STATE OF NORTH CAROLINA

COUNTY OF CHATHAM

RECREATION LAND TRANSFER AGREEMENT

THIS RECREATION LAND TRANSFER AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 2010, by and among NNP-Briar Chapel, LLC, a Delaware limited liability company (hereinafter, "NNP-Briar Chapel"), Chatham County, a body politic and corporate of the State of North Carolina (hereinafter, the "County"), and Briar Chapel Utilities, LLC, a Delaware limited liability company (hereinafter, "BC Utilities").

WITNESSETH

1. <u>Agreement to Transfer Recreation Land</u>. For and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged by NNP-Briar Chapel and the County, NNP-Briar Chapel agrees to transfer and convey to the County, in satisfaction of its obligation to donate suitable recreational facilities pursuant to condition 14(b) of its Conditional Use Permit (all terms and conditions of which shall remain in full force and effect, including without limitation, NNP-Briar Chapel's obligation to pay Recreation Fees), and the County agrees to accept from NNP-Briar Chapel, subject to and in accordance with all the terms and conditions of this Agreement, title to the following:

(a) The recreation site (the "Site") shown on the Park Master Plan dated ____ (the "Master Plan"), and attached hereto as **Exhibit A**. The Site is comprised of Parcel 79946 (portion in southeast corner of Andrews Store Road and Parker Herndon Road) and Parcel 2757. The Site is approximately 66.17 acres and is more particularly described in **Exhibit B** attached hereto, and shall be conveyed as is, inclusive of all improvements, grading, fields, plantings, shrubs and trees existing and located thereon as of the date of this Agreement, and together with all rights, ways and easements appurtenant thereto (hereinafter collectively, the "Land").

(b) All buildings, structures and other improvements located on the Land and all fixtures, attached or affixed, actually or constructively, to the Land or to any such buildings, structures or other improvements (hereinafter collectively, the "Improvements"), as is, as of the date of conveyance and as shown on Exhibit A.

(c) The naming rights to the Site.

The Site, Land, and Improvements are herein collectively called the "Property." The County acknowledges and agrees that it is familiar with and has inspected the Property, has conducted, or will conduct during the Examination Period hereinafter provided for, any and all tests, studies and reports necessary or desirable to the County, and at Closing will accept title to the Property in its current AS IS, WHERE IS, condition.

2. **Purchase Price.** The purchase price for the Property is One Dollar ($1.00).

3. **Improvements; Recreation Fees.** Prior to Closing, NNP-Briar Chapel will have made the following improvements to the Land, all of which shall be reasonably acceptable to the County as of the date of Closing, and which are being conveyed to the County:

(a) graded and sprigged one (1) baseball field with 200-foot radius;

(b) graded and sprigged one (1) baseball field with 250-foot radius;

(c) graded and sprigged one (1) standard size football field;

(d) graded and sprigged one (1) 200 feet by 300 feet soccer field, which can be divided into three smaller youth soccer fields;

(e) an irrigation system installed for these fields (subject to an irrigation easement to be conveyed to BC Utilities as set forth herein);

(f) one (1) parking lot south of Andrews Store Road with spaces for approximately 80 vehicles, as shown on the Master Plan; and

(g) one (1) parking lot east of Parker Herndon Road with spaces for approximately 45 vehicles, as shown on the Master Plan

Following Closing, the County agrees that it shall be solely responsible for any and all further improvements necessary or desirable at the Site, except as to those specific obligations of NNP Briar Chapel and BC Utilities expressly set forth herein in Paragraph 4 and Paragraph 5, respectively. Further, the County agrees that it will use Recreation Fees received to date and to be received in the future from NNP-Briar Chapel, to the extent they are sufficient, to provide additional improvements on the Site. The County hereby confirms that as of the date hereof, the County has received from NNP-Briar Chapel, Recreation Fees in the total amount of $302,802, which shall be applied to construction of future improvements. Such future improvements shall be constructed at such time and in such manner as deemed necessary or desirable by the County in its discretion and shall include:

(a) Accessory improvements to one (1) Baseball Field with a 200 foot radius;

(b) Accessory improvements to one (1) Baseball Field with a 250 foot radius;

(c) Accessory improvements to one (1) standard size Football Field;

(d) Accessory improvements to one (1) Soccer Field 200 feet by 300 feet, to be divided into three (3) smaller soccer fields;

(e) One (1) general purpose Athletic Field or facility and accessory improvements thereto;

(f) One (1) concession stand/restroom building to be determined at the County's discretion;

(g) Adequate parking for the use of the park facilities; and

(h) Appropriate signage for the Property, to be determined at the County's discretion, in compliance with all codes and restrictions applicable to the Property.

The County may also construct trails on the Site, if sufficient funds are available from the current and future Recreation Fees. NNP-Briar Chapel shall provide technical assistance, at no cost or expense to NNP-Briar Chapel, for such construction, and for the County's application for any needed modifications to the existing Corps of Engineers permits, as reasonably requested by, and at no cost to, the County.

The County shall have no obligation to spend funds in excess of the Recreation Fees it has received or will in the future receive from NNP-Briar Chapel. The County may, but has no obligation to, advance funds against future Recreation Fees to add Improvements to the Site.

NNP-Briar Chapel will support the County in all grants applied for to provide improvements to the site, without any financial obligation of, or other cost or expense to, NNP-Briar Chapel.

4. <u>Construction Obligations of NNP-Briar Chapel for Entrance Driveway and Vegetative Buffer</u>. NNP-Briar Chapel shall construct, or cause to be constructed, the following improvements on the Property:

(a) **<u>Entrance Road, Bridge, Road Improvements and Sidewalk</u>.** NNP-Briar Chapel shall construct an entrance road, with a hard surface not less than twenty-six (26) feet in width, and a five (5) foot wide sidewalk to the Site from the southern pavement boundary of Andrews Store Road (which shall align with Woodland Grove Lane) in the general location shown on the Master Plan attached hereto as **Exhibit A**, subject to approval by the North Carolina Department of Transportation (DOT) and specifically constructed pursuant to DOT-approved site plans.. The entrance road and an adjacent sidewalk shall be constructed from and adjoin the pavement of Andrews Store Road to a point fifty feet (50') beyond the southern bank of the creek The entrance road and sidewalk shall be concrete or asphalt and the associated creek crossing or bridge shall be concrete, asphalt, and/or hard surface timber, consistent with the bid and drawing attached hereto as **Exhibit C**. The bridge shall provide at a minimum two (2) twelve (12) foot wide vehicular travel lanes, one (1) five (5) foot wide handicap accessible pedestrian walkway with either a minimum grade separation of six (6) inches from the vehicular travel lanes or a physical dividing barrier between the vehicular travel lanes and the sidewalk, as approved by both parties, and guardrails or barriers for both sides of bridge. The bridge shall accommodate an HS-20 traffic load at a minimum, and ramps shall be installed at each end of the pedestrian walkway to transition to sidewalks. The design for the road, the creek crossing or bridge, and the sidewalk shall be reviewed and approved in writing by the County staff. Any improvements required to

Andrews Store Road as a result of the use of the Site as a park or as part of the entrance road construction shall be provided by NNP-Briar Chapel, consistent with previously submitted traffic impact analyses and NCDOT requirements. The County will assist NNP-Briar Chapel in the procurement of necessary governmental permits for such road improvements, as may be reasonably requested, without financial obligation to the County, and will provide a written acceptance of post-construction maintenance responsibilities, as may be required by NCDOT, and as set forth in Paragraph 6 of this Agreement. Upon completion of the entrance road, creek crossing or bridge, and the sidewalk (collectively the "Completed Improvements") to the reasonable satisfaction of the County, the County shall issue to NNP-Briar Chapel a certification that the Completed Improvements have the final approval of the County. NNP-Briar Chapel shall guarantee the Completed Improvements for a period of twelve (12) months from the date of final approval by the County and repair any defects, deficiencies, or problems therein during said warranty period. At the end of the twelve (12) months warranty period, NNP-Briar Chapel shall not have any further obligations or liabilities with respect to the Completed Improvements.

Not later than sixty (60) days after the Closing, NNP-Briar Chapel shall submit to DOT and any other regulatory authority having jurisdiction over said improvements, the necessary plans, specifications, and other drawings to secure the required regulatory approval for the construction obligations under this Paragraph 4(a). The County shall cooperate with NNP-Briar Chapel and provide prompt review of all design documents. Not later than two hundred and seventy (270) days from the receipt of all regulatory approval for the road improvements, entrance road, sidewalk, and the bridge, NNP-Briar Chapel shall complete such improvements to the reasonable satisfaction of the County.

The County shall grant to NNP-Briar Chapel temporary construction easements as necessary for construction of road improvements, the entrance driveway, and the bridge as set forth above.

(b) **Streetscape Buffer**. NNP-Briar Chapel shall establish a vegetative buffer in the area between the curb stops in the parking lot off Parker Herndon Road and the existing tree line, consistent with the Appearance Commission recommendation dated August 12, 2009, attached hereto as Exhibit E, and as shown on the site plan attached hereto as **Exhibit A** (the "Streetscape Buffer"). The installation of the Streetscape Buffer shall be installed to the reasonable satisfaction of the County prior to ninety (90) days following the Closing.

5. **Obligations of BC Utilities for Utility Stub-outs and for Irrigation.** BC Utilities shall provide the following utilities stub-outs and irrigation services for the Property:

(a) **Utilities.** BC Utilities shall provide one (1) water and one (1) sewer stub-out to the Site, which shall be installed according to County standards. The stub-outs for the sewer and water meter shall be located at the terminus of the entrance road on the Site and will be constructed and operational within six (6) months of BC Utilities

receiving written notice from the County of the need for service for facilities to be constructed on the Property. The water and sewer lines shall be of sufficient capacity to accommodate a maximum peak daily flow of 2750 gpd for the County's use of the Property, including a concession stand and restroom building with anticipated peak daily flow of 2,750 gpd. Following the construction of the water and sewer stub-out, the County will be responsible for any subsequent requirements and all monthly fees and other charges for water and sewer service. The County agrees to grant to BC Utilities water and sewer easements in form reasonably satisfactory to BC Utilities prior to installation of such utilities.

(b) **Irrigation.** BC Utilities will provide an irrigation system of reclaimed water suitable for irrigating athletic fields, including adequate coverage for the fields proposed for the Site. The areas on which BC Utilities will be allowed to irrigate are indicated on a map (the "Irrigation Map") attached hereto as **Exhibit D**, and the right to irrigate those areas and to maintain and operate the system shall be established and preserved by an easement in favor of BC Utilities, in a form reasonably satisfactory to BC Utilities, which easement shall be granted by the County immediately upon the conveyance of the Property to the County. BC Utilities shall not be required to irrigate any areas or portions of the Property not indicated on the Irrigation Map.

The County and BC Utilities shall mutually agree on a spraying schedule for the Property, in compliance with regulatory requirements and obligations, so that the use of the Property for a sprayfield is consistent with its use for recreational purposes.

The County and BC Utilities shall establish a written protocol for shutting off the spray irrigation system in the event of a line break or other emergency.

BC Utilities shall be responsible for the construction, ownership, maintenance and operation of the irrigation system on the Property, and shall repair damages thereto. If such repairs are necessary because of the negligence, gross negligence, or intentional acts of the County, its employees, agents, or invitees, and because of any acts or events whatsoever insured by the County or damage occurring during County construction at or maintenance of the park, BC Utilities shall be indemnified and reimbursed for the cost of repairs. The County shall not be liable for incidental or consequential damages except and to the extent such damages are insured by the County. BC Utilities shall be listed as an additional insured party on any County policy insuring the Site or activities thereon.

In the event there is not sufficient reclaimed water (as hereinafter defined) available to irrigate the fields designated on the Irrigation Map, the irrigation system shall be connected to the County water system; and NNP-Briar Chapel shall pay the County for the water used to irrigate the fields until the earlier to occur of (i) the date of the commencement of operation of the County Middle School currently being constructed near the Land, or (ii) December 31, 2011. Sufficient reclaimed water shall mean approximately one (1) inch of water per week on the fields during the

months of April through October, including rainfall. In no event shall NNP-Briar Chapel have any payment obligations to the County for water used to irrigate fields after December 31, 2011.

Thereafter, BC Utilities, NNP-Briar Chapel, and the County shall agree upon a mutually acceptable priority schedule for irrigation, pursuant to which BC Utilities shall use good faith efforts, consistent with its operating and regulatory permits and requirements, to provide sufficient reclaimed water, as available, to irrigate the constructed fields on the Site. BC Utilities and NNP-Briar Chapel shall take care not to overwater the fields and shall irrigate the same consistent with its NC DWQ non-discharge permit and approved Operating and Maintenance Manual.

The rights and responsibilities of BC Utilities may be transferred and assigned subject to the approval of the North Carolina Utilities Commission. The County will be notified of any requested transfer in sufficient time to be allowed opportunity to participate in any Utilities Commission proceeding regarding any sale or transfer of BC Utilities.

6. **Additional Obligations of the County**. The County shall use the Property for recreational purposes (the "Intended Use") and upon acceptance of the Deed conveying to the County title to the Property, the County shall assume all rights, duties and obligations incident to ownership of the Property, and shall at the Closing release NNP-Briar Chapel from any claims regarding the Property or the condition of any portion of the Property as of the date of such conveyance. The County shall maintain, in accordance with its stated County policies, all portions of the Property, including the Completed Improvements (subject to the warranty provided in Paragraph 4(a)), except for certain maintenance obligations of BC Utilities as set forth in Paragraph 5(b) above,. The County shall carry general liability and property damage insurance covering the Property for such purposes, including the roads, entrance driveway and creek crossing, in accordance with County maintenance and insurance standards. The County shall convey all easements and/or rights of way, as may be required by NCDOT, necessary for the widening of Andrew Store Road, including Parcel 3 as shown on the Boundary Survey provided pursuant to Section 11 of this Agreement.

7. **Access to Property**. Upon the execution hereof and during the period beginning on the Execution Date and ending thirty (30) days thereafter (the "Examination Period"), the County and its agents shall have the right to enter the Property and to conduct, at its expense, such investigations, inspections, and tests as the County may deem necessary or appropriate to determine whether the Property is suitable for the Intended Use.

8. **Conditions Precedent**. The County's obligations under this Agreement are subject to the following conditions precedent, the failure of any one or more of which will entitle the County, at its option, to terminate this Agreement, upon notice to NNP-Briar Chapel:

(a) Title to Property shall be delivered at closing by limited warranty deed and be fee simple marketable title, free and clear of all encumbrances other than the lien of ad valorem property taxes for the year of the closing, the Permitted Encumbrances,

utility easements of record, and such other encumbrances as may have been waived in writing by the County prior to the closing;

(b) Upon the execution here of, the County shall have the right to conduct, at its sole cost and expense, such examinations, investigations, inspections, and tests with respect to the Property as the County may deem necessary or appropriate and the County shall have determined in its discretion that the conditions existing at the Property are acceptable to the County. NNP-Briar Chapel hereby agrees to allow the County and the County's agents access to the Property at reasonable times for the purpose of conducting such investigations, tests, and inspections. Prior to such access and entry, the County shall provide to NNP-Briar Chapel a certificate or other proof of insurance, satisfactory to NNP-Briar Chapel, providing coverage of such allowed activities during the Examination Period. The County assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights hereunder and agrees to indemnify and hold NNP-Briar Chapel harmless from any damages resulting therefrom. This indemnification obligation of the County shall survive the Closing or earlier termination of this Agreement. The County shall have from to the Execution Date through the end of the Examination Period to perform the above inspections, examinations and test. **IF THE COUNTY CHOOSES NOT TO CLOSE ON THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO NNP-BRIAR CHAPEL THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, OR WITHIN TEN (10) DAYS THEREAFTER, THEN THIS AGREEMENT SHALL TERMINATE, AND NEITHER PARTY SHALL HAVE ANY OBLIGATION TO THE OTHER PARTY HEREUNDER.** Notwithstanding the foregoing, the County acknowledges that the property conveyance that is the subject of this Agreement is contemplated by both Parties to satisfy NNP-Briar Chapel's obligation to convey suitable recreational facilities pursuant to condition 14(b) of its Conditional Use Permit and that the County intends, as of the date of execution of this Agreement, and subject to its rights hereunder, to accept such conveyance in satisfaction thereof.

(c) All improvements on the Property shall be in the same condition at Closing as on the date of this Agreement, reasonable wear and tear excepted; and

(d) The County shall determine in its discretion that the Property is in all other respects suitable for its Intended Use.

9. **Representations of NNP-Briar Chapel**. NNP-Briar Chapel represents to the County (which representations and warranties shall be true as of the date hereof and as of the date of Closing) that:

(a) NNP-Briar Chapel is the owner of fee simple title to the Property and has full right, power and authority to enter into this Agreement and to convey the Property in accordance with the terms and conditions hereof;

(b) The Property has access to a public right-of-way;

(c) To the best of NNP-Briar Chapel's knowledge there are no assessments outstanding against the Property and no improvements are contemplated which would result in assessments against the Property;

(d) NNP-Briar Chapel represents and warrants that NNP-Briar Chapel has provided to the County an environmental assessment report of the Property, prepared by S&ME, Inc. and dated March 21 2002, and that this report sets forth information regarding the presence or disposal on the Property of hazardous or toxic waste or substances. Other than what is stated in the assessment report, NNP-Briar Chapel has no actual knowledge of the presence or disposal on the Property of hazardous or toxic waste or substances since the date of that report.

(e) All natural areas and improvements on the Property shall be in substantially the same condition at Closing as on the date of this Agreement.

(f) To NNP-Briar Chapel's actual knowledge, (i) NNP-Briar Chapel has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property: (ii) the performance of this Agreement will not result in the breach of, constitute any default under, or result in the imposition of any lien or encumbrance upon the Property, and NNP-Briar Chapel is not aware of any facts which might result in any such action, suit or other proceeding.

10. **Title Policy**. NNP-Briar Chapel agrees to cause to be issued to the County within thirty (30) days after the Execution Date, an Owner's Title Policy Commitment, issued by a title insurance company reasonably acceptable to the County, dated after the date hereof (herein called the "Commitment"), together with complete and legible copies of all exceptions set forth therein, showing good and marketable title to the Property (including any and all easement rights owned by NNP-Briar Chapel relating to the Property) vested in NNP-Briar Chapel, free and clear of all liens (except Permitted Encumbrances and liens to be canceled or released at Closing), restrictions, claims, easements, rights-of-way, encroachments, reservations, or other matters or encumbrances, except any such restrictions, encumbrances, etc. acceptable to the County in its sole discretion, which shall not be considered to be title defects.

If any objection is raised by the County within thirty (30) days after receipt of the Commitment, or any matter indicated thereby, NNP-Briar Chapel shall use its best efforts to cure and satisfy same. NNP-Briar Chapel shall have thirty (30) days from the date of receipt by NNP-Briar Chapel or its attorney of the objections of the County in which to use its good faith, reasonable efforts to satisfy any requirements described therein or to cure any objections raised by the County, so long as such cure can be accomplished at no cost or expense.

If NNP-Briar Chapel shall fail or be unable to satisfy such requirements or to cure such objections after using reasonable efforts to do so, as aforesaid, within such thirty (30) day period, the County may (i) to waive said requirements or objections and close this transaction subject to such requirements or objections, or (ii) to terminate this Agreement, in which latter event neither party shall have any further obligations hereunder.

At the Closing, NNP-Briar Chapel shall cause an ALTA Owner's Title Policy to be issued to the County in the amount of $1,000,000 for the Property, issued through the Title Company insuring County's title to the Property including any and all easement rights owned by NNP-Briar Chapel relating to the Property to be good and marketable, subject only to the Permitted Encumbrances.

The County shall pay the insurance premium for the Title Policy.

11. Survey. NNP-Briar Chapel agrees to furnish the County within twenty (20) days after the Execution Date, at NNP-Briar Chapel's expense, a current boundary survey ("Survey") of the Property reasonably acceptable to the County and to the Title Company.

12. Risk of Loss. The risk of loss of the Property and any improvements thereon, prior to Closing is on NNP-Briar Chapel.

13. Punch List Items. NNP-Briar Chapel shall have completed prior to the Closing and to the reasonable satisfaction of the County the punch list items on Exhibit F.

14. Survival of Representations and Warranties. In addition to the construction obligations and warranties contained in Paragraph 4 and Paragraph 5, all other representations, warranties, covenants and agreements made by parties hereto shall survive the Closing and delivery of the deed. NNP-Briar Chapel shall, at or within six (6) months after the closing, and without further consideration, execute, acknowledge and deliver to the County such other documents and instructions (in addition to the Post Closing Deliveries) and take such other action as the County may reasonably request or as may be necessary to more effectively transfer to the County the Property described herein in accordance with this Agreement.

15. Permitted Encumbrances. The County agrees that it has approved and has agreed to take title to the Property subject to the following permitted encumbrances (collectively, the "Permitted Encumbrances"):

(a) All future environmental and zoning laws, ordinances, resolutions, orders and regulations of all municipal, county, state, or federal governments having jurisdiction over the Property and any use thereof, including any wetland mitigation or other requirements that may arise from future improvements constructed by the County on the Land.

(b) All liens resulting from the performance of any tests, inspections, work, or activities on the Property by the County, its agents, employees, surveyors or contractors.

(c) Any and all utility easements and rights-of-way affecting the Property disclosed in the Title commitment and accepted by the County.

(d) Any and all public road and/or rights of way affecting the Property, including temporary easements for driveway and road improvements construction as set forth in Section 4(a) above.

(e) Rights of others in and to the continued uninterrupted flow of any creeks or streams crossing the Property.

(f) Irrigation and utility easements in favor of BC Utilities consistent with Paragraphs 5(a) and 5(b) above and Exhibit C.

Collectively, the "Permitted Encumbrances".

16. **Notices.** Any notice required or permitted to be given hereunder shall be deemed to be given when (a) hand delivered; (b) three (3) business days from the date deposited in the U.S. Mail and sent certified mail, return receipt requested; or (c) one (1) business day after pickup by Federal Express, or similar overnight express service under a next day guaranteed delivery service, in either case addressed to the parties at their respective addresses referenced below:

If to NNP-Briar Chapel:
16 Windy Knoll Circle
Chapel Hill, North Carolina 27516
Phone: 919-951-0700
Attention: Mr. Keith Hurand

With a copy to:

Newland Communities, LLC
9820 Town Centre Drive
San Diego, CA 92121
Attention: Legal Services

If to the County:
Chatham County
Post Office Box 1809
Pittsboro, North Carolina 27312
Phone: (919) 542-8201
Attention: County Manager

If to BC Utilities:
16 Windy Knoll Circle
Chapel Hill, North Carolina 27516
Phone: 919-951-0700
Attention: Doug Hageman

or in each case to such other address as the parties may from time to time designate by giving notice in writing to the other parties. Telephone numbers are for informational purposes only. Effective notice will be deemed given only as provided above.

17. Closing. The Closing shall occur within thirty (30) days of the satisfaction of all of the Conditions Precedent set forth above and the abandonment of certain portions of the former Highway 15-501 right-of-way, as being currently considered by the County,

whichever is later, at the offices of the Chatham County Attorney located in Pittsboro, North Carolina.

(a) **NNP-Briar Chapel's Deliveries**. At the Closing, NNP-Briar Chapel shall deliver the following original documents, each executed and, if required, acknowledged:

(i) A limited warranty deed to the Property in favor of the County, subject to the Permitted Encumbrances and other matters, if any, subsequently approved in writing by the County or the County's attorney; and

(ii) Owner's Title Policy as provided in Paragraph 10 hereof.

(iii) A closing statement.

(b) **The County's Deliveries.** At the Closing, the County shall pay NNP-Briar Chapel One Dollar ($1.00) and shall deliver the following original documents, each executed and, if required, acknowledged:

(i) A closing statement;

(ii) A construction easement in favor of NNP-Briar Chapel, and utility and irrigation easements in favor of BC Utilities, as set forth in this Agreement; and

(iii) Such other certificates, documents, statements or agreements as may be reasonably requested by NNP-Briar Chapel or its counsel to consummate the Closing, including evidence of insurance required hereunder.

(iv) Evidence of payment of the premium for the Title Insurance Policy described in Section 10 herein.

(c) **Possession.** The County shall be entitled to possession of the Property upon conclusion of the Closing.

(d) **Ad Valorem Taxes**. All ad valorem taxes, assessments, and other governmental charges or impositions due on the Property for any prior years shall be paid by NNP-Briar Chapel. Ad valorem taxes, assessments, and other governmental charges or impositions on the Property for the year of the Closing shall be prorated between NNP-Briar Chapel and the County as of the date of closing (on a calendar year basis).

(e) **Post-Closing Deliveries.** Following completion of the Construction Obligations listed in Paragraph 4 above, NNP-Briar Chapel shall deliver to the County the following original documents, each executed and, if required, acknowledged:

(i) As-built drawings for all roads, sidewalks, utilities, and other facilities constructed on the Site; and

(ii) Certification by a professional engineer that any and all storm water devices on the Land were constructed pursuant to approved plans and in compliance with all applicable local and state laws, regulations, and requirements.

18. Miscellaneous.

(a) **Entire Agreement**. This Agreement, together with the Exhibits attached hereto, all of which are incorporated by reference, is the entire agreement between the parties with respect to the subject matter hereof, and no alteration, modification, or interpretation hereof shall be binding unless in writing and signed by both parties. No party shall have obligations to any other party hereto regarding the Land except as set forth in writing in this Agreement.

(b) **Severability**. If any provision of the Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

(c) **Applicable Law**. This Agreement shall be construed and enforced in accordance with the laws and judicial decisions of the State of North Carolina.

(d) **Successors Bound**. This Agreement shall be binding upon and inure to the benefit of the County, NNP-Briar Chapel, and BC Utilities and their successors and permitted assigns.

(e) **Breach**. Should either party be in material breach of or material default under or otherwise fail materially to comply with any of the terms of this Agreement, the complying party shall promptly notify the breaching party in writing of any alleged breach or default upon obtaining knowledge thereof and provide the breaching party at least ten (10) days within which to cure the alleged breach.

(f) **Captions**. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of it provisions.

(g) **Attorneys' Fees.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, to the extent allowed by law. The phrase "prevailing party" shall mean the party who receives substantially the relief desired, whether by dismissal, summary judgment, judgment, settlement, or otherwise.

(h) **Time of Essence.** Time is of the essence in this Agreement.

(i) **Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which as so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

(j) **Tax Protest.** If, as a result of any tax protest or otherwise, any refund or reduction of any real property or other tax or assessment relating to the Property during the period which NNP-Briar Chapel is the owner thereof occurs, NNP-Briar Chapel shall be entitled to receive or retain such refund or the benefit of such reduction, less equitable prorated costs of collection.

(k) **Review by Counsel**. The parties acknowledge that each party and its counsel have reviewed and approved this Agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

(l) **Execution Date**. The execution date of this Agreement is _____ (the "Execution Date").

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the County, NNP-Briar Chapel and BC Utilities, by authority duly given, have executed this Agreement, intending that it be an instrument executed under seal, on the dates set forth below.

PURCHASER:
CHATHAM COUNTY

By:_____
Name:_____
Title: _____
Date:_____

ATTEST

By: _____
Title: _____

[AFFIX OFFICIAL SEAL]

SELLER:
NNP-BRIAR CHAPEL, LLC

By:_____
Name:_____
Title: _____
Date:_____

ATTEST

By: _____
Title: _____

[AFFIX CORPORATE SEAL]

UTILITIES PROVIDER:
BRIAR CHAPEL UTILITIES, LLC

By:_____
Name:_____
Title: _____
Date:_____

ATTEST

By: _____
Title: _____

[AFFIX CORPORATE SEAL]

List of Exhibits:

Exhibit A – Master Plan	P.
Exhibit B – Site Description	P.
Exhibit C – Entrance Road and Sidewalk Bid and Drawing	P.
Exhibit D – Irrigation Map	P.
Exhibit E – Appearance Committee Recommendations	P.
Exhibit F – Punch List Items	P.

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