

Instrument Prepared By: Kenneth L. Eagle, 2235 Gateway Access Point, Suite 201, Raleigh, NC 27607
(Utilizing form drafted by the Town Attorney for the Town of Pittsboro)

Brief Description for Index: Plat Slide 2015, Pages _____ through _____

Parcel Identifier: 7099; 83665; 80309; 80308; 83663; 60745; and part of 7101

Mail after Recording to: Town of Pittsboro
Attn: Town Engineer
P. O. Box 759
Pittsboro, N.C. 27312

**DECLARATION OF MAINTENANCE COVENANT AND GRANT OF PROTECTION
EASEMENTS FOR STORMWATER CONTROL FACILITIES**

Town of Pittsboro Case or File Number: SD 2015-02

Name of Development (as shown on recorded plat): Portion of Chatham Park Planned
Development District

Legal Name of Declarant: Chatham Development One Inc.

**STATE OF NORTH CAROLINA
COUNTY OF CHATHAM**

**DECLARATION OF MAINTENANCE COVENANT AND PROTECTION EASEMENTS
FOR STORMWATER CONTROL FACILITIES**

THIS DECLARATION OF MAINTENANCE COVENANT AND GRANT OF PROTECTION EASEMENTS FOR STORMWATER CONTROL FACILITIES (this "Maintenance Covenant") is established this _____ day of October, 2015, by Chatham Development One Inc., a North Carolina corporation, with a mailing address of 100 Matrix Drive, Box 8000, Cary, NC 27513 the "Declarant" (as defined herein), who is the owner of certain real property located in Chatham County, North Carolina, as described further in **Exhibit A** of this Maintenance Covenant (the "Property"), for the benefit of the Declarant, the Responsible Party (as defined herein), all successor Owners (as defined herein) of the Property, their successors, assigns, and heirs, and the Town of Pittsboro. (If the date above is blank, the effective date of this instrument shall be the date of its recordation in the county registry.)

RECITALS

WHEREAS, the Town of Pittsboro, under various state and federal laws, is required to regulate the maintenance of Stormwater Control Facilities (as defined herein) constructed to serve new development within the Town's planning jurisdiction to ensure that, following initial construction, the Stormwater Control Facilities are operated, maintained, and, to the extent necessary, repaired in accordance with applicable state and federal law; and

WHEREAS, the Town of Pittsboro may be subject to substantial regulatory and financial penalties from the State of North Carolina and the federal government if the above-referenced rules and regulations are not applied to new development occurring within the planning jurisdiction of the Town of Pittsboro; and

WHEREAS, the Town Board of the Town of Pittsboro has determined that, to maintain the Town of Pittsboro's compliance under applicable state and federal regulations, certain obligations are to be met by developers and subsequent owners of Stormwater Control Facilities constructed to benefit Owners of newly created Lots (as defined herein) in new developments; and

WHEREAS, Declarant, as Owner of the Property (which is part or all of the real property described in Book 1809, Page 167, Chatham County Registry), wishes to develop the Property in accordance with the rules, regulations, and laws of the Town of Pittsboro (including conditions of approval as shown in the aforesaid Town of Pittsboro Case Number) and the State of North Carolina; and

WHEREAS, Declarant intends to construct one or more Stormwater Control Facilities that will serve the Property and that will benefit more than one Lot within the Property (or any portion

thereof), thus subjecting the Property to this Maintenance Covenant pursuant to the requirements of Section 408 of the Stormwater Ordinance of the Town of Pittsboro.

WHEREAS, this Agreement has been procured in accordance with the requirements of N.C. General Statutes Chapter 143, Article 21, Part 1, N.C. General Statutes 160A-459, and Section 408 of the Town Stormwater Ordinance.

NOW THEREFORE, in order to comply with the requirements of Section 408) of the Stormwater Ordinance of the Town of Pittsboro, the Declarant hereby establishes this Maintenance Covenant in order to encumber, restrict, and obligate the Property and any successor Owners of the Property (or any portion thereof) to the terms, conditions, and obligations herein.

Article I

Definitions, Construction, and Amendment

1. Definitions. As used in this Maintenance Covenant, the following words and terms have the following definitions.

(a) "Association" is defined as the entity organized and operated under the laws of the State of North Carolina as the homeowners' or property owners' association for the Property (if applicable).

(b) "Town" or "Town of Pittsboro" is defined as the Town of Pittsboro, North Carolina, a North Carolina municipal corporation.

(c) "Town Approval" is defined as the written approval of the Town of Pittsboro, as given by the Director of Planning or his deputy on the applicable document or plat.

(d) "Code" is defined as the Pittsboro Town Code of Ordinances, including, but not limited to, the Stormwater Ordinance, as it may be amended from time to time, and includes all duly adopted regulations, rules, directives, and policies of the Town pursuant to or in furtherance of the Code.

(e) "Declarant" is defined as the Person identified as the Declarant hereinabove and its successors and assigns, and includes any Person who has the powers of a Declarant established in a Subsequent Document, and its successors, heirs, and assigns.

(f) "Development" is defined as the real property approved for development by the Town under the Town of Pittsboro Case or File Number shown on the first page of this Maintenance Covenant. The Property may be part or all of the real property that constitutes the Development.

(g) "Governmental Authority" (or "Governmental Authorities") is defined as the Town, the County (or Counties, if applicable) in which the Property is located, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Property or any part thereof, and all applicable departments and agencies of any of them, whichever is/are applicable.

(h) "Lot" or "Parcel" is defined as any portion of the Property, together with any improvements thereon, which are shown upon any recorded plat of any part or all of the Property, and which is not any of the following: dedicated street rights-of-way; or greenway, open space, or park lands owned in fee simple by the Town.

(i) "Maintain", "Maintenance", "Maintaining", or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

(j) "Maintenance Covenant" is defined as this document, together with all exhibits and amendments to this document.

(k) "Owner" is defined as the record Owner, whether one or more Persons, of fee simple title to any Lot, but excluding those having an interest in a Lot solely as security for the performance of an obligation or a tenant.

(l) "Person" is defined to include any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Authority (including the Town), or other entity.

(m) "Parcel" is defined as "Lot", above.

(n) "Property" (or "Properties") is defined as all of the real property which is subject to any part or all of the terms of this Maintenance Covenant, as described in **Exhibit A**, attached hereto, as it may be amended, and incorporated herein by reference.

(o) "Registry" is defined as the office of the Register of Deeds (or any successor office under applicable law) for the North Carolina County or Counties in which deeds, plats, easements, mortgages and deeds of trust for the Property are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Property is situated.

(p) "Responsible Party" is defined as an Association or a commercial Lot Owner that is responsible for Maintenance of the Stormwater Control Facilities following transfer of such responsibility from the Declarant to the Association or commercial Lot Owner by deed or easement. Until such point that the title to the Stormwater Control Facilities is transferred, by deed or easement, to an Association of commercial Lot Owner, the Responsible Party shall be the Declarant.

(q) "Stormwater Control Facilities" is defined as one or more of the following devices and measures, together with associated private drainage easements utilized for conveying stormwater (however identified on a plat or in a document) that serves the Property and which are located outside of public street rights-of-way and drainage easements accepted into public use by the Town, including, but not limited to, conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, dry detention basins, wetlands, permanently protected undisturbed open space areas (or similarly designated areas, such terms to be used interchangeably in this Maintenance Covenant), bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Property.

(q) “Stormwater Operations Maintenance Manual and Budget” or “Stormwater Operations and Maintenance Manual and Budget” is defined as that manual, however named, approved by the Town that documents the requirements for the Maintenance of the Stormwater Control Facilities and the projected annual costs for such Maintenance.

(r) “Subsequent Document” is defined as any document, map, or plat affecting or encumbering the Property or any portion thereof that is recorded in the Registry after this Maintenance Covenant is recorded in the Registry.

2. Applicability. The Property, this Maintenance Covenant and all provisions of Subsequent Documents and other separately recorded instruments applicable to the Property (or any portion thereof) are subject to the ordinances, regulations, and rules of the Town, and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Maintenance Covenant or in any Subsequent Document. It shall be the responsibility of the Responsible Party and each Owner of each portion of the Property to comply with all provisions of the Code applicable to such portion of the Property. No Subsequent Document may avoid, vary, negate, or waive the obligations and rights of the Declarant, any Owner, or the Responsible Party without amendment to this Maintenance Covenant (with Town Approval, as provided in Article I, Section 4) to allow such avoidance, variation, negation, or waiver.

3. Conflicts.

(a) The provisions of the Code control over any inconsistent provisions of this Maintenance Covenant or any Subsequent Document.

(b) As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Maintenance Covenant is deemed to be revised so as to conform to the provisions of the Code as they may exist from time to time and are applicable to the Property or any part thereof.

(c) The provisions of this Maintenance Covenant shall control over any inconsistent provisions of any Subsequent Documents unless this Maintenance Covenant is amended, with Town Approval as provided in Article I, Section 4 below, to allow subordination of this Maintenance Covenant to the Subsequent Document. To the extent that any Subsequent Document affecting the Property conflicts with the provisions of the Code or the General Statutes of the State of North Carolina, the conflicting provision shall be automatically cured to comply with the Code and the General Statutes of the State of North Carolina. To the extent that the requirements of the Code and the General Statutes of the State of North Carolina conflict, the more stringent provision shall prevail and apply.

(d) Notwithstanding any other provision of this Maintenance Covenant, any provision of this Maintenance Covenant or Subsequent Document that is more restrictive than an applicable provision of the Code is not an inconsistent provision of this Maintenance Covenant unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

(e) To the extent that definitions or provisions in a Subsequent Document are different than the definitions or provisions utilized in this Maintenance Covenant yet bear a similar meaning the provisions of this Maintenance Covenant shall apply as if the defined term or provision of this document was utilized. Specific exceptions to this provision may only be

achieved through amendment to this Maintenance Covenant as provided in Article I, Section 4.

(f) If additional Maintenance Covenants are recorded for the Development, those additional Maintenance Covenants shall have the priority of this Maintenance Covenant with respect to Subsequent Documents.

(g) Allocation of assessment obligations among Owners in any Subsequent Document does not constitute a conflict with this Maintenance Covenant. Provided, however, the rights of the Town in this Maintenance Covenant, including, without limitation, the rights of the Town to enforce liens and collect monies from Owners and any Association, shall not be impaired or adversely affected by any such allocation of assessment obligations in any Subsequent Document.

4. Amendment of Maintenance Covenant.

(a) Amendments to this Maintenance Covenant are valid from the time of recording in the Registry. Any amendment of this Maintenance Covenant must have prior Town Approval. Any amendment of this Maintenance Covenant that requires Town Approval is void *ab initio* if recorded without the required Town Approval. Any amendment to an exhibit attached and incorporated into this Maintenance Covenant will similarly require an amendment to this Maintenance Covenant.

(b) During the first ten (10) year period following the date of the recording of this Maintenance Covenant in the Registry, the Declarant may amend this Maintenance Covenant with Town Approval and without the consent or joinder of any other Person, so long as Declarant owns any portion of the Property.

(c) If the amendment provisions of Section 4(b), above, are no longer applicable to the Property, this Maintenance Covenant may be amended with the consent of two-thirds (2/3) of the Owners of Lots within the Property and with Town Approval.

Article II

Obligations of the Pittsboro Town Code for Stormwater Control Facilities and Maintenance

1. Construction of Stormwater Control Facilities. The Declarant shall be responsible for the construction of the Stormwater Control Facilities and the Declarant will be responsible for the Maintenance thereof in accordance with the Stormwater Operations and Maintenance Manual and Budget prior to conveying title of the Stormwater Control Facilities, their appurtenances, and vegetation to the Responsible Party by deed or easement. The Stormwater Control Facilities must be constructed in accordance with all applicable laws, ordinances, regulations, rules, and directives of Governmental Authorities, including, but not limited to, the Code, and the Stormwater Control Facilities must perform as designed.

2. Maintenance of Stormwater Control Facilities. Following conveyance to the Responsible Party by the Declarant, Stormwater Control Facilities shall be Maintained by the Responsible Party in accordance with the Stormwater Operations and Maintenance Manual and Budget. At all times, the Stormwater Control Facilities must comply with all applicable laws, ordinances, regulations, rules, and directives of Governmental Authorities, including, but not limited to, the Code, and the

Stormwater Control Facilities must perform as designed. The Stormwater Operations and Maintenance Manual and Budget must meet all applicable requirements of the Code.

3. Location of Stormwater Control Facilities. A description of the portions of the Property where the Stormwater Control Facilities are located, including all private drainage easements conveying stormwater over, under, across, through, and upon the Property to and from the Stormwater Control Facilities, is provided in **Exhibit B**, attached hereto and incorporated herein by reference.

4. Drainage Easement. The Declarant dedicates, establishes and declares to and for the benefit of each Lot within the Property (or any portion thereof):

(a) the perpetual, irrevocable and non-exclusive easement, right and privilege to discharge, transport, and store stormwater from any portion of the Property into, over, under, across, through and upon the Stormwater Control Facilities and private drainage easements as described in **Exhibit B**, and

(b) the perpetual, irrevocable and non-exclusive easement, right and privilege to use and Maintain Stormwater Control Facilities, including the right of access to and from the Stormwater Control Facilities, including private drainage easements and other portions of the Property as reasonably necessary to Maintain the Stormwater Control Facilities; and

5. Relocation of Drainage Easements.

(a) Private drainage easements situated on the Property may be relocated only by a written agreement signed by the Responsible Party that is responsible for Maintenance of the Stormwater Control Facilities associated with such private drainage easements and by the Owners of all portions of the Property on which the private drainage easement then is located, and by the Owners of all portions of the Property on which the private drainage easement is to be relocated. The consent of tenants, mortgagees, and beneficiaries and trustees under deeds of trust with respect to the affected portions of the Property shall not be required for the relocation to be effective. All relocations of a private drainage easement shall be accompanied with a letter sealed by a professional engineer licensed in the State of North Carolina stating that the relocated private drainage easement will not cause any adverse stormwater runoff unto the benefitted and/or adjoining properties.

(b) Notwithstanding anything herein to the contrary, no relocation of any private drainage easement shall be valid without prior Town Approval. Any relocation without the required Town Approval is void *ab initio*.

(c) Relocation of a private drainage easement is valid from the later of the time of either recording of the plat or other instrument of relocation in the Registry or such later date specified therein.

6. Stormwater Control Facilities Maintained by an Association.

(a) If an Association is responsible for the Maintenance of the Stormwater Control Facilities, then membership in the Association shall be mandatory for each Parcel served by the Stormwater Control Facilities and any successor Owner of the Parcel with membership being appurtenant to the Lot and running with ownership of the Lot. The Association shall have the power to levy assessments for the costs and expenses of Maintaining the Stormwater Control Facilities. All assessments required by this section that are levied against a Lot that remain unpaid shall become a lien on that Lot. (Calculation of the assessment charge shall be set forth in a subsequent recorded document.)

(b) Any Association that is the Responsible Party for the Maintenance of Stormwater Control Facilities shall be established in accordance with Chapters 47C or 47F of the North Carolina General Statutes (or successor statutes) and the Association declaration shall conform to this Maintenance Covenant and to Section 408 of the Stormwater Ordinance (or its successor provision). Compliance with these terms shall be through Subsequent Documents executed and recorded by the Owners of the Property at a later date.

(c) If an Association is responsible for Maintaining the Stormwater Control Facilities, the costs and expenses of Maintaining any Stormwater Control Facilities (including any costs of complying with the terms of this Maintenance Covenant) shall be common expenses of the Association and shall include, without limitation, all costs for insurance premiums associated with the Stormwater Control Facilities and any other costs listed in the operations and maintenance budget established in the Stormwater Operations and Maintenance Manual and Budget.

7. Stormwater Control Facilities Maintained by a Commercial Lot Owner.

(a) If a commercial Lot Owner is responsible for Maintenance of the Stormwater Control Facilities, said Owner is responsible for making all repairs and replacements of the Stormwater Control Facilities in accordance with the construction drawings approved by the Town and the Stormwater Operations and Maintenance Manual and Budget.

(b) Each Parcel served by the Stormwater Control Facility and any successive Owner of any Parcel shall be subject to an assessment charge levied by the designated responsible commercial Lot Owner. The assessment charge shall include, without limitation, the actual costs for Maintaining the Stormwater Control Facility, all costs for insurance premiums associated with the Stormwater Control Facility, and other costs listed in the Stormwater Operations and Maintenance Manual and Budget. Calculation of the assessment charge shall be set forth in a subsequent recorded document. Any assessment charge levied against a Lot and remaining unpaid for a period of thirty (30) days or longer after the payment due date shall be delinquent and shall constitute a default of this Maintenance Covenant entitling the Lot Owner responsible for Maintenance of the Stormwater Control Facilities to bring an action at law against the defaulting party plus interest charges, together with all costs and expenses of collection incurred, such as without limitation, court costs and reasonable attorney fees actually incurred. Each Parcel Owner served by the Stormwater Control Facility shall have the right to Maintain, repair, and replace the Stormwater Control

Facility if after forty-five (45) days written notice the commercial Lot Owner responsible for Maintenance, repair, and replacement fails to faithfully discharge its responsibility. The Parcel Owner doing the work shall have the same right as the designated commercial Lot Owner has to assess the other Lots served by the Stormwater Control Facility.

(c) At any time the commercial Lot Owner responsible for the Maintenance of Stormwater Control Facilities may assign its responsibilities and rights to a property owners association established in accordance with Chapters 47C or 47F of the North Carolina General Statutes or successor statutes, in which instance the Owners of the Parcels served by the Stormwater Control Facilities shall be members of the created property owners association.

8. Insurance. As part of the routine costs and expenses of Maintaining the Stormwater Control Facilities, the Responsible Party must procure and maintain liability insurance in an amount no less than \$1,000,000.00 for the protection of the Stormwater Control Facilities.

9. Penalties Associated with Failure to Maintain Stormwater Control Facilities. Operation and Maintenance of the Stormwater Control Facilities must comply with all relevant provisions of the Code. Failure to Maintain the Stormwater Control Facilities in accordance with the Stormwater Operations and Maintenance Manual and Budget and any applicable regulation of a Governmental Authority is a violation of the Code and may subject each Lot Owner and the Responsible Party to significant daily civil penalties and other enforcement actions by the Town of Pittsboro and/or other Governmental Authorities, including assessments.

10. Joint and Several Liability. Each Owner shall be jointly and severally responsible for Maintenance of the Stormwater Control Facilities, including payment of any unpaid *ad valorem* taxes, public assessments for improvements, and unsafe building and public nuisance abatement liens charged against the Stormwater Control Facilities and Lots benefited by those Stormwater Control Facilities, and including all interest charges thereon, together with the costs and expenses of collection incurred by themselves (or other collecting agent), including court costs and reasonable attorney's fees actually incurred. Each Owner has a right of contribution against all other Owners whose portions of the Property are served by the same Stormwater Control Facilities for payment of such costs and expenses to the extent that the Owner having such right of contribution pays more than such Owner's pro rata share thereof, such pro rata share being determined either by other assessment provisions for Maintenance of Stormwater Control Facilities established in Subsequent Documents or by dividing the acreage of such Owner's portion of the Property served by the Stormwater Control Facilities by the total acreage of the portion of the Property served by the same Stormwater Control Facilities when no maintenance assessments apply to the Property.

11. Permanently Protected Undisturbed Open Space Areas. Within any permanently protected undisturbed open space areas (and similarly designated areas) shown on any recorded plat of any portion of the Property, there must not be any land disturbing activity, any placement of impervious surfaces, any tree disturbing activity (as defined in the Code), any removal of vegetation, any new development or expansion thereof, or new use, construction, or encroachment without first obtaining a watercourse buffer permit from the Town.

Article III
Rights Granted to Town of Pittsboro

1. Action for Specific Performance. Recognizing the consequences to the Town of Pittsboro of non-compliance with the obligations of this Maintenance Covenant, Declarant hereby grants the Town of Pittsboro the right to seek, in any court of appropriate jurisdiction, judicial action for specific performance of any of the obligations established within this Maintenance Covenant. This right of the Town shall not limit any other remedies or enforcement options available to the Town under this Maintenance Covenant, the Code, or any other applicable law, including later adopted ordinances or statutes that may supplement or supersede the requirements stated herein.

2. Grant of Easements.

(a) Declarant hereby dedicates and Grants unto the Town a permanent, non-exclusive and irrevocable easement over the Lots, Stormwater Control Facilities, and private drainage easements for the purpose of permitting Town inspection and, if deemed necessary, as determined by the Town, in its sole discretion, for Maintenance and other work on the Stormwater Control Facilities (the "Protection Easement").

(b) Declarant hereby dedicates and grants to the Town a permanent, irrevocable, and nonexclusive right of ingress, egress, and regress over and across all public or private easements on the Property, including, but not limited to, private roads, for Maintenance and other work on the Stormwater Control Facilities (the "Access Easement"). The rights granted to the Town in this subsection shall extend to employees, agents, and contractors of the Town.

3. Use of Protection and Access Easements. The Town, its officers, employees, contractors and agents may access the Property and enter the Stormwater Control Facilities for purposes of exercising the Town's rights hereunder. This Maintenance Covenant shall in no way obligate the Town to monitor and Maintain the Stormwater Control Facilities, and the Town shall not be liable to any person, firm, partnership, company, corporation, governmental agency, or entity for the condition or operation of the Stormwater Control Facilities. Further, this Maintenance Covenant shall in no way diminish, limit, or restrict the right of the Town to enforce any of its ordinances as permitted by law or to exercise any rights or powers granted to it.

4. Town Right to Maintain and Repair Stormwater Control Facilities and Right of Reimbursement.

(a) If Stormwater Control Facilities serving any portion of the Property are not performing adequately or as intended or are not properly maintained or replaced, the Town, in its sole discretion, may, after providing written notice to the Lot Owners and the Responsible Party, enter the Property and perform Maintenance of the Stormwater Control Facilities as is necessary to remedy the situation.

(b) The Town shall be fully reimbursed for its costs of inspecting, monitoring, designing, constructing, repairing, reconstructing, replacing, and installing the Stormwater Control Facility or Stormwater Control Facilities. Such costs shall include the costs of administration, overhead, contracting, and public advertising associated with the work performed by the Town pursuant to this Article.

(c) In addition to any other rights the Town has to be reimbursed for its costs, the Town may levy an assessment against each Lot served by the noncompliant Stormwater Control Facility. No assessment will be levied by the Town without prior notice to the affected Lot Owners. Any unpaid assessment levied by the Town shall be, as allowed by law, a lien against any delinquent Lot.

5. Town Right to Private Assessments. In addition to all other remedies set forth in this Maintenance Covenant, the Declarant assigns to the Town any powers or rights of assessment that presently exist or that may be created (including those created through a Subsequent Document) for purposes of funding common expenses for services benefitting the Lots (including those of an Association and including any assessments for Maintenance of Stormwater Control Facilities). The Declarant also appoints the Town as attorney-in-fact for the express purpose of assessing and pursuing the collection of unpaid costs incurred by the Town in its Maintenance of any Stormwater Control Facility serving any of the Lots. The Town shall not exercise the assignment and appointment herein until all of the following occur:

(a) The Town has not been fully reimbursed for any costs associated with Maintenance performed by the Town (or its contractors) to any Stormwater Control Facility serving any portion of the Property.

(b) The Town has provided the Responsible Party written notice requesting full payment and full reimbursement has not been made to the Town within thirty (30) days of this notice.

(c) At least sixty (60) days prior written notice of the assignment of assessment rights is provided to the Responsible Party (and the members of the Association if an Association is the Responsible Party). The Declarant further assigns to the Town the right to compel the Responsible Party to ratify such assignment of assessment rights and appointment as are made in this section at a later date and to, if deemed necessary at the Town's sole discretion, make a similar assignment in the future prior to the Town commencing any Maintenance on any Stormwater Control Facility.

6. Provision of Membership Roster. If an Association is the Responsible Party, the Association shall, upon demand by the Town, provide the Town with a list of all members of the Association and the mailing address for each member that that the Association utilizes to communicate with its membership. This list must be provided within thirty (30) days of the Town's demand.

7. No Public Adoption.

(a) The Town's exercise of its rights under this Maintenance Covenant, or its abatement of a public nuisance, or its repair of unsafe structures does not constitute adoption of any Stormwater Control Facility by the Town. The legal authority of the Town is not intended to impede or prohibit the Responsible Party or any Lot Owners from taking all necessary actions to Maintain the Stormwater Control Facilities so that they function safely and perform the function for which they were created.

(b) The Town is not obligated to monitor or Maintain any Stormwater Control Facility and the Town shall not be liable to any person or entity for the condition or operation of any Stormwater Control Facilities.

Article IV Subordination

1. Subordination.

(To protect the interests of the Town of Pittsboro and the public at large, any existing deeds of trust, mortgages, or liens encumbering the Property, other than property tax liens for the current tax year or governmental improvement assessment liens, must be subordinated to this Maintenance Covenant. If no such encumbrances exist, the following representation must be checked by the Declarant. Otherwise, such encumbrances must be listed and the Maintenance Covenant must be executed by the beneficiary and trustee, mortgagee, or lien holder to evidence such subordination.)

[X] DECLARANT REPRESENTS THAT NO SUPERIOR DEEDS OF TRUST, MORTGAGES, OR LIENS (OTHER THAN PROPERTY TAX LIENS FOR THE CURRENT TAX YEAR OR GOVERNMENTAL IMPROVEMENT ASSESSMENT LIENS) ENCUMBER OR AFFECT THE PROPERTY AT THE TIME OF THE EXECUTION AND RECORDING OF THIS MAINTENANCE COVENANT, OR THAT IF ANY OF THE FOREGOING EXIST AND ARE NOT BEING SUBORDINATED BY THE DEED OF TRUST BENEFICIARY AND TRUSTEE, MORTGAGEE, OR LIEN HOLDER BY EXECUTION OF THIS MAINTENANCE COVENANT, DECLARANT HAS AN OWNER'S POLICY OF TITLE INSURANCE THAT EITHER INSURES THE PROPERTY WITHOUT EXCEPTION FOR SUCH ENCUMBRANCE OR THAT PROVIDES AFFIRMATIVE COVERAGE WITH RESPECT TO SUCH ENCUMBRANCE AND, IN SUCH EVENT, A COPY OF SUCH TITLE INSURANCE POLICY HAS BEEN GIVEN TO THE TOWN.

(If the box above is not checked, the subordination section on the signature pages must be completed and signed by the appropriate parties.)

Article V Miscellaneous

1. Notice. Written notice as required hereunder shall be provided to the Town of Pittsboro at Post Office Box 759, Pittsboro, N.C. 27312, Attention: Town Engineer and to the Declarant at 100 Matrix Drive, Box 8000, Cary, NC 27513. Once the Declarant transfers, by deed or easement, responsibility for Maintenance of the Stormwater Control Facilities to the Responsible Party, the address for notice to the Responsible Party shall be provided to the Town in writing, directed to the address listed above. The Town may elect to notify the Responsible Party at either (i) the mailing address for the Responsible Party provided to the Chatham County Tax Assessor; or (ii) the registered agent of the Responsible Party on file with the Corporations Division of the Secretary of State's Office, either of which shall be deemed to comply with any notice requirements of this Maintenance Covenant. Where notice must be provided to individual Lot Owners (as members of an Association), such notice shall be sent to the Owner of that Lot as shown on the county tax listing first class mail. Written notice shall be deemed received four (4)

days following its deposit, first class mail, with the United States postal system. All mailings required by this Article shall be sent via the United States Postal Service.

2. Term. This Maintenance Covenant shall continue as a servitude running in perpetuity with the Property.

3. Severability. If any provision of this Maintenance Covenant shall be deemed invalid by a judgment, order, or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining provisions of this Maintenance Covenant.

4. No Merger. The rights, privileges and easements in this Maintenance Covenant shall not merge by operation of law or terminate but shall remain in full force and effect despite the fact that the same Owner may own title to all the real properties which are affected by this Maintenance Covenant.

5. No Waiver. The failure of any Owner, an Association, a Responsible Party, or the Town in any one or more instances to insist upon compliance with any provision or covenant herein or to exercise any right or privilege herein shall not constitute or be construed as a waiver of such or any similar provision, covenant, right or privilege including the right to cure a breach or default, but the same shall continue and remain in full force and effect, as if no such forbearance had occurred.

Article VI
Execution

TO HAVE AND TO HOLD the covenants agreed to and the terms, conditions, obligations and restrictions imposed herein shall be binding upon the Declarant, its successors and assigns, and shall continue as a servitude running with the land in perpetuity. Declarant covenants that it is vested of the Property in fee simple, has the right to convey the same in fee simple, that the Property is free from encumbrances except as herein stated or subordinated herein, and Declarant will warrant and defend such title to the same against claims of all persons whatsoever. Title to the Property is subject to the following: all utility rights of way and easements recorded in the Registry; plats of any part or all of the Property recorded in the Registry; and restrictive covenants affecting any part or all of the Property that were recorded in the Registry prior to the recording of the deed to the Declarant that conveyed the Property to the Declarant. Declarant acknowledges that the Town of Pittsboro is acting in reliance on Declarant's authority to enter into this Maintenance Covenant and the terms, conditions, obligations, and restrictions imposed herein in its authorization to subdivide the Property and in the issuance of any permits or development approvals associated with any construction of improvements on the Property and that the Town of Pittsboro may suffer irreparable harm from the violation of the covenants, restrictions, and obligations established herein.

(SIGNATURE PAGES FOLLOW)

[Declarant Signature Page]

IN WITNESS WHEREOF, Declarant hereby executes this Maintenance Covenant under seal as of the day and year first above written.

DECLARANT:
Chatham Development One Inc.

By: _____(SEAL)
Name: _____
Its: _____ President

NORTH CAROLINA
WAKE COUNTY

DECLARANT
ACKNOWLEDGMENT

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: (_____)

Date:
My Commission Expires: _____
Notary Public

_____ Print Name:
[Affix Notary Stamp or Seal]

[The next page is the subordination signature page.]

Exhibit A
Description of Property

LYING AND BEING in or near the Town of Pittsboro, Chatham County, North Carolina, and being all of Lot Nos. 1 through 10, and the rights of way of Freedom Parkway, Grant Drive, and Roundtree Way, as shown on a map recorded in the office of the Chatham County, North Carolina Register of Deeds in Plat Slide 2015, Pages _____ through _____.

Exhibit B
Description of Stormwater Control Facilities
and Drainage Easements

All of the following as shown on a map recorded in the office of the Chatham County, North Carolina Register of Deeds in Plat Slide 2015, Pages _____ through _____ (the "Map") or as located in the rights of way of public streets shown on said Map:

1. "Stormwater Control Structure And Access Easement", containing 0.789 acre (34,371 square feet), more or less, located on portions of Lot 8 and Lot 9 on the Map.
2. "Private Stormwater Control Structure And Access Easement", containing 1.035 acres (45,081 square feet), more or less, located on portions of Lot 3, Lot 4, and Lot 5 on the Map.
3. All Tree Wells that serve as Stormwater Control Facilities for any part of the Property.

October ____, 2015

BENEFICIARY:

TOWN OF PITTSBORO
ATTN: Jeff Jones
Planning Director
635 EAST STREET
P.O. BOX 759
PITTSBORO, NC 27312

APPLICANT:

REEDY CREEK INVESTMENTS, LLC
100 SAS CAMPUS DRIVE #H3245
CARY, NC 27513-2414

IRREVOCABLE STANDBY LETTER OF CREDIT
#9511557620-00098
USD \$724,123.63

RE: CHATHAM PARK-SUTTLES ROAD & RUSSET RUN FINAL PLAT, WR PROJECT NO. 2120469.0

Branch Banking and Trust Company hereby issues our Irrevocable Standby Letter of Credit number 9511557620-00098 in your favor for the account of REEDY CREEK INVESTMENTS, LLC for an amount of Seven Hundred Twenty-Four Thousand One Hundred Twenty-Three and 63/100ths Dollars (USD \$724,123.63).

This amount is available upon presentation of your sight draft drawn upon us, and accompanied by the following:

A statement issued on the letterhead of beneficiary and signed by an authorized representative stating one of the following:

A. "We hereby certify that CHATHAM DEVELOPMENT ONE INC. has failed to install required improvements for the Project known as CHATHAM PARK-SUTTLES ROAD & RUSSET RUN FINAL PLAT as required by the Town of Pittsboro ordinances."

OR

B. "We hereby certify that Letter of Credit Number #9511557620-00098 is due to expire in fifteen (15) days or less and CHATHAM DEVELOPMENT ONE INC. has neither replaced the Letter of Credit with another acceptable surety (Letter of Credit, Surety Bond or Cash) nor caused the expiration date thereof to be extended for an additional one year term.

All drafts drawn under this Letter of Credit must contain the following statement: "Drawn under BB&T Irrevocable Standby Letter of Credit No. 9511557620-00098 dated 10/02/15".

This Letter of Credit will expire at 4:00 pm Eastern time on October ____, 2016.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without written amendment for One Year periods from the present or any future expiry date unless at least sixty (60) days prior to such expiration date, we send the Beneficiary written notice at the above stated address by overnight courier that we elect not to extend this Letter of Credit beyond the initial or any extended expiry date hereof; provided, however, in no event shall this letter of credit be extended beyond October ____, 2020.

This Letter of Credit is irrevocable, unconditional, nontransferable, and non-assignable. We hereby agree that sight drafts drawn under and in compliance with, the terms of this Letter of Credit will be duly honored upon presentment at our office at 434 Fayetteville Street, 4th Floor, Raleigh, NC 27601, Attn: Corporate Banking Department, on or before 4:00 pm Eastern time on the initial or any extended expiry date.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 ("ISP98").

BRANCH BANKING AND TRUST COMPANY

STEVEN G. BULLARD
SENIOR VICE PRESIDENT

STATE OF NORTH CAROLINA

SUBDIVISION IMPROVEMENT AGREEMENT

COUNTY OF CHATHAM

THIS SUBDIVISION IMPROVEMENT AGREEMENT (“the Agreement”) made and entered into this the _____ day of _____, 2015 by and between CHATHAM DEVELOPMENT ONE INC., with a mailing address of 100 Matrix Drive, Box 8000, Cary, NC 27513 (“the Developer”) and the Town of Pittsboro with a mailing address of Post Office Box 759, Pittsboro, North Carolina 27312 (“the Town”).

The “Effective Date” of this Agreement will be the date that final subdivision plat approval is granted by the Town, as evidenced by the signatures on the subdivision plat of the Town’s Mayor and Review Officer (or other Town officials authorized to execute the final subdivision plat).

WHEREAS, the Developer seeks permission to subdivide a tract of property within the Town to be known as “A Portion Of Chatham Park Planned Development District” (the “Subdivision”), which property is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “Property”), and which Property is part of Chatham Park Planned Development District approved by the Town (the “PDD”); and

WHEREAS, the Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Subdivision and thereby to limit the harmful effects of substandard subdivisions, including premature subdivision which leaves property undeveloped and unproductive; and

WHEREAS, the purpose of this Agreement is to protect the Town from the cost of completing subdivision improvements itself and is not executed for the benefit of material furnishers, laborers, or others providing work, services or material to the Subdivision or for the

benefit of lot or home buyers in the Subdivision; and

WHEREAS the mutual promises, covenants and obligations contained in this Agreement are authorized by state law and the Town's zoning and subdivision control laws;

NOW, THEREFORE, the Parties hereby agree as follows:

A. DEVELOPER'S OBLIGATIONS

1. IMPROVEMENTS: The Developer will construct and install, at his own expense, those on-site and off-site subdivision improvements required by the Town, as set forth in the records of the Town approving the PDD and the Subdivision, including without limitation, all correspondence, cost estimates, subdivision plats, and other filings, which records are incorporated in this Agreement by reference, or otherwise listed on Exhibit B attached hereto and incorporated herein by this reference (the "Improvements"). The Developer's obligation to complete the Improvements will arise upon final plat approval by the Town and will be independent of any obligations of the Town contained herein and will not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the development.

2. SECURITY: To secure the performance of his obligations hereunder, the Developer will deposit with the Town on or prior to the Effective Date, adequate security in an amount and form acceptable to the Town in its reasonable discretion, but not less than the amount determined by the Town Engineer sufficient to secure the satisfactory construction, installation, and completion of the Improvements based on a Completion Estimate letter from Robbie Oldham, PE, of Withers & Ravenel, dated August 25, 2015.

3. STANDARDS: The Developer will construct the Improvements according to the standards and specifications required by the Town as set forth in the records of the Town approving the PDD and the Subdivision, including without limitation, all correspondence, cost estimates, subdivision plats, and other filings, which records are incorporated in this Agreement by reference, or otherwise listed on Exhibit B attached hereto and incorporated herein by this reference.

4. WARRANTY: The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of one year from the date that the Town accepts the dedication of the applicable improvement completed by the Developer.

5. COMPLETION PERIODS: The Improvements, each and every one of them, will be completed on or before the earlier of one year from the Effective Date or 45 days prior to the Expiration Date of the financial security (the "Completion Period"). The developer will not cease construction activities for any period of more than sixty (60) consecutive days (the "Abandonment Period").

6. COMPLIANCE WITH LAW: The Developer will comply with all relevant laws, ordinances, and regulations in effect at the time of final subdivision plat approval when fulfilling

his obligations under this Agreement. When necessary to protect public health, the Developer will be subject to laws, ordinances and regulations that become effective after final plat approval.

7. DEDICATION: The Developer will dedicate to the Town the Improvements required by the Town or otherwise listed on Exhibit C attached hereto and incorporated herein by this reference pursuant to the procedure described in Paragraph B.4 below.

B. TOWN'S OBLIGATIONS

1. PLAT APPROVAL: The Town will grant final subdivision plat approval to the Subdivision upon the execution of this Agreement by the Developer and the delivery of adequate security in an amount and form acceptable to the Town in its reasonable discretion.

2. INSPECTION AND CERTIFICATION: The Town or other appropriate agencies will inspect the Improvements as they are completed and, if acceptable to the Town or other appropriate agency, certify such Improvements as being in compliance with the required standards and specifications of the Town. Before obtaining certification of any such Improvement, the Developer will present to the Town valid lien waivers from all persons providing materials or performing work on the Improvement for which certification is sought. Certification by the Town does not constitute a waiver by the Town of the right to draw funds under the financial security on account of defects in or failure of any improvement that is detected or which occurs following such certification.

3. NOTICE OF DEFECT: The Town will provide timely notice to the Developer whenever inspection reveals that an Improvement does not conform to the required standards and specifications or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to cure or substantially cure the defect. The Town may not declare a default under this Agreement during the thirty (30) day cure period on account of any such defect unless it is clear that the Developer does not intend to cure the defect. The Developer will have no obligation to cure defects in or failure of any Improvement found to exist or occurring after the Town accepts dedication of the improvement(s).

4. ACCEPTANCE OF DEDICATION: The Town will accept the dedication of any validly certified Improvement within thirty (30) days of the Developer's offer to dedicate the improvement. The Town's acceptance of dedication is expressly conditioned on the presentation by the Developer of a policy of title insurance, where appropriate, for the benefit of the Town showing that the Developer owns the improvement in fee simple and that there are no liens, encumbrances, or other restrictions on the improvement unacceptable to the Town in its reasonable judgment. Acceptance of the dedication of any Improvement does not constitute a waiver by the Town of the right to draw funds under the letter of credit on account of any defect in or failure of the improvement that is detected or which occurs after the acceptance of the dedication.

5. REDUCTION OF SECURITY: After the acceptance of any Improvement, the amount which the Town is entitled to draw on the financial security will be reduced by an amount equal to 90% of the estimated cost of the Improvement. At the request of the Developer,

the Town will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the financial security to the extent of such amount. A Developer in default under this Agreement will have no right to such a certificate. Upon the acceptance of all of the Improvements, the balance that may be drawn under the security will be available to the Town for ninety (90) days after expiration of the Warranty Period.

6. USE OF PROCEEDS: The Town will use funds drawn under the financial security only for the purposes of completing the Improvements or correcting defects in or failures of the Improvements.

C. OTHER PROVISIONS

1. EVENTS OF DEFAULT: The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to commence construction of the Improvements within fourteen (14) days of final Subdivision plat approval;
- b. Developer's failure to complete construction of the Improvements within one (1) year of final Subdivision plat approval, unless otherwise extended by the Town;
- c. Developer's failure to cure the defective construction of any Improvement within the applicable cure period;
- d. Developer's failure to perform work within the Subdivision for a period of more than sixty (60) consecutive days;
- e. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer;
- f. Foreclosure of any lien against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure.
- g. Developer's failure to comply with any condition or obligation in this Agreement.
- h. The Town may not declare a default until written notice has been given to the Developer.

2. MEASURE OF DAMAGES: The measure of damages for breach of this Agreement will be the reasonable cost of completing the Improvements. For improvements upon which construction has not begun, the estimated cost of the Improvements will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the amount of the financial security establishes the maximum amount of the Developer's liability. The Town will be entitled to complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever

commenced.

3. TOWN'S RIGHTS UPON DEFAULT: When any event of default occurs, the Town may draw on the financial security to the extent of the face amount of the security less 90% of the estimated cost of all Improvements previously accepted by the Town. The Town will have the right to complete Improvements itself or contract with a third party for completion, and the Developer hereby grants to the Town, its successors, assigns and agents, contractors and employees a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing such Improvements. Alternatively, the Town may assign the proceeds of financial security to a subsequent developer (or a lender) who has acquired the Subdivision by purchase, foreclosure or otherwise who will then have the same rights of completion as the Town if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements. In addition, the Town also may suspend final plat approval during which time the Developer will have no right to sell, transfer or otherwise convey lots or homes within the Subdivision without the express written approval of the Town, or until the Improvements are completed and accepted by the Town. These remedies are cumulative in nature, except that during the Warranty Period, the Town's only remedy will be to draw funds under the financial security.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the day and year first above written.

TOWN OF PITTSBORO

By: _____
Name: Bryan Gruesbeck
Title: Manager

CHATHAM DEVELOPMENT ONE INC.

By: _____
Name: _____
Title: _____ President

EXHIBIT A

LEGAL DESCRIPTION

All of Lots 1-10, inclusive, according to a plat entitled "Subdivision Plat A Portion of the Chatham Park Planned Development District" prepared by Withers & Ravenel, dated August 13, 2015 (Sheets 1-7) recorded in Plat Slide 2015- _____ through _____, Chatham County Registry, reference to which is hereby made for a more particular description.

EXHIBIT B

SUBDIVISION IMPROVEMENTS

1. Sanitary Sewer Outfall B (serving Lot 10), including mobilization, clearing and erosion control, and installation of utilities.
2. Grant Drive, including installation of water distribution system, reclaimed water distribution system, sidewalk, curb, stone and asphalt.
3. Freedom Parkway, including installation of water distribution system, reclaimed water distribution system, sidewalk, curb, stone and asphalt.
4. Roundtree Way, including installation of water distribution system, reclaimed water distribution system, sidewalk, curb, stone and asphalt.
5. Stormwater Management serving Public Roadways, including completion of BMP #1 and BMP #2, installation of Stormwater Control Facility tree wells on Freedom Parkway.

EXHIBIT C

IMPROVEMENTS

1. Grant Drive, Freedom Parkway, and Roundtree Way depicted upon the subdivision plat.
2. All public sewer collection lines and easements depicted upon the subdivision plat.
3. All public utilities including water and reuse water distribution lines located within the public street rights of way.

Notwithstanding dedication of the foregoing Improvements, Developer or its successor or assignee, which may include one or more property owner associations or individual lot owners, will be responsible for maintenance of the following:

- A. Stormwater Control Facilities located in the foregoing street rights of way as required by the "Declaration Of Maintenance Covenant And Grant Of Protection Easements For Stormwater Control Facilities" recorded in the office of the Chatham County Register of Deeds in Book _____, Page _____, said Declaration being incorporated by reference as if fully set out herein (Developer and the Town agree that, if this Agreement is executed prior to the recording of the Declaration, the Book and Page recording information for the Declaration may be entered in this document subsequent to the execution of this document); and
- B. Trees and other landscaping installed by Developer in the foregoing street rights of way that are required by the PDD Master Plan and any additional trees and other landscaping installed by Developer in the foregoing street rights of way that are not required to be installed by the ordinances or regulations of the Town.