Collection System, the Effluent Storage Pond, the Upset Storage Pond, the Reuse Irrigation Facilities, the Reuse Effluent Pumping Station, the Reclaimed Irrigation Facilities, 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 Development and the ESA, including, but not limited to, additional components to the WWTP, additional effluent storage pond(s), upset storage pond capacity, spray irrigation facilities, and additional components of the Wastewater Collection System.

1.38. *"Wastewater Utility System Assets"* shall mean the WWTP, the WWTP site of adequate size for the current WWTP and future expansions of the WWTP including adequate buffer, the Effluent Storage Pond site, the Upset Storage Pond site, the Wastewater Collection System, the Reuse Irrigation Facilities, the Reuse Effluent Pumping Station, the Reclaimed Irrigation Facilities, the Spray Irrigation Facilities, and, if constructed, any additional components of the Wastewater Utility System necessary to service the Development and the ESA, including, but not limited to, additional components to the WWTP, additional capacity for the Effluent Storage Pond and Upset Storage Pond, and additional components of the Wastewater Collection System, the ESA Collection System, and the ESA Spray Irrigation Facilities. Attached as Schedule 4 is a map of the WWTP site with adequate buffers, the Effluent Storage Pond site and the Upset Storage Pond site.

1.39. *"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 Development or to the ESA, which Developer will convey to Buyer upon its completion.

1.40. *"WWTP" or "Wastewater Treatment Plant"* shall mean the already constructed 250,000 GPD wastewater treatment plant located within the Development and any additions thereto.

Section 2

2. REPRESENTATIONS AND WARRANTIES

2.1. Seller hereby represents and warrants as follows:

(a) Organization; Good Standing; Power. Seller is a Limited Liability Company duly organized, validly existing and in good standing under the laws of the state of Delaware and authorized to do business in the state of North Carolina and has all 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.

(b) Title to Properties. Seller is the legal owner of and has fee simple marketable title to all the assets in the Wastewater Utility System Assets and all existing assets being purchased by Buyer in this Agreement.

(c) Authority Relative to Agreement. Seller has taken all requisite action necessary to enter into this Agreement. The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby will not (i) require the consent, approval or authorization of any other 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 Seller; or (iii) result in a violation of Seller's charter or by laws.

(d) Notices of Terminations or Defaults. Seller is not aware of nor has Seller received any notice of termination or notice of default or claim with respect to any agreement or commitment in effect with respect to any said Wastewater Utility System Assets except for those notices of default set forth on Schedule 14.

(e) Encumbrances. To Seller's knowledge, there are no liens, claims or encumbrances of whatever type or nature upon or against the Wastewater Utility System, including but not limited to mortgages, deeds of trust, financing statements or security instruments filed under the Uniform Commercial Code, either in the county where the Wastewater Utility System is located or with the Secretary of State. In the event that there are any liens or encumbrances, Seller shall pay off or cause to be released at or prior to Closing all mortgages, deeds of trust, liens, and encumbrances and obtain all necessary releases so Buyer will receive fee simple marketable title to the Wastewater Utility System.

(f) Location of Properties. To the best of Seller's knowledge, the Wastewater Utility System is located on the Deeded Properties being conveyed to Buyer by special warranty deed or in the Effluent Easements, which easements shall be conveyed hereunder to Buyer.

(g) Litigation. Except as may otherwise be disclosed on Schedule 14, Seller, to its best knowledge, represents that there are no actions, suits, proceedings or investigations pending or affecting or which would with the passage of time affect the Wastewater Utility System, at law, under regulations or in equity, before any federal or state court, department, commission, board, bureau, agency or instrumentality, which would be a lien or encumbrance on any of the Wastewater Utility System or revenues generated by the Wastewater Utility System or would materially adversely affect Buyer's use of the Wastewater Utility System.

(h) Permits and Approvals. Except as may otherwise be disclosed on Schedule 10, Seller has all the required permits and approvals from DWQ to operate the Wastewater Utility System.

(i) Environmental Matters. Seller has not during the period Seller owned the Deeded Property introduced to the Deeded Property any hazardous substances. Seller has no knowledge of any such hazardous substances being introduced to the real property prior to the time Seller acquired the Deeded Property. For purposes of this paragraph, the definition of the term "hazardous substance" shall be that set out in Section 101(4) of the Federal Comprehensive Environmental Response, Compensation and Liability Act, except that for purposes of this Asset Purchase Agreement, the term also shall include (i) petroleum (crude oil) and natural gas (whether existing as a gas or a liquid) and (ii) any substance defined as hazardous or toxic by any state or local regulatory agency having jurisdiction over the operations of Seller. The term hazardous substance shall not include the wastewater additives such as chlorine, caustic soda, or thiosulfate used in conjunction with the conveyance, treatment and disposal of wastewater.

(j) Prepaid Tap Fees, Advances for Construction. Except as otherwise disclosed on Schedule 12, Seller has not received any prepaid tap fees or advances for construction or cash contributions in aid of construction for which construction has not been completed.

(k) Property Tax Listings and Payments. Seller has filed in a timely manner (taking into account all extensions of due dates) all property tax listings, which are required to have been filed and has paid all property taxes on the Wastewater Treatment System.

2.2. Developer hereby represents and warrants as follows:

(a) Organization; Good Standing; Power. Developer is a Limited Liability Company duly organized, validly existing and in good standing under the laws of the state of Delaware and authorized to do business in the state of North Carolina and has all 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.

(b) Authority Relative to Agreement. Developer has taken all requisite action to enter into this Agreement. The execution, delivery and performance of this Agreement by Developer and the consummation of the transactions contemplated hereby will not (i) require the consent, approval or authorization of any other 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 Developer; or (iii) result in a violation of Developer's charter or by laws.

(c) Subsequent Closing Representations. At each Closing, Seller or Developer, as appropriate, shall represent and warrant the following to Buyer:

- (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 Seller or Developer, as applicable, 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 Buyer, other than this Agreement, and Seller or Developer, as applicable, is not aware of any default by any Party to any such agreement; and

- (iii) except as described herein or in the title commitment described in Section 3.12 below, 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 Buyer, 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.

2.3. Buyer hereby represents and warrants as follows:

(a) Organization; Good Standing; Power. Buyer is a Limited Liability Company duly organized, validly existing and in good standing under the laws of the state of North Carolina, has a current certificate of authority to do business in North Carolina and has all 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.

(b) Authority Relative to Agreement. Buyer has taken all requisite action necessary to enter into this Agreement. The execution, delivery, and performance of this Agreement by Buyer 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 Buyer; or (iii) result in a violation of Buyer's charter or by-laws.

(c) Buyer agrees to use good faith efforts to obtain approval of the

Commission or DWQ for the purchase and operation of the Wastewater Utility System Assets pursuant to this Agreement, and subsequent to Closing will maintain any and all licenses and permits required for the operation of the Wastewater Utility System Assets.

Section 3

3. CONVEYANCE OF EXISTING WASTEWATER UTILITY SYSTEM ASSETS

3.1. Conveyance of Existing Utility System Assets.

(a) Purchase of Assets. Seller agrees to sell and Buyer agrees to purchase on or before the Initial Closing Date (as hereinafter defined), for the consideration hereinafter set forth in Section 3.2, all the Wastewater Utility System Assets of Seller as set forth on Schedule 1 attached hereto and made a part of this Agreement. Schedule 1 also states the number of active customer connections on the Wastewater Utility System on the date Schedule 1 is prepared. The purchase by Buyer of the Wastewater Utility System shall include but not be limited to:

(i) The WWTP, the entire Wastewater Collection System, Reuse Irrigation Facilities, Reclaimed Irrigation Facilities, Effluent Storage Pond, Upset Storage Pond, including, but not limited to, the wastewater collection mains, wastewater service lines, the wastewater pump stations (if any), reuse and reclaimed distribution mains, reuse and reclaimed distribution pump stations, and all buildings, parts, and equipment that constitute part of the Wastewater Utility System.

(ii) The Deeded Property, as specifically set forth on Schedule 4 attached hereto.

(iii) All easements, rights of way and consents owned or used by Seller or Developer for the construction, operation, and maintenance of the Wastewater Utility System. All privileges, permits or approvals issued by DWQ, and all wastewater rights, flowage rights and riparian rights necessary to the operation and maintenance of said Wastewater Utility System. At Closing, Seller shall execute written assignments to Buyer of such rights.

(iv) All current wastewater customer records including service locations and mailing addresses which are necessary for Buyer to establish customer accounts and locations and collect the receivables purchased by Buyer. This schedule shall be substantially in the form shown in Schedule 6 and upon delivery Seller shall acknowledge receipt, which acknowledgement shall become a part of this Agreement. These shall also be delivered in electronic format, if available.

(v) Wastewater Utility System prints, plans, specifications, engineering reports, engineer certifications, wastewater reports, geographical information system, surveys, shop drawings, equipment manuals, wastewater analyses reports, copies of all DWQ reports, permits, approvals, correspondence and other information from DWQ or the Commission which are in the possession of Seller and its agents which are necessary for the operation of the Wastewater Utility System.

(vi) All rights of Seller under Developer Agreements for the Wastewater Utility System, including rights for future wastewater system expansion, any future connection charges and tap fees or impact fees which are to be paid by developers to Seller under the Developer Agreements, and future connection charges or tap fees paid by new customers after the date of closing hereof. "Developer Agreements" shall be set forth on Schedule 7, with a copy of each Developer Agreement attached thereto.

(vii) Seller's copies of all financial and Wastewater Utility System records, including copies of back up invoices relating to utility plant schedules and invoices for the Wastewater Utility System necessary for Buyer to establish the rate base, accumulated depreciation, CIAC, tap fees, etc.

(viii) All contract rights of Seller for non-developer contracts which relate to the Wastewater Utility System and are necessary for the continuing maintenance and operation of the Wastewater Utility System. Seller shall provide to Buyer a copy of each of these contracts prior to Closing and Seller and Buyer shall mutually agree upon which contract will be assigned to and assumed by Buyer.

(ix) All customer accounts receivable.

(x) All future tap fees, connection fees, meter installation fees and plant impact fees.

(xi) Assignment of Covenants and Restrictions related to wastewater service contained within customers deeds.

(b) Assignment of Warranties. Seller shall assign to Buyer any warranties on the Wastewater Utility System components that were provided to Seller or Developer by subcontractors or manufacturers of the Wastewater Utility System. Except for any such warranties, Buyer is acquiring the Wastewater Utility System Assets in an "as is" basis, "with all faults", and without any representation or warranty as to merchantability or fitness for a particular purpose.

(c) Items Not Purchased. Buyer is not purchasing Seller's cash, bank accounts, or certificates of deposit posted at the Commission for Commission required bonds.

(d) Buyer to Replace Seller's Commission Bonds. At Closing, Buyer shall replace all Seller's bonds posted with the Commission, and shall assist Seller in obtaining the expeditious release and return of Seller's certificates of deposit which secure the bonds.

3.2. Purchase Price. The Purchase Price paid to the Seller by Buyer is comprised of the following: One Thousand Five Hundred Dollars ($1,500) per REU for each new residential and non-residential connection made to the Wastewater Utility System. Buyer will continue to collect the $1,500 per REU Connection Fee approved in the franchise proceeding for the Seller in Docket No. W-1230, Sub 0, for each new connection made to the Wastewater Utility System and pay such fees to Developer. Briar Chapel Development is currently planned for 2,516 connections. Currently, 669 connections have been made, leaving 1,847 anticipated future connections. Payment for these

anticipated future connections shall be paid by Buyer to Developer quarterly based on the number of connections installed during the previous quarter. Payments shall be made on or about each January 15, April 15, July 15, and October 15.

3.3. Expansion of the WWTP. Buyer will be responsible for and shall pay all costs for the design, permitting and construction to expand the currently installed 250,000 GPD Wastewater Treatment Plant to 600,000 GPD. Buyer estimates that the cost to expand the WWTP from 250,000 GPD to 600,000 GPD will be $7.00 per gallon or Two Million Four Hundred Fifty Thousand ($2,450,000).

3.4. Tariff and Connection Fee. The Parties acknowledge and agree that Buyer will not submit an application for a rate increase or an increase in the connection fee to the Commission for a period of at least three (3) years after the Initial Closing Date. Once the three (3)-year period after the Initial Closing Date has passed, Buyer has the right to request an increase in rates and/or connection fee, within its discretion.

3.5. Buyer's Due Diligence Investigations of the Wastewater Utility System. It is recognized that Buyer or Buyer's agent is currently operating the Wastewater Utility System. Notwithstanding the forgoing, Buyer with full cooperation of Seller shall be able to perform extensive due diligence inspections of the Wastewater Utility System. Buyer is relying on Buyer's extensive on-site inspections to determine the operating condition of the system and the necessity for system capital improvement upgrades. Buyer is acquiring the Wastewater Utility System Assets in an "AS IS, WHERE IS" basis, "WITH ALL FAULTS", and without any representation or warranty as to merchantability or fitness for a particular purpose. It is expressly agreed that Seller shall have no liability to Buyer after Closing with respect to the Wastewater Utility System. After the Closing, Buyer will make repairs and upgrades to the Wastewater Utility System at Buyer's expense.

3.6. Documents to be Furnished within 10 Days. Seller shall deliver to Buyer within ten (10) days of the execution of this Agreement any of the following documents that have not already been provided to Buyer for Buyer's review. Buyer shall have ten (10) days from the date of its receipt of each document to review and approve or disapprove each of the documents and the contents therein. If Buyer disapproves any of the documents, then Buyer shall not be obligated to close this transaction. If Buyer shall fail to give notice of any disapproval of any document within said ten (10)-day period, then for all purposes hereof, Buyer shall be deemed to approve same.

(i) Schedule 1. The number of active customers of the Wastewater Utility System, the DWQ system I.D. number, and the Commission Docket number for the issuance of the Certificate to Seller.

(ii) Schedule 2. Existing Effluent Easement and Irrigation Agreement between Developer and Seller.

(iii) Schedule 3. Updated Briar Chapel Development Plan.

(iv) Schedule 4. All pump station lots, WWTP lots, and other real estate with copies attached of the deeds and easements and listing the recorded deed book and page together with copies of deeds to all other real estate which is a part of the Wastewater Utility System.

(v) Schedule 5. Wastewater Collection System map, Reclaimed Water Spray Irrigation System map, and Reuse Water Spray Irrigation System map.

(vi) Schedule 6. Format for confidential listing of all customers, physical addresses, mailing addresses, and lot numbers, if possible. This information shall be confidentially conveyed to Buyer. Upon receipt by Buyer, Buyer shall acknowledge receipt.

(vii) Schedule 7. List of "Developer Agreements" and wastewater utility service commitments entered into between Seller and owners or developers of property regarding wastewater service to be provided to the properties of such parties. This schedule shall list each agreement date, agreement parties and wastewater system name, with copies of each such agreement attached if available.

(viii) Schedule 8. List of all invoices for Wastewater Utility System plant additions or improvements subsequent to the initial application with copies attached.

(ix) Schedule 9. List of all private easements and rights of way owned or used by Seller for the construction, operation, maintenance, repair and replacement of the Wastewater Utility System with copies of these instruments attached.

(x) Schedule 10. List of all DWQ approvals or permits, with copies of the DWQ approvals and permits attached together with a description of any portion of the Wastewater Utility System that does not have a DWQ written approval.

(xi) Schedule 11. List of agreements entered into by or between Seller and other parties, which would or might be considered to be an encumbrance upon the Wastewater Utility System and related equipment, with copies of such agreements attached.

(xii) Schedule 12. List of all prepaid customer tap fees, and prepaid cash CIAC for which the wastewater system or a portion thereof has not been installed.

(xiii) Schedule 13. List of all Department of Transportation Encroachment Agreements with copies attached.

(xiv) Schedule 14. List of all Notices of Terminations, Defaults and Claims as required by Section 2.1 (d).

(xv) Schedule 15. List of Wastewater Covenants and Restrictions including specific restrictions related to individual residential grinder pumps, sewer use, and Fats, Oil & Grease with copies attached thereto.

3.7. Possession and Operations. Possession of the Wastewater Utility System Assets shall be delivered on the date of Closing. Buyer, at Closing, will immediately assume ownership and

operation of the Water Utility System and pay all costs of the operation and maintenance which arise after the Closing.

3.8. Fire or Other Casualty. The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller.

3.9. Customer Service Deposits. Seller represents and warrants to Buyer that Seller has not collected any customer service deposits. If Seller has collected any customer service deposits, it shall refund any customer service deposits immediately following the Closing.

3.10. Initial Closing Date. Upon receipt of the last item described in Section 3.6 and upon approval by the Commission of the transfer of the Certificate from Seller to Buyer, the Parties shall mutually agree upon a date for the transfer of the Deeded Properties, the WWTP, the Effluent Storage Pond, the Upset Storage Pond, the Reuse Effluent Pumping Station, the Reuse Irrigation Facilities, the Reclaimed Irrigation Facilities, the initial phase of the Wastewater Collection System, and the initial phase of the Spray Irrigation Facilities, which Initial Closing Date shall not be later than December 31, 2014.

3.11. Effluent Easement Agreement. All rights, duties and obligations of Seller and/or Developer under the Effluent Easement Agreement shall be transferred to and assigned to Buyer. At the Closing, Seller or Developer, as appropriate, and Buyer shall execute a written assignment of the Effluent Easement Agreement to Buyer.

3.12. Title Insurance.

(a) Title Insurance for Deeded Property. Seller, at Seller's cost, has provided to Buyer a title commitment to the Deeded Property for the Wastewater Utility System, showing title to be marketable fee simple title and to be free and clear of any and all liens and encumbrances, except as may be described in the title commitment and approved by Buyer. Seller shall procure a title commitment on behalf of Buyer with respect to each Deeded Property prior to Closing, and shall pay the attorney's fees incurred in connection therewith. Buyer shall pay the title insurance premiums in connection with the issuance of an owner's policy after each such Closing.

(b) Title Insurance for Easements. Contemporaneously with the execution of this Agreement hereof, Seller has delivered to Buyer, and Buyer acknowledges its receipt of, a Commitment for Title Insurance covering the Deeded Property and easement interests in the form attached hereto as Schedule 17. Buyer agrees that if it elects to obtain an owner policy of title insurance at each Closing hereunder, Buyer shall pay the title insurance premium in connection with such owner policy issued in favor of Buyer.

Section 4

4. INSTALLATION AND CONVEYANCE OF FUTURE EXPANSION TO WASTEWATER UTILITY SYSTEM TO SERVE THE DEVELOPMENT

4.1. Design, Engineering, and Expansion of WWTP.

(a) Buyer will design, engineer and expand the existing WWTP to a 600,000 GPD WWTP to provide wastewater services to the Development and the ESA, as more particularly described herein. Such expansion may be completed in phases, if necessary. If additional treatment capacity in excess of 600,000 GPD is necessary to serve the ESA, if constructed, responsibility for expansion of the WWTP necessary to provide such additional capacity shall be completed by Developer in accordance with Section 5.2(c).

(b) The Parties acknowledge that the existing WWTP has been designed to treat 250,000 GPD and that the Non-Discharge Permit has been issued for a WWTP with a capacity of 750,000 GPD.

(c) Buyer agrees to reserve up to 600,000 GPD of capacity in the WWTP for customers in the Development and the ESA. In the event that there is additional and unused capacity in the WWTP that is not required for the Development and the ESA, Buyer may allocate such additional and unused capacity to customers outside the Development and the ESA upon written agreement from the Developer. In the event that Seller and Buyer agree that Buyer may allocate additional and unused capacity in the WWTP to customers outside the Development and the ESA, Developer shall have no obligation to design, permit or construct any additional Wastewater Utility System components or provide property within the Development or ESA for Spray Areas necessary to serve those customers.

4.2. Design, Permitting and Construction of Additional Wastewater Utility System Components.

(a) Only if required to provide wastewater service to the Development, Developer shall design, engineer and install a reuse spray irrigation system, upset pond, and effluent storage pond, as more particularly described herein. Such components may be completed in phases. If additional irrigation, upset pond or effluent holding pond capacity is necessary to serve 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 5.2.

(b) In connection with construction of each section of the Development, Developer shall cause to be installed, at Developer's expense, if required, a complete Wastewater Collection System to serve all lots in that section of the Development. 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.

4.3. Certificate of Public Convenience and Necessity. After the execution of this Agreement, and prior to the installation of each Wastewater Utility System Phase, Buyer will apply to the Commission as soon as may be practicable for a Certificate or Certificate extension to provide wastewater service to that section or phase of the Development, if not already included within the existing Commission approved franchise area. Buyer shall provide all bonds required by the Commission for each Certificate or Certificate Extension.

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

(a) Prior to the commencement of any construction work on additional components of the Wastewater Utility System, Developer shall obtain Buyer's approval of all contractors and subcontractors who will perform work on the installation of the Wastewater Utility System. Buyer shall not unreasonably withhold, condition or delay approval of such additional contractors, and Buyer shall respond to Developer's request for approval within fourteen (14) days of such request.

(b) Developer shall furnish to Buyer 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.

(c) Developer shall cause its contractors to provide to Buyer a one-year warranty on all Wastewater Utility System components commencing on the date of issuance of the final engineering certification.

(d) Buyer may periodically inspect the construction, and may require correction to portions of the construction that are not consistent with the DWR-approved plans, that may be amended from time to time.

4.6. Subsequent Closings of Wastewater Utility System Components to Serve the Development. Once any phase of the Wastewater Utility System components to serve the Development and the ESA has been installed, certified by the engineer, and inspected and approved by Buyer, it shall be conveyed by Developer to Buyer at no cost and accepted by Buyer. Developer shall thereafter have no further responsibility for such phase of the Wastewater Utility System, and Buyer shall pay all costs of the operation and maintenance.

4.7. Installation of Grinder Pump Stations.

(a) For each lot in the Development served by a pressure wastewater main, 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 in the Development served by a pressure wastewater main shall have a standardized Grinder Pump Station, the design of which must be pre-approved by Buyer and DWQ. Upon the first customer request for service at each residential lot, Buyer shall arrange for the installation of the Grinder Pump Station to serve the lot and shall coordinate the installation thereof. Each lot owner shall be required to prepay the outside contractor (specified by Buyer) installing the Grinder Pump Station the entire cost of the installation of the Grinder Pump Station, including any applicable inspection fees. None of the fees for the installation of the Grinder Pump Stations shall be paid to Buyer. Each Grinder Pump Station shall be owned by the lot owner and lot owner shall be responsible for the maintenance, repair and replacement of such Grinder Pump Station. Buyer may apply to the Commission for approval of a grinder pump policy giving Buyer the authority to require certain restrictions related to lot owner's operation

and maintenance of the grinder pump. Additionally, this policy will require annual inspection and testing of the unit by a Buyer approved and manufacturer certified inspector. In the event Buyer is required to initiate and complete corrective action on a grinder pump, Buyer may charge and collect from the person the actual cost of the repairs, corrective actions and/or replacement of the Grinder Pump Station. Buyer shall not be responsible for providing power for the Grinder Pump Stations, which will be provided through the lot owner's individual electric service. Buyer shall not be responsible for providing an emergency generator when there are power outages, nor shall there be any liability to Buyer should a portable generator not be connected to the Grinder Pump Station during a power outage.

(c) 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.

4.8. 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 lateral connecting to the main wastewater force main, 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. Developer, in each deed to a lot purchaser and in the recorded restrictive covenants relating to such lot, shall reserve and convey to Buyer these perpetual easements for the Grinder Pump Stations and service lines.

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

Section 5

5. INSTALLATION AND CONVEYANCE OF FUTURE EXPANSION OF THE WASTEWATER UTILITY SYSTEM TO SERVE THE ESA

5.1. ESA to be Interconnected to Wastewater Utility System. Developer may develop additional residential and nonresidential development areas near Briar Chapel in the future, which areas are defined herein as the ESA. Developer and Buyer agree that the ESA shall be serviced by the Wastewater Utility System.

5.2. Wastewater Utility System Capacity for ESA.

(a) Developer shall cause its engineer to prepare, in Buyer's name, and

process through the DWQ approval process, plans and specifications for any additions or modifications to the Wastewater Utility System, including WWTP expansion as necessary, and Non-Discharge Permit necessary in order to provide service to the ESA. Buyer shall review and approve the plans and specifications prior to Buyer's execution of the applications. Buyer shall execute these applications and cooperate fully with Developer's engineer to expedite the DWQ and Chatham County (if required) permit approval process. 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 necessary to provide service to the ESA.

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

(c) Except as provided in Section 4.1, Developer shall install, at Developer's expense, any necessary additional WWTP capacity in excess of 600,000 GPD required by DWQ in order for the Wastewater Utility System to serve the ESA.

(d) Developer shall install, at Developer's expense, any necessary additional upset storage capacity required by DWQ in order for the Wastewater Utility System to serve the ESA. If DWQ determines that the existing Upset Storage Pond has adequate capacity to serve the ESA, Developer shall not be required to construct additional upset storage capacity.

(e) Developer, at 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, Developer, at Developer's expense, shall construct such pump station.

5.3. Installation of Wastewater Collection System and ESA Spray Irrigation Facilities for ESA.

(a) Upon development, Developer shall cause to be installed in each section of the ESA at Developer's expense, if required, a complete ESA Wastewater Collection System, including any upgrades to the existing Wastewater Collection System in the Development necessary to provide service to all lots in that section of the ESA.

(b) The entire ESA Wastewater Collection System shall be constructed in such a manner as to restrict the 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.

(c) Developer, at Developer's expense, shall construct and install the ESA Spray Irrigation Facilities, if required for the Wastewater Utility System to serve the ESA.

5.4. Installation of Grinder Pump Stations.

(a) For each lot in the ESA served by a pressure wastewater main, 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 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 Buyer and DWQ. Upon the first customer request for service at each residential lot, Buyer shall arrange for the installation of the Grinder Pump Station to serve the lot and shall coordinate the installation thereof. Each lot owner shall be required to prepay the outside contractor (specified by Buyer) installing the Grinder Pump Station the entire cost of the installation of the Grinder Pump Station, including any applicable inspection fees. None of the fees for the installation of the Grinder Pump Stations shall be paid to Buyer. Each Grinder Pump Station shall be owned by the lot owner and lot owner shall be responsible for the maintenance, repair and replacement of such Grinder Pump Station. Buyer may apply to the Commission for approval of a grinder pump policy giving Buyer the authority to require certain restrictions related to lot owner's operation and maintenance of the grinder pump. Additionally, this policy will require annual inspection and testing of the unit by a Buyer approved and manufacturer certified inspector. In the event Buyer is required to initiate and complete corrective action on a grinder pump, Buyer may charge and collect from the person the actual cost of the repairs, corrective actions and/or replacement of the Grinder Pump Station. Buyer shall not be responsible for providing power for the Grinder Pump Stations, which will be provided through the lot owner's individual electric service. Buyer shall not be responsible for providing an emergency generator when there are power outages, nor shall there be any liability to Buyer should a portable generator not be connected to the Grinder Pump Station during a power outage.

(c) 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.

5.5 Oversight; Required Documents. Any future expansion of the Wastewater Utility System necessary to provide service to the ESA shall be installed in accordance with plans and specifications approved by DWQ, Buyer, and Chatham County (if required) and engineered by Developer's engineer.

(a) Prior to the commencement of any construction work by Developer, Developer shall, in accordance with Section 4.4 hereof, obtain Buyer's approval of all contractors and subcontractors who will perform work on the Wastewater Utility System. Buyer shall not unreasonably withhold, condition or delay approval of all such contractors and subcontractors.

(b) Developer shall furnish to Buyer an itemized statement of the entire cost of additional components 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 Buyer 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.

(c) For the installation of additional components of the Wastewater Utility System, Developer shall cause its contractors to provide to Buyer a one-year warranty on all Wastewater Utility System components commencing on the date of issuance of the final engineering certification.

(d) Buyer may periodically inspect the construction and may require correction to portions of the construction that are not consistent with the DWR-approved plans, that may be amended from time to time.

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

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

5.8. ESA Effluent Agreement. Developer shall cause the owners of the ESA Spray Areas to execute an ESA Effluent Easement Agreement. Buyer shall cause the ESA Effluent Easement Agreement to be recorded in the Chatham County Register of Deeds. In the event the Commission requires Buyer 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 Developer to be held in trust pending the Closing. Developer's counsel shall provide a copy of the executed ESA Effluent Easement to Buyer 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.

5.9. Easements for Force Mains and Collection Mains. At the time of completion of the transfer of the Wastewater Utility System Assets relating to the ESA to Buyer, Developer shall convey to Buyer a perpetual easement within the rights of way of all publicly dedicated streets and roads within that section of the ESA for ingress, egress, regress, and access to for the installation, operation, maintenance, repair and replacement of the collection system lines, valves and other equipment appurtenant to the ESA Wastewater Collection System. If any wastewater collection system mains or force mains are not within publicly dedicated rights of way, Developer shall convey to Buyer 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 Buyer by restrictive covenants recorded in the Chatham County Register of Deeds.

5.10. 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, maintain, repair and replace the service line and the Grinder Pump Stations. Developer, in each deed to a lot purchaser and in the restrictive covenants relating to such lot, shall reserve and convey, or shall otherwise obtain and convey, to Buyer these perpetual easements for the service lines and the Grinder Pump Stations.

5.11. Subsequent Closings for the ESA Collection System and ESA Spray Irrigation Facilities. Once any phase of the ESA Wastewater Collection System and the ESA Spray Irrigation Facilities have been installed, certified by the engineer, and inspected and approved by Buyer, they shall be conveyed by Developer to Buyer at no cost and accepted by Buyer. Developer shall thereafter have no further responsibility for such phase of the ESA Wastewater Collection System and the ESA Spray Irrigation Facilities, and Buyer shall pay all costs of the operation and maintenance.

Section 6

6. OPERATION OF THE WASTEWATER UTILITY SYSTEM ASSETS

6.1. 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. In addition to those rights and responsibilities, Buyer agrees to coordinate with Developer and/or Developer's landscape company a schedule for irrigation of the Spray Areas set forth on Schedule 16, and Buyer agrees to irrigate those Spray Areas in accordance with the schedule, so long as the levels in the Effluent Storage Ponds are maintained as required by the Permit.

6.2. Operation of Wastewater Utility System Assets. After conveyance of the Wastewater Utility System Assets to Buyer, Buyer shall provide wastewater service to the residents of such section of the Development or ESA to which the Wastewater Utility System Phase relates, as described in this Agreement and in accordance with the terms of the Certificate or Certificate extension, as the same may be amended from time to time. Buyer shall not connect any customers located outside the Development or the ESA to the Wastewater Utility System without the prior written consent of Developer. Developer shall not unreasonably withhold consent. BUYER WILL NOT BE RESPONSIBLE FOR ACHIEVING WATER QUALITY LEVELS IN THE EFFLUENT BEYOND THE REQUIREMENTS OF THE NON-DISCHARGE PERMIT ISSUED BY DWQ.

6.3. Buyer's Indemnity Regarding Wastewater Utility System Assets. Following Closing, Buyer agrees that it shall be fully responsible for the operation and maintenance of the Wastewater Utility System Assets, including all repairs and upgrades thereto. Buyer further agrees to indemnify, defend and hold harmless each of Seller and Developer, and their respective

agents, officers, affiliates, directors, managers, members, partners, lenders and employees (each of the foregoing, collectively, the "Indemnified Parties") from and against, any and all damages, losses, expenses (including attorneys' fees and costs) or injuries, and any and all other claims of any type whatsoever for any personal injury, death, disability, or damage to tangible or intangible property, or any other loss, damage or injury of any nature whatsoever (collectively, "Claims") arising out of, caused by or relating to Buyer's ownership, operation and maintenance of the Wastewater Utility System Assets; excluding, however, any Claims related to the additional components of the Wastewater Utility System for the ESA, during Developer's construction and ownership thereof, but upon conveyance to Buyer of such additional components, any Claims related to the additional components shall fall within the scope of Buyer's indemnity hereunder.

6.4. Connection Fee. Buyer shall collect a connection fee of One Thousand Five Hundred ($1,500) for each single family residential connection or single family residential equivalent (REU) connected to the Wastewater Utility System. This Connection Fee shall be collected prior to the wastewater service connection to the Wastewater Utility System. The Connection Fee is a one-time fee and shall be paid by the first builder or homeowner requesting service at a particular lot or unit.

6.5. Notices to Lot Purchasers. 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, in accordance with the provisions of Section 4.7 and Section 5.4.

6.6. Gravity Collection Service Lines.

(c) Gravity services shall consist of a wastewater service tap, a 4" home service line, and a cleanout at the easement or right of way line. 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, Developer shall ensure that all wastewater service cleanouts, if damaged, are repaired immediately at no cost to Buyer.

(d) It shall be the responsibility of the owner of each dwelling unit with a gravity service line to maintain the wastewater service line from their residence 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 shall be responsible for maintenance of the wastewater service line up to the property line.

6.7. Utilization of WWTP Administrative Building. Buyer agrees to allow Seller, Developer, and the contractors of Seller and Developer to store equipment and materials in structures and buildings located on the WWTP lot and to utilize the administrative building located on the WWTP lot.

Section 7

7. TERMINATION

7.1. Termination Events. This Agreement may, by notice given prior to or at the initial

Closing, be terminated:

(a) By either Seller or Buyer if a material breach of any provision of this Agreement has been committed by either 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 Seller and Buyer.

7.2. Effect of Termination. Each Party's right of termination under this Section is in addition to any other rights it might 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 this Section, 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.

Section 8

8. INSURANCE

8.1. Insurance.

(a) General Liability. Buyer shall, at Buyer'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 property for the WWTP, Effluent Storage Pond site, Upset Storage Pond site, and adjoining streets and passageways. The coverage under the 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. Buyer shall also purchase and maintain a pollution liability policy covering third-party injury and property damage claims, resulting from pollution conditions arising out of Buyer's operations, and any future construction work at the WWTP with minimum limits of $3,000,000 each occurrence and in the aggregate. Buyer may satisfy any insurance limits required by this Agreement in combination with an "excess" or "umbrella" insurance policy, provided that (a) the CGL, pollution liability, 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, Effluent Storage Pond site, Upset Storage Pond site, and the Reuse Effluent Pumping Station site which amount(s) shall not be subject to reduction on account of claims made with respect to other properties and (b) such policies 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 and Seller as additional insureds;

(ii) All policies shall be written as primary policies no contributing with or in excess of any coverage that Developer may carry;

(iii) All policies shall contain contractual liability coverage;

(iv) Within ten (10) days of receipt, Buyer shall be required to deliver to Developer and Seller any notice of cancellation it receives relating to any of the policies set forth in this Section 8;

(v) Buyer shall deliver to Developer and Seller certificates of insurance on the date of execution of this Agreement and thereafter annually within five (5) days following renewal of any such policies; and

(vi) All policies shall include a Waiver of Subrogation in favor of the Developer and Seller.

8.2. 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 Buyer nor any successor, assignee, partner, officer, director, or employee of Buyer shall have any recourse to any assets of a Non-Recourse Party other than such party's interest in the Developer or Seller, respectively, to satisfy any liability, judgment or claim that may be obtained or made against any such Non-Recourse Party under this Agreement. Buyer agrees it shall look solely to the assets of the Developer or Seller, as applicable, for the enforcement of any claims arising hereunder or related to this Agreement, and Buyer 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 or corporations or limited partners of limited partnerships. The terms of this Section 8 are a material consideration and inducement to the Developer and Seller to enter into this Agreement, and but for the inclusion of such provision in this Agreement, the Developer and Seller would not enter into this Agreement. The limitation of liability provided in this Section 8 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 8 shall survive the Closings under this Agreement. As used herein, the term "Non-Recourse Party" shall mean, collectively, any direct or indirect partner, shareholder, member, officer, director, trustee, agent, employee or other representative of either the Developer or Seller, or any affiliated entity, or any direct or indirect partner, shareholder, member, officer, director, trustee, agent or employee thereof.

Section 9

9. GENERAL PROVISIONS

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

9.2. Cooperation for All Necessary Government Approvals. Developer, Seller and Buyer agree to cooperate in obtaining all necessary permits including DWQ Permits, the transfer of the Certificate from Seller to Buyer, and the issuance of any additional Certificates and/or Certificate Extensions by the Commission to Buyer. Buyer, at Buyer's cost, shall file for all Certificates and Certificate Extensions.

9.3. Representations, Warranties, Covenants and Agreements Survive Closing. All representations and warranties of Developer, Seller and Buyer 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.

9.4. Applicable Laws and Regulations. At all times that Buyer operates the Wastewater Utility System, Buyer shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, environmental laws. In the event of noncompliance, Buyer shall take such actions as are required by applicable federal, state or local regulatory authorities.

9.5. Binding upon Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Developer, Seller and Buyer, and the successors and assigns of the Parties.

9.6. 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 9.5 above.

9.7. 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.

9.8. Counterparts. This Agreement may be executed in one or more counterpart signature pages (including facsimile 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 agreement.

9.9. 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.

9.10. 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.

9.11. 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.

9.12. 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.

9.13. 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.

9.14. 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.

9.15. 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.

9.16. 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, or (iii) by nationally recognized overnight courier, to the address indicated below (or at such other address 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 DEVELOPER, such notice shall be addressed to:

NNP-Briar Chapel, LLC
16 Windy Knoll Circle
Chapel Hill, NC 27516
Attention: Keith Hurand
Telephone: 919-951-0716

With a copy to:
NNP-Briar Chapel, LLC
9820 Town Center Drive, Suite 100
San Diego, CA 92121
Attention: Douglas L. Hageman
Telephone: (858) 875-8161

If to SELLER, such notice shall be addressed to:

Briar Chapel Utilities, LLC
13777 Ballantyne Corporate Place
Suite 550
Charlotte, NC 28277
Attention: Bill Mumford
Telephone: (704) 887-5946

If to Buyer, such notice shall be addressed to:

Old North State Water Company, LLC
1620 Chalk Road
Wake Forest, NC 27587
Telephone: 252-235-4900
Attention: Michael Myers

[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.

BRIAR CHAPEL UTILITIES, LLC

By: _____
Name: Keith Hurand
Title: Senior Vice President

NNP-BRIAR CHAPEL, LLC

By: _____
Name: William Mumford
Title: Vice President

OLD NORTH STATE WATER COMPANY, LLC

By: _____
Michael J. Myers
Member

Exhibit J

Briar Chapel Utilities' Agreement,
Docket No. W-1230, Sub 0

BLANCHARD, MILLER, LEWIS & STYERS, P. A.

LAWYERS

PHILIP R. MILLER, III*
E. HARDY LEWIS
M. GRAY STYERS, JR.*
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WRITER'S DIRECT
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E-MAIL: kkemerait@bmlslaw.com

December 14, 2009

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

HAND DELIVERED

MH
AG
Brown
Kite
Legal
Acctg.
EC/Ra
Water

RE: Briar Chapel Utilities, LLC
Application by Briar Chapel Utilities, LLC, for a Certificate of Public Convenience and Necessity to Provide Sewer Utility Service in Briar Chapel Subdivision in Chatham County, North Carolina, and for Approval of Rates
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 **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** in the above-referenced docket. We would appreciate your filing this Agreement 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,

Sherry Purvis
Legal Assistant to Karen M. Kemerait

skp
Enclosures
cc: All parties of record
Bill Grantmyre

{00034089.DOC;1}

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

October 30, 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 30th day of October, 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**").

W I T N E S S E T H:

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 survey 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 5.3(b).

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-Builts; 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, Vice President

BRIAR CHAPEL UTILITIES, LLC

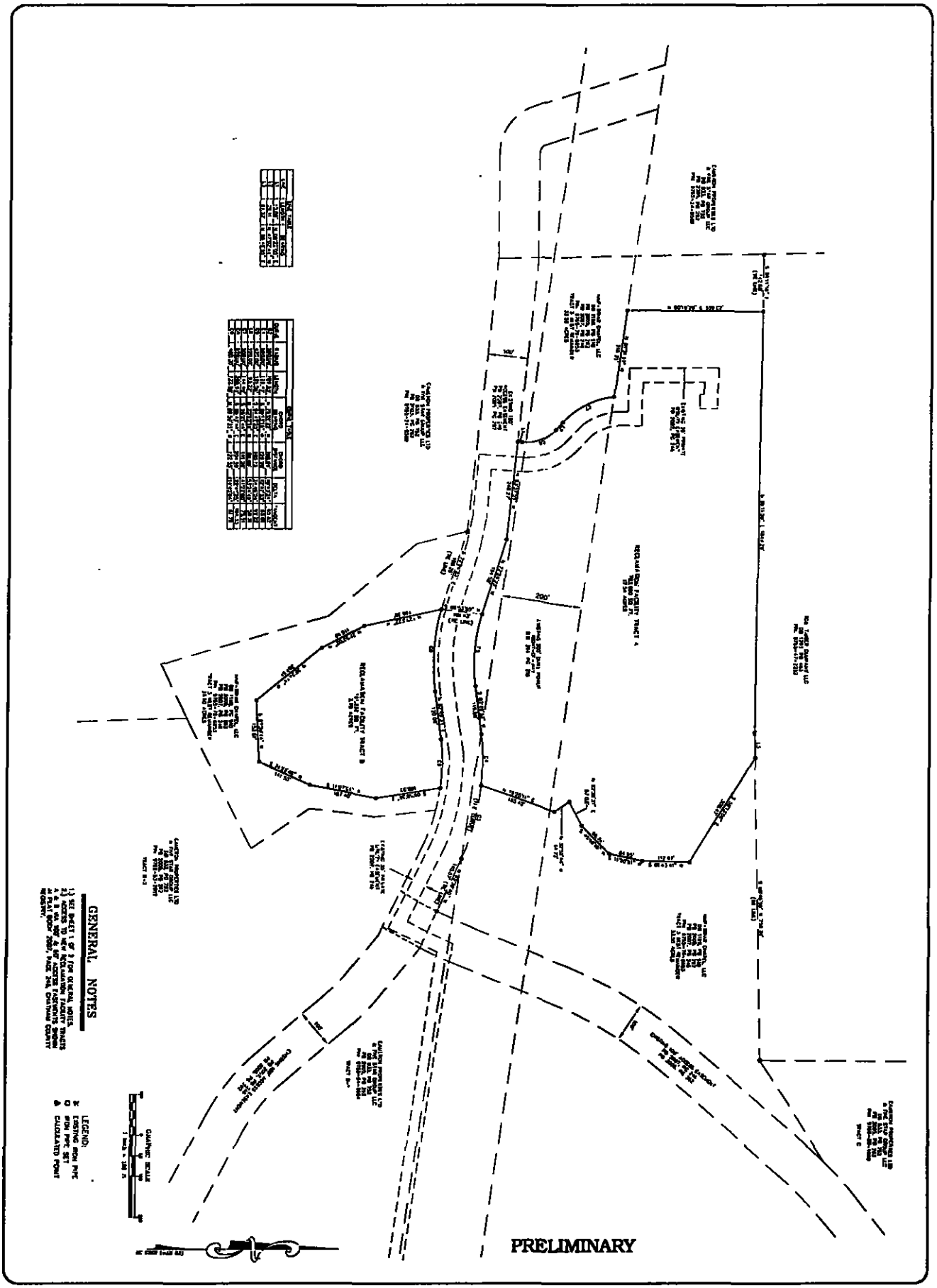
By: _____
Douglas Hageman,
General Counsel and Vice President

INDEX TO EXHIBITS

	EXHIBIT
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.



McADAMS	BRIAR CHAPEL RECLAMATION FACILITY TRACTS A & B SUBDIVISION PLAT BALDWIN TOWNSHIP, CHATHAM COUNTY, NORTH CAROLINA	SURVEY FOR: NEWLAND COMMUNITIES 5000 FAYETTEVILLE ROAD SUITE 201 DURHAM, NORTH CAROLINA 27713	REVISIONS: 1.	THE JOHN R. McADAMS COMPANY, INC. ENGINEERS/PLANNERS/SURVEYORS RESEARCH TRIANGLE PARK, NC P.O. BOX 14006 ZIP 27709-4006 (919) 361-5000

2-2

EXHIBIT 1.15
Effluent Easement and Irrigation Agreement

See attached.

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 _____, 2009, 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 _____ __, 2009, 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 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.

1.3 *"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 B

Spray Areas

EXHIBIT C

WWTP Property

Tract A (North)

Commencing at an iron pipe on the eastern property line of lands owned by Cameron Properties, LTD. & Five Star Group, LLC. (PB 2005, PG 262), iron also being the southwest corner of lands owned by TC&I Timber Company, Inc. (D.B. 1293, Page 483); thence South 89°11'59" East, a distance of 142.60 feet to an iron pipe set, being the Point of BEGINNING; thence South 89°11'59" East , a distance of 1,049.28 feet to an existing iron pipe; thence North 88°46'55" East, a distance of 61.32 feet to an iron pipe set; thence South 58°13'06" East, a distance of 308.47 feet to an iron pipe set; thence South 01°43'41" West, a distance of 117.97 feet to an iron pipe set; thence South 11°50'51" West, a distance of 84.55 feet to an iron pipe set; thence South 45°49'16" West, a distance of 98.74 feet to an iron pipe set; thence South 62°35'31" West, a distance of 67.03 feet to an iron pipe set; thence South 32°52'44" East, a distance of 44.72 feet to an iron pipe set; thence South 19°25'11" West, a distance of 193.42 feet to an iron pipe set on the northerly line of Lands owned by NNP-Briar Chapel, LLC, (as shown as Tract 3 West Remainder, Plat Book 2007, Page 246); thence with the northerly line of aforementioned Tract 3 West Remainder, and along a non-tangent curve to the left having a radius of 580.00 feet, an arc length of 129.47 feet and a chord bearing and distance of South 89°13'15" West, 129.20 feet to an iron pipe set; thence South 82°49'33" West, a distance of 119.60 feet to an iron pipe set; thence along a curve to the right having a radius of 420.00 feet, an arc length of 181.56 feet and a chord bearing and distance of North 84°47'25" West, 180.15 feet to an iron pipe set; thence North 72°24'23" West, a distance of 194.58 feet to an iron pipe set; thence North 83°37'55" West, a distance of 246.27 feet to an iron pipe set; thence North 06°22'05" East, a distance of 10.86 feet to an iron pipe set; thence along a curve to the left having a radius of 100.00 feet, an arc length of 93.22 feet and a chord bearing and distance of North 20°20'19" West, 89.89 feet to an iron pipe set; thence North 47°02'44" West, a distance of 26.11 feet to an iron pipe set; thence along a curve to the right having a radius of 200.00 feet, an arc length of 144.40 feet and a chord bearing and distance of North 26°21'44" West, 141.28 feet to an iron pipe set; thence North 81°31'57" West, a distance of 216.35 feet to an iron pipe set; thence North 00°19'28" East, a distance of 339.02 feet to the Point of BEGINNING containing 763,977 square feet or 17.54 acres, more or less.

Tract B (South)

Commencing at an iron pipe set along the northerly property line of lands owned by NNP-Briar Chapel, LLC, (as shown as Tract 3 West Remainder, Plat Book 2007, Page 246), iron also lying on the southern line of Reclamation Facility Tract A North (Plat Book 2008, Pages 2131-132); thence South 06°53'55" West, a distance of 101.43 feet to an iron pipe set on the southerly line of aforementioned Tract 3 West Remainder, iron also being the Point of BEGINNING; thence along a curve to the left, having a radius of 520.00 feet, an arc length of 205.93 feet, and a chord bearing and distance of South 85°49'45" East, 204.59 feet; thence North 82°49'33" East, a distance of 120.09 feet to an iron pipe set; thence along a curve to the right having a radius of 480.00 feet, an arc length of 122.88 feet and a chord bearing and distance of South 89°50'25" East, 122.55 feet to an iron pipe set; thence South 08°58'36" East, a distance of 160.53 feet to an iron pipe set; thence South 11°07'04" West, a distance of 167.40 feet to an iron pipe set; thence South 24°23'46" West, a distance of 141.53 feet to an iron pipe set; thence South 87°30'44" West, a distance of 153.61 feet to a point; thence North 38°34'14" West, a distance of 207.91 feet to a point; thence North 27°52'02" West, a distance of 118.98 feet to a point; thence North 12°13'22" West, a distance of 195.30 feet to the Point of BEGINNING containing 161,233 square feet or 3.70 acres, more or less.

EXHIBIT 5.5(a)
Approved Wastewater Collection System Contractors

Name/Address/Telephone	Contact Person	Mobile	Contact Person
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			

Exhibit K

ONSWC Letter to Blue Heron,
March 16, 2023

Edward S. Finley, Jr., PLLC
2024 White Oak Rd.
Raleigh, NC 27608
919-418-4516
edfinley98@aol.com

March 16, 2023

Craig D. Schauer
Brooks Pierce
Wells Fargo Capitol Center
150 Fayetteville Street, Suite 1700
Raleigh, NC. 37601
cschauer@brookspierce.com

Re: Briar Chapel Connection and Usage Fees

Dear Mr. Schauer,

This letter will acknowledge and respond to your letter of February 28, 2023 submitted on behalf of Blue Heron Asset Management, LLC (Blue Heron) and Liberty Senior Living (Liberty Senior), asserting claims for excessive charges from Old North State Water Company (ONSWC). We must respectfully deny your claims and disagree with the bases you assert therefor.

With respect to Blue Heron this is the second attempt to make these assertions, but this time from a firm different from the firm purporting to represent Blue Heron making the assertions the first time.

1. **Response to Blue Heron's Claims for a Refund of Connection Fees**.

With respect to Blue Heron's claim that ONSWC has assessed charges for sewer services in excess of those approved by the North Carolina Utilities Commission, we disagree with your reading of the Commission's orders and your interpretation of the law as applied to the facts you recite. In summary, on April 19, 2021 ONSWC provided an invoice to Blue Heron to pay connection fees with respect to the Perch Apartment Building project pursuant to the connection fees approved by the Commission in Docket No. W-1300, Sub 71 on April 19, 2021. The invoice was submitted after the order of the Commission was issued. As of April 19, 2021 no interconnection to the Perch project had been made. No services pursuant to any Commission approved tariff had been provided to Blue Heron on that date. No contract exists between ONSWC and Blue Heron obligating ONSWC to allow Blue Heron to interconnect based on fees of $1,500 per REU. Blue Heron has paid the fees as invoiced.

Blue Heron bases its initial claim in the February 28, 2023 letter that ONSWC bound itself to provide connection to the Perch Project at $1,500 per REU on the following recitation:

> On March 23, 2021, Blue Heron signed and submitted an application to ONSWC for the provision of sewage connection services in the Briar Chapel area. On this same date, ONSWC submitted an associated Intention to Provide Service to Chatham County. Despite receiving a completed application form and tendering the Intention to Provide Service, ONSWC told Blue Heron that it would provide an invoice for the contracted-for connection fee "at a later date." At 3:21 PM on April 19, 2021, ONSWC provided Blue Heron an invoice for the connection fee, which used the newly established rate of $4,000 per REU.

Blue Heron's claim of a binding contract between ONSWC and Blue Heron to allow interconnection at $1,500 per REU is based on the submittal of an application to ONSWC without reference to the fee per connection, which we assume you maintain to be a firm offer.[1] The Blue Heron application was submitted on March 23, 2021, 15 days after ONSWC filed its application with the Utilities Commission to increase the connection fees. Next, you refer to the "tendering" by ONSWC to Chatham County of an "Intention" to Provide Service. By this we assume you assert that this is the acceptance of the offer of Blue Heron to accept or receive interconnection at the rate of $1,500 per REU even though that rate is not set forth in the "offer" nor referred to in the Intention. No connection fee was submitted to ONSWC with the Application. Any dealings between ONSWC and Chatham County would not address the rate or fee Blue Heron would pay ONSWC for the provision of utility service. ONSWC would provide no sewerage service to Chatham County. Blue Heron fails to explain how the "tendering" of the "Intention" document to one party, the County, is an acceptance of an offer made by another party, Blue Heron, to pay for interconnection at an identified rate not specified in either document. Nor does Blue Heron explain how an "Intention" would constitute an acceptance even if it were to Blue Heron, the party Blue Heron apparently maintains to have made the offer and even though the Intention does not mention $1,500 per REU. It is unclear, based on Blue Heron's recitation, when exactly this allegedly binding contract at the rate you advocate became effective.

No explanation is provided as to how an "intention" constitutes a binding obligation to do anything for any party.

[1] The introductory paragraph of the Application, Customer # 7186 BC states: Consumer agrees to promptly pay the application fee, service fees, deposits, late fees, after-hour fees, processing fees and all other charges and fees of Utility ("Charges") at Utility's standard rates as set by Utility now or at any future time, and to comply with Utility's rules, regulations and policies, as modified from time to time by Utility ("Rules"). Utility's obligation to provide water/wastewater service is subject to (i) Utility's acceptance of this application and (ii) the provision of any water or sewer license, franchise, easement, right-of-way or other agreements that may be between Utility and any governmental authority or other person. Utility shall have exclusive right to furnish the service(s) to the service area. Consumer will read and comply with the water and wastewater policy manual available at www.integrawater.com or upon request from Utility at the address shown. The signed application and applicable charges must be submitted to Utility at the address set forth and Consumer further agrees that: . . . .

Next Blue Heron cites selected provisions of N.C. Gen. Stat. § 62-139(a) in support of the assertion that ONSWC has failed to charge fees for services as authorized by the North Carolina Utilities Commission. Blue Heron omits provisions of the subsection of the statute with ellipses that are pertinent here. The complete subsection is set forth below:

> No public utility shall directly or indirectly, by any device whatsoever, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed by the Commission, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed by the Commission.

emphasis added.

The "service rendered" here is interconnection. It is interconnection through facilities that enable sewage to be discharged from the building constructed by Blue Heron to be transmitted through a sewerage collection system to sewage treatment facilities owned and operated by ONSWC. No such interconnection facilities were in place on the date Blue Heron submitted what Blue Heron designates as an offer, March 23, 2021, or the unidentified date of the receipt of the Intention to Chatham County.

Next, Blue Heron maintains that a "sale" of sewer services took place between ONSWC and Blue Heron on March 23, 2021. This appears to be an alternative theory from the argument that a contract to provide interconnection at $1,500 per REU occurred on or about March 23, 2021 based in part on actions by Chatham County. Technically speaking, an interconnection of pipes through which sewage flows from an apartment building is made with the collection system owned and operated by a sewer utility is not a sale as the term sale is commonly used with respect to public utility regulation and with respect to utility fees and charges. A sale commonly refers to the provision of a commodity, an obligation to make a commodity available or receipt of a commodity, such as wastewater by a sewer utility, by the public utility from the end use customer. Even if one were to attempt to classify an interconnection as a sale, no interconnection occurred on March 23, 2021 or April 19, 2021. It would have been impossible to make an interconnection on those dates because facilities were not in place to enable an interconnection to be made. Substantial delays occurred. In order to make the interconnection Blue Heron had to clean and inspect the line. The line had numerous construction defects and debris in it.

Under the Blue Heron first theory the contract is formulated when Chatham receives the Intention. Under the second inconsistent theory the contract is formulated when ONSWC accepts the Blue Heron application. Under the second theory the action of Chatham County is not mentioned.

As stated, under this second theory Blue Heron argues that service was provided when ONSWC accepted the Blue Heron application. This is not a case where ONSWC is refusing to make the interconnection with Blue Heron or to provide the other sewer services for which the application was submitted. The dispute between the parties addresses the fee to be paid in

exchange for the contemplated interconnection due on or before the interconnection was made and charges for the collection and treatment services addressed in the application were provided. The application and ONSWC's acceptance of it are not the determinative factors dictating the fee to be paid. That determination rests with the North Carolina Utilities Commission. The North Carolina Utilities Commission establishes the fee, and it is due on or before the date the services covered by the application are rendered.

Blue Heron earlier has contested the requirement by ONSWC that Blue Heron pay the invoiced connection charge. Therefore, Blue Heron had contested the assessed fees in advance of its payment of the fee. Blue Heron had plenty of time to take its complaints to the Utilities Commission prior to making the payment or to make the payment under protest. It did neither. Blue Heron has waived its right to retroactively contest its payments of the connection fee or the subsequent commodity charges. Where, after expiration of an old contract between a city and the electric company regarding electric current, and during deadlock regarding terms to be included in the new contract, the company continued to bill the city monthly in accordance with rates prescribed by the schedule on which the old contract was based, and the city continued to make payments in accordance with bills rendered, payments made without protest on a month-to-month basis constituted at each month an election to pay on the basis of the old schedule and a waiver as to that month of the right to any contract under the company's new schedule containing lower rates. *City of High Point v. Duke Power Company*, 120 F.2d 866 (4th Cir. 1941). Where, after expiration of an old contract between a city and the electric company regarding electric current and during deadlock regarding terms to be included in the new contract, the company rendered monthly statements based on rates contained in the old contract, the city, which, with full knowledge of the facts, paid bills as rendered, could not recover any part of the payments on the ground that the city should have been charged lower rates contained in the company's new schedule. *City of High Point v. Duke Power Company*, 34 F. Supp. 339, affirmed 120 F.2d 866 (4th Cir. 1941).

While Blue Heron attributes to ONSWC clandestine and underhanded motives, the request for the $4,000 per REU was pending before the Commission well before Blue Heron submitted its application and before the issuance of the order of approval. The date on which the Commission issued its approval was out of ONSWC's control. The application had been reviewed by the Public Staff and approved by and submitted by that agency to the Commission for the Commission's approval. The requested increase was to finance system improvements, an expansion of the Briar Chapel WWTP by 250,000 gpd, that would be needed to serve Blue Heron and other consumers. All of this was through public submissions and was widely known in the Briar Chapel subdivision. Customers in the Briar Chapel area were aware of the submission and on March 19, 2021 communicated with the Commission in support, stating that "the new development which is driving these upgrades should help offset the capital costs for this upgrade with an increase in the connection fees from $1,500 to $4,000 per residential equivalent units (REUs)."

As recited in the Company's application in Docket No. W-1300, Sub 71, the justification for the increase in the connection fee to $4,000 per REU is to provide funds from those like Blue

Heron seeking to interconnect to the Briar Chapel sewer system for expansion of the sewage treatment plant in order to meet the demand anticipated from interconnection with those consumers. "The primary reason for the increased wastewater connection fee is to aid in recovery of cost of the facility expansion and provide service for new development." Connection fees such as those at issue constitute contributions in aid construction. Contributions in aid of construction constitute reductions to rate base and therefore reduce the rates end users in the Briar Chapel development will pay for sewage services they receive. Contributions in aid of construction, by reducing the rate base, reduce the return ONSWC is entitled to receive. Therefore, it is not to the financial advantage of ONSWC to increase the connection fees. These facts refute the claim that ONSWC's motives were as Blue Heron asserts.

If any doubt existed as to whether the connection fee Blue Heron should pay is $1,500 per REU or $4,000 per REU, common sense and fairness support the higher fee justified by the need to expand the facilities for the benefit of consumers ultimately residing in the Blue Heron building.

2. **Response to Blue Herons' Claims That REUs Should Be Calculated Differently**.

Blue Heron takes issue with the formula ONSWC has used to calculate the REUs upon which it has based its invoiced connection fees to Blue Heron. As explained in our letter of May 20, 2021, addressing this same complaint in the May 13, 2021 letter on behalf of Blue Heron, we explained the basis for the calculation. This explanation is repeated here:

> The appropriate way to calculate residential equivalent units is through reference to the wastewater collection system extension permit authorized by the Division of Water Resources of the State. Based on the July 13, 2020 letter to BHBC Apartments, LLC, DWR granted permission for the construction and operation of approximately 444 linear feet of eight inch gravity sewer to serve 183 one and two-bedroom apartments, 17 three bedroom apartments and a clubhouse as part of the Perch project, and the discharge of 51,140 gallons per day of collected domestic wastewater into Old North State's existing Briar Chapel sewerage collection system. This construction permit controls the amount of wastewater Old North State is responsible to process and forms the correct gpd on which to calculate the connection fees.
>
> Briar Chapel has received from DEQ a flow reduction so that its capacity to treat wastewater is now calculated based on a gallons per bedroom of 189 gallons per day. Old North State's REU is therefore 189 gpd. Old North State divided the 51,140 gpd by 189 gpd = 270.58 x $4000 = $1,082,328.04. Were REUs calculated in the manner you suggest, wastewater at some point would exceed the capacity of the sewage treatment plant as permitted and violations likely would occur. Were other potential entities seeking connection to calculate REUs the way you suggest, the capacity very well would be exceeded in short fashion.

Blue Heron apparently maintains that the connection fee should be $69,000. This is based on 46 REUs x $1,500. Blue Heron bases the 46 REUs on the fact that Blue Heron has two 2 inch meters and two 3 inch meters. Blue Heron maintains that it is appropriate to look back many years to 2014-15 at the acquisition of the Briar Chapel system by ONSWC addressed in Docket No. W-1300, Sub 9 or to the order granting a CPCN to ONSWC's predecessor in 2009. Also, the reference to the $1,500 connection fee is from the 2014 Asset Purchase Agreement between Briar Chapel Utilities, LLC and ONSWC. ONSWC's services to Blue Heron are provided under the terms of the Commission order of April 19, 2021 in Docket No. W-1300, Sub 71, not the earlier orders Blue Heron references.

Blue Heron examines calculations of purchase price and recites agreements between the contracting parties with respect to connection fees to be charged if approved by the Commission in Docket No. W-1300, Sub 9. As explained above, the $4,000 per REU and the number of REUs are calculated and determined based on requirements existing in 2021 and thereafter, those relied upon by the Commission in Docket No. W-1300, Sub 71, and not those to which Blue Heron refers. At the time of the 2014 Asset Purchase Agreement and the transfer addressed in Docket No. W-1300, Sub 9 no wastewater collection system extension permit authorized by the Division of Water Resources of the State to BHBC Apartments, LLC had been granted. That occurred on July 13, 2020. The flow reduction granted with respect to the Briar Chapel system by DEQ had not taken place.

Furthermore, the use of connection fees in the context of the acquisition and sale of sewer facilities serves a completely different function from the use of connection fees based on cost of service principles assessed by a sewer utility to a new builder in its service area to finance the construction of post-acquisition improvements to serve customers. In the acquisition and sale context connection fees are used as financing devices to facilitate the sale. The Commission has so held. As is recited in your February 28, 2023 letter at the bottom of Page 3: "The Sub 9 order states that '[t]he purchase price for the Briar Chapel wastewater utility system under the APA is $1,500 per residential equivalent unit (REU) for each new connection and the future expansion. . . . '" In Sub 9 the seller was Briar Chapel Utilities, LLC. The developer of Briar Chapel is NNP-Briar Chapel, LLC. The developer owned the seller. The connection fees negotiated by the parties to the APA of $1,500 per REU were to be passed through to the developer, not retained by the buyer. Moreover, any discussion of a formula or chart to calculate REUs through which the buyer would pay the seller addressed what the parties negotiated then based on facts existing at that time. The 250 gpd x the four meters used to calculate the REU would be insufficient for a fee to Blue Heron. In addition, the chart in section 1.27(b) of the APA also is based on 250 gpd x the increased size of the meters for nonresidential buildings. The chart assumes one meter per nonresidential building, not four meters to a multi-unit residential building as Blue Heron has installed. "If there is **a** water and/or wastewater meter . . . ."

As the connection fees to be collected by the buyer after the transfer were to be conveyed back to the seller as part of the compensation for the sale, the collection fees so

collected at the $1,500 rate did not constitute CIAC, as is the case with the $4,000 per REU approved by the Commission in Docket No. W-1300, Sub 71. The $1,500 was a negotiated fee and based on no cost of service justification.

Blue Heron asserts that "the APA not only defines REU with a computational method, but it also references and incorporates the computation of REU as approved by the Commission in Docket No. W-1230, Sub 0." The Commission's April 20, 2015 Recommended Order and its final Order in Sub 9 contain no reference to any method through which to compute a nonresidential REU much less an REU for a multi-unit residential structure. The order makes no reference to section 1.27(a) or (b) of the October 31, 2014 Asset Purchase Agreement. As admitted in your February 28, 2023 letter "the Sub 9 Order does not explicitly state how to compute the REU . . ." The Sub 9 order does not address computation of REUs, explicit or otherwise.

The Briar Chapel developer, NNP-Briar Chapel, was to pay for all installation costs of the collection system extensions and, if necessary, the additional upset pond, effluent storage pond, and reuse spray irrigation facilities, and NNPP-Briar Chapel was to convey those components to ONSWC at no cost. The $1,500 connection fee calculated by the REU method set forth in the Asset Purchase Agreement was a way to compensate the developer and was part of the purchase price. Just as in Docket No. W-1300, Sub 71 the connection fee established in that docket is to finance identified system improvements, the expansion of the WWTP with an identified cost and with an expectation of the demands from structures like the Blue Heron apartment building, the establishment of the REU and the connection fee in Sub 9 were based on financing a different set of improvements at a different price needed to serve existing and a different set of new customer.

The charges to Blue Heron for connection of $4,000 per REU and the calculation of the REUs as set forth above were formulated to recover as CIAC costs for a defined system improvement. If either component of the connection fee to Blue Heron is modified as Blue Heron asserts, the anticipated CIAC will be far lower than that anticipated and relied upon to fund the needed improvements. The Commission's justification for approving the $4,000 per REU would be nullified if the calculation for REU argued for by Blue Heron were permissible. The correct calculation for REUs must be as invoiced through reliance on up-to-date demand measurements for the particular Blue Heron project and the cost of the improvements for which the calculations were made.

In summary, Blue Heron connected its apartment building to the collection system of ONSWC long after the Sub 71 order took effect. Blue Heron paid a connection fee of $4,000 per REU as required in the Sub 71 order. The REU upon which Blue Heron paid the connection fee was 189 gpd as invoiced by ONSWC. In spite of this, the Blue Heron claims that at the time of the interconnection and at the time of its payment of the fee it had a binding contract to pay a fee of $1,500 per REU. It claims that it had a binding contract to pay a fee based upon an REU of 46 gpd. Blue Heron claims it had a binding contract to pay a connection fee in reliance upon an order that was no longer in effect at the time of the interconnection or at the time of the payment of the fee. The binding contract which Blue Henon asserts it had with ONSWC

allegedly is based upon an order that nowhere made any reference whatsoever to any rate schedule with a REU of 46 gpd or any formula or chart from which 46 gpd could be computed. No such binding contract existed at the time of interconnection, at the time of the payment of the fee or at any time prior thereto.

3. Response to Blue Heron's Claims for a Refund of Invoiced Service Charges.

Blue Heron asserts that it is owed a refund for the monthly usage fees it has paid to date. The reasons for rejecting that claim are the same as the reasons for rejecting the claim for a refund of the connection fee. In addition, Blue Heron cannot claim that any commitment to limit the connection fee based on the alleged contracts addressed above constrained ONSWC from charging the commodity charge approved by the Commission in its order in Docket No. W-1300, Sub 71 after the interconnection was made, sewerage accepted and bills submitted for services provided in arrears.

4. Response to Liberty Senior's Claims for a Reduction in Invoiced Connection Fees.

With respect to the claim by Liberty Senior, a distinguishing factors between that claim and the claim of Blue Heron is that this is the first claim made on behalf of Senior Liberty, and Senior Liberty has not yet interconnected, paid a connection fee or any monthly usage fees. Moreover, Liberty Senior has no valid much less a colorable claim that it has any agreement to receive interconnection based on any agreement entered into prior to the April 19, 2021 North Carolina Utilities Commission order in Docket No.W-1300, Sub 71.

The timeline with respect to ONSWCS correspondence with Liberty Senior is as follows:

On March 19, 2021 ONSWC received an e-mail from Tanya Matzen with NNP-Briar Chapel that Liberty Senior Living was trying to secure permits but was not sure when construction would commence. ONSWC did not receive any correspondence or contact with Liberty Senior Living. On March 19, 2021 ONSWC received a signed FTSE for Liberty Senior Apartments. On March 31, 2021 ONSWC received a phone call from Thad Moore of Liberty Senior wanting to know if Liberty Senior could purchase capacity with the current FTSE. Moore was advised that FTSE for the project was permitted at 38,150 gpd. On April 9, 2021 ONSWC received plans for the Briar Chapel Active Adult. On April 19, 2021 ONSWC informed Thad Moore with Liberty Senior Living that ONSWC would calculate an invoice connection fee. ONSWC asked for a clarification on Moore's mailing address. On April 19, 2021 ONSWC provided Thad Moore on behalf of Liberty Senior Living with a builder application and tap fee invoice. ONSWC also provided the April 19, 2021 NCUC order in Sub 71. On April 20, 2021 Thad Moore stated that Liberty Senior had prepared a financial model for the project for only $1,500 per unit for 150 units. On April 20, 2021 ONSWC advised Thad Moore that the tap fee increase had been applied for several months earlier. ONSWC advised that the plant expansion to be recovered through the increased connection fees was driven by the commercial demands, and the Utilities

Commission agreed to increase the fees accordingly. Only months later, on February 11, 2022, did ONSWC received construction documents from Liberty Common Skilled Nursing.

Likewise, in addition to these distinctions the justification for reducing the invoiced connection fee for Liberty Senior must be rejected for a number of the reasons set forth above justifying the rejection of the claims on behalf of Blue Heron.

Sincerely,
/s/ Edward S. Finley, Jr.
Edward S. Finley, Jr.

Exhibit L

NCDENR Flow Reduction Approval Letter

CF - WQ0028552

NCDENR

North Carolina Department of Environment and Natural Resources
Division of Water Quality
Thomas A. Reeder
Acting Director

Pat McCrory
Governor

John E. Skvarla, III
Secretary

September 30, 2013

William S. Mumford, Vice President, Development
Briar Chapel Utilities, LLC
13777 Ballantyne Corporate Place, Suite 550
Charlotte, North Carolina 238277

Subject: Adjusted Daily Sewage Flow Rate Approval
Briar Chapel Development
Permit No. WQ0028552
Chatham County

Dear Mr. Mumford:

On July 15, 2013, the Division of Water Resources (Division) received an adjusted daily sewage flow rate (flow reduction) request that would apply to all permitted but not yet tributary residential connections and all future residential connections tributary to the Briar Chapel Development collection system.

In accordance with 15A NCAC 02T .0114(f)(2), the Division has evaluated all the submitted data and based on the data submitted, the Division hereby approves for use by the Briar Chapel Development an adjusted daily sewage design flow rate of 56 gallons per day per bedroom effective immediately.

For new sewer extension applications with proposed flows tributary to the Briar Chapel Development collection system:

- The flow reduction is applicable to residential single family dwellings only.
- The minimum flow for 1 and 2 bedroom dwellings shall be 112 gallons per day.
- This flow reduction shall not apply to sewer extension applications and/or permits for any other public or private organizations whose wastewater flows are or might become tributary to the Booth Mountain (Westfall) Project collection system.

For existing permits with flow not yet tributary to the Briar Chapel Development collection system:

- The Division will not reissue permits for previously permitted projects. If reissued permits are desired, a permit modification application with the appropriate fee must be submitted for each permit to be modified.

Future sewer extension applications should be made using the flow reduction amount stated above. All other aspects of the permitting process remain unchanged, and all applications must be in compliance with the statues, rules, regulations and minimum design criteria as certified by the owner and engineer.

Regardless of the adjusted design daily wastewater flow rate, at no time shall the wastewater flows exceed the effluent limits defined in the Non-discharge Permit for the treatment facility or exceed the capacity of the sewers downstream of any new sewer extension or service connection(s).

The granting of this flow reduction does not prohibit the Division from reopening, revoking, reissuing and/or modifying the flow reduction as allowed by the laws, rules, and regulations contained in 15A NCAC 02T, NCGS 143-215.1, or as needed to address changes in State and/or Federal regulations with respect to wastewater collection systems, protection of surface waters and/or wastewater treatment.

If you have any questions, please contact Michael Leggett at (919) 807-6312, or via e-mail at michael.leggett@ncdenr.gov. If the reviewer is unavailable, you may leave a message, and they will respond promptly. Please refer to the above application number when making inquiries on this project.

Sincerely,

for Thomas A. Reeder, Director
Division of Water Resources

cc: Mark P. Ashness, P.E. – CE Group
301 Glenwood Avenue, Suite 220, Raleigh, NC 27603
Danny Smith, Surface Water Protection Supervisor, Raleigh Regional Office
Jon Risgaard, Land Application Unit Supervisor
Central Files: WQ0028552

Exhibit M

ONSWC Sewer Service Invoice to Blue Heron

ONSWC - Briar Chapel

PO Box 6195
Hermitage, PA 16148-0922
Phone: 877-511-2911

CUSTOMER NO:	2786
ACCOUNT NO:	663/16-0
PREVIOUS BALANCE DUE IMMEDIATELY:	34336.59
CURRENT AMT DUE:	45782.12
LATE DATE:	02/07/23
AMOUNT DUE:	After 02/07/23 46239.94*

PIN# 8569

BLUE HERON ASSET MGMT BHEVBC, LLC
LOT 16 THE KNOLL
1111 HAYNES ST, STE 203
RALEIGH, NC 27604

PLEASE BRING ENTIRE BILL WHEN PAYING IN PERSON. PLEASE DETACH AND RETURN TOP PORTION IF PAYING BY MAIL.

CUSTOMER NUMBER:	2786
ACCOUNT NUMBER:	663/16-0
CUSTOMER NAME:	BLUE HERON ASSET MGMT BHEVBC, LLC
SERVICE ADDRESS:	135 BALLENTRAE CT
SERVICE FROM:	12/15/22
SERVICE TO:	01/13/23
DAYS BILLED:	30

Make checks payable to:

ONSWC - Briar Chapel
PO Box 6195
Hermitage, PA 16148-0922
Phone: 877-511-2911

DESCRIPTION	PREVIOUS READING	PRESENT READING	USAGE	AMOUNT
PREVIOUS BALANCE				34336.59
SEWER		0	0	11445.53
TOTAL CHARGES PIN# 8569				45782.12

Previous Balance is for service from:
9/15/2022-12/15/2022

Exhibit N

Complainants' Letter to ONSWC,
February 28, 2023

BROOKS PIERCE
FOUNDED 1897

WELLS FARGO CAPITOL CENTER
150 FAYETTEVILLE STREET, SUITE 1700
RALEIGH, NC 27601

T 919.839.0300
F 919.839.0304
WWW.BROOKSPIERCE.COM

February 28, 2023

VIA EMAIL
Edward Finley, Jr.
Edward S. Finley, Jr., PLLC
2024 White Oak Rd.
Raleigh, NC 27608
edfinley98@aol.com

U.S. REGISTERED MAIL
John McDonald
Old North State Water Company, Inc.
176 Mine Lake Ct. #100,
Raleigh, NC 27615

RE: DEMAND FOR REFUND

Dear Mr. Finley and Mr. McDonald:

This law firm represents Blue Heron Asset Management, LLC ("Blue Heron") and Liberty Senior Living ("Liberty Senior") regarding the fees charged by Old North State Water Company, Inc. ("ONSWC") for the provision of sewage services in the Briar Chapel service area. It has come to our attention that ONSWC has charged rates in excess of the fees prescribed by the North Carolina Utilities Commission (the "Commission") for the provision of sewage services. ONSWC has acted unfairly—and in violation of North Carolina law—by (1) intentionally withholding the invoices for the connection fees for Blue Heron and Liberty Senior until after the Commission had issued a tariff increase and (2) computing the fees inconsistently with the Commission's tariff orders.

1. ONSWC intentionally withheld invoices from Blue Heron and Liberty Senior.

On April 19, 2021, the Commission issued a tariff order increasing ONSWC's prescribed connection fee to "$4,000 per REU" for the Briar Chapel service area. *See Order Approving Tariff Revision*, W-1300, Sub 71 (Apr. 19, 2021). Prior to April 19, 2021, ONSWC's prescribed connection fee for the Briar Chapel service area was "$1,500 per REU." *See Recommended Order*, Docket No. W-1300, Sub 9 (Apr. 20, 2015).

On March 23, 2021, Blue Heron signed and submitted an application to ONSWC for the provision of sewage connection services in the Briar Chapel area. On this same date, ONSWC submitted an associated Intention to Provide Service to Chatham County. Despite receiving a completed application form and tendering the Intention to Provide Service, ONSWC told Blue Heron that it would provide an invoice for the contracted-for connection service "at a later date." At 3:21 PM on April 19, 2021, ONSWC provided Blue Heron an invoice for the connection fee, which used the newly established rate of $4,000 per REU. ONSWC calculated the connection fee

for Blue Heron to be $1,082,320.00—which is approximately $676,450 more than what Blue Heron would owe had ONSWC used the rate of $1,500 per REU.

North Carolina law prohibits a utility from selling its services at a rate higher than allowed by the Commission. Section 62-139(a) prohibits a utility from charging, demanding, collecting, or receiving "greater . . . compensation for any service rendered or to be rendered . . . than that prescribed by the Commission." N.C. Gen. Stat. § 62-139(a). Notably, the statute explicitly covers fees charged for services "to be rendered" in the future. In furtherance of this statute, the Commission's regulations prohibit a utility from charging, demanding, collecting, or receiving "any greater . . . compensation *for sale of sewer service* . . . than those rates and charges approved by the Commission *and in effect at that time*." N.C.U.C. Rule 10-20. Thus, Rule 10-20 makes clear the utility must charge the fees in effect at the time of the sale of the utility service.

Here, ONSWC's sale of sewer service to Blue Heron occurred on March 23, 2021. Blue Heron offered to acquire ONSWC's connection service by tendering the necessary Water/Waste-Water Service Application; and ONSWC accepted the offer. *See, e.g.*, *Yeager v. Dobbins*, 252 N.C. 824, 828, 114 S.E.2d 820, 823 (1960) (a binding contract is formed upon the acceptance of an offer). ONSWC's acceptance is established by the very language in its own Water/Waste-Water Service Application, which conspicuously states: "THIS APPLICATION WILL BECOME A BINDING CONTRACT UPON ACCEPTANCE BY THE UTILITY." The acceptance is also established by ONSWC having submitted the Intention to Provide Service form to Chatham County on the date that it received the application. *See Cap Care Grp., Inc. v. McDonald*, 149 N.C. App. 817, 822, 561 S.E.2d 578, 582 (2002) ("An acceptance by conduct is a valid acceptance."). Therefore, upon acceptance by ONSWC, the "sale of sewer service" had occurred and ONSWC was required to charge the prescribed fee "in effect at the time," N.C.U.C. Rule 10-20, even though the connection service was "to be rendered" by ONSWC at a later date, N.C. Gen. Stat. § 62-139(a).[1]

Furthermore, should ONSWC hope to argue that a "sale of sewer service" could not have occurred until Blue Heron had either paid for the service or been physically connected, ONSWC would be equitably estopped from doing so. North Carolina recognizes the doctrine of equitable estoppel, which "precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity." *Ellen v. A.C. Schultes of Md., Inc.*, 172 N.C.App. 317, 321, 615 S.E.2d 729, 732 (2005) (internal quotation marks omitted). The elements of equitable estoppel are a concealment of material facts, the intention that the concealment will be acted on by the other party, and knowledge of the real facts. *Parker v. Thompson-Arthur Paving Co.*, 100 N.C. App. 367, 370, 396 S.E.2d 626, 628 (1990).

[1] Notably, ONSWC's practice of charging customers the fee in effect at the time of ONSWC accepting an application is memorialized in ONSWC's own instruction for builders seeking sewer services. *See* https://onswc.com/wp-content/uploads/2021/05/ONSWC-Sewer-Builder-Instructions.pdf. These instructions require a builder to submit "application fees" along with the application itself; and the only way a builder could submit the connection fee along with the application is if the fee was determined at the time of the application (and not a later date).

Here, ONSWC intentionally concealed that it was going to withhold the invoice from Blue Heron—which was necessary for payment by Blue Heron and for physical connection—until the Commission had issued an order to increase ONSWC's rates. Simply put, ONSWC baited Blue Heron to wait until ONSWC could swap out its current rates for the higher rate that would later be established by the Commission.

Most disturbingly, ONSWC's dealings with Blue Heron were not an anomaly. Liberty Senior was subject to the same bait and switch tactic. On April 1, 2021, Liberty Senior began communicating with ONSWC regarding waste-water management services. On April 5, 2021, Liberty Senior emailed John McDonald explicitly asking "[w]hat do we need to do to pay the $1,500/unit connection fees associated with [its apartment development]"? Mr. McDonald did not send Liberty Senior the application for sewer services. Instead, he ignored the inquiry for two weeks. Then, at 2:24 PM on April 19, 2021—after the new tariff was established—Mr. McDonald informed Liberty Senior that ONSWC would calculate the invoice at the "current tap fee" of $4,000 per REU. An hour later, ONSWC finally provided Liberty Senior with the invoice that Liberty Senior had requested two weeks prior. ONSWC calculated the connection fee for Liberty Senior to be $807,400.00—which is approximately $504,625 more than what Liberty Senior would owe had ONSWC used the rate of $1,500 per REU.

It is stunning that with both of my clients, ONSWC deliberately prevented them from paying for the sewer services until after the Commission had granted ONSWC a rate increase. Then, on the day the increase was granted, ONSWC finally sent both clients invoices *within the same hour*. ONSWC intentionally undertook this tactic in order collect more than one million dollars above what it was legally entitled to charge my clients for the sewer services.

My clients were the victims of a premeditated pattern of unfair conduct. In addition to seeking any necessary resource before the Commission, we are considering other options. A claim under North Carolina's Unfair and Deceptive Trade Practice Act would entitle my clients to treble damages and attorney's fees. *See* N.C. Gen. Stat. § 75-1.1, et seq.

2. ONSWC is computing REU inconsistent with the Commission's tariff orders.

In Docket No. W-1300, Sub 9, the Commission established that ONSWC was allowed to charge "$1,500 per REU" as a connection fee. In establishing this rate, the Commission relied upon the definition of REU as set forth in preexisting agreements, which provided a computational formula for REU. ONSWC is not permitted to deviate from this predetermined computation of REU.

The $1,500-per-REU rate was established as part of the Commission's approval of ONSWC's acquisition of the Briar Chapel Utility sewer franchise in Docket No. W-1300, Sub 9. Although the Sub 9 Order does not explicitly state how to compute REU, the order does expressly reference the $1,500/REU purchase price to which the parties agreed in the Asset Purchase Agreement ("APA"). The Sub 9 Order states that "[t]he purchase price for the Briar Chapel

wastewater utility system *under the APA* is *$1,500 per residential equivalent unit (REU) for each new connection* and the future expansion . . . ." *See* Sub 9 Order, at 3 (¶ 8) (emphasis added).

The APA, which was filed with the Commission in Sub 9, provides a definition for residential equivalent units that includes an express computational method:

> [A] unit of wastewater treatment capacity equal to the presumed average daily wastewater flow of a single-family unit in the Projects (250). 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	REU
less than 1"	1
1"	2.5
1.5"	5.0
2"	8.0
3"	15.0
4"	25.0
6"	50.0

APA, § 1.27. As set forth the APA, an REU for a non-residential development in Briar Chapel is determined by the meters or, if there are no meters, the design flow divided by 250 GPD.

In addition to this express computation, the APA states that ONSWC was to pay the seller $1,500 "per REU for each new residential and non-residential connection made to the Wastewater Utility System. Buyer will *continue to collect the $1,500 per REU Connection Fee approved in the franchise proceeding for the Seller in Docket No. W-1230, Sub 0*, for each new connection made to the Wastewater Utility System and pay such fees to Developer." APA, § 3.2. Thus, the APA not only defines REU with a computational method, but it also references and incorporates the computation of REU as approved by the Commission in Docket No. W-1230, Sub 0.

In the W-1230, Sub 0 docket, the Commission approved Briar Chapel Utility's initial acquisition of the sewer system, and Briar Chapel Utility's agreement to acquire the sewer system had *the exact same definition for residential equivalent units*—i.e., with the same express computational method—as found in the APA. *See* BCU Agreement, § 1.32. In addition to having the same definition of REU, the BCU Agreement states that Briar Chapel Utility "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." BCU Agreement, § 5.3(b). ("Connection" is defined as "any single family residence or RUE connection[.]") This clause further corroborates that the parties understood that the Commission's approval in the Sub 0 Order of "$1,500 per REU" incorporated the computation of REU as set forth in Section 1.32 of the BCU Agreement.

In sum, the Commission in the Sub 9 Order referenced REU "per the APA," and the APA provides an express computation of REU. The APA also references the REU in the Sub 0 Order, and the Sub 0 Order relied on the definition of REU set forth in Briar Chapel Utilities' Agreement—which is the exact same computation as found in the APA. Therefore, pursuant to the Sub 9 Order, REU is computed by the development's meters or, if there are no meters, by the design flow divided by 250 GDP.

ONSWC has not computed REU in accordance with the Sub 9 Order.

For Blue Heron, ONSWC took the 51,140 GPD for Blue Heron's development and divided it by 189 GPD, and then claimed that the development has 270.6 REUs. Blue Heron, however, has meters. It has two 2" meters and two 3" meters. According to the chart in both the APA and the BCU Agreement, this results in only 46 REUs. This would result in a fee of $69,000 (46 REUs x $1,500).[2]

For Liberty Senior, ONSWC took the 38,150 GPD for Liberty Senior's development and divided it by 189 GPD, and then claimed that the development has 201.85 REUs. Liberty Senior, however, also has meters. It has one 6" meter. According to the chart in both the APA and the BCU Agreement, this results in only 50 REUs. This would result in a fee of $75,000 (50 REUs x $1,500).[3]

3. Blue Heron's first invoice for sewer service is also excessive.

Finally, ONSWC's first invoice to Blue Heron for sewer services suffers from the same error in computing REUs. ONSWC is permitted to charge $42.30 per REU a month for sewer service. On February 8, 2023, ONSWC issued an invoice for the first fourth months of sewer service. The total for the fourth months was $45,782.12, which reflects $11,445.53 per month. This monthly total would be based on 270.6 REUs. As already established, ONSWC must compute

[2] Alternatively, should REU be computed based on design flow, the 51,1450 GPD for Blue Heron's development would be divided by 250 GPD—per the APA and the BCU Agreement—and result in 204.6 REUs. This would still result in a fee of only $306,840 (204.6 REUs x $1,500).

[3] Alternatively, should REU be computed based on design flow, the 38,150 GPD for Liberty Senior's development would be divided by 250 GPD—per the APA and the BCU Agreement—and result in 152.6 REUs. This would still result in a fee of only $228,900 (152.6 REUs x $1,500).

REU by meters or, if there are no meters, by the design flow divided by 250 GDP. A properly computed REU would be 46 REUs, for a monthly sewer fee of $1,945.8.[4]

* * *

Blue Heron is hereby demanding that OSNWC issue a refund of $1,051,326.96. This accounts for the extra $1,013,328 charged for the connection fee (which is the $1,082,328 charged less the $69,000 actually owed) and the extra $37,998.92 charged for the sewer service (which is the $45,782.12 charged less the $7,783.20 actually owed). ONSWC has 30 days provide this refund. Otherwise, Blue Heron will petition the Commission for redress and be able to seek double the amount of the overcharge pursuant to Section 62-139(b).

In contrast to Blue Heron, Liberty Senior has not yet tendered payment for the connection fee. Thus, at this time, ONSWC has an opportunity to remedy its calculation of Liberty Senior's connection fee before Liberty Senior would tender payment and request a refund—thus triggering the requirements of Section 62-139. We encourage ONSWC to not waste this opportunity and issue a corrected invoice to Liberty Senior.

I look forward to hearing from you.

Sincerely,

Craig D. Schauer
cschauer@brookspierce.com
919-573-6206

[4] Alternatively, should REU be computed based on design flow, the 51,1450 GPD for Blue Heron's development would be divided by 250 GPD—per the APA and the BCU Agreement—and result in 204.6 REUs. This would still result in a monthly fee of only $10,177.38 (204.6 REUs x $42.30).

Exhibit O

Complainants' Letter to ONSWC,
March 29, 2023

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March 29, 2023

VIA EMAIL
Edward Finley, Jr.
Edward S. Finley, Jr., PLLC
2024 White Oak Rd.
Raleigh, NC 27608
edfinley98@aol.com

RE: DEMAND FOR REFUND

Dear Ed:

I am writing on behalf of Blue Heron Asset Management, LLC ("Blue Heron") and Liberty Senior Living ("Liberty Senior") in response to your March 16, 2023 letter. Below, I briefly respond to the arguments raised in your letter, in hopes of persuading your client to avoid necessitating a complaint proceeding regarding the excessive fees it has charged.

- *A contract did not exist prior to the April 19, 2021 Order in W-1300, Sub 71.* Specifically, you content that "[t]he application and ONSWC's acceptance of it are not the determinative factors dictating the fee to be paid." That is wrong. Blackletter law recognizes that a contract was created upon ONSWC's acceptance of the application. *E.g.*, *Yeager v. Dobbins*, 252 N.C. 824, 828 (1960). Indeed, the application itself says it will "*become a binding contact upon acceptance*"—and ONSWC's unquestionably accepted the application, as evidenced by the Intention to Provide Service sent to Chatham County.

- *The interconnection facilities were not in place at the time of the contract was formed.* The parties had formed an executory contract, in which both sides promise to perform their obligations in the future: Blue Heron would pay the tariff prescribed by the Commission and, in exchange, ONSWC would connect Blue Heron. The fact that the system was inoperable at the time did not prevent the formation of this executory contract.

- *Blue Heron waived its right to a refund because it made a payment.* Section 62-139's right to demand a refund is triggered by making a payment; thus, the act of making a payment, which triggers the statutory right, cannot waive that very right. Moreover, the case you cite, *High Point v. Duke Power*, concerned an implied waiver based on the city making monthly payments *without protest* for *three years*; here, Blue Heron tendered a single payment under protest.

- *The date on which the Commission issued its approval of ONSWC's fee increase was "out of ONSWC's control."* But the date upon which ONSWC decided to invoice Blue Heron and Senior Liberty was in ONSWC's control—and ONSWC deliberately baited my clients into waiting to make any payment until after ONSWC had received its desired rate increase.

- *The REU is calculated based on the DEQ permit.* First, the interconnection fee is set by the tariff order, which makes no reference to DEQ permits; rather, the tariff order references the asset purchase agreement, which calculated REU as set forth in our letter. Second, the DEQ flow reduction that you reference was "applicable to residential single family dwellings only"—by its own terms, it is not applicable to my clients.

- *The correct REU calculation would result in flow exceeding capacity*. We do not understand this contention. REU is used only to calculate the fees collected by ONSWC—it does not dictate the flow to the system. Using the correct REU would not change the flow from my clients.

- *The $1,500/REU fee was "negotiated" and not based on cost of service.* That is irrelevant. As stated explicitly by the asset purchase agreement, ONSWC agreed to the $1,500/REU fee with the expectation that it would be the tariff for system connection. Indeed, this was the tariff that ONSWC requested (in the W-1300, Sub 9 proceeding) and had been in place for over a decade at the time ONSWC withheld its invoices to prevent my clients from paying the prescribed fee.

My clients are prepared to proceed with a complaint, if necessary; but our hope is that ONSWC would realize the error of its ways and want to reach a resolution that does involve the Utilities Commission. I look forward to hearing from you.

Sincerely,

Craig D. Schauer
cschauer@brookspierce.com
919-573-6206