

STATE OF NORTH CAROLINA
COUNTY OF CHATHAM

**PERMANENT TURN LANE RIGHT OF WAY AND TEMPORARY
CONSTRUCTION EASEMENT AGREEMENT**

This PERMANENT TURN LANE RIGHT OF WAY AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (“Easement Agreement”) is made and entered into the ____ day of _____, 2018, by and between COUNTY OF CHATHAM, P.O. Box 1809, Pittsboro, NC 27312 (the “Grantor”) and NNP-BRIAR CHAPEL, LLC, 1342 Briar Chapel Parkway, Chapel Hill, NC 27516 (“Grantee”). The Grantor and the Grantee are sometimes collectively referred to herein as the “Parties.”

WITNESSETH:

WHEREAS, the County of Chatham owns all of that certain tract or parcel of land, referred to as Chatham County tax parcel number 88014, approximately 2.94 acres in size and located in Baldwin Township, Chatham County, North Carolina, and being more particularly described as follows:

ALL of that certain tract or parcel of land containing 2.94 acres, more or less, according to plat entitled, “Briar Chapel - Map 24 Property of Cameron Properties, Ltd. And Five Star Group LLC” prepared by The John R. McAdams Company, Inc., dated September May 20, 2009 and recorded in Plat Slide 2009-216, Chatham County Registry, reference to which is hereby made for a more particular description (the “Water Tower Tract”);

WHEREAS, Grantee previously donated and conveyed the Property to the Grantor by Special Warranty Deed dated November 16, 2009 and recorded at Book 1491, Page 546, Chatham County Registry;

WHEREAS, Grantee is the developer of the Briar Chapel Compact Community which adjoins the Property;

WHEREAS, Grantee is in the process of initiating roadway safety improvements to Manns Chapel Road at or near the intersection of Great Ridge Parkway and Manns Chapel Road which intersection will serve as an entryway and exit to and from the Briar Chapel Compact Community;

WHEREAS, the roadway safety improvements require that a right turn lane and associated shoulder (the “Right Turn Lane”) be installed to serve eastbound traffic on Manns Chapel Road entering Briar Chapel on Great Ridge Parkway;

WHEREAS, in order to construct the Right Turn Lane, it is necessary for a portion of the Right Turn Lane to cross a portion of the Property and, in order to accommodate the same, a temporary construction easement in favor of Grantee will be necessary;

WHEREAS, approximately .036 acres of the Property is needed to accommodate the Right Turn Lane permanent right of way, as depicted on the survey attached hereto as EXHIBIT A (the "Easement Area");

WHEREAS, approximately .048 acres (.036 for the right of way and .012 for the temporary construction easement) is needed to serve as a temporary construction easement area in order for Grantee to install the Right Turn Lane, as depicted on EXHIBIT A (the "Temporary Construction Easement Area");

WHEREAS, in addition to the temporary construction easement, the Grantor will agree to dedicate the Easement Area as a public right of way on a dedication plat to be recorded;

WHEREAS, the Grantor and Grantee desire for Grantee, its successors, assigns, agents, mortgagees, licensees and invitees to have a temporary construction easement for (i) access, ingress, egress and regress over the Temporary Construction Easement Area, as herein defined; and (ii) construction of the Right Turn Lane depicted on EXHIBIT A attached hereto;

NOW, THEREFORE, the Grantor, for and in consideration of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby bargain, sell and convey, and by these presents does hereby give, grant, bargain, sell and convey to Grantee, its successors and assigns, a non-exclusive, temporary construction easement and right-of-way over the Temporary Construction Easement Area, as defined above, for the purpose of allowing Grantee and its successors, assigns, mortgagees, licensees and invitees: (i) access, ingress, egress and regress across, over, above and below the Temporary Construction Easement Area; (ii) to construct the Right Turn Lane depicted on EXHIBIT A attached hereto. This easement shall automatically expire three hundred sixty five (365) days after the date of execution hereof, unless extended with the written consent of Grantor.

TO HAVE AND TO HOLD said temporary easement to Grantee and its heirs, successors and assigns. This easement shall be appurtenant to and run with the title to Grantee's Tract. Grantee's easement rights set forth herein shall also inure to the benefit of Grantee's successors and assigns.

In addition to the temporary easement granted herein, the Parties agree as follows:

1. During the term of the temporary construction easement, Grantee agrees to construct and the Grantor authorizes Grantee to construct the Right Turn Lane generally as indicated on EXHIBIT A hereto;
2. The Grantor agrees to permanently dedicate the Easement Area (the .036 acres +/- of new, permanent right of way) to the public as permanent right of way by plat dedication, at no expense to Grantor. After construction of Right Turn Lane and recordation of the plat dedicating the Easement Area to the public, the Grantor agrees that the Right Turn Lane may be used by the public, including Grantee, its successors and assigns.
3. General Provisions.

(a) Applicable Law. This Easement Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

(b) Entire Agreement. This Easement Agreement contains the entire understanding and agreement by and between the Parties, and all prior or contemporaneous oral or written agreements regarding the same are merged herein.

(c) Binding Effect. This Easement Agreement shall be binding upon and shall inure to the benefit of the Parties, and their respective heirs, successors and assigns.

(d) Severability. If any term or provision, or any portion thereof, of this Easement Agreement, or the application thereof to any person or circumstances shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Easement Agreement, or the application of such term or provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Easement Agreement shall be valid and be enforced to the fullest extent permitted by law.

(e) Captions and Headings. The captions and headings throughout this Easement Agreement are for convenience and reference only and the words set forth therein shall in no way be held to define or add to the interpretation, construction or meaning of any provision of this Easement Agreement.

(f) No Waiver. Failure of any Party to insist upon compliance of any provision of this Easement Agreement shall not constitute a waiver of the rights of such Party to subsequently insist upon compliance with that provision or any other provision of this Easement Agreement, nor in any way to affect the validity of all or any part of this Easement Agreement.

(g) Amendment. No amendment to this Easement Agreement shall be effective unless made in a writing signed by the Parties, or their respective successors and assigns, and recorded on the Chatham County Registry.

(h) Indemnity. To the fullest extent permitted by law Grantee shall at its sole cost and expense, indemnify, defend, and hold harmless the Grantor and its agents, representatives, and employees (collectively, "Grantor Parties") from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of and/or resulting from Grantee's use of the easement, provided that any such claim, action, judgment, cost, liability, penalty, damage, loss, or expense is caused by any negligent act, error, or omission of Grantee, any contractor, or subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be legally liable; provided, however, Grantee shall not be responsible or liable for any negligent or willful acts of the Grantor Parties. The above obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person. The Parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N.C. Gen. Stat. § 6-21.2. The Parties also specifically acknowledge that the Grantor is a public body and it is the intent of the Parties that the Grantor not incur any expenses when Grantee is solely responsible for the claims.

[The remainder of this page is intentionally left blank; signatures begin on the following page.]

IN WITNESS WHEREOF, GRANTOR and GRANTEE have hereunto set their hands and seals, as of the date first above written.

_____(SEAL)
COUNTY OF CHATHAM
By: _____
Its: _____

_____(SEAL)
NNP-BRIAR CHAPEL, LLC
By: _____
Its: _____

CHATHAM COUNTY, NORTH CAROLINA

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Date: _____

Notary Public

Print Name: _____

[Official Seal]

My commission expires: _____

CHATHAM COUNTY, NORTH CAROLINA

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Date: _____

Notary Public

Print Name: _____

[Official Seal]

My commission expires: _____

EXHIBIT A

“Right Turn Lane and Temporary Construction Easement Area”