NORTH CAROLINA

CHATHAM COUNTY

THIS PAYMENT-IN-LIEU CONTRACT (this "Agreement"), made and entered into this 16th day of November, 2012, by and between Chatham County, a body politic and corporate of the State of North Carolina (the "County") and NNP-Briar Chapel, LLC, a Delaware limited liability company ("NNP-Briar Chapel")(either the County or NNP-Briar Chapel may be referred to herein as a "Party" and collectively as the "Parties");

W I T N E S S E T H:

WHEREAS, in 2004 the County, by and through its Board of Commissioners, adopted a Compact Communities Ordinance (the "Ordinance") with an effective date of April 19, 2004; and

WHEREAS, Section 12.3 entitled, "Housing", of the Ordinance provided options for developers in compact communities to address the housing needs of low and moderate income households; and

WHEREAS, a conditional use permit was issued to NNP-Briar Chapel for the Briar Chapel Compact Community ("Briar Chapel") under the Ordinance on or about the 21st day of March, 2005, which contained therein a requirement that NNP-Briar Chapel contribute sixty (60) lots to the County for ultimate sale to persons of moderate income (the "Moderate Income Lots"); and

WHEREAS, the said conditional use permit contained therein a requirement that, in addition to contributing lots to the County, NNP-Briar Chapel would contribute a total of $1,100,000 in cash on a prorated basis upon final subdivision plat approval of each phase of the Briar Chapel (the "Cash Contribution") development to be used by the County for the purpose of ameliorating the housing needs of Chatham County citizens; and

WHEREAS, since the issuance of the conditional use permit NNP-Briar Chapel has contributed (by plat designation or conveyance) nineteen (19) of the Moderate Income Lots to the County to be sold to persons of moderate income; and

WHEREAS, since the issuance of the conditional use permit NNP-Briar Chapel has timely contributed $352,236.59 towards fulfillment of the Cash Contribution; and

WHEREAS, during the seven (7) years since the issuance of the conditional use permit only one (1) home for moderate income persons has been constructed in Briar Chapel; and

WHEREAS, on or about the 16th day of July, 2012 the County, by and through its Board of Commissioners, amended the Ordinance to provide an option for developers of compact communities, such as Briar Chapel, to meet the housing needs of low and moderate income persons in the County by making a cash payment in lieu of contributing lots to the County, and thereby avoid the existing situation in Briar Chapel with vacant, undeveloped lots remaining within developed neighborhoods; and

WHEREAS, pursuant to the payment-in-lieu option contained in the Ordinance, as amended, the County and a compact community developer may agree on a payment to be made by the developer to the County in lieu of contributing lots; and

WHEREAS, the County has determined that the housing needs of low and moderate income persons and families in Chatham County will be better addressed by a cash payment as opposed to being limited to the lots and dwelling units in a single development resulting from the Moderate Income Lot contribution requirement; and

WHEREAS, a lump sum payment in lieu of the Moderate Income Lot contribution will provide the County flexibility both in locations and methods of addressing affordable housing needs in Chatham County; and

WHEREAS, the County and NNP-Briar Chapel have negotiated a lump sum payment in lieu of the Moderate Income Lot contribution requirement to be made to the County which the County believes will be a more effective means of addressing the needs of low and moderate income persons and families in Chatham County; and

WHEREAS, the County has determined that a one time lump sum payment of $900,000 is a better option than receiving payment over time for the affordable housing lots as the phases of Briar Chapel are developed;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises and respective benefits flowing to the County and NNP-Briar Chapel, the Parties agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated in this Agreement by this reference and shall constitute a part hereof.

2. Purpose. This Agreement deals exclusively with the Moderate Income Lots requirement by substituting a fee in lieu thereof. The Parties have agreed to use the payment in lieu of lot conveyance option provided in Section 12.3 of the

Ordinance as amended to address the housing needs of low and moderate income persons and families in Chatham County. The purpose of this Agreement is to set forth the formula mutually agreeable to the Parties for such payment in lieu option.

3. Lump Sum Payment to the County. Within thirty (30) days of execution of this Agreement, and after all public hearing and procedural requirements of the Ordinance have been complied with, NNP-Briar Chapel shall pay the County the sum of $900,000 in immediately available funds. The County shall use the funds for affordable housing purposes as provided in the Ordinance. This Agreement is entirely contingent upon execution occurring prior to December 1, 2012 so that the lump sum payment can be made prior to December 31, 2012.

4. Conveyed Affordable Housing Lots. On or about the 10th day of May, 2010, pursuant to the moderately priced dwelling provisions of Section 12.3 of the Ordinance, NNP-Briar Chapel conveyed Lot 289, Phase 4, Section 3, Briar Chapel (Lot 289) and Lots 52 and 53, Phases 3 and 4, Section 1, Briar Chapel (Lots 52 and 53) to the County. The County, on or about the 1st day of June, 2010, conveyed the three (3) lots to Empowerment, Inc., a North Carolina non-profit corporation, one of whose objectives is developing affordable housing ("Empowerment"). The conveyance to Empowerment was made subject to a development agreement under the terms of which Empowerment agreed to construct homes on the three (3) lots for sale to persons of low and moderate income. Empowerment subsequently constructed a home on Lot 289. Lots 52

and 53 were never developed or improved, and on or about the 1st day of August, 2012, Lots 52 and 53 were conveyed back to the County, and are currently owned by the County. Simultaneously with delivery of the lump sum payment provided for in Paragraph 3 above the County shall reconvey Lots 52 and 53 to NNP-Briar Chapel. The lots and title to the lots shall be conveyed in their current "AS IS", "WHERE IS", condition, subject to such taxes, homeowners' fees, assessments, and other charges as may be due thereon, except that the County shall warrant that it has not placed any liens (except the lien for taxes) on said lots and except that the lots will be free and clear of any existing restrictions, requirements or covenants relating to use of the lots for affordable housing.. In addition, the County warrants that NNP-Briar Chapel receives title to Lots 52 and 53 free and clear of any obligations to, or rights in favor of, Empowerment, Inc. and does hereby agree to indemnify, defend and hold harmless NNP-Briar Chapel from any claim by Empowerment, Inc. against Briar Chapel relating in any way to Lots 52 and 53.

5. Platted Affordable Housing Lots. In addition to the three (3) lots referred to in Paragraph 4 above, two (2) of which will be reconveyed to NNP-Briar Chapel, there are currently sixteen (16) additional vacant lots in the Briar Chapel development which have been "final platted" with a notation on each such lot that it is reserved for affordable housing (the 18 remaining, unimproved final platted affordable housing lots may sometimes hereinafter be referred to as "Platted Affordable Housing Lots"). The Platted Affordable Housing Lots continue to be subject to the aforesaid affordable housing designation on the recorded final plat.

The eighteen (18) Platted Affordable Housing Lots are listed on Appendix 1, attached hereto and incorporated herein by reference. The County agrees that from and after the receipt of the lump sum payment provided in Paragraph 3 above the Platted Affordable Housing Lots shall no longer be subject to the affordable housing designation and that such lots shall belong to NNP-Briar Chapel free and clear of any affordable housing restrictions or requirements, but subject to all other requirements, obligations, fees, taxes and charges that all other lots in the Briar Chapel subdivision are subject to. The County will cooperate with NNP-Briar Chapel as reasonably requested by NNP-Briar Chapel to remove the affordable housing designation from said lots. Specifically, but without limitation, the County agrees that NNP-Briar Chapel may create amended plat(s) for the Platted Affordable Housing Lots and that, said plats being merely for the purpose of removing the affordable housing designation, shall be subject only to administrative approval from the Planning Department and not to subdivision review by the Planning Board and Board of Commissioners.

6. County's Acknowledgment. The County acknowledges that the lump sum payment provided in Paragraph 3 will satisfy NNP-Briar Chapel's conditional use permit and Ordinance obligation, the Moderate Income Lot contribution requirement, to contribute 2.5% of the approved lots in the Briar Chapel subdivision for ultimate sale as directed by the County to low and moderate income persons. From and after making the lump sum payment provided in Paragraph 3 above NNP-Briar Chapel shall have no further obligation to contribute any lots to the County for use as affordable housing lots. NNP-Briar

Chapel's obligation to contribute a total of $1,100,000, the Cash Contribution, (a portion of which has already been paid) to the County for the purpose of ameliorating the housing needs of Chatham County citizens is a separate requirement from the Moderate Income Lot contribution requirement, and is unaffected by this Agreement or the lump sum payment provided for herein, and such Cash Contribution obligation is hereby reaffirmed and shall remain in full force and effect notwithstanding anything to the contrary contained herein, it being understood and agreed by and between the Parties that such payments to the County shall continue as they have in the past.

7. Conditional Use Permit. As provided by the Ordinance, as amended, the conditional use permit issued to NNP-Briar Chapel on or about the 21st day of March 2005, as amended on or about the 21st day of May, 2012, otherwise shall remain in full force and effect notwithstanding the Parties' decision to utilize the pay in lieu option provided by the amendment to the Ordinance adopted subsequent to the issuance of the conditional use permit and its 2012 amendment.

8. Notices. All notices, payments, or other correspondence given or made pursuant to this Agreement shall be in writing, delivered in person, mailed by certified mail, return receipt requested, or delivery by a recognized overnight courier, postage or fees prepaid, addressed to a Party at the address given below, and shall be deemed effective upon the date received, via personal delivery, certified mail, or overnight delivery. The Parties shall be responsible for notifying each other of any change of address. Mailing addresses for Parties are as follows:

If to the County:	Chatham County Attention: County Manager Post Office Box 1809 Pittsboro, North Carolina 27312
If to NNP-Briar Chapel:	NNP-Briar Chapel, LLC Attention: Lee Bowman 16 Windy Knoll Circle Chapel Hill, North Carolina 27516 and Newland Real Estate Group, LLC 9820 Town Centre Drive San Diego, CA 92121 Attention: Legal Services

9. Miscellaneous. This Agreement constitutes the entire agreement and understanding between the Parties and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements, and agreements heretofore entered into between the Parties with respect to the matters contained herein are merged in this Agreement. This Agreement may not be changed orally, but only by a written document signed by the Parties. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the Party against whom it is sought to be enforced. The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. NNP-Briar Chapel may assign this Agreement. The provisions of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina, and any action brought under or concerning this Agreement shall be

brought and maintained in the Superior Court of Chatham County, North Carolina. The headings contained in this Agreement are solely for the convenience of the Parties and do not constitute a part of this Agreement and shall not be used to construe or interpret any provisions hereof. This Agreement shall be considered for all purposes as having been prepared by the joint efforts of the Parties and shall not be construed against one Party or the other as a result of preparation, substitution, submission, or other event of negotiation This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument, and the Parties hereto may execute this Agreement by signing any such counterpart.

IN WITNESS WHEREOF, Chatham County and NNP-Briar Chapel, LLC have caused this Payment-In-Lieu Contract to be executed by their respective authorized representatives effective the day and year first above written.

CHATHAM COUNTY

By _____
Charlie Horne, County Manager

NNP-Briar Chapel, LLC

By _____
Asst Vice President, (Title)

2361304

APPENDIX 1

PLATTED AND UNIMPROVED AFFORDABLE HOUSING LOTS
IN BRIAR CHAPEL

	Lot Number	Phase	Section	Plat
1.	52	4	1	2007-430 to 436
2.	53	4	1	2007-430 to 436
3.	112	4	2	2007-464 to 469
4.	134	4	2	2007-464 to 469
5.	160	4	2	2011-49
6.	278	4	3	2007-519 to 525
7.	279	4	3	2007-519 to 525
8.	280	4	3	2007-519 to 525
9.	281	4	3	2007-519 to 525
10.	282	4	3	2007-519 to 525
11.	283	4	3	2007-519 to 525
12.	447	4	2	2011-49
13.	497	5	N	2011-135 to 140
14.	500	5	N	2011-135 to 140
15.	566	5	N	2011-135 to 140
16.	573	5	N	2011-135 to 140
17.	575	5	N	2011-135 to 140
18.	588	5	N	2011-135 to 140