

AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2015, by and between THE TOWN OF PITTSBORO (the “Town”) and CHATHAM PARK INVESTORS LLC (“Chatham”).

WHEREAS, in accordance with a Planned Development District Zoning Application (the “Zoning”) and accompanying “Master Plan” for approximately 7,100 acres of property owned by Chatham (the “Development”), which word includes all real property subject to the Master Plan at all relevant times under this Agreement, together with all improvements and infrastructure now existing or hereafter constructed thereon) that has been approved by the Board of Commissioners of the Town, the most recent approval having been given on December 8, 2014 (the terms “Zoning” and “Master Plan” also include all valid prior and subsequent zoning and Master Plan approvals by the Town for the Development), Chatham proposes to develop the Development in accordance with the Master Plan; and

WHEREAS, the Development as proposed under the Master Plan will consist of a mix of uses and its scope and pace of development are anticipated to far exceed and accelerate the growth the Town has heretofore experienced; and

WHEREAS, the Development will consist of multiple phases and will entail and require various reviews and approvals by the Town’s planning, engineering, and utility staffs, and consultants employed by the Town to assist in the review process;

WHEREAS, Chatham and the Town agree that development of and adoption of a unified development ordinance (“UDO”) would provide the Town with a better method to regulate future development in the Town, including development in the Development; and

WHEREAS, the Town will need to approve “Additional Elements” as required under the Master Plan, and Chatham and the Town will need to cooperate and agree upon one or more “Development Agreements” pursuant to Section 160A-400.2 of the North Carolina General Statutes, to provide for public facility and utility infrastructure for the Development; and

WHEREAS, the Zoning and Master Plan were approved as a “Planned Development District”, or “PDD”, in accordance with the Town’s zoning ordinance; and

WHEREAS, civil actions have been filed against the Town, and future civil actions may be filed against the Town, challenging the validity of the Town’s ordinance that established the PDD zoning district and that approved the Zoning and Master Plan, all of such civil actions being referred to herein together as the “Litigation”; and

WHEREAS, the Town has incurred costs and expenses and it is expected that the Town will incur additional costs and expenses in dealing with the Development that exceed filing and review fees and that the Town will incur costs and expenses with respect to the adoption of a UDO, review and approval of the Additional Elements, approval of one or more Development Agreements, and capital and operational costs, all incident or related to public services for the Development, all such costs and expenses being hereafter collectively referred to as “Additional Costs”;

WHEREAS, the Town’s financial resources will be impacted by payment of the Additional Costs until such time as ad valorem tax receipts associated with the Development significantly increase, and Chatham is willing to assist in defraying the Additional Costs as provided herein;

WHEREAS, the Town and Chatham believe that it would be in their mutual best interests to implement a mechanism for Chatham to assist with funding the Town's Additional as provided herein.

NOW, THEREFORE, in consideration of the agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Chatham and the Town agree as follows:

(1) Chatham's Contribution to the Town's Additional Costs.

Chatham shall make Quarterly Payments (as defined herein) to the Town in accordance with the following:

- a. The "Quarterly Payment" shall be the amount due and payable by Chatham or its successors or assigns to the Town four (4) times each calendar year, beginning with calendar year 2015. Quarterly Payments shall be held by the Town in a special revenue fund and disbursed therefrom to pay the Additional Costs.
- b. The "Quarterly Payment Dates" shall be the dates in each calendar year by which the Quarterly Payments are due and payable to the Town as provided herein. The Quarterly Payment Dates are March 31, June 30, September 30, and December 31.
- c. The "Applicable Tax Receipt Period" shall be the twelve (12) months immediately preceding the current calendar year.
- d. Each Quarterly Payment for 2015 shall be in the amount of \$75,000.00.
- e. The amount of the Quarterly Payments for 2016 and subsequent calendar years shall be determined as follows: \$300,000.00 less (i) the total amount of ad valorem property taxes collected by the Town from the Development during Applicable Tax Receipt Period and (ii) the amount by which \$300,000.00 less the amount of the ad valorem taxes collected by the Town from the Development during the Applicable Tax Receipt Period exceeds the Additional Costs paid by the Town during such Applicable Tax Receipt Period. The foregoing items (i) and (ii) are collectively referred to as the "Deductions." For example, if the amount of ad valorem taxes collected by the Town from the Development in 2015 is \$30,000.00 and the amount of Additional Costs paid by the Town in 2015 is \$260,000.00, the Deduction under (i) is \$30,000.00, and the Deduction under (ii) is \$10,000.00 ($\$300,000.00 - \$30,000.00 = \$270,000.00$ and $\$270,000.00 - \$260,000.00 = \$10,000.00$). Accordingly, the total of the Deductions for 2015 would be \$40,000.00 and the total amount to be paid by Chatham in 2016 would be \$260,000.00, with each Quarterly Payment being in the amount of \$65,000.00.
- f. Chatham, or its successors or assigns, shall make Quarterly Payments to the Town until the first to occur of the following:
 - i. the amount of the Deductions for the Applicable Tax Receipt Period equals or exceeds \$300,000.00; or

- ii. a court of final and competent jurisdiction determines that either the amendment to the text of the Town's Zoning Ordinance that established a Planned Development District zoning district is invalid, or the adoption by the Town of a zoning map amendment to its Zoning Ordinance that applied the Planned Development District zoning classification and Master Plan to the Development is invalid.

Beginning with calendar year 2016, and continuing as long as Chatham has an obligation to make Quarterly Payments, on or before February 28 of each year the Town shall provide Chatham (or its successors or assigns, as applicable) with a statement of ad valorem property taxes collected by the Town for Applicable Tax Receipt Period and (ii) the Additional Costs paid by the Town during the Applicable Tax Receipt Period.

(2) Litigation. The Town will notify Chatham immediately after the filing of any Litigation against the Town. Expenses and costs, including reasonable attorneys' fees, incurred by the Town in defense of Litigation are referred to herein as "Litigation Expenses". Chatham will file a motion to intervene in any Litigation and if such motion is granted, will assume the defense thereof. If the motion to intervene is granted, the Town shall be under no obligation to defend the Litigation, but the Town will remain a nominal party and cooperate in Chatham's defense of the Litigation. If the motion to intervene is not granted, the Town will defend the Litigation. In either event, whether the Town is a nominal party or an active party in the defense of any Litigation, Chatham, or its successors or assigns, as applicable, shall indemnify and hold the Town harmless from all loss, damages (including consequential damages), and Litigation Expenses incurred by the Town in connection with the defense of, response to, or resulting from any Litigation. The Town will advise Chatham with respect to the extent of the Town's involvement in the defense of any Litigation and the costs thereof, including the identity of the attorney who will represent the Town and attorneys' fees for such representation of the Town.

IN WITNESS WHEREOF, this Agreement is executed on the date first above written.

TOWN OF PITTSBORO
a North Carolina Municipal corporation

By: _____
Name: _____
Its: Mayor _____

Attest: _____
Name: _____
Its: _____ Town Clerk

(Affix Seal)

CHATHAM PARK INVESTORS LLC

By: _____
Name: _____
Its: Manager