

# **Attachment 7**

## **(Tri-Party Agreement)**

**BINDING TRI-PARTY AGREEMENT**

This Binding Tri-Party Agreement ("Agreement") is entered into this 19th day of October, 2020 ("Effective Date"), by, between, and among Old North State Water Company, LLC ("Old North State Water Company"), NNP-Briar Chapel, LLC ("NNP-Briar Chapel"), and the Briar Chapel Community Association, Inc. ("Briar Chapel Community Association") (referred to individually as a "Party" and collectively as the "Parties").

**RECITALS**

WHEREAS, Old North State Water Company is a limited liability company duly organized under the laws of the State of North Carolina, and is the owner of the Briar Chapel wastewater system located in the Briar Chapel Community in Chapel Hill, Chatham County, North Carolina ("Briar Chapel Community");

WHEREAS, NNP-Briar Chapel is a Delaware limited liability company authorized to do business in the State of North Carolina, and is the developer of the Briar Chapel Community;

WHEREAS, the Briar Chapel Community Association, Inc. is a non-profit corporation duly organized under the laws of the State of North Carolina, and is the community association for the Briar Chapel Community;

WHEREAS, the Parties have certain disputes related to the Briar Chapel wastewater system and other matters;

WHEREAS, the Parties have negotiated in good faith to address certain disputes among them related to the Briar Chapel wastewater system and other matters; and

WHEREAS, except as provided below, the Parties now desire to memorialize the terms upon which they agree to resolve certain disputes related to the Briar Chapel wastewater system and other matters.

NOW, THEREFORE, for and in consideration of the foregoing, the mutual commitments and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Briar Chapel Sport Courts

a. Within forty-five (45) days of the Effective Date, Old North State Water Company will submit or cause to be submitted to the North Carolina Department of Environmental Quality ("NCDEQ") any necessary permit applications to modify Briar Chapel wastewater system Permit No. WQ0028552 to provide for spray irrigation in the existing spray irrigation lines in the area of the Briar Chapel Sport Courts located at the intersection of Briar

Chapel Parkway and Boulder Point Drive, which provisions shall be included in the Packages I and J Application (defined in II.b. below).

b. Within sixty (60) days of the Effective Date, Old North State Water Company will plant fourteen (14) shrubs or trees adjacent to the pipeline located on or near the Sport Courts parcel:

1. One (1) three-inch Red Maple tree;
2. Three (3) eight-foot Fragrant Tea Olive (*Osmanthus*) plants;
3. Seven (7) ten-foot Southern Magnolia trees; and
4. Three (3) ten-foot Nelly Stevens Holly trees.

## II. Improvements to the Briar Chapel Wastewater System

a. Old North State Water Company has submitted to NCDEQ and currently has pending with NCDEQ five (5) applications for renewal or modification of the Briar Chapel wastewater system as follows:

1. Application for Non-Discharge System Renewal: Permit Number WQ28552 (October 1, 2020);
2. Briar Chapel Reclaimed Water Irrigation System Modification to Permit # WQ28552: Package E, Package F, and Package G (Conjunctive to Non-Conjunctive) (September 28, 2020);
3. Briar Chapel Reclaimed Quality Water Irrigation System Modification to Permit # WQ28552: Post Construction Western Irrigation Pond and Reclaimed Waterline (March 2020; Rev. August 2020);
4. Briar Chapel Fast Track Sewer System Extension Application: Lift Station A and Forcemain Improvements (September 24, 2020); and
5. Briar Chapel Reclaimed Water Irrigation System Modification to Permit # WQ28552: Package H (Dedicated Wastewater Irrigation) (September 2020) (collectively, items 1-5 above and any amendments thereto, the "Pending Applications").

Within ten (10) days after the Effective Date, the Briar Chapel Community Association will submit to NCDEQ a written statement of support and request expedited approval of the Pending Applications.

b. Old North State Water Company and/or NNP-Briar Chapel will, in the next forty-five (45) days, also submit to NCDEQ the following application for modification of the Briar Chapel wastewater system: Briar Chapel Reclaimed Water Irrigation System Modification to Permit # WQ28552: Package I and Package J (Dedicated Wastewater Irrigation) (October 2020) (the "Packages I and J Application").

c. Within ten (10) days of submittal of the Packages I and J Application, or of "Packages I and J Approval" as defined below, whichever shall later occur, the Briar Chapel Community Association will submit to NCDEQ a written statement of support and request for expedited approval of the Packages I and J Application. The commitment by the Briar Chapel Community Association with regard to the Packages I and J Application is contingent upon the Association Board's advance review of and concurrence with the Packages I and J Application,

which shall not be unreasonably withheld, conditioned or delayed (referred to herein as "Packages I and J Approval." The Association Board will have ten (10) business days from receipt from Old North State Water Company of the Packages I and J Application in which to review such application and provide concurrence or nonconcurrence. In the event of nonconcurrence, the parties agree that they will cooperatively work out any differences in a timely manner, and Briar Chapel Community Association's obligations to submit a written statement will be suspended until Packages I and J Approval achieved.

d. Before December 31, 2021, Old North State Water Company will increase the capacity in the Briar Chapel wastewater treatment plant from 250,000 gallons per day to 500,000 gallons per day in order to meet the capacity demand from new development in the Briar Chapel Community. However, no party shall unreasonably withhold permission for extension of this period due to weather related delays or other conditions outside the control of Old North State Water Company.

To the extent that such expansion of the wastewater treatment plant requires modification of Permit Number WQ28552, the Briar Chapel Community Association will submit to NCDEQ a written statement of support and request for expedited approval of any associated application for modification within ten (10) days after submittal of such application by Old North State Water Company or after "Permit Modification Approval" as defined below, whichever shall later occur. This commitment for a written statement of support by the Briar Chapel Community Association is contingent upon the Association Board's advance review of and concurrence with any associated application for modification, which shall not be unreasonably withheld, conditioned or delayed (referred to herein as "Permit Modification Approval"). The Association Board will have ten (10) business days from receipt from Old North State Water Company of such application in which to review the application and provide concurrence or nonconcurrence. In the event of nonconcurrence, the parties agree that they will cooperatively work out any differences in a timely manner, and Briar Chapel Community Association's obligations to submit a written statement will be suspended until Permit Modification Approval is achieved.

e. Prior to recordation of either the final plat for Phase 13, Section 3 or the final plat for Phase 14, whichever occurs first, (i) Old North State Water Company agrees that it will submit an infrastructure completion bond to Chatham County, satisfactory to the County, to cover the future costs of improvements to the Briar Chapel wastewater treatment plant and (ii) NNP agrees to submit an infrastructure completion bond to Chatham County, satisfactory to the County, to cover the future costs of improvements to the Briar Chapel spray irrigation system.

### III. Fearrington Village Transfer Application

a. John McDonald with Old North State Water Company will provide to the Briar Chapel Community Association Board, all necessary information about the existing Briar Chapel wastewater treatment capacity and plans to expand capacity of the Briar Chapel wastewater treatment plant to 500,000 gallons per day. For purposes of this Agreement the term "all necessary information" includes information about the sufficiency of the Briar Chapel wastewater system to serve the additional single family residences to be developed in Briar Chapel Phase 13, Section 3, and Phase 14.

b. The Board of Directors for Briar Chapel Community Association has authorized the President to speak on behalf of the Briar Chapel Community Association during the Chatham County Board of Commissioners' ("BOC") October 19, 2020 meeting and will authorize the Board President or another Board member to speak on behalf of the Briar Chapel Community Association at any subsequent BOC meeting at which requested approval of the Final Plats, either or both, is on the agenda. The Briar Chapel Community Association President or any other authorized Board member will express support for the Board of Commissioners' approval of NNP-Briar Chapel's Final Plat applications and state that the Parties have worked collaboratively on a plan to move forward cooperatively in regard to Briar Chapel wastewater issues.

c. Within seven (7) days after the later of (1) the last day on which the Briar Chapel Community Association President or any other authorized Board member is required to and has expressed support for the Board of Commissioners' approval of NNP-Briar Chapel's Final Plat applications, and (2) the Briar Chapel Community Association's submission of written statements of support and request for expedited approval to NCDEQ in accordance with Section II above, Old North State Water Company will withdraw the applications for authority to transfer the Briar Chapel wastewater system and the Fearrington Village wastewater system to ONSWC-Chatham North, LLC in North Carolina Utilities Commission Docket Nos. W-1320, Sub 0, W-1300, Sub 55, W-1320, Sub 2, and W-661, Sub 9, which applications or any similar applications will not be refiled or filed by Old North State Water Company in the future. Because it is recognized that the needs of the Briar Chapel Wastewater system may change in the future (whether by changed density considerations, operational needs, or otherwise), this provision does not apply to any future owner of the system after the aforesaid applications have been withdrawn by Old North State Water Company.

d. If requested by Old North State Water Company or the Public Staff – North Carolina Utilities Commission, the Briar Chapel Community Association will file a written statement of support for the withdrawal of the transfer applications in the Utilities Commission dockets.

#### IV. Compensation for Tree Removal

a. Within seven (7) days of the Effective Date, Old North State Water Company will pay the amount of Seventy Five Thousand Dollars (\$75,000) to the Briar Chapel Community Association in full satisfaction of any and all damages that the Briar Chapel Community Association may have sustained for the removal of trees on Briar Chapel Community Association-owned property. This payment is not made in full satisfaction of any and all damages that the Briar Chapel Community Association may sustain resulting from the removal of additional trees on Briar Chapel Community Association-owned property or otherwise due to incidents that may occur in the future that are related to the existing wastewater system or any modified wastewater system.

b. The Briar Chapel Community Association and Old North State Water Company agree to mutually release, remise and forever discharge one another and each other's respective



past, present, and future officers, directors, employees, shareholders, predecessors, successors, insurers, attorneys, and/or assigns from any and all actions, complaints, lawsuits, liabilities, obligations, accounts, causes of action, suits and claims, in tort, contract or other theory of recovery, known or unknown, asserted or unasserted, which either the Briar Chapel Community Association or Old North State Water Company, their heirs, agents, successors, or assigns ever had, now have, or hereafter may have against the other resulting from the removal of trees on Briar Chapel Community Association-owned property. This release does not include a release and discharge from any and all actions, complaints, lawsuits, liabilities, obligations, accounts, causes of action, suits and claims, in tort, contract or other theory of recovery, known or unknown, asserted or unasserted, which either the Briar Chapel Community Association or Old North State Water Company, their heirs, agents, successors, or assigns may have against the other resulting from the removal of additional trees on Briar Chapel Community Association-owned property due to incidents that may occur in the future that are related to the existing wastewater system or any modified wastewater system or otherwise.

V. Communications Regarding Wastewater Matters

a. The Parties will work in good faith to establish a mechanism for communication and consultation among the Parties regarding the wastewater treatment system and other matters affecting the Briar Chapel Community Association and the Briar Chapel Community, including but not limited to odor issues, spills, and oversight of the wastewater treatment system. This mechanism shall be established by the Parties by November 30, 2020.

VI. NNP-Briar Chapel Representation and Reservation of Claims by All Parties

a. NNP-Briar Chapel represents that with the exception of the Firmage tract (fifteen (15) lots and the Sledd Thomas sewer tie-in, the Willow Oak Montessori School, and all other uses allowed within the Briar Chapel Conditional Use Permit area, NNP-Briar Chapel has no current plans to add additional users outside the Briar Chapel Community.

b. By signing this Agreement, and except as otherwise expressly provided in this Agreement, all Parties acknowledge and agree that no Party is releasing, settling, waiving, or limiting in any way, and has not released, settled, waived, or limited in any way any rights, demands, claims, or causes of action of any kind it may now or in the future have between or among themselves or against any third person relating in any way to the Briar Chapel community, including the existing or future wastewater system or otherwise, or relating to any other agreement or contract, and all parties expressly and specifically reserve all such rights, demands, claims, or causes of action. For clarification and for the avoidance of doubt, as between NNP-Briar Chapel and Old North State Water Company only, NNP-Briar Chapel and Old North State Water Company specifically hereby reserve and do not release, settle, waive, or limit in any way any rights, demands, claims, setoff, or causes of action of any kind that NNP-Briar Chapel or Old North State Water Company may now or in the future have against the other based on or pursuant to that certain Asset Purchase Agreement between Briar Chapel Utilities, LLC, NNP-Briar Chapel, LLC and Old North State Water Company, LLC dated on or about October 31, 2014 and any and all amendments thereto.

VII. Miscellaneous.

a. The Parties hereto agree to execute and deliver such other and further agreements or documents as may be necessary to effectuate fully this Tri-Party Agreement and intention of the Parties as expressed herein.

b. This Tri-Party Agreement may be executed independently in any number of counterparts, each of which when executed and delivered, shall constitute an agreement which shall be binding on the Parties notwithstanding the signatures of all Parties and/or their designated representatives do not appear on the same page. Facsimile, PDF, and electronic signatures shall have the same effect as original signatures.

c. The Parties and their signatories warrant that each has the power and authority to execute this Tri-Party Agreement, and that the Parties have voluntarily executed this Tri-Party Agreement based on their own independent investigations.

d. This Tri-Party Agreement shall be binding on the Parties and each Party's respective successors in interest and assigns except as otherwise provided in this Agreement.

e. This Tri-Party Agreement and all documents referenced herein shall be governed and interpreted under the laws of the State of North Carolina.


f. The provisions of this Tri-Party Agreement shall be interpreted in a manner consistent with each other to carry out the purposes and intent of the Parties. If for any reason any provision of this Agreement is held unenforceable or invalid, that provision shall be deemed severed from this Agreement and the remaining provisions shall not be affected.

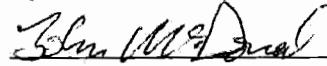
g. This Tri-Party Agreement contains the entire agreement between the Parties hereto as related to the matters covered by this Tri-Party Agreement, and the terms and conditions thereof are contractual in nature and not mere recitals. Each Party acknowledges and agrees that it has read and fully understands this Tri-Party Agreement; that each Party understands that the Tri-Party Agreement contains substantial legal rights; that each Party has had the opportunity to review and discuss the Tri-Party Agreement with its counsel; and that each Party enters into this Tri-Party Agreement of its own free will, without any measure of duress.

**\*\* SIGNATURES ON FOLLOWING PAGES\*\***

IN WITNESS WHEREOF, the Parties have signed, executed, and agreed to the foregoing Settlement Agreement, effective the date and year first above written.


Old North State Water Company, LLC

By: 

, Member/Manager

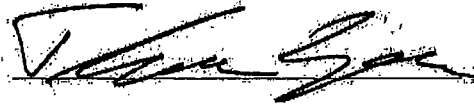


NNP-BRIAR CHAPEL, LLC  
a Delaware limited liability company

By:   
Tanya Matzen, Vice President

Briar Chapel Community Association, Inc.

By:



Thomas Speer, President

ATTEST:



Jerry Cole, Secretary  
Briar Chapel Community Association, Inc.

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